

UIC School of Law

## UIC Law Open Access Repository

---

UIC Law White Papers

---

1-2019

### Submission to The U.N. Human Rights Committee in Relation to the List of Issues of the United States Concerning the Unsafe Dumping and Mismanagement of Coal Ash in Puerto Rico

Sarah Dávila A.

*UIC School of Law*, [sdavila@uic.edu](mailto:sdavila@uic.edu)

Follow this and additional works at: <https://repository.law.uic.edu/whitepapers>



Part of the [Human Rights Law Commons](#)

---

#### Recommended Citation

Dávila A., Sarah, "Submission to The U.N. Human Rights Committee in Relation to the List of Issues of the United States Concerning the Unsafe Dumping and Mismanagement of Coal Ash in Puerto Rico" (2019). *UIC Law White Papers*. 18.

<https://repository.law.uic.edu/whitepapers/18>

<https://repository.law.uic.edu/whitepapers/18>

This White paper is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law White Papers by an authorized administrator of UIC Law Open Access Repository. For more information, please contact [repository@jmls.edu](mailto:repository@jmls.edu).

**SUBMISSION TO THE U. N. HUMAN RIGHTS COMMITTEE IN RELATION TO THE  
LIST OF ISSUES OF THE UNITED STATES CONCERNING THE UNSAFE DUMPING AND  
MISMANAGEMENT OF COAL ASH IN PUERTO RICO.**

**Submitted January 14, 2019**

Contact:

Sarah Dávila-Ruhaak

Steven D. Schwinn

The John Marshall Law School

International Human Rights Clinic

315 S. Plymouth Ct.

Chicago, Illinois, USA 60604

Tel. (312) 360-2654

[sdavila@jmls.edu](mailto:sdavila@jmls.edu)

Also on the submission:

Eduardo Cisneros

Deborah Ragbir

Trent Rehusch

Dante Violette

Renlin Pan

## **I. Reporting Organization**

The John Marshall Law School International Human Rights Clinic (“IHRC”) is a law school student-practice clinic that is committed to the investigation of human rights abuses and the protection of human rights in the United States and abroad.

## **II. Issue Summary**

The IHRC has investigated the human rights abuses arising out of the environmental injustices imposed on communities in the southern municipalities of Puerto Rico that represent violations of international human rights, and specifically of the International Covenant on Civil and Political Rights (“ICCPR”). Since 1994, Applied Energy Systems (“AES”), a private American energy company, has been responsible for continued coal ash contamination of the southern coastal region of Puerto Rico.<sup>1</sup> AES coal-fired power plants in Puerto Rico have released toxic amounts of coal ash into the air and water, negatively impacting air quality and drinking water for residents in this area.<sup>2</sup> Further, the use of coal ash in Agremax,<sup>3</sup> a construction material, and the unsuitable disposal methods of coal ash used by AES has led to further airborne pollution and water contamination. The Puerto Rican government has acquiesced and supported AES permitting the continuous and persistent environmental harm and related health risks affecting Puerto Ricans.<sup>4</sup> Members of the affected communities and the public have not been informed of the environmental harm affecting them and of the potential and probable health risks posed by such environmental harm. Affected communities have not been consulted throughout the process and have been unable to provide their free, prior and informed consent. Additionally, affected communities and the public have had their rights to expression, information and participation suppressed by the government when expressing their opposition to the egregious and continuous environmental harm.

## **III. Background**

In 1994, AES entered into a contract with Autoridad de Energía Eléctrica<sup>5</sup> to build a new \$500 million coal-fired power plant to relieve Puerto Rico’s dependency on imported oil.<sup>6</sup> Article 6.6 of the agreement provides that “Operator (AES) warrants that any combustion waste or by-product produced by the operation of the facility, which cannot be used for beneficial commercial uses, will not be stored anywhere in the Commonwealth of Puerto Rico for a period in excess of 180 days and that it will not be disposed anywhere in the Commonwealth of Puerto Rico or its neighboring waters.”<sup>7</sup>

