



# INTERNATIONAL HUMAN RIGHTS IMPACTS OF FRACKING SUMMARY REPORT

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## Notes

The authors of this summary report are LLM candidates in International Human Rights Law at the Irish Centre for Human Rights (ICHR), NUI Galway. Rowan Hickie holds a Bachelor of Arts Honors degree and Juris Doctor degree from the University of Alberta, Canada. Bridget Geoghegan holds a Bachelor of Civil Law degree from NUI Galway.

This report has been prepared in collaboration with Safety Before LNG, Love Leitrim and Letterbrean and Mullaghduin Partnership (LAMP) as part of the work of the Human Rights Law Clinic at the Irish Centre for Human Rights, NUI Galway.

This report is a revised version of a report prepared for LAMP, examining the human rights impacts of fracking and the obligations which the United Kingdom and Northern Ireland hold in regard to fracking. This report has been revised to be more widely applicable to all States Parties to the human rights treaties discussed.

The ICHR at the School of Law, National University of Ireland Galway, is Ireland's principal academic human rights institute. The ICHR undertakes human rights teaching, research, publications, and training, and contributes to human rights policy development nationally and internationally. The Human Rights Law Clinic at the ICHR was launched in 2019 and is directed by Dr Maeve O'Rourke. The Clinic introduces students to 'movement lawyering' and enables students to contribute their skills to community-based movements for social change.

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The authors are solely responsible for the content of this report and all opinions and any errors are their own.

## Introduction

Climate change poses a major threat to our planet. This has been recognized by the United Nations and broader international legal community, with the United Nations Secretary General, António Guterres, in December 2020 calling on leaders across the globe to declare a State of Climate Emergency in their countries until carbon neutrality is reached.<sup>1</sup>

Hydraulic fracturing (hereinafter ‘fracking’) poses a threat to human rights through both its contribution to climate change and its procedures’ impacts on surrounding communities. The Concerned Health Professionals of New York and Physicians for Social Responsibility in their 7<sup>th</sup> Edition of the Compendium of Scientific, Medical and Media Findings Demonstrating Risks and Harms of Fracking (Unconventional Gas and Oil Extraction)<sup>2</sup> (hereinafter the ‘Compendium’), have stressed that ‘the evidence clearly demonstrates that the processes of fracking contribute substantially to anthropogenic harm, including climate change and global warming, and involve massive violations of a range of substantive and procedural human rights and the rights of nature.’<sup>3</sup> The Compendium concludes that ‘a significant body of evidence has emerged to demonstrate that these activities are dangerous in ways that cannot be mitigated through regulation.’<sup>4</sup>

Human rights impacted by fracking and its contribution to climate change include, but are not necessarily limited to, the right to life, the right to health, the right to water, the right to food, the right to housing, the right to access to information, the right to public participation, the right to a clean and healthy and sustainable environment, with violations of these rights having disproportionate impacts on marginalized and vulnerable communities and groups.

These human rights are contained in numerous international and regional human rights instruments and treaties to which many States are party, including Ireland. These international human rights instruments include:

- The International Covenant on Civil and Political Rights (ICCPR);<sup>5</sup>
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);<sup>6</sup>
- The United Nations Convention on the Rights of the Child (CRC);<sup>7</sup>

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<sup>1</sup> António Guterres ‘Remarks at the Climate Ambition Summit’ (December 12 2020), available at: <https://www.un.org/sg/en/content/sg/speeches/2020-12-12/remarks-the-climate-ambition-summit>.

<sup>2</sup> Concerned Health Professionals of New York and Physicians for Social Responsibility, ‘Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking (Unconventional Gas and Oil Extraction)’ (7th ed, 2020).

<sup>3</sup> *Ibid.*, at 57-58.

<sup>4</sup> *Ibid.*, at 7.

<sup>5</sup> International Covenant on Civil and Political Rights (adopted 23 March 1976) 999 UNTS 171.

<sup>6</sup> International Covenant on Economic, Social and Cultural Rights (adopted 1 March 1976) 993 UNTS 3.

<sup>7</sup> Convention on the Rights of the Child (adopted 20 November 1989) 1577 UNTS 3.

- The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);<sup>8</sup>
- The United Nations Convention on the Rights of Persons with Disabilities (CRPD);<sup>9</sup> and
- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD).<sup>10</sup>

In addition to the treaties mentioned above, the European Convention on Human Rights (ECHR)<sup>11</sup> similarly enumerates human rights obligations, binding on all Council of Europe member states.

