



**A GUIDE TO  
RIGHTS-BASED  
ADVOCACY**

---

International  
Human Rights Law  
and Fracking

---

# TABLE OF CONTENTS

Introduction .....3

## SECTION 1:

What is Fracking? .....7

1.1 Risks of Fracking.....8

## SECTION 2:

Fracking and the Violation  
of Human Rights .....13

2.1 Fracking and the Right to Health..... 14

2.2 Fracking and the Right to Water ..... 21

2.3 Fracking and the Right to Food ..... 29

2.4 Fracking and the Right to Housing..... 33

2.5 Fracking and the Right of  
Access to Information.....39

2.6 Fracking and the Right to  
Public Participation .....43

2.7 Fracking and Other Rights .....46

## SECTION 3:

Engaging With the  
Human Rights System .....51

3.1 Core International  
Human Rights Instruments.....51

3.2 Monitoring and Reporting .....53

3.3 Environmental Impact Assessments.....60

## SECTION 4:

Redressing the Power Imbalance  
Through Rights-Based Advocacy .....63

Conclusion .....67

Front cover and this page:  
photos courtesy of Kim Kelly

## INTRODUCTION

The hydraulic fracturing (fracking) industry is booming. So are industry cash settlements and property buyouts for people who say fracking has ruined their water, lowered their house prices and destroyed their quality of life. From farm animals dropping dead overnight to low birth weights in human infants, fracking is becoming synonymous with harm, and the process is seen to harm ecosystems, as well as animal and human health.

Often overlooked in the fracking debate is the fact that fracking can breach international human rights law in multiple ways. What can also be overlooked is the fact that existing international human rights mechanisms are available to people on the ground in asserting their rights.

This Guide aims to contribute to the debate on fracking by outlining how International Human Rights Law can empower and reposition people and communities as rights-holders, providing an extensive overview of accountability mechanisms to address threats or harms from fracking. These can be many and include violations to the right to health, water, food, housing, freedom of information and expression, the rights of children, and the cultural and collective rights of indigenous peoples, ethnic minorities, and peasant communities.

As with all new and emerging technologies, the risks and negative impacts of fracking are also new and emerging, and the legal framework must keep pace with these consequences.

This challenges civil society actors to contribute to the dialogue and debate about what is appropriate in the name of economic progress and the thirst for fuel and, conversely, what must be halted or changed.

We hope that this Guide will contribute to the improvement of environmental, social and economic policy with regard to fracking and, indeed, as policy applies to any other extractive technology or activity seeking to affect or exploit the natural environment.

As such, this Guide is also a tool for governments as a reminder of their responsibilities both toward their citizens and in preventing rights violations by non-state actors such as extractive industries.

Primarily, however, this is a guide for action by individuals in claiming their rights. **Whether you as a reader are an individual affected by fracking in your community, or belong to a campaigning group wishing to highlight global concerns, you can use this Guide to take action.**

The Guide focuses on how the existing international human rights framework can be applied to the issue of hydraulic fracturing with a view to understanding the impact of fracking on human rights and how action can prevent human rights violations.

The business sector can also benefit from using this Guide to become better informed about its responsibilities in upholding people's rights and respecting the Earth.

This Guide is produced by the Sisters of Mercy (NGO), Mercy International Association: Global Action, enjoying special consultative status with the Economic and Social Council (ECOSOC) of the United Nations. We wish to thank Franciscans International for their consultation in its development.





Courtesy of Sarah Heiland

## WHY INTERNATIONAL HUMAN RIGHTS LAW?

The international human rights framework, complemented by other international agreements and national legislation, can be used by local communities, activists, governments and policy makers at the national, regional and international levels to better understand the issue of fracking and combat its detrimental effects.

International human rights law can be utilized to contextualize, articulate and frame the connections between the practice of fracking and threats to people's rights and wellbeing, and to their environment.

The international human rights framework is also a useful lens through which to view and interpret rights violations of the most vulnerable and marginalized in society. To this end, the Guide can be used as an advocacy tool for NGOs, communities and grassroots campaigning groups and can empower vulnerable and marginalized people at the local level where fracking occurs.

This Guide is offered as a work in progress, inviting further contributions from around the world. It encourages more collaborative efforts on this vital subject, with the ultimate goal of empowering rights-holders, shaping policy and ensuring accountability.

## SECTIONS

The **1<sup>ST</sup> SECTION** of the Guide provides an overview of the process of fracking, its risks and potential impacts.

The **2<sup>ND</sup> SECTION** focuses on international human rights law and its relationship to hydraulic fracturing by analyzing seven thematic areas: the rights to health, water, food, housing, information, participation, and preservation of culture. Each of these sub-sections references the relevant area of international human rights law and lays out the specificities of each right and how to determine if there may be a violation of State obligations.


The **3<sup>RD</sup> SECTION** provides an overview of the main principles of international human rights law and offers ideas and suggestions on how to use the international human rights framework and its national monitoring mechanisms to highlight and prevent violations.

Finally, the **4<sup>TH</sup> SECTION** of the Guide acknowledges other relevant areas of law and highlights the benefits of rights-based action in terms of exposing human rights violations and obtaining redress.

## ACRONYMS AND ABBREVIATIONS

<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>ECOSOC</b>	Economic and Social Council
<b>HRC</b>	Human Rights Council
<b>HR Committee</b>	Human Rights Committee
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>NGO</b>	Non-Governmental Organization
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>UN</b>	United Nations
<b>UPR</b>	Universal Periodic Review



A large gas drilling rig stands prominently in the center of the image, set against a backdrop of rolling green hills and a blue sky with scattered white clouds. The rig is a tall, complex structure of metal and machinery. In the foreground, there's a construction site with various pieces of equipment, including trucks and trailers. The overall scene depicts an active industrial site in a natural, rural setting.

## SECTION 1: WHAT IS FRACKING?

Hydraulic fracturing, or fracking, is a technique for extracting oil and natural gas. In fracking, drillers typically inject a mixture of water, proppant (often sand) and chemicals into a well at high pressure to fracture underground rock formations, unlocking trapped oil or natural gas so that it can be collected. The proppant keeps the fractures propped open so that oil and natural gas can flow into the well.<sup>1</sup> Chemicals are used for a variety of purposes including to reduce friction and to cause the fracking fluid to gel, enabling more proppant to be carried into the fractures.<sup>2</sup>

Fracking can be used in conventional and unconventional formations. In conventional formations, oil and gas are typically concentrated in underground pools or interconnected pores, so extraction only requires vertical drilling. In unconventional formations, energy deposits are dispersed over larger areas and locked in tiny pores in shale or other rock formations, often through a process of drilling straight down and then perpendicularly. In conventional formations, fracking is used to increase production while in unconventional formations oil and gas extraction that was previously too expensive becomes profitable.<sup>3</sup>

Hydraulic fracturing was first used in 1947,<sup>4</sup> but its use and scale have increased over the years as conventional formations have been depleted and drilling companies have sought to exploit unconventional deposits of oil and natural gas.<sup>5</sup> Since the 1990s, fracking has been used extensively in conjunction with horizontal drilling to access oil and natural gas in shale formations.<sup>6</sup> Horizontal hydraulic fracturing has significantly increased oil and natural gas production in the United States and is increasingly being used or considered as a production technique in other nations.<sup>7</sup>

Debates at local, national and international levels have centered on the benefits and costs fracking poses for local and national economies, e.g.: methane emissions and the impact on global warming compared to other energy options; the objection of local populations; and the environmental impact on air, soil and especially on water.

Despite significant risks and concerns regarding potential impacts of hydraulic fracturing, especially as conventional drilling becomes less viable, investment interest in fracking has been expanding rapidly on a global scale.<sup>8</sup> Declines in oil prices may reduce its use for oil extraction at least until prices rise again.<sup>9</sup>

A gas drilling rig in Doddridge County, by Diane Pitcock, [wvhostfarms.org](http://wvhostfarms.org). Used with permission.



## Known and Potential Impacts of Fracking

- Water pollution
- Air pollution
- Damage to crops and livestock
- Earthquakes
- Deforestation
- Significant greenhouse gas emissions
- Noise pollution
- Property damage
- Devaluation of home values
- Higher traffic accident rates
- Localized inflation as temporary workers drive up prices
- Risks for human life and health, and that of other species

Many risks are unknown due to restrictions on freedom of information about fracking operations



Used with Permission: Image © J Henry Fair [www.IndustrialScars.com](http://www.IndustrialScars.com) / Flight provided by LightHawk [www.LightHawk.org](http://www.LightHawk.org)

However, overall, non-conventional hydrocarbons are becoming more and more important due to the growing demand for energy sources around the world. Consequently, in many countries environmental and social conflicts related to fracking are also increasing.<sup>10</sup>

## 1.1 RISKS OF FRACKING

Among the available methodologies for extracting natural gas and oil, fracking has generated the most concern because of its potential impacts. Fracking typically includes

activities ranging from drilling and cementing the well, to obtaining and injecting up to millions of gallons of chemical-laced water, to disposing of at least hundreds of thousands of gallons of wastewater per well. All such activities have differing potential impacts that must be considered. For example, water

contamination via leaks and spills is possible at each stage in the fracking process. Although differences among companies, levels of expertise, and operational standards can influence fracking's potential effects in a particular area, the possibility of harmful impact is significant in all cases where fracking takes place.

**Horizontal hydraulic fracturing** uses significantly more resources than older, vertical hydraulic fracturing and carries more risks: more fluid means more truck trips, more chemicals, more wastewater and more opportunities for leaks and spills.





Courtesy of Vera Scroggins

### Methane and Climate Change:

When natural gas is extracted through fracking, methane is released into the atmosphere. This powerful greenhouse gas is estimated to trap 87 times more heat in the atmosphere than carbon dioxide, pound for pound, over two decades.

There are many known potential impacts of fracking, and the study of fracking risks is growing rapidly. Of the known potential impacts, water pollution has likely received the most attention, but the process also poses risks of air pollution, damage to crops and livestock, earthquakes, deforestation, significant greenhouse emissions, noise pollution, property damage and devaluation of homes, higher traffic accident rates and localized inflation as temporary workers drive up prices. Related to water and air pollution, there are significant risks for human life and health, and that of other species.

Horizontal hydraulic fracturing uses significantly more resources than older, vertical hydraulic fracturing and carries more risks. For example, the state of New York estimated in 1988 that companies would use between 20,000 and 80,000 gallons of fluid for hydraulic fracturing per vertical well.<sup>11</sup> In 2011, the state estimated that companies would use between 2.4 and 7.8 million gallons of fluid to fracture horizontal wells in the Marcellus shale formation.<sup>12</sup> Some wells can use more than 10 million gallons.<sup>13</sup>

More fluid means more truck trips, more chemicals, more wastewater and more opportunities for leaks and spills. Horizontal wells may increase the risk of cracks in protec-

tive cement around the wells that is designed to prevent natural gas and contaminants from migrating up the wellbore toward the surface where groundwater is often located.<sup>14</sup>

It is also important to note that when natural gas is extracted through fracking, methane is released into the atmosphere. This powerful greenhouse gas is estimated to trap 87 times more heat in the atmosphere than carbon dioxide pound for pound over two decades.<sup>15</sup> This debunks the myth of fracking as a source of “clean energy.” Global warming is, of course, a threat to human rights and people’s wellbeing in and of itself and environmental degradation and human rights violations tend to go hand-in-hand.

Further, citizens are unable to learn the true risks of the process. Drilling companies often keep secret the identities of chemicals injected underground in fracking, as well as confidential legal settlements between drilling companies and landowners regarding alleged damages. In many instances national legislation does not require energy companies to disclose what chemicals are injected into wells during the fracking process, although many are known carcinogens.<sup>16</sup>

However, many potential impacts and risks of hydraulic fracturing, and that of the newer horizontal

type in particular, are unknown and impossible to predict, particularly when assessing possible effects in a specific locale.

In fact, there are several characteristics unique to the hydraulic fracturing process that render difficult any attempts to determine its impacts prior to, during, and even after extraction takes place. One of these factors is that fracking processes depend upon and interact with local geology. As geological features relevant to fracking processes vary by region, by country, and even locally, anticipated geological impacts of fracking cannot be generalized. Because baselines are specific and unique at the local level, there is no way to completely standardize geological analysis and risk profiling in fracking.

## RESOURCES

### Further Information on Risks Related to Fracking

**Concerned Health Professionals of New York**, Compendium of Scientific, Medical and Media Findings Demonstrating Risks and Harms of Fracking (Unconventional Gas and Oil Extraction), 2014, <http://concernedhealthny.org/wp-content/uploads/2014/07/CHPNY-Fracking-Compendium.pdf>

**Physicians, Scientists and Engineers for Healthy Energy**, Library, Unconventional Oil and Gas, [http://www.psehealthyenergy.org/site/show\\_list/id/13](http://www.psehealthyenergy.org/site/show_list/id/13)

**10-K Forms filed with U.S. Securities and Exchange Commission**, <https://www.sec.gov/edgar/searchedgar/companysearch.html>





## SECTION 2: FRACKING AND THE VIOLATION OF HUMAN RIGHTS

Illustrated here is a comprehensive list of emissions found in the air after a well is fracked and then flared, or "vented."  
Flickr, Public Herald, Creative Commons

The existing international human rights framework has evolved to the point of recognizing the interdependence between human rights and the integrity of the environment, which are often violated and/or promoted simultaneously. To this end there is a growing understanding that:

*"Human rights law ... recognizes that human rights and environmental protection depend on each other. To enjoy human rights fully, it is necessary to have a safe and healthy environment; and to have a safe and healthy environment, it is critical to protect human rights."*<sup>17</sup>

Although international human rights instruments do not contain explicit provisions on fracking, the international human rights system clearly acknowledges the relationship between environmental degradation and human rights. For example, the UN Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment has observed that:

*"Environmental degradation can and does adversely affect the enjoyment of a broad range of human rights."*<sup>18</sup>

This degradation can be caused by activities or events such as "climate change, desertification, and, in particular, mining operations."<sup>19</sup>

The UN Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights warned about the impact of hazardous chemicals on human rights, including the human rights to life, health, access to information and participation in decision making processes.<sup>20</sup>

Furthermore, the Human Rights Council (HRC) 2008 Resolution 7/23 on Human Rights and Climate Change explicitly noted that:

*"[Climate change] poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights."*<sup>21</sup>

The human rights treaty bodies and Special Procedures, detailed below, have also investigated environmental challenges in the context of various human rights such as the right to health, water, food, housing, access to information, and cultural rights.

Human rights law recognizes that human rights and environmental protection depend on each other. To enjoy human rights fully, it is necessary to have a safe and healthy environment; and to have a safe and healthy environment, it is critical to protect human rights.





Courtesy of Kim Kelly

## 2.1 FRACKING AND THE RIGHT TO HEALTH

The New York State Department of Health has found that, “the relationships between HVHF (high-volume hydraulic fracturing), environmental impacts, and public health are complex and

not fully understood. Comprehensive long-term studies, in particular longitudinal studies, that could contribute to the understanding of those relationships are either not yet complete or have yet to be initiated.”<sup>22</sup>

However, the state noted that there have been reports published on health problems associated

with fracking. Commonly reported symptoms in people and farm animals living near fracking operations include skin rash or irritation, nausea and/or vomiting, abdominal pain, dizziness, eye irritation and throat irritation.<sup>23</sup> Air pollution and water pollution risks from fracking carry health risks such as heavy exposure to carcinogens.

The campaigning group Pennsylvania Alliance for Clean Water and Air has compiled a list<sup>24</sup> of hundreds of individuals and families who have been affected by fracking in the state including people with health problems, the sudden death or illness of farm animals and pets, forced relocations, and reduced property values.

