Peoples Tribunal Vs Australian Governments 2016

Has the Government failed to adequately protect the human rights of citizens as a result of permitting hydraulic fracturing and other techniques of unconventional oil and gas extraction within its jurisdiction?

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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[[1]](#footnote-1):

“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.”[[2]](#footnote-2) The Convention on the Rights of the Child[[3]](#footnote-3) (CRC) describe a child’s right to health, adequate food and clean water, “taking into consideration the dangers and risks of environmental pollution.”[[4]](#footnote-4) The CRC places an onus on all parties to ensure to the maximum extent possible the survival and development of the child.

In 2001, the United Nations Human Rights Committee found that ‘living in a pollution-free world is a basic human right’[[5]](#footnote-5)and those who pollute violate these rights. They noted that, "Human rights cannot be secured in a degraded or polluted environment” and that the “fundamental right to life is threatened by exposures to toxic chemicals, hazardous wastes, and contaminated drinking water."

The following list outlines the Human Rights declarations relevant to this tribunal[[6]](#footnote-6)

* Universal Declaration of Human Rights (UDHR)
* International Covenant on Civil and Political Rights (CCPR)
* International Covenant on Economic, Social and Cultural Rights (CESCR)
* Convention on the Rights of the Child (CRC, 1990)
* Convention on the Elimination of All Forms of Discrimination against
* Women (CEDAW)
* United Nations Declaration on the Rights of Indigenous Peoples
* (UNDRIP)12
* Rio Declaration on Environment and Development
* The World Health Organization Declaration of Alma Ata
* The Nuremberg Code

**Below, the Rights and the Questions posed by the Tribunal are mapped to provide a simple overview:**

Q1 Health Impacts

Right to Health

Right to Cultural Heritage, land and resources, Social Impacts

Q6 Cultural and Social impacts

Q5 Lack of Participation

Q4 Climate Change Impacts / Government subsidised pursuit of fossil fuels

Right to Participation

Q3 Infrastructure Impacts

Right to food, water and housing

Q2 Environmental Impacts

Right to safe, clean healthy environment

# Human rights obligations to Health

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| Human rights obligations to Health**[[7]](#footnote-7)**The right to the enjoyment of the highest attainable standard of physical and mental health: “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”  | **Articulated in:** | **Description:****“*underlying determinants of health*” *include****:* * Safe drinking water and adequate sanitation;
* Safe food;
* Adequate nutrition and housing;
* Healthy working and environmental conditions;
* Health-related education and information;
* Gender equality.

***The right to health contains entitlements. These entitlements include:*** * The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health; The right to prevention, treatment and control of diseases;
* Access to essential medicines;
* Maternal, child and reproductive health;
* Equal and timely access to basic health services;
* The provision of health-related education and information;
* Participation of the population in health-related decision making at the national and community levels.

***All services, goods and facilities must be:**** available, accessible, acceptable and of good quality.
* Functioning public health and health-care facilities, goods and services must be available in sufficient quantity within a State.
* They must be accessible physically (in safe reach for all sections of the population, including children, adolescents, older persons, persons with disabilities and other vulnerable groups) as well as financially and on the basis of non-discrimination.
* Accessibility also implies the right to seek, receive and impart health-related information in an accessible format(for all, including persons with disabilities), but does not impair the right to have personal health data treated confidentially.
* the facilities, goods and services should also respect medical ethics, and be gender-sensitive and culturally appropriate. (In other words, they should be medically and culturally acceptable.)
* Finally, they must be scientifically and medically appropriate and of good quality. This requires, in particular, trained health professionals, scientifically approved and unexpired drugs and hospital equipment, adequate sanitation and safe drinking water.
 | **Refers to Q1 “Health Impacts”*** Map of infrastructure compared to no infrastructure and known outputs (NPI etc) and how can there NOT be an impact
* Lack of baseline testing
* Lack of scientific assessment
* Refuting of the only government studies done
* Lack of testing of impact on food supply (purchase of land and allowing commercial beef production to background on all intensely mined properties
* Lack of interest and wholistic approach to dealing with complaints of water contamination by council and government
* No prevention, let alone measurement and subsequent control
* Lack of access to health services related to concerns of health impacts
* Despite the population and experts and experience indicating wide spread and long term structured monitoring and health study is required nothing is done
* The CHO and CPsych and the Premier and serveral ministers visit and told the same thing and nothing happens, despite documented evidence that when they quoted their medical data not supporting the presence of issues, they were not aware of a reported occurrence of several families in the same street calling an ambulance
* Academic impact of energy on health
* Failing to prevent pollution fails to protect health
* Failing to protect ecosystems fails to protect health
* Healthwatch (industry health surveillance) study discussion, why not civilian?
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# Right to life, liberty and security of person