Two years later, the Environmental Quality Board of Puerto Rico,<sup>8</sup> a local government agency, passed Resolution R-96-39-1, which stated that AES had agreed to not dispose of, store or abandon the coal ashes that it produces, but rather that it will process, salvage and use or reuse the coal ash as ingredients in a manufactured aggregate and as an effective substitute for other commercial products.<sup>9</sup> The Environmental Quality Board later determined that the coal ashes produced by AES did not constitute solid waste because they have a beneficial use, meaning that it can be used for purposes, such as making cement, asphalt, wallboards, and filling potholes.<sup>10</sup> For many years, AES disposed of coal ash by using it as a central ingredient in Agremax, a product formed from a loosely compacted mass of coal ash that uses excess hydrated ash to make construction materials and cement.<sup>11</sup>

Upon facing public pressure and scrutiny from the U.S. EPA with regard to the amount of Agremax actually used in construction projects, AES decided to request authorization to dump coal ash in

regular landfills.<sup>12</sup> On August 27, 2014, the Environmental Quality Board passed a resolution<sup>13</sup> that classified coal ash as “non-hazardous solid waste” and classified the AES power plant as a solid waste facility.<sup>14</sup> Reclassified as a generator of solid waste, AES gained the ability to dispose of ashes in landfills.<sup>15</sup> This has allowed AES to continually store Agremax in open-air landfills easily capable of spreading and permeating the air of nearby communities.<sup>16</sup> This exposure is compounded with heavy rains and hurricanes, which are not uncommon to the region. With coal ash uncovered and unprotected, rainwater “gets into the ash, and leaches through the subsoil and pollutes the aquifer,” affecting the drinking water as well.<sup>17</sup>

Exposure to coal ash, whether directly or through Agremax is extremely problematic since it can lead to several types of cancer, heart damage, lung disease and respiratory distress, reproductive health issues, birth defects, and impaired bone growth, developmental delays and cognitive deficits in children.<sup>18</sup> The EPA Regulatory Impact Analyses of coal ash revealed that latency periods for the onset of illness after exposure to coal ash can average 20 years.<sup>19</sup> The environmental harm caused by coal ash and resulting health conditions represent violations of human rights.

#### **IV. Concluding Observations offered by the Human Rights Committee**

None to date on the topic.

#### **V. U.S. Government Report**

None to date on the topic.

#### **VI. Legal Framework**

ICCPR Articles 2, 6, 17, 19 and 25.

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

General Comment No. 32 (2018) on article 6 of the ICCPR emphasizes that the right to life cannot be derogated since it has crucial importance to individuals and society as a whole.<sup>20</sup> This General Comment recognizes that the right to life includes protection from environmental degradation that may pose “direct threats to life or prevent individuals from enjoying their right to life with dignity.”<sup>21</sup> Additionally, the duty to protect the right to life includes “an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities.”<sup>22</sup> In order to carry out this duty, States are under the obligation to exercise due diligence to respond to “reasonably foreseeable threats to life originating from private persons and entities, whose conduct is not attributable to the State.”<sup>23</sup> In the case of natural or man-made disasters affecting the right to life, such as hurricanes, States should develop and carry out contingency plans and disaster management plans.<sup>24</sup>

General Comment No. 34 (2011) on article 19 of the ICCPR clarifies that the right of expression includes the right to seek, receive and impart information.<sup>25</sup> The right to access information includes “information held by public bodies.”<sup>26</sup> In order to make the information accessible, States should ensure “easy, prompt, effective and practical access to such information.”<sup>27</sup>

## VIII. Violations of the International Covenant on Civil and Political Rights

### A. *The Government Failed to Protect the Rights to Life and Privacy in Relation to Articles 6 and 17.*

The fundamental right to life includes the right of every person to not be deprived of his life arbitrarily, “but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence.”<sup>28</sup> Environmental harm can be so egregious as to rise to the level of a violation of the right to life. The right to life is necessarily implicated and interrelated with the right to living in a safe, clean, healthy and sustainable environment, so that the degradation of the environment may result in the violation of the right to life. States have a positive obligation to take “all appropriate steps to safeguard life” and must have a “legislative and administrative framework designed to provide effective deterrence against threats to the right to life.”<sup>29</sup>

Toxic pollution near local communities was recognized as a potential violation of the right to life by the Inter-American Commission in *San Mateo de Huanchor v. Perú*.<sup>30</sup> In the *San Mateo de Huanchor* case, the Commission found admissible a right to life violation claim where a mining company deposited toxic sludge containing heavy metals into the open air without appropriate precautions near San Mateo. Because of the close proximity of the harm and the high levels of heavy metal contamination in the air, water and soil without state intervention and a lack of affirmative domestic remedies available to the villagers, the claim was deemed admissible.

