

Indigenous Peoples Coordinated Submission

List of Issues and Questions for the periodic review by the United Nations Human Rights Committee of the United States of America as a State Party to the International Covenant on Civil and Political Rights
January 19, 2019

Submitted by the International Indian Treaty Council¹

Co-submitted by the Sicangu (Rosebud) Treaty Council, Venetie Tribal Government (Arctic Village and Venetie, Alaska), Chickaloon Native Village (Alaska), Shishmaref Native Village (Alaska), Nation of Hawai'i, Association on American Indian Affairs, United Confederation of Taino People, Lakota Law Project, Indigenous World Association, Laguna-Acoma Coalition for a Safe Environment, Sixth World Solutions, Huy (Indigenous Prisoners' Rights Advocacy), the University of Arizona Indigenous Peoples Law and Policy Program, the National Indian Child Welfare Association and the Indigenous Rights Center (Albuquerque, New Mexico)

The National Congress of America Indians, Native American Rights Fund, National Native American Boarding School Healing Coalition and the Navajo Nation Human Rights Commission also contributed to this submission.

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¹ See enclosed annex for IITC's organizational description and list of US-based affiliates

EXECUTIVE SUMMARY

The International Indian Treaty Council (IITC) welcomes the opportunity to provide the Human Rights Committee (CCPR) with this coordinated Indigenous Peoples' submission from a range of Indigenous Tribal Nations and governments, Tribal and Indigenous Peoples organizations, Treaty Councils and Indigenous institutions. Its purpose is to gather submissions from a range of Indigenous rights holders to provide input into the List of Issues the CCPR will provide to the United States of America (US) for its upcoming review of US compliance with the International Covenant on Civil and Political Rights (ICCPR).

Based on the list of issues presented in the body of this submission, we respectfully request that the CCPR present the following questions to the US for preparation of its upcoming periodic report, in no order of priority:

- 1. Since the US Constitution maintains that "Treaties are the supreme law of the land" and the US ratified 371 Treaties with the Indigenous Nations who were the original inhabitants of the lands now known as the United States, why does the State Party consider the multilateral United Nations Treaties, Conventions, and Covenants such as ICCPR it has ratified to be legally binding, but not so the Treaties that it ratified, using the same process, with the Indigenous Nations? What measures is the State Party taking to fulfill its obligations under Article 1 to protect Indigenous Nations' treaty rights and to remedy treaty violations? (pp. 3–6)**
- 2. What measures is the State Party taking to ensure that it obtains the free, prior, and informed consent of Indigenous Peoples, including Indigenous Peoples in former and current US Territories such as Alaska and Puerto Rico, and non-federally recognized Indigenous Peoples, prior to adopting any legislative or administrative measures that may affect them, their lands or their natural resources? In particular, what steps is it taking to obtain their free, prior, and informed consent prior to allowing oil and gas drilling, pipelines, and other infrastructure and extractive industry development projects that could negatively impact their sacred places and the resources and ecosystems upon which their traditional subsistence depends? (pp. 6–12)**
- 3. Will the State Party reexamine and reframe its approach to restoration and reconciliation with the Hawaiian People based on US Public Law 103-150, the UN Charter, ICCPR Article 1 and the UN Declaration on the Rights of Indigenous Peoples, by supporting a meaningful participatory political process for realizing self-determination and self-governance? How will the State Party restore its prior International Treaties and Agreements with the Nation of Hawai'i? Is the State Party willing to enter into new Treaties and Agreements with the Nation of Hawai'i to move the restoration and reconciliation process forward? (pp. 7–8)**
- 4. How does the State Party ensure that protection of Indigenous Peoples' cultural heritage (tangible and intangible) complies with Article 27 and thus protects against illegal appropriation or exportation? What steps has the State Party taken to ensure an effective remedy when Indigenous Peoples' cultural heritage has been appropriated or trafficked in violation of Indigenous, federal, state or international law? (pp. 12–14)**
- 5. What steps is the State Party taking to ensure the protection of Indigenous prisoners' religious freedoms at the state and local levels, including access to sweat lodges and ceremonies and access**

to sacred and ceremonial items? How does the State Party ensure that prison regulations affecting Indigenous prisoners are made in consultation with Indigenous Peoples? How does the State Party guarantee an effective remedy when Indigenous prisoners' rights are violated? (pp. 14–15)

6. What measures have been adopted by the State Party to effectively implement the previous CCPR recommendations to protect the sacred areas and landscapes of Indigenous Peoples which are vital to their cultural and religious practices, against desecration, contamination and destruction and to obtain their free, prior, and informed consent in this regard? (pp. 11–12)
7. What actions is the State Party taking to guarantee the right to life by addressing the crisis of Missing and Murdered Indigenous Women and to enforce the prohibition on slavery and involuntary servitude by combatting the sex trafficking of Indigenous women and children? How is the State Party addressing jurisdictional gaps and other structural barriers to holding non-Indigenous offenders accountable for their crimes against Indigenous women and children? (pp. 19–20)
8. How is the State Party addressing disproportionate rates of Indigenous incarceration, disproportionate sentencing of Indigenous Peoples, and the lack of disaggregated data regarding the incarceration of Indigenous Peoples at state and federal levels? What steps is the State Party taking to address the situation of Indigenous political prisoners, including Leonard Peltier and Red Fawn Fallis? How is the State Party ensuring that state and local law enforcement do not subject Indigenous Peoples, including Indigenous protestors, to arbitrary detention or inhumane conditions of confinement? (pp. 20–21)
9. What is the State Party doing to ensure that state and local governments do not adopt laws, policies, or practices disenfranchising or suppressing Indigenous voters? Why has the US not pursued Voting Rights Act enforcement litigation on behalf of Indigenous voters in nearly 20 years? What is the State Party doing to guarantee equal access to voter registration and polling locations for Indigenous voters living on Indigenous lands? (pp. 17–18)
10. What steps is the State Party taking to acknowledge and remedy the forced removal of Indigenous children from their homes under the US Boarding School Policy, including providing information to families and Tribes and returning remains of children still missing from that time? (pp. 21)
11. What measures is the State Party taking to ensure compliance with the Indian Child Welfare Act and to address the continued removal of Indigenous children from their families and Indigenous communities? How is the State Party working to ensure that its domestic legal system recognizes the political status of Indigenous children and the duty to implement special measures for their protection? (p. 22)
12. What measures is the State Party taking to implement the ICCPR, the United Nations Declaration on the Rights of Indigenous Peoples, and other international human rights standards? How is the State Party ensuring dissemination of its obligations under these instruments to its federal agencies as well as state and local governments? (pp. 21–22)

I. Article 1: The Right of All Peoples to Self-Determination

“All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” ICCPR Art. 1(1)

“The States Parties ... including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right...” ICCPR Art. 1(3)

A. Previous CCPR Recommendations

In its first set of recommendations to the United States of America (US) in 1995, the Human Rights Committee (CCPR) recommended “that steps be taken to ensure that previously recognized aboriginal Native American rights cannot be extinguished.”¹ The CCPR noted with concern in 2006 that “no action has been taken by the State party to address its previous recommendation relating to the extinguishment of aboriginal and indigenous rights,” and it recommended that the US “review its policy towards indigenous peoples as regards the extinguishment of aboriginal rights on the basis of the plenary power of Congress regarding Indian affairs and grant them the same degree of judicial protection that is available to the non-indigenous population.”²

The CCPR also recommended in its first set of recommendations that the US “ensure that there is a full judicial review in respect of determinations of federal recognition of tribes.”³

In 2006, the CCPR also urged the US to “take further steps to secure the rights of all indigenous peoples, under articles 1 and 27 of the Covenant, so as to give them greater influence in decision-making affecting their natural environment and their means of subsistence as well as their own culture.”⁴

B. Treaties and the Right to Self-Determination

The right to freely determine political status, which includes the right to enter into Treaties and Agreements with other Nations, is a fundamental component of the right to self-determination as defined in ICCPR Article 1(1).

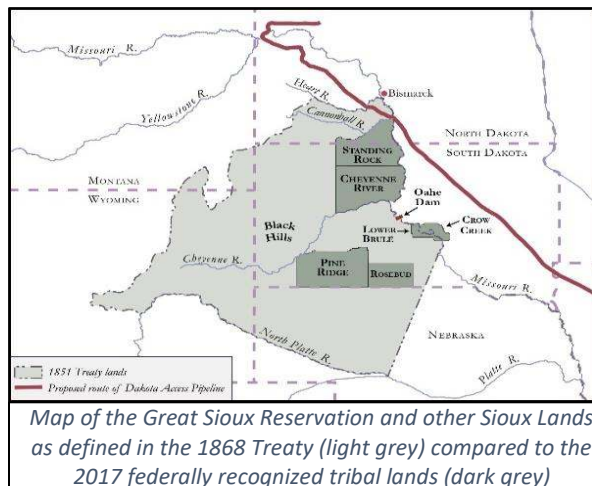
For many Indigenous Peoples in what is now considered to be the United States, the conclusion of Nation-to-Nation Treaties continues to be the basis for their ongoing legal and political relationships with the settler government of the US. Treaties were entered into by Indigenous Nations based on good faith, respect, consent, and the mutual recognition of government systems, leadership and decision-making structures and processes.

The fact that the US government negotiated, concluded, and ratified over 350 Treaties with Indigenous Nations is clear evidence that the US accepted and recognized them as co-equal sovereign powers, because Treaties can only be made between sovereign powers of equal status and standing. Further, the US Constitution refers to Treaties as “the supreme law of the land.”

The US ended Treaty-making with Indigenous Nations in 1871, although the legal basis and standing of the Treaties it previously ratified with the Indigenous Nations has never been challenged. Even before that time, the US began unilaterally violating and undermining the rights and recognitions affirmed in these legally ratified Treaties. Decisions of the US Supreme Court Chief Justice John Marshall in the 1830s defined Indian Nations as occupying a position resembling “wards” of the federal government and “domestic dependent nations” even though Indian Nations had been treated as independent sovereigns since Europeans first arrived. *Johnson v. McIntosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832). The Marshall decisions and the complex set of

US laws and policies adopted in their aftermath called “Federal Indian Law” were based on the “Doctrine of Discovery” and the legal principle of “plenary powers of Congress” which placed Indigenous Nations, including those with ratified Treaties, under the jurisdiction of the US government.