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| Right to life, liberty and security of person**[[8]](#footnote-8)** | **Articulated in:**UDHR Article 3 **“Everyone has the right to life, liberty and security of person.”**CCPR Article 9 **“Everyone has the right to liberty and security of person.”** | **What this right entails** ***This is the right to be safe and secure in one’s person*.** Reasons for concern * Documented reports of adverse physical health effects associated with exposures to air and water contaminants associated with hydraulic fracturing practices.
* Potential adverse health effects associated with exposures to air and water contaminants associated with hydraulic fracturing practices can include respiratory, cardiovascular, dermal and neurologic impacts, as well as miscarriages and birth anomalies, particularly for pregnancies conceived or carried during periods of exposure.
* If any citizens consider that injury or threat of injury from exposure to contaminants resulting from fracking practices will require them to move out of the area, particularly if that would result in documentable economic loss, that would be an encroachment on this right.
 | **Refers to Q1 “Health Impacts”*** The vast amount of land that is purchased is an indicator that people cannot live with the industry
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# Motherhood and childhood’s right to special care

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| Motherhood and childhood’s right to special care**[[9]](#footnote-9)** | **Articulated in:*** UDHR Article 25 “Motherhood and childhood are entitled to special care and assistance. All children...shall enjoy the same social protection.”
* CESCR Article 12 (section 2a) establishes the obligation of states party to this Covenant to take steps to make “provision for the reduction of the stillbirth-rate and infant mortality and for the healthy development of the child.”
* CRC Article 27 “1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.”
* UNDRIP Article 22 (section one) “Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities....”
 | **What this right entails:*****This is the right of children, their mothers and indigenous elders and persons with disabilities to be provided special care, protection and* *assistance.*** This means that both state and non-state actors have a positive duty to protect children, their mothers and indigenous elders and persons with disabilities from anything, including exposure to environmental toxics, which may compromise their physical, mental, spiritual or social well-being.**Reasons for concern** * Children are at much greater risk than adults because of their increased biological susceptibility to adverse health effects from exposure to environmental toxics.
* Preliminary research indicates that foetuses and pregnant mothers are at risk for adverse effects from exposure to contaminants associated with hydraulic fracturing practices.
* If mothers, and mothers’ ability to protect their children and be good caregivers, are adversely affected by activities and exposures associated with hydraulic fracturing, that would be an encroachment on this right.
 | **Refers to Q1 “Health Impacts” and Q6“Cultural & Social Impacts** |

# Duty to protect the child (i.e., persons under age 18)

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| Duty to protect the child (i.e., persons under age 18)**[[10]](#footnote-10)** | **Articulated in:*** CRC Article 24

“States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health.” * UNDRIP Article 17 (section two)

“States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.” | **What this right entails** This is the right of children to live in safe and healthy conditions, including safe and healthy environmental conditions, and not to have to undergo exposure to conditions that adversely affect health. **Reasons for concern** * Activities that put children at increased risk of adverse health effects would be an encroachment on this right.
* Adverse health effects associated with hydraulic fracturing practices can include respiratory, cardiovascular, dermal and neurologic effects, as well as miscarriages and birth anomalies, particularly for pregnancies conceived or carried during periods of exposure.
 | **Refers to Q1 “Health Impacts”** |

# Right of the child to the highest standard of health

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| Right of the child to the highest standard of health**[[11]](#footnote-11)** | **Articulated in:*** CRC Article 24

“States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health.” * UNDRIP Article 17 (section two)

“States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.”  | **What this right entails:**This is the right of children to live in safe and healthy conditions, including safe and healthy environmental conditions, and not to have to undergo exposure to conditions that adversely affect health. **Reasons for concern** * Activities that put children at increased risk of adverse health effects would be an encroachment on this right.
* Adverse health effects associated with hydraulic fracturing practices can include respiratory, cardiovascular, dermal and neurologic effects, as well as miscarriages and birth anomalies, particularly for pregnancies conceived or carried during periods of exposure.
 | **Refers to Q1 “Health Impacts” And Q6 “Cultural & Social Impacts”** |

# Right of all persons to the highest standard of health

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| Right of all persons to the highest standard of health**[[12]](#footnote-12)** | **Articulated in:*** CESCR Article 12

“States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” * UNDRIP Article 24 (section 2)

“Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health.”  | **What this right entails:**This is the right to live in conditions conducive to the highest standard of health. **Reasons for concern** * Activities that put citizens at increased risk of adverse health effects would be an encroachment on this right.
* Adverse health effects attributable to exposures to hydraulic fracturing practices can include respiratory, cardiovascular, dermal, carcinogenic and neurologic effects, as well as miscarriages and birth anomalies, particularly for pregnancies conceived or carried during periods of exposure.
* Adverse psychological health effects shown to be related to hydraulic fracturing practices would be an encroachment on this right.[[13]](#footnote-13)
 | **Refers to Q1 “Health Impacts” and Q6 “Social & Cultural Impacts** |

# State’s duty to provide for the health of citizens

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| State’s duty to provide for the health of citizens**[[14]](#footnote-14)** | **Articulated in:*** The Declaration of Alma-Ata, Article V

“Governments have a responsibility for the health of their people which can be fulfilled only by the provision of health and social measures.”  | **What this right entails:**This language more clearly reframes the right to health as a positive duty of a government to its citizens to provide for the health of its citizens.  | **Refers to Q1 “Health Impacts”** |

# State’s duty to provide for the health of citizens demands coordinated efforts of all sectors

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| State’s duty to provide for the health of citizens demands coordinated efforts of all sectors**[[15]](#footnote-15)**  | **Articulated in** * Declaration of Alma-Ata Article VII

