"AMERICA'S DIRTY SECRET": THE HUMAN RIGHT TO SANITATION IN ALABAMA'S BLACK BELT

Inga T. Winkler & Catherine Coleman Flowers*

CONTENTS

---

* Inga T. Winkler is a lecturer in human rights at the Institute for the Study of Human Rights at Columbia University. She was formerly the Legal Advisor to the United Nations Special Rapporteur on the human rights to water and sanitation, and she draws on that experience to reflect on addressing local challenges through international human rights mechanisms. Catherine Coleman Flowers is the founder and Executive Director of the Alabama Center for Rural Enterprise, the Rural Development Manager at the Equal Justice Initiative, and a Practitioner in Residence at the Franklin Humanities Institute at Duke University. The authors are grateful to the organizers of the Bringing Human Rights Home Lawyers' Network Annual Human Rights in the U.S. Symposium on "Localizing Human Rights in the New Era: Strategies for State and Local Implementation of Human Rights in the United States" held in New York City on May 19, 2017. The symposium provided the backdrop for this Article and triggered an in-depth analysis of the issues discussed herein. The authors are extremely grateful for comments by Sharmila Murthy, JoAnn Kamuf Ward, Martha Davis, and Hà Lê Phan-Warnke on an earlier version of the Article.

INTRODUCTION

Residents of Lowndes County, Alabama know the importance of sanitation. Whereas many people approach adequate sanitation with a flush-and-forget attitude, many Lowndes County residents are acutely aware of sewage, waste, and contamination.[1] Only a small share of the population is connected to sewerage.[2] The majority of residents are supposed to rely on on-site sanitation systems, but soil conditions make these expensive to install and unaffordable to many households.[3] Where systems are in place, they are often inadequate or improperly maintained, resulting in systems that back up, overflow, and expose residents to raw sewage.[4]

Lowndes County residents are not alone in their struggle to realize their rights to water and sanitation. Advocates throughout the United States have formed a National Coalition,[5] and their work has increasingly relied on the rights to water and sanitation, which were

1. *See infra* Section I.A.

2. *Rep. of the Special Rapporteur on the human right to safe drinking water and sanitation: Mission to the United States of America*, ¶ 20, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011).

3. PATRICIA A. JONES & AMBER MOULTON, UNITARIAN UNIVERSALIST SERV. COMM., THE INVISIBLE CRISIS: WATER AFFORDABILITY IN THE UNITED STATES 14–15 (2016).

4. AM. SOC'Y OF CIVIL ENG'RS, REPORT CARD FOR ALABAMA'S INFRASTRUCTURE 2015, at 60 (2015), https://www.infrastructurereportcard.org/wp-content/uploads/2016/10/ASCE-AL-Report-Card-2015-Full-Report-FINAL-web.pdf.

5. *#WaterIsAHumanRight: Human Rights to Water and Sanitation*, U.S. HUMAN RIGHTS NETWORK, http://www.ushrnetwork.org/our-work/project/waterisahumanright-human-rights-water-sanitation (last visited Sept. 10, 2017).

recognized by the United Nations in 2010.[6] From large-scale water disconnections in Detroit, Baltimore, and other cities, to lead contamination in Flint, to other types of contamination in Georgia and New Mexico, to the lack of access to water for indigenous peoples in the Navajo Nation, to the criminalization of public urination and defecation affecting homeless people,[7] disadvantaged communities across the country face immense challenges.[8] In this regard, Lowndes County, located in Alabama's Black Belt,[9] reflects broader struggles of poor rural communities of color in the United States.

Yet, as happens so often, challenges related to water receive significantly more attention than those related to sanitation.[10] Water

---

6. *See, e.g.*, FOOD & WATER WATCH, OUR RIGHT TO WATER 7–8 (2012), https://www.foodandwaterwatch.org/sites/default/files/our_right_to_water_report_may_2012.pdf (arguing that the Special Rapporteur on the human right to safe drinking water and sanitation's recommendations to the U.S. federal government should form the basis of policy reform to ensure equitable access to water).

7. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, CRIMINALIZING CRISIS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 7 (2011), https://www.nlchp.org/Criminalizing_Crisis.

8. *See, e.g.*, Letter from the U.S. Human Rights Network & the Univ. of Cal. at Berkeley Boalt Sch. of Law Int'l Human Rights Clinic to Emilio Álvarez Izaca, Exec. Sec'y, Inter-Am. Comm'n on Human Rights (July 28, 2015), http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_.right towater_0_0_0.pdf (detailing some of the barriers to clean and affordable water in urban, rural, and indigenous communities in the United States); Martha F. Davis, *Let Justice Roll Down: A Case Study of the Legal Infrastructure for Water Equality and Affordability*, 23 GEO. J. ON POVERTY L. & POL'Y 355 (2016) (discussing water affordability from the perspective of civil rights law with a focus on discriminatory intent and disparate impact); Martha F. Davis, *Bringing It Home: Human Rights Treaties and Economic, Social, and Cultural Rights in the United States*, 41 HUM. RTS. 2, 9–12 (2015) (describing how U.N. Special Rapporteurs' intervention in Detroit brought international attention to the city's water shut-offs and supported local policy and legislative efforts); *see also* Sharmila L. Murthy, *A New Constitutive Commitment to Water*, 36 B.C. J.L. & SOC. JUST. 159 (2016) (arguing for legislation that would create a new constitutive commitment to water as a right).

9. *Alabama Counties: Lowndes County*, ALA. DEP'T OF ARCHIVES & HISTORY, http://www.archives.state.al.us/counties/lowndes.html (last updated Feb. 6, 2014).

10. *See, e.g.*, WORLD HEALTH ORG. & U.N.-WATER, INVESTING IN WATER AND SANITATION: INCREASING ACCESS, REDUCING INEQUALITIES 48 (2014), http://apps.who.int/iris/bitstream/10665/139735/1/9789241508087_eng.pdf?ua=1 (finding only a third of the combined global funding for water and sanitation is spent on sanitation); *see also* Inga Winkler, *The Human Right to Sanitation*, 37 U. PA. J. INT'L L. 1331, 1347–48, 1374–77 (2016) (comparing levels of attention and awareness when the right to sanitation is presented alone versus when it is linked to water).

is perceived as clean and fresh. It sustains and symbolizes life. Sanitation is associated with filth, dirt, and disease.[11] This is precisely what makes it all the more important to address the lack of adequate sanitation. This Article will shine a light on this "dirty secret." It examines prevalent sanitation issues in Lowndes County and analyzes them within the human rights framework, linking the human right to sanitation to the principle of substantive equality within the context of racial disparities. This Article traces Alabama advocates' engagement with global and regional human rights mechanisms, thus connecting local struggles to international frameworks. It relies on published studies that paint a fairly comprehensive picture of the situation in Lowndes County, using these studies as the basis for an assessment within the human rights framework. It is unique in that it combines the perspectives of a human rights advocate with extensive experience working internationally and an Alabama advocate with firsthand knowledge of the situation on the ground—thus truly connecting the global and the local, as well as the theoretical framework and lived experience.

Following this introduction, this Article provides an overview of the sanitation crisis in Lowndes County, Alabama. It later traces the development of the human right to sanitation at the international level with a particular focus on the United States' position and human rights obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The Article then maps the international framework onto the situation in Lowndes County and presents an in-depth human rights analysis. It later discusses how advocates have localized human rights standards and sought to connect the global and the local, before presenting some concluding remarks.

I. THE SANITATION CRISIS IN LOWNDES COUNTY, ALABAMA

Lowndes County, Alabama, is located between the cities of Selma and Montgomery.[12] It was part of the route of the historic civil

11. *See* David Biello, *Go Ahead, Say It: Shit—There, Now We Can Seriously Discuss Sanitation*, SCI. AM. (Oct. 15, 2008), https://www.scientificamerican.com/article/shit-enables-serious-sanitation-discussion/.

12. *Alabama County Map with County Seat Cities*, GEOLOGY.COM, http://geology.com/county-map/alabama.shtml (last visited Sept. 16, 2017).

rights march, led by Dr. Martin Luther King, Jr., in 1965.[13] Despite the county's historical significance at the center of the civil rights movement, racial inequalities remain deeply entrenched in all areas of life. They are acutely reflected in access to sanitation and wastewater management.

Lowndes County is a sparsely populated area,[14] home mostly to small rural communities.[15] It is part of Alabama's Black Belt, [16] a term that refers to the region's dense, dark, and fertile soil, traditionally used for cotton growing.[17] The communities are largely low-income and predominantly African-American.[18] According to census data, the estimated population was 10,358 in 2016.[19] In 2010, the population was 15.8 persons per square mile (compared to a national average of 87.4 persons per square mile).[20] According to 2016 data, 73.4% of the population is African-American or Black (compared to 13.3% of the U.S. population).[21] The median household income from 2011 to 2015 was less than $26,000 (compared to a national average of approximately $54,000).[22] An estimated 35.2% of people in the county are living in poverty (compared to 13.5% of the U.S. population).[23]

Lowndes County faces complex sanitation issues, resulting from entrenched poverty and natural and climatic conditions, such as soil conditions and a lack of infrastructure. In many areas, clay soil prevents water from percolating into the ground.[24] When combined

---

13. *Map of the Selma to Montgomery March*, TRIPLINE, https://www.tripline.net/trip/Map_of_the_Selma_to_Montgomery_March-0000000000000100088A1C959013F3D78 (last visited Sept. 16, 2017).

14. *Quick Facts: Lowndes County, Alabama*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/01085,00 (last visited Sept. 8, 2017).

15. *Population, Housing Units, Area, and Density: County Subdivision and Place 2010 Census Summary*, U.S. CENSUS BUREAU, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF (last visited Sept. 16, 2017).

16. *Alabama Counties: Lowndes County*, *supra* note 9.

17. Terance L. Winemiller, *Black Belt Region in Alabama*, ENCYCLOPEDIA OF ALA., http://www.encyclopediaofalabama.org/article/h-2458.

18. *Quick Facts: Lowndes County, Alabama*, *supra* note 14.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Quick Facts: Lowndes County, Alabama*, *supra* note 14.

24. Maxwell Izenberg et al., *Nocturnal Convenience: The Problem of Securing Universal Sanitation Access in Alabama's Black Belt*, 6 ENVTL. JUST.

with an inadequate sanitation infrastructure, these conditions are a recipe for disaster.[25] Many towns in Alabama's Black Belt have inefficient—or even non-existent—wastewater systems.[26] Systems often overflow when it rains, exposing residents to raw sewage in their homes or yards.[27] Climate change is likely to make heavy rains and high temperatures more common in Alabama, exacerbating these issues.[28] The following sections will discuss these challenges in more depth.

A. Lacking and Failing Infrastructure and the Burden on Individuals

Sanitation can be managed in a variety of different ways. Broadly speaking, centralized systems link individual toilets, sinks, showers, and other facilities to a public sewer, through which sewage is transported to a wastewater treatment plant.[29] On-site systems are placed where wastewater is produced, and they collect this wastewater in a tank or cesspool that requires emptying after a given period of time.[30] While many urban and suburban areas use public sewers that are usually run by municipalities,[31] more rural areas frequently use on-site systems installed and funded by homeowners themselves.[32]

From a legal perspective, water and sanitation systems are governed by a complex amalgam of federal and state laws and

---

200, 201–02 (2013); Ashley Cleek, *Filthy Water and Shoddy Sewers Plague Poor Black Belt Counties*, AL JAZEERA AM. (June 3, 2015), http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-black-belt-counties.html.

25. *See infra* Section I.A.

26. Cleek, *supra* note 24.

27. *Id.*

28. *What Climate Change Means for Alabama*, ENVTL. PROT. AGENCY (Aug. 2016), https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-al.pdf.

29. Marshall Brain, *How Sewer and Septic Systems* Work, HOW STUFF WORKS, at 3, http://home.howstuffworks.com/home-improvement/plumbing/sewer3.htm (last visited Sept. 16, 2017).

30. *Id.*; *see also* Elizabeth Tilley et al., *Compendium of Sanitation Systems and Technologies*, SWISS FED. INST. OF AQUATIC SCI. AND TECH. (2014), http://www.eawag.ch/fileadmin/Domain1/Abteilungen/sandec/schwerpunkte/sesp/CLUES/Compendium_2nd_pdfs/Compendium_2nd_Ed_Lowres_1p.pdf (providing an overview of sanitation technologies).

