

United States Government Consultation on Environmental Issues Relating to the United Nations Universal Periodic Review: A Summary

October 7, 2014—UC Berkeley School of Law



BerkeleyLaw

UNIVERSITY OF CALIFORNIA

International Human
Rights Law Clinic

International Human Rights Law Clinic

University of California, Berkeley, School of Law

The International Human Rights Law Clinic (IHRLC) designs and implements innovative human rights projects to advance the struggle for justice on behalf of individuals and marginalized communities through advocacy, research, and policy development. The IHRLC has worked with the Safe Water Alliance and the United Nations' Special Rapporteur on the human right to safe drinking water and sanitation regarding water challenges facing California residents and has also briefed legislative staff and representatives from state agencies on this issue. For more information, please visit: www.humanrightsclinic.org.

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I. Executive Summary

On October 7, 2014, the International Human Rights Law Clinic at the UC Berkeley School of Law hosted a consultation session between federal officials and members of the public focused on environmental issues. The session was held in advance of the second review of the human rights record of the United States (U.S.) by the United Nations Human Rights Council (UNHRC), scheduled for spring 2015. Bringing together numerous civil society representatives, members of the public, and officials from seven federal agencies, the session provided an important opportunity to directly engage on pressing environmental issues. The session consisted of three different panels: (1) Climate Change, (2) Water Issues, and (3) Environmental/Public Health Protections and Members of Vulnerable Communities. Although each panel focused on a distinct environmental issue, common themes, like disparate impacts on disadvantaged communities and barriers to public participation and community engagement, extended throughout the day's conversation.

The Universal Periodic Review (UPR) is a process through which the UNHRC reviews the human rights records of each United Nations (UN) member state every four years. Following the first review of the U.S. in 2011, the UNHRC offered numerous recommendations, encompassing a variety of human rights issues, to the U.S. As for environmental issues, the U.S. adopted three recommendations, all of which focused on climate change.

While the U.S. is committed to addressing climate change issues, communities nationwide continue to face significant challenges in this area. Participants cited health and safety concerns linked to climate change and noted how many of these concerns disproportionately impact low-income communities and communities of color. Examples ranged from cancer rates in a primarily African-American community due to emissions from nearby industrial facilities to fatal explosions resulting from crude oil refining. Some participants offered critiques of current federal policies concerning the reduction of greenhouse gases for failing to address the disparate effects of harmful emissions on disadvantaged communities. Others focused on the lack of community engagement and access to government agencies with regards to climate change policies. Participants put forth various recommendations, including the modification of current funding criteria to ensure money is allocated to reducing emissions in low-income communities to framing programs in a manner that elicits public participation.

The consultation session also explored various barriers and inequities to accessing safe, clean drinking water and sanitation infrastructure. Participants identified unaffordable water rate structures in many communities and the lack of community engagement in the creation of policies affecting the allocation of funding for water infrastructure. Participants noted the various forms of disparate impacts that water policies have on racial minorities and other marginalized communities. These examples included tribes facing cultural threats to the lack of ready access to sanitation facilities for homeless persons. Panelists and commentators emphasized public participation issues, such as disenfranchised residents who are unable to vote on decisions that impact clean water availability and federally unrecognized tribes who are excluded from government resources and decision-making. Recommendations to the federal government included devoting more resources to tracking disparate impacts on low-income, minority communities and providing guidance to state officials on instituting policies that would address and correct the various barriers and political inequities facing these communities.

Lastly, the consultation addressed themes related to members of vulnerable communities and various ways in which marginalized groups are impacted by environmental and public health threats. Participants pointed to the health and safety implications of crude oil transportation and refinement; disparate health impacts on farmworkers, rural communities, and children due to pesticide use; and the possible submersion of an indigenous community due to an inadequate response to rising sea levels. Participants discussed various steps the federal government could take to remedy many of these situations, such as better monitoring of air quality, collecting data and tracking community health impacts, and ensuring community engagement in formulating programs and funding criteria.

Throughout the session, government officials responded to some of the concerns outlined above and discussed efforts towards identifying and addressing the various environmental and health impacts on marginalized communities. The government officials stated that they would seriously consider the recommendations offered at the session and attempt to incorporate some of them into government programs and policies. The session was a step towards creating an ongoing dialogue between the public and government officials on these serious issues, and the public indicated it looks forward to future opportunities for engagement.