[Provision of health measures includes,] “in addition to the health sector, all related sectors and aspects of national and community development, in particular agriculture, animal husbandry, food, industry, education, housing, public works, communications and other sectors; and demands the coordinated efforts of all those sectors.” * UNDRIP Article 29 (sections two and three)

“States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.”  | **What this duty entails** These articles elucidate the meaning of “provision of health and social measures,” saying that a state's duty to provide the highest standard of health for its citizens extends beyond the health sectors of governments; it involves all other sectors as well, including the duty to insure that the industrial, manufacturing and environmental conservation sectors are regulated in ways that are protective of citizens’ health. In the case of indigenous peoples, this includes the duty to insure that no hazardous materials – including the hazardous chemicals used in hydraulic fracturing and the flowback fluids that result from it – shall be stored or disposed of on the lands of indigenous peoples “without their free, prior and informed consent.” **Reasons for concern** * These articles say that in addition to departments of health, all government departments, including departments of agriculture, transportation, environmental conservation and other agencies that deal with chemicals and other health risks also have a positive duty to protect the health of citizens.
* Because hydraulic fracturing is a chemical-intensive process there is concern, particularly for indigenous communities and lands, about the siting, use, storage and disposition of both hazardous inputs required for the fracking process and hazardous outputs that result from it.
* If hazardous materials were to be used, stored or disposed of on lands of native peoples without their prior, free and informed consent, that would be an abridgement of this right.
 | **Refers to Q1 “Health Impacts”; Q3 “Infrastructure Impacts” and Q6 “Cultural & Social Impacts”** |

# Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

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| Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**[[16]](#footnote-16)**  | **Articulated in:** | **What this obligation entails:**Human rights law includes obligations relating to the environment. Those obligations include procedural obligations of States to assess environmental impacts on human rights and to make environmental information public, to facilitate participation in environmental decision-making, and to provide access to remedies. The obligation to facilitate public participation includes obligations to safeguard the rights of freedom of expression and association against threats, harassment and violence. The human rights obligations relating to the environment also include substantive obligations to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights, including harm caused by private actors. The obligation to protect human rights from environmental harm does not require States to prohibit all activities that may cause any environmental degradation; States have discretion to strike a balance between environmental protection and other legitimate societal interests. But the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights. In assessing whether a balance is reasonable, national and international health standards may be particularly relevant. In addition, there is a strong presumption against retrogressive measures. In addition to a general requirement of non-discrimination in the application of environmental laws, States may have additional obligations to members of groups particularly vulnerable to environmental harm. Such obligations have been developed in some detail with respect to women, children and indigenous peoples, for example, requirements under the Stockholm Convention on children and indigenous peoples, for example, requirements under the Stockholm Convention on Persistent Organic Pollutants[[17]](#footnote-17) 2001 but work remains to be done to clarify the obligations pertaining to other groups. Human rights obligations relating to the environment are continuing to be developed in many forums, but the obligations are already clear enough to provide guidance to States and all those interested in promoting and protecting human rights and environmental protection. States and others must take these human rights obligations into account in the development and implementation of their environmental policies.  | **Impacts; Q4 “Gov Subsidisation; Q5 “Lack of Participation” Q2 Health env** |

# Right to a healthy environment

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| Right to a healthy environment**[[18]](#footnote-18)** | **Articulated in** * Aarhus Convention Preamble

“every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.”  | **What this right entails** This Convention articulates both a right and a duty. The right is to live in an environment adequate to one’s health and well-being. The duty is to protect the environment so this right is respected. **Reasons for concern** * Hydraulic fracturing practices that compromise the environment or cause conditions injurious to health, even if those conditions affect the health of some people more than others, would be an encroachment on this right.
 | **Refers to Q2 “Environmental Impacts** |

# Human Rights Obligations to Water

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| Human Rights Obligations to Water  | **Articulated in:**“The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use”[[19]](#footnote-19) | **What this right entails:**“The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use”. | **Refers to Q1 “Health Impacts” Q2 “Healthy Env** |

# Right to safe drinking water

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| Right to safe drinking water**[[20]](#footnote-20)**  | **Articulated in:*** UDHR Article 25 (section 1)

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services....” * CESCR Article 11 (section 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....” * UN Resolution 64/292. The human right to water and sanitation[[21]](#footnote-21)

“The General Assembly... recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.”  | **What this right entails:**This is the right to safe and clean drinking water. **Reasons for concern** * If drinking water drawn from the well of a private residence, institution or community were to be contaminated or otherwise compromised by hydraulic fracturing operations that would be an encroachment on this right.
* If the river, stream or other water source from which a community draws its drinking water were to be contaminated or otherwise compromised by hydraulic fracturing operations, that would be an encroachment on this right.
* The permanent removal of several billion gallons of fresh water each year from the earths hydrologic cycle, particularly given the scarcity of potable water around the globe, compromises this right.
 | **Refers to Q1 “Health Impacts” Q2 Healthy env*** Jangs bore
* Condamine bubbling
* Weir being filled with ro water
* Removal of stock and domestic water bores
* Failure of uwir to foresee or model the actual impact
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# Human Rights Obligations to Food

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| Human Rights Obligations to Food  | **Articulated in:**The Committee on Economic, Social and Cultural Rights identified, in a General comment,key issues with regard to the right to adequate food.[[22]](#footnote-22) | **What this right entails**: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.” This refers to food safety, especially the prevention of contamination and bad environmental hygiene. Availability also includes the possibility to obtain food from “productive land or other natural resources.”
* Food must be accessible “in ways that are sustainable and that do not interfere with the enjoyment of other human rights.” For example, the inability to access indigenous ancestral land can affect the right to food.

