



# Legal Mapping for Resilience

## Navajo Nation

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## Checklist on Human Rights to Water and Sanitation for Resilience to Pandemic Emergencies such as COVID 19

### Objective of this checklist

The objective of this checklist is to provide an **assessment tool** based on human rights to establish that there are governance systems in place to ensure that each water, sanitation and hygiene provider and key public service institution (such as schools, hospitals, prisons, care homes) may carry out its activity during an emergency such as a Pandemic, in compliance with human rights.

Encouraging water and sanitation suppliers to comply with the human rights to water and sanitation improves the implementation of other human rights such as health. Importantly, the increase in standards associated with realizing these rights, will also support greater resilience to future contagious diseases, not only for the vulnerable groups that may be overlooked. These checks can therefore contribute to the well-being and dignity of a greater percentage of the population.

### What are the human rights to safe drinking water and sanitation?

In 2010, the UN General Assembly declared the right to drinking water and sanitation as essential to the full enjoyment of life and all human rights. In 2015, the UN General Assembly reaffirmed the right to water and the right to sanitation, recognizing them as distinct rights, although related and both stemming from the right to an adequate standard of living. Human rights obligations related to access to water and sanitation are included in different human rights treaties. It is **States** that are primarily responsible for the realization of the human right to water and sanitation.

The human right to water entitles everyone to have access to **sufficient, safe, acceptable, physically accessible and affordable water** for personal and domestic use, while the right to sanitation entitles everyone to have **physical and affordable access to sanitation**, in all spheres of life, that is **safe, hygienic, secure, and socially and culturally acceptable** and that provides **privacy** and ensures **dignity**. Those rights shall be delivered in a **participatory, accountable and non-discriminatory manner**.

### Who has human rights to safe drinking water and sanitation?

Human rights are the inalienable fundamental rights to which each person is inherently entitled. Human rights are conceived as **universal** (applicable everywhere) and **egalitarian** (the same for everyone). They embody the basic standards without which people cannot realize their inherent human dignity. Recognizing access to safe drinking water and sanitation as a human right therefore means that **everybody** is entitled to these rights.

### What are the human rights to water and sanitation principles and criteria?

Human rights **criteria** (availability, quality, acceptability, accessibility, and affordability) and human rights **principles** (non-discrimination, access to information, participation, accountability and sustainability) shape the content and scope of the right and guide its implementation process. All these elements give meaning to the human rights to water and sanitation and must be taken into account for its implementation.

### Why do human rights matter for all organisations and businesses?

The United Nations Human Rights Council (2011) endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. These Guiding Principles apply to all States and to all business enterprises, NGOs and community-based organisations regardless of their size, sector, location, ownership and structure.

The Guiding Principles recognise that:

1. **States** have the obligation to respect, protect and fulfill human rights;
2. **Business enterprises and other suppliers/operators** are required to comply with all applicable laws and need to respect human rights. They should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved; and
3. Rights and obligations need to be matched by appropriate and effective remedies when breached.

This means all water and sanitation operators have to comply with local laws **and** are responsible to respect human rights, including the rights to access to safe drinking water and sanitation.

### Responsibilities of service providers

State and Non-State actors must **comply with the laws and regulations** of the country in terms of a general legal obligation: they have a basic responsibility to **respect** human rights. The distinctive responsibilities of companies in relation to human rights are summarized under the concept of 'due diligence.' Companies are required to exercise due diligence in relation to human rights while operating. This concept describes the steps a company must take to become aware of, prevent and address adverse human rights impacts<sup>1</sup>.

### Service providers in the water and sanitation sector

Service providers in the water, sanitation and hygiene sectors need to comply with the due diligence framework. At the same time, the provision of water and sanitation services is characterized by a special feature: the services relate directly to the fulfilment of human rights. Thus, while the service itself may contribute to the realization of the rights to water and sanitation, the activities of service providers may also potentially result in abuses of the right to water and sanitation. The following special challenges have been identified in light of the human rights-based approach in the water and sanitation sectors<sup>2</sup>:

- Guaranteeing transparent and democratic decision-making
- Addressing power asymmetries in the bidding and negotiation process
- Reaching the poorest and the most marginalised
- Ensuring affordable services
- Avoiding disconnections in case of inability to pay
- Ensuring the quality of services
- Ensuring monitoring and follow up
- Ensuring effective complaint mechanisms
- Addressing corruption

### Guideline for methodology

The checklist is used a guide to the laws, policies, and local authority practices that are currently applicable in the jurisdiction under analysis.

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<sup>1</sup> Protect, Respect and Remedy: a Framework for Business and Human Rights Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie A/HRC/8/5.

<sup>2</sup> Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque A/HRC/15/31

In addition to the basis collection of information, the summary page also provides a dashboard of the degree to which the jurisdiction has achieved some resilience to pandemics through the inclusion of the human rights to water and sanitation criteria and principles. It is worth noting that this is a test of what is already included in written laws, policies, regulations and standards, and not a recognition of compliance in practice. It is intended to identify areas of weakness that can be easily supported to improve resilience.

## Country Analysis

**Name of Jurisdiction: Navajo Nation, a sovereign nation within the United States**

### General Legislation

Member of a regional integration organization	No
State Organization	N/A
Relationship between International and National Law	N/A
Supreme Law	Navajo Law (Navajo Code, fundamental law, and case law) and U.S. federal law
Independent National Human Rights Institution (NHRI)	Yes <sup>3</sup>
Name of Institution possessing regulation-making authority	Tribal government and U.S. federal agencies
Popular consultation as part of governing/legislative process	Yes

### Water Governance

Right to Water or Sanitation mentioned in Constitution	No
A water code or a law specific to water resources	Yes, Navajo Water Code
National Strategy, Policy, Action Plan, etc. on Water and Sanitation	Yes <sup>4</sup>
Transboundary Water Resources	Yes
Priorities in the allocation of water for different uses	Yes, for water shortages the Navajo Water Code identifies priority uses with domestic and municipality use first

<sup>3</sup> <https://www.nnhrc.navajo-nsn.gov/>

<sup>4</sup> <https://www.nndwr.navajo-nsn.gov/>

### Pandemic Resilience Scores (out of 100):

Availability	3
Quality	7 (contested <sup>5</sup> )
Acceptability	3
Accessibility	5
Affordability	7
Non-Discrimination	4
Access to Information, transparency	7
Participation	5
Accountability	5
Sustainability	5
TOTAL	51%

### Executive Summary

Overall, the Navajo Nation received a score of 51% (out of a possible 100%) on the Checklist. It scored highest in quality (7/10), affordability (7/10), and transparency (7/10), and lowest in availability (3/10), acceptability (3/10), and non-discrimination (4/10). These scores are not necessarily definitive of how the Navajo Nation performs in each of these categories. In some instances, there was a lack of information available, which might have resulted in an inaccurate score. In other instances, there were programs in place to address a certain issue, but due to limited resources, the impact of those programs on most people's access to water may have been minimal. Laws and regulations may also be in place, but not actually enforced.

