



# A GUIDE TO RIGHTS-BASED ADVOCACY

## International Human Rights Law and Fracking

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### FRACKING AND HUMAN RIGHTS

Hydraulic fracturing, or *fracking*, is a technique for extracting oil and natural gas. Fracking involves the injection of water mixed with proppant (sand and chemicals) into drill wells at high pressures and the subsequent fracturing of underground rock formations, thus extracting trapped oil or natural gas.

#### HOW CAN FRACKING IMPACT HUMAN RIGHTS?

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International **human rights law** is comprised primarily of 9 core legally-binding human rights treaties to which countries (Member States of the United Nations) have voluntarily agreed to be bound. Upon ratification, countries become legally obligated to respect, protect, and fulfill the human rights laid out by each particular treaty. Many universal human rights were first recognized internationally by the Universal Declaration of Human Rights in 1945. International human rights law is enforced in part through a system of monitoring and reporting mechanisms like those under the Human Rights Council ("Special Procedures") and those set up by each treaty called "treaty bodies"—committees of independent experts set up to evaluate treaty implementation.

### KNOWN AND POTENTIAL HUMAN RIGHTS IMPACTS OF FRACKING:

#### Health

The human right to the highest attainable standard of health is outlined in the International Covenant on Economic, Social and Cultural Rights (1966) in Article 12; the Convention on Rights of the Child (1989) in Article 24, and the Convention on the Rights of Persons with Disabilities (2006) in Article 28.

Some **key components** of the right to health (paraphrased from international law):

1. The right to safe and potable water
2. The right to healthy occupational and environmental conditions
3. The right to access health information
4. The reduction of population exposure to harmful chemicals that directly or indirectly impact human health
5. States' duties to regulate and monitor the impact of business activities that may compromise children's right to health

Fracking poses risks to the right to health by:

- Links to low average birth weights in children born to mothers living within 2.5 km of a shale gas well and detectable reduced birth weights in children of mothers living more than 3.5km away (**key component 5**);
- Releasing known and potential carcinogens into surrounding air and water (through emissions inherent to the process and unintended leaks and spills into groundwater) (**key components 1, 2, 4**);
- Consistent reports of skin rashes, nausea, vomiting, nose bleeds, ear bleeds, severe fatigue, eye irritation, joint pain, muscular pain and spasms, across contexts where fracking takes place (**key component 2**);
- Lack of transparency of identities and potential health impacts of chemicals deemed “proprietary” or “trade secrets” by fracking corporations; secrecy maintained through “cash settlements” and “property buyouts” for people whose health impacts have become unbearable (**key components 3, 5**)

## Water

In international treaties, the human right to water appears in the Convention on the Elimination of All Forms of Discrimination against Women (1979) in Article 14; the Convention on the Rights of the Child (1989) in Article 24; and the Convention on the Rights of Persons with Disabilities (2006) in Article 28.

Some **key components** of the right to water (paraphrased from international law):

1. The right to water supplies adequate to maintain human dignity, life, and health (including that of future generations)
2. The right to freedom from interference with the right to water such as contamination of water supplies
3. The right to water free from risky elements like chemical substances that threaten people’s health
4. States’ duties to protect the right to water from interference by third parties (including companies)
5. States’ duties to stop pollution, inequitable extraction, and unsustainable use of water resources
6. States’ duties to end pollution of watersheds by harmful chemicals

Fracking can impact the right to water by:

- Contaminating water supplies. Chemicals used during fracking processes can migrate into underground water supplies through naturally occurring faults that channel drilling pollutants into groundwater; abandoned wells that carry fluids up to aquifers near the surface; leaks and spills; and in the disposal of “flowback” and “produced water” after extraction. (**key components 2,3,4,6**);
- Water depletion. As each well generally requires between 1-5 million gallons of water, fracking threatens many already over-utilized water resources. Even in water scarce areas, corporate demands for water for fracking often take priority over individual rights (**key components 1,4,5**).

## Food

The human right to food is included in the International Covenant on Economic, Social and Cultural Rights (1966) in Article 11; the Convention on Rights of the Child (1989) in Article 24; and the Convention on the Rights of Persons with Disabilities (2006) in Article 28.

Some **key components** of the right to food (paraphrased from international law):

1. The right to availability of food of sufficient quality (free from adverse substances); sufficient quality includes food safety, especially from contamination and bad environmental hygiene
2. States’ duties to prevent third parties from depriving others of access to adequate food
3. States are encouraged to ensure that activities of the private sector are in line with the right to food

Fracking has the potential to violate the human right to food because:

- Lack of public information on risks of crop and livestock contamination (**key component 3**);
- Making sick and/or killing livestock. Reports show cattle and other livestock have died after ingesting spilled fracking fluid. Other documented animal impacts include feathers falling off birds, skin irritation and bald patches on dogs, changes in animal behavior after the introduction of fracking. (**key component 1**);

- Negative effects on crops via water and soil contamination; lack of comprehensive testing on the impacts of oil and gas extraction on soil (**key components 1,2,3**);
- Industry failure to take precautions to ensure that crops and livestock raised for human consumption are not exposed to contaminants (or even tested for contamination) (**key components 2,3**).

