



January 14, 2019

Members of the Human Rights Committee  
Office of the United Nations High Commissioner for Human Rights  
Palais Wilson  
52 rue des Pâquis  
CH-1201 Geneva, Switzerland

**Suggested List of Issues to Country Report Task Force on the United States for the  
125th Session of the Human Rights Committee, 4-29 March 2019**

**Introduction**

Uranium mining and processing has left an indelible stain on the people and environment of the western United States, and minority communities continue to suffer under this toxic legacy. In particular, the communities in the northwestern part of the state of New Mexico continue to suffer disproportionate adverse environmental and health effects from unremediated uranium mining and processing waste. These wastes not only pose radioactive threats to the predominantly minority communities in northwestern New Mexico, but they are chemically toxic, which further increases the health burdens on these communities. Nevertheless, the United States government and state governments continue to permit new uranium mining operations in and near these communities. Uranium mining and processing waste has also contaminated untold amounts of water, perhaps the most important resource in the desert southwestern United States. Proposed uranium mines promise to contaminate even more water sources.

The United States' response to cleaning up historic uranium mining and processing waste and permitting new uranium mines violates Articles 6, 7, 23, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR). The United States' historic and current practice in remediating radioactive and toxic waste in minority communities generally, and indigenous communities specifically, reveals a pattern of disparate impacts on minority and indigenous communities resulting in abrogation of the rights to life, family, exercise of culture, and freedom from discrimination guaranteed by the ICCPR.

The United States has abrogated the ICCPR's provisions in two significant ways. First, the United States has established a pattern of remediating uranium mining and processing waste in minority - and especially indigenous - communities much more slowly and much less rigorously than in non-minority communities. As a result, minority and indigenous communities are exposed to life threatening radioactive and toxic contaminants much longer and in higher concentrations than their non-minority counterparts. Such unnecessarily long exposure causes not only physical impacts, but also psychological and cultural impacts.

Second, when community relocation may be indicated due to environmental contamination, the United States does not consider culturally appropriate relocation criteria. As a result, indigenous communities are forced to choose between maintaining cultural ties to land and moving some or all of their families to a location that is not polluted. Further, this untenable choice often results in traditional family units and relationships being fractured.

The primary reporting organization for the following issues is the Red Water Pond Road Community Association, which is a grassroots organization of Diné (Navajo) families who have experienced and lived with the impacts of uranium mining and milling in northwestern New Mexico since the 1960s. Its mission is "to restore the land and water contaminated by uranium mining, improve the health of community members, and protect and preserve the natural and cultural environment in which we live." The Red Water Pond Road Community Association is a nonprofit organization recognized under Navajo Nation laws, including Fundamental Laws of the Diné, Title 1, Chapter 2.

## **ISSUE 1**

**I. Title:** Disparate Pace and Quality of Uranium Mine and Mill Waste Clean-up in Indigenous Communities

**II. Reporting Organizations:** Red Water Pond Road Community Association with the assistance of the New Mexico Environmental Law Center. The Red Water Pond Road Community Association may be contacted through Edith Hood, ediehood@yahoo.com or Annie Benally, amben2000@yahoo.com. The New Mexico Environmental Law Center may be contacted through Eric Jantz, Staff Attorney, ejantz@nmelc.org.

### III. Issue Summary

In New Mexico, and throughout the western United States, the public health and environmental impacts from uranium mining and processing have been devastating. From the 1950s until the 1990s, uranium was mined and processed in northwestern New Mexico for atomic weapons and later, nuclear power. While millions of pounds of uranium were extracted, millions of tons of radioactive and toxic waste were left behind. Little has been done to clean up the waste. As a result, in minority communities in northwestern New Mexico, vast areas of land and groundwater have been contaminated with radiation and heavy metals. The resultant health impacts have already affected three generations and promise to affect many more.

