**Submission to the UN Special Rapporteur on Human Rights and the Environment[[1]](#footnote-1)**

The United States has a long and well-established history of biodiversity and ecological protections and international cooperation. It was the first nation to establish a national park,[[2]](#footnote-2) and among the first to adopt anti-poaching legislation,[[3]](#footnote-3) bilateral treaties protecting biodiversity[[4]](#footnote-4) and ecological stewardship,[[5]](#footnote-5) and international institutions for their enforcement.[[6]](#footnote-6) However, analyzing human rights standards in the environmental context is complicated by the federalist constitution’s division of responsibility for environmental and human rights matters between state, federal, and municipal jurisdictions.[[7]](#footnote-7) Jurisdictional divisions inherent to U.S. federalism also complicate the ratification of international treaties it has signed due to the U.S. Senate’s policy of certifying U.S. law’s compliance with a treaty’s provisions as a precondition to ratification.[[8]](#footnote-8) Nonetheless, its ratification most notably of the *International Covenant on Civil and Political Rights[[9]](#footnote-9)* and the *International Convention On the Elimination of All Forms of Racial Discrimination[[10]](#footnote-10)* provide a framework for analyzing the human rights implications of its environmental enforcement, particularly concerning governance and the rule of law in environmental decision-making that impacts vulnerable populations in the United States.[[11]](#footnote-11) Conversely, insufficient protections for the rule of law and fundamental human rights can negatively impact international biodiversity conservation efforts for critically endangered species. Our submission highlights several contemporaneous U.S. examples of the interconnectedness of human rights with biodiversity and ecologyical protections which serve to protect both human and non-human life, and the rule of law.

**Public Participation and Vulnerable Communities’ Ability to Reduce Environmental Harms**

 The ICCPR provides that State parties to the convention establish procedural rights to take part in public affairs, to have equal access to public services, to equal protection against non-discrimination on any ground listed in Article 2 of the Covenant, and for ethnic, religious, or linguistic minorities to enjoy their own culture, language, or religious practice in community with one another.[[12]](#footnote-12) The CERD provides a reciprocal right to take part in the conduct of public affairs “at any level,” the equal right to public health, public and social services, access to places intended for public use, and to the equal protection of law, including against bodily harm by the state “or by any individual group or institution,” as well as judicial remedies against the same, and for public education “promoting understanding, tolerance and friendship” among ethnic groups.[[13]](#footnote-13) The U.S. applies these standards in environmental matters in part through Executive Order 12,898 requiring federal agencies to collect data on the health and environmental impact of their activities on communities of color and low-income populations, and to incorporate principles of environmental justice into their mission.[[14]](#footnote-14) Title VI of the Civil Rights Act[[15]](#footnote-15) enforces standards that parallel those of the ICCPR and CERD’s guarantees of equal protection of law and equal benefit of “any program or activity receiving federal financial assistance,” and applies these to environmental protection.[[16]](#footnote-16)

Despite these human rights protections, vulnerable communities throughout the United States continue to suffer disproportionate impacts to their security and health from environmental pollutants and lax environmental enforcement, limited access to beneficial environmental resources and green space, and effective participation in environmental decision-making, access to information, and reasonable protection against foreseeable environmental harms or effective remedies for the same.[[17]](#footnote-17) In particular, the transfer and storage of coal ash[[18]](#footnote-18) and petroleum coke[[19]](#footnote-19) aggravate disparate health impacts from which these communities already suffer.[[20]](#footnote-20)

New federal coal ash regulations issued in 2015 were criticized for exposing vulnerable communities to increased risk from the transportation of coal ash pollutants.[[21]](#footnote-21) However they also advanced transparency around previously unpublished industry pollution monitoring data, and a first-ever nationwide analysis of that data by the Environmental Integrity Project found that 91% of 265 coal ash storage sites in 39 U.S. states were leaking unsafe levels of toxins into drinking water and groundwater at concentrations hundreds of times greater than minimum safe levels.[[22]](#footnote-22) Illinois is the most-affected state with sixteen coal ash ponds, followed by Indiana, Kentucky, Michigan, Missouri, North Carolina, and Texas with at least ten each.[[23]](#footnote-23) Despite this problem existing for decades, Illinois passed the *Coal Ash Pollution Prevention Act* within months of the report’s release.[[24]](#footnote-24) North Carolina, by contrast, only passed the *Coal Ash Management Act (CAMA)* following Duke Energy’s disastrous spill in February 2014 (prior to the rule change) of 39,000 tons of coal ash and 29 million gallons of wastewater into the Dan River in Eden, North Carolina. The disaster decimated the river’s riparian ecosystem in two states and the local population’s access to clean drinking water, and the fallout for the cost of the disaster is still being litigated.[[25]](#footnote-25)

