



Alternative Report submitted by

the **Center for International Environmental
Law (CIEL)** and

the **Global Initiative for Economic, Social and
Cultural Rights (GI-ESCR)**

to the
Human Rights Committee

on the occasion of the consideration of the

**List of Issues prior to Reporting
for the United States of America**

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Executive Summary

This report focuses on the failure of the United States to uphold its obligation to protect the right to life, as provided under article 6 of the International Covenant for Civil and Political Rights (ICCPR), in the context of climate change. As noted by the Human Rights Committee in its recent General Comment 36 on article 6, “climate change and non-sustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”.

In the context of climate change, the protection of the right to life provided under article 6 of the ICCPR requires states to adopt and implement adequate policies seeking to mitigate the causes of climate change. Additionally, it also requires States to plan and implement effective climate adaptation actions in order to protect the life of those who are already endangered by the impacts of climate change. However, given that there are limits to the ability of adaptation measures to protect life from the impacts of climate change, reducing emissions is a prerequisite for the effective protection of the right to life in the context of climate change.

The United States has consistently failed to develop and implement policies aimed at reducing its emissions effectively in a manner that would contribute to averting the most dangerous levels of warming.

In this context, we urge the Human Rights Committee to request the State Party to provide information regarding: **what steps the State Party has taken to address the significant threats to the right to life in the United States, posed by the impacts of climate change and specifically, what climate mitigation measures has it taken?**

1. Climate Change and the Protection of the Right to Life

According to the latest report of the Intergovernmental Panel on Climate Change (IPCC), global average temperatures have already increased by over 1°C over pre-industrial levels.¹ This increase of global temperatures is more rapid than any change of temperatures on Earth over the past millennia.² The scientific community has concluded for decades that human activity – particularly the combustion of fossil fuels – is the main driving factor in these changes. The current level of temperature increase has already led to many severe implications for communities across the United States, particularly those exposed to climate-related extreme events such as hurricanes, droughts, floods and wildfire (for some selected examples of such events, see text box on page 4).

In October 2018, the IPCC released a Special Report on 1.5°C of Warming, which concluded that “climate-related risks for natural and human systems are higher for global warming of 1.5°C than at present, but lower than at 2°C”.³ The IPCC has stressed that risks increase with every additional magnitude of warming.

¹ IPCC Special Report, ‘Global warming of 1.5°C. An IPCC special report on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty’ (2018) (SR 1,5), finding A1.

² <<https://climate.nasa.gov/evidence/>>, accessed 11 January 2019.

³ SR 1,5, finding A3.

The IPCC notes that without significant additional emissions reduction efforts, an increase of average temperatures by more than 4 degrees was “more likely than not”. According to the IPCC, “the risks associated with temperatures at or above 4°C include substantial species extinction, global and regional food insecurity, consequential constraints on common human activities, and limited potential for adaptation in some cases (high confidence).”

The United States government has endorsed these findings through the adoption of the 1.5C Special Report and all reports produced by the IPCC.

Human Rights Experts have underlined that limiting warming to 1.5C is a human rights imperative, since warming above 1.5C will have very serious adverse implications for human rights, including the right to life.⁴

Many communities and individuals in the United States are particularly vulnerable to the impacts of climate change due to their geographic location, social and economic situations or health condition.