A Cornell University study<sup>25</sup> of people in Pennsylvania living close to shale gas development using fracking, examined the impacts on low birth weight, term birth weight and other measures of infant health. Results associated shale gas wells with reduced average birth weight among infants born to mothers living within a 2.5 km radius from a shale gas well and found a prevalence of five-minute APGAR scores less than eight (a quick test performed on a baby just after

birth where a score of 7-9 is normal) and decreases in birth weight on average. These findings have clear implications for children’s human rights, notably as stated in Article 24 on the right to health of the Convention on the Rights of the Child.

In addition, there were detectable effects of shale gas development on low birth weight of babies born and term birth weight more than 3.5 km from the well head. This is a significant finding because set-back (i.e., distances between a well head and nearby residences, hospitals and schools) can be a little as 300 ft in U.S. states where shale gas development is taking place.

In an informal health survey of 113 people in 38 households living in close proximity to coal seam gas development, for which

## RESOURCES

### Further Information on Environment and Human Rights

Georgescu, Calin, Human Rights and Extractive Industries, Report of the Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and wastes, 2012, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-48\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-48_en.pdf)

Knox, John H., Mapping Report, Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2013, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-53\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-53_en.doc)



## Special Rapporteur on Human Rights and the Environment

The Human Rights Council established a mandate on human rights and the environment in 2012. An Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment was appointed with a mandate to study human rights obligations relating to the environment and to promote best practices relating to the use of human rights in environmental policymaking. The Independent Expert carries out country visits, holds consultations and reports annually to the Human Rights Council. The website of the current Special Rapporteur, Mr. John Knox, is <http://srenvironment.org/> and he can be contacted at [srenvironment@ohchr.org](mailto:srenvironment@ohchr.org). This mandate does not generally respond to individual complaints.

fracking is used, General Practitioner Dr. Geryl McCarron based in Brisbane, Australia<sup>26</sup> found that:

*In all age groups there were reported increases in cough, chest tightness, rashes, difficulty sleeping, joint pains, muscle pains and spasms, nausea and vomiting. Approximately one third of the people over 6 years of age were reported to have spontaneous nose bleeds, and almost three quarters were reported to have skin irritation. Over half of children were reported to have eye irritation ... Approximately a third of all the 48 children to age 18 (15/48) were reported to experience paraesthesia. Almost all the 31 children aged 6-18 were reported to suffer from headaches and for over half of these the headaches were severe. Of people aged 6 years and over, severe fatigue and difficulty concentrating was reported for over half.*<sup>27</sup>

The human right to the highest attainable standard of physical and mental health has a strong relationship to other human rights, including the right to food, water, public participation and access to information. The right to health is probably the highest at risk due to fracking. Considering its status, not only in international law but also in

constitutional systems, this right constitutes an important point of reference for strategies to address fracking.

### The right to the highest attainable standard of health

is recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).

Under international law the right to health includes the following elements, relevant to strategies on fracking, which are outlined by the UN Committee on Economic Social and Cultural Rights in its General Comment on the Right to Health:

- The right to access “safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, [and] healthy occupational and environmental conditions”<sup>28</sup>
- The right to access “health related information” and the need for public participation in health related decision-making<sup>29</sup> including the right to “seek, receive and impart information and ideas concerning health issues”<sup>30</sup>



Courtesy of Vera Scroggins

- The right to a “healthy natural environment” including “an adequate supply of safe and potable water ... [and] reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health”<sup>31</sup>
- Improvement of industrial hygiene, including factors such as “causes of health

hazards inherent in the working environment”<sup>32</sup>

- The right to “prevention, treatment and control of diseases,”<sup>33</sup> including those caused by water pollution

The General Comment emphasizes that States may need to take measures to protect vulnerable groups:

- Indigenous communities’ right to health may be violated when development related

activities cause their displacement “against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands.”<sup>34</sup> “Plants, animals and minerals” important for indigenous health should be protected.<sup>35</sup>

- Environmental pollution poses a risk to children’s health. States should “regulate and monitor the environmental





Flickr, Sarah Craig, Faces of Fracking, Creative Commons License

## Special Rapporteur on the Right to Health

In 2002, the Commission on Human Rights appointed a Special Rapporteur on the right to the enjoyment of the highest attainable standard of physical and mental health. The mandate was endorsed and extended in 2007 by the Human Rights Council to gather, request, receive and exchange information, to develop dialogue and discuss areas of cooperation, to identify best practices as well as challenges and obstacles and to make recommendations on appropriate measures to promote and protect the realization of the right to health. In order to fulfill the mandate, the Special Rapporteur undertakes country visits, prepares thematic reports and responds to individual complaints. Reports are submitted on an annual basis to the Human Rights Council and the General Assembly. The current Special Rapporteur, Mr. Dainius Puras, can be contacted at [srhealth@ohchr.org](mailto:srhealth@ohchr.org).

impact of business activities that may compromise children's right to health, food security and access to safe drinking water and to sanitation.”<sup>36</sup>

States are required to adopt measures against environmental health hazards such as creating and implementing policies to reduce and eliminate air and water pollution.<sup>37</sup> They must also take measures to prevent third parties from violating the right to health of others by enacting or enforcing laws to “prevent the pollution of water, air and soil by extractive and manufacturing industries.”<sup>38</sup>

## The Right to Health in International Human Rights Treaties

### International Covenant on Economic, Social and Cultural Rights (1966)

Article 12 (1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (b) The improvement of all

aspects of environmental and industrial hygiene...

### Convention on the Rights of the Child (1989)

Article 24 (1) States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health... (2) States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (c) To combat disease and malnutrition

... through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution ...

### Convention on the Rights of Persons with Disabilities (2006)

Article 25 States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.

## RESOURCES

### Further Information on the Right to Health

The Right to Health, Fact Sheet No. 31, United Nations, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/Documents/Publications/Fact-sheet31.pdf>

Committee on Economic Social and Cultural Rights, General Comment No. 14 (2000), The Right to the Highest Attainable Standard of Health, <http://tbinter.net.ohchr.org/layouts/treaty-bodyexternal/Download.aspx?symbolno=E/C.12/2000/4&Lang=en>

Committee on the Rights of the Child, General Comment No. 15 (2013), The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health, <http://tbinter.net.ohchr.org/layouts/treaty-bodyexternal/Download.aspx?symbolno=CRC%2fC%2fG-C%2f15&Lang=en>

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, <http://www.ohchr.org/EN/Issues/Health/Pages/SRRRightHealthIndex.aspx>

Toolkit on the Right to Health, United Nations Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/Issues/ESCR/Pages/Health.aspx>

Article 19, Policy Brief, A Healthy knowledge: Right to information and the right to health (2012) <http://www.article19.org/data/files/medialibrary/3452/12-09-12-POLICY-right-to-health-WEB.pdf>





## 2.2 FRACKING AND THE RIGHT TO WATER

There are several ways for water to be contaminated during the fracking process. The fracking fluid injected underground contains chemicals, many of them toxic. A 2011 study by three members of the U.S. House of Representatives found that the 14 leading hydraulic fracturing companies used more than 650 different products in their fracking fluids, including chemicals that are known or possible human carcinogens.<sup>39</sup>

### Contamination

These chemicals can migrate into underground water supplies. While drilling industry sources say that this potential is low because fracking often occurs deep below drinking water aquifers, Stanford University researchers reported in 2014 that drilling companies were using fracking and acid stimulating (another chemical well stimulation technique) in Wyoming at depths of just 700 to 750 feet – the same depths as the deepest water wells in the area.<sup>40</sup> U.S. Geological Survey scientists warned that in some places in New York State the subsurface is riddled with underground faults

that could channel drilling pollutants into groundwater.<sup>41</sup> Nearby active or abandoned wells could also serve as conduits carrying fracking fluids from deep underground into aquifers near the surface.<sup>42</sup>

Leaks and spills of drilling fluids, whether of chemicals used in fracking, wastewater or other substances, provide a route for contamination. In 2012, the *Denver Post* reported that according to state data there were more than 2,000 spills at oil and gas operations in Colorado since 2008 resulting in more than 350 cases of groundwater contamination.<sup>43</sup>

Disposal of wastewater is another potential source of water contamination. After companies fracture the underground rock formation, the formation's natural pressure causes a portion of the fracking fluid to return to the surface. This fluid is called "flowback." Naturally occurring water that was in the formation also typically flows out of the well. This fluid is known as "produced water." The wastewater, comprising both flowback and produced water, can contain chemicals injected in fracking as well as naturally occurring contaminants such as radium. Such water must be disposed of properly. The *New York Times* reported in 2011 that drilling companies in Pennsylvania took millions of gallons of fracking

### Dangers of Water Contamination from Fracking

- Chemicals migrating into underground water supplies
- Leaks and spills of drilling fluids
- Improper disposal of wastewater
- Wastewater injection wells linked to earthquakes
- Leaks from cracks in oil and gas wells' protective cement

A 2011 study found that leading fracking companies used more than 650 different products in their fracking fluids that are known or possible carcinogens.

Fracking is a water intensive activity that poses a risk to many already over-utilized water resources. In water scarce areas where fracking is being proposed, like the South African Karoo, this will put a huge strain on this resource.



wastewater contaminated with carcinogenic benzene and radium to sewage treatment plants that in at least some cases were not equipped to decontaminate it. In some cases, these plants discharged the wastewater into rivers just upstream from drinking water intakes.<sup>44</sup>

The drilling industry's preferred means of disposal of wastewater in the United States is to inject it underground into wastewater disposal wells. However, an early 1989 report by the Government Accountability Office, the investigative agency for the U.S. Congress, found these wells have leaked into groundwater causing pollution that in some cases has been deemed too expensive to clean up.<sup>45</sup> A 2014 report by the same agency found lax oversight of these wells.<sup>46</sup>

Many studies have linked wastewater injection wells to earthquakes in recent years,<sup>47</sup> some causing property damage and exceeding 5.0 on the Richter Scale.<sup>48</sup> Such quakes when they occur can be numerous; for example, more than 109 small earthquakes "induced by the fluid injection at a deep injection well,"<sup>49</sup> were detected during a 14-month-period from January 2011 to February 2012 in the Youngstown, Ohio area, where there were no known earthquakes in the past. A 2015 article the *New York Times* also cited the US Geological Survey's linkage of disposal of fracking wastewater to earthquakes. According to the *Times*, earthquakes in the

state of Oklahoma are now hundreds of times more common than they were a few years ago before fracking, and now are daily occurrences.<sup>50</sup>

Another route of water contamination from fracking operations is through cracks in oil and gas wells' protective cement that allow natural gas and sometimes associated contaminants to migrate into underground aquifers. In May 2011, the state of Pennsylvania fined Chesapeake Energy Corp. \$900,000 after improper cementing and casing in one of the company's gas wells allowed methane to migrate and contaminate 16 private drinking water wells.<sup>50</sup>

### Water depletion

Water depletion is an issue where the availability of a sufficient and continuous water supply is undermined. Fracking is a water intensive activity that poses a risk to many already over-utilized water resources. The International Energy Agency estimates that each fracking well might need anywhere between a few thousand to 20,000 cubic meters of water (between 1 million and 5 million gallons).<sup>52</sup> In water scarce areas where fracking is being proposed, like the South African Karoo, this will put a huge strain on this resource.<sup>53</sup>

### Right to Water is Essential

Water is essential for communities and ecosystems. It determines not only life systems, but also cultural and economic activities. Realization

## The Right to Water in International Human Rights Treaties

### Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Article 14(2) States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular shall ensure to women the right ... (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

### Convention on the Rights of the Child (1989)

Article 24 (1) States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health ... (2) States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (c) To combat disease and malnutrition ... through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution ...

### Convention on the Rights of Persons with Disabilities (2006)

Article 28(2) States parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs

of the right to water is essential for enjoyment of other human rights.

**The right to water** is recognized in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). The 2010 UN General Assembly affirmed: "Safe drinking water and sanitation is a human right, essential for the full enjoyment of life and all other human rights."<sup>54</sup>

The right to water has been recognized as a human right in General Comment No. 15, issued by the Committee on Economic, Social and Cultural Rights.<sup>55</sup>

In fracking, as with other extractive activities, water is a key area of concern given that it is often the resource most affected. The right to water can be compromised by negative impacts on the quantity (accessibility and affordability) of water as well as on quality of water (contamination).

### Quantity of Water

The Committee on Economic, Social and Cultural Rights (CESC) declared that access to water is important because people and communities must not "be deprived of its means of subsistence."<sup>56</sup>

"The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use".

Committee on Economic, Social and Cultural Rights, General Comment No. 15





Flickr, Lock the Gate Alliance, Sydney Drinking Water Catchment, Nattai, Creative Commons

The General Comment on this subject makes several key points regarding conditions of the right to water:

- The right to water supplies that are adequate for maintaining human dignity, life and health, taking into consideration the sustainability of the water supply to ensure the right of future generations<sup>57</sup>
- The right to be free from interference, such as “arbitrary disconnections or contamination of water supplies”<sup>58</sup>
- A sufficient and continuous provision of water for personal and domestic use<sup>59</sup>
- Water must be free of risky elements, such as chemical substances, that “constitute a threat to a person’s health. Furthermore, water should be of an acceptable colour, odour and taste”<sup>60</sup>
- Water sources must be within a safe and reasonable distance and be affordable<sup>61</sup>
- Water must be accessible without discrimination of any kind, including discrimination due to property and social status<sup>62</sup>
- The right to seek, receive and provide information about water issues<sup>63</sup>

States are required to take deliberate, concrete and targeted steps by:

- ensuring that allocation of water and investments in water facilitate access;
- prohibiting regressive measures in relation to the right to water, including the duty to prove that measures “have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party’s maximum available resources;”<sup>64</sup>
- prohibiting interference with the right to water, such as by “unlawfully diminishing or polluting water;”<sup>65</sup>
- protecting the right to water by keeping third parties, including corporations, from “interfering in any way with the enjoyment of the right to water;”<sup>66</sup>
- adopting legislation and other measures to restrain the “pollution and the inequitable extraction of water resources, including from natural sources;”<sup>67</sup>



## Special Rapporteur on the Right to Water

The Human Rights Council appointed an Independent Expert on the human right to safe drinking water and sanitation in 2008 to develop a dialogue and undertake a study to clarify the content of human rights obligations in relation to access to safe drinking water and sanitation. The mandate was extended in 2011 and its title was changed to Special Rapporteur with a mandate to carry out research, undertake country visits, and collect good practices. Reports are submitted on an annual basis to the Human Rights Council and the General Assembly. The current Special Rapporteur, Mr. Leo Heller, can be contacted at [lrwatsan@ohchr.org](mailto:lrwatsan@ohchr.org). This mandate does not generally respond to individual complaints.

## Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes

In 1995, the Commission on Human Rights appointed a Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human right. In 2011, the Human Rights Council broadened the mandate to cover the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. The Special Rapporteur is tasked with providing information on the adverse effects that the generation, management, handling and distribution and final disposal has on human rights. In 2014, the Special Rapporteur was requested to develop a guide to best practices. The Special Rapporteur also conducts country visits and submits annual reports to the Human Rights Council. The current Special Rapporteur, Mr. Baskut Tuncak, can be contacted at [srtoxicwaste@ohchr.org](mailto:srtoxicwaste@ohchr.org).