Another particularly egregious recent example of inadequate public participation or protection against airborne coal ash was the recent demolition of the smokestack of the former Crawford Coal-Fired Power Generation Plant in the mostly Spanish-speaking immigrant community of Little Village in Chicago which, like the Duke Energy plant, had been decommissioned in 2012. Years of prior community advocacy lead to the plant’s closure, and the state designated the site one of “Environmental Justice concern,”[[26]](#footnote-26) however the community’s subsequent attempts to voice concerns about air quality from the heavy truck traffic anticipated in the site redevelopment plans for a regional transportation hub,[[27]](#footnote-27) as well as concerns about air quality monitoring in the decommissioning process, were not taken seriously.[[28]](#footnote-28) The plant’s new owner, Hilco Redevelopment Partners, then proceeded to demolish its smokestack with high explosives, giving residents less than 24 hours’ notice over the Easter holiday weekend, and releasing an uncontrolled toxic cloud of coal dust over a neighborhood already disproportionately impacted by poor air quality, the COVID pandemic, and limited access to health care.[[29]](#footnote-29) Similarly, the notorious Flint Water Crisis was enabled in part by an “Emergency Manager” law that allowed the governor to replace local governments in financial distress with an “emergency manager” who ruled by decree.[[30]](#footnote-30) These are one of many examples of how limiting the rights of vulnerable communities to participate in public life and decision-making that affects them exacerbates the heavy environmental burdens they already bear throughout the United States. These incidents highlight how environmental disasters in vulnerable communities are inextricably linked to their political rights to inclusive public participation and transparent access to environmental data, in order to spur proactive pollution control legislation at the state, local, and federal levels, as well as more aggressive environmental enforcement to prevent predictable and avoidable environmental disasters from materializing.

**Native American Treaty Rights, Wild Rice, and the Equal Right to Water Regulation**

In their 2012 modification to the Boundary Waters Treaty, the U.S. and Canada established the *Great Lakes Water Quality Agreement* to more effectively manage the North American Great Lakes which contain 20% of the world’s fresh water, in invaluable environmental resource.[[31]](#footnote-31) The 2012 Agreement, like its predecessors, is novel both for the consistent bipartisan support it enjoys in the United States (rare for an environmental resource management treaty) but also in its inclusion of sub-national and Tribal governments, as well as local public agencies and governance structures,[[32]](#footnote-32) thereby enabling and promoting the parties’ observance of Art. 5(c) of the CERD for with respect to the environmental stewardship of the indigenous peoples of North America.[[33]](#footnote-33) Its provisions concerning public engagement also actively solicit feedback from local communities in both nations throughout the Great Lakes region, and a Great Lakes Public Forum in preparation for its tri-annual Progress Report of the Parties, reporting on progress made under the Agreement.[[34]](#footnote-34) The Agreement also adopts an “ecosystem approach” to water quality management, “taking management actions that integrate the interacting components of air, land, water, and living organisms, including humans”[[35]](#footnote-35) and proactive establishment of Lakewide Action Management Plans, and a Progress Report outlining progress in achieving the Agreement’s objectives for the restauration and preservation of healthy ecosystems and their protection against threats of pollution, invasive species, and climate change.[[36]](#footnote-36)

In addition to direct participation of Tribal governments, it also includes regional inter-tribal organizations established to jointly manage natural resources, such as the Chippewa Ottawa Resource Authority (CORA)[[37]](#footnote-37) and the Great Lakes Indian Fish & Wildlife Commission (“GLIFWC”).[[38]](#footnote-38) Formed in 1984, the latter represents eleven Ojibwe tribes[[39]](#footnote-39) in Minnesota, Wisconsin, and Michigan who enjoy usufructuary rights reserved by them in the Treaties with the United States of 1836, 1837, 1842, and 1854 to hunt, fish, and gather in those territories ceded by them to the United States via those treaties. GLIFWC monitors and regulates the fisheries and other natural resources to which they’re entitled by virtue of the rights recognized in those treaties[[40]](#footnote-40) rights which they have had to defend successfully in federal court against attempts by the State of Wisconsin to limit or disregard them.[[41]](#footnote-41)

GLIFWC’s constituent members also include representative Committees composed of member tribes convened to regulate and manage their usufructuary treaty rights and ensure the sustainable conservation of these natural resources.[[42]](#footnote-42) Among the most important of these natural resources is the habitat of wild rice in the tribes lands ceded to the United States in Wisconsin and Minnesota, the cultivation of which is an important staple and central to cultural teachings and practice,[[43]](#footnote-43) but which has been consistently declining due to poor water quality, climate change, invasive species, and competing agricultural use through water flow management, with successful harvests in the Rainy River Basin occurring only twice in the past 13 years, as of 2018.[[44]](#footnote-44) That same year, the White Earth band of the Chippewa Nation adopted the “Rights of the Manoomin” law securing legal rights of manoomin, or wild rice, a traditional staple crop of the Anishinaabe people, and the first law to secure legal rights of a particular plant species.[[45]](#footnote-45) The Rights of Manoomin was also adopted by the 1855 Treaty Authority which gave explicit recognition to the importance of wild rice in its own legislation governing Native natural resource use,[[46]](#footnote-46) demonstrating the inalienability of the human right of Native American cultural and religious practices, per the ICCPR Art. 27 and the CERD Art.5(e)(vi), with necessary ecological protections for wild rice habitat.