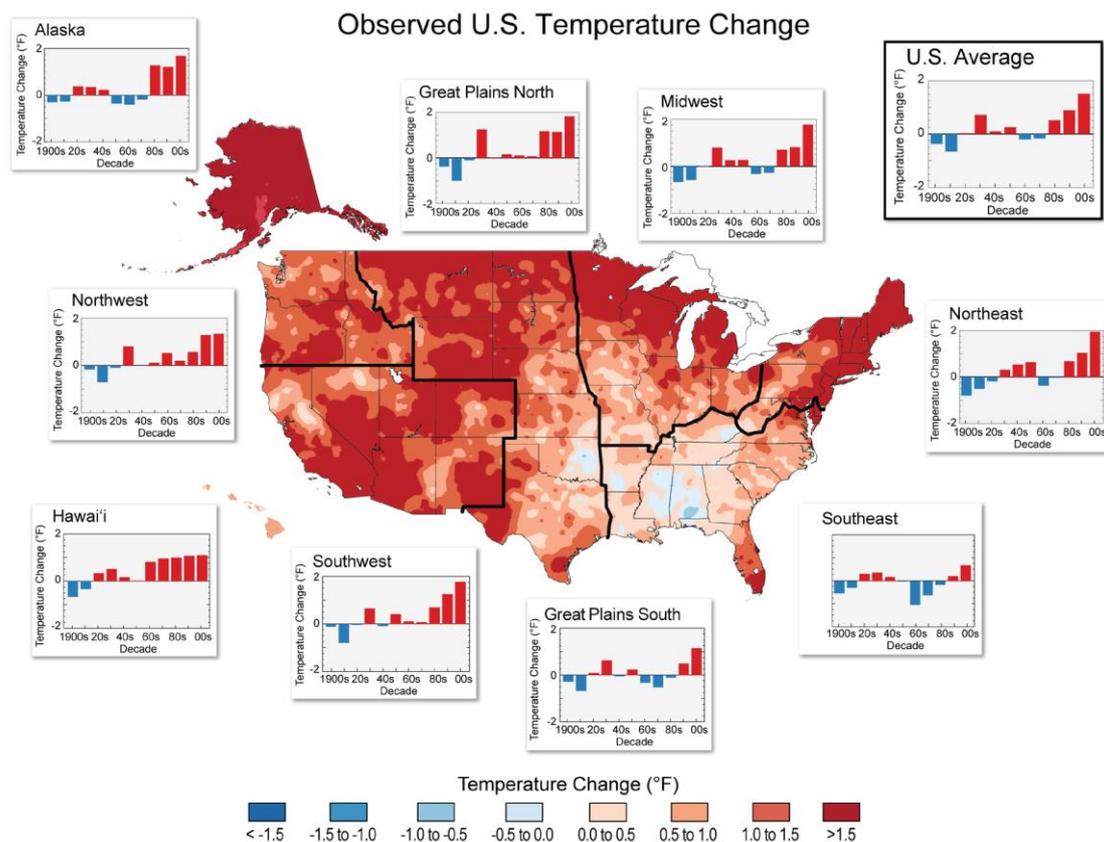


Figure 1: Observed Temperature Change in the United States, 1900-2012 (source: US Global Change Research Program, Third National Climate Assessment, 2014)⁵

⁴ See: ‘The Effects of Climate Change on the Full Enjoyment of Human Rights’, Joint Paper by five Special Procedures mandate holders of the Human Rights Council (2015), available at http://www4.unfccc.int/Submissions/Lists/OSPSubmissionUpload/202_109_13075877586756_8762-CVF%20submission%20Annex%201_Human%20Rights.pdf; Public Statement of the Committee on Economic, Social and Cultural Rights made on 31 October 2018, UN Document E/C.12/2018/1, paragraph 2.

The Fourth National Climate Assessment released by the US administration in 2018 provides an assessment of the ongoing and projected impacts of climate change in the country.⁶ The report notes that climate change contributes to the increase of the magnitude, range and/or frequency of climate-related events and phenomena, and to mortality and morbidity linked to these events. These events include, among others, flash floods, coastal flooding, wildfires, prevalence and geographical distribution of food and waterborne illnesses and other infectious diseases, increase in ground-level ozone and/or particulate matter air pollution and extreme heat events.⁷

Clearly each of these events has serious implications for the right to life for Americans.