United Nations treaty bodies, special rapporteurs and civil society organizations have recognized and noted the negative impacts that fracking and climate change pose to the human rights contained within these instruments. Once a State has ratified the above mentioned international and regional human rights instruments, it is bound by their obligations thereunder to respect, protect and ensure these international human rights are met.

A brief discussion of each right and how fracking and fracking's contribution to climate change may impact and infringe upon international legal human rights standards will follow below.

## **Right to Life<sup>12</sup>**

The right to life is one of the most widely-recognized rights in international human rights law.<sup>13</sup> The right to life protects against State action or inaction which poses risk to the life of persons.

The UN Human Rights Committee has emphasized that climate change and degradation of the environment present serious threats to 'present and future generations to enjoy the right to life.'<sup>14</sup> The UN Office of the High Commissioner for Human Rights (OHCHR) has emphasized that not only does climate change result in premature deaths, but that climate change also

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<sup>8</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 3 September 1981) 1249 UNTS 1.

<sup>9</sup> Convention on the Rights of Persons with Disabilities (adopted 3 June 2008) 2515 UNTS 3.

<sup>10</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965) 660 UNTS 195.

<sup>11</sup> Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) 213 UNTS 221.

<sup>12</sup> See Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) art 3 (UDHR); ICCPR art 6; CRC art 6.

<sup>13</sup> United Nations General Assembly 'Safe Climate: a report of the Special Rapporteur on human rights and the environment' (15 July 2019) UN Doc A/74/161 at 28 (hereinafter the 'Safe Climate Report').

<sup>14</sup> United Nations Human Rights Committee 'General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life' (30 October 2018) UN Doc CCPR/C/GC/36 para 62.

‘endangers the underlying determinants of health at every level, acting as a threat multiplier.’<sup>15</sup> The Special Rapporteur on human rights and the environment has similarly stressed the disastrous effects of climate change and the risk it poses to human rights, including through its contribution to extreme weather events, heat waves, floods, draughts, wild-fires, diseases and pollution leading to deaths.<sup>16</sup>

Fracking poses significant public health risks to communities and individuals residing in the surroundings of fracking operations, through its contribution to the issue of climate change and the production and use of fossil fuels and greenhouse gas emissions.

## **Right to Health<sup>17</sup>**

Treaty bodies, such as the Committee on Economic Social and Cultural Rights (CESCR) have described the right to health as an inclusive right, inclusive of not only access to health care, but also ‘the underlying determinants of health’ including safe water, safe food and healthy environmental conditions.<sup>18</sup>

The UN Special Rapporteur on human rights and the environment has outlined the nexus between the right to health and the environment, emphasizing the dire consequences climate change poses for health.<sup>19</sup> Fracking’s impact on human health has been widely documented in civil society reports such as the Compendium, where serious impacts to reproductive health, birth defects, cancers and respiratory conditions have been linked to fracking operations.<sup>20</sup> With fracking’s contribution to climate change and the degradation of the environment, and the resulting impacts on human health, the Special Rapporteur has recommended the prohibition of the ‘most polluting and environmentally destructive types of fossil fuel extraction, including oil and gas produced from hydraulic fracturing (fracking).’<sup>21</sup>

States that have ratified international legal instruments containing the right to health are obligated to ‘implement them and translate their obligations into national law.’<sup>22</sup> Thus, States,

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<sup>15</sup> United Nations Human Rights Council ‘Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health’ (6 May 2016) UN Doc A/HRC/32/23 at 8, referring to DARA, ‘Climate Vulnerability Monitor: A Guide to the Cold Calculus of a Hot Planet’ (2<sup>nd</sup> ed, 2012); *see also* WHO, ‘Quantitative Risk Assessment of the Effects of Climate Change on Selected Causes of Death, 2030s and 2050s’ (2014).

<sup>16</sup> Safe Climate Report (n 13) at 29.

<sup>17</sup> See ICSCR art 12; CRC art 24; CRPD art 25; UDHR art 25; CERD art 5(e)(1v); CEDAW arts 11.1(f), 12.

<sup>18</sup> Committee on Economic Social and Cultural Rights, ‘General Comment No. 14: The Right to the Highest Attainable Standard of Health’ (11 August 2000) at 11.