- preventing third parties that control access to rivers and wells from compromising the right to water. In order “to prevent such abuses an effective regulatory system must be established ... which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance;”<sup>68</sup>
- ensuring appropriate education to protect water sources and minimize water wastage;<sup>69</sup>
- adopting strategies to “reduce depletion of water resources, through unsustainable extraction;”<sup>70</sup>
- reducing and eliminating pollution of watersheds by harmful chemicals;<sup>71</sup>
- ensuring that development projects do not affect “access to adequate water;”<sup>72</sup>
- giving due attention to the right to water in international trade agreements in order not to compromise the ability of a country to ensure the full realization of this right;<sup>73</sup>
- taking all necessary measures to ensure that third parties do not infringe on the right to water. Failing to enact or enforce legislation to “prevent the contamination and inequitable extraction of water” is a breach of a country’s international human rights obligations.<sup>74</sup>

## Quality of Water

The Committee (CESC) noted that water contamination is “exacerbating existing poverty.”<sup>75</sup> States must ensure that “natural water resources are protected from contamination by harmful substances”<sup>76</sup> and that water is “free from micro-organisms, chemical substances, and radiological hazards that constitute a threat to a person’s health.”<sup>77</sup>

The Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes noted that:

- Excess water from oil or gas production and drilling fluids “constitute hazardous wastes.” This water is sometimes “re-injected into the reservoir ... [and] disposed of in waste ponds, which may not be lined with impermeable barriers, or even dumped directly into streams or oceans.”<sup>78</sup>
- “Toxic substances in fracking fluids and resulting mud can be released into the surface water during the extraction, transport, storage and waste disposal stages.”<sup>79</sup>
- “The storage of wastewater and other waste products may result

in further contamination of water supplies due to spills, leaks and/or floods. These unintended releases can reasonably be expected to increase following the anticipated increase in the frequency and intensity of storms in the future, due to climate change.”<sup>80</sup>

He recommended that companies and other private actors “routinely monitor for associated toxic substances at the mine site as well as in nearby sources of drinking water or aquatic habitat, when hazardous substances that can contaminate water are used, such as cyanide and hydro-fracking solutions.”<sup>81</sup>

## RESOURCES

### Further Information on the Right to Water

The Right to Water, Fact Sheet No. 35, United Nations, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>

Committee on Economic Social and Cultural Rights, General Comment No. 15 (2002), The Right to Water, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2002%2f11&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2002%2f11&Lang=en)

Study on Human Rights Obligations related to Equitable Access to Safe Drinking Water and Sanitation,

United Nations, Office of the High Commissioner on Human Rights, 2007, <http://www.ohchr.org/EN/Issues/WaterAndSanitation/Study-Water/Pages/OHCHRStudyWaterIndex.aspx>

De Albuquerque, Catarina, Realizing the Human Rights to Water and Sanitation: A Handbook, United Nations Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, 2014, <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>

Special Rapporteur on the human right to safe drinking water and sanitation, <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx>

Toolkit on the Right to Water and Sanitation, United Nations Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/Issues/ESCR/Pages/Water.aspx>

UN Water, World Water Development Report – Water and Energy (includes concerns from fracking), March 2014 <http://www.unwater.org/publications/world-water-development-report/en/>





## 2.3 FRACKING AND THE RIGHT TO FOOD

Toxic releases from oil and natural gas operations can have negative effects on soil, crops and livestock. For example, the *Denver Post* reported in 2014 that experts worry that spills from oil and gas operations in Colorado are poisoning soil that could be used to grow crops. A Colorado State scientist called the state's oil and gas boom "a death sentence for soil."

The *Post* also highlighted a lack of information on these effects. "No federal or state agency has assessed the impact of the oil and gas boom on soil and potential harm from cancer-causing benzene and other chemicals," the newspaper reported.<sup>82</sup>

In 2001, U.S. Forest Service researchers reported dramatic negative effects on vegetation caused by the drilling and fracking of natural gas in an experimental forest in northeastern West Virginia.<sup>83</sup>

In 2009, 17 cows in Caddo Parish, Louisiana died after apparently ingesting fracking fluid that had spilled at a well site. "It seemed obvious the cattle had died acutely from an ingested toxin that had drained from the 'fracking' operation going on at the property," Mike Barrington, a veterinarian said in a document obtained from the state Depart-



Courtesy of Kim Kelly

ment of Environmental Quality by the *New Orleans Times-Picayune*.<sup>84</sup>

Research suggests a strong link between fracking and negative impacts on farming and food quality. In a 2012 publication,<sup>85</sup> Michelle Bamberger, a veterinarian, and Robert Oswald, a professor of molecular medicine at Cornell University, compiled the results of 24 case studies from the United States. More than one-third of the cases involved conventional (vertical) wells with the remainder comprising unconventional (horizontal) wells subjected to high-volume hydraulic fracturing. The authors concluded that exposure to gas drilling operations strongly affect the health of humans, companion animals, livestock, horses, and wildlife.

The study documented cases "where food-producing animals exposed to chemical contaminants have not been tested before

---

A Colorado State scientist called the state's oil and gas boom "a death sentence for soil."



## The Right to Food in International Human Rights Treaties

### International Covenant on Economic, Social and Cultural Rights (1966)

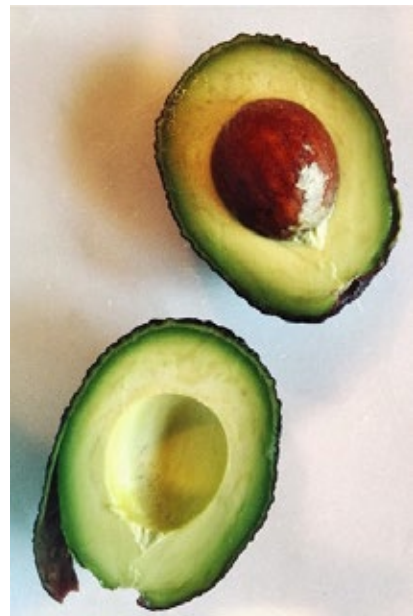
Article 11 (1) The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right ...

### Convention on the Rights of the Child (1989)

Article 24 (2) States Parties shall ... take appropriate measures: (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution ...

### Convention on the Rights of Persons with Disabilities (2006)

Article 28 (1) States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.



Courtesy of Kim Kelly

slaughter and where farms in areas testing positive for air and/or water contamination are still producing dairy and meat products for human consumption without testing of the animals or the products. Some of these chemicals could appear in milk and meat products made from these animals.”

In McCarron’s report on residents in Queensland, the General Practitioner notes “Feathers falling off birds and chickens. Skin irritation in dogs, bald patches. ... rashes after swimming in the dam. No birds, kangaroos or wallabies will drink from the dam now – they used to.”<sup>86</sup>

**The right to food** is recognized in the International Covenant on Economic, Social and

Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD) as an essential part of the right to an adequate standard of living.

The Committee on Economic, Social and Cultural Rights identified, in a General Comment, key issues with regard to the right to adequate food. The core issues of availability and accessibility are relevant to fracking:

- Food must be **available** and it must be of sufficient quality and “free from adverse substances.”<sup>87</sup> This refers to food safety, especially the prevention of contamination<sup>88</sup> and bad environmental hygiene.<sup>89</sup> Availability also includes the possibility to obtain food from

“productive land or other natural resources.”<sup>90</sup>

- Food must be **accessible** “in ways that are sustainable and that do not interfere with the enjoyment of other human rights.”<sup>91</sup> For example, the inability to access indigenous ancestral land can affect the right to food.<sup>92</sup>

The General Comment on this subject also recognized obligations and violations that might affect the right to adequate food. Those relevant for fracking include:

- “Enterprises or individuals” cannot deprive others of access to adequate food.<sup>93</sup>
- Access to resources for livelihood and food security must be strengthened.
- Denial of an individual’s or group’s access to food is equivalent to a violation of this right.

States are encouraged to develop strategies for implementing the right to food at a national level including:

- The need to address “all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food.”<sup>94</sup>
- Full and equal access to economic resources such as the “ownership of land and other property, credit, [and] natural resources.”<sup>95</sup>
- The necessity to take “appropriate steps to ensure that activities of the private business sector ... are in conformity with the right to food.”<sup>96</sup>

## Special Rapporteur on the Right to Food

In 2000, the Commission on Human Rights appointed a Special Rapporteur on the right to food to develop an integrated and coordinated approach to promote and protect the right to food. The mandate was endorsed and extended in 2007 by the Human Rights Council to promote the full realization of the right to food, examine ways to overcome obstacles, submit proposals and make recommendations to achieve the full realization of the right to food. Attention to the situation of women and children is to be taken into account in the fulfillment of the mandate. The Special Rapporteur conducts country visits, prepares thematic reports and responds to individual complaints. Reports are submitted on an annual basis to the Human Rights Council and the General Assembly. The current Special Rapporteur, Ms. Hilal Elver, can be contacted at [srfood@ohchr.org](mailto:srfood@ohchr.org).

## RESOURCES

### Further Information on the Right to Food

The Right to Adequate Food, Fact Sheet No. 34, United Nations, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>

Committee on Economic Social and Cultural Rights, General Comment No. 12 (1999), The Right to Adequate Food, <http://www.refworld.org/docid/4538838c11.html>

Special Rapporteur on the Right to Food, <http://www.ohchr.org/EN/Issues/Food/Pages/HilalElver.aspx>

Toolkit on the Right to Food, United Nations, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/Issues/ESCR/Pages/Food.aspx>





Courtesy of Kim Kelly

## 2.4 FRACKING AND THE RIGHT TO HOUSING

The right to adequate living conditions and housing can be detrimentally affected by fracking in several ways.

- **Availability** of housing is affected as influxes of temporary workers push up rents and reduce available properties.
- **Quality** of housing is affected as a result of property damage and devaluation from contaminated land and water wells, damage caused by earthquakes, and wastewater disposal and pollution.
- **Forced displacement** results from people vacating their properties as a result of the above damage or through coercion from private companies.
- **Quality of community life** is disrupted.

A 2014 report by the Multi-State Shale Research Collaborative, a group of nonpartisan non-governmental policy and research organizations, found that higher rents and a shortage of affordable housing accompanied a shale drilling boom in three of four rural communities in Ohio, Pennsylvania and West Virginia.<sup>97</sup>

Reuters reported that oil and gas drilling can have a negative effect on property values, citing in part

### The Right to Housing in International Human Rights Treaties

#### International Covenant on Economic, Social and Cultural Rights (1966)

Article 11 (1) The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right ...

#### Convention on the Elimination of All Forms of Discrimination against Women (1979)

Article 14(2) States Parties shall undertake all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that

they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

#### Convention on the Rights of Persons with Disabilities (2006)

Article 28 (1) States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

a study by a researcher from Duke University and two environmental organizations which found that shale gas drilling within a kilometer decreases home values by an average of 16.7 percent if the home depends on well water.<sup>98</sup>

In 2012, residents of a Pennsylvania trailer park had their leases terminated when the park was bought by a fracking company. While residents were offered incentives

of between \$1,500 and \$2,500 to relocate, it would actually cost at least \$5,000 to relocate each trailer. The Huffington Post reported:

*Some of the residents of Riverdale, who had lived there for decades, were elderly people in their 70s and 80s, and had little chance of finding work or new living accommodations. It was, quite literally, the end of their world.<sup>99</sup>*





“The human right to housing is the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity.”

Miloon Kothari, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

The 2012 World Disasters Report by The International Federation of Red Cross and Red Crescent Societies (IFRC)<sup>100</sup> focused on forced displacement including those by conflict, political upheaval, violence, disasters, climate change and development projects. The report notes that the scale of development-forced displacement and resettlement (DFDR) is enormous: “An estimated 280–300 million people were displaced by development projects, particularly dams, in the 1980s and 1990s, and since the mid-1990s 15 million people have been displaced annually. The true totals could be even higher.”<sup>101</sup>

Oil-related development-induced displacement and resettlement (DIDR) often lead to the marginalization of indigenous peoples as oil operations are frequently located in indigenous territories. Indigenous communities are forced to leave land that has been inhabited for generations, yet without benefiting from the income from extraction on their land.

A report by the New York Department of Health<sup>102</sup> notes that “There are numerous historical examples of the negative impact of rapid and concentrated increases in extractive resource development resulting in indirect community impacts such as interference with quality-of-life (e.g., noise, odors), overburdened transportation and

health infrastructure, and disproportionate increases in social problems, particularly in small isolated rural communities.”

The report notes that similar concerns have been raised by communities where fracking activity has increased rapidly.

In her November 2014 submission to the Australian Senate on fracking in Chinchilla,<sup>103</sup> local resident Karen Aunty reports that “sky rocketing rents forced out many permanent, long term residents. Pensioners, retirees, sole parents, single income families and non-industry workers left the town in droves. They will not return. Young children, living in tents at the showground in the midst of a very chilly winter was something previously unseen in this town. Lack of Public Housing contributed to this situation.”

In a submission to the Parliament of South Australia, Natural Resources Committee Inquiry into Unconventional Gas (i.e., fracking) in February 2015,<sup>104</sup> Anne Daw summarized the impact on the community:

*“Valid community concerns exist in regard to environmental, economic, water security, sustainable food bowl, local, national and international export markets, and tourism. People are concerned with demographic changes, associated strain*

## Special Rapporteur on the Right to Adequate Housing

In 2000, the Commission on Human Rights appointed a Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living. The mandate was endorsed and extended in 2007 by the Human Rights Council to promote the full realization of the adequate housing, to identify best practices as well as challenges and obstacles, to emphasize practical solutions, and to facilitate the provision of technical assistance. Gender-specific vulnerabilities should be identified. In order to fulfill the mandate, the Special Rapporteur undertakes country visits, prepares thematic reports and responds to individual complaints. Reports are

submitted on an annual basis to the Human Rights Council and the General Assembly. The current Special Rapporteur, Ms. Leilani Farha, can be contacted at [srhousing@ohchr.org](mailto:srhousing@ohchr.org).

**The Special Rapporteur on the Human Rights of Internally Displaced Persons** also has a mandate to sponsor research into the implications of particular provisions of the Guiding Principles on Internal Displacement, including those concerning displacement by development projects, and how they best can be translated into policy. The current Special Rapporteur, Mr. Graham Fox, can be contacted at [idp@ohchr.org](mailto:idp@ohchr.org).

*on community services, loss of lifestyle as they now know it, and insecurity regarding their futures. Impacts on landscape, triggering of earthquakes, seawater intrusion and the fact that the South East is built on limestone with a number of caves, fault lines, sinkholes and subsidence ... Limestone subsidence and sinkhole formation are hastened by unconventional gas activities.”*

Access to basic services like quality water and sanitation are indivisible from the realization of the right to adequate housing. If fracking can impact people’s access to water of adequate quantity and quality, it in turn impacts the right to adequate housing.<sup>105</sup>

**The right to adequate living conditions and housing** is recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD) as an essential part of the right to an adequate standard of living.

The Special Rapporteur has described the right to adequate housing as a component of the right to an adequate standard of living.<sup>106</sup>

Several dimensions included as part of the right to adequate housing under international law are particu-





Courtesy of Avery Kelly

### Forced Evictions

“The permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”

Committee on Economic, Social and Cultural Rights, General Comment No. 7

larly relevant for fracking. The right to housing implies:

- The right to legal security of tenure, which guarantees legal protection from “forced eviction, harassment and other threats.”<sup>107</sup>
- The right to access “natural and common resources [and] safe drinking water.”<sup>108</sup>
- The right to be protected from “arbitrary or unlawful interference” in privacy and home,<sup>109</sup> and to choose one’s home.<sup>110</sup>
- The right to housing that provides protection from threats to health.<sup>111</sup>

- Housing should not be built in places with pollution problems or sources of pollution that may affect the right to health.<sup>112</sup>
- Environment and energy policies, among others, should take into account the right to housing.<sup>113</sup>
- States must collect detailed information about vulnerable groups in relation to the right to housing, including those subject to forced evictions.<sup>114</sup>

In the General Comment on forced evictions:

- Forced evictions caused “in the name of development,”

“including large scale energy projects,” can violate the right to housing.<sup>115</sup>

- Forced evictions carried out by private persons or bodies without “appropriate safeguards” must be punished by the State.<sup>116</sup>

Procedural protections from forced evictions,<sup>117</sup> including those caused by development projects, should be applied, including:

- “Opportunity for genuine consultation with those affected;”
- “Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;”
- “Information on the proposed evictions, and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;”
- Government representation during an eviction and proper identification of those carrying out the eviction;
- “Provision of legal remedies,” including compensation.