The Navajo Nation scored relatively high in quality (7/10), however, this score does not reflect the actual quality of drinking water in the Navajo Nation, as it is only a measure of the legal framework in place. The federal government heavily regulates drinking water

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<sup>5</sup> This rating is contested by experts in this field because it reflects current water quality standards, not compliance with these standards. Over 30% of the Navajo population rely on unregulated water sources which are not subject to these standards. See Colorado River Water Users Association Annual Report 2021 at 33, available at <https://www.crwua.org/assets/downloads/2021-CRWUA-Annual-Report.pdf#page=30>. Additionally, the Navajo Nation faces significant water quality challenges with uranium and arsenic. See <https://unmcop.unm.edu/metals/>. Additional references relating to unregulated water quality provided by the Navajo Nation Department of Water Resources: Elevated Arsenic and Uranium Concentrations in Unregulated Water Sources on the Navajo Nation, USA <https://link.springer.com/article/10.1007/s12403-016-0226-6>; Quantification of Elemental Contaminants in Unregulated Water across Western Navajo Nation, <https://www.mdpi.com/1660-4601/16/15/2727>; Dissolved Uranium and Arsenic in Unregulated Groundwater Sources – Western Navajo Nation, <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1936-704X.2020.03330.x>; Uranium and arsenic unregulated water issues on Navajo lands, <https://avs.scitation.org/doi/full/10.1116/1.5142283>.

quality through the Environmental Protection Agency (EPA) under the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). The Navajo Nation receives treatment as a state (TAS) under these two programs, meaning it has primary authority to implement them within the Navajo Nation.<sup>6</sup> Despite these programs, there are significant water quality issues in the Navajo Nation, due in large part to a lack of access to regulated water sources. As of 2021, over 30% of the Navajo Nation rely on water hauled from unregulated water sources, because there is a lack of piped water to Navajo homes.<sup>7</sup> These unregulated sources, usually shallow wells dug for livestock, generally do not conform with drinking water standards and instead have dangerously high levels of uranium and other harmful pollutants.<sup>8</sup>

The Navajo Nation also scored relatively high in affordability (7/10), but as with water quality, this score does not represent how affordable water is for most people in the Navajo Nation. Rather, it represents the laws, policies, and government programs in place to increase water affordability. Many of the questions in this section focused on the cost of water during the COVID-19 pandemic. During the pandemic, the Navajo Nation received water related funding from Indian Health Services (IHS),<sup>9</sup> Coronavirus Aid, Relief, and Economic Security Act (CARES) Act,<sup>10</sup> and the COVID-19 Water Access Coordination Group (WACG).<sup>11</sup> Funding from the IHS and WACG was used to directly cover well fees, while funding from the CARES Act was used by the Navajo Tribal Utility Authority (NTUA) to extend piping and build other water and waste water infrastructure for residential users to decrease the cost of water overtime while increasing access.

The Navajo Nation also scored seven points in transparency. This score was largely due to the communication tools created by WACG. During the pandemic, WACG created a website ([navajosafewater.org](http://navajosafewater.org)) and a phone alert system, “Navajo Safety Water Alerts,” to share information about water with the public.<sup>12</sup> These resources promote transparency because they enable information about water to be rapidly and directly shared with the public. These systems are relatively new, as they were created in response to the COVID-19 pandemic, which began in 2020.

The Navajo Nation scored lowest in availability (3/10) and acceptability (3/10). These scores may not represent the actual availability or acceptability of potable water in the Navajo Nation, although the Navajo Nation does face significant issues in these areas.<sup>13</sup> The low score in availability represents a lack of legal rights to water and sanitation in the Navajo Nation. The low score in acceptability represents a lack of mechanisms to solicit consumer feedback on water acceptability and a lack of laws, policies, and programs to ensure that water and sanitation services are culturally acceptable.

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<sup>6</sup> For information on TAS generally see <https://www.epa.gov/tribal/tribal-assumption-federal-laws-treatment-state-tas>; for list of programs the Navajo Nation has TAS statutes under see <https://www.epa.gov/tribal/tribes-approved-treatment-state-tas#regulatory-and-administrative-tas>.

<sup>7</sup> See note 5.

<sup>8</sup> See note 5.

<sup>9</sup> Information provided by the Navajo Nation Department of Water Resources.

<sup>10</sup> <https://www.ntua.com/ntua-cares-act.html>

<sup>11</sup> <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

<sup>12</sup> Id.

<sup>13</sup> See note 5.



The Navajo Nation also scored relatively poorly in non-discrimination (4/10). This score does not mean that discrimination in water and sanitation services is occurring in the Navajo Nation, but rather indicates that many of the kinds of anti-discrimination laws, policies and programs contemplated by this Checklist are not in place in the Navajo Nation.

As discussed above, a major issue in the Navajo Nation is a lack of water and sanitation infrastructure. This lack of infrastructure means that water laws and regulations, which would otherwise provide for access to clean water and sanitation services, are often not effective, because water regulated by the government is not reaching a significant portion of the Navajo population. However, this situation may be changing due to recent federal legislation, which has allocated significant funding for water and waste water infrastructure in the Navajo Nation. The first significant federal legislation is the CARES Act of 2020, Public Law 116-136.<sup>14</sup> The CARES Act was the first major federal aid package passed during the COVID-19 pandemic and includes funding to help State, local, and Tribal governments to deal with the impact of the pandemic on their communities, including supporting water and waste water infrastructure.<sup>15</sup> The Navajo Council approved \$20.9 million of the CARES Act funding to be used to construct cisterns systems (home water reservoir systems), and \$18.6 millions to be allocated towards wastewater systems.<sup>16</sup> In light of the on-going pandemic, in 2021, the federal government enacted the American Rescue Plan Act (ARPA), Public Law 117-2,<sup>17</sup> to provide additional support for State, local, and Tribal governments. The Navajo Nation received \$2 billion under the ARPA.<sup>18</sup> The Navajo Nation plans to use some of these funds to continue water and wastewater projects,<sup>19</sup> though it is still working on a plan of how the funds will be used.<sup>20</sup> Following the ARPA, congress enacted the Infrastructure Investment Jobs Act, Public Law 117-58,<sup>21</sup> which provides the largest amount of funding for Tribal water and sanitation projects yet,