<sup>19</sup> Safe Climate Report (n 13) at 32.

<sup>20</sup> Compendium (n 2) at 187-215.

<sup>21</sup> Safe Climate Report (n 13) at 78(d).

<sup>22</sup> United Nations Human Rights Council ‘Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health’ (6 May 2016) UN Doc A/HRC/32/23 at 44.

in meeting their obligations must take measures to ‘prevent and remedy the negative impacts of climate change on the right to health, including with regard to the environmental and social determinants of health.’<sup>23</sup>

Fracking’s contribution to greenhouse gases and climate change pose a risk to human health, as numerous human health risks result from climate change. Further, the practices of fracking pose substantial health risks to surrounding communities, where pollution to water, air, and soil directly contribute to poor health.

## **Right to Water<sup>24</sup>**

Safe and clean drinking water has been explicitly recognized by the United Nations General Assembly in resolution 64/292 as a human right, essential for life and the realization of other human rights.<sup>25</sup>

Access to safe and clean water directly impacts various human rights, as recognized by treaty bodies such as CESCR, the Committee recognizing the importance of access to water for the purposes of agriculture and the right to adequate food.<sup>26</sup> The Committee has further linked the importance of water in relation to human dignity, life and health.<sup>27</sup>

Fracking is a water-intensive activity that poses a risk to water resources by compromising the quantity (accessibility and affordability) as well as the quality (contamination) of water available to affected communities. As noted in the Compendium, researchers in Arkansas found that the withdrawal of water for fracking operations depleted water sources necessary for both consumption and recreation in local communities.<sup>28</sup> The contamination of water supplies during fracking operations is also noted in the Compendium, where spills of fracking fluids and fracking wastewater are common.<sup>29</sup> Accordingly, the depletion and contamination of water as a result of fracking poses a substantial risk to the right to safe clean water.

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<sup>23</sup> *Ibid.*, at 45.

<sup>24</sup> See CEDAW art 14(2), CRC art 24(1), CRPD art 28(2).

<sup>25</sup> UN General Assembly, ‘The human right to water and sanitation’ (3 August 2010) UN Doc A/RES/64/292, at 2.

<sup>26</sup> CESCR, ‘General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)’ (20 January 2003) UN Doc E/C.12/2002/11 at 7.

<sup>27</sup> *Ibid.*, at 11.

<sup>28</sup> Compendium (n 2) at 34.

<sup>29</sup> *Ibid.*, at 86; see also 86 – 141 for more on water contamination.

## **Right to Food<sup>30</sup>**

The availability of food is fundamental to the right to life, health and human dignity. The CESCR Committee has emphasized that ensuring the right to adequate food means that food must not only be available and of sufficient quality, but must also be ‘free from adverse substances’.<sup>31</sup> This refers to food safety and especially the prevention of contamination.<sup>32</sup>

Fracking poses a risk to the right to adequate food through both its contribution to climate change and its contamination of food sources. As the climate changes, food security is compromised, as recognized by the Special Rapporteur on the right to food, who has called for a policy change to respond to climate change, while simultaneously ‘sustaining the Earth’s renewable resources.’<sup>33</sup>

Toxic substances released from oil and natural gas operations negatively impact surrounding soil, crops and livestock. The OHCHR has noted that States, in meeting their obligations under the right to food, should prevent third parties from destroying sources of food including through means of ‘polluting land, water and air with hazardous industrial or agricultural products’.<sup>34</sup> As the Compendium notes, research indicates that exposure to gas drilling operations strongly affect the health of humans, companion animals, livestock, horses, and wildlife.<sup>35</sup>

## **Right to Housing<sup>36</sup>**

Like the right to water and the right to food, the right to housing is tied to the exercise and enjoyment of other human rights such as the right to health and the right to life.<sup>37</sup>

Fracking poses a risk to the right to housing through its impact on the availability of housing in surrounding communities, quality of housing as a result of property damage and devaluation caused by fracking activities and resulting pollution, forced displacement and disruption of the quality of community life.

The Special Rapporteur on adequate housing, as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, has noted the nexus

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<sup>30</sup> See ICESCR art 11(1); CRC art 22.2(c); CRPD art 28 (1); UDHR art 25 (1).

<sup>31</sup> CESCR, ‘General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)’ (12 May 1999) UN Doc E/C.12/1999/5 at 8.

<sup>32</sup> *Ibid.*, at 10.