The desire of the US government and private interests to access lands for farming, mineral development, and other resources has been a primary force behind the illegal acquisition and appropriation of Treaty Lands. One of many examples was the US response to the discovery of gold in the sacred Black Hills in South Dakota only six years after they were affirmed by the 1868 Fort Laramie Treaty between the US and “the Great Sioux Nation”⁵ as belonging to the Oceti Sakowin (Lakota, Dakota, and Nakota) in perpetuity.



In another example, the Dawes Act was adopted by the US in 1887 with the stated intent to “civilize” American Indians by turning them into farmers and landowners. Its true intent was to open greater portions of land for western expansion, farming, and ranching. During 47 years under the Act, roughly 60% of Indian lands were confiscated by the US in violation of many Treaties, without redress or consent, in large part for sale or distribution to settlers. “Reservations” were established by the US first as prisoner of war camps, and then as “Indian Country” where Indigenous Nations were confined to lands far smaller than their legally recognized Treaty lands (see adjacent map for one example).

Lack of Access to Justice or Redress for Treaty Violations

US domestic legal institutions, laws, and policies continue to facilitate gross violations of Treaty rights, including the rights to Self-Determination and Subsistence (hunting, fishing and gathering) affirmed in Article 1, paragraphs 1 and 2 of the Covenant as well the ability to protect sacred areas, waters, and landscapes from imposed development in accordance with Articles 18 and 27 of the Covenant (see Part III below).

The sacred responsibility to protect the Black Hills was a primary motivation for the Oceti Sakowin to enter into Treaties with the US. However, the discovery of gold unleashed the Black Hills Gold Rush. Within 2 years all of the land along Deadwood and Whitewood Creeks had been “claimed” by prospectors. The Homestake Gold Mine was “claimed” in April 1876 and over the next 125 years it produced 43 MILLION OUNCES of gold—10% of the world’s gold supply—employing a poisonous mix of cyanide and mercury to recover the gold from a vast tonnage of ore, leaving a mile wide open pit and hundreds of miles of tunnels blasted up to 8,000 feet deep into the sacred Black Hills.

The US has never, to date, established just, participatory, and fair processes to address, adjudicate, and correct Treaty and land rights violations. The Indian Claims Commission established by the US government in 1946 (and disbanded in 1978) was a failed unilateral process for Treaty abrogation “settlements” in violation of the right to free, prior, and informed consent (FPIC) of Indigenous Treaty Nations. The US Treaty Party was the sole and final arbitrator of any violation claims filed by the Indigenous Nation Treaty Parties, doubly violating their right to self-determination in this process.

In this and other proceedings affecting Treaty rights, the US Treaty Party has continued to assert that it has sole jurisdiction to determine, decide, and control the process for redress of Treaty violations or to

unilaterally abrogate legally binding Treaties based on the “plenary power of Congress.” Even when domestic legal systems have recognized violations of Treaties pertaining to appropriation of lands, legal remedies are usually limited to monetary compensations rather than return of these lands. For example, in 1980 in response to the illegal confiscation of Treaty Lands recognized in the 1868 Treaty between the “Great Sioux Nation” and the US, the US Supreme Court stated that “a more ripe and rank case of dishonorable dealing will never, in all probability, be found in the history of our nation” and considered that “President Ulysses S. Grant was guilty of duplicity in breaching the Government’s treaty obligations with the Sioux relative to ... the Nation’s 1868 Fort Laramie Treaty commitments to the Sioux.” The Court also concluded that the US Government was guilty of “a pattern of duress ... in starving the Sioux to get them to agree to the sale of the Black Hills.”⁶

Despite this clear acknowledgement of wrongdoing by the highest court in the US, to this day none of these illegally confiscated Treaty Lands have been returned, and gold mining continues in the Black Hills. The monetary compensation for the theft of the sacred Black Hills now amounts, with interest, to more than \$1.3 billion, but has been repeatedly rejected by the Lakota Tribes which continue to hold the firm position that “the Black Hills are not for sale.”

The US has also consistently failed to comply with the recommendations of UN human rights mechanisms, including Treaty bodies and special procedures in this regard. For example, in 2006, the UN Committee on the Elimination of Racial Discrimination (CERD) issued a response to the Early Warning/Urgent Action submission by the Western Shoshone, regarding the case of Mary and Carrie Dann vs. United States, in which the federal government was imposing fees and taxes for the use of 26,000 acres of rangeland that was Western Shoshone traditional territory guaranteed them in the 1863 Treaty of Ruby Valley. CERD found that the US failed to implement due process or “comply with contemporary international human rights norms, principles and standards.”⁷ Failure of the US to implement these recommendations was underscored in the CERD’s concluding observations addressing the US in both 2008 and 2014.

Treaties and FPIC

For Indigenous Peoples, FPIC is a requirement, prerequisite, and manifestation of the exercise of their fundamental right to self-determination. It has been affirmed in international standards including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and CERD General Recommendation XXIII. FPIC is the fundamental underpinning of Indigenous Peoples’ right to conclude and implement valid Treaties and Agreements with other governments, to develop and participate in processes to redress violations, and to establish the terms and criteria for negotiations with States over implementation of Treaty Rights.

Consent is a fundamental Treaty Principle predating the United Nations. It is a foundation of the original relationship between the US and Indian Treaty Nations. For example, the Ft. Laramie Treaty, concluded on April 29, 1868 with the “Great Sioux Nation,” states in Article 16:

*The United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn Mountains shall be held and considered to be unceded Indian territory, and also stipulates and agrees that no white person or persons shall be permitted to settle upon or occupy any portion of the same; or **without the consent of the Indians first had and obtained**, to pass through the same....*

The recommendation by the CCPR addressing the right to FPIC and the US obligation to uphold this right, specifically with regard to sacred sites in the concluding observations on the US report in 2014, was a landmark advance for the recognition of this right under international law.

Violations of Treaty Rights by the Current US Administration

The current US Administration has been particularly unwilling to consider US Treaty or Human Rights obligations for Indigenous Peoples in the US in its decisions to promote fossil fuel development. Notably, on January 24, 2017, during the first week of his presidency, Donald Trump issued an Executive Order “Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects.” It had the expressed intent to “streamline and expedite, in a manner consistent with law, environmental reviews and approvals for all infrastructure projects, especially projects that are a high priority for the Nation, such as improving the U.S. electric grid and telecommunications systems and repairing and upgrading critical port facilities, airports, pipelines, bridges, and highways.”⁸

The President also issued two Executive Memorandums paving the way to expedite the permitting of the Dakota Access and Keystone XL Pipelines, which are strongly opposed by Indigenous Peoples and Tribal Nations because of their threats to sacred sites, water rights, and Treaty rights. The Order and Memorandums failed to acknowledge or recognize cultural and FPIC rights of the impacted Indigenous Peoples of the Oceti Sakowin, in blatant violation of Treaty rights. Urgent submissions on this matter had already been submitted to various UN mandate holders as well as the UN Human Rights Council.

As a direct result of the President’s actions, on February 7, 2017, the US Army Corps of Engineers announced that it would grant the final easement needed to finish the Dakota Access Pipeline (DAPL) passing through 1851 and 1868 Treaty Lands and directly adjacent to the current Standing Rock Reservation. The decision dismissed an intended environmental impact assessment, cut short a public comment period already underway, abandoned the previously stated intention to consider an alternative route that would not threaten sacred sites, water supply, and Treaty rights, and ignored the long-standing, vehement objections of the impacted Indigenous Treaty Nations. DAPL construction went forward and leaks impacting Treaty lands and waters have already occurred.

In addition, the States of South Dakota, North Dakota, Wyoming, and Nebraska are engaged in permitting, trespass, and conversion of Sioux Nation resources in violation of their Treaty Rights including Consent. In South Dakota, exploratory gold-mining operations have been permitted in close proximity to the sacred site PeSla. In Nebraska, the state and federal governments are seeking to reauthorize uranium mining activity at the Crow Butte site which has already contaminated waters currently relied upon by the Oglala Lakota people. In Wyoming the state and federal governments are seeking to authorize coal and natural gas exploration in violation of the 1868 and 1851 Treaties.

Conclusion

Treaty-making between Sovereign Nations is an exercise and validation of the inherent right to self-determination. The legal standing of the Treaties concluded and ratified by the US settler government with 371 Indigenous Nations are affirmed in the US Constitution, International Treaty law, and the sacred original understandings of Indigenous Nations Treaty Parties.

C. Rights of “Non-federally Recognized” Tribes

Indigenous Nations’ right to self-determination is not contingent upon whether they seek or are granted recognition by the US government. The US, however, continues to impose a lengthy and burdensome process of federal recognition on Indigenous Nations and often fails to acknowledge or respect their human rights in the absence of federal recognition.

For instance, on October 13, 2017, the US Federal Energy Regulatory Commission approved the 600-mile Atlantic Coast Pipeline (ACP), which will transport natural gas from West Virginia to Virginia and North

Carolina.⁹ In approving the ACP, the US refused to even consult with Indigenous Nations in the direct path of the pipeline, including the Lumbee, Coharie, Haliwa-Saponi, Rappahannock Tribe, and Monacan Indian Nation.¹⁰ The US has withheld consultation on the basis that these Indigenous Nations, although state-recognized, are not federally recognized. As the Lumbee Tribe stated in its resolution opposing the ACP, approximately 30,000 Indigenous persons live within one mile of its route, and the ACP will disproportionately affect Indigenous Peoples.¹¹ The National Congress of American Indians has stated that at least 12 tribes will be impacted by pipeline construction and operation, with at least 12 more tribes potentially suffering negative consequences.¹²

The US has an affirmative obligation to obtain the FPIC of Indigenous Peoples regardless of whether they have been recognized under the US's deeply flawed federal recognition process. Failure to consult with any unrecognized tribes regarding a major extractive industry infrastructure that will directly affect them violates their rights under the ICCPR to self-determination (Article 1), culture (Article 27), and equality (Article 26). Additionally, the US is failing to provide an effective remedy (Article 2) for violations of the rights of the Indigenous Peoples in the path of the ACP.