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<sup>14</sup> <https://www.congress.gov/bill/116th-congress/house-bill/748>

<sup>15</sup> Four different sections of the Act discuss access to water. Section 2912 provides funding to Tribes to “assist low-income households that pay a high proportion of household income for drinking water and wastewater services by providing funds to owners or operators of public water systems or treatment works to reduce arrearages of and rates charged to such households for such services.” Depending on how this section is interpreted, funding from this section may be used to pay well fees. Section 9901 provides funds to Tribal governments to “make necessary investments in water, sewer, or broadband infrastructure.” Funding under this section could be especially beneficial to the Navajo Nation because it could be used to increase piping infrastructure. Section 1101 provides funds to the Indian Health Services (IHS) “to address the impacts of COVID-19” including covering “expenses relating to the delivery of potable water.” Funding from this section could be used to support services that bring clean water via trucks to homes without piping who live far distances from safe wells. Section 1102 provides “funding for the Bureau of Indian Affairs to address the impacts of COVID-19 on social welfare and public safety programs, including by providing. . . delivery of potable water.” This funding could be used for some of the above-mentioned purposes, or for other water-related needs. <https://www.congress.gov/bill/116th-congress/house-bill/748>.

<sup>16</sup> <https://fronterasdesk.org/content/1647618/cares-act-funds-bring-electric-water-upgrades-navajo-nation>; See <https://www.ntua.com/ntua-cares-act.html> for updates on CARES project completion.

<sup>17</sup> <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>

<sup>18</sup> <https://www.daily-times.com/story/news/local/navajo-nation/2021/10/06/navajo-nation-receives-final-amount-under-american-rescue-plan/6005872001/>

<sup>19</sup> <https://www.navajo-nsn.gov/News%20Releases/OPVP/2022/Jan/FOR%20IMMEDIATE%20RELEASE%20-%20President%20Nez%20and%20Vice%20President%20Lizer%20approve%20American%20Rescue%20Plan%20Act%20Hardship%20Assistance%20for%20the%20Navajo%20people.pdf>

<sup>20</sup> <https://navajonationarpa.org>; see also <https://www.ntua.com/nn-fiscal-recovery-funds.html>

<sup>21</sup> <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>

allocating \$3.5 billion for these purposes.<sup>22</sup> This Act fully funds the Navajo Utah Water Rights Settlement Act, which according to the office of the Utah Senator, Mitt Romney, will provide running water to 40% of the Navajo Nation in Utah who currently lack access.<sup>23</sup> The funding provided by the CARES Act, the ARPA, and the Infrastructure Investment Jobs Act, may enable the laws, policies, and programs evaluated by this Checklist to have a more significant impact on Navajo people's access to, and quality of, water and sanitation in the future.

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<sup>22</sup> <https://www.sinema.senate.gov/roundtable-navajo-nation-leaders-sinema-highlights-historic-infrastructure-investments-tribal>

<sup>23</sup> <https://www.romney.senate.gov/romney-secures-funding-for-tribes-to-fulfill-critical-water-needs/>

## 1. Availability

The human right to water means that water must be available in **sufficient quantities** for personal and domestic uses (cooking, drinking, personal and household hygiene), with these uses being prioritized over water uses like agriculture and industry.

According to the World Health Organization (“WHO”), 50 to 100 liters per person per day is an adequate quantity of water to meet all health requirements. This includes (but is not limited to) safe drinking water.

During a pandemic emergency, it becomes even more critical to maintain water and sanitation services on a continual basis and provide facilities for additional handwashing and hygiene.

1.	AVAILABILITY	Yes=2 No=0	Reference text and link
1.1	Is there a vital minimum volume of water guaranteed by local governments (including tank trucks)?	0	No. The Navajo Nation as a whole has water rights, but there is not an individual right to a minimum volume of water. The Navajo Nation Water Code <sup>24</sup> does not guarantee a minimum volume of water, nor is there such a guarantee under the United States Constitution <sup>25</sup> or under other federal laws. The Supreme Court established in the 1908 case <i>Winters v. United States</i> that Native American reservations have inherent water rights. The Navajo Nation's water rights have since been more specifically defined by PL111-11, <sup>26</sup> which requires the State of New Mexico to provide the Navajo Nation with defined quantities of water from the Navajo Nation Reservoir and the San Juan River, and PL116-260, <sup>27</sup> which finalized the Navajo-Utah Water Rights Settlement. This "settlement confirmed the Navajo Nation's right to deplete 81,500 acre-feet of water per year from Utah's Colorado River allocation and authorized approximately \$220 million for drinking water for the Navajo Nation projects." <sup>28</sup>
1.2	Is there an obligation to include soap and handwashing facilities in all public	1	There is no legal requirement for all public service facilities to provide soap and handwashing facilities, but the Occupational Safety and Health Administration (OSHA) “requires employers to provide all workers with sanitary and immediately-

<sup>24</sup> [https://www.watercode.navajo-nsn.gov/summary\\_of\\_water\\_code\\_fees\\_taxes.html](https://www.watercode.navajo-nsn.gov/summary_of_water_code_fees_taxes.html)

<sup>25</sup> <https://www.archives.gov/founding-docs/constitution-transcript>

<sup>26</sup> See PART IV--NAVAJO NATION WATER RIGHTS, available at <https://www.govinfo.gov/content/pkg/PLAW-111publ11/pdf/PLAW-111publ11.pdf>

<sup>27</sup> See Division FF, Title XI: Western Water and Indian Affairs, Section 1102: Navajo-Utah Waters Rights Settlement, available at <https://www.congress.gov/bill/116th-congress/house-bill/133/text?overview=closed>

<sup>28</sup> <https://www.crwua.org/utah.html>

	services (e.g., schools, hospitals, transport)?		available toilet facilities (restrooms).” <sup>29</sup> Under <i>FPC v. Tuscarora Indian Nation</i> , statutes of general applicability apply to Native Americans and OSHA is a statute of general applicability. <sup>30</sup> Therefore, OSHA applies in the Navajo Nation, so all public service facilities are required to provide sanitation services to their employees. However, facilities may not be open to the public.
1.5	Were additional or alternative sources of water provided during the pandemic?	2	Yes. The Coronavirus Aid, Relief, and Economic Security (CARES) Act provided funding to construct 59 transitional water points (TWP), and pay for water fees at TWPs and water supplies including 5,000 5-gallon water storage and water disinfection tablets. <sup>31</sup> The Navajo Nation COVID-19 Water Access Coordination Group (WACG), which also received funding from the CARES Act, created a digital map showing where alternative and pre-existing water sources could be found. <sup>32</sup> Indian Health Services (IHS) and the Bureau of Indian Affairs also received funding from the CARE Act to be used for the delivery of potable water. <sup>33</sup>
1.6	Was there an emergency plan for the pandemic that included continuity of sanitation waste and wastewater treatment and collection facilities?	0	No plan was identified.
	<b>TOTAL SCORE for AVAILABILITY</b>	<b>3/10</b>	