II. Introduction

This summary document presents the major points of discussion from the United States Government Consultation on Environmental Issues held in Berkeley, California on October 7, 2014. The Consultation Session was organized by the International Human Rights Law Clinic at the UC Berkeley School of Law in advance of the United Nations' (UN) second review of the human rights record of the United States (U.S.) in 2015.

A. The Universal Periodic Review

The Universal Periodic Review (UPR) is a process through which the UN Human Rights Council (UNHRC) reviews and assesses the human rights records of all UN member states. The UNHRC bases its review upon the state's legal obligations under international human rights instruments to which the state is a party and offers recommendations to improve compliance with international legal standards.

In preparation for its review, the UNHRC requires the U.S. to submit a report regarding its compliance with its international legal obligations. In advance of the submission of this document, members of the public and advocacy groups have the opportunity to submit alternative reports directly to the UN detailing human rights challenges and offering recommendations to address them. Each UN member state is also encouraged to engage directly with relevant stakeholders, including advocacy groups and community members, about human rights issues through consultation sessions. These meetings inform the UPR report that the U.S. ultimately submits to the UNHRC, as it aims to reflect input and consideration of information collected from consultations with civil society.

B. U.S. Consultation Session on Environmental Issues

After its review in 2011, the U.S. accepted, either in full or in part, three recommendations relating to environmental issues.¹ In particular, the U.S. committed to working on the issue of climate change. In light of these recommendations, the U.S. hosted the UPR Consultation Session on Environmental Issues to follow up on its progress in implementing the recommendations, and to discuss environmental issues beyond climate change. Representatives from several federal agencies attended the consultation session, including those from the Environmental Protection Agency (EPA), U.S. Department of State, Department of Health and

¹ Please see Appendix C for a detailed list of recommendations and government responses to those recommendations.

Human Services (DHHS), Department of Justice, Department of Agriculture, Department of the Interior, and Department of Commerce, as well as the White House Council on Environmental Quality.² Advocates and members of the public from around the country attended in person and participated by phone.

Through a combination of presentations and public comments, the consultation session aimed to facilitate an open discussion on environmental issues impacting communities nationwide. Three overarching issues were discussed through panels composed of environmental advocates: (1) Climate Change, (2) Water Issues, and (3) Environmental/Public Health Protections and Members of Vulnerable Communities.

This report aims to summarize the important issues raised by the public during the consultation session and the government responses to those issues. It also includes several appendices to provide detailed information about the session, the participants, the issues discussed, and related resources available to the public.

III. Insights, Presentations, and Discussions Relating to the Panels

A. Panel One: Climate Change

In response to the recommendations set forth by the UNHRC in 2011, the U.S. committed to reduce greenhouse gases and work with the international community to mitigate the impact of climate change. In light of this commitment, the consultation began with a panel on climate change to provide a platform for follow-up on those recommendations and for the public to provide input. The panel drew community stakeholders and government representatives from diverse federal agencies. Panelists and public participants discussed significant challenges pertaining to climate change facing communities all over the nation, and suggested strategies for addressing those challenges.

1. Disparate Impact of Climate Change on Low-Income Communities/Communities of Color

Panelists and commentators identified the disproportionate impact of climate change on the health and livelihoods of people in “frontline communities,”—mainly comprised of low-income people and people of color—and described the array of problems they face. Advocates and community members expressed their concerns that serious health effects were linked to climate change. For example, one panelist noted that respiratory problems, cancer, stroke, and

² For a full list of federal offices and departments in attendance, please see Appendix B.

other health effects had been linked to exposure to harmful particulate matter and soot in frontline communities like Richmond and Oakland, California. Another speaker highlighted the case of Mossville, Louisiana, a historically African-American unincorporated community, which has struggled with pollution and health problems for many years. The panelist explained that Mossville was located in what is known as “Cancer Alley” and surrounded by at least fourteen industrial facilities. Panelists also identified reliance on and expansion of crude oil as a major issue that affected frontline communities and undermined the effort to reduce greenhouse gas emissions. In addition to the health effects related to oil refineries, panelists voiced safety concerns resulting from the expansion of refineries that process crude oil. At a refinery in Richmond, California, for example, sulfur corrosion due to crude oil processing caused an explosion that killed over two dozen people. Officials from the Environmental Protection Agency concurred with commentators and recognized that the agency’s own qualitative analysis indicated that environmental justice communities were “especially vulnerable” to climate change impacts. Moreover, a representative from DHHS conceded that one type of climate change impact—negative health effects—would not be distributed equally in both low-income communities and communities of color.