<sup>33</sup> United Nations General Assembly, ‘Right to food’ (5 August 2015) UN Doc A/70/287 at 3.

<sup>34</sup> OHCHR, ‘Factsheet 34 The right to adequate food’ (April 2010) at 18.

<sup>35</sup> Michelle Bamberger, Robert E. Oswald, ‘Impacts of Gas Drilling on Human and Animal Health’ (2012) 22(1) *New Solutions* 51-77 at 67.

<sup>36</sup> See ICESCR art 11(1); CEDAW art 14(2); CRPD art 28.

<sup>37</sup> CESCR, ‘General Comment No. 4, The right to adequate housing (Art.11 (1))’ (13 December 1991) UN Doc E/1992/23 at 8(d).

between natural resource extraction and forced evictions.<sup>38</sup> Similarly, the OHCHR has recognised that the private sector's negative impact on the right to adequate housing, particularly in the context of resource extraction such as oil and gas which can cause environmental degradation or may force residents to move.<sup>39</sup> The Compendium directs toward instances in which fracking operations have negatively impacted the values of property and negatively impacted the quality-of-life for communities, including continuous and disruptive noise, odours and disproportionate increases in social problems within communities.<sup>40</sup> As noted by the Compendium, fracking's contribution to noise and light pollution have been linked to adverse physical and mental health impacts such as cardiovascular disease, stress and anxiety.<sup>41</sup> Negative health impacts not only impact the health of communities, but also their quality of life.

## **Right to Access to Information<sup>42</sup>**

In addition to being a right by itself, the right to access to information is crucial for the protection of virtually all other human rights. Access to information is particularly important in obtaining information regarding health and environmental matters that relate to fracking.

The CESCR Committee has observed that access to information ‘includes the right to seek, receive and impart information and ideas concerning health issues.’<sup>43</sup> Pursuant to this right, public authorities and third parties should give ‘full and equal access to information concerning water, water services and the environment’ to individuals and groups.<sup>44</sup>

However, as noted by the Compendium, industry secrecy and non-disclosure ‘thwart scientific inquiry into the health and environmental impacts of fracking’s many component parts and operations, leaving many potential problems—especially cumulative, long-term risks—unidentified, unmonitored, and largely unexplored.’<sup>45</sup>

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<sup>38</sup> United Nations General Assembly, ‘Guidelines for the Implementation of the Right to Adequate Housing: Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context’ (26 December 2019) UN Doc A/HRC/43/43 at 36.

<sup>39</sup> OHCHR, ‘Fact Sheet No. 21(Rev.1), The Human Right to Adequate Housing’ (November 2009) at 36.

<sup>40</sup> New York State Department of Health, ‘A Public Health Review of High-volume Hydraulic Fracturing for Shale Gas Development’ (December 2014) at 6.

<sup>41</sup> Compendium (n 2) at 216.

<sup>42</sup> See ICCPR art 19 (2); CRC arts 13(1), 17; CRPD arts 9(2), 21.

<sup>43</sup> CESCR, ‘General Comment No. 14’ (n 18) at 12(b)(iiii).

<sup>44</sup> CESCR, ‘General Comment No. 15’ (n 26) at 48.

<sup>45</sup> Compendium (n 2) at 26.

## **Right to Public Participation<sup>46</sup>**

As with the right to access information, the right to public participation through public debate and dialogue is used to defend other rights that might be impacted by fracking. It cannot be realized unless freedom of speech, assembly and association are also implemented.<sup>47</sup> As recognised in a report issued by OHCHR, ‘participation enables the advancement of all human rights’.<sup>48</sup>

The right of public participation is inextricably linked to the right of access to information. Fracking can impact on this right where there is not full, free and informed public participation in the decision-making process and effective community consultation. As noted by CESCR in their General Comment No. 15 on the right to water, national water strategies and plans of actions should respect the ‘right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water’.<sup>49</sup> When decisions impact rights holders, decision-making processes need to establish at the local and national levels ‘permanent spaces’ for consultation and dialogue where ‘peoples and communities concerned, companies and local authorities’ are represented.<sup>50</sup> The Special Rapporteur on hazardous substances and wastes and the Special Rapporteur on the situation of human rights defenders, similarly emphasized that governments must facilitate the right to participation in environmental decision-making.<sup>51</sup>

## **Right to a Safe, Clean and Sustainable Environment**

While there is not yet an explicitly-enumerated human right to a safe, clean, healthy and sustainable environment within an international human rights treaty, the right ‘has been recognized, in various forms, in regional agreements and in most national constitutions’.<sup>52</sup>

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<sup>46</sup> See ICCPR art 25; CEDAW art 7; CRC art 12; CRPD arts 4, 29.