This is important to bear in mind in considering potential threats to that habitat which are now evident in recent permitting developments for the St. Louis River, the largest freshwater estuary in the world, and the largest tributary to Lake Superior, itself the world’s largest body of fresh water.[[47]](#footnote-47) Since 1973, the minimum sulfate water quality standard necessary to support wild rice habitat has been set in Minnesota state law and regulations at 10 ppm. per liter to be discharged in waters that produce wild rice, however this standard has rarely been adequately implemented[[48]](#footnote-48) and went largely unenforced until the Minnesota Pollution Control Agency revisited the rule following a triannual review of state regulations required by the *Clean Water Act* in 2008.*[[49]](#footnote-49)* Wastewater treatment plants and taconite mine operators – notably U.S. Steel – found it difficult and costly to reduce sulfate content of wastewater to levels necessary to meet the standard.[[50]](#footnote-50) After the MPCA requested mine and wastewater operators survey their discharge waters for the presence of natural wild rice and PolyMet Mining proposed a new copper-nickel mine whose wastewater discharge would be incompatible with the rule, the Minnesota Chamber of Commerce sued, but the Minnesota Court of Appeals found no record of enforcement sufficient to challenge the rule,[[51]](#footnote-51) and because the EPA had approved the standard, the National Pollutant Discharge Elimination System (NPDES) applied to wastewater discharge permitting and is subject to EPA review, and any justification for water quality standards below levels approved by the EPA would require a scientific basis to do so.[[52]](#footnote-52) A long and protracted effort by state officials ensued, to generate a plethora of scientific studies ostensibly in support of new rule-making[[53]](#footnote-53) but contradicting Tribal leaders own scientists’ conclusions,[[54]](#footnote-54) and to legislate means to frustrate, evade, or nullify the Rule,[[55]](#footnote-55) amounting to what one reporter called “a long and winding road back to square one for Minnesota’s wild rice standard,”[[56]](#footnote-56) with still no effective enforcement of the Wild Rice Rule.[[57]](#footnote-57)

What is clear is that Minnesota’s Tribes are not receiving equal benefit of state environmental laws in place to protect, in part, their fundamental rights to wild rice cultivation as a cultural practice. This arbitrary non-enforcement risks an irreparable loss not only to Minnesota’s biodiversity, but to the cultural practices of its indigenous peoples, as well as a possible violation of international obligations in the *Great Lakes Water Quality Agreement* under which the St. Louis River Basin has already been designated as an Area of Concern.[[58]](#footnote-58) There may be harm to Minnesota’s democratic institutions as well, which have little to show for many years of effort of futile legislation by state lawmakers, and a plethora of science research from state researchers, all with little to show for it. Worse still, the Wild Rice Rule remains unenforced, and the conflict around it ongoing, endangering not only Minnesota’s biodiversity and Native Americans’ cultural practices, but the ecology of the world’s largest freshwater estuary. At the same time, the MCPA and EPA officials have undertaken highly-irregular actions to issue PolyMet wastewater permits while avoiding the inclusion of contrary EPA scientific findings from entering the public record, the discovery of which has caused state courts to temporarily suspend the permits pending the outcome of further litigation.[[59]](#footnote-59)

**Monarch Butterflies, Rights Defenders, and the Rule of Law**

The monarch butterfly is the only butterfly species known to follow a migration route similar to birds, crossing the North American continent from Canada to the United States to Mexico over 3,000 miles annually.[[60]](#footnote-60) Monarch butterflies migrate to coastal California and to the oyamel fir forests of the Monarch Butterfly Biosphere Reserve, a UNESCO World Heritage site in the Mexican states of Michoacán and México.[[61]](#footnote-61) They are highly vulnerable to disruptions in their habitat and migration routes, given their dependence on milkweed to lay their eggs and feed their caterpillars. Their numbers have dropped 90% from their historic population, prompting an outpouring of initiatives to save the species. One such initiative, the Monarch Joint Venture, has partnered with multiple universities, museums, and national parks, and agencies at all levels of government throughout the U.S. as well as internationally. Last year, they established 225 habitat sites across 23 states,[[62]](#footnote-62) and an Integrated Monarch Monitoring Program (IMMP) to develop peer-reviewed scientific research measuring their habitat conservation and restauration.[[63]](#footnote-63) Other initiatives include the “Mayors Monarch Pledge” of 400 municipalities across Canada, Mexico, and the United States to create habitat;[[64]](#footnote-64) the state-level Illinois Monarch Project,[[65]](#footnote-65) as well as public-private partnerships including the Illinois Department of Transportation creating 80,000 acres of roadside habitat through its mowing policy updates,[[66]](#footnote-66) non-profit and energy transportation companies planting milkweed underneath electric transmission and transportation lines,[[67]](#footnote-67) which was recently expanded nationally to prevent declaring the monarch endangered,[[68]](#footnote-68) and one million urban gardeners creating healthy pollinator habitat.[[69]](#footnote-69)