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
* 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.”
* Full and equal access to economic resources such as the “ownership of land and other property, credit, [and] natural resources.”
* The necessity to take “appropriate steps to ensure that activities of the private business sector …are in conformity with the right to food.”
 | **Refers to Q1 “Health Impacts”*** Removal of land and water and commercial backgrounding of cattle in industry impacts food security
* Removal of stock and domestic water bores impacts food security
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# Right to Housing

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| Right to Housing**[[23]](#footnote-23)** | **Articulated in:** | **What this right entails:**“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.” * The right to legal security of tenure, which guarantees legal protection from “forced eviction, harassment and other threats.” 107
* The right to access “natural and common resources [and] safe drinking water.”108
* The right to be protected from “arbitrary or unlawful interference” in privacy and home,109 and to choose one’s home.110
* The right to housing that provides protection from threats to health.111
* Housing should not be built in places with pollution problems or sources of pollution that may affect the right to health.112
* Environment and energy policies, among others, should take into account the right to housing.113
* States must collect detailed information about vulnerable groups in relation to the right to housing, including those subject to forced evictions.114

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.115
* Forced evictions carried out by private persons or bodies without “appropriate safeguards” must be punished by the State.116

Procedural protections from forced evictions,117 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.
 | **Refers to Q1 “Health Impacts” and Q6 Cultural & Social Impacts”*** Impact of boom on housing, family camping in winter eg
* Removal of locals due to property pricing
* Removal of locals due to purchasing of land
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# Right to privacy and home

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| Right to privacy and home**[[24]](#footnote-24)** | **Articulated in:*** UDHR Article 12

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence....” * CCPR Article 17

“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”  | **What this right entails:** This is the right to be secure in one’s home, to be able to enjoy the use of one’s property and to not have one’s property devalued as a result of a state’s failure to adequately regulate. * “The European Human Rights Court noted that severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.” [[25]](#footnote-25)
* This means that adverse health effects are not the only kind of adverse effects that violate the right to one’s property and home.

**Reasons for concern** * Discomfort experienced at home, or a compromised ability to enjoy one’s home and property due to air and water contaminants, as well as noise and light pollution, associated with hydraulic fracturing operations, even without adverse health effects.
* Potential adverse physical health effects from exposures to air and water contaminants associated with hydraulic fracturing operations and suffered in the home.
 | **Q 6 Social impact Q3 Infrastructure*** Use of drones on family properties without permission
* Recording and using private images taken on private property without permission
* Comm bank refusal of bridging loan
* People not able to live with the industry impact ie noise, water
* Even when the industry is on the property next door it is intruding – see pressure testing documentation, atmospheric contamination and noise, light and privacy
* No isolation valves for each property
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# Right to property

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| Right to property**[[26]](#footnote-26)** | **Articulated in** * UDHR Article 17

“No one shall be arbitrarily deprived of his property.”  | **What this right entails:** *See the right to privacy and home.* **Reasons for concern** * Any adverse physical or economic impacts on property or property values attributable to activities and exposures associated with hydraulic fracturing practices would encroach on this right.
* If individuals, families or businesses have been forced to leave or sell their property due to hydraulic fracturing operations, that would be an encroachment on this right.
* If individuals or families’ ability to enjoy the use of their property has been compromised due to hydraulic fracturing operations, that would be an encroachment on this right.
* Loss of property value attributable to impacts of hydraulic fracturing practices would encroach on this right.
 | **Refers to Q3 “Infrastructure Impacts” and Q4 “Climate Change Impacts / Government Subsidised Pursuit of Fossil Fuels”** |

# Right to Access of Information

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| Right to Access of Information**[[27]](#footnote-27)**  | **Articulated in:**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”124 and should: * ensure “easy, prompt, effective and practical access” to information;
* enact clear rules and procedures to gain access to information;125
* 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.”126
* Access to information is an obligation “concerning the main health problems in the community, including methods of preventing and controlling them.”127
* Public authorities and third parties should give “full and equal access to information” about water, water services and the environment to individuals and groups.128
 | **What the right entails:** 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.123
* 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 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.”130 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. The UNEP Strategic Approach to International Chemicals Management (SAICM), a policy framework for international action on chemical hazards, states that “information on chemicals relating to the health and safety of humans and the environment should not be regarded as confidential”.[[28]](#footnote-28) | **Refers to Q5 “Lack of Participation” and Q6 “Cultural and Social Impacts”*** Lack of incident investigation
* Lack of details re when and what is fracced
* Lack of info within communities, confidentiality between landholders
* Difficulty with RTI
* Difficulty accessing info re noise, light, atmosphere impacts, measurement, testing
* Industry owns access to data, and experts and sites
* Trucks that are not labelled what are they taking where
* Pond on private property not signed, no info, not managed,,
 |