Uranium is not only radioactive, it is also a heavy metal. Uranium mining and processing waste's radioactive impacts – primarily cancer – are well documented. Emerging research,<sup>1</sup> however, is revealing that people living in close proximity to uranium mine and processing waste suffer a broad range of adverse health effects, including hypertension, heart disease, kidney disease, and autoimmune dysfunction, all associated with the waste's toxic properties.<sup>2</sup>

There are two primary issues related to uranium mining and processing upon which ICCPR mandates bear. First, uranium mine and mill waste clean-up is conducted relatively quickly in predominantly non-minority communities, but waste continues to fester in minority communities causing significant health and environmental impacts.<sup>3,4,5</sup>

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<sup>1</sup> Significantly, all the emerging research has been done by uranium impacted communities along with their research partners. Neither federal nor state governments have initiated any of the studies that indicate the wide-ranging adverse health effects associated with uranium mining and processing waste.

<sup>2</sup> See, e.g., Kurttio P, Auvinen A, Salonen L, Saha H, Pekkanen J, Mäkeläinen, Väisänen, Penttilä IM, Komulaninen H. Renal effects of uranium in drinking water. *Environmental Health Perspectives*, 2002; 110:337-342.; Shuey CL. Biomarkers of Kidney Injury – Challenges for Uranium Exposure Studies: A Critical Integrative Review of the Literature. Albuquerque: University of New Mexico Masters in Public Health Program, April 2002; Limson-Zamora M, Tracy BL, Zielinski JM, Meyerhof DP, Moss MA. Chronic ingestion of uranium in drinking water: a study of kidney bioeffects in humans. *Toxicological Sciences* 1998; 43:68-77.

<sup>3</sup> United States Government Accountability Office, Report to Congressional Requestors, Uranium Contamination: Overall Scope, Time Frame, and Cost Information is Needed for Contamination Cleanup on the Navajo Reservation (GAO 14-323) (May 2014) at pp. 54, 62, 70; <http://www.gao.gov/assets/670/662964.pdf>.

Typical of the impacts visited on minority and indigenous communities is the situation of the Diné community of Red Water Pond Road Community. This small community, located within the Coyote Canyon Chapter<sup>6</sup> of the Navajo Nation in northwestern New Mexico, lies near three uranium mining and processing Superfund sites. To the south of the RWPRC is the abandoned Northeast Churchrock uranium mine<sup>7</sup>. To the northeast is the abandoned Kerr-McGee uranium mine complex.<sup>8</sup> To the southeast is the United Nuclear Corp. Churchrock mill site. All of these sites are currently undergoing surface remediation pursuant to the Comprehensive Environmental Response and Liability Act (CERCLA), 42 U.S.C. § 9601 *et. seq.*<sup>9,10</sup> Complete remediation remains decades away, if it is even possible. Nevertheless, community demands that the mine waste piles – which are the source of elevated levels of radiation in the community’s air and water – be moved away from their community, have been repeatedly rejected by federal and state agencies. Moreover, none of these mine sites is undergoing groundwater remediation.<sup>11</sup>

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<sup>4</sup> U.S. Department of Energy, Office of Legacy Management, Durango, Colorado Processing and Disposal Sites Fact Sheet, [www.lm.doe.gov/Durango/Fact\\_Sheet\\_Durango.pdf](http://www.lm.doe.gov/Durango/Fact_Sheet_Durango.pdf).

<sup>5</sup> <http://www.wise-uranium.org/udusahs.html>.

<sup>6</sup> The U.S. Census Bureau's Census Designated Place in which the Coyote Canyon Chapter is located is over 99% Native American. [https://en.wikipedia.org/wiki/Brimhall\\_Nizhoni,\\_New\\_Mexico](https://en.wikipedia.org/wiki/Brimhall_Nizhoni,_New_Mexico).

<sup>7</sup> The Northeast Churchrock Mine operated between approximately 1967 and 1982 and left behind 1,000,000 cubic yards (764,555 cubic meters) of mine waste. [https://www.epa.gov/sites/production/files/2017-12/documents/necr\\_aoc\\_for\\_design\\_and\\_cost\\_recovery-2015-04-27.pdf](https://www.epa.gov/sites/production/files/2017-12/documents/necr_aoc_for_design_and_cost_recovery-2015-04-27.pdf) at 14.