Unfortunately these multifaceted conservation efforts are threatened by multiple breakdowns in the rule of law, from the inadequate enforcement of existing environmental laws to systemic impunity for the murder of environmental and indigenous rights defenders in Mexico[[70]](#footnote-70) and the suppression of their freedom and security to exercise their right to defend human rights and the environment.[[71]](#footnote-71) The Monarch Butterfly Biosphere Reserve’s habitat is first among the “biodiversity hotspots” identified by the Forest Stewardship Council in its most recent report on Mexico.[[72]](#footnote-72) Despite appropriate laws and regulations and recent success in reducing the rate of deforestation,[[73]](#footnote-73) illegal logging remains a major threat, enabled by “a generalized national context of illegal overexploitation and lack of law enforcement.”[[74]](#footnote-74) In January, two butterfly conservationist protectors – Homero Gómez González and Raúl Hernández Romero – were killed,[[75]](#footnote-75) possibly targeted for their advocacy opposing illegal logging, according to news reports.[[76]](#footnote-76) Drug cartels have been linked to the illegal logging industry, and thus benefit from both the non-enforcement of environmental laws,[[77]](#footnote-77) repressive state-sponsored criminalization and violence to environmental and human rights defenders,[[78]](#footnote-78) and impunity for the intimidation, kidnapping, torture, and murder of those who oppose their environmental exploitation.[[79]](#footnote-79) Indigenous leader advocating against logging elsewhere have been subject to arbitrary detention under dubious criminal charges and impunity for murdered family members.[[80]](#footnote-80) The plundering of this UNESCO World Heritage site of its unique butterfly habitat, enabled by the murder of its most ardent defenders, is a bloody harvest that shows little sign of abating.

Non-enforcement of environmental laws linked with human rights abuses against environmental and human rights defenders is not a problem limited to Mexico. Past comprehensive reports have indicated more than half and even as much as 90% of all timber harvested in Latin America is done illegally.[[81]](#footnote-81) While there has been greater enforcement of CITES convention protections for illegally-harvested timber in the U.S. in recent years,[[82]](#footnote-82) more effective protections for the human rights of environmental defenders and human rights activists or limiting access to international timber markets may be the only effective mechanism to save the monarch butterfly, absent greater domestic enforcement in Mexico or a reversal of its declining rule of law, which seems unlikely.[[83]](#footnote-83) At the international level, real economic consequences for consumers of the product of human rights abuses and environmental crimes by cartels and poachers is likely necessary to save monarch butterfly habitat and other UNESCO World Heritage sites in Mexico. Increasing support for the identification of the natural persons who are beneficial owners of Mexican corporations is an important step for reducing internal anti-corruption controls.[[84]](#footnote-84) Without such protections, the viability of these good-faith efforts of millions of citizens in Canada, Mexico, and the United States, and those of their museums, research institutions, federal and state agencies, and public-private partnerships, may well be in vain, as well may be the broader fight against climate change.

**Conclusion**

Selective or irregular enforcement of environmental laws threatens vulnerable populations’ right to life and security against environmental harms, and equal protections before the law, relative to competing values of economic development to which they are often rendered subordinate.[[85]](#footnote-85) Persistent efforts by citizens actively campaigning to resist this trend may be mischaracterized as competing with economic policy goals, but opposition of economic development against the survival of human and non-human life is a false one. As recent events have shown, prosperity is impossible in environments generative of ill-health from environmental pollution which impacts the water and air on which both human and non-human life depend. Without minimum safe levels of air and water, and by extension, minimum legal protections for human rights and environmental rights, these will not be reciprocal and mutually reinforcing. The rule of law ensures those protections are available in reality and not just on paper.[[86]](#footnote-86) Neither our institutions nor our ecosystems can survive the regular application of environmental laws for the benefit of the powerful at the expense of the vulnerable. This is not (merely) a policy issue, or an access to justice issue, but a governance and a rule of law issue. The lack of minimally necessary and equal protections against environmental harms to the security and well-being of citizens calls into question not merely the wisdom of policy choices, but the legitimacy of the legal system itself. When laws meant to protect vulnerable populations instead victimize them and render them more vulnerable, a necessary precondition for law and order is itself threatened – namely, the social contract upon which peace, order, and good government depend. As recent experience has shown, when that contract is broken, instability and violence in human societies and the natural world are the inevitable result. This is why human rights abuses and environmental crimes will only be prevented when they are not seen in isolation from or in opposition to economic development, but as a holistic and inextricably necessary part of it, through democratic institutions that uphold and affirm, rather than undermine, the rights of all to equally benefit from both human rights and environmental protections.