Examples of recent Impacts of Climate Change on the right to life in the United States

Like other countries around the world, the United States has witnessed a growing number of climate-related disasters in recent years—from extreme storm, rainfall and flooding events, to unprecedented droughts, to widespread and intense wildfires. As the frequency, intensity and severity of climate-fueled disasters continues to rise, so do the impacts of these disasters on human livelihoods, human rights and human lives.⁸

- Montecito Mudslides (January 9th 2018, California) – 21 people killed, 28 injured and 2 still reported missing. Research determines that climate change in the United States causes hydrological disasters, such as mudslides.⁹
- 2016 West Virginia Flood (23-24 June 2017, West Virginia), 23 people killed. Various climate research demonstrates the increase in prevalence, frequency and intensity of floods in the United States is attributable to climate change.¹⁰

⁵ Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds.,: *Climate Change Impacts in the United States: The Third National Climate Assessment*. (U.S. Global Change Research Program 2014), 841 pp. doi:10.7930/J0Z31WJ2., figure 2.7.

⁶ See USGCRP, 2018: *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018

⁷ See *ibid*, for instance pages 27, 55-56, 66-68.

⁸ See IPCC, '*Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*' (2014) (IPCC SR5), p. 50 at a; Jerry Melillo, Thomas Peterson, eds., '*Global Climate Change Impacts in the United States*' (Cambridge University Press 2009), p. 12.

⁹ See, on the causation of climate change and mudslides in the United States Alexander Gershunov, Tim Barnett, 'ENSO Influence on Intraseasonal Extreme Rainfall and Temperature Frequencies in the Contiguous United States: Observations and Model Results' (1998) 11 JCLI 1575, p. 1575; Melillo et al (fn8), p. 64 and for research on the increase of heavy rainfall Thomas Karl, Richard Knight, 'Secular Trends of Precipitation Amount, Frequency, and Intensity in the United States' (1998) 79(2) Bulletin of the American Meteorological Society 231.

¹⁰ Daniel Cayan, Michael Dettinger et al, 'Natural Variability, Anthropogenic Climate Change, and Impacts on Water Availability and Flood Extremes in the Western United States' in Kathleen Miller et al *Water Policy and Planning in a Variable Changing Climate* (Taylor & Francis Group 2015) p. 28-29; IPCC SR5, p. 53; Gregg Greenough, Michael McGeekin et al., 'The Potential Impacts of Climate Variability and Change on Health Impacts of Extreme Weather Events in the United States' (2001) 109(2) Environmental Health Perspectives 191, p. 193; Melillo et al (fn8), pp. 24-25, 44. See for another climate-attributed flood the more recent Maryland Floods (May 27 2018 and July 30th 2016, Maryland) – 1 person killed (2018), 2 persons killed (2016); Chesapeake Quarterly and Bay Journal Special Report, 'Come High Water: Sea Level Rise and Chesapeake Bay' (Maryland Sea Grant 2015

- Hurricane Michael (7 – 16 October 2018, Florida, Georgia, South Carolina, North Carolina, Virginia) – 53 people killed (and at least 15 more in Central America). Research determines the growing intensity of hurricanes is tied to climate change.¹¹
- California Wildfires (November 2018), 104 people killed, more than 80 injured. Climate researchers and experts ascribe the cause of the bigger and more frequent fires to climate change¹²

2. States' Human Rights Obligations in the Context of Climate Change

The right to life is recognized as a fundamental human right, 'basic to all human beings'.¹³ Article 6 of the ICCPR provides that:

Every human being has the inherent right to life. This right shall be protected by law.¹⁴

The right is incorporated in every human rights document and is non-derogable, even in times of emergency.¹⁵ Its fulfilment has been linked to other human rights such as the right to food, water and an adequate standard of living.¹⁶ The Human Rights Committee (HRCtte) clarified the scope of the right to life in its General Comment (GC) n.36 adopted in October 2018. The HRCtte emphasized that a broad range of obligations can be interpreted from this right that entitles individuals to be free from both acts and omissions that cause, or may be expected to cause, death or impairs the enjoyment of a life with dignity.¹⁷