31. Marshall Brain, *supra* note 29, at 4.

32. *Id.* at 3.

regulations. Most prominently, the 1972 Clean Water Act seeks to regulate water pollution covering various kinds of pollutants and limits the discharge of sewage into the environment.[33] The 1974 Safe Drinking Water Act focuses on water services and is not directly relevant to sanitation.[34] The relevant stipulations for sanitation and wastewater are largely found in state law. Section 22-26-2 of the Alabama Code provides that every person, firm, or corporation or municipal corporation owning or occupying property shall be required to install wastewater collection, treatment, and disposal facilities and to connect to sewers where available.[35] If sewers are unavailable, they are required to dispose of wastewater by other means.[36] The Alabama Department of Public Health further specifies, with regard to on-site sewage treatment and disposal systems, that any dwelling shall include toilet and plumbing facilities and that "sanitary drainage piping shall be connected to a properly permitted system of sewage disposal used solely to treat, transport and dispose of sewage."[37]

According to data collected through the 2013 American Housing Survey, a total of 21,498,000 households in the United States rely on septic tanks, cesspools, or chemical toilets, rather than a public sewer.[38] This equals over 18% of all households in the United States.[39] Historical data suggests that in Alabama, and Lowndes County in particular, figures are higher than average. In 1990—the last time complete data on sewage and septic systems was collected—43.6% of Alabama homes relied on septic tanks or cesspools, compared to 24.1% of homes in the United States as a whole.[40] In mostly-rural Lowndes County, this percentage is even greater: an estimated 82% of homes use on-site wastewater solutions,

---

33. 1972 Clean Water Act, 33 U.S.C. § 1251 (2012) (establishing a nationwide policy of waste treatment "to assure adequate control of sources of pollutants in each State").

34. 1974 Safe Drinking Water Act, 42 U.S.C. § 300f (2012) (defining "public water systems" as systems that deliver "water for human consumption").

35. ALA. CODE § 22-26-2 (2016).

36. *Id.*

37. ALA. ADMIN. CODE r. 420-3-1-.02 (2017).

38. 2013 AMERICAN HOUSING SURVEY: PLUMBING, WATER, AND SEWAGE DISPOSAL, U.S. CENSUS BUREAU, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2013_C04AO&prodType=table (last updated Feb. 24, 2015).

39. *Id.*

40. *Historical Census of Housing Tables: Sewage Disposal*, U.S. CENSUS BUREAU, https://www.census.gov/hhes/www/housing/census/historic/sewage.html (last updated Sept. 31, 2011).

and only 18% are connected to municipal sewerage.[41] This is typical of many rural communities in the South.[42] Many households are responsible for the installation and maintenance of their own wastewater disposal systems,[43] whereas wastewater infrastructure may be publicly provided to wealthier areas of the country at a fraction of the cost.[44]

Even where municipal infrastructure exists, it is often inadequate. For instance, the city of Uniontown, Alabama, built spray fields as a disposal method, but soil conditions limit absorption so that sewage flows into nearby fields and waterways.[45] Similarly, the city of Hayneville, Alabama, relies on a lagoon sewage system, which consists of large ponds that hold wastewater prior to treatment.[46] During times of heavy rain, the system often overflows and backs up into the yards of residents living close to the lagoon.[47] "[Sewage] was coming back in my bathtub one time. I broke down crying," Charlie Mae Martin Holcombe, a resident, told Al Jazeera America.[48] In addition to the immediate impact, including the smell, discomfort, and impossibility of showering and using toilets, the backups also have the long-term impact of contaminating the yards.[49]

The majority of households not connected to municipal sewerage are required to install and maintain septic systems according to the Alabama regulations explained above.[50] It is the individual's responsibility.[51] Many residents in one of the poorest counties in the United States cannot afford to do so. As previously mentioned, the median household income was below $26,000 as of

41. *Report of the Special Rapporteur on the human right to safe drinking water and sanitation: Mission to the United States of America*, *supra* note 2, ¶ 20.

42. Kaye LaFond, *Infographic: America's Septic Systems*, CIRCLE OF BLUE: WATERNEWS (Oct. 16, 2015), http://www.circleofblue.org/2015/world/infographic-americas-septic-systems/.

43. Mary Anna Evans, *Flushing the Toilet Has Never Been Riskier*, ATLANTIC (Sept. 17, 2015), https://www.theatlantic.com/technology/archive/2015/09/americas-sewage-crisis-public-health/405541/.

44. *See infra* Section III.C.

45. JONES & MOULTON, *supra* note 3 at 14–15 (2016); *see also* Bruce Lesikar, *Spray Distribution*, TEX. A&M AGRILIFE EXTENSION, http://ossf.tamu.edu/spray-distribution/ (last visited Sept. 10, 2017) (describing how spray fields dispose of waste).

46. Cleek, *supra* note 24.

47. *Id.*

48. *Id.*

49. *Id.*

50. ALA. ADMIN. CODE r. 420-3-1-.02 to -.03 (2017).

51. *Id.*

2015.[52] Due to soil conditions that do not allow water to percolate into the ground, conventional systems often do not work, necessitating engineered systems.[53] These can be very expensive to install—up to $30,000.[54]

As a result, many households do not have septic tanks installed.[55] In these homes, feces and wastewater are not contained, but run straight from bathrooms into yards.[56] A resident explains how unbearable the situation is: "It's the odor, it's the smell, it's the raw sewage that comes out of a person's body. That's what it is. There's no other way to explain it."[57]

Where households do have septic tanks installed, a large number of them are inadequate and improperly maintained. The 2015 Infrastructure Report Card estimated that 25% of 850,000 septic systems in Alabama are currently failing.[58] When rainfall saturates the soil, residents with on-site systems are exposed to effluent coming back into their homes through bathtubs, sinks, or overflowing toilets.[59] Heavy rainfalls are increasingly common, and record rainfall in 2017 has made this problem worse for residents.[60]

While there is no current data, an Environmental Protection Agency (EPA) blog post relied on data collected by the Alabama Department of Public Health to note that "[i]n 2002, it was estimated that 40 to 90 percent of households had either no septic system or were using an inadequate one. In addition, 50 percent of the existing

---

52. *Quick Facts: Lowndes County, Alabama*, *supra* note 14.

53. JONES & MOULTON, *supra* note 3, at 14; Izenberg et al., *supra* note 24, at 200, 202.

54. Izenberg et al., *supra* note 24, at 202.

55. *Id.*; Cleek, *supra* note 24.

56. Sabrina Tavernise, *A Toilet, but No Proper Plumbing: A Reality in 500,000 U.S. Homes*, N.Y. TIMES (Sept. 26, 2016), https://www.nytimes.com/2016/09/27/health/plumbing-united-states-poverty.html?mcubz=0.

57. *Lowndes County's Raw Sewage Problem, Alabama Center for Rural Enterprise*, JOHN HOPE FRANKLIN HUMANITIES INST. AT DUKE UNIV. (May 20, 2016), http://fhi.duke.edu/videos/lowndes-countys-raw-sewage-problem-acre-alabama-center-rural-enterprise.

58. AM. SOC'Y OF CIVIL ENG'RS, *supra* note 4, at 60; *see* ISABEL BLACKETT ET AL., WATER AND SANITATION PROGRAM, THE MISSING LINK IN SANITATION SERVICE DELIVERY 1 (2014), https://www.wsp.org/sites/wsp.org/files/publications/WSP-Fecal-Sludge-12-City-Review-Research-Brief.pdf (discussing common ways in which on-site sanitation systems are inadequately managed).

59. Tavernise, *supra* note 56.

60. *Record-breaking Rain Falls on Alabama, More May Be Coming*, AL.COM (May 21, 2017), http://www.al.com/news/birmingham/index.ssf/2017/05/record-breaking_rain_falls_on.html.

septic systems did not work properly."[61] Another study found that 18% of households across the seventeen counties that comprise Alabama's Black Belt had no means of wastewater disposal at all.[62] Yet another study estimated that a total of 90% of on-site sanitation systems in the Black Belt region were either failing or poorly functioning.[63]

B. Impact of Inadequate Sanitation

Non-existent and failing wastewater systems create devastating impacts. Residents may experience serious health consequences from contamination. When septic tanks fail, there is a greater risk of bacteria in the groundwater that people use as drinking water.[64] One study estimated that failing septic systems and the resulting groundwater contamination put 340,000 low-income people in rural Alabama at an elevated risk of waterborne diseases.[65]

Moreover, scientists point to a risk of the re-emergence of tropical diseases. Alabama and other states in the South face a resurgence of Neglected Tropical Diseases that commonly affect tropical and sub-tropical countries.[66] Peter Hotez from the National School of Tropical Medicine estimates that as many as 12 million residents in the United States are affected by tropical diseases related to poverty and inadequate living conditions.[67] He explains: "The concept of global health needs to give way to a new paradigm: on the new map, Texas and the Gulf coast would be lit up as a hotspot."[68]

---

61. Apple Loveless & Leslie Corcelli, *Pipe Dreams: Advancing Sustainable Development in the United States*, EPA BLOG (Mar. 5, 2015), https://blog.epa.gov/blog/2015/03/pipe-dreams-advancing-sustainable-development-in-the-united-states/.

62. Jessica Cook Wedgworth & Joe Brown, *Limited Access to Safe Drinking Water and Sanitation in Alabama's Black Belt: A Cross-Sectional Case Study*, 5 WATER QUALITY, EXPOSURE & HEALTH 69, 71 (2013).

63. Jiajie He et al., *Assessing the Status of On-site Wastewater Treatment Systems in the Alabama Black Belt Soil Area*, 28 ENVTL. ENGINEERING SCI. 693, 695 (2011).

64. Izenberg et al., *supra* note 24, at 200, 202; Wedgworth & Brown, *supra* note 62, at 71.

65. Wedgworth & Brown, *supra* note 62, at 71.

66. *Neglected Tropical Diseases*, WORLD HEALTH ORG., http://www.who.int/neglected_diseases/diseases/en/ (last visited Sept. 16, 2017).

67. David Crow, *Poverty, Open Sewers and Parasites: 'America's Dirty Shame'*, FIN. TIMES (Apr. 18, 2017), https://www.ft.com/content/1a0f1de6-ff59-11e6-8d8e-a5e3738f9ae4.

68. *Id.*

The population in Alabama's Black Belt region has experienced a resurgence of parasitic diseases, such as hookworm, that are linked to poor sanitation.[69] In a recent study of Lowndes County, 42% of households reported exposure to raw sewage in their homes.[70] The study found "that gastrointestinal parasites are present in >30% of this at-risk population in Lowndes County, Alabama."[71]

C. Criminalizing Inadequate Sanitation

Not only are low-income homeowners individually responsible for wastewater disposal with little support from the authorities, but they can also be charged for failing to put sanitation systems in place. The Code of Alabama stipulates that it is a misdemeanor "to build, maintain or use an insanitary sewage collection, treatment and disposal facility or one that is or is likely to become a menace to the public health."[72] This includes private plumbing facilities, septic tanks, and other private disposal systems.[73] Homeowners who fail to comply may face legal action, fines, and arrest.[74]

Between 1999 and 2002, arrest warrants were issued for a number of people,[75] but the Department of Public Health claims that this is no longer present practice.[76] Those who were charged, however, have an arrest on their criminal record—simply because they did not have the means to put in place sanitation infrastructure. However, criminalization extends beyond Lowndes County. In 2014, a pastor in Brundidge, Pike County, Alabama, was arrested because his church

---

69. JONES & MOULTON, *supra* note 3, at 14; Cleek, *supra* note 24; Lindsey Gilpin, *In the American South, an Inequity of Diseases*, UNDARK (Jun. 29, 2016), https://undark.org/article/rural-american-south-tropical-diseases/. For background on hookworm in the South, see Rachel Nuwer, *How a Worm Gave the South a Bad Name*, PBS (Apr. 27, 2016), http://www.pbs.org/wgbh/nova/next/nature/how-a-worm-gave-the-south-a-bad-name/.

70. Megan L. McKenna et al., *Human Intestinal Parasite Burden and Poor Sanitation in Rural Alabama*, AM. J. TROPICAL MED. & HYGIENE 1, 5 (2017).

71. *Id.*

72. ALA. CODE § 22-26-1 (2014).

73. *Id.*

74. JONES & MOULTON, *supra* note 3, at 12; *see also* ALA. CODE § 22-26-6 (2017).

75. Jennifer Suzanne Carrera, Sanitation and Social Power in the United States 107–08, 118 (2014) (unpublished Ph.D. dissertation, Univ. of Ill. at Urbana-Champaign), https://www.ideals.illinois.edu/bitstream/handle/2142/50688/Jennifer_Carrera.pdf.

76. Cleek, *supra* note 24.

had a failing septic system.[77] The *New York Times* has also reported that the Alabama Department of Public Health has cited and fined hundreds of people more recently.[78] Moreover, the mere fact that the provision criminalizing inadequate sanitation remains in place leads to an erosion of trust in public institutions.

The arrests and prosecution of people living in poverty and people of color in Lowndes County reinforces structural violations of basic human rights that have long been a part of Alabama's history. Summarizing the consequences of inadequate sanitation, a recent report by the Unitarian Universalist Service Committee points out:

> The real costs . . . are wide ranging. There is the obvious cost to public and individual health, but there is also the cost in lower property values and increased debt that contribute to cycles of poverty, the unmet costs of installing sanitation systems, the cost of defending prosecutions and possible job loss due to criminal records, and the unquantifiable cost of trying to raise families with dignity when a community's health needs are ignored.[79]

D. Reflecting Broader Patterns of Racial Inequalities in Access to Sanitation

While the situation in Lowndes County, Alabama, is unique in some respects, it also reflects broader patterns of inequalities. All over the world, access to sanitation—or the lack thereof—is deeply intertwined with inequalities along lines of income, wealth, geography, race, ethnicity, indigenous status, caste, gender, and disability.[80] The status of sanitation throughout the United States, and in Alabama in particular, follows these patterns. In Alabama, racial disparities are particularly salient.[81]

---

77. April Garon, *Church Protests Pastor's Arrest*, TROY MESSENGER (Sept. 29, 2014, 10:46 PM), http://www.troymessenger.com/2014/09/29/church-protests-pastors-arrest/.

