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Ms. Gabriella Habtom, Secretary UN Committee on the Elimination of Racial Discrimination CERD Early Warning and Urgent Action Procedures Palais Wilson, Geneva Switzerland

Via email: ghabtom@ohchr.org, cerd@ohchr.org

Re: Urgent Action Submission by the International Indian Treaty Council (IITC) and the Shiprock Chapter of the Navajo (Diné) Nation addressing a toxic mining waste spill by the Environmental Protection Agency of the United States of America and resulting urgent violations of the rights of the Shiprock Community and other Indigenous Peoples under the International Convention on the Elimination of All Forms of Racial Discrimination

Please receive our respectful greetings. The International Indian Treaty Council (IITC), an Indigenous non-governmental organization with General ECOSOC Consultative Status, respectfully submits the enclosed information to the CERD Early Warning/Urgent Action Procedures in conjunction with the Shiprock Chapter of the Navajo (**Diné**) Nation in New Mexico, United States. The Shiprock Chapter is an Indigenous community with a population of 12,000 and is one of 110 distinct political entities that constitute the Navajo Nation.

This submission presents the urgent worsening threats and violations of the human rights and ways of life of Indigenous Peoples who depend for their means of subsistence and their physical and cultural health upon Rivers that have been highly contaminated by a mining toxic waste spill caused by the United States Government's Environmental Protection Agency on August 5th 2015. The Shiprock Chapter, in their enclosed submission, has highlighted the discriminatory effects of actions (and failures to act) by the US government including urgent threats and violations of their rights including:

- 1) Violations of their free prior and informed consent through permitting toxic mining waste to be stored on the banks of a river system that provides water for traditional food production and subsistence rights posing a significant, negligent and discriminatory threat to the health and way of life of the impacted Indigenous Peoples;
- 2) Violations of free prior and informed consent through failure to provide timely and adequate information to the community members, food producers and leaders to enable them to understand the immediate and long term, health dangers and risks and to be able to prepare and respond;
- 3) Violations of subsistence rights and right to food as well as the cultural rights that are inextricably linked to these traditional practices, food sources and sacred waters;
- 4) Violations of the rights of the child and the right to health of women, children, unborn and the entire community;
- 5) Violations of their rights to property including land, water, animals, seeds and plant resources;
- 6) Violations of their rights to effective and adequate redress, restitution, remedy and compensation.

Specific rights under the Convention that have already been violated or are being threatened on an urgent matter include rights affirmed in ICERD Article 5 and 6 as follows:

Article 5(e), Economic, social and cultural rights, in particular:

- (i) The rights to work, to free choice of employment, to just and favourable conditions of work;
- (iv) The right to public health, medical care, social security and social services;
- (vi) The right to equal participation in cultural activities;

Article 6:

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

In addition, urgent violations of CERD General Recommendation 23 paragraphs 4 and 5 as follows:

- 4. The Committee calls in particular upon States parties to:
 - (a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;
 - (b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;
 - (c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;
 - (d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;
 - (e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.
- 5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories...

It is of vital importance that the United States be called upon by the CERD to uphold and implement the following recommendations from the two previous reviews of the United States by the CERD in 2008 and 2014 which are directly relevant to this request for urgent action. The urgent and devastating violations of human rights presented in this submission, resulting in effects which constitute extreme discrimination by the United States against an Indigenous People would have been prevented and avoided had the United States implemented these recommendations by the CERD as follows:

While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the

declaration be used as a guide to interpret the State party's obligations under the Convention relating to indigenous peoples. -- Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, 72nd Session, CERD/C/USA/CO/6 (2008) para. 29.