Likewise, right to life violations committed by the Russian government were found in *Fadeyeva v. Russia* where the government failed to regulate a nearby steel plant whose emissions made a victim more susceptible to diseases associated with toxics released from the plant.<sup>31</sup> The government, despite not owning the steel plant itself, was obligated to adequately regulate the private entity where serious health risks existed to those in surrounding communities.<sup>32</sup>

In the case of Puerto Rico’s southern municipalities, the environmental contamination resulting from the improper use and disposal of coal ash threatens the lives and health of the region’s residents, especially the lives of children and women. The toxins that comprise coal ash waste cause immediate and irreparable harm to the physical and mental health of those exposed to the contamination and contaminate the water and food supply in the region, which exacerbates the harm long-term.

Coal ash contains many toxic substances that can negatively impact the human body. Among the assortment of toxic metals present in coal ash are arsenic, lead, mercury, cadmium, chromium, and selenium among others.<sup>33</sup> Airborne pathways present the other most common way for persons to be exposed to dangerous levels of coal ash. Coal ash stored dry and uncovered poses the danger of being dispersed by wind either simply because the ash is exposed to wind or due to mismanagement at any stage in transportation of the coal ash from plant to landfill or construction site.<sup>34</sup> Coal ash is dangerous if inhaled, making this “fugitive dust” a serious health concern.<sup>35</sup> This dust may take form in increasingly smaller particles, which means greater health risks; the smaller the particle, the deeper the particle can be inhaled and the further they can infiltrate the lungs and other key organs.<sup>36</sup>

As mentioned above, coal ash contains arsenic, lead, and mercury, among other toxics. Especially in cases of prolonged exposure, these toxic metals can cause various ailments such as several types of cancer, heart damage, and lung disease and respiratory distress.<sup>37</sup> Also possible are reproductive problems, birth defects, impaired bone growth in children, developmental delays, and cognitive deficits.<sup>38</sup>

Indeed, cancer rates have remained high in Guayama, one of the affected municipalities, listed among the ten municipalities with the highest incidence of cancer on the island, according to the Puerto Rico Cancer Registry.<sup>39</sup> Nearby towns also ranked among the highest in the rate of cancer among their citizens.<sup>40</sup> The region has also seen significant increases in respiratory disease, including chronic bronchitis, and the rate of “spontaneous abortion” (more commonly known as miscarriage) among pregnant women.<sup>41</sup> A recent survey conducted by the School of Public Health at the University of Puerto Rico found that almost one in ten people in the Miramar neighborhood of Guayama have been diagnosed with cancer.<sup>42</sup> One in four have a respiratory disease and more than one half have heart disease.<sup>43</sup> The dumping of coal ash in these landfills essentially creates “a time bomb with heavy metals, radioisotopes, that in the long-run will get into the environment” particularly on a tropical island with high levels of rainfall every year, and prone to tropical storms and hurricanes.<sup>44</sup>

This egregious environmental contamination violates the residents’ rights to life, children’s rights and privacy rights because the coal ash waste has contaminated their food and water supply, thus making it impossible for the residents to enjoy their right to preserve their health through sanitary measures. Ingestion of toxic coal ash through air and waste directly implicates the right to life because air and water make up basic necessities associated with everyone’s home life. Healthy living, and, by extension, living itself, are hampered where the State fails to remedy pollution that results in health conditions. Without clean air or water, rights to life are prevented from being realized where external harm gets in the way. These are basic needs necessary for any person to survive and function at a bare minimum level.

The Puerto Rican government has done nothing to stop AES’s dangerous storage and disposal of coal ash and Agremax and, arguably, has helped facilitate it. Nor has there been any effort to mitigate the health risks posed by the environmental degradation presented by coal ash-infected air and water. The combination of harmful effects on residents’ health with the lack of government action to sufficiently regulate AES and protect its residents constitutes a violation of the fundamental right to life and privacy guaranteed to all persons.