<sup>29</sup> <https://www.osha.gov/restrooms-sanitation>

<sup>30</sup> *FPC v. Tuscarora Indian Nation*, 362 U.S. 99, 116 (1960) (“a general statute in terms applying to all persons includes Indians and their property interests.”); U.S. Dep’t of Labor, Occupational Safety and Health Admin., Opinion Letter on OSH Act applicability to tribal land workplaces and employers (Mar. 12, 1998) (“OSHA has always considered the OSH Act to be a statute of general applicability. Therefore, the OSH Act reaches workplaces located on tribal lands and operated by tribal employers”), available at <https://supreme.justia.com/cases/federal/us/362/99/>.

<sup>31</sup> <https://www.navajonnsn.gov/News%20Releases/OPVP/2020/Sep/FOR%20IMMEDIATE%20RELEASE%20-%20Navajo%20Nation%20and%20Indian%20Health%20Service%20making%20progress%20with%20water%20points%20and%20safe%20water%20storage%20projects%20using%20CARES%20Act%20funds.pdf>.

<sup>32</sup> <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

<sup>33</sup> <https://www.epa.gov/fedfunds/usda-emergency-community-water-assistance-grants-drinking-water-utilities>

## 2. Quality

Water must be safe for consumption and other uses and not threaten human health.

States enjoy a relative margin of discretion to establish quality standards while following [WHO standards](#).

Quality of water, provided by regular testing, and ensured by safe wastewater treatment and disposal, is essential to avoid the spread of disease. Handwashing and hygiene habits are also strong indicators of quality.

2.	QUALITY	Yes=2 No=0	Reference text and link
2.1	Is the water supply quality tested regularly to WHO or higher standards and are communities kept informed about contamination? If so, did this testing continue during the pandemic?	1	Water quality standards are in place, but more than 30% of the Navajo population rely on unregulated water sources. <sup>34</sup> Water quality is regulated under the federal Safe Drinking Water Act <sup>35</sup> and the Navajo Nation Primary Drinking Water Regulations (NNPDWR). <sup>36</sup> The Navajo Tribal Utility Authority (NTUA) regularly tests its water systems for different analytes (pollutants) and reports the results to the Navajo Nation Environmental Protection Agency (NNEPA). <sup>37</sup> The frequency of testing depends on the previous level of contamination. <sup>38</sup> These standards are not geared towards emergencies, but there is no indication that testing for compliance ceased during the pandemic. Unregulated water sources are not systematically tested, but the Community Environmental Health Program at the University of New Mexico, along with its partners, have compiled water quality data for unregulated sources, which was collected over time by different entities. <sup>39</sup> The United States Environmental Protection Agency (USEPA) has also tested some unregulated water sources and posted the results on their website. <sup>40</sup> It is unclear if the USEPA or the NNEPA labels unsafe sources or otherwise shares this information with nearby communities.

<sup>34</sup> Colorado River Water Users Association Annual Report 2021 at 33, available at <https://www.crwua.org/assets/downloads/2021-CRWUA-Annual-Report.pdf>

<sup>35</sup> <https://www.epa.gov/laws-regulations/summary-safe-drinking-water-act>

<sup>36</sup> <https://www.navajopublicwater.navajo-nsn.gov/NNPDWA>

<sup>37</sup> Information provided the Navajo Nation Department of Water Resources.

<sup>38</sup> Id.

<sup>39</sup> <https://unmcop.unm.edu/metals/>

<sup>40</sup> <https://www.epa.gov/navajo-nation-uranium-cleanup/water-sampling-results-navajo-nation>

2.2	Is there an accessible, clear, and simple system of gathering data quickly for problem hotspots, such as wastewater leaks, contamination of water supplies, shortage of workers, or supplies, so that services can be replaced quickly?	1	WACG has created a phone alert system that provides information about the location and hours of water sources in different Chapters of the Navajo Nation (Chapters are the political subdivisions of the Navajo Nation), however this system does not cover a significant portion of water being utilized by the Navajo due to the reliance on unregulated sources. <sup>41</sup>
2.3	Is wastewater release regulated and if so, is there a system to check that wastewater is tested before it is released?	2	Yes. Wastewater in the Navajo Nation is regulated under the federal Clean Water Act (CWA). <sup>42</sup> The CWA requires parties discharging wastewater to obtain a permit under the National Discharge Pollution Elimination Permitting System (NPDES). <sup>43</sup> NPDES permits set limits on the quantities of pollutants that can be discharged and require regular testing. The NNEPA also promulgated Solid Waste Regulations, <sup>44</sup> which include wastewater in the definition of solid waste. These regulations do not require testing, but section § 102 (A) (2) gives the Director of the NNEPA the authority to require testing.
2.4	Is there a policy to educate households on handwashing, safe water storage, waste management, dirty laundry, etc.?	2	A policy has been put in place in response to the COVID-19 pandemic. WACG has made it part of its mission to inform the public about the water services it provides, which includes training on disinfecting water storage containers. <sup>45</sup> No specific policies were found on handwashing, waste management, or laundry.

<sup>41</sup> <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

<sup>42</sup> <https://www.epa.gov/laws-regulations/summary-clean-water-act>. Note that the Navajo Nation does not have primary authority under the Clean Water Act, which means the USEPA has primary authority to enforce this Act within the Navajo Nation. See the list of tribes authorized with treatment as states (TAS) for enforcement of environmental statutes with TAS provisions at: <https://www.epa.gov/tribal/tribes-approved-treatment-state-tas>.