1. Submission prepared by William B. Shipley, Esq., Program Manager of the Human Rights and Poverty Alleviation Program of the Centre for International Sustainable Development Law, submitted June 15, 2020. [↑](#footnote-ref-1)
2. Yellowstone National Park in 1872, via the *Yellowstone Act* (U.S.C. title 16, sec. 21), online ([www.nps.gov](http://www.nps.gov)). [↑](#footnote-ref-2)
3. The *Lacey Act* of 1900, 16 U.S.C. §§ 3371–3378, amended by the *Food, Conservation, and Energy Act* of 2008 (Pub.L. 110–234, H.R. 2419, 122 Stat. 923, enacted May 22, 2008) which expanded its protection to a broader range of plants and plant products (Sec. 8204. Prevention of Illegal Logging Practices). [↑](#footnote-ref-3)
4. *Convention Between The United States And Great Britain For The Protection Of Migratory Birds* (16 August 1916) U.S.T.S. No. 628, 11:2 *Am J Int Law*, Supplement: Official Documents (Apr., 1917), pp. 62-66; enacted in the U.S. by the *Migratory Bird Treaty Act* of 1918, 40 Stat. 755, 16 U.S.C. §§ 703–712; see also *Missouri v. Holland*, 252 U.S. 416 (1920) (Holmes, J.) (upholding the constitutionality of the Treaty and its legislation); *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 US 159 (2001) (limiting *Clean Water Act*’s protections to “navigable waters” notwithstanding migratory birds’ use of intrastate waters). For biodiversity treaties in force and related legislation, see the U.S. Fish and Wildlife Service, "Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service," online: ([https://www.fws.gov/laws/lawsdigest/treaty.html](https://www.fws.gov/laws/lawsdigest/treaty.html#:~:text=CITES%20was%20signed%20by%2080,force%20on%20July%201%2C%201975.)) [accessed June 2020]. [↑](#footnote-ref-4)
5. *Treaty Between the United States and Great Britain Relating to Boundary Waters between the United States and Canada*, United Kingdom-U.S., Jan. 11, 1909, 36 Stat. 2448, T.S. 548. For other environmental treaties and their respective ratification and entry into force, see U.S. Environmental Protection Agency [EPA] "Selected Multilateral Environmental Instruments In Force for the U.S.", online: (<https://www.epa.gov/international-cooperation/selected-multilateral-environmental-instruments-force-us>). [↑](#footnote-ref-5)
6. The International Joint Commission under by the *Boundary Waters Treaty* has resolved over 100 environmental disputes since its inception; “History of the ICJ,” online (<https://www.ijc.org/en/who/history>) [accessed June 2020]. [↑](#footnote-ref-6)
7. See generally UN OHCHR, “United States of America Common Core document forming part of the reports of State Parties to International Human Rights Instruments” (30 Dec 2011), UN Doc HRI/CORE/USA/2011 and Annex. [↑](#footnote-ref-7)
8. *Ibid*.at para. 105.. [↑](#footnote-ref-8)
9. 19 Dec 1966, 999 UNTS 171, TIAS 92-908 (entered into force 23 Mar 1976). [↑](#footnote-ref-9)
10. 7 Mar 1966, 660 UNTS 195, TIAS 94-1120 (entered into force 4 Jan 1969). [↑](#footnote-ref-10)
11. For a complete list of U.S. bilateral and multilateral treaties in force as of January 2019, see U.S. Department of State, “Treaties in Force” (1 Jan 2019), online: (<https://www.state.gov/treaties-in-force/>) [accessed June 2020]. [↑](#footnote-ref-11)
12. Art. 2 (State parties undertake to respect and ensure the rights in the Covenant “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”), Art. 25(a) (right to take part in conduct of public affairs), Art. 25(c) (right to access public services “on general terms of equality”), Art. 26 (persons equal before the law and entitled to equal protection of the law), Art. 27 (ethnic, religious, or linguistic minority communities’ right to enjoy culture, practice religion, and use language). [↑](#footnote-ref-12)
13. CERD Art. 5 (equality before the law); Art.5(b) (security of the person and protection from bodily harm); Art. 5(e)(iv) (equal right to public health and social services); Art.5(f) (right of access to public places and services intended for general use); Art. 5(c) (public participation rights); Art. 6 (access to judicial remedies); Art. 7 (promoting understanding, tolerance and friendship among nations and racial or ethnical groups); see also CERD General Recommendation No. 23(on the rights of indigenous peoples), UN Doc CERD/C/GC/23 (1997) at paras. 4-6; CERD General Recommendation No. 34, *Racial discrimination against people of African descent*, UN Doc CERD/C/GC/34 (2011) at paras. 6, 25, 35; CERD General Recommendation No. 30, *Discrimination against Non-citizens*, UN Doc CERD/C/64/Misc.11/rev.3 (2004) at paras. 7, 18, 36, and 38. [↑](#footnote-ref-13)
14. Exec. Order No. 12,898, 3 C.F.R. § 859 (1995), *reprinted as amended* in 42 U.S.C. § 4321 (hereinafter “Environmental Justice E.O.”), (amm. 59 FR 7629 (Feb. 16, 1994)). [↑](#footnote-ref-14)
15. 42 U.S.C. §2000(d), Sec. 601 (“no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance”) and Sec. 602 (directing agencies distributing federal funds to implement Sec. 601 with regulations and mechanism for processing complaints of racial discrimination). [↑](#footnote-ref-15)