*B. The Government Violated the Rights to Freedom of Expression and Information in Relation to Article 19 and the Right to Participation in Relation to Article 25.*

All persons enjoy the fundamental rights of freedom of expression and information as protected under Article 19 of the ICCPR. The right to information arises out of the right to freedom of opinion and expression, which includes “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>45</sup> The right is interrelated to the right of participation. Access to public information allows individuals and communities to adequately engage with the government in a way that meaningfully

contributes to an effective participation in governmental processes.<sup>46</sup> The right to information is particularly important in relation to environmental harm.

Baskut Tuncak, Special Rapporteur on hazardous substances and wastes, has asserted that information is critical to the enjoyment of human rights. In his first thematic report on right to information, Tuncak emphasized the importance of information on hazardous substances and wastes: “Information about hazardous substances is essential to prevent risks, mitigate harms, conduct focused research on safer alternatives, provide treatment and remedy, and ensure transparency, participation and consent in decision- and policymaking.”<sup>47</sup> Additionally, John H. Knox, former Special Rapporteur on the right to a safe, clean, healthy and sustainable environment, presents the framework principles addressing that, to avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights. The information provided should be affordable, effective and timely to any person upon request.<sup>48</sup>

In Puerto Rico, the right to information has been violated since accurate and accessible information has not been provided to the public and communities affected by the environmental harm. In making the decision of coal ash disposal in Puerto Rico, the EPA submitted a draft assessment regarding health risks associated with coal ash earlier in 2010, in which certain element in coal ash was found dangerous to human health.<sup>49</sup> However, no final submission of this assessment has been made. In addition, as mentioned in the *Request to include Puerto Rico in official visit to the U.S.* submitted to Philip Alston, “in the southern town of Peñuelas, where toxic carbon ash is brought by a US company and disposed of in nearby Guayama, residents have not heard about what steps were taken to ensure they are not risking further exposure to the ash, which has already caused an increase in serious illnesses in the nearby area, including cancer.”<sup>50</sup>

Additionally, a violation of the right to information necessarily violates the right to participation under Article 25. Article 25 of the ICCPR recognizes the right of people to take part in the conduct of public affairs.<sup>51</sup> The right to participate in environmental matters has long been recognized.<sup>52</sup> The right to participation includes the right to Free, Prior and Informed Consent. The right to free, prior and informed consent has been traditionally recognized in the indigenous rights legal framework. However, international courts and commissions have recognized that traditional, local or vulnerable communities affected by environmental harm may also have the right to free, prior and informed consent in relation to environmental matters affecting them.<sup>53</sup> Free, prior and informed consent requires that communities affected by environmental harm receive prompt, accurate and accessible information relating to environmental harm so that they can consent to potentially harmful activities that may affect their lives. Consent can only occur when the affected community is able to make informed decisions and effectively express any objections to decisions affecting it.<sup>54</sup> By not receiving accurate and accessible information, residents of the southern municipalities of Puerto Rico cannot consent and meaningfully participate in decision-making processes relation to environmental harm affecting them.

C. *The Government Failed to Protect the Right to Effective Remedies in Relation to Article 2.*

Article 2 of the ICCPR recognizes the right to an effective remedy to persons whose rights and freedoms are violated.<sup>55</sup> The right to effective remedies requires adequate, effective and prompt reparation for harm suffered by victims.<sup>56</sup> Reparation includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>57</sup>

According to *Access to Justice in Puerto Rico*,<sup>58</sup> the challenges Puerto Rico is facing in ensuring access to justice remain substantial. Statistics show that an estimated 75% of persons lack legal representation.<sup>59</sup> As a Commonwealth, Puerto Rico is subject to federal law. However, since federal court proceedings are conducted in English and an estimated 80% of Puerto Ricans are not fully fluent in English, bringing federal challenges to vindicate their human rights has been a real obstacle to obtain access to justice through the federal judicial system.<sup>60</sup> Even for those who were able to bring the lawsuits in Federal court, they have been unable to vindicate their rights against AES.<sup>61</sup> Similar outcomes have been obtained through the Puerto Rican judicial system. Puerto Rican courts have held that the ash resulting from the combustion of coal, as well as Agremax, can be used or disposed of at El Coquí Landfill in Humacao, the Peñuelas Valley Landfill and at other locations authorized by the Environmental Quality Board.<sup>62</sup> The consistent obstacles to vindicate the human rights of Puerto Ricans is a clear violation of their right to effective remedies, and especially guarantees of non-repetition.