78. Tavernise, *supra* note 56; *see also* Carrera, *supra* note 75, at 101–03 (discussing Irene Mason's situation in 1999 and the Fields' situation in 2002).

79. JONES & MOULTON, *supra* note 3, at 15.

80. *See* Winkler, *supra* note 10, at 1340–41 (stating that access to sanitation is closely related to structural patterns of discrimination and marginalization).

81. *See* Catherine Albisa, *Economic and Social Rights in the United States: Six Rights, One Promise*, *in* BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES 173, 173–97 (Cynthia Soohoo et al. eds., 2009) (arguing that racial justice and socio-economic rights are inextricably linked

Environmental justice scholars have traced the patterns of environmental racism. African-American communities are more likely to experience environmental pollution and disproportionately negative impacts from industrial facilities.[82] One example is the Mossville case pending before the Inter-American Commission on Human Rights.[83] Petitioners allege violations of their rights to privacy, life, health, and equality due to the siting of industrial facilities around Mossville, which exposed them to toxic contaminants and resulted in health problems.[84] In the United Nations context, the Committee on the Elimination of Racial Discrimination (CERD) notes that "individuals belonging to racial and ethnic minorities, as well as indigenous peoples, continue to be disproportionately affected by the negative health impact of pollution caused by the extractive and manufacturing industries."[85] It called upon the United States to

---

in the work of social movements in the U.S. South); *see also CDC Health Disparities and Inequalities Report – United States, 2013*, 61 CTR. FOR DISEASE CONTROL & PREVENTION, MORBIDITY & MORTALITY WKLY. REP. 1, 1–3 (2013) (reporting recent data demonstrating racial disparities in health).

82. *See, e.g.*, Robert D. Bullard, *Environmental Justice in the 21st Century*, 49 PHYLON 151 (2001) (discussing how African-American communities historically have been disproportionately affected by pollution); THE QUEST FOR ENVIRONMENTAL JUSTICE: HUMAN RIGHTS AND THE POLITICS OF POLLUTION (Robert D. Bullard ed., 1st ed. 2005) (examining the growth of the environmental justice movement and issues they face); *see generally* Dorceta E. Taylor, *The Rise of the Environmental Justice Paradigm: Injustice Framing and the Social Construction of Environmental Discourses*, 43 AM. BEHAV. SCIENTIST 508 (2000) (analyzing environmental justice rhetoric through social movement theory); Laura Pulido et al., *State Regulation and Environmental Justice: The Need for Strategy Reassessment*, 27 CAPITALISM NATURE SOCIALISM 12 (2016) (examining critically how the environmental justice movement's interaction with the state has affected disadvantaged communities).

83. Mossville Environmental Action Now v. United States, Petition 242–05, Inter-Am. Comm'n H.R., Rep. No. 43/10, OEA/Ser.L/V/II, doc. 5 rev. 1 (2010) [hereinafter Mossville Environmental Action Now v. United States].

84. *Id.*; *see* Carmen G. Gonzalez, *Environmental Racism, American Exceptionalism, and Cold War Human Rights*, 26 TRANSNAT'L L. & CONTEMP. PROBS. 281 (2017) (using Mossville as a case study to examine the ways in which American exceptionalism and the Cold War influenced the reception of international human rights law in the United States); *see also* Jeannine Cahill-Jackson, Mossville Environmental Action Now v. United States: *Is a Solution to Environmental Injustice Unfolding?*, 3 PACE INT'L L. REV. ONLINE COMPANION 173 (2012) (evaluating the human rights claims in the Mossville petition to the Inter-American Commission on Human Rights).

85. Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America, ¶ 10, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014) [hereinafter CERD Concluding Observations].

"[c]lean up any remaining radioactive and toxic waste throughout the State Party as a matter of urgency, paying particular attention to areas inhabited by racial and ethnic minorities and indigenous peoples that have been neglected to date."[86]

In comparison to issues involving unequal exposure to pollution, disparities in access to water and sanitation services have received relatively little attention.[87] At the international level, the CERD has repeatedly raised concerns about racial disparities in the United States in regard to housing.[88] It has noted persistently high degrees of segregation, concentrated poverty, and inadequate housing conditions.[89] Similarly, the Committee expressed concern about racial disparities in access to health care, particularly in states that have declined to expand access to Medicaid under the Affordable Care Act.[90] A number of studies point to the existence of similar racial disparities in water and sanitation sectors.

A Boston study on the "color of water" examined the relationship between race, income, and the threat of water disconnection.[91] It found a "*strong, persistent relationship between race and water access*. Those wards with large populations of people of color receive a significantly higher number of water shutoff notifications."[92] The Safe Water Alliance and other organizations in California have found that Latino communities in California's Central Valley face disproportionate challenges in relation to water

---

86. *Id.*

87. *But see* Sten-Erik Hoidal, Note, *Returning to the Roots of Environmental Justice: Lessons from the Inequitable Distribution of Municipal Services*, 88 MINN. L. REV. 193 (2003) (stating that minority communities in the 1970's and 1980's successfully brought cases involving inequitable distribution of municipal services and arguing that the environmental justice movement should revive these cases in the modern context); Laura Pulido, *Flint, Environmental Racism, and Racial Capitalism*, 27 CAPITALISM NATURE SOCIALISM 1 (2016) (arguing that the environmental problem in Flint, Michigan, exemplifies environmental racism and racial capitalism, where Flint officials knew the consequences of their austerity measures and devalued the community based on race).

88. *See generally* CERD Concluding Observations, *supra* note 85 (expressing concern that "individuals belonging to racial and ethnic minorities, as well as indigenous people, continue to be disproportionately affected by the negative health impact of pollution").

89. *Id.* ¶ 13.

90. *Id.* ¶ 15.

91. KIMBERLY FOLTZ-DIAZ ET AL., MASS. GLOBAL ACTION, THE COLOR OF WATER 5 (2014).

92. *Id.*

quality, infrastructure, and affordability.[93] A study in Mebane, a small rural town in North Carolina, framed limited access to regulated public sewer networks as a public health issue.[94] Residents rely on septic systems that are prone to chronic failure and result in fecal contamination of water supplies.[95] The study demonstrates that spatial drivers of incorporated and unincorporated areas put people of color at a disadvantage.[96] It also finds that the municipality has deliberately refused to annex African-American communities.[97] As a result, it has denied them access to public water and sewer services.[98] Another study, focusing on racial disparities in water services in Wake County, North Carolina, found "that every 10% increase in the African American population proportion within a census block increases the odds of exclusion from municipal water service by 3.8%."[99] Yet another recent study focused on water affordability in Michigan and found that Rust Belt cities pay the highest water rates and that racial minorities tend to pay higher rates.[100]

Moreover, a series of domestic cases reflect racial disparities in access to municipal services, including water supply and sewerage. All of the cases were brought under 42 U.S.C. § 1983, alleging a violation of the Equal Protection clause of the U.S. Constitution's Fourteenth Amendment.

In an early case from Mississippi from 1971, *Hawkins v. Town of Shaw*, African-American plaintiffs argued that geographic segregation and disparities in municipal services led to discrimination.[101] In *Johnson v. City of Arcadia*, the court developed a

---

93. SAFE WATER ALLIANCE ET AL., RACIAL DISCRIMINATION AND ACCESS TO SAFE, AFFORDABLE WATER FOR COMMUNITIES OF COLOR IN CALIFORNIA 9 (2014), http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf; *see* Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 CALIF. L. REV. 223, 235 (2012).

94. *See* Sacoby M. Wilson et al., *Built Environment Issues in Unserved and Underserved African-American Neighborhoods in North Carolina*, 1 ENVTL. JUST. 63 (2008).

95. *Id.* at 64.

96. *Id.* at 68.

97. *Id.* at 66.

98. *Id.* at 67.

99. J. MacDonald Gibson et al., *Racial Disparities in Access to Community Water Supply Service in Wake County, North Carolina*, 3 FRONTIERS IN PUB. HEALTH SERV. SYS. RES. 3, 3–4 (2014).

100. *See* Rachel Butts & Stephen Gasteyer, *More Cost per Drop: Water Rates, Structural Inequality, and Race in the United States—The Case of Michigan*, 13 ENVTL. PRAC. 386 (2011).

101. Hawkins v. Town of Shaw, 437 F.2d 1286, 1286 (5th Cir. 1971).

test for determining prima facie discrimination in access to municipal services: "(1) existence of racially identifiable neighborhoods in the municipality; (2) substantial inferiority in the quality or quantity of the municipal services and facilities provided in the neighborhood; and, (3) proof of intent or motive."[102]

In *Dowdell v. City of Apopka*, the court discussed the notion of discriminatory intent in relation to municipal services, citing a "cumulative evidence of action and inaction."[103] It stated:

> First, the magnitude of the disparity, evidencing a systematic pattern of municipal expenditures in all areas of town except the black community, is explicable only on racial grounds. Second, the legislative and administrative pattern of decision-making, extending from nearly half a century in the past to Apopka's plans for future development, indicates a deliberate deprivation of services to the black community. . . . Third, the continued and systematic relative deprivation of the black community was the obviously foreseeable outcome of spending nearly all revenue sharing monies received on the white community in preference to the visibly underserviced black community.[104]

While none of these factors was seen as "independently conclusive," the court found that the city of Apopka had engaged in a systematic pattern of acts and omissions that demonstrated discriminatory intent.[105] The court ordered the city to prioritize infrastructure and services in predominantly African-American areas until it met the standards of other city neighborhoods.[106]

In all these cases, the courts found existing patterns in municipal services to be discriminatory and required the municipalities to remedy the situation by redistributing their allocation of resources to the benefit of African-American residents. In a more recent case, *Kennedy v. City of Zanesville*, the court identified sufficient evidence to support a jury finding of intentional discrimination and denied a motion for summary judgment, setting

---

102. Johnson v. City of Arcadia, 450 F. Supp. 1363, 1379 (M.D. Fla. 1978).

103. Dowdell v. City of Apopka, 698 F.2d 1181, 1184–85 (11th Cir. 1983).

104. *Id.* at 1186.

105. *Id.* (citations omitted). In addition to a violation of the Fourteenth Amendment, the court also found a violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

106. *Dowdell*, 698 F.2d at 1184.

the stage for a settlement of $9.6 million.[107] A large-scale study that examined U.S. census data on access to complete plumbing facilities confirms such disparities.[108] According to the 2012 American Community Household Survey, an estimated 540,000 households lack access to complete plumbing facilities, which translates to an estimated 1.4 to 1.7 million individuals.[109] These figures likely underestimate the number and do not capture whether services are affordable, of adequate quality, continuously available, or disconnected.[110] The study identifies hotspots in the southwestern United States, Alaska, and the borderlands between the United States and Mexico and the United States and Canada.[111] In addition, it finds significant disparities between white and non-white communities, which suggests a pattern of structural environmental racism in terms of access to water and sanitation infrastructure.[112] This legacy persists today. It results from a lack of investment in areas considered marginal and often inhabited by minority communities.[113]

The development of centralized water and sanitation infrastructure in the United States has often excluded low-income areas.[114] Given "the number of households that access a public water system and the remoteness of rural communities, rural areas are at a

---

107. Kennedy v. City of Zanesville, 505 F. Supp. 2d 456, 464 (S.D. Ohio 2007). In addition to the Fourteenth Amendment, the claimants also alleged a violation of the Fair Housing Act (FHA). The court construed the FHA to cover water access, which is significant for municipal services cases, because unlike the Constitution, the FHA allows claims based solely on disparate impact. For further information on this case and previous case law, see Jon Isaac Monger, Note, *Thirsting for Equal Protection: The Legal Implications of Municipal Water Access in* Kennedy v. City of Zanesville *and the Need for Federal Oversight of Governments Practicing Unlawful Discrimination*, 59 CATH. U. L. REV. 587, 606 (2010); *see also* Reed N. Colfax, Kennedy v. City of Zanesville *Making the Case for Water*, 36.4 HUM. RTS. (2009), https://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol36_2009/fall2009/kennedy_v_city_of_zanesville_making_a_case_for_water.html (describing how the Coal Run neighborhood in Zanesville, Ohio, was denied clean water for decades because of the race of its residents, until the residents filed discrimination complaints in federal court and won).

108. *See* Stephen Gasteyer et al., *Basics Inequality: Race and Access to Complete Plumbing Facilities in the United States*, 13 DU BOIS REV. 305 (2016).