The HRCtte further stated that the right of life requires states to take "appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity" and "these general conditions may include ... degradation of the environment". The General Comment recognises that "[e]nvironmental degradation, climate change and non-sustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life".¹⁸

¹¹ Terry Dinan, 'Projected Increases in Hurricane Damage in the United States: The Role of Climate Change and Coastal Development' (2017) 138 *Ecological Economics* 186, p. 189-190; Melillo et al (fn8), pp. 35-36; Morris Bender, Thomas Knutson et al, 'Modeled Impact of Anthropogenic Warming on the Frequency of Intense Atlantic Hurricanes' (2010) 327 *Science* 454.

¹² See Noah Diffenbaugh, Daniel Swain, Danielle Touma, 'Anthropogenic warming has increased drought risk in California' (2015) 112 (13) *PNAS* 3931, p. 3931; Office of Environmental Health Hazard Assessment, California Environmental Protection Agency, 'Indicators of Climate Change in California' (2018), p. 189; IPCC SR5, p. 53, Melillo et al (fn8), pp. 82, 113.

¹³ UN Human Rights Council, 'Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights' (15 January 2009) A/HRC/10/61, para 8.

¹⁴ ICCPR, Article 6.

¹⁵ HRCtte, 'CCPR General Comment No. 6: Article 6 (Right to Life)' (30 April 1982), para 1; HRCtte, 'CCPR General Comment no.14: Article 6 (Right to life) Nuclear Weapons and the Right to Life (9 November 1984), para 1; HRCtte, 'CCPR General Comment No. 36 on Article 6 (Right to life)' (30 October 2018), para 2.

¹⁶ Committee on the Rights of the Child (CRC), 'General Comment No. 7 (2005): Implementing Child Rights in Early Childhood' (20 September 2006), para. 10.

¹⁷ HRCtte, 'CCPR General Comment No. 36 on Article 6 (Right to life)' (30 October 2018), para 3.

¹⁸ *Ibid*, para. 65.

Moreover, the HRCtte has recognised that Article 6 provides a due diligence obligation to protect the right to life from deprivations caused by actors whose conduct is not attributable to the State. In its GC 36, the Committee reiterated that “[t]he duty to protect the right to life by law also includes an obligation for States parties to take appropriate legal measures in order to protect life from all foreseeable threats, including from threats emanating from private persons and entities.”¹⁹

The Right to Life and the Duty to Mitigate the Causes of Emissions – Statements and Findings from International Human Rights Institutions

Many international institutions have recognized that the right to life implies an obligation for States to protect individuals from future climate-related harms, by adopting and implementing adequate mitigation policies.

Reviewing the implementation of the Convention on the Rights of the Child²⁰ - which states explicitly that “every child has the inherent right to life”, the Committee on the Rights of the Child (CRC) has noted that the prevention of severe climate-related harms for the rights of children requires “urgent and aggressive reductions in greenhouse gases, guided by the best available science”.²¹ Through the State reporting process, the CRC expressed concern about the inadequacy of national climate policies and their impacts on the rights of children.²²

Regional human rights institutions have also confirmed that the protection of the right to life imposes a duty upon states to protect the environment adequately so as to uphold their duty of due diligence and to prevent environmental threats to human life. This need for preventive action in light of article 2 of the ECHR, was also key in the decision of the European Court for Human Rights (ECtHR) in *Öneryildiz v. Turkey*. In this decision the ECtHR ruled that states have a positive obligation to take preventive measures to protect the lives of those within their jurisdiction. A violation of article 2 was found because of the lack of appropriate steps to prevent the fatal incident in this case. A positive obligation pursuant to article 2 was also affirmed in *Budeyeva v Russia*. In this case the State was said to have a positive obligation in case of threats to the right to life caused by natural events, to put in place (effective) legislative and administrative frameworks.²³

The Inter-American Court in its *Yanomami case* has established that the realisation of the right to life is linked to, and dependent upon, the physical environment and therefore, environmental degradation and climate change.²⁴ In its advisory opinion requested by Colombia concerning the environment and human rights, the Court stated in 2017 that States have several substantive and procedural obligations regarding environmental protection arising from the obligation to respect and ensure the rights to life and personal integrity.²⁵ According to the Court, these duties include the obligation to prevent significant environmental damages within and outside their territory, including through regulation, supervision and monitoring of activities under their jurisdiction as well as the mitigation of any significant environmental damage that could have occurred.