...the Committee is concerned that individuals belonging to racial and ethnic minorities as well as indigenous peoples continue to be disproportionately affected by the negative health impact of pollution caused by the extractive and manufacturing industries... The Committee calls upon the State party to: (a) Ensure that federal legislation prohibiting environmental pollution is effectively enforced at state and local levels; (b) Undertake an independent and effective investigation into all cases of environmentally polluting activities and their impact on the rights of affected communities, bring those responsible to account, and ensure that victims have access to appropriate remedies; (c) Clean up any remaining radioactive and toxic waste throughout the State party as a matter of urgency, paying particular attention to areas inhabited by racial and ethnic minorities and indigenous peoples that have been neglected to date; -- Committee on the Elimination of Racial Discrimination. Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, 85th session, CERD/C/USA/CO/7-9, 85 (2014) para10.

Recalling its general recommendation No. 23 (1997) on indigenous peoples, the Committee calls upon the State party to: (a) Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them based on their free, prior and informed consent; (c) Adopt concrete measures to effectively protect the sacred sites of indigenous peoples as a result of the State party's development or national security projects and exploitation of natural resources, and ensure that those responsible for any damages caused are held accountable; -- Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, 85th session, CERD/C/USA/CO/7-9, 85 (2014) para 24.

The violations of the UN Declaration on the Rights of Indigenous Peoples by the United States Government in both its creation and response to this disaster constitute an example of extreme environmental racism. Violations include Articles 20, 21, 22, 23, 24, 25, 26, 29 and 32 as well as Article 37 affirming Treaty Rights.

The community members and leadership of the Shiprock Chapter were not notified that the US had allowed a toxic waste storage site to be located upstream from their vital water source. They have since discovered that there are thousands of such sites potentially impacting Indigenous Peoples' lands and waters throughout the US. In this regard, we highlight Article 29 which is of particular relevance regarding the US failure to respect and uphold the rights of Indigenous Peoples both in allowing the situation which allowed this disaster to occur and in failing to adequately respond to date:

United Nations Declaration on the Rights of Indigenous Peoples, Article 29

- 1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
- 2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

We respectfully invite the CERD Early Warning/Urgent Action Procedures to review the enclosed materials, including in particular the information submitted by the Shiprock Chapter of the Navajo Nation. The specific responses from the United States called for as a matter of utmost urgency by the impacted Indigenous Peoples are as follows:

- 1. That the United States government and its Environmental Protection Agency immediately, freely and openly divulge to the Diné Indigenous Peoples of the Shiprock community and other affected Indigenous Peoples, all pertinent data and information that will describe the kinds of contaminants that are/were contained in the waste materials, the amounts that were released of each, and the known or suspected impacts on human, plant and animal life;
- 2. That the United States government and its Environmental Protection Agency immediately proceed with an aggressive program that will assure the total and complete cleanup of the damage it has caused, working in close collaboration with the impacted Indigenous communities, including the Shiprock Chapter leadership and relevant programs and officials of the Diné (Navajo) Nation;
- 3. That the United States government, the US Environmental Protection Agency and related agencies provide a complete inventory of mine and mine waste contamination storage facilities that could potentially cause similar damage to the San Juan River and its tributaries in the future as well as a cleanup plan that will be carried out without father risk to these waterways;
- 4. That the United States government and its Environmental Protection Agency fully compensate the San Juan River valley farmers for all crop and livestock losses directly attributable to this event;
- 5. That the United States government fully compensate the impacted Tribal governments and their entities for all expenses incurred in addressing the emergency conditions precipitated by this event as well as any ongoing health impacts;
- 6. That the United States government provide adequate financing to allow the impacted local Diné farmers to plan, design and construct water collection and storage systems that will provide an alternative water source for river based Navajo irrigation systems now and in the future;
- 7. That the United States government immediately put in place, in collaboration and with the full participation of the impacted Indigenous Peoples, a just and effective mechanism to ensure redress and restitution for the human rights, Treaty rights, subsistence rights and health rights violated by this action in accordance with the United Nations Declaration on the Rights of Indigenous Peoples Articles 27, 28, 29 and 40.

In conclusion, the IITC and Shiprock Chapter of the Navajo Nation respectfully request that a formal communication be issued by the CERD Urgent Action Procedure to the United States addressing this urgent matter before the end of the current 87th CERD session. For more information please contact:

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