16. Sec. 601 of Title VI generally corresponds to ICCPR Art. 25(c), Art. 26 and CERD Art.5(b) and Art. 5(e)(iv), however the ICCPR has additional grounds of protection against discrimination on the basis of sex, language, religion, political or other opinion, social origin, property, birth or “other status.” See ICCPR, Art. 2, *supra*. [↑](#footnote-ref-16)
17. See M. Castro, U.S. Commission on Civil Rights “Environmental Justice: Examining the Environmental Protection Agency’s Compliance and Enforcement of Title VI and Executive Order 12,898,” [USCCR Report], online: (<https://www.usccr.gov/pubs/2016/Statutory_Enforcement_Report2016.pdf>) (finding EPA failed to meet non-discrimination requirements under Title VI of the Civil Rights Act in its regulation of coal ash and its environmental enforcement generally-speaking, both substantially and procedurally); UN HRC, *Report of the Working Group of Experts on People of African Descent on its mission to United States of America*, UN Doc A/HRC/33/61/Add.2 (2016) at para. 52 (disproportionate exposure of poor and minority communities to environmental hazards and pollutants), and 121-122 (recommending funding for better implementation of the E.O. on Environmental Justice). [↑](#footnote-ref-17)
18. US CCR Report, *supra* at pp. 51-88 (“EPA’s Enforcement Efforts and Coal Ash”). [↑](#footnote-ref-18)
19. Caruso, Joseph A et al. “Petroleum coke in the urban environment: a review of potential health effects.” 12:6 *Int J Environ Res Public Health* (Jun 2015) 6218‐6231, doi 10.3390/ijerph120606218; Dourson, Michael L et al. "A Case Study of Potential Human Health Impacts From Petroleum Coke Transfer Facilities." 66:11 J Air Waste Manag Assoc 1061-1076 (Nov 2016), doi: 10.1080/10962247.2016.1180328. [↑](#footnote-ref-19)
20. USCCR Report at 4; American Lung Association, “Disparities in the Impact of Air Pollution” (20 April 2020), online (<https://www.lung.org/clean-air/outdoors/who-is-at-risk/disparities>) [accessed June 2020]; Cushing, Lara et al. “Racial/Ethnic Disparities in Cumulative Environmental Health Impacts in California: Evidence From a Statewide Environmental Justice Screening Tool (CalEnviroScreen 1.1).” 105:11 *Am J Public Health* 2341‐2348 (2015), doi:10.2105/AJPH.2015.302643. [↑](#footnote-ref-20)
21. See USCCR Statutory Enforcement Report, *supra*; James Bruggers, “Coal Ash Contaminates Groundwater at 91% of U.S. Coal Plants, Tests Show” (4 Mar 2019), online: (<https://insideclimatenews.org/news/04032019/coal-ash-groundwater-contamination-toxic-arsenic-memphis-texas-eip>); Environmental Integrity Project, “First Comprehensive, National Study of Coal Ash Pollution Finds Widespread Groundwater Contamination” (4 Mar 2019) online (<https://environmentalintegrity.org/news/first-comprehensive-national-study-of-coal-ash-pollution-finds-widespread-groundwater-contamination/>) [June 2020]. [↑](#footnote-ref-21)
22. *Ibid*. [↑](#footnote-ref-22)
23. *Ibid*. [↑](#footnote-ref-23)
24. Nina Pullano, “"Illinois Passes Tougher Rules on Toxic Coal Ash Over Risks to Health and Rivers" (31 May 2019), online (<https://insideclimatenews.org/news/31052019/illinois-coal-ash-power-plant-law-health-hazard-groundwater-contamination-pritzker>) [accessed June 2020]; Office of the Governor of the State of Illinois Press Release, “Gov. Pritzker Signs Coal Ash Pollution Prevention Act” (30 July 2019), online (<https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=20368>). [↑](#footnote-ref-24)
25. See Memorandum of Plea Agreement, *U.S. v. Duke Energy Carolinas, LLC*, Case 5:15-CR-67-H-2, E.D.N.C., online (<https://www.sec.gov/Archives/edgar/data/17797/000132616015000151/duk-20150630x10qxexx103.htm>); N.C. Dept. of Environmental Quality, “Dan River Coal Ash Spill”, online (<https://deq.nc.gov/news/key-issues/coal-ash-nc/coal-ash-archive/dan-river-coal-ash-spill>); NC DOJ Press Release, “Attorney General Josh Stein Appeals Duke Energy Coal Ash Rate Case to Supreme Court of North Carolina” (26 Apr 2019) (<https://ncdoj.gov/attorney-general-josh-stein-appeals-duke-energy-co/>); Downey, John, “Attorney General appeals Duke Energy rates, saying new coal-ash info ‘materially affects merits of the case’,” (28 Apr 2018), *Charlotte Business Journal*. [↑](#footnote-ref-25)
26. This despite the site being designated area of “Environmental Justice (EJ) concern,” determined based on census block group data identifying higher concentrations of low-income and minority populations where a disproportionate environmental burden may occur; IEPA, “Former Crawford Power Plant site - Hilco Development Partners Chicago”, online (<https://www2.illinois.gov/epa/topics/community-relations/sites/hilco/Pages/default.aspx>) [accessed June 2020]. [↑](#footnote-ref-26)
27. Lydersen, Kari. "As Chicago coal plant cleanup proceeds, residents demand air pollution monitors" (7 Aug 2019), *Energy News Network*, online (<https://energynews.us/2019/08/07/midwest/as-chicago-coal-plant-cleanup-proceeds-residents-demand-air-pollution-monitors/>) (residents demanded air quality monitors for the decommissioning in anticipation of the very harms from particulate matter and toxic dust they wound up suffering from). [↑](#footnote-ref-27)