The ICCPR should be interpreted consistently with UNDRIP and other relevant international law. The principle of self-identification of Indigenous Peoples is well-enshrined in international law such as International Labour Organization Convention No. 169 Article 1(3). Additionally, UNDRIP Article 3 recognizes Indigenous Peoples' right to self-determination and to freely determine their political conditions. The US, therefore, is not free to exclude Indigenous Peoples from consultations or other processes designed to protect Indigenous rights on the basis of the State Party refusing to recognize them through federal administrative processes. Non-federally recognized tribes, like other Indigenous Peoples, are entitled under UNDRIP Articles 18, 19, and 32 to FPIC prior to the State taking any legislative or administrative measure that may affect them, their lands, or their natural resources.

D. Native Hawaiian Self-Determination

Hawai'i was on the List of Non-Self-Governing Territories eligible for decolonization at the time the UN Charter was adopted. However, the Hawaiian people were deprived of a valid decolonization process under Article 73 because independence was not included as an option in the referendum regarding US statehood.

The Nation of Hawai'i's 2012 submission for the 2014 US review to the CCPR discussed how Article 1 has not been properly applied in the case of Hawai'i. It asked about the significance of the Apology Law and requested that the CCPR ask the US to explain the process it used for decolonization in Hawai'i, including the process to make Hawai'i a US state. It recommended that the CCPR call on the US to establish a mechanism and process with full and equal participation of the Hawaiian people and that the US implement a just, bi-lateral, fully participatory process for redress and restitution. However, these questions and recommendations remain unanswered and unaddressed by the CCPR and the US.

With the passage of US Public Law 103-150 in 1993, the "Apology Law," the federal and state governments began to formally engage the Hawaiian people regarding the restoration of a representative Hawaiian government. However, these processes have been unilateral and improper, as the US attempted to apply its federal recognition model for Native Americans and Alaska Natives to Hawai'i even though Hawaiians are geographically, legally, historically, and culturally distinct. The Nation of Hawai'i has participated in all US and State of Hawai'i processes regarding Hawaiian sovereignty, self-determination, and self-governance but has found them to be glaringly deficient and not in compliance with ICCPR Article 1. During the 2018 session of the UNPFII, representatives of Nation of Hawai'i met with US Department of Foreign Affairs Officer Linda Lum and discussed how the US approach to reconciliation with Hawaiians

(i.e., the many iterations of the Akaka Bill and the US Department of Interior administrative rule) has been deficient and informed her that Nation of Hawai'i is willing to consult about its approach to self-determination and self-governance.

The Nation of Hawai'i reframes its previous questions with an emphasis on a self-determining, participatory political process. In addition to the principles and mandates in the UN Charter, ICCPR, and the UNDRIP, the US Apology Law is an important tool for Hawaiians to assert their right to true self-determination and self-governance based upon the US government's own admissions, terms, and framework for reconciliation.

After participating in numerous failed political processes, Nation of Hawai'i established an independent and sovereign Hawaiian Nation without intervention or interference from the federal and state governments. Since 1995, the Nation has practically exercised self-determination and self-governance on its sovereign land base *Pu'uhonua o Waimānalo*. US support for Nation of Hawai'i's UN Democracy Fund (UNDEF) grant application to create a fair and democratic electoral process for Hawaiians to determine how to move forward with reforming a Hawaiian government, that is community-driven and under the third-party oversight of the UN, would help fulfill ICCPR Article 1.

E. Indigenous Peoples of Puerto Rico (Boriken) and the right to Self Determination

The lack of legal recognition of the Taíno and other Indigenous Peoples of US Territories demonstrates the failure of the US to fully comply with the ICCPR, especially Article 1 on self-determination, as well other international instruments such as UNDRIP and the Organization of American States Declaration on the Rights of Indigenous Peoples.

Since the CCPR issued its concluding observations regarding sacred sites (see Part IV below), no consultations have taken place with the Taíno in Puerto Rico or the US Virgin Islands or other Indigenous Peoples in US Territories, to ascertain information on measures taken to guarantee the protection of Indigenous sacred areas, as well as to ensure that Indigenous Peoples are consulted and that FPIC is obtained regarding matters that directly affect their interests.

Indigenous Peoples of US Territories, like the Taíno, are marginalized domestically and within the international system as their "home countries" are not full members of the United Nations or the Organization of American States. Their status regarding remedy and redress of rights affirmed by international and regional bodies, as well as under US law (such as the Native American Graves Protection and Repatriation Act, discussed below in Section III.C) remain in limbo, violating ICCPR Article 2. Additionally, this "limbo status" further enables violation of the right to equal protection of the law and hinders the ability for Indigenous Peoples of US Territories to fully enjoy their own culture in violation of ICCPR Articles 26 and 27.

In Section 1.C.(4)(c) of its Concluding Observations on the US 4th periodic report, the CCPR said, "The State party should: ... Taking into account its declaration that provisions of the Covenant are non-self-executing, ensure that effective remedies are available for violations of the Covenant, including those that do not, at the same time, constitute violations of U.S. domestic law, and undertake a review of such areas with a view to proposing to the Congress implementing legislation to fill any legislative gaps. The State party should also consider acceding to the Optional Protocol to the Covenant providing for an individual communication procedure." No implementing legislation has been enacted to ensure that effective

remedies are available for violations of the Covenant against Indigenous Peoples of US Territories, including those violations that do not, at the same time, constitute violations of US domestic law.

II. Article 1, paragraph 2: The Right to Subsistence

“All peoples may, for their own ends, freely dispose of their natural wealth and resources In no case may a people be deprived of its own means of subsistence.” ICCPR Art. 1(2)

A. Infrastructure Permitting in Violation of Subsistence Rights

As indicated by the issues arising from the DAPL and ACP approvals discussed above, the US is in the process of permitting major extractive industry infrastructure throughout the country in violation of Indigenous Peoples’ rights to self-determination and subsistence.

Previously permitted aging infrastructure is also a concern. For instance, in the Great Lakes Region of the US’s aging pipelines (Enbridge Lines 3 and 5) are a severe threat to all of the 5 Great Lakes in the US. Of immediate concern is Line 5, which runs from the western end of Lake Superior, across Wisconsin and to Michigan’s Upper Peninsula. This 30-inch line is over 60 years old and was designed with an expected life of 50 years. This line has had many leaks over its history, but the greatest risk is from being struck by an anchor on the lake bottom in the Straits. This has already happened at least once. Such a leak would be devastating and would endanger drinking water supplies for millions of people. It would also be catastrophic for the area’s Indigenous Peoples as it would impact traditional subsistence practices such as fishing, hunting, and gathering rights, which are inherent rights preserved in numerous treaties from the 1800s and are essential to traditional lifeways of the Anishinabek (Odawa, Ojibwa, and Potawatomi Tribes) who reside in the area that the pipeline crosses. Any leak would contaminate commercial and subsistence fish stocks, pollute wetlands, and make inedible food and medicine plants. The hazard to Indigenous subsistence also directly threatens the preservation of Indigenous culture.

In addition to the threat posed by these aging pipelines, Indigenous Peoples face an immediate threat from their “replacement,” which involves constructing new pipelines, along new routes, with no plan for remediating the harm to Indigenous Peoples caused by the old infrastructure. The approval processes for replacement of Enbridge Lines 3 and 5 continue to move forward over significant Indigenous opposition and in violation of ICCPR Articles 1(1), 1(2) and 27.

B. Alaskan Indigenous Peoples Subsistence Rights in the Context of Self-Determination

Alaska was on the list of Non-Self-Governing Territories to be decolonized, as stipulated in Article 73 when the UN Charter was adopted. Instead, the US made Alaska a state in 1959 in a voting process that excluded large proportions of the Indigenous Peoples by requiring voters to speak and write in English. Alaska Natives were also required to have 5 Caucasians guarantee their competence as a voter, while US military personnel stationed in Alaska were allowed to vote despite being mostly residents from elsewhere.

Article XII of the Alaska State Constitution disclaimed all right and title to any property, including fishing rights, of Indigenous Peoples. In 1971, however, the US government implemented the Alaska Native Claims Settlement Act creating 13 regional and over 200 village corporations. Shares of stock were issued to Alaska Natives in exchange for purportedly terminating their land rights. Since its adoption, this Act has created many problems including conflicting and overlapping jurisdictions impacting the federally recognized tribes of Alaska whose land bases are primarily identified as “villages.”

A key motivation for the abrogation of large portions of the original Indigenous lands and the undermining of Tribal government jurisdiction over the lands, waters, and subsistence resources essential to their

survival has been the US government's desire to access the vast stores of oil lying under the land and waters of Alaska.

In a key current example, after decades of threats to the pristine Arctic National Wildlife Refuge (ANWR) by oil development were successfully blocked by Indigenous Peoples and environmental allies, in December 2017, the Republican-led US Congress adopted a provision, strongly supported by the President, to open the entire refuge to oil exploration. The provision was inserted into tax overhaul legislation under the guise of generating revenue for the federal government and is in line with President Trump's January 24th, 2017 Executive Order expediting economic development projects. Based on the Trump Administration's plans to fast track approval and circumvent full scale environmental impact studies, the US Department of Interior expects to begin selling the first drilling leases in June 2019.

Located in the Northeast Corner of Alaska, the 1002 area of the Coastal Plain of ANWR is known to the Gwich'in Indigenous Nation as The Sacred Place Where Life Begins, "Iizhik Gwats'an Gwandaii Goodlit." The Gwich'in Nation is composed of fifteen villages located along the migratory route of the Porcupine Caribou Herd in Northeast Alaska and Northwest Canada. For the Gwich'in, a long-term decline in the herd's population or a major change in its migration would be devastating. The Porcupine Caribou Herd provides the Gwich'in Nation with their food security and represents 80% of their traditional diet. In a spiritual sense the Gwich'in and Caribou are one, if there is harm to one, the other will also be harmed. Reliance of the Gwich'in on traditional and customary use (or Subsistence) of the Porcupine Caribou Herd is a matter of their survival. Beyond the importance of basic food needs, the relationship of the Gwich'in with the caribou has, since time immemorial, been central to their spirituality as the basis for their songs, dances, creation stories, traditional knowledge practices and transmission of Gwich'in values and ways of life to new generations.

Because of its rich biodiversity, including the calving ground of the Porcupine Caribou Herd, the U.S. Secretary of the Interior, in 1960, designated 8.9 million acres of coastal plain and mountains of northeast Alaska as the Arctic National Wildlife Range to protect its "unique wildlife, wilderness and recreation values." The US House of Representatives passed legislation in 1978 and 1979 designating the entire original Range, including the now contested arctic coastal plain, as Wilderness. The Senate's version, however, required studies of wildlife and petroleum resources, and the potential impacts of oil and gas development within the northern part of the Range.