<sup>43</sup> <https://www.epa.gov/npdes>

<sup>44</sup> <https://img1.wsimg.com/blobby/go/a2151a2a-2de5-432f-b9bc-4d2420ee493b/downloads/Solid%20Waste.pdf?ver=1637258277078>

<sup>45</sup> <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

2.5	Are there government programs in place to improve water quality?	1	<p>Yes, the Drinking Water State Revolving Fund is a state-federal partnership that provides loans to fund water treatment, transmission, distribution, storage, consolidation and creation of new systems.<sup>46</sup> However the Navajo and other tribes only receive a small percentage of that funding through the Tribal Set-Aside Program.<sup>47</sup> Additionally, the Water State Revolving Fund is a state-federal partnership that provides low-cost financing for water quality infrastructure projects.<sup>48</sup> Lastly, the Native American Technical Assistance Program provides financial assistance to tribes to “develop, manage, and protect their water and related resources.”<sup>49</sup></p>
TOTAL SCORE for QUALITY		7/10	

<sup>46</sup> <https://www.epa.gov/dwsrf>

<sup>47</sup> <https://www.epa.gov/tribaldrinkingwater/current-allocations-tribal-set-aside-program-drinking-water-infrastructure#A1>

<sup>48</sup> <https://www.epa.gov/cwsrf>

<sup>49</sup> <https://www.usbr.gov/native/programs/TAPprogram.html>

### 3. Acceptability

Water and sanitation facilities and services must be culturally and socially acceptable. This means that the location of facilities with respect to safety (especially at night), and also the types of systems that are provided need to be acceptable to the community so that they are safe and pleasant to use. In addition to safety, water should also be of an acceptable color, odor and taste.

3	ACCEPTABILITY	Yes=2 No=0	Reference text and link
3.1	Is there a system for consulting with the community about the way that services are provided to ensure that they are socially and culturally acceptable?	0	No, there does not seem to be a system in place for this purpose.
3.2	Is there a system of monitoring any changes in water taste, smell, color, with a view to ensuring that it is still acceptable to the public?	1	Preventing and resolving these types of water quality issues falls under the federal Safe Drinking Water Act <sup>50</sup> and the Navajo Nation Solid Waste Regulations. <sup>51</sup> These acts require providers of water to meet certain water quality standards, but they do not establish a system for monitoring changes and sharing this information with the public.
3.3	Is consumer opinion on water acceptability taken into account?	0	The federal Safe Drinking Water Act <sup>52</sup> and Navajo Nation Solid Waste Regulations <sup>53</sup> do not take “consumer opinion” into account. Public opinion is considered when regulations are promulgated during the public comment period, but this only includes members of the public who choose to submit a formal comment.
3.4	Is there a protocol to ensure that marginalized members of the community have safe access to toilets and hygiene facilities?	1	Access is not ensured under federal or Navajo law or policy, but the Indian Health Service's Division of Sanitation Facilities Construction is working to construct water, wastewater, and solid waste systems for tribal communities to help achieve the IHS goal of "rais[ing] the health status of the American Indian and

<sup>50</sup> <https://www.epa.gov/laws-regulations/summary-clean-water-act>

<sup>51</sup> <https://img1.wsimg.com/blobby/go/a2151a2a-2de5-432f-b9bc-4d2420ee493b/downloads/Solid%20Waste.pdf?ver=1637258277078>

<sup>52</sup> <https://www.epa.gov/laws-regulations/summary-safe-drinking-water-act>

<sup>53</sup> <https://img1.wsimg.com/blobby/go/a2151a2a-2de5-432f-b9bc-4d2420ee493b/downloads/Solid%20Waste.pdf?ver=1637258277078>



			Alaska Native people to the highest possible level." <sup>54</sup> Public hygiene facilities are available in most places open to the public, but the government (Navajo or federal) do not provide toilets and hygiene facilities to the public as a matter of obligation.
3.5	Is there a directive to ensure the cleanliness of public toilet, menstrual hygiene and handwashing facilities to ensure that they are usable, and also less likely to spread disease?	1	Not explicitly, as these services are not provided to the public by the government (see 3.4), but as discussed in 1.5, OSHA regulates restrooms in public facilities with the intent of protecting the employees of these establishments.
	TOTAL SCORE for ACCEPTABILITY	3/10	

<sup>54</sup> <https://www.ihs.gov/dsfc/>

#### 4. Accessibility

Water and sanitation services must be accessible to everyone in the household or its vicinity on a continuous basis, as well as in schools, health-care facilities and other public institutions and places. Physical security must not be threatened during access to facilities.

There is no physical access when you have to travel a distance of more than 1 km or when it takes more than 30 minutes return trip (WHO).

Accessibility during a pandemic is more difficult due to transport limitations, and there needs to be consideration of solutions to keep services accessible to all.

4	ACCESSIBILITY	Yes=2 No=0	Reference text and link
4.1	Do current <i>laws</i> and <i>policies</i> ensure that access to water delivery is physically easy for all people, including marginalized groups?	0	No, current laws and policies do not ensure access to safe drinking water for residents of the Navajo Nation. <sup>55</sup> However, there is an opportunity to provide access in the future using IHS appropriated funding under the American Rescue Plan Act (ARPA), which is in the process of being finalized. <sup>56</sup>
4.2	Are there government <i>programs</i> in place the help increase access to water deliver that is physically easy for all people?	2	Yes, though funding under these programs is limited. The predominant program is the IHS, Sanitation Facilities Construction Program, which provides funding to federally recognized tribes for sanitation projects, including constructing water supply and waste water disposal systems for new or existing homes. <sup>57</sup>
4.3	Are there provisions in place to prohibit or eliminate disparities in access to drinking water and waste water infrastructure?	1	Partially. The federal Fair Housing Act prohibits providers of housing (e.g., landlords and developers) from discriminating on the basis of protected classifications including race, religion, sex, national origin, familial status, and disability. <sup>58</sup>
4.4	During the pandemic, were there special considerations for remote communities and marginalized people to ensure that they were not forgotten?	1	The majority of the Navajo people would be considered remote compared to the general population of the United States. Efforts were made during the pandemic to increase access to clean water in the Navajo Nation. Specifically, WACG increased access by installing transitional water points and providing water storage containers and water disinfectant tablets, and

<sup>55</sup> See Colorado River Water Users Association Annual Report 2021 at 33, available at <https://www.crwua.org/assets/downloads/2021-CRWUA-Annual-Report.pdf>

<sup>56</sup> <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>

<sup>57</sup> <https://www.epa.gov/tribal-lands/indian-health-service-ihs-sanitation-facilities-construction-program>

<sup>58</sup> <https://www.justice.gov/crt/fair-housing-act-1>

			increasing public awareness of water sources. <sup>59</sup> However, these efforts alone were insufficient to "ensure" access to water due to access issues that predated the pandemic.
4.5	Are elderly people and people in care homes given special priority in the supply of water and sanitation during the emergency, with accessible access and deliveries?	1	Elderly people were prioritized for some water related and non-water related COVID-19 services, such as hardship money. <sup>60</sup> Elderly Navajo are also prioritized by the non-profit group DigDeep, which provides home water systems and water deliveries to the Navajo. <sup>61</sup>
	TOTAL SCORE for ACCESSIBILITY	5/10	

<sup>59</sup> <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

<sup>60</sup> Elders received additional hardship funding from the CARES Act, see <https://navajotimes.com/reznews/hardship-payments-on-the-way/>

<sup>61</sup> <https://www.thedenverchannel.com/news/national/unbound-by-red-tape-nonprofit-delivering-running-water-and-electricity-to-navajo-homes>

## 5. Affordability

Access to water facilities and services must be done at a price that is affordable for all people. Access to water must not compromise the ability to pay for other essential necessities guaranteed by human rights, such as food, housing and health care.