# Right to education

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| Right to education  | **Articulated in:*** CESCR Article 13 (section 1)

“States Parties to the present Covenant recognize the right of everyone to education.”  | **What this right entails:** | **Refer to Q6 “Cultural and Social Impacts”*** Industry and government undiluted access to the schools for industry skewed training, not diluted with information balancing their perspective,
* No public participation in that decision
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# The Right to Public Participation

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| The Right to Public Participation  | **Articulated in:** | **What this right entails:**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,”137 which includes the development and implementation of policies at national and local levels.138
* 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.139
* 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.140
* Minorities have the right to participate in the decisions that affect them.141
* Children must be involved in matters that affect them, such as “the environment;”142 the process must be child-friendly, transparent, informative, and relevant and their views must be treated with respect.143

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.144
* The work of human rights defenders who advocate for the access to water should be protected, respected, facilitated and promoted by States.145
* There must be public participation in political decisions that can affect the right to health “at both the community and national levels.”146
 | **Refer to Q5 “Lack of Participation”*** Political lack of peoples desires reflected by the multiple inquiries with no change to policy
* Allowing the industry to progress while deliberately lagging policy development
* No participation in the gov decision to reallocate the western downs from rural to industrial and wholesale removal of water from an agricultural aquifer and then failure to predict the impacts after the fact
* People fighting the industry vilified
* No financial support from gov to thoseopposing the industry
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# Right to effective remedy, redress and mitigation

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| Right to effective remedy, redress and mitigation**[[29]](#footnote-29)** | **Articulated in**: * CCPR Article 2(3)a

“Each State Party to the present Covenant undertakes: To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity....” * UNDRIP Article 28

“Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.” * UNDRIP Article 32 (sections two and three)

“States shall provide effective mechanisms for just and fair redress for any such activities [i.e., “any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”21], and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.” * UNDRIP Article 40

“Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights.”  | **What this right entails:**“The legal obligation to offer restitution for injury is as old as the Code of Hammurabi, the first formal set of laws in history.”[[30]](#footnote-30) It is recognized both internationally and domestically that “one of the major, primordial functions of the law is to return the victims of an unjust act to their previous condition.”[[31]](#footnote-31)“Effective remedy” means that by judicial action, monetary compensation or some other means any person whose rights have been unjustly violated will be restored as much as possible to their previous condition. The right to effective remedy would be violated if, despite attempts to stop a proposed hydraulic fracturing operation using normal methods and channels, the operation continued.[[32]](#footnote-32) **Reasons for concern** * If individuals or indigenous communities were to be adversely impacted by hydraulic fracturing practices, these articles would support their claims for effective remedy,
* redress or mitigation.
 | **Refers to Q6 ”Cultural and Social Impacts”*** failure of ‘compensation’ to address the real losses
* neighbours are not accounted for at all and have no remedy
* failure of the law that even an established breach of legislation resulting in impact on families has not remedy for the family,
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# Right to compensation

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| Right to compensation**[[33]](#footnote-33)**  | **Articulated in:*** In 1985 the U.N. General Assembly spelled out the nature of indemnification in the Declaration of Basic Principles of Justice for Victims of Crime and Abuses of Power. This declaration insists that “victims are entitled to prompt redress for the harm that they have suffered’ and that offenders should ‘pay fair restitution to victims, their families and dependents.”[[34]](#footnote-34)
 | **What this right entails:** “The basic moral law of every society asserts that a government [or private entity] which wrongly injures its own citizens must make them whole insofar as this is possible.”[[35]](#footnote-35) **Reasons for concern** * Personal or business economic losses associated with impacts of hydraulic fracturing practices would be an encroachment on this right.
* Loss of property value attributable to impacts of hydraulic fracturing practices would be an encroachment on this right.
* Any other losses that are measureable in or interpretable in economic terms would also be an encroachment on this right.
 | **Refer to Q3 “Infrastructure Impacts” and Q6 “Cultural and Social Impacts** |

# Right to know

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| Right to know[[36]](#footnote-36) | **Articulated in:*** The Rio Declaration on Environment and Development establishes citizens’ right to information about environmental toxics to which they may be exposed.
* Rio Declaration Principle 10

“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.” * Aarhus Convention Article 1

“each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters....” | **What this right entails:** This is the right of citizens to be provided full information about environmental issues so they can participate knowledgeably in decision-making about those issues. It entails the right to full disclosure of information about ingredients, plans, planned effectiveness studies, Health Risk Assessments, Environmental Impact Reports, planned health effects monitoring, etc. **Reasons for concern** * Despite manufacturers' claims that information about undisclosed ingredients should be considered proprietary, precedents are emerging around the country and the world in support of citizens' right to know the full list of chemical products, both inputs and outputs of fracking processes, to which they may be exposed.
* The fact of chemical drift significantly exacerbates human rights concerns primarily because of the larger number of persons who are impacted by drifting chemicals and who may, because of their distance from the originating site, be uninformed, unwarned and perhaps unconsenting.
 | **Refers to Q1 “Health Impacts** |