109. *Id.* at 306.

110. *Id.* at 319.

111. *Id.* at 313.

112. *Id.* at 315.

113. Gasteyer et al., *supra* note 108, at 318.

114. JONES & MOULTON, *supra* note 3, at 14.

cost disadvantage."[115] Although these areas face higher per capita infrastructure costs due to low population densities, rural communities are often low-income and offer a limited tax base.[116]

In Lowndes County, Alabama, this pattern of neglect and marginalization of low-income, rural, and small communities is combined with racial disparities. More than 70% of the county's residents are African-American.[117] A large share of the population of Lowndes County lives in unincorporated areas where they have to rely on on-site systems that often fail.[118] While some have argued that race no longer plays a significant role and that socio-economic status is the primary factor influencing sanitation outcomes, there is evidence that spatial, income, wealth, and property inequalities that limit access to sanitation infrastructure intersect with race.[119] Moreover, as Coleman Flowers has explained, even "where they did have wastewater treatment [in Alabama], you can trace it back to those areas that were first inhabited largely by white populations. And even in the two towns that had wastewater infrastructure, it stopped, you know, where the black community started. So those legacies still exist to this day."[120]

In order to discuss what the human right to sanitation means for the situation in Lowndes County in Part III, the next part will present an overview of global developments on the right to sanitation and their relevance to the United States.

II. THE HUMAN RIGHT TO SANITATION

A. Global Recognition and Definition

The United Nations recognized sanitation as a human right in 2010, and the issue has since slowly been gaining traction, both internationally and in the United States.[121] In 2015, in line with

115. Butts & Gasteyer, *supra* note 100, at 387.
116. JONES & MOULTON, *supra* note 3, at 20.
117. *Quick Facts: Lowndes County, Alabama*, *supra* note 14.
118. Tavernise, *supra* note 56.
119. Carrera, *supra* note 75, at 277–78.
120. Anita Rao, *Catherine Coleman Flowers Fights for Sanitation as a Human Right*, BLUE RIDGE PUB. RADIO (Apr. 12, 2017, 4:04 PM), http://bpr.org/post/catherine-coleman-flowers-fights-sanitation-human-right.
121. G.A. Res. 64/292, ¶ 1 (Aug. 3, 2010); *see* Winkler, *supra* note 10 (summarizing the history and process behind the political recognition of the right to sanitation); *see also* Sharmily Murthy, *The Human Right(s) to Water and*

previous resolutions, the General Assembly reaffirmed that the right to sanitation is a component of the right to an adequate standard of living[122] and, as such, derived from legally binding human rights guarantees.[123]

The 2015 resolution brought two significant breakthroughs for which civil society and experts have long advocated. First, the resolution recognized sanitation as a distinct human right separate from the right to water.[124] Second, it defined the human right to sanitation as "entitl[ing] everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity."[125]

The Human Rights Council's Independent Expert[126] in 2009 seminally defined sanitation as "a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene."[127] She stressed that, "[s]tates must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures

---

Sanitation: History, Content, and the Controversy over Privatization, 31 BERKELEY J. INT'L L. 89 (2013) (describing the historical evolution of the right to water and sanitation and addressing some of the controversies around privatization).

122. G.A. Res. 70/169, The Human Rights to Safe Drinking Water and Sanitation, ¶ 1 (Dec. 17, 2015).

123. *See also* Winkler, *supra* note 10, at 1367 (noting sanitation has been included, both explicitly and implicitly, in prior human rights treaties).

124. *Id.* at 1377.

125. G.A. Res. 70/169, *supra* note 122, ¶ 2.

126. Note that the mandate of the "Independent Expert on the issue of human rights obligations related to safe drinking water and sanitation" was renamed to "Special Rapporteur on the human right to safe drinking water and sanitation" after the human right to water and sanitation was recognized. *See* Human Rights Council Res. 16/2, U.N. Doc. A/HRC/16/2, ¶ 1 (Apr. 8, 2011). It was further renamed to "Special Rapporteur on the human rights to safe drinking water and sanitation" (plural) after the U.N. General Assembly recognized water and sanitation as two distinct rights. *See* Human Rights Council Res. 33/10, U.N. DOC. A/HRC/RES/33/10, ¶ 11 (Sept. 29, 2016).

127. Indep. Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Report on Sanitation, ¶ 63, U.N. DOC. A/HRC/12/24 (July 1, 2009) (footnotes omitted).

dignity."[128] The Human Rights Council and the Committee on Economic, Social and Cultural Rights endorsed this definition.[129]

There is a significant degree of overlap between the language used in the General Assembly resolution and the initial definition by the Independent Expert. Both documents stress that sanitation must be accessible; affordable; safe, secure, and hygienic; and socially and culturally acceptable; ensuring privacy and dignity.[130] At least two of these elements (affordability and safety) are central to the situation in Alabama and will be discussed in depth in Part III. Yet, there are also nuances in the language that limit the understanding of sanitation as defined in the General Assembly resolution. The Independent Expert stressed the fact that sanitation requires a "system for the collection, transport, treatment and disposal or reuse of human excreta."[131] As Winkler has explained elsewhere,

> adequate sanitation is more than just access to and the use of toilets or latrines. It entails the treatment and safe disposal or re-use of feces, urine, and associated wastewater in a way that avoids direct contact in order to minimize health risks. Such a broad understanding of sanitation is warranted as sanitation not only concerns one's own right to use a latrine or toilet, but also the rights of others, in particular their right to health, which can be negatively impacted if excreta and wastewater are not properly managed.[132]

The adequate management of wastewater is of central significance in Lowndes County, and these aspects will be further discussed in Part III.

---

128. *Id.* (footnotes omitted).

129. *See* Human Rights Council Res. 12/8, U.N. DOC. A/HRC/RES/12/8, ¶ 2 (Oct. 12, 2009) (acknowledging with appreciation the Independent Expert's report); U.N. Comm. on Economic, Social and Cultural Rights, Statement on the Right to Sanitation, U.N. DOCS. E/C.12/2010/1, ¶ 8 (Nov. 19, 2010) (quoting the Independent Expert's definition of sanitation); *see also* Malcolm Langford et al., *The Human Right to Sanitation*, *in* THE HUMAN RIGHT TO WATER: THEORY, PRACTICE AND PROSPECTS, 345, 349 n.17.

130. *See* Winkler, *supra* note 10, at 1340–41, 1380 (defining each criterion).

131. U.N. DOC. A/HRC/12/24, *supra* note 127.

132. Winkler, *supra* note 10, at 1379; *see also* Anna Zimmer et al., *Governing Wastewater, Curbing Pollution, and Improving Water Quality for the Realization of Human Rights*, 33 WATERLINES 337, 340 (2014) (demonstrating the value of integrating human rights in wastewater governance and water pollution control to address the challenges of regulatory and legislative frameworks).

B. U.S. Position on the Human Rights to Water and Sanitation

The U.S. position on the right to sanitation must be understood in the broader context of socio-economic rights, which are considered "second-class" rights and have "outsider" status in the United States.[133]

Socio-economic rights in the United States are often traced to Franklin D. Roosevelt's State of the Union address in 1944, also known as the "Four Freedoms Speech."[134] Roosevelt stated: "[W]e cannot be content, no matter how high that general standard of living may be, if some fraction of our people—whether it be one-third or one-fifth or one-tenth—is ill-fed, ill-clothed, ill-housed, and insecure."[135] The "second Bill of Rights" he proposed, however, never materialized, and socio-economic rights remain marginalized in the United States for a variety of political and economic reasons.[136]

At the seventieth anniversary of Roosevelt's speech in 2011, the Obama administration signaled a shift towards greater openness around socio-economic rights. In an address to the American Society of International Law, Michael Posner, the Assistant Secretary of State for Democracy, Human Rights, and Labor at the time, explained that the U.S. government will be guided by the following five considerations:

- First, economic, social and cultural rights addressed in U.N. resolutions should be expressly set forth, or reasonably derived from, the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights. While the United States is not a party to the Covenant, as a signatory, [it is] committed to not defeating the object and purpose of the treaty.
- Second, [it] will only endorse language that reaffirms the "progressive realization" of these rights and prohibits discrimination.

---

133. Hope Lewis, *"New" Human Rights? U.S. Ambivalence Toward the International Economic and Social Rights Framework*, *in* BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES 100 (Cynthia Soohoo et al., eds., 2009).

134. For a thorough discussion of the historical context, see *id.*

135. Franklin D. Roosevelt, State of the Union Message to Congress (Jan. 11, 1944), http://www.fdrlibrary.marist.edu/archives/address_text.html (last visited Sept. 10, 2017).

136. *See* Albisa, *supra* note 81, at 176–77.

- Third, language about enforcement must be compatible with [the U.S.] domestic and constitutional framework.
- Fourth, [it] will highlight the U.S. policy of providing food, housing, medicine and other basic requirements to people in need.
- And fifth, [it] will emphasize the interdependence of all rights and recognize the need for accountability and transparency in their implementation, through the democratic participation of the people.[137]

To some extent, this approach is reflected in U.S. engagement on the human rights to water and sanitation. When the original U.N. resolution on the human right to water and sanitation was adopted in 2010, prior to Posner's speech, the United States called for a vote on the resolution and then abstained from voting.[138] The follow-up resolution in the Human Rights Council in 2010 was adopted by consensus (with no state calling for a vote).[139] The United States joined consensus on this resolution and subsequent resolutions. However, in a subsequent explanation of its position on a resolution relating to the same topic, the U.S. government explained that

> [t]he United States joins consensus with the express understanding that it does not imply that States must implement obligations under human rights instruments to which they are not a party. The United States is not a party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the rights contained therein are not justiciable in U.S. courts.[140]

---

137. Michael H. Posner, Assistant Sec'y, Bureau of Democracy, Human Rights, and Labor, Address to the American Society of International Law: The Four Freedoms Turn 70 (Mar. 24, 2011), https://2009-2017.state.gov/j/drl/rls/rm/2011/159195.htm. For a critique, see *It's No New Deal*, NESRI (Mar. 25, 2011), http://www.nesri.org/news/2011/03/its-no-new-deal (claiming the Obama administration has taken no concrete action towards economic and social rights).

138. *See* Press Release, United Nations, General Assembly Adopts Resolution Recognizing Access to Clean Water, Sanitation as Human Right, by Recorded Vote of 122 in Favour, None Against, 41 Abstentions, U.N. Press Release GA/10967 (Jul. 28, 2010), www.un.org/News/Press/docs/2010/ga10967.doc.htm.

139. Human Rights Council Res. 15/9, U.N. Doc. A/HRC/RES/15/9 (Sept. 30, 2010).

140. Ambassador Keith Harper, U.S. Representative to the Human Rights Council, Statement of the Delegation of the United States of America at the Meeting of the U.N. Human Rights Council (Sept. 25, 2014),

In other words, the United States is willing to voice its approval for the global recognition of the right to sanitation (applying to other states that are parties to the ICESCR), but does not consider itself legally bound by it.

At the United Nations General Assembly, the 2013 resolution on the topic was also adopted by consensus.[141] For that resolution, the United States joined the list of co-sponsors.[142] However, Amnesty International explains that the draft resolution had included language on the definition of the rights to water and sanitation until moments before its adoption—language that was removed by its main sponsors at the behest of the United States.[143]

The General Assembly adopted a further resolution on the human rights to water and sanitation in 2015.[144] This resolution includes the definition of the human right to sanitation, thus explicitly recognizing its normative content as explained above. The United States again joined consensus on the resolution but dissociated itself from the paragraph that contains the definition of the right to sanitation.[145] It explained that "[t]he language used to define the right to water and sanitation in that paragraph is based on the views of the Committee on Economic, Social, and Cultural Rights and the Special Rapporteur only. That language does not appear in an international agreement and does not reflect any international consensus."[146]

This series of resolutions and the United States' explanations of its position demonstrate its contradictory stance on the right to sanitation. It has expressed a desire to join the international community in recognizing the human rights to water and sanitation, but does not wish to be legally bound by this recognition. In this regard, the U.S. position on the right to sanitation reflects a broader

---

https://geneva.usmission.gov/2014/09/25/explanation-of-position-the-human-right-to-safe-drinking-water-and-sanitation/.

141. U.N. GAOR, 68th Sess., 70th plen. mtg. at 17–18, U.N. Doc. A/68/PV.70 (Dec. 18, 2013); G.A. Res. 68/157 (Dec. 18, 2013).

142. Public Statement, Amnesty Int'l, United Nations: General Assembly Makes Progress on the Human Rights to Water and Sanitation, but Only So Far as the USA Permits (Nov. 26, 2013), www.amnesty.org/en/library/info/IOR40/005/2013/en.

143. *Id.*

144. G.A. Res. 70/169, *supra* note 122, ¶ 2.

145. U.S. STATE DEP'T, DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW, ch. 6, § D(3) at 215 (2015), https://www.state.gov/documents/organization/258206.pdf.