**IX. Recommended Questions**

- Please describe what measures the United States and Puerto Rican government are taking to prevent the environmental harm resulting from the mismanagement and improper disposal of coal ash in Puerto Rico.
- Please describe the environmental impact assessments provided to affected communities and the public to inform them of potential environmental harm and potential threats to their life and health due to coal ash.
- Please provide information relating to assessment of contamination levels in sources of drinking water, houses, workplaces, schools, streets, parks, markets, and other public facilities.
- What measures has the State taken to effectively decontaminate impacted areas, including private and public places.
- Please provide information relating to the implementation of objective and independent environmental and public health education programs to inform the population about the contamination, exposure routes, potential health effects in the medium and long-term, symptoms, methods for treatment and diagnosis, and preventive measures to minimize exposure and health impacts resulting from the mismanagement and improper disposal of coal ash.

---

<sup>1</sup> *Power Purchase & Operating Agreement*, available at <http://www.utier.org/documentos/contratos/aes.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Leaching Behavior of "AGREMAX" Collected from a Coal-Fired Power Plant in Puerto Rico*, U.S.

ENVIRONMENTAL PROTECTION AGENCY, [https://cfpub.epa.gov/si/si\\_public\\_record\\_report.cfm?dirEntryId=307594](https://cfpub.epa.gov/si/si_public_record_report.cfm?dirEntryId=307594)



---

(last visited May 3, 2018) (“Agremax as a “a partially solidified mixture of coal combustion fly ash and bottom ash” used in construction materials.”).

<sup>4</sup> The U.N. Human Rights Committee has recognized that United States has the obligation to protect the rights of the people of Puerto Rico as a territory of the United States. U.N. Human Rights Comm., Concluding Observations on the Fourth Periodic Report of the United States of America, ¶ 7, U.N.Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014).

<sup>5</sup> The power utility company, Autoridad de Energía Eléctrica (AEE), is engaged in the production, transmission, distribution, and sale of electric power for Puerto Rico. It services the entire Puerto Rico population. AEE has been in operation since 1941 and operates as a public corporation of the Puerto Rican government. BN AMERICAS, Autoridad de Energía Eléctrica, <https://www.bnamericas.com/company-profile/en/autoridad-de-energia-electrica-de-puerto-rico-ae> (last visited Jan. 14, 2019).

<sup>6</sup> Omar Alfonso, “They promised jobs... and brought ashes,” CENTRO DE PERIODISMO INVESTIGATIVO (March 8, 2016) <http://periodismoinvestigativo.com/2016/03/they-promised-jobs-and-brought-ashes/>.

<sup>7</sup> *Power Purchase & Operating Agreement*, available at <http://www.utier.org/documentos/contratos/aes.pdf>. The by-product of burning coal for combustion is coal ash. Coal ash contains toxic substances that negatively impact the human body. Some of the toxic substances contained in coal ash are arsenic, lead, mercury, cadmium, chromium, and selenium among others. Other toxic metals present can include aluminum, antimony, barium, beryllium, boron, chlorine, cobalt, manganese, molybdenum, nickel, thallium, vanadium, and zinc. See, Barbara Gottlieb, Steven G. Gilbert, PhD, DABT, Lisa Gollin Evans, *Coal Ash: The Toxic Threat to Health and Our Environment*, PHYSICIANS FOR SOCIAL RESPONSIBILITY (Sept. 2010) at vii, <http://www.psr.org/assets/pdfs/coal-ash.pdf>. Other toxic metals present can include aluminum, antimony, barium, beryllium, boron, chlorine, cobalt, manganese, molybdenum, nickel, thallium, vanadium, and zinc.

<sup>8</sup> The Environmental Quality Board (EQB) of Puerto Rico is the primary environmental protection regulatory agency in Puerto Rico. The EQB is tasked with regulating the solid waste landfills in Puerto Rico and issuing permits to waste-producing companies, such as AES. See “¿Qué es la Junta de Calidad Ambiental?” <http://www.insidesources.com/puerto-ricos-landfill-governing-authority-says-they-do-not-inspect-all-landfills-on-the-island/>.