# Right to participation in decision-making in environmental issues

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| Right to participation in decision-making in environmental issues**[[37]](#footnote-37)** | **Articulated in:*** Rio Declaration Principle 10
* Aarhus Convention Article 1 (See above)
* UNDRIP Article 18
 | **What this right entails:**“Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.” * UNDRIP Article 23

“Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development.” **Reasons for concern** * If individuals and indigenous communities have not had sufficient opportunity for effective participation in decision-making about programs which would impact them, their families and their lands, that would be an encroachment on this right.
 | **Refer to Q5 “Lack of Participation”** |

# Right to Cultural Heritage

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| Right to Cultural Heritage  | **Articulated in:** | **What this right entails:**The Right to Cultural Heritage, 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.”148  | **Refer to Q6 “Cultural and Social Impacts”** |

# The family’s right to protection

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| The family’s right to protection**[[38]](#footnote-38)** | **Articulated in:*** CCPR Article 23

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” * CESCR Article 10

“The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.”  | **What this right entails:**This means that the health, strength, well-being and social integrity of families must be protected and supported; if these become compromised as a result of exposures associated with hydraulic fracturing operations then this right has been abridged. **Reasons for concern** * Adverse physical or economic effects on families attributable to exposures associated with hydraulic fracturing operations would encroach on this right.
* If the health or well-being of families, including economic well-being, have been adversely affected as a result of hydraulic fracturing practices, that would be an encroachment on this right.
 | **Refers to Q6 “Cultural and Social Impacts** |

# Right to lands and resources

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| Right to lands and resources**[[39]](#footnote-39)** | **Articulated in:*** UNDRIP Article 26 (section two)

“Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.” * UNDRIP Article 32 (section one)

“Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.”  | **What this right entails:** Indigenous peoples perceive and experience a unique, more integral and less “othered” relationship with their lands and physical environs than do most western cultures, and this specific “right to lands” is intended to reflect and protect that relationship. **Reasons for concern** * If the surface or subsurface lands or resources owned by indigenous communities including surface and ground waters, surface and subsurface biotic communities of all types, soils and subsurface ground structures were to suffer damage or be in any way compromised as a result of fracking practices, that would be an encroachment on this right.
 | **Refers to Q2 “Environmental Impacts” and Q6 “Cultural and Social Impacts”** |

# Right to work

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| Right to work**[[40]](#footnote-40)** | **Articulated in** * CESCR Article 6

“The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”  | **What this right entails:**This right refers to the right to work and, by extension, the right to be able to transport oneself to work without being made sick along the way. **Reasons for concern** * Citizens who become unable to work because of disabilities resulting from exposures associated with hydraulic fracturing practices.
* Citizens who are unable to work because their place of work is located in or near hydraulic fracturing operations.
* Citizens who may be unable to transport themselves to work due to their need to avoid exposure to contaminants associated with hydraulic fracturing practices.
* Workplaces that have been contaminated by hydraulic fracturing practices enough that some workers are unable to perform their work or keep their jobs would be an encroachment on this right.
 | **Refers to Q1 “Health Impacts” and Q6 “Cultural and Social Impacts”** |

# Right to safe and healthy working conditions

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| Right to safe and healthy working conditions **[[41]](#footnote-41)**  | **Articulated in:*** CESCR Article 7

“States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure...safe and healthy working conditions.”  | **What this right entails:**This entails the right to a safe and healthy work environment. **Reasons for concern** * Adverse physical effects experienced in the workplace that are attributable to nearby hydraulic fracturing operations.
* Workplaces becoming less safe for some as a result of contamination by hydraulic fracturing practices.
 | **Refer to Q1 “Health Impacts” and Q3 “Infrastructure Impacts”** |

# Right to equal protection of the law

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| Right to equal protection of the law**[[42]](#footnote-42)** | **Articulated in** * CCPR Article 26

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground...” UNDRIP Article 2 “Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.”  | **What this right entails:** This means that discrimination against persons and classes is proscribed. The basic principles of environmental justice require that those communities that are disadvantaged in any way – socially, economically, as a result of discriminatory racial policies, etc., or who simply have less ready access to social and economic resources – be accorded the same degree of respect, fair treatment and opportunity for meaningful involvement in decision-making as communities that are more socially or economically advantaged and have greater access to resources. As explained on the Environmental Protection Agency website, “Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of negative environmental consequences.”[[43]](#footnote-43)**Reasons for concern** * Are all communities, whether rural or urban, treated equally regardless of perceived social privilege or socioeconomic status?
* Does the socio-economic makeup of communities appear to be a factor in any decisions made about the proposed hydraulic fracturing program?
* Are disadvantaged communities affected any differently than more privileged communities?
* Are communities with different racial compositions affected differently?
 | **Refers to Q6 “Cultural and Social Impacts”** |

# Right to freedom from discrimination due to disability

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| Right to freedom from discrimination due to disability**[[44]](#footnote-44)** | **Articulated in:*** The Americans with Disabilities Act (US)
* UNDRIP Article 22 (section one)

“Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.”  | **What this right entails:** The US Department of Justice maintains a website with detailed information about ADA requirements.[[45]](#footnote-45)In general, this law requires that everyone who has, or is perceived to have, a disability not be discriminated against in any way. A booklet providing an overview of ADA “requirements for ensuring equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation” is available on the ADA website.[[46]](#footnote-46)**Reasons for concern** * Discrimination occurs when any sub-group is disproportionately impacted by a policy or practice and no sufficient accommodations are made for them. Individuals with asthma or other respiratory conditions, chemically sensitive persons, pesticide sensitive persons, people with certain allergies, immunocompromised people, the elderly, the very young, pregnant women,30 any place-bound persons (in hospitals or elder care facilities, for example), to name a few vulnerable sub-sets of residents, may be reasonably expected to experience more serious adverse effects from exposure to fracking operations than the general population.
* Have reasonable accommodations been developed for persons in those groups to insure that they can avoid being unfairly impacted by fracking practices?
 | **Refer to Q1 “Health Impacts” and Q6 “Cultural and Social Impacts”** |

# Right to prior, free and informed consent

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| Right to prior, free and informed consent**[[47]](#footnote-47)** | **Articulated in:*** UNDRIP Article 19

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”  | **What this right entails:**This is the right to a) be fully informed about hydraulic fracturing processes, input materials, output materials, anticipated effects on humans and the environment and anticipated impacts on the community; b) be allowed adequate time and opportunity to deliberate freely, as individuals and as communities; and c) give or withhold consent for the program. **Reasons for concern** * Have indigenous communities been provided full information about the materials, processes and outcomes of hydraulic fracturing?
* Have indigenous communities been given adequate time and opportunity, as individuals and as communities, to deliberate freely?
* Have indigenous communities been given opportunity, before any decisions are made, to give or withhold formal consent for the fracking program?
 | **Refers to Q2 “Environmental Impacts” and Q6 “Cultural and Social Impacts”** |

# Right of experimental subjects to free and informed consent

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| Right of experimental subjects to free and informed consent**[[48]](#footnote-48)**  | **Articulated in:** * Nuremberg Code Item 1

“The voluntary consent of the human subject is absolutely essential.” * Nuremberg Code Item 9

“the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.”  | **What this right entails:** This is the right to be fully informed about an experiment before agreeing to participate, the freedom to choose whether to participate or not, and the freedom to withdraw from the experiment at any time. The rights of experimental subjects to informed consent and to protection from possible harms, as they are expressed in The Nuremberg Code, are premised on the acknowledgment that hydraulic fracturing practices and their impacts on exposed humans have not been adequately studied and are thus at least partly experimental in nature. **Reasons for concern** * Have citizens been provided opportunity to give or refuse consent to exposure to the effects of fracking processes?
* Have citizens been provided ways to withdraw themselves or their families from exposure to the effects of fracking processes if they choose not to be exposed?
* Have citizens, particularly those with certain disabilities, been notified about details of the fracking program and provided alternative places to stay during fracking operations to reduce exposures?
 | **Refers to Q1 “Health Impacts; Q5 “Lack of Participation” and Q6 “Cultural and Social Impacts”** |

# Right of experimental subjects to be protected from injury, disability or death

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| Right of experimental subjects to be protected from injury, disability or death**[[49]](#footnote-49)** | **Articulated in:*** Nuremberg Code Item 7

“Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.”  | **What this right entails:**This is the right to be protected from anticipated, remote or unanticipated harms that may possibly result from participation in the experiment. **Reasons for concern** * Have such protections been provided, particularly for those at increased risk of harm from exposure to the effects of fracking operations?
 | **Refers to Q1 “Health Impacts“** |

**Argument**

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 duty bearers for good business practices.[[50]](#footnote-50)

Therefore, it is the argument of this Tribunal that in respect to each of the Human Rights supported by International Human Rights Law, the Australian Governments have failed to carry out their duty to adopt policy to protect these rights.

Notwithstanding the overarching fact that "lessons were not learned from the long-standing US industry failings where baseline studies on aquifer water and air quality have not been done before CSG mining development. "[[51]](#footnote-51)

Also through permitting and enabling the industry in breaking these human rights, the Australian Government has failed.

The very nature of the industry requires “political, legal and fiscal primacy of subterranean mineral and fossil fuel resources over terrestrial, 'life-sustaining', environments and catchments and their inhabitants… over good, sustainable groundwater resources”[[52]](#footnote-52) which by definition insures that there will be a deficit to the human rights dimension. The scale and pace of this industrialisation of the rural Murray-Darling Basin (MDB) landscape, is without precedent in Australian history. Given its geographical extent and extraction density, the CSG industry in the Downs is a huge ‘gas refinery’, comprised of a vast, pressurised, leaking, below-ground ‘tank farm’, and a labyrinthine, gas gathering and purifying network above-ground[[53]](#footnote-53)

Industry has invested billions of dollars into development of unconventional gas resources without adequate research — and state governments have given approvals without adequate regulation.[[54]](#footnote-54)

“Despite the rapid expansion of CSG developments, the health impacts have not been adequately researched, and effective regulations that protect public health are not in place. There is a lack of information on the chemicals used and wastes produced, insufficient data on cumulative health impacts, and a lack of comprehensive environmental monitoring and health impact assessments. In circumstances where there is insufficient evidence to ensure safety, the AMA recommends that the precautionary principle should apply. This is essential given the threat of serious and irreversible harms to human health.” Dr Steve Hambleton, President of the Australian Medical Association, May 2013.[[55]](#footnote-55)

Each of these issues will be investigated in depth in their own right.