<sup>8</sup> The Kerr-McGee mine complex encompasses approximately 40 surface acres (16.1 hectares) and operated from the late 1960s until 1987. <https://semspub.epa.gov/work/09/2221281.pdf> at 1-1 - 1-3.

<sup>9</sup> See, <http://yosemite.epa.gov/r9/sfund/r9sfdocw.nsf/vWSOAlphabetic?openview>.

<sup>10</sup> The United States Environmental Protection Agency and United States Nuclear Regulatory Commission are the Federal agencies primarily responsible for remediation of the CERCLA sites near the RWPRC. The New Mexico Environment Department is the state agency primarily responsible for uranium mine groundwater remediation where New Mexico has jurisdiction.

<sup>11</sup> See, e.g., *Engineering Evaluation/Cost Analysis: Northeast Churchrock (NECR) Mine Site, Gallup, New Mexico* at 10 (May 30, 2009).

In contrast, uranium mill waste piles in the predominantly non-minority community of Durango<sup>12</sup>, Colorado, were moved to a site away from the town over a period of four years.<sup>13</sup> Similarly, in predominantly non-minority Moab, Utah,<sup>14</sup> mill wastes are being moved to a permanent location 30 miles away from the community.<sup>15</sup>

The unequal speed at which uranium mining and processing waste is remediated in minority compared to non-minority communities results in minority communities suffering significantly higher risks of death and disease attributable to exposure to uranium mining and processing wastes. Moreover, being relegated to live in a community contaminated by radioactive and toxic waste results in significant psychological distress and trauma.<sup>16</sup> Finally, the presence of widespread radioactive and toxic waste in their community prevents Red Water Pond Road Community members from fully realizing their cultural practices<sup>17</sup> or traditional lifeways such as subsistence pastoral and agricultural practices.<sup>18</sup>

#### IV. ICCPR Legal Framework

Article 6(1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

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

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<sup>12</sup> According to 2012 U.S. Census estimates, Durango is 88.1% non-Hispanic white. [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_5YR\\_DP05](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP05).

<sup>13</sup> [www.lm.doe.gov/Durango/Fact\\_Sheet\\_Durango.pdf](http://www.lm.doe.gov/Durango/Fact_Sheet_Durango.pdf).

<sup>14</sup> Moab's population is 90.33% non-Hispanic White. <http://censusviewer.com/city/UT/Moab>.

<sup>15</sup> <http://www.moabtailings.org/>.

<sup>16</sup> See, <https://beyondnuclearinternational.org/2018/12/30/poisoned-water-and-deadly-dust/>.

<sup>17</sup> Diné consider uranium a source of evil that must be left in the ground. Markstrom, Carol A., and Charley, Perry H., *Psychological Effects of Technological/Human Caused Environmental Disasters*, in *The Navajo People and Uranium Mining* at 105.

<sup>18</sup> <https://beyondnuclearinternational.org/2018/12/30/poisoned-water-and-deadly-dust/>.

discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess their own religion, or to use their own language.

## **V. Concluding Observations**

None relevant to this issue.

## **VI. Current U.S. Government Policy or Practice**

The United States has not submitted a report on current compliance with the ICCPR. Currently, the United States continues to remediate uranium mine and mill waste in communities of color more slowly and less rigorously than in non-minority communities. This remains unchanged since 2014.

## **VII. Human Rights Committee General Comments**

The Human Rights Committee has, in relevant part, provided the following General Comments on the Legal Framework bearing on the issue raised.

General Comment No. 18: Non-discrimination:

¶ 6 - The Committee notes that the Covenant neither defines the term “discrimination” nor indicates what constitutes discrimination. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

¶ 7 - While these conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and

which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

General Comment No. 23 (Art. 27):<sup>19</sup>

¶ 5.1 - The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language.

¶ 6.2 - Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion.

¶ 7 - With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, specially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.

General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life:<sup>20</sup>

¶ 3 - The right to life is a right which should be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. Article 6 guarantees this right for all human beings, without distinction of any kind ...