Commentators also noted that indigenous people face a disproportionate burden of climate change impacts, including the loss of traditional food sources and cultural practices. A commentator explained, for example, that entire villages in Alaska face relocation given rising sea levels. In response, government representatives from the EPA and the Department of the Interior recognized the need to work more closely with indigenous populations and emphasized their willingness to engage and enhance relationships with all types of indigenous communities, including federally recognized and unrecognized tribes, urban indigenous communities, and native Hawaiians.

Participants highlighted numerous solutions that would begin to address the disparate impact of climate change on frontline and vulnerable communities. Panelists emphasized the need to ensure that governmental policies prioritize and account for environmental justice and equity for impacted communities. Panelists and commentators asked for specific policies that would address these issues including: health monitoring, quantitative analysis of the impact on vulnerable communities, and greater funding and increased access to funding for disadvantaged communities. More broadly, public participants called for continued reduction in greenhouse

gases, greater investment in green and sustainable energy and infrastructure, and the electrification of our power grid and transportation systems.

In response, a Department of State representative underscored that nondiscrimination is a core principle and legal obligation of the U.S. government. Government officials from other agencies pointed to working groups that are charged with addressing issues relating to indigenous peoples and the transportation of crude oil. Officials also identified efforts that aim to address the issue of disparity, including on-going research and research grants to forecast the effects of climate change on health vulnerabilities, and funding to aid in species recovery. An EPA official also stated that the agency will work with states to make sure that equity is part of the discussion regarding climate change issues, and encouraged community members to get in touch with their state government directly.

2. Federal Climate Change Policies

Participants expressed support for the government's commitment to reducing greenhouse gases. However, they raised concerns pertaining to two federal policies: the Climate Action Plan and the EPA's Clean Power Plan (the Plan). As previously mentioned, one critique of the Climate Action Plan is the expansion of fossil fuel infrastructure and crude oil. Furthermore, panelists addressed the greater need to mitigate the harmful effects on low-income communities and communities of color by these federal plans. Speakers discussed the need for the forthcoming federal rule on the Plan to focus efforts on reducing greenhouse gases in communities already facing negative impacts. One panelist recommended adopting policies like those in California by funneling the Plan's cap and trade funds directly to impacted and disadvantaged communities. This, it was suggested, could be coupled with a policy requiring that disadvantaged communities must benefit from the proceeds and cannot be negatively impacted by policies meant to address climate change issues.

Federal officials noted the concerns raised and agreed that the federal plans could have a disproportionate effect on certain communities. In particular, a representative of the EPA acknowledged the need for a quantitative analysis of the impacts of the Plan. The EPA also clarified that it would reach out to all the states via a public comment process for input before issuing the Plan's final rule. Moreover, a DHHS official emphasized its attempt to take advantage of the Climate Action Plan's momentum by conducting more research on population

vulnerabilities and offering continued support for two initiatives: the Climate Ready States and Cities Initiative and the Sustainable and Climate Resilient Healthcare Facilities Initiative.

3. Community Engagement on Climate Change

Panelists and commentators discussed the lack of community engagement and access to government resources and information as another concern related to climate change. Specifically, panelists noted the lack of participation from impacted communities when creating and implementing policies that affect them. One commentator noted that small Alaskan tribes lacked access to the government given their lack of infrastructure, and in particular, broadband Internet. In fact, the same commentator revealed that many tribal members could not participate in the Consultation due to the lack of Internet access. Those tribal communities, she explained, faced serious environmental issues, including increased toxins and pollution, rising sea levels, a lack of access to clean water, and increased marine traffic near their communities. Raising the issue of lack of access to information, another speaker shared his concern that an air quality management district granted a permit to an oil refinery that switched from using ethanol to Bakken crude oil without public notification. Even when community members were able to engage with a federal agency regarding the environmental issues they were facing, such as the case in Mossville, Louisiana, there was a concerning lack of follow-up with the community members after such a meeting took place.

Panelists and commentators advocated for greater inclusion of community members and environmental justice leaders in government decision-making. Specifically, participants called for greater transparency and engagement via increased meetings between government officials and stakeholders. One speaker proposed that the government form partnerships with local residents to protect communities. Another panelist offered creative ways to engage the community to better illicit public participation. She suggested presenting opportunities and incentives framed as benefitting local residents and improving their lives, and not as overly scientific or technical environmental policies and concerns.