<sup>47</sup> Human Rights Committee, ‘General Comment Adopted by The Human Rights Committee Under Article 40, Paragraph 4, Of The International Covenant On Civil And Political Rights’ (12 July 1996) UN Doc CCPR/C/21/Rev.1/Add.7, at 8.

<sup>48</sup> UN General Assembly, ‘Draft guidelines for States on the effective implementation of the right to participate in public affairs’ (20 July 2018) UN Doc A/HRC/39/28, at 1.

<sup>49</sup> CESCR, ‘General Comment No. 15’ (n 26) at 48.

<sup>50</sup> United Nations Human Rights Council, ‘Report of the Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and waste, Calin Georgescu’ (2 July 2012) UN Doc. A/HRC/21/48 at 69(g).

<sup>51</sup> United Nations General Assembly, ‘Report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Okechukwu Ibeau’ (18 February 2008) UN Doc A/HRC/7/21; UN General Assembly, ‘Situation of human rights defenders: Report of the Special Rapporteur on the situation of human rights defenders’ (5 August 2013) UN Doc A/68/262.

<sup>52</sup> UN General Assembly, ‘Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’ (24 January 2018) UN Doc A/HRC/37/59, at 11.

A clean and safe environment consists of multiple elements, including (but not limited to) clean air, access to clean water, healthy and sustainable food, a safe climate and healthy ecosystems.<sup>53</sup> The Special Rapporteur has remarked on the connection between clean air and the enjoyment of a safe and clean environment and various other human rights, such as the rights to life, health, water, food, housing and an adequate standard of living.<sup>54</sup> Although the right to clean air is not found in an international human rights instrument, the Special Rapporteur argues that obligations relating to clean air are implicit in numerous human rights instruments and the rights contained therein.<sup>55</sup> As with unsafe, polluted water, poor air quality and pollution possess the ability to impact other human rights, such as the right to food and water where air pollution or contaminants can result in crop damage or contamination of aquatic ecosystems.<sup>56</sup> As noted by the Compendium, air pollution associated with fracking operations pose grave health and environmental concerns, with evidence of increased rates of health problems linked to air pollution and dangerous levels of volatile organic compounds in areas surrounding fracking operations.<sup>57</sup>

The environmental impacts of fracking are not limited to impacting air quality however, with the Compendium further noting the risks fracking poses to water contamination,<sup>58</sup> the release of radioactive materials,<sup>59</sup> contributions to earthquakes and seismic activity,<sup>60</sup> flooding,<sup>61</sup> negative impacts to agriculture and soil quality,<sup>62</sup> and threats to the climate.<sup>63</sup> These environmental risks in turn impact and compromise the exercise and enjoyment of numerous other human rights such as the right to life, health, water and housing. As the environment plays a significant role in the everyday lives of people, ensuring an inhabitable environment, and that work is safe and conducive to exercise and enjoyment of their human rights, must be a key consideration for States in meeting their international human rights obligations.

## Disproportionate Impacts on Vulnerable Communities and Groups

Various international bodies have acknowledged that climate change and fracking have a disproportionate impact on certain ‘vulnerable’ groups, such as women and children. In ensuring that all persons benefit from the human rights encompassed in international human rights treaties, States, must take action to remedy the ‘disproportionate impacts of climate change on the most marginalized … ensure that climate actions benefit persons, groups and

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<sup>53</sup> *Ibid.*, at 17.

<sup>54</sup> *Ibid.*, at 44.

<sup>55</sup> *Ibid.*, at 45.

<sup>56</sup> *Ibid.*, at 45.

<sup>57</sup> Compendium (n 2) at 60.

<sup>58</sup> *Ibid.*, at 86.

<sup>59</sup> *Ibid.*, at 149.

<sup>60</sup> *Ibid.*, at 226.

<sup>61</sup> *Ibid.*, at 276.

<sup>62</sup> *Ibid.*, at 284.