The connection between the Gwich'in and the caribou continues today as Gwich'in community members continue to rely on the caribou to meet both their subsistence and spiritual needs. The hunting and distribution of caribou meat also enhances their social interaction and cultural expression. Caribou skins are used for winter boots, slippers, purses, bags, and other items of Native dress. Bones continue to be used as tools. Songs, stories, and dances, old and new, reverberate around the caribou further strengthening Gwich'in spiritual ties to the caribou.

There is also a spiritual belief of the people: the elders have stated that the Gwich'in must seek protection of the calving and post calving grounds of the Porcupine Caribou Herd located in what is now called the 1002 area of ANWR. If this area is ever opened for development the Gwich'in believe that it will begin a cycle of destruction for the Gwich'in and for all humanity.

The US House of Representatives passed legislation in 1978 and 1979 designating the entire original Range, including the now contested arctic coastal tundra, as Wilderness. The Senate's version, however, required studies of wildlife and petroleum resources, and the potential impacts of oil and gas development within the northern part of the Range. It postponed the decision to authorize oil and gas development or Wilderness designation. Differences between the House and Senate were not worked

out by a conference committee in the usual manner. Instead, following the 1980 election, the House accepted the Senate bill and President Carter signed the Alaska National Interest Lands Conservation Act (ANILCA) into law. ANILCA doubled the size of the Range, renamed it the ANWR, and designated most of the original Range as Wilderness.

The part of the original Range that was not designated Wilderness was addressed in Section 1002 of ANILCA and is now referred to as the "1002 Area." Section 1002 outlined additional information that would be needed before Congress could designate the area as Wilderness, or permit oil development. Studies of the 1002 Area included a comprehensive inventory and assessment of the fish and wildlife resources, an analysis of potential impacts of oil and gas exploration and development on those resources, and a delineation of the extent and amount of potential petroleum resources. **In Section 1003 of ANILCA, Congress specifically stated that the "production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the [Refuge] shall be undertaken until authorized by an act of Congress."**

The Gwich'in have sought permanent protection of the 1002 are of the Arctic National Wildlife Refuge. This political position was affirmed at the Gwich'in Nintsyaa Gathering in 1988 and re-affirmed at various Gatherings since that time, most recently in August 2018.

No FPIC was obtained or even sought for the adoption of the December 2017 Congressional legislation, which, combined with the January 2017 Presidential order, will serve to fast track oil development in ANWR with no consideration for the permanent and irreparable harm that will result for the Gwich'in Nation's rights to their culture, subsistence, and way of life.

III. Articles 18 and 27: The Rights to Religion and Culture

"Everyone shall have the right to freedom of ... religion. This right shall include the freedom ... either individually or in community with others ... to manifest his religion or belief...." ICCPR Art. 18

"[P]ersons belonging to [ethnic] minorities shall not be denied the right, in community with other members of their group, to enjoy their culture, to profess and practise their own religion, or to use their own language." ICCPR Art. 27

A. Previous Recommendations

In its concluding observations from the last review of the US in 2014, the CCPR recommended that the US "should adopt measures to effectively protect sacred areas of indigenous peoples against desecration, contamination and destruction and ensure that consultations are held with the indigenous communities that might be adversely affected by the State party's development projects and exploitation of natural resources with a view to obtaining their free, prior and informed consent for proposed project activities."¹³

B. Sacred Areas Currently under Threat in the US

Despite the CCPR's 2014 recommendations, numerous sacred areas in the US have since been desecrated or continue to be under threat of destruction from extractive activities, industrial development, and tourism. Indigenous Peoples continue to fight for access to sacred areas to exercise their cultural rights. Additionally, the US continues to deny Indigenous Peoples their right to FPIC. These actions and inactions constitute on-going violations of Article 18(1) and Article 27 as well as failure to implement previous CCPR recommendations.

The following cases are a few among many that illustrate how the US has failed to honor its obligations under the ICCPR to protect sacred areas which are vital to the cultures and religious practices of Indigenous Peoples:

1. **Mt. Taylor in New Mexico**. A mountain and cultural landscape sacred to numerous peoples in the Southwestern US, Mount Taylor, continues to be under threat of proposed new uranium mining. Despite years of attempts by Indigenous Peoples to halt proposed uranium mining and demands for FPIC, the US Forest Service has recommended the grant of a permit to mine uranium to Roca Honda Mine, LLC, in an Environmental Impact Statement, using a rationale that the General Mining Act of 1872 obligates the US to grant a permit to extract.¹⁴

2. **Chaco Canyon in New Mexico**. The Chaco Culture National Historical Park, a UNESCO World Heritage Site, is the ancestral place of many Indigenous Peoples who possess cultural connections to this sacred landscape. Although the Chaco Park is to be protected by a buffer zone, it is under a growing threat of destruction from oil and gas developments. In 2018 the US Bureau of Land Management sold thousands of acres for lease rights surrounding Chaco Canyon, which drew widespread protest. These lands contain ancient archeological sites and numerous pilgrimage roads to sites inside Chaco Canyon.¹⁵ Indigenous Peoples in the Southwestern US have protested these sales and have called for the protection of surrounding archeological sites and their pilgrimage roads.¹⁶

3. **Bears Ears in Utah**. Bears Ears National Monument, with 1.35 million acres (around 546,325 hectares), was established by Executive Order in 2016 after years of advocacy by Indigenous Peoples. Bears Ears holds numerous ancient Indigenous cultural archeological sites and thousands of sites and objects which are sacred to surrounding Indigenous Peoples. In 2017, the US Department of Interior arbitrarily reduced the Monument's size by 85 percent, removing 100 million acres, in order to grant access to fossil fuel companies for coal and oil development. This was done over the objection and without the FPIC of numerous affected Indigenous Peoples, including the Navajo Nation, the Hopi Tribe, Zuni Tribe, and the Ute Tribe.¹⁷

4. **Oak Flat and Apache Leap**. The San Carlos Apache Tribe in Arizona continues to protest the expansion of Rio Tinto's Resolution Copper Mine because it desecrates Oak Flat and Apache Leap, sacred areas to the Tribe. This extractive activity also threatens the exercise of the Tribe's cultural and religious rights. This aboriginal land is located within the Tonto National Forest which is managed by the US Department of Agriculture. The US Forest Service has permitted mining on these lands, and did so without the Tribe's FPIC. Oak Flat has been occupied by tribal activists since 2015, when the US Congress passed a bill allowing a subsidiary of Rio Tinto to mine for copper under Oak Flat.

5. **San Francisco Peaks in Arizona**. This case, well documented in human rights bodies including the CERD, continues to be a major concern for Indigenous Peoples in the area, who revere these mountain peaks as sacred. The US Forest Service, which manages these lands, has permitted the City of Flagstaff to use sewage wastewater for making snow on skiing slopes. Both US courts and federal agencies have failed to understand the religious and cultural significance of this sacred area to culturally affiliated Indigenous Peoples. Most recently, in November of 2018, the Arizona Supreme Court ruled that the Hopi Tribe could not claim damage to the mountain from applying wastewater for snowmaking.¹⁸

C. Cultural Heritage and Repatriation

In addition to failing to protect sacred sites, the US lacks effective protection for Indigenous Peoples' cultural heritage, such as sacred and cultural patrimony, funerary objects, and Ancestors' remains.

Much cultural heritage is held in common by citizens of Indigenous Nations and Peoples. Such cultural heritage cannot be bought and sold as objects of commerce. Rather than being “things” that can be owned or alienated, to Indigenous Peoples they are living, breathing beings for which Indigenous peoples have the responsibility to care and pass on to future generations; they are integral to Indigenous identities and have important roles in Indigenous ceremonies and traditions. Too often, however, Indigenous cultural heritage has been and continues to be taken from Indigenous Peoples without their consent and in violation of Indigenous laws and customs. Cultural heritage is then misappropriated, bought, displayed, sold domestically, or exported abroad.

The US has enacted laws intended to protect Indigenous Peoples’ cultural heritage, but these laws fall short of providing effective protection or remedy. For instance, the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001 et seq., prohibits theft and trafficking of certain types of Indigenous cultural heritage, but only applies to items that are removed from currently recognized tribal lands without a tribe’s consent or from federal lands without tribal consultation. It does nothing to protect items that are taken from private lands. It also does not protect items taken from federal or tribal lands prior to 1990. NAGPRA’s repatriation provisions do not apply to private individuals or institutions that do not receive federal funds, and there is no enforcement mechanism to ensure repatriation of Indigenous cultural heritage in US government possession.

US law also fails to provide effective protection against the trafficking abroad of protected items of Indigenous cultural heritage. Thus, even if laws such as NAGPRA do apply to cultural heritage, it is very difficult for Indigenous Peoples to secure the return of cultural items taken in violation of federal law once they are exported and put up for sale in foreign auction houses. Although the US has implemented the import-restriction provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property to protect other countries’ cultural heritage in the event it is imported into the US, it has not imposed export controls to protect the cultural resources of Indigenous Peoples within the US.

In March 2015, the US reported to UNESCO that “[t]he United States has a recurring problem of illegal excavations, primarily impacting Native American sites, that has been ongoing for decades.” The US also acknowledged that it “does not have a reliable estimate of the scale of the illicit export or import of cultural property” and that “[i]n general, the United States does not control the export of cultural property.” In identifying the main obstacles encountered in securing the return of cultural property, the US reported that “[i]n recovering U.S. cultural property, particularly that of U.S. Indian Tribes, in other countries, the United States believes that there is a general lack of knowledge of and respect for U.S. laws protecting such cultural property.”

In August 2018, the US General Accountability Office (GAO) published a report detailing additional steps needed to help Indigenous Peoples repatriate items from overseas auctions.¹⁹ The GAO report highlighted the lack of federal laws implementing the export provisions of the 1970 UNESCO Convention and the difficulty this causes when Indigenous Peoples attempt to secure the repatriation of items from abroad. The GAO specifically referenced difficulties of the Pueblo of Acoma and the Hopi Tribe in securing repatriation from overseas due to the US’s lack of an explicit export prohibition on illegally obtained Indigenous cultural heritage.