A representative from the National Oceanic and Atmospheric Administration's (NOAA) Office of the General Counsel made clear that public engagement was important to NOAA and outlined ways in which the agency was attempting to engage with communities, and in particular, tribal communities. Examples included the formation of advisory groups, cooperative agreements, and research partnerships. Federal officials, including those representing the EPA,

the DHHS, and NOAA, highlighted policies that demonstrate their commitment to public engagement, including providing technical assistance to vulnerable communities, creating committees where tribal issues could be raised in California, and creating research initiatives to predict and provide information on climate change, such as changes in sea level and storm patterns.

B. Panel Two: Water Issues

Water issues, such as the lack of access to safe, clean drinking water and barriers to adequate water and sanitation infrastructure, are experienced by diverse communities throughout the U.S. The second panel provided a platform for communities nationwide to voice their concerns to federal officials and raise awareness about these issues.

1. Disparate Impacts

Panelists and commentators highlighted the racial minorities, low-income individuals, and indigenous peoples who are disproportionately affected by unsafe, inaccessible, and unaffordable drinking water and sanitation.

a) Quality and Accessibility

Twenty million Californians receive drinking water from a contaminated source and of that number, one panelist noted, two million live in a community where that contaminated water runs from their faucets untreated. Many of these residents are minorities and members of farmworker communities who live in the Central Valley, the state's agricultural center, where water quality is especially poor due to groundwater contaminants resulting from the use of fertilizers and other chemicals in agriculture.

In addition to lacking access to clean water, many poor communities do not have access to the infrastructure necessary to treat and provide clean water. Participants noted that those communities without access to physical infrastructure are not dispersed randomly across all cities. In fact, one commentator referenced statistical evidence based on U.S. Census data indicating that communities of color are much more likely to lack infrastructure and adequate facilities than are white populations. Government representatives agreed that this disparate impact on racial minorities was troubling and in need of further inquiry.

In response to various funding issues raised by speakers, government officials explained that there are State Revolving Loan Funds available in many states for water infrastructure improvement projects, in which the federal government provides 80% of the funding and state

governments provide the remainder. However, officials acknowledged that in California most of these funds had gone unused for years and were not allocated to communities most in need until the federal government issued the state a notice of non-compliance that threatened to take back the money unless it was properly allocated. Participants called on the government to act more quickly in the future to ensure funding reached communities in need in a prompt manner. Participants also noted that the State Revolving Loan Funds are not available for operation and maintenance of water infrastructure—a problem in some communities that cannot afford to operate and maintain existing water treatment plants. Federal officials recognized the need for these kinds of funds to better address such situations.

Participants also discussed the disparate impact on indigenous groups with regards to water access. The Winnemem Wintu tribe, from Shasta County in California, faces a serious threat to its cultural practices due to the flooding of sacred sites that would result from plans to raise a nearby dam in response to drought conditions. Alaskan tribal communities criticized increasing government restrictions on access to Alaskan waters that led to the loss of their fishing rights in native territories. They also reported on the harmful effects of water pollution resulting from the dumping of waste off the coast of Canada. Commentators urged the U.S. government to begin documenting these international water violations. Representatives from the EPA, the agency responsible for water infrastructure for tribal communities, noted that they are working to identify tribes impacted by the drought and provide them with the necessary funding to obtain a safe and reliable water supply.

The lack of wastewater treatment facilities in rural communities and sanitation for disadvantaged individuals was also highlighted. One speaker, who has documented sanitation issues in Alabama, discussed how many rural communities throughout the southeast are exposed to raw sewage due to the lack of wastewater treatment facilities. Resulting health effects, like hookworm disease, can be especially harmful to the children in these communities. On a similar note, one speaker told the story of a homeless man in Sacramento, California who created a makeshift outhouse for the members of his encampment and carried the waste miles away in plastic bags on his bike to properly dispose of it in a public restroom. Moreover, audience members discussed situations in which homeless persons must walk miles to access a public drinking fountain, only to discover that the fountains have been capped.

b) *Affordability*

Affordability was also identified as a challenge to accessing safe and clean drinking water. Participants emphasized that low-income residents and residents of color are often disproportionately burdened with the costs needed to obtain clean water. A panelist noted that many low-income households must pay twice for drinking water: once for contaminated water from the tap and a second time for bottled water for drinking and cooking. This issue has become more prevalent due to worsening drought conditions. One panelist noted that some low-income California residents in the Central Valley no longer have any water coming from their faucets, forcing them to spend a greater portion of their limited income on bottled water.