28. Goldman Environmental Prize, Profile of 2013 Recipient Kimberly Wasserman, Little Village Environmental Justice Organization founder [LVEJO] (<https://www.goldmanprize.org/recipient/kimberly-wasserman/>); LVEJO “Support Little Village’s Right to Breathe” (15 Jan 2019), online (<http://www.lvejo.org/support-little-villages-right-to-breathe/>) (outlining LVEJO’s public testimony despite the City of Chicago’s last-minute cancellation of hearings on tax incentives for the site’s redevelopment), “LVEJO Response To Hilco: Little Village’s Fight For The Right To Breathe,” online: (<http://www.lvejo.org/lvejo-response-to-hilco-little-villages-fight-for-the-right-to-breathe/>) (concerning Hilco’s community meetings with inadequate public accommodation and limited answers to development and environmental matters of public concern) [accessed May 2020]. [↑](#footnote-ref-28)
29. See *Block Club Chicago* “Planned Explosion Covered Little Village In Dust During Respiratory Pandemic – Why Did The City Let It Happen?” (12 Apr 2020), online (<https://blockclubchicago.org/2020/04/12/extremely-angry-lightfoot-blames-developer-for-massive-little-village-dust-cloud-alderman-apologizes/>); “Little Village Neighbors Blindsided Again By Demolition At Hilco Site – A Month After Dust Cloud Fiasco” (14 May 2020), online (<https://blockclubchicago.org/2020/05/14/little-village-neighbors-get-no-notice-another-demolition-is-happening-at-dust-cloud-site/>); Moser, Whet, "This Chicago neighborhood is battling coronavirus – then the demolition happened" (8 June 2020) *MarketWatch*, online (<https://www.marketwatch.com/story/this-chicago-neighborhood-was-already-combating-air-pollution-when-the-coronavirus-pandemic-hit-it-hard-2020-06-04>); Bynum, Steve, "How Environmental Racism Hurts Chicago's Marginalized Communities" (30 Apr 2020) *Chicago Public Radio*, online (<https://www.wbez.org/stories/how-environmental-racism-hurts-chicagos-marginalized-communities/86c8165c-5213-4dac-912b-71bda3a35e69>) [accessed June 2020]. [↑](#footnote-ref-29)
30. See Fonger, Ron, "Near total authority of emergency managers impacted Flint water crisis, UM study says" *Mlive* (29 Apr 2020), online (<https://www.mlive.com/news/flint/2020/04/near-total-authority-of-emergency-managers-aided-flint-water-crisis-um-study-says.html>) ("The state’s emergency manager law effectively silenced the voices of Flint citizens during the city’s water crisis, allowing it to develop and grow, according to a new study by the University of Michigan School of Public Health.”) [accessed June 2020] [↑](#footnote-ref-30)
31. *Agreement Between Canada and the United States of America on Great Lakes Water Quality, 2012*; Washington, D.C.; Ottawa, Ontario; online (<https://www.ijc.org/en/who/mission/glwqa>). The authors are indebted to Susan Hedman, former EPA Region 5 Administrator and Head of the U.S. Delegation to the Water Quality Agreement Negotiations, and Reynaldo A. Morales, International Research Fellow with the Forum for Law, Environment, Development, and Governance (FLEDGE) and Graduate Researcher with the Great Lakes Indigenous Law Center, for their consultations on the Great Lakes Water Quality Agreement and Native American resource rights issues. [↑](#footnote-ref-31)
32. *Ibid*., Principle 4(e) (“The Parties shall be guided by the following principles and approaches in order to achieve the purpose of this Agreement: (e) coordination – developing and implementing coordinated planning processes and best management practices by the Parties, as well as among State and Provincial Governments, Tribal Governments, First Nations, Métis, Municipal Governments, watershed management agencies, and local public agencies); Art. 3, para. 1(b) “Specific Objectives” (“The Parties…shall, in cooperation and consultation with State and Provincial Governments, Tribal Governments, First Nations, Métis, Municipal Governments, watershed management agencies, other local public agencies, downstream jurisdictions, and the Public, identify and work to attain Specific Objectives for the Waters of the Great Lakes”) para. 2 “Implementation” (“The Parties shall use best efforts to ensure that water quality standards and other regulatory requirements of the Parties, State and Provincial Governments, Tribal Governments, First Nations, Métis, Municipal Governments, watershed management agencies, and other local public agencies are consistent with all of these objectives”); Art. 4 (cooperation and consultation with Tribal Governments, First Nations, Métis, Municipal Governments in program implementation). [↑](#footnote-ref-32)
33. See UN GAOR, *Declaration on the Rights of Indigenous Peoples*, Resolution 61/295 (13 Sep 2007), 61st Sess., 107th Plenary Mtg., UN Doc A/Res/61/295 [UNDRIP], Arts. 5, 19, 20, 32, and 34; CERD Gen.Rec. No. 23, *supra*. [↑](#footnote-ref-33)