146. *Id.*

conviction of U.S. exceptionalism, in which it applies different standards to the implementation and recognition of human rights abroad and domestically.[147]

In response to tense negotiations around the 2013 resolution, Amnesty International suggested that the United States' claim that only States Parties to the ICESCR are bound by the right to sanitation is not convincing. The organization argued that "if [the United States] were confident in such a claim, it would not have devoted significant energy and diplomatic capital to opposing the definition of the contents of these rights."[148] In a similar vein, the Special Rapporteurs on extreme poverty, housing, and water and sanitation argued in an allegation letter relating to the Flint water crisis that

> the fact that the United States has, on numerous occasions, joined consensus on Human Rights Council and General Assembly resolutions on the rights to safe drinking water and sanitation indicates, notwithstanding its statements explaining its votes and positions, that it accepts the existence of this right and a range of related obligations. Thus, the suggestion that issues relating to the right to water are rendered moot because there are no justiciable rights to water and sanitation provided in the United States Constitution or in federal law seems unconvincing to us.[149]

By joining consensus and co-sponsoring a series of resolutions on the human rights to water and sanitation, the United States has demonstrated a significant political commitment to ensure the realization of these rights at home and abroad. Moreover, while the United States has not ratified the ICESCR, it did sign the treaty in

---

147. *See generally* AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS (Michael Ignatieff, ed., Princeton University Press 2005) (addressing various types of exceptionalism exhibited by the United States since the 2003 invasion of Iraq, including "exemptionalism" (the idea that the United States will support treaties so long as it is exempt from them)).

148. Amnesty Int'l, *supra* note 142.

149. Letter from Philip Alston, Leilani Farha, & Léo Heller, Special Rapporteurs, Office of the High Comm'r for Human Rights, to the U.S. Gov't, Mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on extreme poverty and human rights; and the Special Rapporteur on the human right to safe drinking water and sanitation 15 (Apr. 5, 2016), https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=18792 [https://perma.cc/E7YG-788D].

1977.[150] According to international law, treaty signatories have an obligation "to refrain from acts which would defeat the object and purpose of a treaty."[151]

Moreover, while resolutions on the human rights to water and sanitation indicate that these rights are derived from the right to an adequate standard of living, the ICESCR is not the only human rights treaty guaranteeing that right. Similar provisions on an adequate standard of living are found in the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). However, the United States has not ratified either.[152] Human rights obligations related to sanitation can also be derived from the Convention Against Torture (CAT),[153] the International Covenant on Civil and Political Rights (ICCPR),[154] and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),[155] to all of which the United States is a State Party.[156] Of particular significance

---

150. *Status of Treaties, International Covenant on Economic, Social, and Cultural Rights*, UNITED NATIONS (Sept. 17, 2017), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en.

151. Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 1, 1155 U.N.T.S. 331, 336 (entered into force Jan. 27, 1980). The United States is not a State Party to the Vienna Convention, yet it acknowledges that many of the Convention's provisions have become customary international law. *Vienna Convention on the Law of Treaties,* U.S. DEP'T OF STATE, http://www.state.gov/s/l/treaty/faqs/70139.htm (last visited Sept. 9, 2017).

152. *See Status of Treaties, Convention on the Elimination of All Forms of Discrimination Against Women*, UNITED NATIONS (Sept. 17, 2017), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en; *Status of Treaties, Convention on the Rights of the Child*, U.N. TREATY COLLECTION (Apr. 9, 2017) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en.

153. *See* Convention Against Torture and Other Cruel, Inhuman or Degreding Treatment or Punishment, *opened for signature* Dec. 10, 1984, art. 1, S. Treaty Doc. No. 100-20, 1465 U.N/T/S/ 85 (entered into force June 26, 1987); U.N. Doc. A/HRC/18/33/Add.4, *supra* note 45, ¶ 58 (noting that lack of access to sanitation may amount to inhuman and degrading treatment, which is prohibited under art. 16 of the CAT).

154. *See* International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 6, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (guaranteeing a right to life) [hereinafter ICCPR]; *see also id.* art. 7 (on the prohibition of torture).

155. *See* International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Mar. 7, 1966, art. 2(1), 660 U.N.T.S. 195, 48 (entered into force Jan. 4, 1969) [hereinafter ICERD].

156. Ratification status available at: *Status of Treaties, International Convention on the Elimination of All Forms of Racial Discrimination*, UNITED

in the context of Lowndes County are provisions that prohibit racial discrimination, most robustly expressed in the ICERD.[157]

C. Human Rights Obligations under the ICERD: Addressing Racial Disparities

The United States is a State Party to the ICERD.[158] According to Article 2(1), States Parties "undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination."[159] Article 1(1) of the Convention defines racial discrimination as

> any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.[160]

There are a number of factors worth highlighting about the Convention and the obligations it includes. First, the ICERD has a broad definition of discrimination, which relates to all areas of life. Specifically, Article 5(e)(iv) requires parties to prohibit and eliminate

---

NATIONS (Apr. 9, 2017), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en; *Status of Treaties, International Covenant on Civil and Political Rights*, UNITED NATIONS (Apr. 9, 2017), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en; *Status of Treaties, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UNITED NATIONS (Apr. 9, 2017), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en.

157. In addition to the ICERD, the ICCPR also includes a broad provision on non-discrimination and equality in Art. 26. It reads:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, *supra* note 154, art. 26. Importantly, it extends to all areas of life, including the socio-economic sphere, and does not only cover discrimination in the enjoyment of civil and political rights. *Id.*

158. *Status of Treaties, International Convention on the Elimination of All Forms of Racial Discrimination*, *supra* note 156.

159. ICERD, *supra* note 155.

160. *Id.* art. 1(1).

racial discrimination in the enjoyment of economic, social, and cultural rights.[161] This includes the right to public health, medical care, social security, and social services, which must be understood to include sanitation.[162] The fact that sanitation is not mentioned explicitly may be attributed to the fact that the provision is very brief and does not spell out all rights in detail.[163] While the United States has submitted reservations to the ICERD, these primarily concern provisions on freedom of expression and private conduct.[164] It has not made reservations related to discrimination in the context of economic, social, and cultural rights as expressed in Article 5(e).[165] This approach is reflected in the latest U.S. government report to the CERD, in which the government provides a brief overview of efforts to combat racial discrimination in relation to socio-economic rights,[166] including housing;[167] public health, medical care, and social security;[168] and environmental justice.[169] This seems to imply that the U.S. accepts its obligations not to discriminate in the context of economic and social rights, which can be extended to sanitation.

Second, racial discrimination as defined in the ICERD refers to the purpose *or effect* of impairing the enjoyment of human rights on an equal footing.[170] The ICERD explained that "[i]n seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin."[171] Thus, discrimination

---

161. *Id.* art. 5(e).

162. *Id.*

163. *See id.* (guaranteeing access to housing, education, and training, among other rights, without spelling out all of the factors necessary for their enjoyment).

164. Declarations and reservations available at: *Status of Treaties, International Convention on the Elimination of All Forms of Racial Discrimination, supra* note 156.

165. *Id.*

166. PERIODIC REPORT OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION CONCERNING THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION 57–77 (2013), http://www.state.gov/documents/organization/210817.pdf.

167. *Id.* ¶ 124.

168. *Id.* ¶ 133.

169. *Id.* ¶ 144.

170. *See* Comm. on the Elimination of Racial Discrimination, General Recommendation No. 14, ¶ 2, U.N. Doc. A/48/18 (1993).

171. *Id.*

under international law does not have to be intentional. Accordingly, guarantees of non-discrimination and substantive equality under the ICERD are broader than the guarantees under the U.S. Constitution. The Equal Protection Clause in the Fourteenth Amendment has been interpreted by the U.S. Supreme Court to require intentional discrimination.[172] The same holds true for most other guarantees against discrimination,[173] even if the courts have somewhat loosened the requirements for proving discriminatory intent in the above-mentioned cases on disparities in municipal service provision.[174] The CERD has repeatedly expressed concern that this definition of racial discrimination is not in line with Article 1, paragraph 1 of the ICERD.[175] As a State Party to the ICERD, the United States has the obligation to address discriminatory effects and disparate impacts.

Third, the CERD has clarified that the Convention combines formal (de jure) equality with substantive (de facto), with the latter referring to equality in the enjoyment of human rights.[176] The Committee explains:

> The term 'non-discrimination' does not signify the necessity of uniform treatment when there are significant differences in situation between one person or group and another, or, in other words, if there is an objective and reasonable justification for differential treatment. To treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same.[177]

To achieve substantive equality and redress existing disadvantages, states may have to adopt temporary special measures as called for in Article 2, paragraph 2 of the ICERD.[178]

With regard to water and sanitation, the Special Rapporteur on the human rights to water and sanitation has pointed out:

---

172. Risa Kaufman, *Framing Economic, Social, and Cultural Rights at the U.N.*, 4 NE. U. L.J. 407, 412 (2012).

173. *See* Davis, *supra* note 8 (providing a detailed analysis of water disconnections).

174. *See supra* Section I.D.

175. CERD Concluding Observations, *supra* note 85, ¶ 5.

176. Comm. on the Elimination of Racial Discrimination, General recommendation No. 32, ¶ 6, U.N. Doc. CERD/C/GC/32 (Sept. 24, 2009).

177. *Id.* ¶ 8.

178. *See id.* (providing practical guidance on the meaning of special measures under the ICERD).

> Substantive equality requires prioritizing the provision of services to these groups and individuals who have been disadvantaged. Such redistribution is most obvious in relation to (material) resources and benefits, such as provision of water, sanitation and hygiene services. However, disadvantages and the necessary (re)distribution extend to the underlying structural factors, such as decision-making power, and the ability to make and exercise choices.[179]

He explained that a contextual analysis is key to achieving an equitable redistribution of resources and to determining which groups in society are being disadvantaged:

> Undertaking this analysis through the lens of equality and non-discrimination will demonstrate that the unserved and underserved are not randomly distributed. It will often point to communities . . . in remote rural areas. It will expose entrenched gender inequalities and the disadvantages and barriers faced by persons with disabilities, older persons and chronically ill people. It will point to patterns of neglect in service provision for communities that belong predominantly to indigenous peoples or ethnic minorities.[180]

Lowndes County, home to a mostly African-American population, is grappling with a sanitation crisis that may result from such neglect. Further research should be undertaken to understand disparities across Lowndes County, the state of Alabama, the Black Belt, and the United States to determine the structural dynamics that produce these disparities.

The next part will consider what achieving substantive equality means for Lowndes County, what the main barriers to realizing the human right to sanitation are, and how to address them.

III. REALIZING THE HUMAN RIGHT TO SANITATION IN LOWNDES COUNTY

Applying the human right to sanitation and the framework of substantive equality to Lowndes County, Alabama, this Article will now examine state obligations and individual responsibilities in this

---

179. *Rep. of the Special Rapporteur on the human right to safe drinking water and sanitation*, ¶ 85, U.N. Doc. A/70/203 (July 27, 2015).

180. *Id.* ¶ 84.

context. While human rights obligations of the United States stem from the ICERD, the Article employs a definition and understanding of sanitation developed over the last few years. The human right to sanitation may be derived from the right to an adequate standard of living guaranteed in the ICESCR.[181] However, the resolutions by the General Assembly and the Human Rights Council and the reports by the Special Rapporteur define the right to sanitation beyond the context of this treaty. These definitions can be used to inform the understanding of the right to sanitation (as part of economic, social and cultural rights) expressed in the ICERD.[182]

A. Access to Infrastructure

As explained above, a disproportionately high share of households in Lowndes County—an estimated 82%—rely on on-site wastewater systems.[183]

The human right to sanitation does not mandate a specific technical solution. It does not require a connection to a public sewer for all households; septic tanks can be an adequate alternative from the human rights perspective.[184] Indeed, depending on the circumstances, when managed properly, septic systems may have significant economic, environmental, and public health advantages.[185]

---

181. *See* International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, art. 11(1), 993 U.N.T.S. 3, 7 (entered into force Jan. 3, 1976); ICERD, *supra* note 158, art. 1(1) (guaranteeing to all persons "economic, social, and cultural rights," including specific rights that relate to sanitation, such as the right to public health).

182. It must be acknowledged again that the United States has disassociated itself from the paragraph in the 2015 resolution that defines the right to sanitation. However, the United States has not explained which elements it considers problematic. In addition, there is no alternative definition of sanitation in international human rights law. The existing definition, elaborated on by the Special Rapporteur, was informed by generally-accepted views of sanitation, including the World Health Organization's. *See* U.N. Doc. A/HRC/12/24, *supra* note 127. Accordingly, the discussion will proceed on the basis of this understanding.