The CCPR recognized in General Comment XXIII that Article 27 places affirmative obligations on States to protect not only against acts of the State “but also against acts of other persons within the State party.” The US, therefore, has a duty to ensure that Indigenous cultural heritage is protected from private actors. The US has also failed to provide an effective remedy under Article 2 by failing to prevent the alienation

of cultural heritage in violation of Indigenous laws, prevent the domestic sale or export of such resources, or implement effective measures and mechanisms to ensure repatriation as also enshrined in UNDRIP Articles 11 and 12.

D. Indigenous Prisoners' Religious Freedom

Indigenous prisoners in the US remain subject to a pervasive pattern of state and local prisons illegally restricting their freedoms to possess religious items, participate in religious ceremonies, and otherwise engage in traditional religious practices.

Indigenous Peoples in the US suffer one of the highest rates of incarceration of any racial or ethnic group, and therefore current or previously incarcerated persons form a significant and important subsection of the US Indigenous population. These Indigenous prisoners depend upon their freedom to engage in traditional religious practices for their rehabilitation, survival, and ability to maintain their identity as Indigenous Peoples. Put differently, “for some Native American prisoners, walking the red road in the white man's iron house is the path to salvation, the way of beauty, and the only road to rehabilitation and survival.”²⁰

Violation of Indigenous prisoners' religious freedoms violates ICCPR Article 18(1)'s guarantee of freedom of religion and threatens Indigenous cultural survival in violation of Article 27. Rights of Indigenous prisoners are not protected on equal terms with other groups, violating Article 26's guarantee of equality before the law and Article 2(3)'s right to an effective remedy.

In the particular context of prisoners, Article 18(3) provides that “[f]reedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” CCPR General Comment No. 22 clarified that “[p]ersons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the nature of the restraint.”

Article 10 additionally states that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” CCPR General Comment 21 states that persons deprived of their liberty may not “be subject to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.”

Formal protections in domestic law²¹ have been insufficient to deter state agencies from placing significant burdens on Indigenous prisoners' exercise of religion. US courts have failed to provide effective remedies. The Supreme Court held that the American Indian Religious Freedom Act has no effective enforcement, barring claims from being brought under that statute.²² Courts applying the Religious Land Use and Institutionalized Persons Act, which prohibits prison authorities from substantially burdening an inmate's religious exercise unless in furtherance of a compelling government interest and accomplished by the least restrictive means, have often found that restrictions either did not constitute a substantial burden or that the state had both a compelling interest and used the least restrictive means.²³ Further, the length and cost of litigation in the US means that courts are often not effective means of protecting Indigenous prisoners against present or imminent human rights violations.

In the US's fourth periodic report, it acknowledged that Indigenous representatives raised concerns including “religious freedom for prisoners at the federal and state levels” and stated that the US “is aware of these concerns and is working to address them.”²⁴ Yet, the US continues to fail to ensure that state

and local entities respect Indigenous prisoners' religious freedoms. Additionally, in 2013 the UN Special Rapporteur on the rights of Indigenous Peoples specifically inquired about violations of Indigenous prisoners' religious freedoms,²⁵ but to our knowledge the US has never responded.²⁶

Numerous violations of Indigenous prisoners' religious freedoms were documented in a September 2013 shadow report to the Committee, which was jointly submitted by the non-governmental organization Huy and nine other Indigenous and civil society entities. Examples include:

- *California*—In 2013, the California Department of Corrections finalized regulations prohibiting previously allowed sacred items such as pipes and pipe bags, hand drums and rattles, and other items. Indigenous prisoners are forced to rely on lengthy, and often costly, litigation to attempt to restore religious freedoms.²⁷
- *Alabama*—Along with nine other states, Alabama prohibits Indigenous prisoners from seeking a religiously based exemption from bans on long hair.²⁸ In 2015, the Supreme Court held that a similar restriction in Arkansas violated a Muslim prisoners' rights.²⁹ The Court instructed the Eleventh Circuit Court of Appeals to reconsider a case involving Arkansas' rule with respect to Indigenous prisoners, yet the Eleventh Circuit simply denied rehearing and reissued its prior order, keeping the restriction in place.³⁰
- *Texas*—In a consolidated case, three Indigenous inmates are challenging Texas' refusal to grant a religious exemption that would allow inmates to grow their hair long. A federal bench trial was conducted in 2018, and the inmates are currently awaiting the court's decision.³¹
- *Pennsylvania*—After an Indigenous prisoner's religious property was destroyed by guards, causing the prisoner to attempt suicide, a court held the intentional destruction was not actionable.³²
- *Missouri*—Despite the Eighth Circuit Court of Appeals recognizing that Indigenous prisoners must be permitted to possess ceremonial tobacco and sacred pipes, prisoners are still caught in lengthy court battles attempting to force prison officials to respect this right.³³

IV. Articles 2(1), 7, 9, 10, 14: Equal Protection, Arbitrary Detention, and Conditions of Confinement

"Each State Party ... undertakes to respect and ensure ... rights ... without distinction of any kind, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." ICCPR Art. 2(1)

"No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment." ICCPR Art. 7

"Everyone has the right to liberty and security of person. No one shall be subject to arbitrary detention or arrest. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." ICCPR Art. 9(1)

"All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person." ICCPR Art. 10

"All persons shall be equal before the courts and tribunals. ... [E]veryone shall be entitled to a fair and public hearing..." ICCPR Art. 14

Approximately 30,000 Indigenous persons are incarcerated in 23 states with an additional 4,000 imprisoned in the federal system. Tribal members living on reservations are incarcerated in federal prisons at a rate of more than 249 per 100,000 residents. Due to the Major Crimes Act— which gives the federal government jurisdiction for selected crimes on Indian lands—mandatory minimum

sentences, and the abolishment of parole in the federal system, Indigenous persons face harsher punishments than non-Natives for what are effectively local crimes.

Despite its public claim that it is committed to enforcing the law in a manner consistent with the Constitution, and with the rights and dignity of all citizens, the US government has failed to address the structural inequalities that lead to the constitutional violations of Indigenous prisoners. The Lakota Law Project published a report entitled "Native Lives Matter" compiling empirical data from the Center for Disease Control and Prevention showing that the "racial group most likely to be killed by law enforcement is Native Americans."³⁴ Alarming, the report also shows that "[a]lthough Native youth are only 1 percent of the national youth population, 70 percent of youth committed to the Federal Bureau of Prisons (BOP) as delinquents are Native American, as are 31 percent of youth committed to the BOP as adults."³⁵ This epidemic has a harrowing financial incentive: "If and when the State transfers those children into juvenile detention centers, there is additional Federal funding available, as is the case with transfers to state prison. Indian children, the most vulnerable in the country, bring in approximately \$65 million in Federal funding to South Dakota each year."³⁶ This incentivization leads to the arbitrary arrests and detention of Native American and Alaskan Native youth, men, and women in violation of Articles 2, 3, 9, 10, 14, and 15 of the ICCPR.

The case of Leonard Peltier continues to be an example and ongoing symbol of the criminal injustice faced by Indigenous Peoples in the US, which in Peltier's case include wrongful conviction, substandard medical care and physical abuse while in US custody. Since his 1977 conviction in a case in which other defendants were acquitted on the basis of self-defense, the US federal courts have acknowledged FBI and prosecutorial misconduct in Peltier's case. Despite its public claim that the government is committed to enforcing the law in a manner consistent with the Constitution and with the rights and dignity of all citizens, the US government has failed to address the staggering number of constitutional violations in the trial of Leonard Peltier and in the conditions he faces at present after 40 years in custody.

Leonard Peltier is 74 years old, and suffers from multiple serious health conditions including diabetes, undiagnosed prostate issues, and an abdominal aortic aneurysm. He has long been eligible for transfer to a lower security prison facility but has had repeated holds put on any transfer. He remains incarcerated at a maximum-security federal penitentiary over 2000 miles from his home at Turtle Mountain, well over three times the BOP guidelines of a maximum distance of 500 miles from home (Article 7 and Article 15). From the time of Peltier's conviction in 1977 until the mid-1990s, according to the DOJ's Bureau of Justice Statistics, the average length of imprisonment served for homicide in the US ranged from 94 to 99.8 months. Rather than Peltier being released on parole, the US has imposed a heavier penalty than one that was applicable at the time of his conviction according to its own guidelines. The BOP refuses to correct his mandatory release date and the US Parole Commission refuses to act on his mandatory release date, both in violation of substantive and procedural due process rights guaranteed under the US Constitution and statutes of the US. Further, the Parole Commission has stated that Peltier will not receive parole until he "recognizes his crime," a violation of Article 10(3) and Article 14(g).

In public pronouncements and submissions to the Parole Commission, the US has arbitrarily attacked Peltier's honor and reputation alleging offenses for which he either was never charged or charges of which he was acquitted. And the US has presented uncorroborated testimony from criminal proceedings to which Peltier was not a party and therefore by a witness Peltier has been unable "to examine or have examined" in violation of Article 14(3)(e). Nor has Peltier been able "to obtain the

attendance and examination of witnesses on his behalf under the same conditions as witnesses against him,” as required by Article 14(3)(e).

The case of Leonard Peltier demonstrates the failure of the US criminal justice system to provide real justice for Native Peoples as well as the government-generated environment of racism that consistently leads to unjust convictions. These injustices have set a dangerous precedent, leading to the increased criminalization of Indigenous land rights, environmental, Treaty, and water rights protectors. State and federal law enforcement entities have partnered with energy companies to develop new laws and processes to continue the theft of Indigenous lands, territories, and resources, while increasing the severity of state sanctioned violence and use of crowd control weaponry against unarmed protestors, in violation of international conventions. These tactics serve to justify systemic violence and repression while enabling impunity by the states, and in many cases, the corporate security forces and private militia acting in tandem.

From September 2016 to February 2017, at least 76 different law enforcement agencies, federal agencies, and private security firms were deployed against the Indigenous Peoples protesting the Dakota Access Pipeline.³⁷ Indigenous “water protectors” were violently attacked on multiple occasions, including over 200 injured on November 20, 2016.³⁸ Seven water protectors were charged with federal crimes. This resulted in a nearly 5-year prison sentence for Red Fawn Fallis, an Oglala Sioux water protector, despite revelations about the involvement of an undercover agent for the Federal Bureau of Investigation. Additionally, an initial total of 832 North Dakota state criminal cases were filed against water protectors.³⁹ The criminalization of Indigenous dissent in response to the DAPL protests is part of a larger pattern of violence and discrimination against Indigenous Peoples seeking to defend their treaty rights and their rights related to protection of Indigenous lands, territories, and resources.