34. GLWQA Art. 4(j) (Principle of Public Engagement incorporating Public opinion and advice, as appropriate, and providing information and opportunities for the Public to participate in activities that contribute to the achievement of the objectives of this Agreement); Art. 5.1 (“Recognizing the importance of Public input and advice, the Parties shall convene, with the Commission, a Great Lakes Public Forum [to] provide an opportunity for…(a) the Parties to discuss and receive Public comments on the state of the lakes and binational priorities for science and action...and (b) to discuss and receive Public input on the Progress Report of the Parties”); Art. 7(g) (“consulting on a regular basis with the Public about issues related to the quality of the Waters of the Great Lakes, and about options for restoring and protecting these waters”); Annex 4 – Reporting. [↑](#footnote-ref-34)
35. *Ibid*., Art. 4(f). [↑](#footnote-ref-35)
36. *Ibid*. Art. 3, para. 1 (“General and Specific Objectives”), para. 2 (“Implementation”), para. 4 (“Reporting”). [↑](#footnote-ref-36)
37. See Chippewa Ottawa Resource Authority [“CORA”], Intertribal management for 1836 Treaty fishery, online (<http://www.1836cora.org>); Chippewa Ottawa Resource Authority, *Commercial, Subsistence, And Recreational Fishing Regulations For The 1836 Treaty Ceded Waters Of Lakes Superior, Huron, And Michigan*, online (<http://www.1836cora.org/wp-content/uploads/2017/04/CORA-Regulations-Revised-April-3-2017.pdf>). [↑](#footnote-ref-37)
38. GLIFWC Member Tribes are the Bad River, Bay Mills, Danbury, Fond du Lac, Keweenaw Bay, Lac Courte Oreilles, Lac du Flambeau, Lac Vieux Desert, Mille Lacs, Mole Lake / Sokaogon, and Red Cliff Tribes; see generally Great Lakes Indian Fish & Wildlife Commission (GLIFWC), online (<http://www.glifwc.org/About/>). [↑](#footnote-ref-38)
39. Also known by their anglicized name “Chippewa,” or their endonym “Anishinaabe,” the Ojibwe are Alongquin-speaking peoples originally from the Lake Huron region, with communities in Montana and North Dakota and the Canadian provinces of Alberta, Manitoba, Ontario, Quebec, and Saskatchewan, numbering 170,742 people in the U.S., the fifth-largest Native American population (per 2010 U.S. Census Data); see also Dr. Loriane Roy, “Ojibwa”, World Culture Encyclopedia, online (<https://www.everyculture.com/multi/Le-Pa/Ojibwa.html>) [accessed May 2020]. [↑](#footnote-ref-39)
40. GLIFWC, “Treaties”, online (<https://www.glifwc.org/TreatyRights/treaties.html>) [accessed June 2020]. [↑](#footnote-ref-40)
41. See *Lac Courte Oreilles v. Voigt, et al.*, 700 F.2d 341 (7th Cir., 1983), *cert. denied* 464 U.S. 805, 105 S.Ct. 53, 78 L.Ed.2d 72 (1983); GLIFWC and Pierson, Brian L. “The Spearfishing Civil Rights Case: *Lac Du Flambeau Band v. Stop Treaty Abuse-Wisconsin*”, online: ([https://www.glifwc.org/minwaajimo/Papers/3%20-%20Pierson%20--%20The%20Spearfishing%20Civil%20Rights%20Case%20(GLIFWC).pdf](https://www.glifwc.org/minwaajimo/Papers/3%20-%20Pierson%20--%20The%20Spearfishing%20Civil%20Rights%20Case%20%28GLIFWC%29.pdf)); GLIFWC, *Voigt Model Off-Reservation Conservation Code* (Rev. 04/2018) (a model indigenous natural resource management code intended to incorporate and implement all stipulations and court decisions entered into as a result of the *Voigt* judgment), online: (<https://www.glifwc.org/Regulations/VoigtModelCode.2018.internal.links.pdf>); *Lac Courte Oreilles v. State of Wisconsin*, 758 F.Supp. 1262 (W.D. Wis. 1991); *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin, Inc*, 781 F. Supp. 1385 (W.D.Wis. 1992) [accessed June 2020]. [↑](#footnote-ref-41)
42. See GLIFWC, “Regulation Summaries, online: (<https://www.glifwc.org/Regulations/index.html>) (including regulations for hunting, trapping, fishing, camping, and ricing). [↑](#footnote-ref-42)
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44. See ICJ and Bunch, Kevin. "Climate Change and Dams Present Challenges for Wild Rice at Rainy Lake" (21 Aug 2018), online: (<https://ijc.org/en/climate-change-and-dams-present-challenges-wild-rice-rainy-lake#:~:text=The%20damming%20and%20water%20management,Allan%20Yerxa%2C%20lands%20and%20resources>) [accessed June 2020]. [↑](#footnote-ref-44)
45. See Community Environmental Legal Defense Fund, “Advancing the Legal Rights of Nature: Timeline” online: (<https://celdf.org/advancing-community-rights/rights-of-nature/rights-nature-timeline/>); Slagle, Nicolette, Comment to the ICJ, *Rights of Nature FAQ* (Oct 2019), online: (<https://ijc.org/system/files/commentfiles/2019-10-Nicolette%20Slagle/FAQ.pdf>) [accessed June 2020]. [↑](#footnote-ref-45)
46. See 1855 Treaty Authority, “Chippewa Establish Rights Of Manoomin On White Earth Reservation And Throughout 1855 Ceded Territory” Press Release (11 Jan 2019) (“The Rights of Manoomin were adopted because ‘it has become necessary to provide a legal basis to protect wild rice and fresh water resources as part of our primary treaty foods for future generations’ according to resolutions.”) [↑](#footnote-ref-46)
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