## RESOURCES

### Further Information on the Right to Housing

The Right to Adequate Housing, Fact Sheet No. 21, Rev.1, United Nations, Office of the High Commissioner for Human Rights, [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf)

Committee on Economic Social and Cultural Rights, General Comment No. 4 (1991), The Right to Adequate Housing, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2f-GEC%2f4759&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2f-GEC%2f4759&Lang=en)

Forced Evictions, Fact Sheet Fact Sheet No. 25, Rev.1, United Nations, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>

Committee on Economic Social and Cultural Rights, General Comment No. 7 (1997), The Right to Adequate Housing: Forced Evictions, <http://www.refworld.org/docid/47a70799d.html>

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, <http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>

Right to Adequate Housing Toolkit, United Nations Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/Issues/Housing/toolkit/Pages/RighttoAdequateHousingToolkit.aspx>

International Instruments on Housing Rights, United Nations, UN Habitat, <http://mirror.unhabitat.org/pmss/getElectronicVersion.aspx?nr=1281&alt=1>

Compilation of United Nations resolutions on housing rights, United Nations Housing Rights Programme, Report No. 5, 2nd edition, 2005, [http://www.unrol.org/files/3671\\_53168\\_1.pdf](http://www.unrol.org/files/3671_53168_1.pdf)

Compilation of United Nations documents on housing rights, United Nations Housing Rights Programme, Report No. 6, 2nd Edition, 2005, [http://www.unrol.org/files/3672\\_81984\\_1.pdf](http://www.unrol.org/files/3672_81984_1.pdf)





## 2.5 FRACKING AND THE RIGHT OF ACCESS TO INFORMATION

Due to secrecy in the fracking process and policies of nondisclosure, citizens and regulators cannot always know all the risks or indeed whether negative trends in health and environment, for example, are directly related to fracking. There are two major ways in which practices of hydraulic fracturing often lack transparency:

- The identity of chemicals injected underground can be kept hidden from the public, and
- Lawsuits against drilling companies are often resolved through confidential legal settlements.

According to a 2011 investigation by three members of the U.S. House of Representatives on fracking fluids used by the 14 leading hydraulic fracturing companies:

*Between 2005 and 2009, the companies used 94 million gallons of 279 products that contained at least one chemical or component that the manufacturers deemed proprietary or a trade secret ... in most cases the companies stated that they did not have access to proprietary information about products they purchased “off the shelf” from chemical suppliers. In these cases, the companies are injecting fluids containing chemicals that they themselves cannot identify.<sup>118</sup>*

Courtesy of Kim Kelly



Flickr: Stop the Propoganda by greensefa, Creative Commons License

The drilling industry in the United States has made available a well-by-well list of chemicals injected in fracking operations on a website called FracFocus, but “many of the wells that are listed on FracFocus have at least one or two chemicals marked confidential,” *Bloomberg* reported in 2012. “Others have far more.”

*Bloomberg* also reported that companies failed to list more than 40 percent of their wells (and the chemicals injected) between April 11, 2011 when FracFocus began operating and the end of 2011.<sup>119</sup>

As early as 1987, the U.S. Environmental Protection Agency found that:

*Very often damage claims against oil and gas operators are settled out*

*of court, and information on known damage cases has often been sealed through agreements between landowners and oil companies. In some cases, even the records of well-publicized damage incidents are almost entirely unavailable for review. In addition to concealing the nature and size of any settlement entered into between the parties, impoundment curtails access to scientific and administrative documentation of the incident.<sup>120</sup>*

This practice has continued into the present.

*In cases from Wyoming to Arkansas, Pennsylvania to Texas, drillers have agreed to cash settlements or property buyouts with people who say hydraulic fracturing, also known as fracking, ruined their*



## The Right of Access to Information

### International Covenant on Civil and Political Rights (1966)

Article 19(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

### Convention on the Rights of the Child (1989)

Article 13(1) The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

Article 17 States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and

material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

### Convention on the Rights of Persons with Disabilities (2006)

Article 2 States Parties shall also take appropriate measures to (f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information.

Article 21 States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

*water according to a review by Bloomberg News of hundreds of regulatory and legal filings. In most cases homeowners must agree to keep quiet. The strategy keeps data from regulators, policymakers, the news media and health researchers, and makes it difficult to challenge the industry's claim that fracking has never tainted anyone's water.*<sup>121</sup>

The 2012 report discussed in the section on the right to food above notes that necessary information on specific chemical exposures related to gas drilling “cannot be obtained due to the lack of testing, lack of full disclosure of the International

Union of Pure and Applied Chemistry (IUPAC) names and Chemical Abstracts Service (CAS) numbers of the chemicals used, and the industry's use of nondisclosure agreements.”<sup>122</sup>

In her Australian Senate submission, Karen Aunty notes that:

*Community consultation has been almost non-existent and inadequate ... I was curious about a number of details about this process. “How will the company ensure that all naturally occurring radioactive substances be removed? How will it address low molecular weight chemicals unable to be treated effectively by reverse*

*osmosis? What will the company do with the many tonnes of contaminated salt produced, when the company representative has said that dumping of salt will be a last resort?”*

*These, and many more questions, could not be answered. ... Response by email, after some prodding, came four weeks later and could only be described as manifestly inadequate.*

The impact of this lack of transparency makes it difficult for individuals to assess their own circumstances and risk of harm when faced with human rights violations from fracking – such as

the health impacts outlined above. It is also difficult for campaigners to objectively assess the industry and its impact with limited access to information. This denial of information itself leads to the violation of other rights: for example, the consuming of contaminated food products.

The lack of freedom of information therefore compromises the ability of individuals and communities to uphold their human rights, and takes away their agency.

### The right of access to information

is recognized in the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). In addition to being a right by itself, it is mentioned and used for the protection of virtually all other human rights.

According to international law, the human right of access to information includes principles that must be observed by States:

- The principle of maximum disclosure means that access to complete information is the general rule and thus, exceptions are strict and limited.
- The principle of good faith suggests that interpretation of rules and policy decisions must be done according to the purpose of the right and the satisfaction of the general interest.<sup>123</sup>

The principle of maximum disclosure could be used to request wide and general access to existing data on fracking projects and the principle of good faith could be used to argue that general interest requires knowledge of the dimensions and effects of fracking projects.

The Human Rights Committee (HR Committee) noted in a General Comment that States should “proactively put in the public domain Government information of public interest”<sup>124</sup> and should:

- ensure “easy, prompt, effective and practical access” to information;
- enact clear rules and procedures to gain access to information;<sup>125</sup>
- process requests for information in a low-cost and timely manner;
- avoid excessive restrictions on access to information and provide reasons for refusal to provide access to information.

The Committee on Economic, Social and Cultural Rights observed that:

- Access to information “includes the right to seek, receive and impart information and ideas concerning health issues.”<sup>126</sup>
- Access to information is an obligation “concerning the main health problems in the community, including methods of preventing and controlling them.”<sup>127</sup>

• Public authorities and third parties should give “full and equal access to information” about water, water services and the environment to individuals and groups.<sup>128</sup>

• “Timely and full disclosure of information on the proposed measures” and “reasonable notice of proposed actions” that can affect the right to water should be provided.<sup>129</sup>

The Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment noted that to comply with their international obligations States should “provide access to environmental information and provide for the assessment of environmental impacts that may interfere with the enjoyment of human rights.”<sup>130</sup>

According to the Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and wastes, companies and other private actors should “recognize the right of access to information and avoid using the privilege of confidential business information to shield health and safety information” on chemicals and solutions used when fracking.<sup>131</sup>





Courtesy of the Institute of the Sisters of Mercy of the Americas

## 2.6 FRACKING AND THE RIGHT TO PUBLIC PARTICIPATION

Like access to information, public participation through public debate and dialogue is a right used to defend other rights that might be impacted by fracking. It cannot be realized unless freedom of speech, assembly and association are also implemented.<sup>132</sup>

There have been cases of alleged violations of this right related to fracking. In the UK for example, a lawyer representing 36 people arrested at an anti-fracking demonstration commented: “I am concerned that the right to expression and the right to protest – sections 10 and 11 of the European convention on human rights – are being minimised by Greater Manchester police.”<sup>133</sup>

**The right to public participation** is recognized in the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).

Public participation is particularly important in the development of national strategies. In the General Comment on this subject:

- National water strategies and plans of actions should respect the “right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water.”<sup>134</sup>

- The adoption of a national housing strategy should “reflect extensive genuine consultation with, and participation by, all of those affected.”<sup>135</sup>

- Accountability, transparency, and public participation are necessary to formulate and implement national strategies for the right to food.<sup>136</sup>

### The Right to Public Participation

#### International Covenant on Civil and Political Rights (1966)

Article 25 Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives.

#### Convention on the Elimination of All Forms of Discrimination against Women (1979)

Article 7 States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (b) (b) To participate in the formulation of government policy and the implementation thereof ...

#### Convention on the Rights of the Child (1989)

Article 12 (1) States Parties shall assure to the child who is capable of forming his or her own views the

right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

#### Convention on the Rights of Persons with Disabilities (2006)

Article 4 (3) In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

#### Article 29

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs ...



## Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

The Commission on Human Rights appointed a Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression in 1993. The mandate was endorsed and extended in 2008 by the Human Rights Council to seek, receive and respond to information regarding violations and to make recommendations to promote and protect the right to freedom of opinion and expression. In order to fulfill the mandate, the Special Rapporteur transmits urgent appeals and allegations to States and undertakes country visits. Reports are submitted on an annual basis to the Human Rights Council and the General Assembly. The current Special Rapporteur, Mr. David Kaye, can be contacted at [freedex@ohchr.org](mailto:freedex@ohchr.org) to register a complaint or an urgent appeal. Guidelines for the submission of information to the Special Rapporteur are available at <http://www.ohchr.org/EN/ISSUES/FREEDOMOPINION/Pages/OpinionIndex.aspx>



Public participation must give groups and individuals the opportunity to contribute to decision-making processes that affect them. Under international law:

- Every citizen has the right to participate in the “conduct of public affairs,”<sup>137</sup> which includes the development and implementation of policies at national and local levels.<sup>138</sup>
- Decision-making processes need to establish at the local and national levels “permanent spaces” for consultation and dialogue where “peoples and communities concerned, companies and local authorities” are represented.<sup>139</sup>
- A genuine opportunity must be implemented for those affected by measures that impact the right to water to be consulted in a timely and reasonable manner with full disclosure on the proposed measures and legal remedies.<sup>140</sup>
- Minorities have the right to participate in the decisions that affect them.<sup>141</sup>
- Children must be involved in matters that affect them, such as “the environment;”<sup>142</sup> the process must be child-friendly, transparent, informative, and relevant and their views must be treated with respect.<sup>143</sup>

Public participation is also a way to monitor implementation and prevent violations of International Law:

- Public participation must be ensured as a measure to prevent third parties from violating the right to water.<sup>144</sup>
- The work of human rights defenders who advocate for the access to water should be protected, respected, facilitated and promoted by States.<sup>145</sup>
- There must be public participation in political decisions that can affect the right to health “at both the community and national levels.”<sup>146</sup>

## Regional Example: Aarhus Convention

The United Nations Economic Commission for Europe (ECE) adopted the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) in 1998 (<http://www.unece.org/env/pp/treatytext.html>). The Aarhus Convention ensures public access to environmental information held by government authorities, fosters public participation in environmental decision-making and allows access to the justice system on environmental matters. Although most of the States parties are from Europe, the Convention is open to ratification by any UN member State.

The Aarhus Convention sets out detailed obligations on access to environmental information including providing guidance for those seeking access to environmental information, promoting

education and awareness on obtaining information, establishing deadlines for providing information and requiring justified and informed grounds on which access to information may be refused. Non-state actors are encouraged to inform the public about important environmental impacts.

In terms of public participation in environmental decision-making, the Aarhus Convention requires that the public be informed of decision-making procedures and opportunities to participate in the preparation of environmental policies as well as standards and legislation on the environment. Decision-making processes should be accessible, have a reasonable time frame for effective participation and admit comments, opinions and analysis from the public. The results of the process must take into account the outcome of the public participation.

## RESOURCES

### Further Information on Freedom of Information and Expression

Human Rights Committee, General Comment No. 34 (2011), Article 19: Freedoms of Opinion and Expression, <http://www.article19.org/resources.php/resource/2420/en/general-comment-no.34:-article-19:-freedoms-of-opinion-and-expression>

Committee on the Rights of the Child, General Comment No. 12 (2009), The Right of the Child to be Heard, <http://www2.ohchr.org/english/bodies/crc/docs/AdvancesVersions/CRC-C-GC-12.pdf>

Hussain, Abid, The Public’s Right to Know: Principles on Freedom of Information Legislation, Special

Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Annex II, 2000, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=E/CN.4/2000/63](http://ap.ohchr.org/documents/dpage_e.aspx?si=E/CN.4/2000/63)

Special Rapporteur on the Promotion and Protection of the right to freedom of opinion and expression, <http://www.ohchr.org/EN/ISSUES/FREEDOMOPINION/Pages/OpinionIndex.aspx>

Human Rights Committee, General Comment No. 25 (1996), The right to participate in public affairs, voting rights and the right of equal access to public service,

<http://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>

United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), <http://www.unece.org/env/pp/treaty-text.html>

Article 19, Policy Brief, International standards: Right to information 2012, Accessed 16 March 2015 at <http://www.article19.org/resources.php/resource/3024/en/international-standards:-right-to-information>





Courtesy of Avery Kelly

## 2.7 FRACKING AND OTHER RIGHTS

In connection to extractive industries, people that live off the land tend to disproportionately suffer violations of the individual human rights discussed above. In addition to more frequently being victims of these abuses, groups and communities that have a particularly close tie to the land and its ecosystems will suffer the destruction or tampering of biodiversity in a particularly

negative way. Given these close ties and interdependence between the Earth and their culture, fracking and its negative consequences can affect the internationally protected cultural rights of members of these groups as well. This is the case for many indigenous peoples, ethnic minorities, and peasant communities.