For example, in response to joint urgent action submissions by IITC and the Standing Rock Sioux Tribe in 2016, Maina Kiai, UN Rapporteur on the rights to freedom of peaceful assembly and association, stated that “Law enforcement officials, private security firms and the North Dakota National Guard have used unjustified force to deal with the opponents of the Dakota Access pipeline” (November 15, 2016).⁴⁰ The UN Special Rapporteur on the rights of Indigenous Peoples, in her report to the US dated August 9, 2017 stated that she was concerned at the scale of arrests and the conditions in which people were being held: “Marking people with numbers and detaining them in overcrowded cages, on the bare concrete floor, without being provided with medical care, amounts to inhuman and degrading treatment.”⁴¹

V. Article 25: Voting Rights

“Every citizen shall have the right and the opportunity ... to vote.” ICCPR Art. 25

Article 25 guarantees to all people universal and equal suffrage. This fundamental right is infringed for Indigenous Peoples in the US by restrictive federal and state voting laws; by a failure of the government to guarantee access to polling locations for Indigenous Peoples living on Indigenous land; and by a failure on the part of the government to enforce existing voting rights laws on behalf of Indigenous voters.

Indigenous Peoples were the last to obtain the right to vote in the US as a matter of law, and Indigenous voters continue to face persistent barriers in exercising that right. Election administration in the US is decentralized and delegated to state and local governments without adequate federal oversight to protect the rights of Indigenous voters. State and local governments pass election laws and develop election administration practices that result in Indigenous voter suppression and disenfranchisement. As a result, turnout among Indigenous voters lags behind the national average. In the 2012 elections, for

example, turnout among American Indians and Alaska Natives nationwide was 17 percentage points below that of other racial and ethnic groups.⁴²

The federal Voting Rights Act is the primary law aimed at protecting the rights of voters. The US Department of Justice (DOJ) has not brought a Voting Rights Act enforcement case on behalf of Indigenous voters in nearly 20 years. Below is a brief description of voting issues Indigenous voters experience because of the lack of federal action.

- **Lack of Access to Polling Places.** Polling places are often not provided for Indigenous voters living on Indigenous lands. It is not uncommon for Indigenous voters to be assigned to polling places that are unreasonably far away and require them to travel significantly farther than non-Indigenous voters. For example, members of the Shoshone-Paiute Tribe of the Duck Valley Indian Reservation in Nevada have to drive approximately 104 miles to their closest polling location—over 4 hours round trip. Citizens of the Confederated Tribes of the Goshute Indian Reservation have to travel approximately 163 miles—over 5 and a half hours round trip to vote. In Alaska, many Alaska Native voters have physical barriers like mountains or rivers between themselves and the nearest polling place, making exercising their right to vote a journey requiring multiple modes of transportation and substantial sums of money. In Utah, the Navajo Nation had to file a lawsuit against the county of San Juan in order for early polling places to be open and staff for early voting and voter registration. In these instances, polling locations may become completely inaccessible on Election Day due to weather conditions.
- **Voter Identity Document (ID) Laws:** For many Indigenous people in the US, their only identification is their clanship or documents issued by their Indigenous government. However, state laws vary on whether these are acceptable forms of identification for voting. States should not be permitted to discriminate against Indigenous clanship or documents in their voter ID laws.
- **Lack of Address:** Many Indigenous people live in rural areas and/or face dire housing shortages. As a result, many Indigenous persons in the US lack a permanent residential street address. However, vote by mail, registration forms, and voter ID laws that require addresses have led to increased confusion and disenfranchisement of Indigenous Peoples.
- **Language Access:** Many Indigenous voters, particularly elders, speak their Indigenous language and require either written or oral language assistance to vote. The Voting Rights Act provides that voting materials shall be provided in the language of the applicable language minority group as well as in the English language. However, some jurisdictions interpret the VRA to deny language assistance to Native voters even when a written form of the applicable Native language currently exists, and others will provide mail-in ballots without any language assistance as the only means to vote early.
- **Overt Discrimination:** Indigenous people face discrimination when casting a ballot. Hostile poll workers (e.g., workers that fall silent when an Indigenous person enters the room), substandard voting conditions (e.g., the use of a modified chicken coop), and the use of police presence (e.g., police stationed outside of reservations checking license plates on Election Day) to intimidate Indigenous voters have been reported.

Recognizing the challenges that Indigenous voters face, the US Department of Justice drafted legislation that would address many of these challenges, including requiring jurisdictions “whose territory includes

part or all of an Indian reservation, an Alaska Native village, or other tribal lands to locate at least one polling place in a venue selected by the tribal government.” This legislation has never been enacted.

VI. ICCPR Articles 6 and 8: Right to Life and Prohibition Against Slavery

“Every human being has the inherent right to life.” ICCPR Art. 6(1)

“No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.” ICCPR Art. 8(1)

“No one shall be held in servitude.” ICCPR Art. 8(2)

A. Missing & Murdered Indigenous Women

International jurisprudence demonstrates that “[i]n its widest sense, the obligation to take appropriate steps means that the State must, as its primary duty, establish a framework of laws, procedures and enforcement mechanisms that will, as far as reasonably practicable, protect life.”⁴³ When most recent statistics show that murder is the third leading cause of death of Native American women,⁴⁴ the lack of meaningful action by the US to respond to the epidemic of Missing and Murdered Indigenous Women (MMIW) by (1) fully investigating crimes against Native American women, (2) investigating arbitrary deprivation of life from police or other law enforcement authorities’ use of lethal force and (3) instituting preventative operational measures to protect an individual whose life is at risk from the acts of a third party, constitutes a clear violation of the Right to Life.

Contributing to the invisibility of these structural injustices has been the lack of data and statistics specific to Native American populations. According to the US Department of Justice’s own statistics collected in 2012, Native American women are 10 times more likely to be murdered than any other demographic. Of those living, 50 percent of Native American women have experienced stalking, rape, or physical violence by an intimate partner while 1 in every 3 women will “at some point in her life, experience the violence and trauma of rape.”⁴⁵ Since then, reports have expanded on this research and data, offering findings that show that “more than 4 in 5 American Indian and Alaska Native women (84.3 percent) have experienced violence in their lifetime.”⁴⁶

As alarming as these statistics are, it is generally known that due to the fear of reporting, lack of access to justice, and lack of disaggregated data, we are only beginning to understand the depth of this epidemic and the range of impacts on Native American communities and urban populations. Regardless, where there is available evidence, there has been no meaningful action to address the structural inequalities and inefficiencies contributing to the lack of investigation and/or prosecution of perpetrators for the murder or disappearance of Indigenous women, especially when they are non-native, or state actors such as law enforcement. Such cases include, but are not limited to, the 2015 murder of Loreal Tsingine by Winslow Police Officer Austin Shipley, a known white supremacist;⁴⁷ and the case of Justin Schnieder who received no jail time for his violent attack on an Alaska Native woman despite a successful conviction.⁴⁸

Most investigations are “too little, too late” in response to missing and murdered Indigenous women. The case of Ashley Heavyrunner—a Montana woman who was missing for nine months before the FBI, who had jurisdiction over her case, got involved—provides a poignant example of the lack of appropriate preventative operational measures to protect an individual whose life is at risk. This is

recognized as a positive obligation on behalf of states to protect the right to life. In her testimony to the US Senate on Indian Affairs, Ashley's older sister Kimberly Long Heavyrunner "used an example of a deer that was poached on the reservation and stated the investigation into the poaching was more in-depth than missing or murdered indigenous women cases" including that of her sister who is still missing.⁴⁹

In a November 2018 report entitled, "Missing and Murdered Indigenous Women and Girls," Dr. Annita Lucchesi and Abigail Echo-Hawk of the Urban Indian Health Institute (UIHI)⁵⁰ identified several challenges inhibiting access to data, including gross inconsistencies in tracking the cases of the Missing and Murdered Indigenous women, lack of response to Freedom of Information Act (FOIA) requests submitted to law enforcement, and prohibitive fees and inefficient bureaucracies. The report found that 153 cases of MMIW identified by UIHI were not recorded in any law enforcement records and that out of the 5,712 identified cases of MMIW in 2016, only 116 were logged in the Department of Justice database. The authors note that the "[c]hallenges and barriers in accessing data on this issue from law enforcement severely impede the ability of communities, tribal nations, and policy makers to make informed decisions on how to best address this violence."⁵¹ For this reason, legislative efforts have been proposed, calling for changes in the criminal justice code to require collection of disaggregated data, and training for local law enforcement on the endemic of MMIW to increase preparedness, prioritization, and response time. Such efforts include federal level legislation such as Savannah's Act (S. 1942)⁵², and state bills such as those put forward by North Dakota state house representative Ruth Ann Buffalo to require law enforcement training on MMIW (House Bill 1311) and to require the state criminal justice data information sharing system to include data related to missing and murdered Indigenous people (House Bill 1313).⁵³

Aside from the necessity of supporting these efforts and funding appropriate mechanisms and entities for the full implementation of these legislative actions, meaningful remedies also require that the US acknowledge the role of the US justice system in perpetuating structural injustices that marginalize Native American women and enable impunity of crimes committed by non-Indigenous perpetrators and state actors due to jurisdictional gaps, among other factors.⁵⁴ To develop appropriate remedies and to fulfill their obligation to protect life, federal, state, and local level efforts to address this epidemic—including the collection of and access to data—must be developed with the full participation and FPIC of Indigenous Peoples, in respect of UNDRIP, and with the appropriate funding to provide the services required to address this epidemic from its root causes.

B. Trafficking of Indigenous Women and Children

Related to the issue of MMIW is the trafficking of Indigenous persons. It is crucial that the US take immediate steps at local, state, and national levels to address the forced prostitution and human trafficking of Indigenous women and children.