¶ 6 - Deprivation of life involves an intentional or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission. It goes beyond injury to bodily or mental integrity or threat thereto.

¶ 18 - The second sentence of paragraph 1 provides that the right to life "shall be protected by law". This implies that States parties must establish a legal framework to

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<sup>19</sup> CCPR/C/21/Rev. 1/Add. 5 (26 April 1994)

<sup>20</sup> CCPR/C/GC/36 (30 October 2018).

ensure the full enjoyment of the right to life by all individuals as may be necessary to give effect to the right to life. The duty to protect the right to life by law also includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities.

¶ 26 - The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include ... degradation of the environment, deprivation of land, territories and resources of indigenous peoples ... The measures called for addressing adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation ...

¶ 56 - The arbitrary deprivation of life of an individual may cause his or her relatives mental suffering, which could amount to a violation of their own rights under article 7 of the Covenant.

¶ 62 - Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. Obligations of the States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it from harm, pollution and climate change caused by public and private actors.

### **VIII. Other UN Body Recommendations**

The Committee on the Elimination of Racial Discrimination has made several relevant recommendations. In 2008, the CERD Committee cited an ongoing concern about the United States' continued failure to meaningfully address *de facto* racial discrimination in Federal and state laws and policies and recommended that the U.S. review the definition of "racial discrimination" in Federal and state legislation and



court practice so as to ensure that it encompasses racial discrimination in effect in addition to discrimination in purpose.<sup>21</sup>

In 2014, the CERD Committee called upon the United States to "clean up any remaining radioactive and toxic waste throughout the State party as a matter of urgency."<sup>22</sup> Moreover, the CERD Committee recommended that the United States pay particular attention to areas inhabited by racial minorities and indigenous peoples that have been historically and continually neglected.<sup>23</sup>

## **IX. Recommended Questions**

What specific steps has the United States taken to insure parity in uranium mine and processing waste remediation in minority communities compared to non-minority communities?

What specific steps has the United States taken to assess the health impacts on communities located near unremediated or partially remediated uranium mining or processing operations?

## **X. Suggested Recommendations**

The United States should immediately begin final remediation of uranium mines and processing sites in indigenous communities and complete remediation as quickly as possible.

The United States should implement a comprehensive national plan, with strict timetables, to achieve final reclamation of uranium mines.

The United States should immediately provide culturally appropriate alternative housing options for community members living in communities contaminated from uranium mining and processing.

The United States should require, consistent with the ICCPR's right to life, Article 6(1), comprehensive studies analyzing and evaluating the public health impact from historic uranium mining and processing in minority communities impacted by

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<sup>21</sup> CERD/C/USA/CO/6 ¶10 (8 May 2008).

<sup>22</sup> CERD/C/USA/CO/7-9 (29 August 2014).

<sup>23</sup> *Id.*

uranium mining and processing and implement comprehensive policies to prevent and mitigate those impacts.

## ISSUE 2

**I. Title:** Culturally Appropriate Relocation for Indigenous Peoples Impacted by Uranium Mine and Processing Waste

**II. Reporting Organizations:** Red Water Pond Road Community Association with the assistance of the New Mexico Environmental Law Center.

### III. Issue Summary

Because their community is contaminated with radioactive and toxic waste and remediation of the waste will take years, residents of the Red Water Pond Road Community have demanded they be given the opportunity to relocate to a culturally appropriate location. Diné people are culturally attached to the land. In particular, they are "anchored" to that place where their umbilical cord is buried at birth.<sup>24</sup> Thus, the Red Water Pond Road Community members are inextricably connected to that community. Because of the cultural ties to the Red Water Pond Road Community, Community members have asked the U.S. Environmental Protection Agency to relocate their entire community, collectively, to a traditional summer herding camp site several miles away from the current location of their residences. This relocation site would move the Community away from the radioactive and toxic pollution but would still be within a culturally appropriate area.