It was noted that water rates are escalating in many cities across the U.S., often combined with significant surcharges for past due payments, making it difficult for low-income families to keep up with their water bills. In some areas of the country, such as Detroit and Boston, mass water shutoffs are occurring as a result of water rates that are unaffordable for many residents. Commentators cited examples of families forced to forgo health care or food to ensure that their household has running water. A single mother in Southern Illinois, one presenter shared, lost custody of her three children to state social services due to her inability to afford running water in her home, even though she had been bathing her children using water obtained from a nearby well. These examples demonstrate how affordability issues have impacts beyond the physical availability of water.

Moreover, participants pointed to statistics indicating that water shutoffs occur at higher rates in communities of color. Many cities do not offer programs to reduce the principle amount owed for water for those who cannot afford their water bills. A commentator noted that in Boston there are no mechanisms in place to determine and report on the impact of planned water rate increases on low-income residents and communities of color. The same commentator reported that some neighborhoods are ten times more likely to be subject to water shutoffs than others and data indicated that for every 1% increase in the proportion of persons of color, there was a corresponding 3–4% increase in water shutoff notices. Accordingly, participants called on federal officials to assess the disproportionate risk of water and sanitation shutoffs and to advise states on how to protect these communities from unnecessary shutoffs.

2. Public Participation and Community Engagement

Several participants highlighted a lack of public participation and community engagement with government agencies as a barrier to the resolution of many of the aforementioned issues.

In the context of tribal peoples, participants noted that government officials do not adequately consider the extensive knowledge of indigenous peoples about their lands and water. A member of the Winnemem Wintu, a tribe in California that is not federally recognized, reported that due to their unrecognized status they are unable to access needed resources and support from the federal government. Speakers recommended that the government increase engagement with these tribal communities. An official from the EPA underscored initiatives in place that focus on increasing communications between tribes and the federal government, including one which identifies tribes impacted by the drought in California to connect those communities with necessary resources.

Participants emphasized the need for meaningful public participation of *all* relevant stakeholders, including community residents, in the decision-making process to ensure the formulation of appropriate and responsive government policies. One commentator explained how in some areas with special districts, such as water districts, voting rights are limited to property owners. As a result, renters in the community, often low-income residents, are effectively disenfranchised. Panelists noted that unincorporated communities, in which no formal municipal governments exists, are often unable to devote the necessary time and resources to secure funding and other assistance for water infrastructure improvements. Instead, neighboring cities make crucial decisions about water infrastructure and treatment without the input of the residents of unincorporated communities. In some cases, city pipes pass right under adjacent unincorporated communities without delivering needed clean water to residents. Furthermore, many unincorporated communities lack a voice in determining how federal funding is allocated or cannot access such federal funding because they are not recognized in the U.S. Census. Panelists and audience members called on the government to collect data and monitor unincorporated communities to ensure their access to resources for water infrastructure. Panelists also urged federal officials to give guidance to state and local officials regarding the policies necessary to address the imbalances facing unincorporated communities.

Participants also discussed the lack of community engagement between government officials and disparately impacted communities. Multiple commentators focused on the difficulty in obtaining funding for clean water infrastructure due to complex, bureaucratic application processes, like that of the State Revolving Loan Fund. A community member discussed how some low-income and rural communities have waited ten to thirty years to secure the necessary funding for drinking water infrastructure improvements and were left with unsafe tap water in the interim period. By engaging directly with communities, federal officials can begin to pinpoint the obstacles to accessing funding and, in turn, direct states to effectively allocate these funds and eliminate complex procedures and delays. In addition, commentators noted that local communities need more resources from state and federal officials to build partnerships and create platforms for education and outreach to the most vulnerable communities. This, they explained, would alleviate the gap in information and facilitate access to federal funding programs.

C. Panel Three: Environmental/Public Health Protections & Members of Vulnerable Communities

Disadvantaged populations, particularly communities of color, bear significant health and financial impacts resulting from climate change and other environmental issues. Panelists and audience members voiced concerns about the disparate impact on vulnerable communities and called for an increase in environmental protections and greater inclusion in government decision-making.

1. Disparate Impact on Disadvantaged Communities

a) *Crude Oil*

The transport of crude oil was highlighted as an issue affecting disadvantaged communities. One panelist presented statistics showing an exponential growth in the transport of extreme crude oil over the last five years. These extreme crude oils are corrosive and increase the possibility of high-risk accidents. A participant reported that there have been numerous incidents, including a fatal one, involving explosions and fires in the last year alone. Communities near refineries that transport crude oil, she also noted, have seen an increase in cancer rates and air quality issues, including noxious odors. Moreover, in the hundreds of schools adjacent to railroads on which crude oil travels, many children suffer from respiratory illnesses.