<sup>63</sup> *Ibid.*, at 298.

peoples in vulnerable situations ... and ... reduce inequalities' in accordance with the principles of equality and non-discrimination.<sup>64</sup>

### Children

Children are disproportionately impacted by fracking and climate change. The CRC Committee has identified climate change as one of the biggest threats to children's health and has urged States to put children's health concerns at the centre of their climate change adaptation and mitigation strategies.<sup>65</sup> Environmental harm poses a risk to children's rights, including (but not limited to) the right to life, health, development, an adequate standard of living and the right to play and recreation.<sup>66</sup> The importance of protecting children from the negative impacts of climate change is widely recognized, with various Human Rights Council resolutions recognizing the impact climate change has on children and calling upon States to act against climate change.<sup>67</sup> The Special Rapporteur on human rights and the environment has noted that the Convention on the Rights of the Child explicitly requires States to act in the best interests of the child and consider 'the dangers and risks of environmental pollution.'<sup>68</sup> In particular, the Special Rapporteur flagged risks associated with air pollution, water pollution, chemicals, toxic substances and waste, the loss of biodiversity and climate change as posing substantial threats to children and their rights under the Convention.<sup>69</sup>

### Women

The disproportionate impact of fracking and climate change on women has been noted by UN the Committee on the Elimination of Discrimination Against Women in its General Recommendation 37, which emphasizes that situations of crisis (such as climate change) exacerbate gender inequalities and 'compound intersecting forms of discrimination.'<sup>70</sup> The Committee has recommended that States, in meeting their obligations to mitigate and adapt to climate change, limit their fossil fuel use and greenhouse gas emissions and the 'harmful environmental effects of extractive industries such as mining and fracking, as well as the allocation of climate financing.'<sup>71</sup>

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<sup>64</sup> United Nations Human Rights Council, 'Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (6 May 2016) UN Doc A/HRC/32/23 at 37.

<sup>65</sup> Committee on the Rights of the Child, 'General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art.24)' (17 April 2013) at 50.

<sup>66</sup> United Nations Human Rights Council 'Report of the Special Rapporteur on the issue of human rights to enjoyment of a safe, clean, healthy and sustainable environment' (24 January 2018) UN Doc A/HRC/37/58 at 31.

<sup>67</sup> See Human Rights Council Resolutions: A/HRC/RES/32/33; A/HRC/RES/35/20 and A/HRC/RES/32/33.

<sup>68</sup> Safe Climate Report (n 13) at 40.

<sup>69</sup> United Nations Human Rights Council 'Report of the Special Rapporteur on the issue of human rights to enjoyment of a safe, clean, healthy and sustainable environment' (24 January 2018) UN Doc A/HRC/37/58 at 31.

<sup>70</sup> Committee on the Elimination of Discrimination against Women 'General Recommendation No.37 on the gender related dimensions of disaster risk reduction in the context of climate change' (13 March 2018) at 2.

<sup>71</sup> *Ibid.*, at 14.

The CEDAW Committee has further expressed its concern that women in the United Kingdom, in particular women living in rural areas, are ‘disproportionately affected by the harmful effects of fracking, including exposure to hazardous and toxic chemicals, environmental pollution and the effects of climate change.’<sup>72</sup> The CEDAW Committee has already recommended that the United Kingdom ‘Review its policy on fracking and its impact on the rights of women and girls and consider introducing a comprehensive and complete ban on fracking’.<sup>73</sup>

## European Convention on Human Rights

Under the ECHR, State Parties have obligations to uphold the rights and freedoms contained in its 18 articles. Rights under the ECHR which may be impacted by fracking include the right to life<sup>74</sup>, the right to respect for private and family life,<sup>75</sup> and protection of property.<sup>76</sup>

The European Court of Human Rights has emphasised that effective enjoyment of Convention rights depends on a healthy environment and, as environmental concerns have moved up the agenda both internationally and domestically, the Court has increasingly embraced the idea that human rights law and environmental law are mutually reinforcing.<sup>77</sup>

The connection between the right to life and the environment can be seen in the Court’s decision in *Öneryildiz v Turkey*, where the court held that the right to life can be infringed by the failure of the State to inform residents living near potentially dangerous sites of any environmental safety risks or by failure to take practical measures to avoid safety risks.<sup>78</sup> Further, in examining the State’s failure to take measures to protect private property from environmental risks in this context amounted to a breach of the State’s obligations under Article 1 of Protocol 1.<sup>79</sup> Academics have noted that this decision has clear relevance for the potential lawfulness of fracking operations in certain situations.<sup>80</sup>

In addition to the right to life, the right to respect for private and family life has been examined in relation to environmental harm, where the Court has interpreted the right broadly to include

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<sup>72</sup> CEDAW, ‘Concluding Observations on the eight periodic report of the United Kingdom of Great Britain and Northern Ireland’ (14 March 2019) UN Doc CEDAW/C/GBR/CO/8 at 53.