In the Committee on Economic, Social and Cultural Rights General Comment 21 on The Right to Cultural Heritage, the committee

states that everyone has the right “to follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity.”<sup>148</sup>

Meanwhile, the independent expert in the field of cultural rights, Farida Shaheed noted in 2011, “globalization, the exploitation of economic resources, the promotion of tourism, and development programmes may have a detrimental impact on the ability of individuals and communities to preserve/safeguard, develop and transmit their cultural heritage, including cultural practices, specific ways of life, and cultural sites and landscapes.”<sup>149</sup>

As the Special Rapporteur on hazardous substances noted, “As recognized in international human rights law, access to water that is free from hazardous substances is not only essential for human health (the right to health) and ensuring livelihoods (right to gain a living from work), but also for the enjoyment of certain cultural practices (right to take part in cultural life), as is often the case for coastal communities and indigenous peoples.”<sup>150</sup>

In December 2014, the Mithaka indigenous people of Australia wrote to Victoria Tauli-Corpuz, the Special Rapporteur on the Rights of Indigenous Peoples, to express their concern about fracking on their land. Their letter<sup>151</sup> states:

### Cultural and Collective Rights in International Law

#### Common Article 1 of International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966)

Article 1 (1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

#### Declaration on the Rights of Indigenous Peoples 2007

Several relevant articles including: Article 3 (right to self-determination); Article 8 (dispossession of lands, territories or resources); Article 10 (forced removal from land); Article 12 (the right to maintain, protect, and have access to religious and cultural sites); Article 18 (right to participate in decision-making); Article 21 (improvement of economic and social conditions); Article 23 (right to development); Article 25 (right to relationship with traditional lands, territories, waters and coastal seas and other resources); Article 26 (right to lands, territories and resources); Article 28 (right to redress); Article 29 (right to the conservation and

protection of the environment); Article 32 (right to determine and develop priorities and strategies for the development or use of lands or territories and other resources).

#### International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169)

Article 15 (1) The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources. (2) In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16 (1) Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.



## Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), comprised of five independent experts, was established in 2007 and provides the Human Rights Council with studies and research on the rights of Indigenous Peoples.

The Expert Mechanism has so far completed studies including a *Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries* in 2012: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-55\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-55_en.pdf)

The report includes specific guidance to governments including that “The State duty to protect the human rights of Indigenous Peoples in the context of business activities also applies when granting development licences and permits relating to Indigenous Peoples’ lands, territories and resources. As provided by relevant standards on the specific rights of Indigenous Peoples, the State should take into account the full participation of Indigenous Peoples at all stages of decision-making in such processes.”

*Petroleum exploitation on our traditional lands, and the associated use of harmful chemicals to fracture the surrounding rock (“fracking”) required to extract the resources, is likely to harm our traditional lands – especially our rivers and floodplains – to which our culture is deeply connected and requires us to preserve. ...*

*Our culture depends on our special relationship with our traditional lands and waters, which gives meaning to our existence and tells us who we are. Our right to our culture is inseparable from the condition of our traditional lands. Unfortunately, by promoting petroleum exploitation on our traditional lands without adequately consulting us, the Queensland Government is failing to respect and protect our right to our culture.*

In its concluding observations on the eighteenth to the twentieth periodic reports of New Zealand,<sup>152</sup> the Committee on the Elimination of Racial Discrimination said it is “concerned by reports by representatives of Māori communities regarding the inadequacy of the consultations conducted by the State party before awarding deep-sea oil seismic, drilling and hydraulic fracturing contracts to commercial companies, under circumstances that may threaten these communities’ enjoyment

of their rights to land and resources traditionally owned or used, and before pursuing negotiation of Free Trade Agreements that could similarly affect indigenous peoples’ rights.”

The OHCHR notes that “Some of the most difficult human rights challenges for indigenous peoples stem from pressures on their lands, territories and resources as a result of activities associated with development and the extraction of resources. Their cultures continue to be threatened, and the protection and promotion of their rights resisted.”<sup>153</sup>

This section aims only to flag that in cases where indigenous peoples are or may be affected it is important to consider the full range of international rights and standards, especially rights related to participation over policies that impact their rights (see box on page 43).

**Cultural rights and the rights of indigenous peoples** are recognized in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the United Nations Declaration on the Rights of Indigenous Peoples, and the International Labour Organization Indigenous and Tribal Peoples Convention, 1989.

## Special Rapporteur on the rights of indigenous peoples

The Commission on Human Rights appointed a Special Rapporteur on the rights of Indigenous Peoples in 2001. The mandate of the Special Rapporteur includes promoting good practices, including new laws, government programmes, and constructive agreements between Indigenous Peoples and States, to implement international standards; reporting on the overall human rights situations of indigenous peoples in selected countries; addressing specific cases of alleged violations of the rights of Indigenous Peoples; and conducting or contributing to thematic studies.

The current Special Rapporteur, Ms. Victoria Tauli Corpuz, can be contacted at [indigenous@ohchr.org](mailto:indigenous@ohchr.org).

## Special Rapporteur in the field of cultural rights

A Special Rapporteur in the field of cultural rights was appointed in 2009. Ms. Farida Shaheed (Pakistan) took up her functions as Independent Expert in the field of cultural rights in 2009 and continued as a Special Rapporteur on the same issue.

The right to take part or participate in cultural life is widely recognized in human rights instruments, and in particular in article 27 of the Universal Declaration of Human Rights and article 15, paragraph 1 (a), of the International Covenant on Economic, Social and Cultural Rights. In its General Comment No. 21, the Committee on Economic, Social and Cultural Rights further clarified the scope and content of this right.

The current Special Rapporteur, Ms. Farida Shaheed, can be contacted at [srculturalrights@ohchr.org](mailto:srculturalrights@ohchr.org).

## RESOURCES

### Further Information on Cultural Rights

OHCHR Indigenous Peoples and the United Nations Human Rights System Fact Sheet 9 2013 <http://www.ohchr.org/Documents/Publications/fs9Rev.2.pdf>

UN Development Group Guidelines on Indigenous Peoples Issues [http://www.un.org/esa/socdev/unpfii/documents/UNDG\\_guidelines\\_EN.pdf](http://www.un.org/esa/socdev/unpfii/documents/UNDG_guidelines_EN.pdf)

UNESCO Universal Declaration on Cultural Diversity 2001 [http://portal.unesco.org/en/ev.php-URL\\_ID=13179&URL\\_DO=DO\\_TOP-IC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13179&URL_DO=DO_TOP-IC&URL_SECTION=201.html)

UNESCO Booklet on Cultural Diversity and Sustainable Development 2002 <http://unesdoc.unesco.org/imag-es/0012/001271/127162e.pdf>

The United Nations Development Group’s Guidelines on Indigenous Peoples’ Issues 2009 [http://www.un.org/esa/socdev/unpfii/documents/UNDG\\_guidelines\\_EN.pdf](http://www.un.org/esa/socdev/unpfii/documents/UNDG_guidelines_EN.pdf)

United Nations Permanent Forum on Indigenous Issues (UNPFII) <http://undesadspd.org/Indigenous-Peoples.aspx>

UN Resolution on Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity 2014 [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/25/L.29/Rev.1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/25/L.29/Rev.1)





## SECTION 3: ENGAGING WITH THE INTERNATIONAL HUMAN RIGHTS SYSTEM

Human rights are universal, inalienable, interdependent, indivisible, equal and non-discriminatory, and apply to everyone, regardless of nationality, residence, sex, age, gender, religion, race, national or ethnic origin or any other factor.

International human rights law was developed to promote and protect human rights, many of which were officially recognized at the international level when the United Nations (UN) General Assembly adopted the Universal Declaration of Human Rights in 1945.

### 3.1 CORE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

There are nine core international human rights treaties, which are legally binding instruments that set out specific rights (see next page). These nine major treaties, to which the vast majority of UN Member States are parties and are therefore legally bound to uphold their principles, comprise the foundation for the existing international human rights framework. Each treaty is monitored by a Committee (known as a “treaty body”), composed of independent experts.

In addition are regional human rights systems, with the most established being in Africa, the Americas and Europe.<sup>154</sup> These include various human rights treaties and mechanisms including the European Court of Human Rights, the Inter-American Court on Human Rights and the African Court on Human and Peoples’ Rights.

Of particular interest to the fracking question is the fact that the UN Human Rights Council has established an intergovernmental working group that is to draft a proposal for an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights. International human rights law speaks to the obligations of States, although there is expanding liability for individuals and third parties under international law. At this point the business sector is legally bound by the norms of international human rights law to the extent they are adopted into national legislations and other fora. Therefore, national governments remain the primary dutybearers for good business practices.

In 2011 the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises produced the Guiding Principles on Business and Human Rights: Implementing the



## Core Human Rights Treaties and Corresponding Monitoring Bodies

**International Convention on the Elimination of all Forms of Racial Discrimination (1965)**  
Committee on the Elimination of Racial Discrimination

**International Covenant on Civil and Political Rights (1966)**  
Human Rights Committee

**International Covenant on Economic, Social and Cultural Rights (1966)**  
Committee on Economic, Social and Cultural Rights

**Convention on the Elimination of all Forms of Discrimination against Women (1979)**  
Committee on the Elimination of Discrimination against Women

**Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)**  
Committee against Torture

**Convention on the Rights of the Child (1989)**  
Committee on the Rights of the Child

**International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990)**  
Committee on Migrant Workers

**International Convention for the Protection of All Persons from Enforced Disappearance (2006)**  
Committee on Enforced Disappearances

**Convention on the Rights of Persons with Disabilities (2006)**  
Committee on the Rights of Persons with Disabilities

It is important to note that the business sector is legally bound by the norms of international human rights law to the extent they are adopted into national legislations and other fora. Therefore, national governments remain the primary dutybearers for good business practices.

United Nations “Protect, Respect and Remedy” Framework.<sup>155</sup> This stresses that the State has a duty to protect against human rights abuses by third parties, including businesses, and that there is a corporate responsibility to respect human rights and the need for more effective access to remedies.

The Guiding Principles advise: “business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights. ... The responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions.”

When dealing with human rights violations which are caused by corporate actions, the State has a legal duty to “protect, respect and remedy” the rights of individuals in their territory (and outside of their territory in certain circumstances) and must enact national legislation and policies that are compatible with their treaty obligations.

For this reason, advocacy using the international human rights system focuses on holding governments to account for policy decisions and omission as opposed to addressing the direct liability of the corporation or industry involved.

How the business sector can be directly called to account concerning fracking is discussed further in Section 4.

## 3.2 MONITORING AND REPORTING

A key entity for enforcing the human rights framework is the **Human Rights Council** (HRC). The HRC is part of the UN system and is responsible for protecting and promoting human rights around the world by addressing human rights violations and promoting the effective coordination and mainstreaming of human rights within the UN.

It replaced the former Human Rights Committee in 2006 and is composed of 47 States elected by the General Assembly. The HRC has several procedures and mechanisms that it uses to carry out its mission, including coordination with its **Advisory Committee**, carrying out **Universal Periodic Reviews** (UPRs) for all UN Member States, and establishing **Special Procedures** including Special Rapporteurs.

### Special Procedures Including Special Rapporteurs, Independent Experts and Working Groups

The Special Procedures of the Human Rights Council (HRC) are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. There are currently

41 thematic and 14 country mandates.

Most Special Procedures receive information on specific allegations of human rights violations, allowing individuals and groups to report human rights violations. Communications to States, and occasionally to non-State actors, are then sent by the mandate-holder (Special Rapporteur, Independent Expert, or Working Group) asking for clarification and action.

The UN Office of the High Commissioner for Human Rights (OHCHR) publishes reports of Special Procedures with details of previous complaints.<sup>156</sup> These include impacts on human rights from the business sector such as complaints relating to toxic waste and the health impacts of mining.

Special Rapporteurs and Independent Experts (mandate-holders) may conduct country visits in order to obtain information on the human rights situation in a specific country. The mandate-holder prepares an official report for the HRC, which includes conclusions and recommendations.

- The mandate-holder must be invited by a government to visit the country, unless the government has issued a standing invitation to the special procedures.<sup>157</sup>
- Mandate-holders request to visit a country based on information or complaints received, usually from civil society.
- Mandate-holders generally meet both with government officials and representatives of civil society during country visits.

## RESOURCES

### Further Information on Business and Human Rights

Business and Human Rights Resource Centre <http://business-humanrights.org/>

ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy 2006 [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf)

OECD Guidelines for Multinational Enterprises, first adopted in 1976 and updated in 2011 <http://www.oecd.org/corporate/mne/>

UN Guiding Principles on Business and Human Rights 2011 [http://www.ohchr.org/Documents/Publications/Guiding-PrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/Guiding-PrinciplesBusinessHR_EN.pdf)







- Once a visit is confirmed, civil society should submit information relevant to the mandate and raise awareness at the national level about the upcoming visit.
- The conclusions and recommendations made by the mandate-holder should be disseminated by civil society to the media and general public.

### Relevant Special Rapporteurs with Individual Complaints Procedures

Questionnaires relating to several mandates are available (see links below). However, communications are also considered even when they are not submitted in the form of a questionnaire.

Special Rapporteur on the Right to Adequate Housing

Special Rapporteur on the Right to Food

Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression  
[Questionnaire](#)

Special Rapporteur on the Right to Health

Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes

Special Rapporteur in the field of cultural rights  
[Questionnaire](#)

- Information on follow-up should be submitted to the mandate-holders in order to keep them informed as to the progress being made in the implementation of the recommendations.

Special Rapporteurs and Independent Experts may also be requested by the HRC to prepare a study on specific themes.

- Thus, relevant information on fracking and human rights should be submitted to the mandate-holder as a contribution to these studies.
- Suggestions as to topics that deserve further study by mandate-holders can be proposed by civil society.

### Universal Periodic Review

The Universal Periodic Review (UPR) is a procedure whereby the HRC reviews on a periodic basis (every 4.5 years) the fulfillment of human rights obligations and commitments of all members of the United Nations. The UPR is a cooperative mechanism and is based on an interactive dialogue between the State under review and the HRC.

- The UPR is meant to complement the work of the treaty body system, as it is a political rather than a legal instrument.
- States conduct the review.

### Key Procedures/Mechanisms of the Human Rights Council

<b>Advisory Committee</b>	Lends the HRC expertise and guidance related to particular rights areas
<b>Special Procedures including Special Rapporteurs, independent experts and working groups</b>	Independent human rights experts who monitor, report and advise on human rights from a thematic or country perspective; they send out communications, undertake country visits, prepare thematic studies, convene expert consultations, engage in advocacy at and through the UN and the national level, provide technical advice, and raise public awareness on their particular country or issue
<b>Universal Periodic Review (UPR)</b>	Periodic review of the human rights records of all UN Member States

- It covers all States rather than only those who ratified a specific treaty.
- The review is based on three documents: a report prepared by the State, information contained in the reports of the treaty bodies and special procedures, and a summary of information submitted by other stakeholders, including civil society.

Civil society can contribute to the UPR by:

- participating in national consultations held by the State

under review in preparation of the national report;

- submitting information on the State's human rights situation;
- lobbying other States to bring to their attention specific issues;
- providing an oral statement during the adoption of the report by the HRC;
- monitoring and participating in the implementation of the UPR recommendations at the national level.<sup>158</sup>

### Treaty Bodies

The treaty bodies are comprised of independent expert committees that monitor the implementation by States of the international human rights treaties. The state reporting obligation means that States conduct a self-assessment of their human rights duties but receive input from a national dialogue among stakeholders and international input of expert advice and good practices.

In April 2014, the UN General Assembly adopted a resolution on



## Information on Reporting Procedures

A number of international coalitions of NGOs or individual international NGOs are working to promote the implementation of the various human rights treaties. Information on the role of civil society in the preparation and submission of information that is specific to the requirements of relevant treaty bodies may be obtained from the sources below.

**Human Rights Committee:**  
Center for Civil and Political Rights  
<http://www.ccpcentre.org/en>

**Committee on Economic, Social and Cultural Rights:**  
International Network for Economic, Social and Cultural Rights  
<http://www.escr-net.org/>

**Committee on the Elimination of Discrimination against Women:**  
International Women's Rights Action Watch Asia Pacific  
<http://www.iwraw-ap.org/>

**Committee on the Rights of the Child:**  
Child Rights Connect  
<http://www.childrightsconnect.org/>

**Committee on the Rights of Persons with Disabilities:**  
International Disability Alliance  
<http://www.internationaldisabilityalliance.org/>

strengthening the treaty body system, which included increasing the number of weeks of meeting time for all the treaty bodies combined, from a total of 75 to 96 weeks per year, allowing the review of more countries and individual complaints; approving a capacity-building program to assist countries that need technical assistance in implementing their treaty obligations; and rationalizing Treaty Body documentation.