Trafficking of Indigenous women and children has reached a crisis level in the US, as demonstrated by the following:

- **International trafficking of Indigenous women and children.** Duluth police in 2002 found evidence that three traffickers prostituted up to 10 women and children on foreign ships in the port, and a 2008 study by the Minnesota legislature suggested that the large population of Indigenous women contributed to Duluth becoming a major hub for human trafficking.⁵⁵ Approximately 1,000 ships a year dock at the Duluth harbor, and there are reports of women and children, including boys and girls, trafficked to ships' crews who are disappeared for months before returning.⁵⁶

- **Disproportionate levels of victimization.** In North Minneapolis, Indigenous women accounted for 24% of the women on probation for prostitution despite the Indigenous population comprising only 2% of the city's population.⁵⁷ One study found that of 95 Indigenous women and girls entering programs in the Minnesota Indian Women's Resource Center programs, 40% had been sexually exploited in prostitution and 27% were victims of trafficking as defined by Minnesota law.⁵⁸ As noted above, Indigenous women throughout the US experience violent victimization at higher rates than any other population.
- **Impunity for non-Indian offenders.** Non-Indigenous offenders commit 88% of violent crimes against Indigenous women. Jurisdictional gaps in US law allow non-Indigenous offenders to often escape justice.⁵⁹

In her August 9, 2017 report on her country visit to the US, the UN Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz noted the link between trafficking, sexual and other forms of violence against Indigenous Women and children and the growth of extractive industry projects in and near Indigenous lands as well as lack of government and corporate concern for these impacts: "While the trafficking of indigenous women and children is hardly a new phenomenon, there is little recognition by public and private stakeholders about affirmative actions that they can take to protect women in communities where energy development catalyzes an increase in sexual violence."⁶⁰

Trafficking of Indigenous women and children violates their rights to freedom from slavery and servitude under ICCPR Article 8.

VII. Articles 23 & 24: Protection of the Family & Children

"The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." ICCPR Art. 23

"Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." ICCPR Art. 24

A. US Indian Boarding School Policy

The US Indian Boarding School Policy of 1869 launched the Boarding School Era. It was a government policy of forced assimilation which legally mandated the removal of Indigenous children from their families, tribes, and communities. It denied American Indians and Alaskan Natives the right to community, culture, religious freedom, and use of language for over 100 years. This practice has left devastating impacts on Native communities, which include: loss of language; loss of culture and traditions; violence, suicide, and sexual abuse; physical and mental health disparities; drug and alcohol abuse to cope with intergenerational trauma; and the ongoing violation of having remains of our children who were taken into US custody and died at these schools kept at those boarding schools' cemeteries without attempt at repatriation. In February 2016, a FOIA Request was made for "Information Detailing the Schools and Fate of Native American Students Taken into Federal Custody Pursuant to the Boarding School Policy of 1869" (#BIA-2016-01054). However, this file was closed without notification or information received. Furthermore, the US has never acknowledged or made reparations for this policy and its ongoing negative impacts known as "intergenerational trauma."

B. Indian Child Welfare Act

Although the boarding school era has ended, Indigenous children continue to face forced removal from their homes and separation from their communities at alarmingly high rates.

The Indian Child Welfare Act (ICWA) was enacted in 1978 in response to studies demonstrating that large numbers of Indigenous children were being separated from their families and communities by state child welfare departments and private adoption agencies. At that time, 25%-35% of Indigenous children were being removed from their homes, and 85% of those removed were being placed outside their families and communities, even when fit and willing relatives were available. Indigenous children are still four times more likely to be removed from their families than non-Indigenous children, and 56% of Indigenous adoptees are placed outside their families and communities.⁶¹ Among other protections, ICWA requires states to contact Indigenous Nations when Indigenous children are removed from their homes and provides that preference in adoption or foster care be given to a member of the child's extended family or members of the child's Indigenous Nation.

Despite the continued need for ICWA, the law is under attack. In October 2018, a federal district court in Texas ruled that the law was unconstitutional because it is race-based.⁶² This decision poses a grave threat to Indigenous children and to legal protections for Indigenous Peoples more generally.

The forcible transfer of Indigenous children falls under the definition of genocide in international law. The US must take immediate steps to remedy this ongoing violation.

VIII. Article 2: Guarantee of an Effective Remedy

"Each State Party to the present Convention undertakes ... [t]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...." ICCPR Art. 2(3)

The US has failed to provide effective remedies for the many human rights violations described in this report. Part of the US failure to provide effective remedies involves its failure to implement the ICCPR, UNDRIP, and other relevant international law.

The US does not recognize the ICCPR as self-executing, and it has not enacted implementing legislation. The CCPR, in its 2014 Concluding Observations, stated that "The State party should ... [t]aking into account its declaration that provisions of the Covenant are non-self-executing, ensure that effective remedies are available for violations of the Covenant, including those that do not, at the same time, constitute violations of US domestic law, and undertake a review of such areas with a view to proposing to the Congress implementing legislation to fill any legislative gaps. The State party should also consider acceding to the Optional Protocol to the Covenant providing for an individual communication procedure."⁶³ The CCPR also called on the US to widely disseminate the ICCPR.⁶⁴ The US has not implemented any of these recommendations.

IX. Conclusion

We thank the CCPR for this opportunity to make recommendations regarding the list of issues and questions for the US's 5th periodic review. We welcome the CCPR's efforts to ensure compliance with the ICCPR in the US, and we look forward to working collaboratively with the State Party to ensure that Indigenous Peoples' rights are protected in accordance with international law.

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- ¹ Human Rights Committee, Concluding Observations, para. 37, CCPR/C/79/Add.50, April 7, 1995.
- ² Human Rights Committee, Concluding Observations, para. 37, CCPR/C/USA/CO/3/Rev.1, December 18, 2006.
- ³ Human Rights Committee, *supra* note 1, at para. 37.
- ⁴ Human Rights Committee, *supra* note 2, at para. 37.
- ⁵ TREATY WITH THE SIOUX -- BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE-- AND ARAPAHO 15 Stat., 635. Ratified, Feb. 16, 1869. Proclaimed, Feb. 24, 1869.
- ⁶ United States v. Sioux Nation, 518 F.2d 1298, 1302 (1975) (cited in United States v. Sioux Nation of Indians, 448 U.S. 371, 388 (1980)).
- ⁷ “The State party should adopt measures to effectively protect sacred areas of indigenous peoples against desecration, contamination and destruction and ensure that consultations are held with the communities that might be adversely affected by State party’s development projects and exploitation of natural resources with a view to obtaining their free, prior and informed consent for the potential project activities.” Human Rights Committee, Concluding Observations, para. 25, CCPR/C/USA/CO/4, April 23, 2014.
- ⁸ Executive Order “Expediting Environmental Reviews and Approval for High Priority Infrastructure Projects”, <https://www.whitehouse.gov/presidential-actions/executive-order-expediting-environmental-reviews-approvals-high-priority-infrastructure-projects/>; Executive Memoranda, <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-regarding-construction-keystone-xl-pipeline/>.
- ⁹ See John Downey, *Divided FERC Approves Duke Energy’s Atlantic Coast Pipeline*, Charlotte Business Journal (Oct. 14, 2017), <https://www.bizjournals.com/charlotte/news/2017/10/14/divided-ferc-board-approves-duke-energy-s-atlantic.html>.
- ¹⁰ See National Congress of American Indians, “Support for Meaningful Tribal Consultation in Accordance with Applicable Laws to Identify and Mitigate the Adverse Impacts of the Atlantic Coast Pipeline on Affected Indian Tribes,” Res. KAN-18-009, [hereinafter NCAI Res. KAN-18-009], http://www.ncai.org/attachments/Resolution_pqZwtqSXuZqJhnAgGClkMkjuRbWMfhirWopdHhBFfSmsvxOkC_KA_N-18-009%20Final.pdf; Lumbee Tribe of North Carolina, “Tribal Consultation and the Atlantic Coast Pipeline,” Resolution CLLR-2018-022-01, Feb. 22, 2018 [hereinafter Lumbee Resolution], <https://www.documentcloud.org/documents/4417276-Lumbee-Tribe-of-N-C-Resolution-on-Atlantic-Coast.html>. Elizabeth Ouzts, *North Carolina Tribes Fear Impact of Atlantic Coast Pipeline Construction*, Energy News Network, March 21, 2018, <https://energynews.us/2018/03/21/southeast/north-carolina-tribes-fear-impact-of-atlantic-coast-pipeline-construction/>.
- ¹¹ Lumbee Resolution, *supra* note 10.
- ¹² NCAI has stated that at least 12 tribes will be impacted by pipeline construction and operation, with at least 12 more tribes potentially suffering negative consequences. National Congress of American Indians, *supra* note 10.
- ¹³ Human Rights Committee, Concluding Observations, para. 25 CCPR/C/USA/CO/4, April 22, 2014.
- ¹⁴ The Roca Honda project can be viewed at <http://www.fs.usda.gov/project/?project=18431>
- ¹⁵ See video at <https://vimeo.com/92010343>
- ¹⁶ For more information on lease sales, see <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/new-mexico>.
- ¹⁷ See www.bearscoalition.org
- ¹⁸ Hopi Tribe v. Arizona Snowball Resort Limited Partnership, No. CIV-18-0057-PR (filed November 29, 2018).
- ¹⁹ Available at <https://www.gao.gov/products/GAO-18-537>.
- ²⁰ Suzanne J. Crawford & Dennis F. Kelley, *American Indian Religious Traditions: An Encyclopedia* 774 (2005).
- ²¹ U.S. Const., Am. 1 (guaranteeing free exercise of religion); *Bell v. Wolfish*, 441 U.S. 520, 545 (1979) (stating prisoners “do not forfeit all constitutional protections by reason of their conviction and confinement.”).
- ²² *Lyng v. Northwest Indian Cemetery*, 485 U.S. 439 (1988).
- ²³ See, e.g., *Fowler v. Crawford*, 534 F.3d 931 (8th Cir. 2008) (allowing Missouri prison to deny sweat lodge access).
- ²⁴ United States of America, Fourth Periodic Report, CCPR/C/USA/4, para. 31, 22 May 2012.

