

**RESPONSE TO THE PERIODIC REPORT OF THE UNITED
STATES OF AMERICA TO THE UNITED NATIONS
COMMITTEE ON THE ELIMINATION OF RACIAL
DISCRIMINATION**

July 1, 2014

SUBMITTED BY: Multicultural Alliance for a Safe Environment (MASE) with the assistance of the New Mexico Environmental Law Center. MASE consists of five core groups: Bluewater Valley Downstream Alliance, Eastern Navajo Diné Against Uranium Mining, Laguna-Acoma Coalition for a Safe Environment, Post '71 Uranium Workers Committee, and the Red Water Pond Road Community Association.

CONTACTS: Susan Gordon, MASE Coordinator, susangordon@earthlink.net
Eric Jantz, Staff Attorney, New Mexico Environmental Law Center,
ejantz@nmelec.org

SUPPORTING ORGANIZATIONS: Citizens for Alternatives to Radioactive Dumping, Janet Greenwald, Coordinator, Albuquerque, New Mexico; Clean Water Alliance, Liliás Jardin, Coordinator, Rapid City, South Dakota; Grand Valley Peace and Justice, Julie Mamo, Executive Director, Grand Junction, Colorado; Groundwater Awareness League, Nancy Freeman, Executive Director, Green Valley, Arizona; Ohio Valley Environmental Coalition, Janet Keating, Executive Director, Huntington, West Virginia; Uranium Watch, Sarah Fields, Program Director, Moab, Utah.

I. Introduction

1. Uranium mining and processing has left an indelible stain on the people and environment of the western United States, and minority communities continue to grapple with this toxic legacy.

2. 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.

3. 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.

4. 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.

5. The United States' response to cleaning up historic uranium mining and processing waste and permitting new uranium mines violates Articles 1, 2 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination's ("CERD").

II. Issue Summary

6. 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.

7. While vast areas of contamination from historic uranium mining and milling remain unremediated, the United States Government and state governments continue to permit new uranium mines. The impacts from both historic waste and new mining fall primarily on minority communities.

8. Uranium is not only radioactive, but is also a heavy metal. Uranium mining and processing waste's radioactive impacts – primarily cancer – are well documented. Emerging research,¹ however, is revealing that people living in close proximity to uranium mine and

¹ 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.

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.

9. There are two primary issues related to uranium mining and processing upon which CERD mandates bear.

10. 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.^{2,3,4}

11. For example, in the predominantly minority⁵ community of Milan, New Mexico, federal and state administrative agencies have been overseeing remediation of the Homestake uranium mill site for over 30 years. Complete remediation remains decades away, if it is even possible. Nevertheless, community demands that the mill waste piles - which are the source of elevated levels of radiation in the community's air and water - be moved, have been repeatedly rejected by federal and state agencies.

12. In contrast, uranium mill waste piles in the predominantly non-minority community of Durango⁶, Colorado, were moved to a site away from the town over a period of four years.⁷ Similarly, in predominantly non-minority Moab, Utah,⁸ mill wastes are being moved to a permanent location 30 miles away from the community.⁹

13. 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.

²United 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>.

³ 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.

⁴ <http://www.wise-uranium.org/udusahs.html>.

⁵ According to 2012 U.S. census estimates, Milan is 69.3% Latino. http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP05.

⁶ 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.

⁷ www.lm.doe.gov/Durango/Fact_Sheet_Durango.pdf.

⁸ Moab's population is 90.33% non-Hispanic White. <http://censusviewer.com/city/UT/Moab>.

⁹ <http://www.moabtailings.org/>.

14. Moreover, the unequal speed at which uranium mine and mill waste is remediated in minority communities aggravates widespread and ongoing water contamination.¹⁰ In a region of the United States where potable water is already scarce, every potential water source is important. Further, projections indicate that water in the southwestern United States, including New Mexico, will become even scarcer in the future due to global climate disruption.¹¹

15. Second, even in light of the extensive radioactive and toxic contamination in minority communities throughout the western U.S., the U.S. government and state governments continue to issue licenses and permits for new uranium mining and processing operations in impacted communities.

16. In New Mexico, the U.S. Nuclear Regulatory Commission licensed a new solution uranium mine, in spite of the fact the community where the mine is to be located is already heavily contaminated by waste from past uranium mining.¹²

17. Moreover, U.S. administrative agencies responsible for managing federal land, much of which in northwestern New Mexico contains uranium deposits, interpret the General Mining Act of 1872, 30 U.S.C. §§ 22 *et. seq.*, as a blanket prohibition on interfering with mining.¹³

18. The United States' implementation of its laws governing uranium mining and processing have resulted and continue to result in disparate adverse health and environmental impacts on racial and ethnic minorities, in violation of CERD Articles 1 and 2.

19. The United States' implementation of its laws governing uranium mining and processing have resulted and continue to result in disparate adverse health impacts on racial and ethnic minorities, in violation of CERD Article 5.

III. Legal Framework

20. Article 1(1) of the CERD defines “racial discrimination” as any “distinction, exclusion, restriction or preference” based on race color, descent or ethnic origin that has the “purpose or effect” of restricting equal recognition or enjoyment of human rights or fundamental freedoms such as exercise of political or social rights.

¹⁰ http://www.emnrd.state.nm.us/mmd/marp/Documents/MK023ER_20081212_Marquez_NNELC-Acoma-Comments-AttachmentE-UExposureSummary.pdf.

¹¹ <http://www.epa.gov/climatechange/impacts-adaptation/southwest.html#impactswater>.

¹² <http://www.wise-uranium.org/upusanm.html#CHURCHR>.