<sup>9</sup> R-96-39-1 p. 1, ¶2.

<sup>10</sup> R-00-14-1 p. 4, ¶1.

<sup>11</sup> Garrabrants, A., D. Kosson, R. DeLapp, & P. Kariher. Leaching Behavior of “AGREMAX” Collected from a Coal-Fired Power Plant in Puerto Rico. US Environmental Protection Agency, Cincinnati, OH, EPA/600/R/12/724, 2012. Available at [https://cfpub.epa.gov/si/si\\_public\\_record\\_report.cfm?Lab=NRMRL&dirEntryId=307594](https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NRMRL&dirEntryId=307594).

<sup>12</sup> “Peñuelas, En Contexto,” Asociación Nacional de Derecho Ambiental (Nov. 23, 2016), available at <http://www.andapuertorico.org/penuelas-en-contexto/>.

<sup>13</sup> R-14-27-20.

<sup>14</sup> *Id.*

<sup>15</sup> “Coal ash raising concerns over health risks in Puerto Rico,” (2018) PBS NEWS HOUR, available at <https://www.pbs.org/newshour/show/coal-ash-raising-concerns-over-health-risks-in-puerto-rico>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Barbara Gottlieb, Steven G. Gilbert, PhD, DABT, Lisa Gollin Evans, *Coal Ash: The Toxic Threat to Health and Our Environment*, PHYSICIANS FOR SOCIAL RESPONSIBILITY (Sept. 2010) at vii, <http://www.psr.org/assets/pdfs/coal-ash.pdf>.

<sup>19</sup> See Federal Register Vol. 80, No. 74 at 21309 (“Summary of Estimated Regulatory Costs and Benefits”).

<sup>20</sup> U.N. Human Rights Committee, *CCPR General Comment No. 36 On the Right to Life (Art. 6)*, at ¶2, U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018).

<sup>21</sup> *Id.* at para. 26.

<sup>22</sup> *Id.* at para. 18.

<sup>23</sup> *Id.* at para. 21.

<sup>24</sup> *Id.* at para. 28.

<sup>25</sup> U.N. Human Rights Committee, *CCPR General Comment No. 34 On Article 19: Freedoms of Opinion and Expression*, ¶ 18, U.N. Doc. CCPR/C/GC/43 (Sept. 12, 2011)

<sup>26</sup> *Id.* at para 18.

<sup>27</sup> *Id.* at para 19.

<sup>28</sup> See Declaration of the Rights and Duties of Man, Art. I.; See Villagrán Morales *et. al*, Inter-American Court of Human Rights, 1999.

<sup>29</sup> *Öneryildiz v. Turkey* [GS], No. 48939/99. Sentence of Nov. 30, 2004, para. 89.