183. U.N. Doc. A/HRC/18/33/Add.4, *supra* note 2, ¶ 20.

184. Zimmer et al., *supra* note 132.

185. *See* EPA DECENTRALIZED WASTEWATER MEMORANDUM OF UNDERSTANDING (MOU) P'SHIP, DECENTRALIZED WASTEWATER TREATMENT CAN PROTECT THE ENVIRONMENT, PUBLIC HEALTH, AND WATER QUALITY, https://www.epa.gov/sites/production/files/2015-06/documents/mou-public-health-paper-081712_1.pdf (describing ways in which decentralized water treatment can provide reliable wastewater treatment, reduce pollutants and contaminants, and mitigate associated health risks); EPA DECENTRALIZED WASTEWATER

Development of an adequate mix of centralized and decentralized solutions depends on the context. In Lowndes County, low population density and dense clay soil create particular conditions that render conventional on-site systems impossible to install, while many engineered systems are cost-prohibitive.[186] In response, Coleman Flowers recently suggested several measures including: an upgrade and expansion of current municipal systems to cover all households within a five mile radius of the towns of Fort Deposit and Hayneville, sewering every household in the town of White Hall, and funding a wastewater challenge to develop and test on-site technology that will work in Black Belt soils.[187]

Human rights and the principle of equality do not require that identical technical solutions or services be adopted for everyone.[188] Consequently, it does not per se violate the principle of equality if part of the population is connected to a sewer network, while another relies on on-site solutions such as septic tanks. What human rights do require is that states ensure that everyone has access to services on the basis of equality, and that these services—regardless of the technical solutions—meet criteria of affordability, acceptability, and safety. Hence, practical solutions may differ, while standards are the same.

The challenge, however, is that populations relying on on-site systems are often neglected in policy-making and financing decisions. The Special Rapporteur on the human rights to safe drinking water and sanitation has pointed out with regard to self-supply solutions such as individual septic tanks that "[i]n some countries, the State may not recognize its obligation to ensure that self-supply solutions comply with human rights obligations and are appropriate and

---

MEMORANDUM OF UNDERSTANDING (MOU) P'SHIP, DECENTRALIZED WASTEWATER TREATMENT CAN BE GREEN AND SUSTAINABLE, https://www.epa.gov/sites/production/files/2015-06/documents/mou-green-paper-081712-v2_1.pdf (describing case studies in which localized wastewater treatment improved the quality of the associated watershed while reducing energy costs); EPA DECENTRALIZED WASTEWATER MEMORANDUM OF UNDERSTANDING (MOU) P'SHIP, DECENTRALIZED WASTEWATER TREATMENT CAN BE COST EFFECTIVE AND ECONOMICAL, https://www.epa.gov/sites/production/files/2015-06/documents/mou-economics-paper-081712_1.pdf (arguing that decentralized wastewater systems allow for lower up-front capital costs and gradual transitions to new technologies).

186. *See supra* Section I.A.

187. Ala. Ctr. for Rural Enter. (ACRE), *Onsite Wastewater Design Challenge*, EVENTBRITE, https://www.eventbrite.com/e/onsite-wastewater-design-challenge-tickets-28422595749# (last visited Sept. 17, 2017).

188. U.N. Doc. A/HRC/18/33/Add.4, *supra* note 2, ¶ 28.

affordable. States need to put appropriate systems in place, including regulation and financial support for those who need it."[189] In Lowndes County, state support for on-site solutions is limited, as will be discussed in the next section.

B. Quality Services and Public Health

Sanitation requires not only access to a toilet, but also the safe collection, management, and disposal of feces and associated wastewater. This broad human rights definition of sanitation is warranted because inadequate sanitation may impact others through contamination.[190] States have an obligation to realize the right to sanitation and ensure access to hygiene services.[191] Sanitation combines the dimensions of individual dignity and public health, both of which are central to the challenges facing Lowndes County's population.

The human right to sanitation is closely linked to the right to health. Whether or not individuals adopt safe sanitation practices and whether or not care is taken to confine human excreta has a significant impact on the community, not just that individual's health.[192] "Water-related disease" is often a euphemism for sanitation and feces-related disease.[193] Diseases may spread through direct contact (e.g. when children are playing in contaminated environments), through contaminated drinking water, or through the food chain.[194] Uncontained raw sewage that flows directly into yards and septic tanks that overflow, leak, or back up put the health of homeowners and the entire community at risk.[195] As discussed above, Alabama is witnessing a resurgence of tropical diseases that are likely linked to inadequate sanitation.[196]

As in Alabama, the responsibility to install, operate, and maintain septic tanks is often vested with homeowners.[197] Such responsibilities are not per se incompatible with the human rights

189. U.N. Doc. A/70/203, *supra* note 178, ¶ 60.
190. *See supra* Section I.B.
191. Winkler, *supra* note 10, at 1399–1400.
192. *See supra* Section I.B.
193. MAGGIE BLACK & BEN FAWCETT, THE LAST TABOO: OPENING THE DOOR ON THE GLOBAL SANITATION CRISIS 72 (2008).
194. Zimmer et al., *supra* note 132, at 340.
195. *See supra* Sections I.A–B.
196. *See supra* Section I.B.
197. In Alabama, residents that are not connected to municipal sewage must install their own septic systems. ALA. ADMIN. CODE r. 420-3-1-.02 to -.03.

framework, since human rights do not require that states provide services directly.[198] However, the human rights framework also stresses that ensuring adequate management of sewage and sludge is not the responsibility of individuals alone.[199] If individuals do not have the means to ensure adequate sanitation, states have the obligation to adopt the necessary measures to ensure that services are affordable.[200]

In order to protect people from contamination, states must adopt and enforce policies and regulations, including those related to the use and management of septic tanks.[201] However, states must not impose responsibilities that homeowners are unable to meet.[202] Therefore, in addition to regulation, states must create environments that enable individuals to comply with regulations, taking into account the capacity, opportunities, and resources that homeowners have at their disposal.[203] In Lowndes County, this may imply providing support to build and maintain septic systems. This will be discussed further in the next section.

C. Financing Service Provision

While there may be misconceptions, the human rights to water and sanitation do not require services to be provided free of charge.[204] They do not rule out tariffs and user contributions.[205] They do require, however, that services are affordable to everyone, which requires taking into account all associated costs.[206] There is no universal standard of what constitutes affordability from a human

198. Zimmer et al., *supra* note 132, at 346; *see generally* Asbjorn Eide, *Economic, Social and Cultural Rights as Human Rights*, *in* ECONOMIC, SOCIAL AND CULTURAL RIGHTS – A TEXTBOOK 9, 23–24 (Asbjorn Eide, Catarina Krause and Allan Rosas eds., 2nd ed. 2001) (indicating that not all economic, social, and cultural rights must be directly provided for by the state, and whenever possible, the individual is expected to ensure his or her needs through his or her own efforts).

199. Zimmer et al., *supra* note 132, at 338.

200. *See generally* Eide, *supra* note 198 (indicating that when individuals are unable to access basic resources, the state has an obligation to facilitate and fulfill people's economic, social, and cultural rights).

201. Zimmer et al., *supra* note 132, at 347.

202. *Id.* at 340.

203. Winkler, *supra* note 10, at 1387.

204. *Rep. of the Special Rapporteur on the human right to safe drinking water and sanitation*, ¶ 19, U.N. Doc. A/66/255 (Aug. 3, 2011).

205. *Id.* ¶ 17.

206. Winkler, *supra* note 10, at 1382–83.

rights perspective.[207] For the United States, the Unitarian Universalist Service Committee has recently recommended a standard of 2.5% of household income for water and sanitation services combined.[208]

In Lowndes County, system installation costs are the primary concern.[209] Soil conditions require installation of unusually expensive systems.[210] Where people are unable to pay for installment or service provision for reasons beyond their control, governments must contribute to the cost or provide services free of charge, which can be funded through public finance, including taxes, and cross-subsidization.[211] One of the challenges in Alabama's Black Belt is that individuals have limited income and, as a result, municipalities and counties also have a limited tax base for investments in public infrastructure.[212]

While the costs of ensuring adequate sanitation in Lowndes County are perceived to be high, this must be put into perspective. Costs are insurmountably high for the local population.[213] Yet, from a broader perspective, the area and size of the population experiencing these conditions is relatively small when averaged at the national level. This is true even while Lowndes County is part of the largest

---

207. *Rep. of the Special Rapporteur on the human right to safe drinking water and sanitation*, ¶ 28, U.N. Doc. A/HRC/30/39 (Aug. 5, 2015). Three to five percent of household income is often referred to as a rule of thumb. Simone Klawitter, *What Price Water? Sustainable Water Pricing and Tariff Setting for Residential Water Use* 81 (Berlin, Technische Universität, 2006); JAMES WINPENNY, FINANCING WATER FOR ALL, REPORT OF THE WORLD PANEL ON FINANCING WATER INFRASTRUCTURE 19 (Marseilles, 2003); U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REP. 2006, BEYOND SCARCITY: POWER, POVERTY AND THE GLOBAL WATER CRISIS 97 (2006); Ashok Nigam & Sadig Rasheed, *Financing of Fresh Water for All: A Rights Based Approach* (UNICEF Staff Working Paper, Evaluation, Policy and Planning Series, Number EPP-EVL-98-003 6, 1998); ORG. FOR ECON. CO-OPERATION & DEV., SOCIAL ISSUES IN THE PROVISION AND PRICING OF WATER SERVICES 43 (2003).

208. JONES & MOULTON, *supra* note 3, at 2.

209. For an overview of the regular costs associated with the operation and maintenance of these systems, see U.N. Doc. A/HRC/30/39, *supra* note 207, ¶ 16 (presenting an overview of associated costs).

210. JONES & MOULTON, *supra* note 3, at 14; Izenberg et al., *supra* note 24, at 202.

211. U.N. Doc. A/HRC/30/39, *supra* note 207, ¶ 7.

212. Tavernise, *supra* note 56.

213. *See supra* Section I.A.

economy in the world[214] with one of the highest GDPs per capita.[215] At this level, the question becomes one of prioritizing the allocation of resources. It is true that the infrastructure needs in the United States are vast. The EPA estimates that a total of $271 billion for wastewater infrastructure alone is required over the next twenty years.[216] However, from the perspective of human rights, the question is primarily one of how to distribute resources.

Butts and Gasteyer stress that the assumption that water and sanitation infrastructure must be paid for individually by local municipalities "may lead to de facto racial disparities."[217] From the perspective of substantive equality, the comparison with financing devoted to other systems is most revealing. At the global level, the Special Rapporteur on safe drinking water and sanitation has pointed out that almost all large-scale sanitation systems have received public financing and that such financing is unequally distributed, particularly through "hidden subsidies."[218] Such subsidies come into play when public financing is used to construct infrastructure that is intended to be used by all, but is only available to part of the population.[219] Public financing—and the associated hidden subsidies—are common for large-scale sewerage systems.[220] Where only a part of the population is connected to the sewerage network, the use of public finance disproportionately benefits this share of the population.[221] People who depend on on-site sanitation solutions—including those who live in disadvantaged and marginalized areas—do not accrue the advantages of such financing.[222]

---

214. The United States has the largest GDP in the world at more than $18 trillion. *See GDP (Current US$)*, WORLD BANK, http://data.worldbank.org/indicator/NY.GDP.MKTP.CD (last visited Sept. 17, 2017).

215. For a list of countries showing the United States as having the eighth highest GDP per capita in the world, see *GDP Per Capita (Current US$)*, WORLD BANK, https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?year_high_desc=true (last visited Sept. 17, 2017).

216. AM. SOC'Y OF CIVIL ENG'RS, INFRASTRUCTURE REPORT CARD: WASTEWATER 2 (2017), https://www.infrastructurereportcard.org/wp-content/uploads/2017/01/Wastewater-Final.pdf

217. Butts & Gasteyer, *supra* note 100, at 393.

218. U.N. Doc. A/HRC/30/39, *supra* note 207, ¶¶ 37–38.

219. *Id.*

220. *Id.*

221. *Id.* ¶ 40.

222. *Id.*

Where such a skewed distribution of public financing exists, the Special Rapporteur has called for a re-assessment and re-distribution:

> The first step to ensuring that public financing is targeted toward the most disadvantaged is to acknowledge the inherent inequalities and biases in the current distribution of public financing. On that basis, States must adopt measures to reach the people who rely on public finance to ensure the affordability of water and sanitation services for all and to reduce inequalities in access. States need to reallocate resources to the most disadvantaged.[223]

According to data from the Congressional Budget Office, federal, state, and local governments in the United States spent $109 billion on water and wastewater utilities, sewage treatment systems, and plants (capital costs, operation, and maintenance combined) in 2014.[224] Spending totaled $2.2 trillion in the 59-year period between 1956 and 2014.[225]

Funding sources also exist for small and rural wastewater systems.[226] For instance, the EPA provided $5.4 billion in assistance

---

223. U.N. Doc. A/HRC/30/39, *supra* note 207, ¶ 49.

224. CONG. BUDGET OFF., PUBLIC SPENDING ON TRANSPORTATION AND WATER INFRASTRUCTURE, 1956–2014, at 8 (2015), https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/49910-infrastructure.pdf.