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- ²⁵ UN Special Rapporteur on the Rights of Indigenous Peoples, Communication to the United States, AL G/SO 214 (56-23) Indigenous (2001-8) USA 7/2013 (Jun. 5, 2013).
- ²⁶ UN Special Rapporteur on the Rights of Indigenous Peoples, Report on Observations to Communications Sent and Replies Received, A/CCPR/27/52/Add.5 at 43-44.
- ²⁷ See *In re Rhoades*, 10 Cal.App.5th 896 (Cal. Ct. App. 2017) (involving June 2014 policy change banning tobacco unless mixed with other herbs); *Bausman v. CDCR*, No 1:14-cv-00900 (E.D. Cal. May 4, 2016) (challenging prohibition on variety of religious and ceremonial items).
- ²⁸ The other states include Florida, Georgia, Idaho, Indiana, Louisiana, Mississippi, South Carolina, Texas, and Virginia. Native American Rights Fund, Legal Protections for Spiritual Practices in Prison (Mar. 2016), http://www.narf.org/nill/documents/2016_protections_prisoners.pdf.
- ²⁹ *Holt v. Hobbs*, 135 S.Ct. 853 (2015).
- ³⁰ *Knight v. Thompson*, 796 F.3d 1289 (11th Cir. 2015), *cert denied* 136 S.Ct. 1824 (2016).
- ³¹ *Goodman v. Davis*, 12-cv-00166, (S.D.T.X. 2018).
- ³² *Woodell v. Wetzell*, No. 18-4430 (E.D. Penn. Nov. 14, 2018).
- ³³ *McCracken v. Godert*, No. 2:18-cv-35 (E.D. Mo. Oct. 17, 2018).
- ³⁴ Lakota People’s Law Project. “Native Lives Matter” (February 2015). Found at: <file:///C:/Users/Janene%20Yazzie/Documents/IITC/CCPR%20Submission/Native-Lives-Matter-PDF.pdf>
- ³⁵ *Id.*
- ³⁶ *Id.*
- ³⁷ University of Arizona Indigenous Peoples Law & Policy Program, *Indigenous Resistance to the Dakota Access Pipeline: Criminalization of Dissent and Suppression of Protest*, p. 2 (2018).
- ³⁸ *Id.*
- ³⁹ *Id.* at p.3
- ⁴⁰ OHCHR. “Native Americans facing excessive force in North Dakota pipeline protests – UN expert” (November 15, 2016). Found at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=20868>
- ⁴¹ UN Special Rapporteur on the Rights of Indigenous Peoples, Report on Mission to the United States of America, para. 73, A/CCPR/36/46/Add.1, Aug. 9, 2017.
- ⁴² National Commission on Voting Rights, “Protecting Minority Voters 2014: Our Work is Not Done,” Aug. 2014, available at <http://votingrightstoday.org/ncvr/resources/discriminationreport>.
- ⁴³ <http://www.CCPR.act.gov.au/res/Right%20to%20life%20281011.pdf>
- ⁴⁴ Urban Indian Health Institute. “Missing and Murdered Indigenous Women and Girls; a snapshot of data from 71 Urban Cities in the United States” (November 2018). Found at: <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>
- ⁴⁵ US Department of Justice, “Protecting Native American and Alaska Native Women from Violence,” (November 29, 2012), <https://www.justice.gov/archives/ovw/blog/protecting-native-american-and-alaska-native-women-violence-november-native-american>.
- ⁴⁶ André B. Rosay, “Violence against American Indian and Alaska Native Women and Men,” National Institute of Justice Research Report (2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.
- ⁴⁷ The Red Nation, “Lapel Camera Shows Racist, Killer Cop Executed Loreal Tsingine,” July 28, 2016, <https://therednation.org/2016/07/28/lapel-camera-shows-racist-killer-cop-executed-loreal-tsingine/>
- ⁴⁸ CBS News, “Outrage in Alaska after judge sentences no jail time to man who pleaded guilty to felony assault,” September 25, 2018, <https://www.cbsnews.com/news/anchorage-alaska-justin-schneider-sentence-judge-michael-corey-recall-campaign/>.
- ⁴⁹ Natalie McAlpine, “Ashley Loring’s sister speaks at Senate committee hearing about MMIW crisis,” December 12, 2018, <https://krtv.com/news/montana-and-regional-news/2018/12/12/ashley-lorings-sister-speaks-at-senate-committee-hearing-about-mmiw-crisis/>.
- ⁵⁰ Urban Indian Health Institute. “Missing and Murdered Indigenous Women and Girls; a snapshot of data from 71 Urban Cities in the United States,” November 2018. Found at: <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>

⁵¹ *Id.*

⁵² Available at <https://www.congress.gov/bill/115th-congress/senate-bill/1942>.

⁵³ House Bill 1313 “A BILL for an Act to amend and reenact subsection 1 of section 54-12-34 of the North Dakota Century Code, relating to the collection of data on missing and murdered Indigenous people in the criminal justice data information sharing system,” <https://www.legis.nd.gov/assembly/66-2019/bill-index/bi1313.html>; and House Bill 1311, “A BILL for an Act to amend and reenact subsection 2 of section 54-12-33 of the North Dakota Century Code, relating to law enforcement training on missing and murdered indigenous people,” <https://www.legis.nd.gov/assembly/66-2019/bill-index/bi1311.html>.

⁵⁴ See Amnesty International, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA*, <https://www.amnestyusa.org/pdfs/mazeofinjustice.pdf>.

⁵⁵ Peter Edwards, “Aboriginal women exploited in Great Lakes sex trade,” *The Star*, Aug. 23, 2013, https://www.thestar.com/news/crime/2013/08/23/aboriginal_women_exploited_in_great_lakes_sex_trade.html.

⁵⁶ Liz Collin, “Sex Trafficking on the North Shore,” CBS Minnesota, May 5, 2011, <https://minnesota.cbslocal.com/2011/05/05/sex-trafficking-on-the-north-shore/>.

⁵⁷ Angela Bortel, et al., *Sex Trafficking Needs Assessment for the State of Minnesota*, p. 22 (2008), https://www.theadvocatesforhumanrights.org/uploads/report_final_10_13_08.pdf.

⁵⁸ Alexandra Pierce, *Shattered Hearts (Summary Report): The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota*, p. 8 (2009), <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1028&context=humtraffconf>.

⁵⁹ See Amnesty International, *supra*. note 54.

⁶⁰ UN Special Rapporteur on the Rights of Indigenous Peoples, Report on Mission to the United States of America, para. 60, A/CCPR/36/46/Add.1, Aug. 9, 2017.

⁶¹ National Indian Child Welfare Association, *Setting the Record Straight: The Indian Child Welfare Act*, <https://www.nicwa.org/wp-content/uploads/2018/10/Setting-the-Record-Straight-2018.pdf>.

⁶² *Brackeen v. Zinke*, No. 4:17-cv-00868 (Oct. 4, 2018).

⁶³ Human Rights Committee, *supra* note 7, at para. 4(c).

⁶⁴ *Id.* at para. 26.

For more information on many of the issues addressed in this coordinated submission, please see UN Special Rapporteur on the Rights of Indigenous Peoples, Report on Mission to the United States of America, A/CCPR/36/46/Add.1, Aug. 9, 2017, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/CCPR/36/46/Add.1.

ANNEX

The International Indian Treaty Council is an organization of Indigenous Peoples from North, Central, South America, the Arctic, Pacific and Caribbean working for the Sovereignty and Self Determination of Indigenous Peoples and the recognition and protection of Indigenous Rights, Treaties, Traditional Cultures and Sacred Lands. IITC was the first Indigenous organization to receive Consultative Status with the United Nations Economic and Social Council (ECOSOC) in 1977 and was upgraded to General Consultative Status in 2011. IITC was founded in 1974 on the Standing Rock Reservation in South Dakota. IITC affiliates in the United States include:

1. National Native American Prisoners' Rights Coalition
2. White Clay Society/Blackfoot Confederacy (Montana)
3. Indigenous Environmental Network
4. Columbia River Peoples (Washington/Oregon)
5. Rural Coalition Native American Task Force (Minnesota)
6. Yoemem Tekia Foundation, Pascua Yaqui Nation (Arizona)
7. Tohono O'odham Nation Traditional community (Arizona)
8. Pit River Tribe (California)
9. Wintu Nation of California)
10. Redding Rancheria (California)
11. Tule River Nation (California)
12. Muwekma Ohlone Nation (California)
13. Coyote Valley Pomo Nation (California)
14. Round Valley Pomo Nation (California)
15. Oklahoma Region Indigenous Environmental Network (Oklahoma)
16. Wanblee Wakpeh Oyate (South Dakota)
17. IEN Youth Council
18. Independent Seminole Nation of Florida (Florida)
19. Cactus Valley/Red Willow Springs Big Mountain Sovereign Dineh Community (Arizona)
20. Leonard Peltier Defense Committee
21. Eagle and Condor Indigenous Peoples' Alliance (Oklahoma)
22. Seminole Sovereignty Protection Initiative (Oklahoma)
23. Mundo Maya (California)
24. Los Angeles Indigenous Peoples Alliance (California)
25. American Indian Treaty Council Information Center (Minnesota)
26. Vallejo Inter-Tribal Council (California)
27. Three Fires Ojibwe Cultural and Education Society (Minnesota)
28. California Indian Environmental Alliance (CIEA)
29. Wicapi Koyaka Tiospaye (South Dakota)
30. Mvskoke Food Sovereignty Initiative (Oklahoma)
31. Light is Life Youth Food Sovereignty Project
32. Buffalo Council (Colorado/National)
33. Oce Vpofa/Hickory Grounds Tribal Town (Alabama/Oklahoma)
34. United Tribes of Michigan
35. Alliance of Colonial Era Tribes (ACET) (Haliwa Saponi Indian Tribe, Lenape Indian Tribe of Delaware, Lipan Apache Tribe of Texas, Lumbee Tribe, Monacan Indian Nation, MOWA Band of Choctaw, Nanticoke Indian Tribe, Nanticoke Lenne-Lenape Tribal Nation, Pocasset Tribe, Rappahannock Tribe, United Houma Nation, Upper Mattoaponi)

36. Inhanktonwan Treaty Committee (Yankton Sioux Tribe)
40. Sicangu Lakota Treaty Council (Rosebud Sioux Tribe)
41. Schaghticoke First Nations

Alaska:

1. Native Village of Venetie Tribal Government/Arctic Village Traditional Council
2. Chickaloon Village Traditional Council, Chickaloon Native Village
3. Stevens Village Traditional Council
4. Native Village of Eklutna

Hawaii:

1. Sovereign Nation of Hawaii
2. Aloha First, Hawaii

Puerto Rico (Boriken)

1. United Confederation of Taino People