As a rule, the fact that water must be affordable does not mean that water should be free, but that no person can be deprived of the right to water for economic reasons.

The United Nations Development Program (UNDP) proposes that household spending on water does not exceed 3% of family income.

During a health emergency, it is critical that everyone has access to WASH, and there might be people that need to have these services provided free during this period.

5	AFFORDABILITY	Yes=2 No=0	Reference text and link
5.1	Is there normally a system for ensuring that vulnerable people, including the homeless, have access water at a reduced price or for free? If no, was such a system put in place during the pandemic?	1	Neither Navajo nor federal law ensures that vulnerable people will be able to access water at a reduced fee. However, the Navajo Tribal Utility Authority (NTUA) offers reduced prices for low-income seniors and those on life support. <sup>62</sup> These programs, which were offered before and during the pandemic, allow eligible seniors to pay a constant discounted rate for utilities throughout the year, thus eliminating seasonal fluctuation in price due to differences in usage. <sup>63</sup> NTUA also waived late and reconnection fees and delayed water disconnects for residential customers during the pandemic. <sup>64</sup> During the pandemic, the WACG also increased water access for vulnerable communities by paying well fees at permanent and transitional water points. <sup>65</sup>
5.2	Are there government subsidies to cover the extra expenses of local water and sanitation providers during an emergency, such as the pandemic?	2	Yes, water fees for in-home use were covered by the CARES Act funding from IHS. <sup>66</sup> Additionally, CARES funding was used by the NTUA to fund bathroom additions and waterline extensions. <sup>67</sup> Another federal program intended to meet this need is the Emergency Community Water Assistance Grants which is funded by the U.S. Department of Agriculture. This program provides grants to rural communities, including tribes in rural areas, during emergencies, which

<sup>62</sup> <https://www.ntua.com/customer-information.html>

<sup>63</sup> Id.

<sup>64</sup> <https://www.ntua.com/ntua-temporary-policy.html>

<sup>65</sup> <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4> and input from the Navajo Nation Department of Water Resources.

<sup>66</sup> Information provided the Navajo Nation Department of Water Resources.

<sup>67</sup> <https://www.ntua.com/assets/ntua-update--18---cares-projects-12-30-2020-.pdf> and input from the Navajo Nation Department of Water Resources.

			includes disease outbreak. <sup>68</sup> These grants are intended to cover infrastructure repair or expansion costs, and therefore may not cover the extra expenses local water and sanitation providers experience during an emergency.
5.3	Is there a public water service pricing strategy especially for emergencies?	1	Partially, during the pandemic the NTUA instated a Temporary Policy that included delaying disconnects and waiving late fees and reconnect fees for residential customers as well as offering assistance to customers who could not pay their bill due to the direct or indirect impact of COVID-19. <sup>69</sup>
5.4	Is there a public sanitation service pricing strategy specifically for emergencies?	1	See 5.3.
5.5	Was funding for WASH services included in economic response packages to support vulnerable households effected by the pandemic?	2	Yes. Funding provided to the Navajo Nation through the CARES Act was used by NTUA to construct 277 water and wastewater infrastructure projects including extending piping to homes that previously did not have access to piped water and installing septic tank systems. <sup>70</sup> The federal government also provided funding to the Navajo Nation through the Federal Emergency Management Agency (FEMA). <sup>71</sup> Though there was no information available indicating what FEMA funding was specifically used for, it may have been used to provide WASH services.
	<b>TOTAL SCORE for AFFORDABILITY</b>	<b>7/10</b>	

<sup>68</sup> <https://www.rd.usda.gov/programs-services/water-environmental-programs/emergency-community-water-assistance-grants>

<sup>69</sup> <https://www.ntua.com/ntua-temporary-policy.html>

<sup>70</sup> <https://www.ntua.com/assets/2020-nn-cares-act-projects---ntua-final-report---4.29.21.pdf>; see also <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

<sup>71</sup> <https://www.fema.gov/press-release/20210203/president-joseph-r-biden-approves-major-disaster-declaration-navajo-nation>

## 6. Non-Discrimination

Non-discrimination is central to human rights. Discrimination on prohibited grounds including race, color, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status or any other civil, political, social or other status must be avoided, both in law and in practice. In order to address existing discrimination, positive targeted measures may have to be adopted. In this regard, priority must be given to the most marginalized and vulnerable to avoid exclusion and discrimination.

Care needs to be taken that marginalized groups are not overlooked during health emergencies, to avoid additional spread of disease.

6	NON-DISCRIMINATION	Yes=2 No=0	Reference text and link
6.1	Are there instructions for the provision of water and sanitation services without direct or indirect distinction based on race, gender, color, age, nationality, disability?	2	Not explicitly, but under the 5th and 14th Amendments of the U.S. Constitution, federal and state governments respectively, cannot discriminate on the basis of any protected class, which includes race, religion, sex, and national origin. Therefore, if the federal or state government is involved in providing a service, discrimination on the basis of a protected class is prohibited. However, this constitutional protection is not as expansive as the protection posed in the question, because only intentional discrimination is prohibited <sup>72</sup> and disability and age are not protected classes. <sup>73</sup> As discussed in 4.3, the federal Fair Housing Act bars discrimination in the provision of household water, by private actors or the government, on the basis of race, color, national origin, religion,

<sup>72</sup> *Washington v. Davis*, 426 U.S. 229 (1976) (held disparate impact alone is not unconstitutional when invidious intent cannot be shown), available at <https://supreme.justia.com/cases/federal/us/426/229/>