## Housing

The human right to housing appears in the International Covenant on Economic, Social and Cultural Rights (1966) in Article 11; the Convention on the Elimination of All Forms of Discrimination against Women (1979) in Article 14; and the Convention on the Rights of Persons with Disabilities (2006) in Article 28.

Some **key components** of the right to housing:

1. The right to legal security of tenure (protection from forced eviction, harassment, and other threats)
2. The right to access “natural and common resources” and safe drinking water
3. The right to housing that provides protection from threats to health
4. Housing cannot be built in places where sources of pollution may impact the right to health
5. Forced evictions by private entities without mandated safeguards (including consultation, advanced and reasonable notice, provision of information on alternative housing and legal remedies, government representation at time of eviction, identification of evicting parties) must be punished by the State

Fracking can infringe upon the right to housing when it causes:

- Negative impacts on housing quality; property damage from land and water well contamination, earthquake damage, air and land contamination (**key component 1**);
- Forced displacement; people are often forced to vacate their properties due to health concerns; impacts on land, water, air, (and often on agricultural livelihoods); marginalized communities and Indigenous Peoples become particularly targeted for resettlement (**components 1, 3, 4**);
- Forced evictions as a result of property buyouts by the industry (**key component 5**);
- Contamination of local water supplies restricts access to community watersheds and impacts the right to water, which is integral to the right to adequate housing (**key component 2**);
- Lack of information given and safeguards taken for people residing (working, going to school, etc.) near fracking sites (**key component 4**).

## Access to Information

The international treaties outlining the right of access to information are the International Covenant on Civil and Political Rights (1966) in Article 19; the Convention on the Rights of the Child (1989) in Article 13 and Article 17; and the Convention on the Rights of Persons with Disabilities (2006) in Article 2 and Article 21.

Some **key components** of the right of access to information (paraphrased from international law):

1. States must observe the principles of maximum disclosure (exceptions to access to complete information are strict and limited) and good faith (interpretations of policies must be done in the interest of the general public) as they relate to the right of access to information
2. In observing the principle of good faith, States should
  - a. Ensure easy and effective access to information
  - b. Avoid excessive restrictions on access to information and provide reasons for refusal
3. The right to “seek, receive and impart information and ideas concerning health issues”
4. Public authorities and third parties should give full and equal access to information about water and the environment to individuals and groups (timely and full disclosure of information on proposed measures that can affect the right to water are required)

The human right of access to information is violated by fracking with:

- Failure to uphold the principle of maximum disclosure; under this principle, wide and general access to existing data on fracking projects should be readily available (**key component 1**);
- Failure to uphold the principle of good faith; general interest requires knowledge of the dimensions and effects of fracking projects (**key components 1, 2**);
- Lack of transparency on chemicals used during the fracking process (including known and potential carcinogens, chemicals with potential to impact water, soil, crops) under the pretense of “trade secret” or “proprietary information” (**key components 1, 2, 3**);
- Lack of transparency on risks and impacts of fracking in confidential legal settlements resulting from lawsuits against fracking companies. This prohibits regulators, scientists, policymakers, health researchers, and communities from relevant testimony and data, leading to violations of other rights (such as contamination of crops that impacts the right to food) (**key components 1, 3, 4**);
- Consistent lack of disclosure of pertinent information regarding human and environmental risks before and during fracking projects (**key components 2, 3, 4**).

## Public Participation

The human right to public participation is detailed in the International Covenant on Civil and Political Rights (1966) in Article 25; the Convention on the Elimination of All Forms of Discrimination against Women (1979) in Article 7; the Convention on the Rights of the Child (1989) in Article 12; and the Convention on the Rights of Persons with Disabilities (2006) in Article 4 and Article 29.

Some **key components** of the right public participation (paraphrased from international law):

1. The right to participation in the conduct of public affairs (including in the formation and implementation of policies nationally and locally)
2. The right to public participation cannot be realized unless freedom of speech, assembly and association are also implemented
3. Decision-making processes must establish permanent spaces at national and local levels with representation of “peoples and communities concerned, companies and local authorities”
4. The right to public participation in political decisions that can affect the right to health

Fracking violates the right to public participation when there are:

- Persecution, threats, harassment of anti-fracking activists (**key components 1, 2, 4**);
- Arrests of anti-fracking protestors (**key components 1, 2, 4**);
- Lack of relevant information on risks of fracking, discouraging participation (and in formed policymaking) in the development and implementation of energy policy, and national strategies and plans of action for food, water, and housing (**key components 1, 4**);
- Consistent lack of community consultation before projects are initiated; failure to provide spaces for public participation in decision-making, dialogue, information-sharing, or concern during and after fracking takes place (**key component 3**).

Highlights above are taken from *A Guide to Rights-Based Advocacy: International Human Rights Law and Fracking*.

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