¹⁹ *Ibid*, para. 22.

²⁰ While the United States has signed the Convention on the Rights of the Child, it has not ratified this legal instrument.

²¹ CRC, ‘Report of the 2016 Day of General Discussion. Children’s Rights and the Environment’ (23 September 2016), p. 32.

²² CRC, ‘Concluding Observations: United Kingdom of Great Britain and Northern Ireland’ (11 July 2016) CRC/C/GBR/CO/5, para 68.

²³ *Budayeva v Russia* ECHR [2014] 59 EHRR 2, para 128-129.

²⁴ *Case of Yanomami Indians v Brazil*, IACmHR [1985] Case N/7615.

²⁵ Advisory Opinion requested by the Republic of Colombia, IACHR [2017] Oc-23/17

3. The United States' International Environmental Obligations related to Climate Change

In its General Comment n. 36 concerning the Right to Life, the Committee noted that:

Obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life must reinforce their relevant obligations under international environmental law.

Under the UN Framework Convention on Climate Change – which the United States ratified in 1992 – the United States is legally required to “adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs”.²⁶ In the context of this international framework, the United States committed in 2010 to reduce its emissions by 17% before 2020 compared to 2005.²⁷ Under the Paris Agreement which the United States ratified in 2016,²⁸ the States Parties committed to “holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels”.²⁹ Under this agreement, the United States subsequently committed in 2015 to reduce emissions by 26-28% before 2025 compared to 2005 emissions.³⁰ Moreover, the Paris Agreement legally binds the United States to “pursue domestic mitigation measures, with the aim of achieving the objectives of [the nationally determined contribution that it has communicated]”.³¹

These obligations of the United States under the Paris Agreement should inform the interpretation of, and be reinforced by, its obligations under Article 6 of the ICCPR.

However, according to researchers, even meeting these self-allocated commitments would be insufficient to limit warming to 2°C, let alone 1.5°C.³² Consequently, given the human rights imperative of the 1.5C objective, the United States' commitments pursuant to the Paris Agreement are not sufficient to fulfill its obligations under the ICCPR art. 6.

²⁶ UN General Assembly, 'United Nations Framework Convention on Climate Change : resolution / adopted by the General Assembly' (20 January 1994) A/RES/48/18, Article 4.2.a.

²⁷ See

https://unfccc.int/files/meetings/cop_15/copenhagen_accord/application/pdf/unitedstatescph_accord_app.1.pdf, accessed 11 January 2019.

²⁸ Please note at the state of the writing of this report, the United States remains a party to the Paris Agreement. Announcement by the President of the United States regarding a potential withdrawal from the agreement remain without legal implications as the provisions of the Paris Agreement imply that such a withdrawal cannot take effect before 2020.

²⁹ UNFCCC, Paris Agreement adopted at the 21st Session of the Conference of the Parties (12 December 2015) (Paris Agreement), article 2.1.a.

³⁰ See U.S.-China Joint Announcement on Climate Change at: <<https://obamawhitehouse.archives.gov/the-press-office/2014/11/11/us-china-joint-announcement-climate-change>>, accessed 11 January 2019.

³¹ Paris Agreement, article 4.2.

³² <https://climateactiontracker.org/countries/usa/>, accessed 11 January 2019.