¹³ See, e.g., United States Department of Agriculture, *Draft Environmental Impact Statement for Roca Honda Mine* at p. 356 (Feb. 2013) (noting that General Mining Law of 1872 eclipses the Religious Freedom Restoration Act (“RFRA”) and that RFRA only applies to Federal, not state, actions, citing *City of Boerne v. Flores*, 521 U.S. 507 (1997)). http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/31880_FSPLT2_383483.pdf.

21. Article 2(1) of the CERD requires parties to the Convention to undertake policies and legislation, on both national and local governmental levels, to eliminate racial discrimination. Further, Article 2(1)(a) prohibits parties to the Convention in engaging in any acts or practices that result in racial discrimination.

22. Article 5(e)(vi) of the CERD guarantees the right to public health irrespective of race or ethnicity.

IV. CERD Committee Concluding Observations

23. The Committee made the following relevant recommendations in its 2008 Concluding Observations:

24. Paragraph 10: the Committee cited an ongoing concern about the United States' continued failure to meaningfully address *de facto* racial discrimination in Federal and state laws and policy 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;

25. Paragraph 29: the Committee recommended that the U.S. take all appropriate measures to ensure that extractive and nuclear related activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impacts on the enjoyment of their rights under the Convention;

26. Paragraph 32: the Committee recommended that the U.S. continue efforts to address the persistent health disparities affecting persons belonging to racial, ethnic and national minorities.

V. The CERD Committee General Recommendations

27. The Committee's General Recommendations relevant to the United States' 2013 Periodic Report is General Recommendation XX.¹⁴ General Recommendation XX recognizes that the rights guaranteed in Article 5 of the CERD may be restricted or implemented in different ways; however, in no way may the restrictions or alternative implementations be discriminatory in purpose or effect.

VI. Special Rapporteur Findings and Recommendations

28. The Special Rapporteur on the human right to water and sanitation (then Independent Expert) submitted a report on disparate access to clean water in the United States to

¹⁴A/51/18 (Supp.) Annex VIII, paras. A.1-5 (Jan. 1, 1996); http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f51%2f18%28SUPP%29&Lang=en.

the UN Human Rights Council in September 2011.¹⁵ In paragraphs 30-40 of her report, the Special Rapporteur expressed her concern about the pattern of discriminatory impacts on low-income and minority populations in the United States, regarding those communities' access to safe drinking water.

29. In paragraphs 61-69, the Special Rapporteur expressed concern about the disproportionate burden that lack of access to clean drinking water has on indigenous populations in the United States. Paragraph 69 specifically expresses concern about the impacts of mining on indigenous populations' access to clean water.

30. In paragraph 92(b) the Special Rapporteur recommended that the United States Adopt a comprehensive federal law on water and sanitation guaranteeing the rights to safe water and sanitation without discrimination and clearly delineating the responsibilities of public officials at the federal, state and local levels.

31. In paragraph 92(f), the Special Rapporteur recommended that the United States strengthen the regulatory system on water and sanitation to prevent upstream pollution (agricultural, industrial, chemical, including pharmaceutical, stormwater run-offs, etc.) as well as ensure adequate regulation of the bottled water industry.

VII. U.S. Government Report

32. The United States addresses discrimination with respect to the right to health guaranteed by Article 5, as it pertains to environmental justice, in paragraph 144. The Report does not indicate that the efforts it mentions have resulted in any minority community being relieved of disparate environmental impacts in Federal or state permitting, enforcement or rulemaking.

33. The U.S. report cites Plan EJ 2014 as a positive step toward addressing environmental racism. However, Plan EJ 2014 is a "roadmap" for re-integrating environmental justice into national environmental programs and has not resulted in any affirmative progress in uranium impacted communities. Indeed, Plan EJ 2014 notwithstanding, the EPA continues to marginalize communities of color in rulemaking and permitting, to say nothing of other Federal administrative agencies and state governments.¹⁶

34. The U.S. report does not address disparate access to clean water or the disparate impacts of resource extraction on the water quality in minority communities.

¹⁵ UN Doc. A/HRC/18/33, Report of the Special Rapporteur on the human right to Safe Drinking Water and Sanitation, U.S. Mission Report, 2011.

¹⁶ See, e.g., U.S. EPA, *Technical and Regulatory Support to Develop a Rulemaking to Potentially Modify the NESHAP Subpart W for Radon Emissions from Operating Uranium Mills* (40 C.F.R. 60.250) at pp. 115-116 (Feb. 2014) (environmental justice analysis that does not include evaluation of Latino populations in proximity to existing and proposed uranium mills).

VIII. Recommended Questions

35. Will the United States consider a moratorium on permitting new uranium mines on Federal land until waste from historic uranium mining has been remediated, in order to realize the CERD's mandate that all people have the equal right to health irrespective of race or ethnicity?

36. What specific steps has the United States taken to comprehensively assess the extent and degree of uranium mining and processing contamination, particularly contamination of water, across the areas where uranium mining and processing has occurred?

37. 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?

IX. Suggested Concluding Recommendations

38. The United States, including state and local governments, should cease permitting new uranium mining and processing operations until waste from historic uranium mining and processing has been remediated to standards consistent with the CERD's guaranteed right to health.

39. The United States should require, consistent with the CERD's right to health, Article 5(d)(iv), comprehensive studies analyzing and evaluating the public health impact from historic uranium mining and processing in minority communities impacted by uranium mining and processing, prior to permitting or licensing any new uranium mines or mills.

40. The United States should endeavor to repeal the General Mining Law of 1872, 30 U.S.C. 22, or amend it to clarify that it is subject to the provisions of all other domestic laws protecting public health, cultural and religious rights, and the environment.

41. The United States should ensure, consistent with its obligations under the CERD, that state and local governments are implementing and enforcing domestic environmental law consistent with the provisions of the CERD.