- 
- <sup>30</sup> *San Mateo de Huanchor v. Peru*, Report No. 69/04 (Oct. 15, 2004).
- <sup>31</sup> *Fadeyeva v. Russia*, Eur. Ct. H.R., App. No. 55723/00 (2005).
- <sup>32</sup> *Id.*
- <sup>33</sup> Barbara Gottlieb, Steven G. Gilbert, PhD, DABT, Lisa Gollin Evans, *Coal Ash: The Toxic Threat to Health and Our Environment*, PHYSICIANS FOR SOCIAL RESPONSIBILITY (Sept. 2010) at vii, <http://www.psr.org/assets/pdfs/coal-ash.pdf>. Other toxic metals present can include aluminum, antimony, barium, beryllium, boron, chlorine, cobalt, manganese, molybdenum, nickel, thallium, vanadium, and zinc.
- <sup>34</sup> *Id.* at 12.
- <sup>35</sup> *Id.*
- <sup>36</sup> Alan H. Lockwood, MD, Lisa Evans, *Ash in the Lungs: How Coal Ash is Hazardous to your Health*, PHYSICIANS FOR SOCIAL RESPONSIBILITY, 3, <http://www.psr.org/assets/pdfs/ash-in-the-lungs.pdf> (last visited Oct. 28, 2018) (“The very smallest particles are inhaled into the deepest part of the lungs where they trigger inflammation and immunological reactions. Some particles gain access to the systemic circulation and travel to distant organs where they produce heart or lung disease, while others may enter the brain directly via the nerves in the nose.”).
- <sup>37</sup> Gottlieb, *supra* note 33 at vii.
- <sup>38</sup> *Id.*
- <sup>39</sup> Omar Alfonso, “Toxins from AES’s ashes are contaminating groundwater in Puerto Rico,” CENTRO DE PERIODISMO INVESTIGATIVO (March 15, 2018), available at <http://periodismoinvestigativo.com/2018/03/toxins-from-aess-ashes-are-contaminating-groundwater-in-puerto-rico/>.
- <sup>40</sup> *Id.*
- <sup>41</sup> Omar Alfonso, “Confirm High Incidence of Abortions and Respiratory Diseases in Guayama” CENTRO DE PERIODISMO INVESTIGATIVO (July 11, 2016), available at <http://periodismoinvestigativo.com/2016/07/confirman-alta-incidencia-de-abortos-y-enfermedades-respiratorias-en-guayama/>.
- <sup>42</sup> PBS NEWS HOUR, *supra* note 15.
- <sup>43</sup> *Id.*
- <sup>44</sup> Omar Alfonso, “Puerto Rico government and EPA agree to amend AES contract behind closed doors” CENTRO DE PERIODISMO INVESTIGATIVO (March 16, 2016), available at <http://periodismoinvestigativo.com/2016/03/puerto-rico-government-and-epa-agree-to-amend-aes-contract-behind-closed-doors/>.
- <sup>45</sup> U.N. General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 13 November 2018]
- <sup>46</sup> See Bhatia, 2017 WL 4975587 at \*10.
- <sup>47</sup> See Report of the Special Rapporteur on Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (2015), at 4, U.N. Doc. A/HRC/30/40.
- <sup>48</sup> See Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (2018), at 12, U.N. Doc. A/HRC/37/59.
- <sup>49</sup> Brie D. Sherwin, *La-La Land: Regulating Coal Waste in the Trump Era*, 37 *STAN. ENVTL. L.J.* \_\_ at 40 (forthcoming) (2017) (Citing EPA, *Human and Ecological Risk Assessment of Coal Combustion Wastes ES-10 (Draft)* at ES-10, *EARTH JUSTICE* (Apr. 2010), <http://earthjustice.org/sites/default/files/library/reports/epa-coal-combustion-waste-risk-assessment.pdf>).
- <sup>50</sup> Request to include Puerto Rico in official visit to the U.S. (2017), [http://www.ohchr.org/Documents/Issues/Poverty/VisitsContributions/USA/PRLDEF\\_AI.pdf](http://www.ohchr.org/Documents/Issues/Poverty/VisitsContributions/USA/PRLDEF_AI.pdf)
- <sup>51</sup> ICCPR, Art. 25.
- <sup>52</sup> Article 10 of the Stockholm Declaration provides that, each Party shall, within its capabilities, promote and facilitate public participation in addressing persistent organic pollutants and their health and environmental effects. Declaration of the U.N. Conference on the Human Environment [Stockholm Declaration], U.N. Doc. A/Conf.48/14/Rev.1 (June 16, 1972).
- <sup>53</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya (Endorois v. Kenya), No. 276/2003, Afr. Comm’n H.R. at ¶ 162 (Feb. 4, 2010).
- <sup>54</sup> Office of the High Commissioner for Human Rights, *CRC General Comment No. 12 On the Right of the Child to be Heard*, ¶ 87 (2009).
- <sup>55</sup> ICCPR, Art. 2.
- <sup>56</sup> U.N. General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation (UN Remedy Principles)*, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), ¶ 3.
- <sup>57</sup> *UN Remedy Principles*, *supra* note 5, ¶¶ 18-23.
- <sup>58</sup> Deborah L. Rhode & Pablo J. Hernández Rivera, *Access to Justice in Puerto Rico*, 86 Rev. Jur. U.P.R. 818 (2017)
- <sup>59</sup> *Id.*

---

<sup>60</sup> *Id.*

<sup>61</sup> *See AES Puerto Rico, L.P. v. Trujillo-Panisse*

<sup>62</sup> “AES prevails in lawsuit against use of Agremax in Puerto Rico” CYBERNEWS, (Jan. 18, 2018), *available at*, <https://caribbeanbusiness.com/aes-prevails-in-lawsuit-against-use-of-agremax-in-puerto-rico/>