Rather than accommodating Community members' requests, the U.S. Environmental Protection Agency has insisted that Community members be individually relocated to cities outside the Navajo Nation or to other communities within the Navajo Nation but outside the Community's current traditional cultural area. The EPA's relocation plan would not only fracture the community and tear apart extended and clan<sup>25</sup> families, it would result in Community members being forced to sever their ties to their traditional community.

### IV. ICCPR Legal Framework

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<sup>24</sup> Schwarz, Maureen, *Unraveling the Umbilical Cord: Navajo Relocation 1974 - 1996*, 99 *American Anthropologist* No. 1 at 43 (March 1997).

<sup>25</sup> Clan relationships are a foundation of Diné culture and family relationships. *See, e.g.*, <https://en.wikipedia.org/wiki/Navajo>.

Article 23(1): The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 27: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess their own religion, or to use their own language.

## **V. Concluding Observations**

None relevant to this issue.

## **VI. Current U.S. Government Policy or Practice**

The United States has not submitted a report on current compliance with the ICCPR. Currently, the United States does not provide culturally appropriate relocation opportunities for indigenous peoples who live in communities contaminated by uranium mining and processing.

## **VII. Human Rights Committee General Comments**

The Human Rights Committee has, in relevant part, provided the following General Comments on the Legal Framework bearing on the issue raised.

General Comment No. 19: Article 23 (the Family)(1990):

¶1 - Article 23 of the International Covenant on Civil and Political Rights recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Protection of the family and its members is also guaranteed, directly or indirectly, by other provisions of the Covenant. Thus, article 17 establishes a prohibition on arbitrary or unlawful interference with the family. In addition, article 24 of the Covenant specifically addresses the protection of the rights of the child, as such or as a member of a family. In their reports, States parties often fail to give enough information on how the State and society are discharging their obligation to provide protection to the family and the persons composing it.

¶ 2 - The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition. However, the

Committee emphasizes that, when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in article 23. Consequently, States parties should report on how the concept and scope of the family is construed or defined in their own society and legal system. Where diverse concepts of the family, “nuclear” and “extended”, exist within a State, this should be indicated with an explanation of the degree of protection afforded to each. In view of the existence of various forms of family, such as unmarried couples and their children or single parents and their children, States parties should also indicate whether and to what extent such types of family and their members are recognized and protected by domestic law and practice.

General Comment No. 23 (Art. 27):<sup>26</sup>

¶ 5.1 - The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language.

¶ 6.2 - Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion.

¶ 7 - With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, specially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.

## VIII. Other UN Body Recommendations

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living made several recommendations on the rights of displaced persons, including those forcibly or coercively displaced by "environmental destruction or degradation".<sup>27</sup> Displaced persons have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that is, among other

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<sup>26</sup> CCPR/C/21/Rev. 1/Add. 5 (26 April 1994)

<sup>27</sup> *Basic Principles and Guidelines on Development-Based Evictions and Displacement*, Annex 1 to A/HRC/4/18 at ¶ 9 (5 February 2007) .

requirements, culturally adequate.<sup>28</sup> Among the guidelines for resettling displaced persons are: the right to culturally appropriate housing;<sup>29</sup> relocation to land that is not polluted and is not in immediate proximity to pollution sources;<sup>30</sup> and full participation of the affected community.<sup>31</sup>

## **IX. Recommended Questions**

What criteria, if any, does the United States consider when relocating displaced persons or communities?

How does the United States implement relocation of displaced persons or communities in minority communities differently than in non-minority communities?

Does the United States specifically consider cultural appropriateness when relocating displaced persons or communities?

## **X. Suggested Recommendations**

The United States should immediately begin resettlement or return of indigenous communities impacted by uranium mining and processing consistent with the Basic Principles and Guidelines on Development-Based Evictions and Displacement, specifically considering the cultural appropriateness of relocation options.

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<sup>28</sup> *Id.*, ¶¶ 16, 55.

<sup>29</sup> *Id.*, ¶ 55.

<sup>30</sup> *Id.*, ¶ 56(g).

<sup>31</sup> *Id.*, ¶ 56(i).