One panelist offered several solutions that government agencies could employ to ameliorate the impacts on these affected communities. The creation of new technologies that

transition away from fossil fuels to clean economy was suggested as a long-term strategy. Remaining fossil fuels should be transported and refined in the least damaging way. While fossil fuels are low cost, noted one panelist, businesses need to prioritize community health over industry profits given the dangerous consequences.

b) *Pesticides*

The use of pesticides was flagged as another issue negatively impacting the health of marginalized communities. More than one billion pounds of pesticides are used in the U.S. each year. While farmworkers are directly exposed to pesticides and the hazardous chemicals they contain, it was noted that many more people, such as school children and those living and working in communities adjacent to farmland, are also affected when pesticides spread beyond the targeted area of application. The panelist recounted the story of a family working near a farm that became ill after being exposed to eight different pesticides. It took nearly a year for the county commissioner to investigate and prepare an incident report that pinpointed the exposure and identified measures to prevent future exposure. The panelist also expressed concern regarding government agencies' delayed or inconsistent regulations of these hazardous chemicals. For example, it was not until 2003 that the EPA recognized that hot temperatures contribute to the ability of pesticides to travel. She also noted the inconsistency between the government ban on some chemicals, like chlorpyrifos, from consumer products but not for agricultural use, even though they can cause acute illnesses. She encouraged all levels of government to make a concerted effort to effectively create and enforce policies in order to protect farmworkers and other community members living in pesticide-exposed areas.

2. *Lack of Environmental Protections*

Participants highlighted the tendency for government agencies to react to environmental problems rather than to take proactive measures against them. One panelist shared that climate change threatens the livelihoods of residents of the Alaskan village of Catalina due to rising sea levels. As arctic storms gradually submerge the island, community members fear they will be forced to relocate. The panelist noted that while many reports document how fossil fuels contribute to rising sea levels, which threaten places like Catalina, little has been done to mitigate the effects of climate change or to assist residents in preparing for and coping with the impacts. Residents fear that Catalina will undergo an extreme disaster before the government takes action to protect them. The speaker emphasized the need for government intervention and

that Title VI of the Civil Rights Act of 1964 does not preclude the government from addressing environmental issues affecting communities of color.

Federal officials responded regarding government efforts to address many of these concerns. An official from the Civil Rights Division of the Department of Justice noted that an array of programs that target vulnerable populations and small communities exist, but that Title VI forbids them from allocating money to certain groups based on race. A representative of DHHS referred to department-wide strategies targeted at fostering equitable and healthy communities, specifically populations with disproportionately high and adverse human health and environmental effects, low-income populations, and Indian tribes. For instance, an environmental public health tracking system, which finds chemicals in local environments and can be used to identify patterns of chronic diseases and conditions in specific areas. Moreover, DHHS is partnering with other federal agencies, such as the EPA, to develop health impact assessment tools, such as a regional approach to help mitigate the environmental factors that trigger asthma attacks in young children.

Furthermore, an EPA official pointed to a tool used in California, the CalEnviroScreen—a screening methodology to identify communities that are disproportionately burdened by multiple sources of pollution, including pesticide use and other environmental impacts—as particularly helpful. The official emphasized that they are working closely with state and local agencies to replicate tools like the CalEnviroScreen to identify the negative effects of environmental issues on a national scale.

3. Lack of Inclusion

While projects aimed at reducing fossil fuels and the presence of hazardous substances were welcomed as positive developments, many participants expressed concerns that these efforts tend to neglect disadvantaged communities. One panelist highlighted a project that creates alternative forms of transit in order to mitigate air quality issues in the Coachella Valley. The project invests in electric vehicles and creates more roads to improve traffic flow, minimize idling time, and reduce air emissions. However, the newly improved roads do not reach disadvantaged communities and as a result those residents do not benefit from the project. Participants also shared their concerns that community members are not involved in local government's decision-making. One panelist described an initiative between state and local officials to address access to safe drinking water and the reduction of odors from industrial

activities in the city of Tulare. However, unincorporated communities are excluded from these decision-making processes and from sharing in newly available resources because the local government holds itself accountable only to those community members living within the city limit.

In response, government officials stated that they are continuing to work on transparency issues and incorporating community input into policies and practices. They acknowledged that environmental justice should include those most affected by the negative impacts of environmental change.