“Brace yourselves,” said Geoffrey Watson SC.[[56]](#footnote-56)

1. A Guide to Rights Based Advocacy – International Human Rights Law and Fracking - Sisters of Mercy (NGO), Mercy International Association: Global Action, enjoying special consultative status with the Economic and Social Council (ECOSOC) of the United Nations [↑](#footnote-ref-1)
2. 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; [↑](#footnote-ref-2)
3. Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). Australia ratified the CRC on 17 December 1990. Available at http://www.unicef.org/crc/ [↑](#footnote-ref-3)
4. Article 24 2(c) To combat disease and malnutrition, including within the framework of primary health care, through, iner 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; [↑](#footnote-ref-4)
5. http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=197&ArticleID=2819 [↑](#footnote-ref-5)
6. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011

 [↑](#footnote-ref-6)
7. OHCHR Fact Sheet No 31 – The Right to Health [↑](#footnote-ref-7)
8. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-8)
9. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-9)
10. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-10)
11. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-11)
12. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-12)
13. Health Impact Assessment for Battlement Mesa, Garfield County Colorado, Colorado School of Public Health, September 2010 [↑](#footnote-ref-13)
14. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-14)
15. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-15)
16. Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox (Mapping report) [↑](#footnote-ref-16)
17. Article 10.c (c) Development and implementation, especially for women, children and the least educated, of educational and public awareness programmes on persistent organic pollutants, as well as on their health and environmental effects and on their alternatives; Available www.pops.int [↑](#footnote-ref-17)
18. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-18)
19. Committee on Economic, Social and Cultural Rights, General Comment No. 15 [↑](#footnote-ref-19)
20. 20 Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-20)
21. Adopted by the General Assembly, 108th plenary meeting, July 28, 2010 [↑](#footnote-ref-21)
22. A Guide to Rights Based Advocacy – International Human Rights Law and Fracking - Sisters of Mercy (NGO), Mercy International Association: Global Action, enjoying special consultative status with the Economic and Social Council (ECOSOC) of the United Nations [↑](#footnote-ref-22)
23. A Guide to Rights Based Advocacy – International Human Rights Law and Fracking - Sisters of Mercy (NGO), Mercy International Association: Global Action, enjoying special consultative status with the Economic and Social Council (ECOSOC) of the United Nations (End note numbers retained from reference material) [↑](#footnote-ref-23)
24. 24 Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-24)
25. This passage continues: “It found that the determination of whether this violation had occurred in Lopez-Ostra v. Spain should be tested by striking a fair balance between the interest of the town’s economic well-being and the applicant’s effective enjoyment of her right to respect for her home and her private and family life. In doing this, the Court applied its “margin of appreciation” doctrine, allowing the State a “certain” discretion in determining the appropriate balance, but finding in this case that the margin of appreciation had been exceeded. It awarded Mrs Lopez- Ostra 4,000,000 pesetas [approximately US$35,600], plus costs and attorneys’ fees.” Shelton, Dinah, “The Environmental Jurisprudence of International Human Rights Tribunals,” in Picolotti, R and Taillant, JD, 2003, p 15. [↑](#footnote-ref-25)
26. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-26)
27. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-27)
28. http://www.saicm.org/images/saicm\_documents/saicm%20texts/SAICM\_publication\_ENG.pdf [↑](#footnote-ref-28)
29. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-29)
30. Drinan, Robert F, The Mobilization of Shame, A World View of Human Rights. Yale University Press, 2001 p 186 [↑](#footnote-ref-30)
31. Drinan RF. 2001. p 170. [↑](#footnote-ref-31)
32. In reference to a specific case: “the human right to effective judicial remedy has been violated because despite the riverside communities’ plea to the judicial system, nothing has been done to stop the contamination.” in Picolotti, R and Taillant, JD, 2003, p 146 [↑](#footnote-ref-32)
33. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-33)
34. Drinan RF. 2001. p 171 [↑](#footnote-ref-34)
35. Drinan RF. 2001. p 187 [↑](#footnote-ref-35)
36. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-36)
37. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-37)
38. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-38)
39. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-39)
40. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-40)
41. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-41)
42. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-42)
43. US EPA’s definition of environmental justice. See http://www.epa.gov/compliance/resources/faqs/ej/index.html Quoted in Robert D Bullard, The Quest for Environmental Justice: Human Rights and the Politics of Pollution, Sierra Club Books, San Francisco, 2005, p. 4. [↑](#footnote-ref-43)
44. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-44)
45. http://www.usdoj.gov/crt/ada/ [↑](#footnote-ref-45)
46. http://www.usdoj.gov/crt/ada/publicat.htm#Anchor-ADA-44867 [↑](#footnote-ref-46)
47. Environment and Human Rights Advisory Report on a Human Rights Assessment of Hydraulic Fracturing for Natural Gas for New York State Dept of Environmental Conservation 2011 [↑](#footnote-ref-47)
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