<sup>73</sup> *Ibid.*, at 54(b).

<sup>74</sup> ECHR (n 11) art 2.

<sup>75</sup> *Ibid.*, art 8.

<sup>76</sup> Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (20 March 1952) ETS 9, art 1.

<sup>77</sup> Council of Europe, ‘Manual on Human Rights and the Environment’ (Council of Europe Publishing, 2<sup>nd</sup> edn. 2012) at 30.

<sup>78</sup> *Öneryildiz v. Turkey App no 48939/99* (ECtHR, 30 November 2004).

<sup>79</sup> *Ibid.*, at 5.

<sup>80</sup> Anna Grear, Evadne Grant, Tom Kerns, Karen Morrow, Damien Short, *A Human Rights Assessment of Hydraulic Fracturing and Other Unconventional Gas Development in the United Kingdom* (30 October 2014) at 15.

both respect for the quality of family life as well as the enjoyment of the home as living space.<sup>81</sup> In *Lopez Ostra v Spain*,<sup>82</sup> the Court was clear that environmental pollution can be severe enough to constitute a violation of the Article 8 right to respect for private and family life due to its effect on individual wellbeing.<sup>83</sup>

In examining access to information and public participation under the ECHR, the rights to life and respect for private and family life may impose a positive obligation on public authorities to ensure a right of access to information in relation to environmental issues in certain circumstances.<sup>84</sup> Further, the Court has found that in the particular context of dangerous activities falling within the responsibility of the State, special emphasis should be placed on the public's right to information.<sup>85</sup> In *McGinley and Egan v UK*, the Court found that where a State engages in hazardous activities which might have hidden adverse consequences on the health of those involved, respect for private and family life requires an effective and accessible procedure be established which enables persons to seek all relevant and appropriate information.<sup>86</sup>

The caselaw from the European Court of Human Rights demonstrates the Court's recognition of the important role a safe and clean environment plays in the recognition and exercise of the human rights contained under the ECHR. States, in meeting their obligations under the ECHR, must be cognisant of the impact the environment has over these rights and ensure that State action or inaction does not violate such rights.

## Conclusion and Recommendations

Through its emission of greenhouse gases and contribution to climate change and the immediate environmental, social and public health impacts it causes for surrounding communities, fracking poses numerous threats to the enjoyment and exercise of human rights. In light of the abundant evidence demonstrating how international and regional human rights are and will be infringed by fracking, it is difficult to see how a State can propose and utilize fracking operations without breaching its international and regional human rights obligations. As a result, we recommend that States:

- Refrain from implementing fracking practices, and in accordance with the CEDAW Committee's 2019 recommendation to the United Kingdom, introduce a comprehensive and complete ban on fracking;<sup>87</sup>

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<sup>81</sup> *Powell & Rayner v. the United Kingdom* App no 9310/81 (A/172) (ECtHR, 21 Feb 1990) at 40.

<sup>82</sup> *Lopez Ostra v Spain* App no 16798/90 (ECtHR, 09 December 1994).

<sup>83</sup> Anna Grear (n 73) at 16.

<sup>84</sup> See *Öneryıldız v. Turkey* (n 70) at 90; *Guerra and Others v Italy* App no 14967/89 (ECtHR, 19 February 1998).

<sup>85</sup> *Ibid.*, at 90.

<sup>86</sup> *McGinley and Egan v UK* App No's 10/1997/794/995-996 (ECtHR, 9 June 1998) 101.

<sup>87</sup> CEDAW, Concluding Observations (n 65) at 54(b).

- Prohibit the expansion of polluting and environmentally destructive types of fossil fuel extraction, including oil and gas produced from fracking, as per the recommendation of the Special Rapporteur on human rights and the environment;<sup>88</sup> and
- Commit to attaining and upholding the highest standards of the rights to life, health, water and food, and ensure that no State or private initiatives disproportionately impact these or other collective and individual rights.

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<sup>88</sup> Safe Climate Report (n 13) at 78(d).