The principal task of the treaty bodies is to periodically review reports submitted by States on steps taken to implement the relevant treaty. In order to conduct a comprehensive and independent assessment of the progress made and difficulties encountered in the implementation of the treaty, the treaty bodies welcome the submission of information from civil society. Thus, civil society can bring information on fracking and violations of human rights to the attention of the relevant treaty body. Following the review, the treaty bodies issue concluding observations that point out the main areas of concern and make recommendations for follow-up action.

- Treaty bodies may only examine the human rights situation in States that have ratified their specific treaty.<sup>159</sup>
- Reports are scheduled for consideration once received.<sup>160</sup>
- The procedure for the submission and consideration of information submitted by civil society varies amongst treaty bodies.
- In some countries, coalitions or networks of civil society organizations work together to prepare one comprehensive report to be submitted to a treaty body.
- Civil society can submit information on the impact of measures taken by the State and evaluate their effectiveness.
- Gaps in implementation can be brought to the attention of the treaty body and concrete recommendations can be proposed.
- The concluding observations should be used by civil society as a reference tool at the national level.



Anti-fracking campaigners at Cuadrilla drilling site at Balcombe, West Sussex.  
Flickr: Power to the People by Sheila, Creative Commons License

## Treaty Body Inquiry Procedures

Some treaty bodies can initiate a confidential inquiry procedure if they receive reliable information containing serious, grave or systematic violations of the treaty by a State party. States are requested to submit their observations. Following examination of the complaint, the treaty body transmits its findings to the State, together with any comments and recommendations.

- States may opt out of this procedure.
- The cooperation of the State must be sought throughout the proceedings.

- Inquires may include a visit to the State, if justified and with the State's consent.
- Civil society may submit information to a treaty body and request an inquiry.

## Treaty Body Complaints Mechanisms

Most treaty bodies consider individual complaints or communications from individuals alleging violations of their respective treaties. If found admissible, the complaint is sent to the State for a response. The complainant may then comment on the State's reply. The treaty body makes a decision on the merits of the case

## Relevant Treaty Bodies with an Inquiry Procedure

Committee on Economic, Social and Cultural Rights

Committee on the Elimination of Discrimination against Women

Committee on the Rights of Persons with Disabilities

Committee on the Rights of the Child





## Relevant Treaties with Individual Complaints Procedures

Human Rights Committee  
[Procedure under the Optional Protocol to the International Covenant on Civil and Political Rights](#)

Committee on Economic, Social and Cultural Rights  
[Procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights](#)

Committee on the Elimination of Discrimination against Women  
[Procedure under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#)

Committee on the Rights of Persons with Disabilities  
[Procedure under the Optional Protocol to the Convention on the Rights of Persons with Disabilities](#)

Committee on the Rights of the Child  
[Procedure under the Optional Protocol \(on a communications procedure\) to the Convention on the Rights of the Child](#)

which, in the case of a violation, will contain recommendations for preventing a similar violation from occurring. The State is required to carry out the recommendations.

- Although most treaty bodies follow similar procedures, differences do exist and it is important to follow the specific requirements of each treaty body in order to ensure the admissibility of the complaint.
- The most basic condition for admissibility is that the complaint can only be made against a State who is a party to the treaty in question and has accepted the Committee's competence to examine individual complaints.
- All available and effective domestic remedies must be exhausted prior to sending the complaint unless proceedings at the national level have been unreasonably prolonged, or the remedies are unavailable or would plainly be ineffective.
- The complaint must indicate which articles of the treaty have been violated.
- Civil society may bring a complaint on behalf of an individual, provided that consent or authorization has been given.

## Summary of Actions which can be taken by Civil Society where a human rights violation is suspected as a result of fracking

Submit information to the special procedures such as Special Rapporteurs: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

Submit information to a treaty body or request an inquiry: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>

Contribute to the Universal Periodic Review process: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NGosNhris.aspx>

## RESOURCES

### Further Information on Civil Society and Human Rights

United Nations, Office of the High Commissioner for Human Rights, Civil Society Space and the United Nations Human Rights System – A Practical Guide for Civil Society, 2014, [http://www.ohchr.org/Documents/AboutUs/CivilSociety/CSspace\\_UNHRSysystem\\_Guide.pdf](http://www.ohchr.org/Documents/AboutUs/CivilSociety/CSspace_UNHRSysystem_Guide.pdf)

United Nations, Office of the High Commissioner for Human Rights, Working with the United Nations Human Rights Programme – A Handbook for Civil Society, [http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook\\_en.pdf](http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf)

United Nations, Office of the High Commissioner for Human Rights, How to follow up on United Nations

Human Rights Recommendations - A Practical Guide for Civil Society <http://www.ohchr.org/Documents/AboutUs/CivilSociety/HowtoFollowUNHRRRecommendations.pdf>

Guide for Human Rights Defenders on Domestic Implementation of UN Human Rights Recommendations [http://www.ishr.ch/sites/default/files/article/files/domestic\\_implementation\\_of\\_un\\_human\\_rights\\_recommendations\\_-\\_final.pdf](http://www.ishr.ch/sites/default/files/article/files/domestic_implementation_of_un_human_rights_recommendations_-_final.pdf)

Procedure for complaints by individuals under the human rights treaties, <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#procedure-generale>

United Nations, Office of the High Commissioner for Human Rights, 23 Frequently Asked Questions about Treaty Body Complaints Procedures, <http://www.ohchr.org/Documents/HRBodies/TB/23FAQ.pdf>

Procedures for Communications under special procedure mechanisms <http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

Universal Periodic Review: Information and guidelines for relevant stakeholders' written submissions, 2013, <http://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.docx>





Courtesy of Kim Kelly

### 3.3 ENVIRONMENTAL IMPACT ASSESSMENTS

States must adopt comprehensive and integrated strategies and programs in order to promote and protect human rights at the national level. National legislation must be harmonized with international human rights treaties and public policies must be consistent with national and international law. How a government manages environmental impact assessments and the application of the precautionary principle are two important fora to evaluate its compliance with human

rights obligations and advocate for improved policies and decisions.

Human rights law mandates that human rights should be integrated into environmental impact assessments.<sup>161</sup> The Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment emphasized that States are required to assess environmental impacts that might interfere with human rights.<sup>162</sup> The Special Rapporteur on the human rights obligations related to environmentally

sound management and disposal of hazardous substances and waste recommended that States “Carry out comprehensive environmental, social and human rights impact assessments that examine existing natural resources in the area, cumulative impacts of projects and socioeconomic linkages to environmental issues.”<sup>163</sup>

In terms of specific rights, the Special Rapporteur on the human right to safe drinking water and sanitation pointed out that States “need to carry out impact assessments in line with human rights standards and principles” when planning projects that may impact water quality.<sup>164</sup> The Committee on Economic, Social and Cultural Rights has also explicitly stated that States should “assess the impacts of actions that might impinge upon water availability and natural ecosystems watersheds.”<sup>165</sup>

The Rio Declaration (see sidebar) indicated, “environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”<sup>166</sup> In order to implement this principle, many States have adopted environmental impact assessment laws.<sup>167</sup>

Impact assessments should be:

- based on reliable baseline studies;
- ongoing to monitor the evolving impact;

- developed in consultation with those affected;
- carried out by competent, independent third parties;
- conducted in a manner that gives special consideration to the rights of different groups, such as indigenous peoples or children.<sup>168</sup>

#### Precautionary Principle

The Rio Declaration noted that States should apply the “precautionary approach” in order to “protect the environment” and “prevent environmental degradation” even if there is a lack of scientific information definitively showing specific environmental impacts.<sup>169</sup> Although it comes from environmental law, the “precautionary principle” is useful for evaluating whether States are upholding their human rights obligations.

For example, the state of New York’s Department of Public Health used this principle as the basis for its recent decision to ban high-volume hydraulic fracturing that would be required to extract natural gas from the state’s Marcellus shale formation. After studying the process extensively, the state concluded that:

*While a guarantee of absolute safety is not possible, an assessment of the risk to public health must be supported by adequate scientific information to determine with confidence that the overall risk is*

#### Rio Declaration on Environment and Development

In 1992, the United Nations Conference on Environment and Development adopted the Rio Declaration on Environment and Development. The Rio Declaration contains 27 principles upon which States agreed to base their actions in dealing with environmental and development issues. One of the key principles is that “environmental protection shall constitute an integral part of the development process” (Principle 4). <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

*sufficiently low to justify proceeding with HVHF [high-volume hydraulic fracturing] in New York. The current scientific information is insufficient. Furthermore, it is clear from the existing literature and experience that HVHF activity has resulted in environmental impacts that are potentially adverse to public health. Until the science provides sufficient information to determine the level of risk to public health from HVHF and whether the risks can be adequately managed, HVHF should not proceed in New York State.*<sup>170</sup>





## SECTION 4: REDRESSING THE POWER IMBALANCE THROUGH RIGHTS-BASED ADVOCACY

The above considerations illustrate that multiple human rights violations can and do take place in the context of fracking. Justice is undermined, and the balance of power is skewed away from the Earth and its people, and toward corporations.

However, individuals and communities are rights holders and can be powerful agents of change.

Philip Alston, Special Rapporteur on extreme poverty and human rights, summarizes:<sup>171</sup>

*Human rights language ... provides a context and a detailed and balanced framework. It invokes the specific legal obligations that states have agreed upon in the various human rights treaties, it brings a degree of normative certainty and it brings into the discussion the carefully negotiated elaborations of the meaning of specific rights that have emerged from decades of reflection, discussion and adjudication.*

*Even more importantly, rights language recognizes the dignity and agency of all individuals ... and it is intentionally empowering; ... it makes a difference if one is calling for the realization of agreed human rights ... rather than making a general request or demand. Human rights are inseparable from the notion of accountability.*

This Guide sets out the obligations that States have in protecting, respecting and fulfilling human rights and describes how the existing international human rights framework may be engaged to protect against social, environmental and climate impacts of fracking and to address rights violations caused by fracking.

Corporations have responsibilities in preventing and addressing human rights violations. The Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework 2011<sup>173</sup> reminds corporations that:

*Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*

The focus of the UN system, however, is on the role of the State to ensure that its national legislation and public policies effectively prevent and redress these abuses.

it is troubling that a 2010 Report of the Special Rapporteur on the situation of human rights defenders<sup>172</sup> notes that:

*A number of human rights violations against human rights defenders are committed by private corporations, a category that should be understood as consisting of companies, whether*



*national or transnational, not owned or operated by Governments. Private corporations have allegedly been impeding the activities of defenders working, inter alia, on labour rights, the exploitation of natural resources, the rights of indigenous peoples and minorities.*

What recourse exists when governments are turning a blind eye to threats and abuses from corporations involved in fracking?

Given the manifold violations around the world, a legally binding international treaty on business and human rights is desperately needed and can make an important contribution to the efforts for greater accountability of private actors. Until then, however, the international human rights system does provide strong norms and mechanisms to spur States toward improved policies and practices vis-a-vis corporate action within their jurisdiction.

National litigation and administrative proceedings can also have the impact of improving policy and precedent. These actions can also be strengthened by drawing upon international legal standards and norms.

The report by Bamberger and Oswald concerning the U.S.A. noted the difficulty in documenting cases of animal and owner

health problems with potential links to gas drilling.

The following are some examples of litigation in relation to the environment and human rights, including fracking:

In April 2014, a Texas jury awarded \$3 million to a family affected by fracking who alleged that hazardous gases, chemicals and industrial waste made them so ill they could not work or live in their home. The award included \$275,000 for loss of market value to the family property, and \$2 million for past physical pain and suffering.<sup>175</sup>

Meanwhile, in October 2014 the railroad commission of Texas (RRC) amended its existing oil and gas disposal well regulations so that if seismicity increases in the area of a well, the RRC now has explicit regulatory provisions “allowing it to impose injection pressure and rate limits, a temporary injection ban or even outright cancellation of a disposal well permit.”<sup>176</sup>

A 2014 ruling by Canada’s high court recognized the aboriginal title of the Tsilhqot’in First Nation to a specific tract of land. This set a legal precedent affecting resource rights and making it harder for governments to justify economic development on aboriginal land.

Oil industry website OilPrice.com said of the ruling:<sup>177</sup>

*Business for oil companies operating in Canada just got more complicated because of a Supreme Court ruling that significantly expands the ability of a native tribe’s ability to potentially veto proposed land use plans. ... The court stated that the Tsilhqot’in had the right to determine “the uses to which the land is put and to enjoy its economic fruits.” That power could prove to be a major obstacle for industrial companies seeking to build major infrastructure projects like roads, bridges, power plants, and pipelines.*

In October 2014, health and environmental groups filed a complaint in the U.S. Court of Appeals challenging the Environmental Protection Agency’s (EPA) faulty approval of a regional smog plan which fails to achieve National Ambient Air Quality Standards and reduce pollution vulnerabilities.<sup>178</sup>

In 2013, a Dutch court ruled against the oil company Shell for a case of oil pollution in the Niger Delta, seen as “a test for holding multinationals responsible for offences at foreign subsidiaries.”<sup>179</sup> In January 2015, Shell announced a settlement of £55M for individuals and the Bodo community in Nigeria affected by oil spills.<sup>180</sup>

At the level of International Law, in September 2006, the Inter-American Court of Human Rights issued a landmark ruling, becoming the first international tribunal to recognize a basic right of access to government information as an element of the right to freedom of expression. The case concerned a major logging undertaking, known as the Condor River project.<sup>181</sup>

In another freedom of information case, this time concerning fracking, a Pennsylvania kidney specialist, Dr. Alfonso Rodriguez, has taken a case to the U.S. Court of Appeals, challenging the state’s fracking law, which prohibits the disclosure of the chemicals and fluids used in fracking unless doctors sign a confidentiality agreement. Dr. Rodriguez says the law prohibits him from sharing what he believes to be crucial treatment information with his patients.<sup>182</sup>

Meanwhile there are calls for legal reform. The United Nations World Water Development Report 2014,<sup>183</sup> which focuses on water and energy, recommends that:

*Legal and regulatory frameworks should be created to channel reforms and establish rules and sanctions for infractions by users, including businesses. Calls for closer regulation and greater*

*transparency, monitoring and local community engagement are part of the public and political reaction to the potential impact on water from the development of unconventional sources of oil and gas; for example, fracking in Argentina, Mexico, the USA and in Europe.*

A proposed International Law that could change the state of affairs for human rights violations caused by fracking is the International Law of Ecocide.<sup>184</sup> Ecocide law would put in place a pre-emptory duty of care at the very top end and hold to account individuals in positions of “superior responsibility.”

Laws prohibiting Ecocide currently exist in the national legislation of ten countries, and it was first proposed as an international crime in the 1970s. However, despite it being drafted into the Rome Statute (which codifies the existing Crimes against Peace: Genocide, War Crimes, Crimes Against Humanity and Crimes of Aggression), a law of Ecocide was removed at the eleventh hour. Many nations objected to its removal in 1996. In 2010 a fully proposed draft Ecocide law was submitted to the United Nations by Barrister Polly Higgins.

## Global Atlas of Environmental Justice

In March 2014, the Environmental Justice Organisations, Liabilities and Trade (EJOLT) project launched a Global Atlas of Environmental Justice which catalogues social conflict around environmental issues <http://ejatlas.org/>.