225. Shadi Eskaf, *Four Trends in Government Spending on Water and Wastewater Utilities Since 1956*, ENVTL. FIN. BLOG AT U.N.C. 2 (Sept. 9, 2015), efc.web.unc.edu/2015/09/09/four-trends-government-spending-water/. This reflects funding patterns at a global level, where funding is disproportionately allocated to large-scale systems in urban areas instead of smaller systems in rural areas. *See also* UN Doc. A/66/255, *supra* note 204, ¶ 47 (reporting that "[l]arge systems in urban areas . . . receive vastly larger sums than basic services in rural areas and deprived urban areas"). This is not meant to imply that funding for large-scale water and wastewater infrastructure is at a sufficient level. Concerns are being raised about much larger investments being necessary due to aging infrastructure and, for instance, Carrera has pointed out that infrastructure spending has declined by 60% between the late 1960s and the late 1980s. Carrera, *supra* note 75, at 86.

226. *See, e.g.*, U.S. ENVTL. PROT. AGENCY, FUNDING SOURCES FOR SMALL AND RURAL WASTEWATER SYSTEMS, https://www.epa.gov/small-and-rural-wastewater-systems/funding-sources-small-and-rural-wastewater-systems (describing available funding sources for small and rural communities to improve their water and wastewater systems).

under the Clean Water State Revolving Fund in Fiscal Year 2014.[227] There is a range of other programs sponsored by the EPA and the U.S. Department of Agriculture, some of which are aimed at specific regions of the United States.[228]

However, even where funding is available, many communities face significant access challenges. In 2011, the Special Rapporteur on water and sanitation expressed concerns that "poor, disadvantaged, minority and indigenous communities [in the United States] are often unable to access federal, state and local funding sources due to technical, managerial and financial capacity requirements, among others."[229] Challenges may arise from residents living in isolation and not possessing clear home titles.[230] Those who are elderly may face additional bureaucratic hurdles.[231] Many communities are not aware of potential funding options.[232]

Lowndes County applied for and received a $575,000 EPA Grant through the Alabama Center for Rural Enterprise (ACRE) for a demonstration project as part of a national program on Community Decentralized Wastewater Treatment.[233] The project sought to develop a decentralized wastewater management system for the county.[234] A house-to-house survey was carried out to document the extent of the sewage problem in the county, which then led to the development of a master plan that was submitted to the EPA.[235] ACRE advocated on behalf of the towns of Hayneville and Fort

---

227. U.S. ENVTL. PROT. AGENCY, CLEAN WATER STATE REVOLVING FUND: FISCAL YEAR 2014, NATIONAL FINANCIAL REPORTS 6 (2014), https://www.epa.gov/sites/production/files/2015-04/documents/cwsrf_2014_financial_statements.pdf.

228. *See* U.S. ENVTL. PROT. AGENCY, *supra* note 226 (listing a range of programs under the EPA, such as pollution control or watershed protections and programs targeted at tribal communities or U.S.-Mexico border communities).

229. U.N. Doc. A/HRC/18/33/Add.4, *supra* note 2, ¶ 27.

230. Izenberg et al., *supra* note 24, at 203.

231. *Id.*

232. Wedgworth & Brown, supra note 62, at 73.

233. *See generally* ALA. CTR. FOR RURAL ENTER. (ACRE), THE ACRE MODEL FOR RURAL COMMUNITIES WORK PLAN, http://undark.org/wp-content/uploads/sites/2/2017/06/The_ACRE_Model_For_Rural_Communities_Work_Plan_07_12_2010_Revision-2.pdf (outlining a project work plan to protect public health and improve water quality in Lowndes County).

234. U.S. ENVTL PROT. AGENCY, GRANT AWARDS DATABASE, THE ACRE/LOWNDES COUNTY, ALABAMA DECENTRALIZED WASTEWATER PLANNING PROJECT, https://yosemite.epa.gov/oarm/igms_egf.nsf/52f35d81cc937e5e85256fb6006df28e/5d17c2b13779036885257d6f00717f92!OpenDocument.

235. CATHERINE COLEMAN FLOWERS, THE ACRE RURAL COMMUNITIES FINAL REPORT 2 (on file with the authors).

Deposit to expand their current wastewater treatment systems for residents who are currently not connected to the sewer.[236] The recommendations also included funding to the towns of White Hall and Gordonville.[237] As a result, Gordonville has been defined by the Alabama Department of Public Health as a top priority for sanitary sewer because of the prevalence of raw sewage.[238]

Under most circumstances, those eligible to apply for federal grant funding are communities, tribes, organizations, or public bodies that would manage small-scale systems, whereas many households rely on individual on-site sanitation solutions.[239] While officials from the Department of Public Health explain that the Department will work with residents to find affordable solutions,[240] there is limited support for installing on-site sanitation systems. Funds for on-site sanitation systems are very limited, except as direct loans to homeowners.[241] Eligibility for such loans, including subsidized federal and state programs, often depends on credit ratings, which makes it more difficult for low-income people to access loans.[242] Public health officials generally do not see it as their responsibility to support residents, but understand their role as regulating septic management and imposing fines, if necessary.[243]

With climate change leading to higher temperatures and a resurgence of tropical diseases, addressing the sanitation crisis in Lowndes County is more important now than ever. Allowing Lowndes County to continue unabated as "America's dirty secret" is likely to increase the costs of inaction. Studies in other countries have demonstrated that installing septic tanks and managing wastewater has a positive cost-benefit ratio.[244] Therefore, it is urgent to find

---

236. *Id.* at 11.
237. *Id.*
238. *Id.*
239. Izenberg et al., *supra* note 24, at 203.
240. Cleek, *supra* note 24.
241. Izenberg et al., *supra* note 24, at 203.
242. *Id.* at 204.
243. Carrera, *supra* note 75, at 8.
244. *See* WORLD BANK GRP., WATER AND SANITATION PROGRAM, THE ECONOMIC RETURNS OF SANITATION INTERVENTIONS IN THE PHILIPPINES 4 (2011), https://www.wsp.org/sites/wsp.org/files/publications/wsp-philippines-economic-returns.pdf; WORLD BANK GRP., WATER AND SANITATION PROGRAM, THE ECONOMIC RETURNS OF SANITATION INTERVENTIONS IN VIETNAM 3 (2011), https://www.wsp.org/sites/wsp.org/files/publications/wsp-vietnam-economic-returns.pdf.

solutions and redistribute resources to the benefit of disadvantaged communities that rely on small-scale or on-site systems.

D. Avoiding Stigmatization and Criminalization

The challenges in Lowndes County are not only linked to a lack of public financing and government support—the government has also cited, fined, and arrested homeowners for the inadequate operation and maintenance of septic systems.[245] As outlined above, the regulation of on-site sanitation and wastewater systems and the enforcement of such regulations are measures to ensure that human rights standards are met.[246] However, human rights also requires assessing who bears the burden of such regulations and whether it is possible to comply with those regulations.[247] Government must create the enabling environment that allows people to do so.[248]

Inequality may be reinforced when states decide to criminalize activities that carry certain stigma.[249] Through criminalization, states may institutionalize and perpetuate stigmatization of low-income households. In the context of homelessness, the criminalization of life-sustaining activities has received significant attention.[250] The CERD has called upon the United States to "[a]bolish laws and policies making homelessness a crime."[251] In 2012, the Special Rapporteur on safe drinking water and sanitation recognized that criminalization infringes on human rights standards because homeless individuals often have no alternative to public urination and defecation.[252] Similarly, with regard to ordinances that prevented homeless people from life-sustaining activities, a court in Florida ruled that their conduct "is inseparable from their involuntary condition of being homeless. Consequently,

---

245. *See supra* Section I.C.

246. *See supra* Section II.A.

247. *See* Eide, *supra* note 198.

248. *See supra* Section III.B.

249. *Rep. by the Special Rapporteur on the human right to safe drinking water and sanitation*, ¶ 41, U.N. Doc. A/HRC/21/42 (July 2, 2012).

250. *See* NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 16–29 (2014).

251. CERD Concluding Observations, *supra* note 85, ¶ 12; *see also* Human Rights Comm., Concluding Observations on the Fourth Periodic Rep. of the U.S. ¶19, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014) (noting with concern laws in many U.S. localities criminalizing homelessness and calling on the federal government to work with localities to abolish these laws).

252. U.N. Doc. A/HRC/21/42, *supra* note 249, ¶ 42.

arresting homeless people for harmless acts they are forced to perform in public effectively punishes them for being homeless."[253]

There are certain similarities between the regulations in question in Alabama and those concerning public urination and defecation. The Alabama regulations aim to protect public health by ensuring the adequate collection, management, and disposal of human feces.[254] However, when they are applied without regard to an individual's situation or means, the state fails to meet its human rights obligations. In fact, enforcing these regulations may threaten public health: when residents are fined, it is less likely they will be able to afford adequate sanitation systems.[255] Carrera explains that "[f]ines entered residents into a relationship with the regulatory structure that holds within it an essential contradiction. They entered residents into a process designed to regulate their being without providing mechanisms for improving their circumstances."[256] Criminalizing people living in poverty through citations, fines, and arrests "mark[s] them physically and symbolically in their unsanitary status,"[257] and furthers their stigmatization. To avoid stigmatization, steps to be taken have to go beyond abandoning or reducing the practice of arresting people; the legislation itself that criminalizes people for inadequate sanitation has to be repealed.

IV. CONNECTING LOCAL AND GLOBAL NETWORKS

Against this background, this last part will explore how residents and advocates in Lowndes County have sought to address the crisis, with a particular focus on the use of international mechanisms as one piece of their overall strategy. How have residents in Lowndes County localized and vernacularized human rights standards? How have they strategically used international human rights mechanisms, including a visit by the U.N. Special Rapporteur on the human rights to water and sanitation and two hearings at the Inter-American Commission for Human Rights, to make their cause heard?

253. Pottinger v. City of Miami, 810 F. Supp. 1551, 1564 (S.D. Fla. 1991).
254. *See supra* Section III.B.
255. Carrera, *supra* note 75, at 128.
256. *Id.*
257. *Id.* at 134.

A. Engaging with International Mechanisms

Over the years, advocates from Lowndes County have consistently engaged with global and regional human rights mechanisms. In 2011, the Special Rapporteur on safe drinking water and Sanitation carried out a country mission to the United States to assess the extent to which the human rights to water and sanitation have been realized and to identify areas of concern.[258] Among many other groups and individuals, she received testimony from communities and human rights advocates in Lowndes County who brought attention to the challenges they face in terms of failing, inadequate, or non-existent systems that risk public health and raise questions about affordability.[259] In her report on the mission, the Special Rapporteur stated:

> More concerted efforts are required to ensure targeting of policies and programmes to reach the hidden and poorest segments of the population. Problems of discrimination in the United States water and sanitation services may intensify in the coming years with climate change and competing demands for ever scarce water resources.[260]

She also called on the government specifically to "[e]valuate the extent to which people living in poverty face challenges in paying for water and sanitation services."[261]

The Special Rapporteur's visit brought significant international visibility to the challenges faced by Lowndes County residents. As a result, Alabama advocates also had the opportunity to collaborate with other grassroots activists across the country who face similar challenges.[262] Advocates have since formed a National Coalition on the Human Rights to Water and Sanitation that is driven by the experiences of grassroots activists and coordinated by the United States Human Rights Network.[263]

The United States Human Rights Network took up issues related to the rights to water and sanitation in the consultation

---

258. *See generally* U.N. Doc. A/HRC/18/33/Add.4, *supra* note 2 (analyzing the degree to which the United States fulfills its obligations under international law to provide safe drinking water and sanitation to its residents).

259. *Id.* ¶ 20.

260. *Id.* ¶ 89.

261. *Id.* ¶ 92(h).

262. *See #WaterIsAHumanRight*, *supra* note 5.

263. *Id.*

process leading up to the Universal Periodic Review.[264] Two recommendations offered to the United States during the Universal Periodic Review process focused on the rights to water and sanitation, including a specific reference to ensuring the human right to sanitation without discrimination.[265] The United States has, in part, accepted these recommendations, while also adding a caveat that reiterates its position on the enforceability of the human right to sanitation.[266]

Engaging with international and regional mechanisms has provided an important forum for advocacy and strengthening organizational ties across the country. Advocates from Alabama have come together with other groups for two hearings at the Inter-American Commission on Human Rights. Advocates presented testimony at the thematic hearing in October 2015 that addressed the human rights to water and sanitation across the Americas.[267] The subsequent hearing in April 2016 was a U.S.-specific hearing at which the U.S. government was present.[268] Advocates had yet another recent opportunity to engage in this conversation when the United

---

264. *See UPR Working Groups*, U.S. HUMAN RIGHTS NETWORK, http://www.ushrnetwork.org/upr-working-groups (last visited Sept. 15, 2017) (listing working groups that focused on the right to water).

265. Human Rights Council, Rep. of the Working Group on the Universal Periodic Review, United States of America, U.N. DOC. A/HRC/30/12, ¶¶ 176.311–176.312 (July 20, 2015).