<sup>73</sup> Although disability is not a protected class, in some cases the Supreme Court has applied a higher level of scrutiny, which practically means it required the government to give a more compelling reason to justify the distinction based on disability than just any reason rationally related to the government's goal, which is the usual standard for discrimination cases when a protected class is not involved. *E.g.*, see *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432 (1985) (held a city councils' decision to deny zoning permit for a home for mentally disabled people was unconstitutional because it was based on unsubstantiated fears of the mentally disabled and was therefore irrational), available at <https://supreme.justia.com/cases/federal/us/473/432/>

			disability, sex, gender identity, sexual orientation, and familial status. <sup>74</sup>
6.2	Is there a system in place to investigate whether any segments of society are excluded from normal services?	1	No system found. The USEPA has been investigating access to water in the Navajo Nation, but their research does not capture demographic information. <sup>75</sup> Discrimination claims can be brought in court if government funds are being used in a discriminatory manner or if household water is being administered in a discriminatory way (see 6.1).
6.3	Are there guidelines for local authorities to design services to accommodate marginalized groups, such as women, the elderly, those with disabilities, and those in need?	0	No such guidelines found. As discussed in 6.1, the U.S. Constitution prohibits the purposeful exclusion of protected classes from government services, but it does not create a positive right to services for marginalized groups. Similarly, the federal Fair Housing Act does not create positive rights. <sup>76</sup> As mentioned in 5.1, NTUA offers discounted rates to low-income seniors and those on life support, which likely helps to increase access for these groups. <sup>77</sup>
6.4	Are there special protocols for water and sanitation workers?	1	The Centers for Disease Control and Prevention (CDC) issued guidance for reducing health risks to sanitation workers in 2002, <sup>78</sup> but no information was found indicating that this guidance has been converted into protocols for sanitation and water workers in the Navajo Nation.

<sup>74</sup> <https://www.justice.gov/crt/fair-housing-act-1>

<sup>75</sup> <https://www.epa.gov/navajo-nation-uranium-cleanup/providing-safe-drinking-water-areas-abandoned-uranium-mines>

<sup>76</sup> <https://www.justice.gov/crt/fair-housing-act-1>

<sup>77</sup> <https://www.ntua.com/customer-information.html>

<sup>78</sup> <https://www.cdc.gov/niosh/docs/2002-149/pdfs/2002-149.pdf>

6.5	Were there special provisions to provide WASH services for informal settlements and nomadic peoples during the pandemic?	0	No provisions found.
TOTAL SCORE for NON-DISCRIMINATION		4/10	



## 7. Access to Information and Transparency Sustainability

This includes the right to seek, receive and impart information concerning water and sanitation issues. To reach people and actually provide accessible information, multiple channels of information, that consider cultural communication preferences, have to be used.

Moreover, capacity development and training may be required – because it is only when existing legislation and policies are understood, they may be utilized, challenged or transformed.

During emergencies, there needs to be special attention to communication of information to be more inclusive.

7	ACCESS TO INFORMATION	Yes=2 No=0	Reference text and link
7.1	Is there adequate notice of changes in the schedule of delivery water that could affect the regularity of supply?	1	No federal or Navajo notice requirement found, but WACG provides the public with information on water through their website, navajosafewater.org, and through their phone alert system, "Navajo Safety Water Alerts." <sup>79</sup> The phone alert system provides updates on the schedule and delivery of water at non-home sources, but is unclear how far in advance these warnings are given or the level of detail. Water delivered via pipes is usually continuous and thus these types of warnings would not be needed for households with plumbing.
7.2	Do water suppliers have the obligation to clearly communicate information about the quantity, quality and price of services?	2	The NTUA is required by federal law to notify the public if their drinking water does not meet federal standards. <sup>80</sup> The NTUA posts this information on their website. <sup>81</sup> Federal law also requires the NTUA to publish annual Consumer Confidence Reports, which provide water quality information for each water system. <sup>82</sup> No requirement was found under federal or Navajo Law for NTUA to disclose its prices, however, NTUA still publishes pricing information on its website. <sup>83</sup>
7.3	Do service providers have the obligation to	0	No information available.

<sup>79</sup> <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

<sup>80</sup> <https://www.ntua.com/2020-ccr.html>

<sup>81</sup> Id.

<sup>82</sup> See e.g., [https://www.ntua.com/assets/2020ccr\\_rock-springs-community-09350302.pdf](https://www.ntua.com/assets/2020ccr_rock-springs-community-09350302.pdf)

<sup>83</sup> <https://www.ntua.com/water.html>

	communicate water quality in times of emergency? What happens to communication if the offices are closed?		
7.4	Are there systems to ensure that emergency instructions are clearly communicated?	2	The Navajo Safety Water Alerts and WACG website, mentioned in 7.1, provide community members with updates about the location and hours of water sources. <sup>84</sup> These systems were created in response to the COVID-19 emergency.
7.5	Were there provisions for new communication systems during the pandemic related to water and sanitation?	2	Yes, the Navajo Safety Water Alerts and WACG website, discussed in 7.1, is new since the pandemic. <sup>85</sup>
	<b>TOTAL SCORE for ACCESS TO INFORMATION</b>	<b>7/10</b>	

<sup>84</sup> <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

<sup>85</sup> <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

## 8. Participation

Processes related to planning, design, construction, maintenance and monitoring of sanitation and water services should be participatory. This requires a genuine opportunity to freely express needs and concerns and influence decisions. Also, it is crucial to include representatives of all concerned individuals, groups and communities in participatory processes. Poor people and members of marginalized groups are frequently excluded from decision-making regarding water and sanitation, and hence their needs are seldom prioritized.

Community participation in the planning and design of water and sanitation programs is also essential to ensure that water and sanitation services are relevant and appropriate, and thus ultimately sustainable.

8	PARTICIPATION	Yes=2 No=0	Reference text and link
8.1	Are there guidelines for local authorities to include a range of stakeholders in design of water and sanitation services, including women, the elderly, those with disabilities, the marginalized and those in need?	0	No Navajo or federal provisions found that require local authorities (or public water utilities or private water providers) to follow specific guidelines when making decisions regarding water access.
8.2	Is there a requirement to hold regular meetings, including all community stakeholders, for all stages in the planning, design, construction, maintenance and monitoring of sanitation and water services?	0	No, see 8.1.
8.3	Does the local community have a role in the development of emergency protocols and responses?	2	Yes, the Navajo Nation community had an opportunity to propose water projects to be funded by the CARES Act and the ARPA. <sup>86</sup> Local communities also have a voice in the WACG because this group includes representatives of community groups. <sup>87</sup>
8.4	Is there participation in decisions that affect access to safe water at community/river basin level?	1	Historically the Navajo and other Tribes have been left out negotiations about the management of the Colorado River Basin. However, recently there has been an