It includes a global map of fracking activity <http://ejatlas.org/featured/fracking-frenzy> produced as part of the Friends of the Earth Report Fracking Frenzy: How the Fracking Industry and Threatening the Planet December 2014 [https://www.foeeurope.org/sites/default/files/publications/fracking\\_frenzy\\_0.pdf](https://www.foeeurope.org/sites/default/files/publications/fracking_frenzy_0.pdf)





# CONCLUSION

## *Early Warnings, Later Lessons*

The human rights impacts of fracking are both far-reaching and severe. As outlined in these pages with pertinent examples taken from the U.S. and elsewhere, fracking has implications for the human rights to health, water, food, housing, public participation, access to information and cultural rights.

The violation of these rights impacts our entire world: from its animals and ecosystems, to communities and individuals.

Of greatest concern is that, while the risks and negative impacts of fracking are being documented every day, we are perhaps still in the industry's infancy: In Texas, producing horizontal wells in Barnett shale alone rose from fewer than 400 in 2004 to more than 10,000 during 2010.<sup>185</sup> The question then becomes how those negative impacts will also increase in the future, and how they will be addressed.

As the Special Rapporteur on the implications for human

rights of the environmentally sound management and disposal of hazardous substances and wastes, Marc Pallemmaerts, noted in August 2013:<sup>186</sup>

*Health and environmental risks of hazardous substances used extensively are generally discovered in hindsight, when the substances have already become widespread in the environment in large quantities and are having adverse effects on the enjoyment of human rights or on the state of ecosystems.*

The good news is that civil society and the communities and individuals affected by fracking have rights. There are established and accessible mechanisms people can engage to report human rights violations caused by fracking. By exercising their rights through official channels, people can be agents of change in the protection of both the planet and its people – ranging from the quality of soil to the quality of life.

Although there is no specific norm or instrument that addresses fracking, this Guide demonstrates numerous ways that the existing human rights

framework can provide options for advocating for improved policies and intervening in particular cases. These include platforms for engagement with Special Procedures, the Universal Periodic Review, the Human Rights Council, and mechanisms offered by specific treaties at both the international and regional levels.

The primary objective of engaging these procedures is to influence government policy and practice in favor of human rights protections. Beyond that there are numerous other benefits: evidence is recorded in the UN system and public arena, there is greater awareness of the issues, and there is increased democratic dialogue and participation.

This Guide seeks to assist in that process so that individuals and communities can exercise their rights and hold governments accountable and, through them, corporations as well. A human rights-based approach will contribute to the existing diverse efforts by groups around the world working to protect people and planet from the harmful impacts of fracking.



# ENDNOTES

1. U.S. Environmental Protection Agency, The Process of Hydraulic Fracturing, Accessed online January 6, 2015, at <http://www2.epa.gov/hydraulicfracturing/process-hydraulic-fracturing>.
2. New York State Department of Environmental Conservation, Revised Draft, Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program Well Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and other Low-Permeability Reservoirs, Sept. 7, 2011, at 5-40, 5-50 [hereinafter NYSRDSGEIS 2011].
3. U.S. Environmental Protection Agency, supra note 1, U.S. Department of Energy, Natural Gas from Shale: Questions and Answers. Accessed online January 6, 2015, at [http://energy.gov/sites/prod/files/2013/04/f0/how\\_is\\_shale\\_gas\\_produced.pdf](http://energy.gov/sites/prod/files/2013/04/f0/how_is_shale_gas_produced.pdf).
4. U.S. Environmental Protection Agency, Appendix A, Department of Energy – Hydraulic Fracturing White Paper, at 1. Accessed January 6, 2015, at [http://www.epa.gov/ogwdw/uic/pdfs/cbmstudy\\_attach\\_uic\\_append\\_a\\_doe\\_whitepaper.pdf](http://www.epa.gov/ogwdw/uic/pdfs/cbmstudy_attach_uic_append_a_doe_whitepaper.pdf).
5. U.S. Environmental Protection Agency, 2008 Sector Performance Report: Oil & Gas, at 80. Accessed online January 6, 2015, at [http://www.epa.gov/sectors/pdf/2008/oil\\_gas.pdf](http://www.epa.gov/sectors/pdf/2008/oil_gas.pdf).
6. David Wethe et al. George P. Mitchell, Who Revolutionized Oil and Gas Exploration, Dies at 94, The Washington Post (July 26, 2013), Accessed online January 6, 2015, at [http://www.washingtonpost.com/business/george-p-mitchell-who-revolutionized-oil-and-gas-exploration-dies-at-94/2013/07/26/5dbf258c-f61f-11e2-aa2e-4088616498b4\\_story.html](http://www.washingtonpost.com/business/george-p-mitchell-who-revolutionized-oil-and-gas-exploration-dies-at-94/2013/07/26/5dbf258c-f61f-11e2-aa2e-4088616498b4_story.html).
7. See, e.g., Ian Urbina, Hunt for Gas Hits Fragile Soil, and South Africans Fear Risks (Dec. 31, 2011, A1). Accessed online January 6, 2015, at <http://www.nytimes.com/2011/12/31/world/south-african-farmers-see-threat-from-fracking.html>.
8. See, e.g., Andrew Higgins, Russian Money Suspected Behind Fracking Protests, New York Times (Dec. 1, 2014), at A6. Simon Romero and Clifford Krauss, An Odd Alliance in Patagonia, New York Times (Oct. 22, 2013), at B1; Brian Spegele and Justin Scheck, Energy-Hungry China Struggles to Join Shale-Gas Revolution, Wall Street Journal (Sept. 5, 2013), at A1.
9. Clifford Krauss, U.S. Oil Producers Cut Rigs as Price Declines, New York Times (Jan. 8, 2015), at B1.
10. Supra note 11.
11. New York State Department of Environmental Conservation, Draft Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program, Volume 1, Jan. 1988, at 9-26.
12. New York State Department of Environmental Conservation, Revised Draft, Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program Well Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and other Low-Permeability Reservoirs, Sept. 7, 2011, at ES-8.
13. Clifford Kraus, Natural Gas Contrarian, New York Times (Dec. 23, 2014), at B1.
14. Theresa L. Watson et al, Evaluation of the Potential for Gas and CO2 Leakage Along Wellbores, Society of Petroleum Engineers (2009), at 121.
15. Climate Change 2013: The Physical Science Basis. IPCC, 2013: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Ch.8, p. 711-714, Table 8.7. 2013. <http://www.foodandwaterwatch.org/water/fracking/why-fracking-is-dangerous/>
16. <http://www.foodandwaterwatch.org/water/fracking/why-fracking-is-dangerous/>
17. Statement by John H. Knox, Independent Expert on Human Rights and the Environment at “The Development of Environmental Human Rights”; Fourth meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean; Santiago, Chile, 6 November 2014; <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15274&LangID=E#sthash.hry74xCt.dpuf>
18. Knox, John H., Preliminary Report, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2012, Par. 34.
19. Knox, John H., Mapping Report, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2013, A/HRC/25/53, Par 18.
20. Ibeanu, Okechukwu. Report of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, 2010, Par. 37.
21. H.R.C. Res. 7/23, U.N. H.R.C., at introduction, 1, 7th Sess., U.N. Doc. A/HRC/RES/7/23 (Mar. 28, 2008), available at [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_7\\_23.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf)
22. New York State Department of Health, A Public Health Review of High Volume Hydraulic Fracturing for Shale Gas Development (Dec. 2014), at 11. Accessed Jan. 8, 2015 at [http://www.health.ny.gov/press/reports/docs/high\\_volume\\_hydraulic\\_fracturing.pdf](http://www.health.ny.gov/press/reports/docs/high_volume_hydraulic_fracturing.pdf).
23. Ibid. at 7.
24. List of the Harmed in Pennsylvania Compiled by Jenny Lisak -Updated as of June 11th, 2013-. Accessed February 25th, 2015 at <https://pennsylvaniaallianceforcleanwaterandair.files.wordpress.com/2013/02/list-of-the-harmed-in-pennsylvania10.pdf>
25. Shale Gas Development and Infant Health: Evidence from Pennsylvania Elaine L. Hill, December 2013, Accessed 5 March 2015 at <http://dyson.cornell.edu/research/researchpdf/wp/2012/Cornell-Dyson-wp1212.pdf>
26. Symptomatology of a gas field: An independent health survey in the Tara rural residential estates and environs, April 2013.
27. Ibid Executive Summary
28. Committee on Economic Social and Cultural Rights, General Comment No. 14 (2000), The Right to the Highest Attainable Standard of Health, Par. 11.
29. Ibid. Par. 11.
30. Ibid. Par. 12(b).
31. Ibid. Par. 15.
32. Ibid.
33. Ibid. Par. 16.
34. Ibid. Par. 27.
35. Ibid.
36. Committee on the Rights of the Child, General Comment No. 15 (2013), The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health, Par. 49.
37. CESCR, General Comment No. 14, Par. 36.
38. Ibid. Par. 52.
39. Henry A. Waxman, et al. U.S. Congress, Committee on Energy & Commerce, Minority Staff, Chemicals Used in Hydraulic Fracturing (April 18, 2011). Accessed Jan. 8, 2015, at <http://democrats.energycommerce.house.gov/sites/default/files/documents/Hydraulic-Fracturing-Chemicals-2011-4-18.pdf>.
40. Neela Banerjee. Oil companies fracking into drinking water sources, new research finds, Los Angeles Times (August 12, 2014). Accessed Jan. 8, 2015, at <http://www.latimes.com/nation/la-na-fracking-ground-water-pavillion-20140811-story.html#page=1>.
41. U.S. Geological Survey, New York Water Science Center, Comments on the Revised Draft Supplemental Generic Environmental Impact Statement (2012) at 10.
42. Ian Urbina. A Tainted Water Well, and Concern There May be More, New York Times (Aug. 4, 2011), at A13.
43. Bruce Finley. Drilling spills reaching Colorado groundwater; state mulls test rules, The Denver Post (December 9, 2012), Accessed Jan. 8, 2015, at [http://www.denverpost.com/environment/ci\\_22154751/drilling-spills-reaching-colorado-groundwater-state-mulls-test#ixzz2EihHU2fg](http://www.denverpost.com/environment/ci_22154751/drilling-spills-reaching-colorado-groundwater-state-mulls-test#ixzz2EihHU2fg).
44. Ian Urbina. Regulation lax as gas wells' tainted water hits rivers, The New York Times (Feb. 27, 2011), at A1. Accessed Jan. 8, 2015, at <http://www.nytimes.com/2011/02/27/us/27gas.html?pagewanted=all&r=0>.
45. United States Government Accountability Office, Drinking water: Safeguards are not preventing contamination from injected oil and gas wastes (July 5, 1989). Accessed Jan. 8, 2015, at <http://www.gao.gov/products/RCED-89-97>.
46. U.S. Government Accountability Office, Drinking water: characterization of injected fluids associated with oil and gas production (September 23, 2014). GAO-14-657R. Accessed Jan. 8, 2015, at <http://www.gao.gov/products/GAO-14-857R>.
47. J.L. Rubinstein et al. The 2001-present induced earthquake sequence in the Raton Basin of Northern New Mexico and Southern Colorado [abstract], Bulletin of the Seismological Society of America (2014). Accessed Jan. 8, 2015, at <http://www.bssaonline.org/content/104/5/2162.abstract?stoc>.
48. W.D. Barnhart, et al. Seismological and geodetic constraints on the 2011 Mw5.3 Trinidad, Colorado earthquake and induced deformation in the Raton Basin, J. Geophys. Res. Solid Earth (2014) 119, 7923 – 7933, doi:10.1002/2014JB011227. Accessed Jan. 8, 2015 at <http://onlinelibrary.wiley.com/doi/10.1002/2014JB011227/abstract>.
49. Won-Young Kim, Induced seismicity associated with fluid injection into a deep well in Youngstown, Ohio, Journal of Geophysical Research: Solid Earth, 19 JUL 2013. Accessed February 25th, 2015 at <http://onlinelibrary.wiley.com/doi/10.1002/jgrb.50247/abstract>
50. Marc Levy. DEP fines Chesapeake \$1 million. Pressconnects.com (May 18, 2011). Accessed Jan. 8, 2015 at <http://www.pressconnects.com/viewart/20110517/NEWS01/105170345/DEP-fines-Chesapeake-1-million>.
51. IPCC Fifth Assessment Report, Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (accepted September 26, 2013). Accessed Jan. 8, 2015 at <http://www.ipcc.ch/report/ar5/>, at 714.
52. International Energy Agency, World Energy Outlook: Special Report on Unconventional Gas (November 2012)
53. Asit Biswas and Julian Kircher, Shale Gas: Black Hole for Water, Huffington Post, March 29, 2013, [http://www.huffingtonpost.com/asit-biswas/fracking-water\\_b\\_2837779.html](http://www.huffingtonpost.com/asit-biswas/fracking-water_b_2837779.html); Mail and Guardian, Karoo Fracking: Water, Wealth, and Whites, October 28, 2013, <http://mg.co.za/article/2013-10-28-karoo-fracking-water-wealth-and-whites>
54. United Nations General Assembly, Resolution: The human right to water and sanitation, 2010 (A/RES/64/292).
55. Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2003), The right to water, Par. 2.
56. Ibid. Par. 7.
57. Ibid. Par 11.
58. Ibid. Par. 10.
59. Ibid. Par. 12(a).
60. Ibid. Par. 12(b).
61. Ibid. Par. 12(c).
62. Ibid. Par. 13.
63. Ibid. Par. 12(c).
64. Ibid. Par. 19.
65. Ibid. Par. 21.
66. Ibid. Par. 23.
67. Ibid. Par. 23.
68. Ibid. Par. 24.
69. Ibid. Par. 25.
70. Ibid. Par. 28.
71. Ibid. Par. 28.