4. Climate Policies of the United States of America

The United States currently emits annually over 6.6 million metric tons of carbon-dioxide equivalent greenhouse gases.³³ Consequently, the United States currently constitutes the largest historic emitter and the second largest current emitter of greenhouse gases – but with much higher per capita emissions than the largest current emitter, China. Greenhouse gases emitted from the United States make up more than 17% of global emissions.³⁴

The government of the United States and its administration have been informed of the dangerous impacts resulting from the increasing greenhouse gas emissions since no later than 1965. In 1965, the Executive Branch reported that anthropogenic pollutants, including CO₂, threaten “the health, longevity, livelihood, recreation, cleanliness and happiness of citizens who have no direct stake in their production, but cannot escape their influence.”³⁵

As a first significant attempt to tackle this situation, the Environmental Protection Agency submitted a report to the US Congress in December 1990 on “Policy Options for Stabilizing Global Climate.”³⁶ The EPA’s 1990 Report concluded: “responses to the greenhouse problem that are undertaken now will be felt for decades in the future, and lack of action now will similarly bequeath climate change to future generations.”³⁷ The EPA’s 1990 Report called for a 50% reduction in total U.S. CO₂ emissions below 1990 levels by 2025. They justified this proposal by stating that such reductions were the only pathway to achieve Congress’ goal of preventing dangerous global warming.³⁸

This initial plan, however, was never implemented. On the contrary, during the following decades successive governments continued to permit, authorize, and subsidize fossil fuel extraction, development, consumption and exportation – activities producing enormous quantities of CO₂ emissions that have substantially caused or substantially contributed to the increase in the atmospheric concentration of CO₂.

Under the previous US administration, the Environmental Protection Agency put forward a “Clean Power Plan” to contribute to the reduction of emissions related to the generation of energy.³⁹ This plan aims for power plant emissions reductions of approximately 32% from 2005 levels by 2030. While the adoption of this policy constituted a significant step forward for US climate policies, it nonetheless remained insufficient. Firstly, the rate of emission reductions proposed in the plan was not sufficient compared to what would be required to keep the increase of temperatures below dangerous thresholds. Secondly, the United States still lacked a comprehensive

³³ See <<https://www.epa.gov/ghgemissions/overview-greenhouse-gases>>, accessed 11 January 2019.

³⁴ See for instance data compiled by the UNFCCC <https://unfccc.int/resource/docs/2015/cop21/eng/10.pdf#page=3>, accessed 11 January 2019.

³⁵ Johnson’s Science Advisory Committee Report, ‘Restoring the Quality of Our Environment’ (1965).

³⁶ *Ibid*, p. 1.

³⁷ United States Environmental Protection Agency (US EPA) Report, ‘Policy Options for Stabilizing Global Climate’ (1990).

³⁸ *Ibid*, at III-15.

³⁹ US EPA, ‘Clean Power Plan’ (2015).

emissions reductions policy, as this plan covered only emissions related to the power sector.

Troublingly, over the last two years the United States government has launched a wide-ranging effort to weaken, roll-back and undermine those climate policies that do exist. These initiatives compound the existing weaknesses in an already inadequate system, and reflect a further departure from the United States’ obligations to respect and protect the right to life in the context of climate change. The current administration has put forward a proposal to rewrite and dramatically weaken the Clean Power Plan,⁴⁰ proposed to freeze vehicle efficiency standards after 2020,⁴¹ and will not enforce regulations to limit emissions of “super climate pollutant” gases.⁴² The administration will also allow methane leaks from oil and gas production to continue for longer before they are found and fixed.⁴³

Consequently, the emissions of greenhouse gases generated within the US territory is projected to increase in 2018 in all sectors of the economy.