IV. CONCLUSION

The United States Government Consultation on Environmental Issues aimed to provide the public with an opportunity to engage with federal agencies on various environmental issues and provide follow up on the recommendations made by the UNHRC during the 2011 UPR session. The consultation session allowed the public and government representatives to discuss issues pertaining to climate change, water issues, and the health and environmental challenges facing low-income and vulnerable communities. Based on the comments and dialogue over the course of the day, it is evident that government agencies and community organizations are both working towards curing the long-term negative environmental impacts while also providing immediate assistance to members of vulnerable communities. Community members and advocates are eager for on-going engagement on these issues to ensure concerted efforts from government agencies as well as policies and innovations that reach the most vulnerable groups. The consultation provided an important platform for discussions between key stakeholders and created linkages to tackle pressing environmental issues in a comprehensive and sustainable way.

Appendix A

AGENDA

United States Government Consultation on Environmental Issues Relating to the UN Human Rights Council Universal Periodic Review

Tuesday, October 7, 2014 8:30 am – 3:00 pm
295 Simon Hall- Warren Room
U.C. Berkeley School of Law

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| 8:30-9:00 | Registration and Continental Breakfast |
| 9:00-9:15 | Welcome, Introductions, and Overview of UPR and Consultation Process |
| | Sujit Choudhry, Dean, Berkeley Law |
| | Julianna Bentes, Attorney-Advisor, U.S. Department of State, Office of the Legal Adviser for Human Rights and Refugees |
| 9:15-10:45 | Panel 1 – UPR Recommendations and Climate Change |
| | Moderator: Daniel Farber, Professor, Berkeley Law |
| | Panelists: (maximum of 10 minutes each) |
| | # 1 Jalonne White-Newsome, We ACT for Environmental Justice |
| | # 2 Nile Malloy, Communities for a Better Environment |
| | # 3 Vien Truong, The Greenlining Institute |
| | Participant Questions & Comments (maximum 2 minutes each) |
| | Government Responses |
| 10:45-11:00 | Break |

11:00-12:30

Panel 2 – Water Issues

Moderator: Michael Kiparsky, Wheeler Institute, Berkeley Law

Panelists: (maximum of 10 minutes each)

1 Omar Carrillo, Community Water Center

2 Chief Caleen Sisk, Winnemem Wintu Tribe

3 Colin Bailey, Environmental Justice Coalition for Water

#4 Patricia Jones, Unitarian Universalist Service Committee

Participant Questions & Comments (maximum 2 minutes each)

Government Responses

12:30-1:15

Lunch

1:15-2:45

Panel 3 – Environmental/Public Health Protections and Members of Vulnerable Communities

Moderator: Charlotte Smith, School of Public Health, UC Berkeley

Panelists: (maximum of 10 minutes each)

#1 Madeline Stano, Center on Race, Poverty & the Environment

2 Phoebe Seaton, Leadership Counsel for Justice and Accountability

3 Diane Bailey, National Resources Defense Council

#4 Pearl Kan, California Rural Legal Assistance

Participant Questions & Comments (maximum 2 minutes each)

Government Responses

2:45-3:00

Closing Remarks and Adjournment

Appendix B

United States Government Consultation on Environmental Issues Relating to the United Nations Universal Periodic Review: U.S. Government Delegation

Department of Commerce

1. National Oceanic and Atmospheric Administration
 - International Section, Office of General Counsel
 - Northwest Fisheries Science Center

Department of the Interior

1. Office of the Assistant Secretary - Indian Affairs
2. Bureau of Reclamation
3. Fish and Wildlife Service

Department of Agriculture

1. Forest Service
2. Office of the Undersecretary of Agriculture for Natural Resources and Environment

Department of Justice

1. Civil Rights Division
 - Federal Coordination and Compliance Section

Department of Health and Human Services

White House Council on Environmental Quality

Department of State

1. Office of the Legal Adviser for Human Rights and Refugees
2. Office of Multilateral and Global Affairs
 - Bureau of Democracy, Human Rights, and Labor (DRL)
3. Office of Global Change

Environmental Protection Agency

1. Office of Policy
 - Climate Adaptation Staff
2. Regional Office 9
 - Enforcement Division
 - EJ Program Manager
 - Water Division
3. Office of Environmental Justice
4. Office of Water
5. Office of Assistant Administrator for Water
 - Lead on International Water Program
6. Office of General Counsel

Appendix C

CLIMATE CHANGE RECOMMENDATIONS FROM UPR 2011

2011 UPR Recommendations Supported in Whole or in Part Issue Group 8: The Environment

- **Recommendation 51**—Comply with its international obligations for the effective mitigation of greenhouse gas emissions, because of their impact in climate change.
- **Recommendation 221**—Take positive steps in regard to climate change, by assuming the responsibilities arising from capitalism that have generated major natural disasters particularly in the most impoverished countries.
- **Recommendation 222**—Implement the necessary reforms to reduce their greenhouse gas emissions and cooperate with the international community to mitigate threats against human rights resulting from climate change.