266. Mission of the U.S. to U.N., *Addendum of the United States of America to the Report of the Working Group on its Universal Periodic Review* (Aug. 31, 2015), https://geneva.usmission.gov/2015/09/01/addendum-of-the-united-states-of-america-to-the-report-of-the-working-group-on-its-universal-periodic-review/. The response includes the following explanation:

> The U.S. is not a party to the ICESCR, and we understand the rights therein are to be realized progressively. We understand #311-312 as referencing a right to safe drinking water and sanitation, derived from the right to an adequate standard of living. We continue to improve our domestic laws and policies to promote access to housing, food, health, and safe drinking water and sanitation, with the aim of decreasing poverty and preventing discrimination. Concerning #312, we do not regard UNGA Resolution 64/292 as legally-binding.

Id.

267. *IACHR Regional Hearing on Rights to Water and Sanitation,* U.S. HUMAN RIGHTS NETWORK (Oct. 2015), http://www.ushrnetwork.org/our-work/projects-campaigns/previous-projects-campaigns/iachr-regional-hearing-rights-water.

268. Letter from U.S. Human Rights Network to Emilio Álvarez Icaza, Exec. Sec'y, Inter-American Comm'n on Human Rights (Jan. 20, 2016) (on file with the U.S. Human Rights Network).

Nations Working Group on Discrimination Against Women in Law and Practice went to Lowndes County as part of its mission.[269]

From the perspective of local advocates and communities, engagement with various human rights mechanisms may attract international attention and help residents seek more immediate solutions. As international experts examine and comment on the situation in Lowndes County, they may convey the idea that the United Nations—and the world—is watching what is happening in Alabama. While residents are the ones who hold the legitimacy to speak about their lived experiences and the challenges they face, international experts may lend credibility by adding their perspectives and amplifying the voice of local communities. As such, U.N. mechanisms may validate the concerns of local residents and help bring an international legal perspective to the conversation about resources and potential partnerships to help resolve this issue.

B. Localizing the Human Right to Sanitation

While many challenges and efforts to realize human rights have occurred at local levels, this fact has only received increased scholarly attention in the last decade or so. There is a broad spectrum of literature that addresses topics such as the use of human rights to influence local laws, policies, and practices;[270] contextualization and vernacuralization;[271] and how local actors influence normative

---

269. *See UN Working Group on Discrimination Against Women in Law and Practice Visit*, U.S. HUMAN RIGHTS NETWORK, http://www.ushrnetwork.org/our-work/project/un-working-group-discrimination-against-women-law-practice-visit (last visited Sept. 15, 2017).

270. *See generally* COLUMBIA LAW SCH. HUMAN RIGHTS INST., BRINGING HUMAN RIGHTS HOME: HOW STATE AND LOCAL GOVERNMENTS CAN USE HUMAN RIGHTS TO ADVANCE LOCAL POLICY (2012) (discussing the importance of adopting a human rights framework to articulate social needs and to ensure that laws, policies, and programs meet those needs).

271. *See generally* SALLY ENGLE MERRY & MARK GOODALL, THE PRACTICE OF HUMAN RIGHTS: TRACKING LAW BETWEEN THE GLOBAL AND THE LOCAL (2007) (using four themes in human rights practice—violence, power, vulnerability, and ambivalence—to develop new frameworks for conceptualizing "the practice of human rights as a key transnational discourse."); THE LOCAL RELEVANCE OF HUMAN RIGHTS (Koen De Feyter et al. eds., 2011) (using human trafficking as a case study to determine factors that make local petitions to human rights successful). For seminal work on case studies, see, e.g., Peggy Levitt & Sally Merry, *Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States*, 9 GLOBAL NETWORKS 441, 441–61 (2009) (describing how and why the local adoption of global ideas about women's rights differed in four countries); Sally Engle Merry et al., *Law From Below:*

developments.[272] The basic rationale of localization efforts is to make human rights relevant to the lived experiences of rights-holders, to address the struggles they face, and to reflect these in the development of international norms.[273] Koen De Feyter has argued that "there is no contradiction between maintaining human rights as a global language and allowing for variations in content in order to make human rights protection as locally relevant as possible. On the contrary, global human rights stand to be enriched if they take into account input from varied societies."[274] Using local realities to develop international human rights is just as important as applying international norms to the local human rights context.[275] While an in-depth discussion of localizing the human right to sanitation in Lowndes County is beyond the scope of this article,[276] this section seeks to briefly point out how advocates in Alabama have localized the human right to sanitation to advance their cause and connect global and local efforts.

First of all, and perhaps most significantly, advocates from Alabama and other local groups in the United States have helped create awareness that the realization of the human right to sanitation is a challenge in the United States.[277] All too often, the human rights to water and sanitation are perceived as being of primary relevance in the Global South. Images of women and girls walking to collect water on dry, cracked soil in a country in Southern Africa or images of women squatting while practicing open defecation in South Asia abound. Advocates in Alabama and elsewhere have put the United States on the map as a country that faces significant

---

Women's Human Rights and Social Movements in New York City, 44 LAW & SOC'Y REV. 101, 101–28 (2010) (arguing that international human rights frameworks can benefit local social movements by facilitating coalition work between groups with differing values).

272. Tine Destrooper, *Uprooting the Curious Grapevine?: The Transformative Potential of Reverse Standard-Setting in the Field of Human Rights*, 14 J. HUM. RTS. 1, 1–16 (2016); Makau Mutua, *Standard Setting in Human Rights: Critique and Prognosis*, 29 HUM. RTS. Q. 547, 547–630 (2007).

273. Destrooper, *supra* note 272, at 2.

274. Koen de Feyter, *Localizing Human Rights*, *in* ECONOMIC GLOBALISATION AND HUMAN RIGHTS 67, 71 (Wolfgang Benedek et al. eds., 2007).

275. Gaby Oré Aguilar, *The Local Relevance of Human Rights: A Methodological Approach*, *in* THE LOCAL RELEVANCE OF HUMAN RIGHTS 109, 112 (Koen De Feyter et al. eds., 2011).

276. For a methodology of how to study the localization of human rights in more detail, see *id.*

277. See FLOWERS, *supra* note 235, at 12; *#WaterIsAHumanRight*, *supra* note 5.

challenges in the realization of the human rights to water and sanitation. By engaging with international human rights mechanisms and employing the language of human rights, they have shown human rights to be a truly international framework that can be used, localized, and adapted to a diversity of contexts.

Second, in the United States—the largest economy in the world—disparities, inequalities, exclusion, and neglect appear especially startling in an overall context of abundance.[278] Advocates have aimed to highlight this dimension both for substantive and strategic reasons. Substantive equality claims go to the heart of the human rights framework. Strategically, because the United States has ratified the ICERD and ICCPR, advocates are able to hold the government accountable for the implementation of these human rights instruments.[279]

Finally, advocates in Alabama have put significant emphasis on the public health dimension of the quality of sanitation solutions and the disposal and management of feces, i.e., sanitation beyond mere access to toilets. Even if global human rights advocates pushed back against this narrow understanding, the discourse on human rights prior to 2015 was heavily influenced by Millennium Development Goals' targets and characterized by a narrow focus on access to toilets and latrines.[280] A similar tendency can be observed in the General Assembly and Human Rights Council resolutions on the human right to sanitation. The resolutions speak of "access to sanitation" that is "safe" and "hygienic,"[281] but they do not spell out what is meant by sanitation in terms of treatment and disposal (or re-

278. *See supra* note 214 (stating that the United States has the world's largest GDP).

279. *See, e.g.*, ENVTL. JUSTICE COAL. FOR WATER ET AL., RACIAL DISCRIMINATION AND ACCESS TO SAFE, AFFORDABLE WATER FOR COMMUNITIES OF COLOR IN CALIFORNIA (Aug. 2014), http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf (using the ICERD framework to address disparities of access to water in California's Central Valley in a shadow report submitted to the Committee on the Elimination of Racial Discrimination in its 85th Session).

280. *See Special Rapporteur on the human rights to safe drinking water and sanitation*, ¶¶ 20–29, U.N. Doc. A/68/264 (Aug. 5, 2013); Zimmer et al., *supra* note 184, at 341; *see also* Malcolm Langford & Inga Winkler, *Muddying the Water? Assessing Target-Based Approaches in Development Cooperation for Water and Sanitation*, 15 J. HUM. DEV. & CAPABILITIES 247, 254–55 (2014) (discussing the inadequacy of the "access-centric approach to sanitation").

281. *See, e.g.*, U.N. GAOR, 70th Sess., 80th plen. mtg. at 21, U.N. Doc. A/70/PV.80; G.A. Res. 70/169, *supra* note 122, ¶ 2.

use). The original definition provided by the Special Rapporteur highlights these dimensions,[282] but all too often they are neglected. Advocates in Alabama have stressed that sanitation must include adequate means of managing sludge and sewage.[283] Based on the experiences of residents, advocates have determined that current technologies suggested for onsite wastewater treatment do not function properly in Lowndes County.[284] Accordingly, ACRE has launched an international wastewater challenge in pursuit of affordable, sustainable, and climate-conscious technologies that could function in the soils of Lowndes County.[285]

As such, advocates from Alabama have made significant strides in connecting global and local human rights efforts.[286] They have made strategic use of international mechanisms to advance their causes and have sought to influence the development of discourse on the human right to sanitation at a global level.[287] More efforts should be undertaken to reflect the lived experience of communities in rural Alabama in the normative developments at the international level.

CONCLUSION

"America's dirty secret," the lack of adequate sanitation in Alabama's Black Belt, is increasingly coming to the fore. Raw sewage overflowing into yards and fields, and even backing up into people's homes, is an affront to individual dignity and a threat to public health.[288] Lowndes County, a rural locale home to a largely low-income and African-American population, has been neglected in

282. U.N. Doc. A/HRC/12/24, *supra* note 127, at ¶ 63.

283. FLOWERS, *supra* note 235, at 11–12.

284. *Id.* at 12.

285. ACRE, *supra* note 187.

286. More generally, realization of the right to water has been highlighted as a fruitful process in which local communities and activists have played a critical role in norm development alongside transnational networks. One author describes it as "a very illustrative example of enriching interrelations between the local and the global before the UN human rights bodies and the potential of these interrelations to advance the cause of ESC rights in local scenarios." Felipe Gómez Isa, *Freedom from Want Revisited from a Local Perspective: Evolution and Challenges Ahead*, *in* THE LOCAL RELEVANCE OF HUMAN RIGHTS 40, 64 (Koen De Feyter et al. eds., 2011).

287. FLOWERS, *supra* note 235, at 5 (detailing how advocates testified before the Special Rapporteur on the right to safe drinking water and sanitation about sanitation conditions in Lowndes County).

288. *See supra* Section I.A.

policy-making and resource allocation. [289] Individuals are responsible for installing on-site systems with hardly any government support.[290] This neglect is no coincidence, but instead reflects structural patterns of entrenched inequalities.[291] U.S. studies have confirmed racial disparities in access to municipal services across the country.[292]

Despite such evidence, infrastructure proposals have not addressed the problem in places like Lowndes County.[293] At the same time, temperatures have reached record highs and the likelihood of tropical illnesses has increased.[294] The intersection of climate change, racial disparities, and environmental injustice demands urgent attention.

In response to this crisis, advocates have begun to mobilize, embodying the ideal that "rights are born of wrongs."[295] Social movements play an essential role in recognizing socio-economic rights so as to protect against future human rights violations.[296] Framing these in terms of racial inequalities is powerful both for substantive and strategic reasons.[297] Advocates in Alabama have relied on global and regional human rights mechanisms to lend visibility and increased credibility to their struggles.[298] Their experience is extremely valuable in shaping and developing the human right to sanitation at the global level so that it truly captures and addresses the struggles that people face in their everyday lives.

Eleanor Roosevelt has been quoted many times, but her words are more relevant than ever:

> Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he [or she] lives in . . . Unless these rights have meaning there, they have little meaning

289. *See supra* Section I.A.
290. *See* Eide, *supra* note 198.
291. *See supra* Section I.D.
292. *See supra* Section I.D.
293. *See supra* Section III.C.
294. *Neglected Tropical Diseases*, *supra* note 66.
295. Cathy Albisa, *Drawing Lines in the Sand: Building Economic and Social Rights in the United States*, *in* HUMAN RIGHTS IN THE UNITED STATES: BEYOND EXCEPTIONALISM 68, 84 (Shareen Hertel & Kathryn Libal, eds., 2011).
296. *Id.*
297. *But see* Kaufman, *supra* note 172, at 424–27 (discussing the limitations of an advocacy strategy premised on non-discrimination and equality).
298. FLOWERS, *supra* note 235, at 5–6.

> anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.[299]

Advocates in Alabama will continue to work towards giving real meaning to the human right to sanitation in the state, in the county, the neighborhood, and the home.

299. Eleanor Roosevelt, In Our Hands, Speech delivered on the 10th Anniversary of the Universal Declaration of Human Rights (1958), *as reprinted in Human Rights Day, December 10*, FRANKLIN D. ROOSEVELT FOUR FREEDOMS PARK BLOG (Dec. 10, 2012), http://www.fdrfourfreedomspark.org/blog/2015/2/18/human-rights-day-december-10.