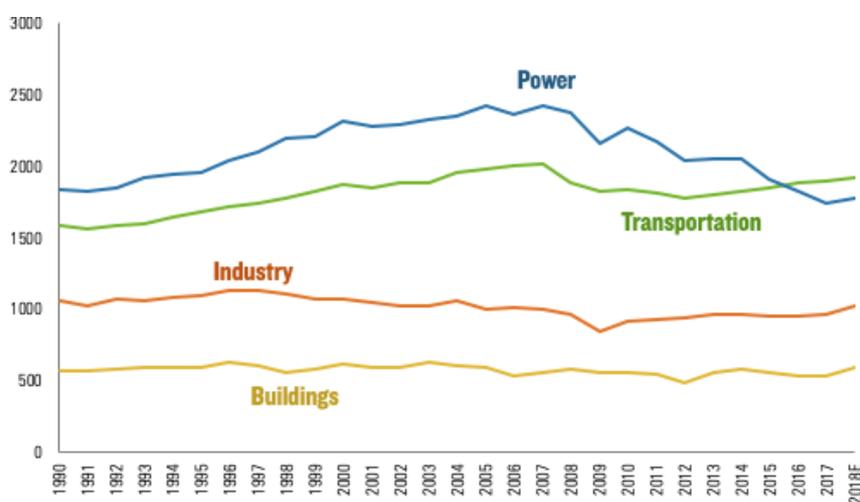


Figure 2: U.S. Emissions of Greenhouse Gases – including emissions projected in 2018 (source: Rhodium US Climate Service, 2019)⁴⁴

Independent assessments of the climate policies of the United States concur that these policies are grossly inadequate. The Climate Change Performance Index published by a consortium of expert organizations ranks the performance of the United States 59th out

⁴⁰ <https://www.epa.gov/sites/production/files/2018-08/documents/frn-ace-proposal_8.20.2018.pdf> , accessed 11 January 2019.

⁴¹ <<https://www.govinfo.gov/content/pkg/FR-2018-08-24/pdf/2018-16820.pdf>>, accessed 11 January 2019.

⁴² See <https://www.epa.gov/sites/production/files/2018-04/documents/snap-guidance-notice_as-signed-4-13-18-with-disclaimer.pdf>, accessed 11 January 2019.

⁴³ See <<https://www.epa.gov/sites/production/files/2018-09/documents/frnoilgasreconsideration2060-at54nprm20180910.pdf>>, accessed 11 January 2019.

⁴⁴ See <<https://rhg.com/research/preliminary-us-emissions-estimates-for-2018/>>, accessed 11 January 2019.

of 60 States reviewed, with only the climate policy of Saudi Arabia considered more insufficient.⁴⁵

The refusal of President Trump to acknowledge climate change being human-caused, and his dismantling of regulation designed to reduce carbon emissions, result in the United States also being rated very low for its national and international climate policy performance.

This finding is shared by Climate Action Tracker – another international consortium assessing the adequacy of national climate policies.⁴⁶ Climate Action Tracker assesses the climate policy of the United States as “critically insufficient”, suggesting that these policies could result (if a similar degree of ambition was implemented in other countries) in an increase of temperatures by more than 4°C – a level of climate change associated with dramatic impacts on all human societies.

5. Conclusion and suggested questions

This report addresses the failure of the United States to uphold its obligation to protect the right to life under article 6 of the ICCPR, in the context of climate change.

The United States has consistently failed to develop and implement policies that would reduce its emissions effectively in a manner that would avert the most dangerous levels of warming. This failure to develop and implement adequate policies to mitigate the causes of climate change despite the foreseeable impacts of such failure constitutes a breach of the States’ obligation to respect, protect and fulfill the right to life.

In this context, we urge the Human Rights Committee to include in its List of Issues for the United States, the following question to the State Party:

- What steps has the State Party taken to address the significant threats to the right to life in the United States, posed by the impacts of climate change and specifically, what climate mitigation measures has it taken?

⁴⁵ See <<https://www.climate-change-performance-index.org/>>, accessed 11 January 2019.

⁴⁶ See <<https://climateactiontracker.org/countries/usa/>>, accessed 11 January 2019.