United States General Comments on the UPR Recommendations Supported in Whole or in Part

“Some recommendations ask the United States to achieve an ideal, e.g., end discrimination or police brutality, and others request action not entirely under the control of our Federal Executive Branch, e.g., adopt legislation, ratify particular treaties, or take action at the state level. Such recommendations enjoy our support, or our support in part, when we share the ideal that the recommendations express, are making serious efforts toward achieving their goals, and intend to continue to do so. Nonetheless, we recognize, realistically, that the United States may never completely accomplish what is described in the literal terms of the recommendation. We are also comfortable supporting a recommendation to do something that we already do, and intend to continue doing, without in any way implying that we agree with a recommendation that understates the success of our ongoing efforts.

Some countries added to their recommendations inaccurate assumptions, assertions, or factual predicates, some of which are contrary to the spirit of the UPR. In such cases, we have decided whether we support a recommendation by looking past the rhetoric to the specific action or objective being proposed. When we say we “support in part” such recommendations, we mean that we support the proposed action or objective but reject the often provocative assumption or assertion embedded in the recommendation.”

United States Comments on the UPR Recommendations Supported in Whole or in Part related to the Environment

“We disagree with premises embedded in these recommendations, but agree with their essential objectives (reduce greenhouse gas emissions and cooperate internationally).”

Full text available at <http://www.state.gov/j/drl/upr/recommendations/index.htm>.

Appendix D

LIST OF RESOURCES AND INFORMATION

UPR PROCESS AND US CONSULTATION

Universal Period Review (UPR)

<http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>

Department of State Information on UPR Process:

<http://www.state.gov/j/drl/upr/index.htm>

UN Human Rights Council's 2011 UPR Report on the United States:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/100/69/PDF/G1110069.pdf?OpenElement>

United States Consultation on Environmental Issues:

<http://www.law.berkeley.edu/17648.htm>

UPR CONSULTATION PARTICIPANTS:

COMMUNITY ORGANIZATIONS

Safe Water Alliance:

<http://www.safewateralliance.info/>

We ACT for Environmental Justice:

<http://www.weact.org/>

Communities for a Better Environment:

<http://www.cbecal.org/>

The Greenlining Institute:

<http://greenlining.org/>

Community Water Center:

<http://www.communitywatercenter.org/>

Winnemem Wintu Tribe:

<http://www.winnememwintu.us/>

Environmental Justice Coalition for Water:

<http://www.ejcw.org/>

Unitarian Universalist Service Committee:

<http://www.uusc.org/>

Center on Race, Poverty & the Environment:

<http://www.crpe-ej.org/crpe/>

Leadership Counsel for Justice and Accountability:

<http://www.leadershipcounsel.org/>

National Resources Defense Council:

<http://www.nrdc.org/>

California Rural Legal Assistance:

<http://www.crla.org/>

GOVERNMENT AGENCIES

Environmental Protection Agency:

<http://www.epa.gov/environmentaljustice/>

National Oceanic and Atmospheric Administration:

<http://www.noaa.gov/>

Department of Interior:

<http://www.doi.gov/index.cfm>

Department of Agriculture:

<http://www.usda.gov/wps/portal/usda/usdahome>

Department of Justice:

<http://www.justice.gov/>

Department of Health and Human Services:

<http://www.hhs.gov/>

White House Council on Environmental Quality:

<http://www.whitehouse.gov/administration/eop/ceq>

Department of State:

<http://www.state.gov/>

GOVERNMENT ENVIRONMENTAL TOOLS:

EPA-Enforcement Arena

<http://www2.epa.gov/enforcement/criminal-enforcements-intergovernmental-partnerships>

EPA-Laws and Regulations

<http://www2.epa.gov/laws-regulations>

EPA-Permitting Guide

<http://www.epa.gov/region9/ej/permitting.html>

EPA-Plan EJ 2014-Legal Tools

<http://www.epa.gov/compliance/ej/resources/policy/plan-ej-2014/ej-legal-tools.pdf>

EPA-Smart Growth

<http://www.epa.gov/smartgrowth/>