# ENDNOTES

72. Ibid. Par. 28.
73. Ibid. Par. 35.
74. Ibid. Par. 44.
75. CESCR, General Comment No. 15, Par. 1.
76. Ibid. Par. 8.
77. Ibid. Par. 12(b).
78. Georgescu, Calin, Human Rights and Extractive Industries, Report of the Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and wastes, 2012, UN Doc. A/HRC/21/48, Par. 8.
79. Ibid. Par. 14.
80. Ibid. Par. 14.
81. Ibid. Par. 70(b).
82. Bruce Finley. Colorado faces oil boom “death sentence” for soil, eyes microbe fix. The Denver Post (May 4, 2014), Accessed Jan. 8, 2015 at [http://www.denverpost.com/environment/ci\\_25692049/colorado-faces-oil-boom-death-sentence-soil-eyes](http://www.denverpost.com/environment/ci_25692049/colorado-faces-oil-boom-death-sentence-soil-eyes).
83. Mary Beth Adams, et al. Effects of development of a natural gas well and associated pipeline on the natural and scientific resources of the Fernow experimental forest, U.S. Forest Service (January 2011). Accessed Jan. 8, 2015 at [http://www.fs.fed.us/nrs/pubs/gtr/gtr\\_nrs76.pdf](http://www.fs.fed.us/nrs/pubs/gtr/gtr_nrs76.pdf).
84. Mark Schleifstein. Haynesville natural gas field is the most productive in the U.S. The Times-Picayune (March 27, 2011), Accessed Jan. 8, 2015, at [http://www.nola.com/politics/index.ssf/2011/03/haynesville\\_natural\\_gas\\_field.html](http://www.nola.com/politics/index.ssf/2011/03/haynesville_natural_gas_field.html). KSLA. Cows in Caddo Parish fall dead near gas well. KSLA News (April 28, 2009). Accessed Jan. 8, 2015 at <http://www.ksla.com/Global/story.asp?S=10268585>.
85. Michelle Bamberger, Robert E. Oswald, New Solutions, Vol. 22(1) 51-77, 2012 Impacts Of Gas Drilling on Human and Animal Health. Accessed Feb 25, 2015 at [www.psehealthenergy.org/data/Bamberger\\_Oswald\\_NS22\\_in\\_press.pdf](http://www.psehealthenergy.org/data/Bamberger_Oswald_NS22_in_press.pdf)
86. Op Cit Appendix
87. Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999), The Right to Adequate Food, Par. 8.
88. Ibid. Par. 10.
89. Ibid. Par. 10.
90. Ibid. Par. 12.
91. Ibid. Par. 8.
92. Ibid. Par. 13.
93. Ibid. Par. 15.
94. Ibid. Par. 25.
95. Ibid. Par. 26.
96. Ibid. Par. 27.
97. Multi-State Shale Research Collaborative, (2014, April 10). Assessing the impacts of shale drilling county case studies. Accessed Jan. 8, 2015, at <http://www.multistateshale.org/case-studies>.
98. Michelle Conlin. Gas drilling is killing property values for some Americans. Reuters (Dec. 12, 2013). Accessed Jan. 8, 2015, at <http://www.businessinsider.com/drilling-can-make-some-properties-un-sellable-2013-12#ixzz2nMgFv8FU>.
99. Hands Across Riverdale: The Human Costs of Fracking. Huffington Post, 8 March 2012. Accessed 25 February, 2015 at [www.huffingtonpost.com/stanley-rogouski/fracking\\_b\\_1566162.html](http://www.huffingtonpost.com/stanley-rogouski/fracking_b_1566162.html)
100. Forced migration: the dynamics of displacement and response IFRC, 2012. Accessed 25 February, 2015 at [www.ifrcmedia.org/assets/pages/wdr2012/styled/chapter-1/index.html](http://www.ifrcmedia.org/assets/pages/wdr2012/styled/chapter-1/index.html)
101. Ibid Chapter 5 <http://www.ifrc-media.org/assets/pages/wdr2012/styled/chapter5/index.html>
102. Op cit p6
103. Shared with the authors of this report
104. Shared with the authors of this report
105. De Albuquerque, Catarina. Realising the Human Right to Water and Sanitation: A Handbook by the UN Special Rapporteur, Catarina de Albuquerque. Handbook Introduction, page 37. 2014.
106. Kothari, Miloon, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, 2001,
107. Committee on Economic, Social and Cultural Rights, General Comment No. 4 (1991), The right to adequate housing (Art.11 (1)), Par. 8(a).
108. Ibid. Par. 8(b).
109. Committee on Economic, Social and Cultural Rights, General Comment No. 7, Par. 8, See article 17.1 of the International Covenant on Civil and Political Rights (ICCPR).
110. Committee on Economic, Social and Cultural Rights, General Comment No. 9, Par. 9.
111. CESCR, General Comment No.4. Par. 8(d).
112. Ibid. Par. 8(f).
113. Ibid. Par. 12.
114. Ibid. Par. 13.
115. CESCR, General Comment No. 7. Par. 7.
116. Ibid. Par. 9.
117. Ibid. Par. 16.
118. Henry A Waxman, et al. (2011, April 18), U.S. Congress, Committee on Energy & Commerce, Minority Staff, Chemicals Used in Hydraulic Fracturing (April 18, 2011). Accessed Jan. 8, 2015, at <http://democrats.energy-commerce.house.gov/sites/default/files/documents/Hydraulic-Fracturing-Chemicals-2011-4-18.pdf>.
119. Benjamin Haas et al. Fracking Hazards Obscured in Failure to Disclose Wells, Bloomberg (Aug. 14, 2012). Accessed Jan. 8, 2015, at <http://www.bloomberg.com/news/2012-08-14/fracking-hazards-obscured-in-failure-to-disclose-wells.html>.
120. Environmental Protection Agency. (1987). Report to Congress: Management of wastes from the exploration, development, and production of crude oil, natural gas, and geothermal energy (Rep.). 137-138. Washington, D.C.: U.S. Environmental Protection Agency.
121. Jim Efstathiou, Jr., & Mark Drajem. Drillers silence fracking claims with sealed settlements. Bloomberg (June 5, 2013), Accessed Jan. 8, 2015, at <http://www.bloomberg.com/news/2013-06-06/drillers-silence-fracking-claims-with-sealed-settlements.html>.
122. Op cit p53
123. Ibid.
124. Human Rights Committee, General Comment No. 34 (2011), Article 19: Freedoms of Opinion and Expression, Par. 19.
125. Ibid. Par. 19.
126. Committee on Economic Social and Cultural Rights, General Comment No. 14 (2000), The Right to the Highest Attainable Standard of Health, Par. 12 (b) (iiii).
127. Ibid. Par. 44(d)
128. Committee on Economic, Social and Cultural Rights, General Comment No. 15, The right to water (2003), U.N. Doc. E/C.12/2002/11 (2002), Par. 48.
129. Ibid. Par. 56.
130. Knox, John H., Mapping Report, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2013, A/HRC/25/53, Par. 31.
131. Georgescu, Calin, Human Rights and Extractive Industries, Report of the Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and wastes, 2012, UN Doc. A/HRC/21/48, Par. 70(c).
132. Human Rights Committee, General Comment No. 25 (1996), The right to participate in public affairs, voting rights and the right of equal access to public service, Par. 8.
133. Police accused of brutality as fracking protester is left ‘battered and bruised’ Guardian, 21 January 2014. Accessed February 25th, 2015 at <http://www.theguardian.com/uk-news/2014/jan/21/police-accused-brutality-anti-fracking-protester>
134. CESCR, General Comment No. 15, Par. 48.
135. Committee on Economic Social and Cultural Rights, General Comment No. 4 (1991), The Right to Adequate Housing, Par. 12.
136. Committee on Economic Social and Cultural Rights, General Comment No. 12 (1999), The Right to Adequate Food, Par. 23.
137. HR Committee, General Comment No. 25, Par. 3.
138. Ibid. Par. 5.
139. Georgescu, Par. 69(g).
140. CESCR, General Comment No. 15, Par. 56.
141. Human Rights Committee. General Comment No. 23 (1994), The Rights of Minorities, Par. 7.
142. Committee on the Rights of the Child, General Comment No. 12 (2009), The Right of the Child to be Heard, Par. 87.
143. Ibid. Par. 134.
144. CESCR, General Comment No. 15, Par. 24.
145. Ibid. Par. 59.
146. CESCR, General Comment No. 14, Par. 17.
147. See for example Lancaster University Cultural Diversity and the Conservation of Biodiversity. Accessed February 25th, 2015 at <http://www.cesagen.lancs.ac.uk/virtual/biodiversity/section1/cultural.htm>
148. General Comment No. 21: Right of everyone to take part in cultural life 2009. Accessed March 6th, 2015 at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&Doc-TypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&Doc-TypeID=11)
149. Report of the independent expert in the field of cultural rights, Farida Shaheed March 2011 Accessed March 6th, 2015 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/122/04/PDF/G1112204.pdf?OpenElement>
150. Report of the Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and waste, Calin Georgescu, UN Doc. A/HRC/21/48 (July 2, 2012), para. 39.
151. To Ms. Victoria Tauli-Corpuz, Special Rapporteur on the Rights of Indigenous Peoples, Re: Australia’s failure to protect the Mithaka peoples’ rights to culture and to be consulted and involved in decisions about resource exploitation on our traditional lands. 3 December 2014. Accessed February 25th, 2015 at <https://mithaka.files.wordpress.com/2014/11/submission-to-the-special-rapporteur-by-the-mithaka-people-03-12-2014.pdf>
152. Concluding observations on the eighteenth to the twentieth periodic reports of New Zealand, Committee on the Elimination of Racial Discrimination, 17 April 2013, accessed 6 March 2015 at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx)
153. OpCit p3
154. For a useful overview see Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers 2003, Chapter 3 The Major Regional Human Rights Instruments and the Mechanisms for Their Implementation. Accessed 6 March 2015 at <http://www.ohchr.org/Documents/Publications/training9chapter3en.pdf>
155. Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework March 2011 [http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31\\_AEV.pdf](http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf)
156. OHCHR Communications reports of special procedures <http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>
157. A standing invitation is an open invitation to visit that State. The mandate-holder must still request to visit the State but in principle, all requests are granted. A list of countries who have issued standing invitations can be found at <http://www.ohchr.org/EN/HRBodies/SP/Pages/Invitations.aspx>
158. Capacity-Building Tools for Civil Society, UPR Info, <http://www.upr-info.org/en/how-to/documentation-for-ngos/upr-info-documents>
159. Ratification of 18 International Human Rights Treaties, <http://indicators.ohchr.org>



## ENDNOTES

160. A master calendar has been created that lists the expected dates of consideration by the treaty body, [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/MasterCalendar.aspx?Type=Session&Lang=En](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx?Type=Session&Lang=En)
161. Danish Institute for Human Rights and the Global Oil and Gas Industry Association for Environmental and Social Issues, Integrating Human Rights into Environmental, Social and Health Impact Assessments – A Practical Guide for the Oil and Gas Industry, 2013, [http://www.ipieca.org/sites/default/files/publications/Integrating\\_HR\\_into\\_environmental\\_social\\_and\\_HIS\\_0.pdf](http://www.ipieca.org/sites/default/files/publications/Integrating_HR_into_environmental_social_and_HIS_0.pdf)
162. Knox, John H., Mapping Report, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2013, A/HRC/25/53, Par. 29.
163. Georgescu, Calin, Human Rights and Extractive Industries, Report of the Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and wastes, 2012, UN Doc. A/HRC/21/48, Par. 69(f).
164. Catarina de Albuquerque, Wastewater management in the realization of the rights to water and sanitation, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, 2013, Par. 73.
165. Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2003), The right to water, Par. 28.
166. The United Nations Conference on Environment and Development, Rio Declaration, Principle 17, <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>
167. Knox, Par. 35.
168. Georgescu, Par. 69 (f).
169. Rio Declaration, Principle 15.
170. A Public Health Review of High Volume Hydraulic Fracturing for Shale Gas Development, New York State Department of Public Health (Dec. 2014), Accessed Jan. 8, 2015, at [http://www.health.ny.gov/press/reports/docs/high\\_volume\\_hydraulic\\_fracturing.pdf](http://www.health.ny.gov/press/reports/docs/high_volume_hydraulic_fracturing.pdf).
171. Philip Alston, Third Committee, 28th meeting - 69th General Assembly, 24 Oct 2014 accessed 16 March 2015 at <http://webtv.un.org/search/third-committee-28th-meeting-%E2%80%93-69th-general-assembly/3860798389001?term=Philip%20Alston%20Third%20Committee>
172. Report of the Special Rapporteur on the situation of human rights defenders August 2010. Accessed 25 February, 2015 at <http://www2.ohchr.org/english/issues/defenders/docs/A-65-223.pdf>
173. Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework 2011. Accessed 25 February, 2015 at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)
174. Op cit page 53
175. Jury Awards Texas Family \$2.9M For Fracking Nuisance Claim, Law360, 22 April 2014, accessed 6 March 2015 at <http://www.law360.com/articles/530645/jury-awards-texas-family-2-9m-for-fracking-nuisance-claim>
176. New rules address earthquake and fracking concerns in Texas, Norton Rose Fulbright, 17 November 2014, accessed 6 March 2015 at <http://www.nortonrosefulbright.com/knowledge/publications/125181/new-rules-address-earthquake-and-fracking-concerns-in-texas>
177. Canadian Supreme Court Ruling Throws Major Pipeline into Doubt June 2014. Accessed 25 February, 2015 at <http://oilprice.com/Energy-General/Canadian-Supreme-Court-Ruling-Throws-Major-Pipeline-into-Doubt.html>
178. Health And Environmental Groups File Lawsuit To Fight Filthy Air In Los Angeles, Earth Justice 31 October 2014. Accessed February 26th, 2015 at <http://earthjustice.org/news/press/2014/health-and-environmental-groups-file-lawsuit-to-fight-filthy-air-in-los-angeles>
179. Dutch court says Shell responsible for Nigeria spills, Reuters, 30 January 2013. Accessed February 26th, 2015 at <http://uk.reuters.com/article/2013/01/30/uk-shell-nigeria-law-suit-idUKBRE90T0DC20130130>
180. Shell announces £55m payout for Nigeria oil spills, Guardian, 7 January 2015. Accessed February 26th, 2015 at <http://www.theguardian.com/environment/2015/jan/07/shell-announces-55m-payout-for-nigeria-oil-spills>
181. Open Society Foundation, Global Human Rights Litigation, October 2013. Accessed February 26th, 2015 at <http://www.opensocietyfoundations.org/sites/default/files/global-litigation-report-12102013.pdf>
182. Doctor Battles Gag Rule in Fracking Statute, The National Trial Lawyers, 13 February 2015. Accessed February 26th, 2015 at <http://www.thenationaltriallawyers.org/2015/02/doctor-fracking-law/>
183. The United Nations World Water Development Report 2014, Accessed 9 March 2015 at <http://www.unwater.org/publications/world-water-development-report/en/>
184. <http://www.eradicatingecocide.com>
185. Technology drives natural gas production growth from shale gas formations, US Energy Information Administration, July 2011, accessed 9 March 2015 at <http://www.eia.gov/todayinenergy/detail.cfm?id=2170>
186. Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marc Pallemmaerts 13 August 2013, accessed 9 March 2015 at [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-39\\_en.pdf](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-39_en.pdf)

# SPONSORS AND CONTRIBUTORS

## PREPARED BY

**Sisters of Mercy (NGO), Mercy International Association: Global Action**

**Áine O'Connor, RSM**  
Mercy Global Action  
Coordinator at the UN

**Human Rights Project Advisor**

**Amanda Lyons**  
Advocacy Officer,  
Franciscans  
International

**Project Coordinator**

**Avery Kelly**  
Fellow, Sisters of Mercy (NGO), Mercy International Association:  
Global Action

## WRITERS AND CONTRIBUTORS

**Carlos Lozano Acosta**  
Environmental Lawyer

**Dusty Horwitt**  
Attorney

**Avery Kelly**  
Fellow, Sisters of Mercy (NGO), Mercy International Association:  
Global Action

**Amanda Lyons**  
Human Rights Lawyer and  
Advocacy Officer,  
Franciscans  
International

**Laura Theytaz-Bergman**  
Human Rights  
Consultant

**Elizabeth Willmott-Harrop**  
Human Rights  
Advocacy  
Consultant and  
Writer

**PHOTOGRAPHIC CONSULTANT**

**Kim Kelly**

**GRAPHIC DESIGNER**

**Julie Conway**

## EDITORS

**Rita Parks, RSM**  
Sisters of Mercy (NGO), Mercy International Association:  
Global Action

**Elizabeth Willmott-Harrop**  
Human Rights  
Advocacy  
Consultant and  
Writer

## PUBLISHED

**June 2015**

*Acknowledgment: Sponsors, Consultants, Writers, Contributors, Editors, Designer and Photographers.*





**Sisters of Mercy (NGO),  
Mercy International  
Association: Global Action**

Sisters of Mercy (NGO) enjoys  
Special Consultative Status with  
the Economic and Social Council  
(ECOSOC) of the United Nations.

**Contact:**

**Áine O'Connor, RSM**  
Mercy Global Action  
Coordinator at the UN  
777 UN Plaza, 6h  
New York, NY 10017  
USA

[mgc@mercyinternational.ie](mailto:mgc@mercyinternational.ie)

**For more information:**  
[www.mercyworld.org](http://www.mercyworld.org)