<sup>86</sup> List of approved projects and designated funding available at <https://sites.google.com/nndcd.org/caresact/home>; see also <https://www.nndcd.org/>

<sup>87</sup> <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

			<p>increased effort to have Tribal input in these negotiations.<sup>88</sup> For example, the Colorado River Basin Tribes Partnership, which includes the Navajo Nation, formed in 1992 to "strengthen[] tribal influence . . . over the management and utilization of Colorado River water resources."<sup>89</sup> In 2018, this Tribal partnership conducted a study on Tribal water rights, known as the Tribal Water Study, which showed that "[T]ribes collectively have water rights in the Upper and Lower Basin to roughly 20% of the mainstream flow."<sup>90</sup></p>
8.5	Is there any accommodation for marginalized people to access this participation process, e.g., disabled access, local language, location?	2	See 8.3. The majority of the information on WACG's website is available both in written English and in audio recordings in Navajo, suggesting that this group works to move beyond language barriers within the community. <sup>91</sup>
	TOTAL SCORE for PARTICIPATION	5/10	

<sup>88</sup> Recent as of 2021. See the Colorado River Water Users Association Annual Report 2021 at 13, available at <https://www.crwua.org/assets/downloads/2021-CRWUA-Annual-Report.pdf>

<sup>89</sup> <https://www.crwua.org/ten-tribes.html>

<sup>90</sup> Id.

<sup>91</sup> <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

## 9. Accountability

The realization of human rights requires responsive and accountable institutions, a clear designation of responsibilities and coordination between different entities involved. States should be held accountable for meeting these obligations and ensuring that non-State actors respect them.

Persons or groups denied their HRWS should have access to effective judicial or other appropriate remedies, like courts, national ombudspersons or human right commissions.

9	ACCOUNTABILITY	Yes=2 No=0	Reference text and link
9.1	Did people have the possibility to file complaints related to water services during the pandemic?	2	NTUA has an online form where customers can share their comments or question. <sup>92</sup> This system is not pandemic specific, but could be used to communicate water issues related to the pandemic. WACG also offers an online form where Chapters (political divisions within the Navajo Nation) can report about monthly water collection and storage. This form has a section where Chapter Representatives or residents can leave comments and report issues to the IHS. <sup>93</sup> This form does not seem to be intended for filing and remediating individual complaints.
9.2	Was the complaint mechanism(s) readily available for the public and easy to access? E.g., online, telephone, mail, with contact details easy to find?	1	Yes, see 9.1. (Full points not given due to lack of individual complaint mechanism)
9.3	Was the complaint mechanism(s) adapted for those with incapacities, such as illiteracy, language barriers, disabilities, and how?	0	It does not seem to be. The form discussed in 9.1 is only available online in written form, in English and therefore would be difficult to access for people who do not speak English or have reading related disabilities. <sup>94</sup>
9.4	Are local water providers required to report to authorities during an emergency? E.g., on	1	There are no requirements under the Navajo or federal law for utilities or private well owners to report to

<sup>92</sup> <https://www.ntua.com/contact-us.html>, however, as of 04/30/22 this form was not available because the monthly quota had been exceeded.

<sup>93</sup> “Chapter Reporting” <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

<sup>94</sup> Id.

	water quality, continuity of supply, potential contamination.		authorities during an emergency. However, WACG collects and reports information about the water supply that is voluntarily reported by Chapters. <sup>95</sup>
9.5	Was there a system established by local authorities during the pandemic that dealt with complaints quickly and found solutions to solve them?	1	There was a system in place to collect complaints (see 9.1), but it is unclear how quickly these complaints were resolved.
	TOTAL SCORE for ACCOUNTABILITY	5/10	

<sup>95</sup> <https://storymaps.arcgis.com/stories/1b4dc0d978c74d97a559e615730d4cd4>

## 10. Sustainability

The human rights obligations related to water and sanitation have to be met in a sustainable manner. This means practices have to be economically, environmentally and socially sustainable so that future generations can enjoy these rights too.

In emergencies, it is often difficult to maintain the same standard of sustainability unless there are detailed plans on how to mitigate the risks in advance.

10	SUSTAINABILITY	Yes=2 No=0	Reference text and link
10.1	Is there a requirement for local authorities to have an emergency plan, including economic, social and environmental risks?	2	Yes, the Navajo Nation Department of Emergency Management (NDEM) is responsible for "[c]oordinat[ing] and direct[ing] emergency management services during all declared emergencies and/or disasters . . . through an established and approved emergency operations plan." <sup>96</sup>
10.2	Is there a mechanism to ensure continued maintenance of the infrastructure or technology used during emergencies? If so, how is this monitored?	1	The NDEM (see 10.1) would likely be responsible for overseeing maintenance of infrastructure and technology during an emergency, though this task is not explicitly listed in the responsibilities of NDEM. <sup>97</sup>
10.3	Economic: Do service providers have the obligation to reserve a budget for emergencies?	2	The Navajo Nation has established an Emergency Fund for public waste water and water systems using sales tax revenue. <sup>98</sup> Since the Navajo Nation runs NTUA, this fund is run by the service provider.
10.4	Environmental: Is there a system in hospitals to manage the disposal of additional and highly contaminated sanitation and water waste during emergency pandemics?	0	There does not seem to be a specific system for additional waste during the pandemic and other emergencies. Disposal of medical waste is generally regulated by the USEPA, <sup>99</sup> however "medical waste" as defined by the USEPA does not

<sup>96</sup> <https://www.ndem.navajo-nsn.gov/portals/0/files/homepage/NDEM%20Plan%20of%20Operation%20LOCAP-07-18.pdf>, at page 3.

<sup>97</sup> Id.

<sup>98</sup> Navajo Nation Code Annotated Title 24. Taxation Chapter 6. Sales Tax § 620. Allocation of Revenue (D)

<sup>99</sup> <https://www.epa.gov/rcra/medical-waste>

			include waste water produced by hospitals. Instead, waste water is regulated by the USEPA under the Clean Water Act. <sup>100</sup>
10.5	Social: Is there a requirement for local authorities to prioritize hospitals, schools, care homes and people in need (such as those in informal settlements) for water and sanitation service supply during pandemics?	0	No legal requirement identified, however in the Navajo Nation these types of facilities are among those most likely to have access to running water and therefore are unlikely to face the same water access issues as individuals due to lack of water access at their homes.
	<b>TOTAL SCORE for SUSTAINABILITY</b>	<b>5/10</b>	

<sup>100</sup> <https://www.epa.gov/laws-regulations/summary-clean-water-act>



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