

# **Convention on the Elimination of Racial Discrimination**

Joint Alternative Report Submission for the United States  
Review

## **Indigenous Rights Violations in the United States Related to Increased Transition Minerals Mining and Green Energy Policies**

Prepared for: The 107<sup>th</sup> Session of the  
Convention on the Elimination of Racial Discrimination

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## I. Reporting Organizations

This Alternative Report reflects the work of the United States-based partners in Securing Indigenous Rights in the Green Economy (SIRGE), a global coalition of Indigenous-led organizations with a wide experience of work, research, and advocacy on behalf of Indigenous Peoples that are impacted by the transition to the green economy. The reporting organizations have specific experience as to the impact on Indigenous Peoples that reside in the United States (the U.S.).

The Batani Foundation (Batani) for development and solidarity was created in 2004 as an initiative of Indigenous Peoples in Russia to organize development projects and have implemented several successful programs of economic development. Batani develops tools and mechanisms for negotiations between Indigenous communities and private businesses and promotes international cooperation between Indigenous Peoples in Russia, the U.S., Canada, Norway, Bolivia, and other countries.

Cultural Survival is an international Indigenous rights organization with global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the U.S. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, *Cultural Survival Quarterly*, and on its website. Cultural Survival also produces and distributes esteemed radio programs that strengthen and sustain Indigenous languages, cultures, rights, and civil participation.

Earthworks is a U.S.-based non-profit organization dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions.

First Peoples Worldwide works from a foundation of Indigenous values to achieve a sustainable future for all. First Peoples Worldwide, housed at the University of Colorado, is an Indigenous-led organization that works with Indigenous partners around the world to deploy strategies to move the market towards respect for the rights of Indigenous Peoples.

## II. Background Information

States around the world have acknowledged that human-induced global warming requires quickly reducing carbon emissions.<sup>1</sup> Transition minerals such as nickel, lithium, cobalt, and copper play a critical role in the development of a low-carbon economy as they are required to produce technologies such as electric vehicles and solar panels, among others.<sup>2</sup> To spur this low-carbon future, states around the world have set forth global commitments and domestic policies that increase the demand for transition mineral extraction. In large part, policy incentives in this theme focus on promoting renewable energy and nuclear technologies. Innovations in vehicle technology have also focused attention on the rapid production of electric vehicles on a scale that can be taken up rapidly by mainstream consumers in a relatively short time frame. While these shifts rightly seek to implement a low-carbon future for all, to date these solutions have been largely divorced from the very real, negative impacts that building these technologies will have on Indigenous Peoples via the increase in mineral mining and extraction on or near Indigenous land that is necessary for their manufacture and operation. The strategies to shift to green energy set forth

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<sup>1</sup> IPCC, 2022: Climate Change 2022: Impacts, Adaptation, and Vulnerability. Sixth Assessment Report of the Intergovernmental Panel on Climate Change. <https://www.ipcc.ch/report/ar6/wg2/>

<sup>2</sup> Block, S. (2021, June 3). *Mining Energy-Transition Metals: National aims, local conflicts* - MSCI. <https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947>

by the United States reflect this global ambition and pose a heightened and continued threat to Indigenous rights.

Over 3 billion tons of transition minerals are required to activate green technology like wind, solar, and geothermal power, and energy storage.<sup>3</sup> Electric vehicles and battery storage will be the largest industry demand,<sup>4</sup> increasing the production of transition minerals by nearly 500 percent by 2050 globally.<sup>5</sup> And transition minerals are produced through the same methods of traditional, extractive mineral mining.

In the U.S., the Biden administration has undertaken several efforts to respond to the climate crisis, including rejoining the Paris Climate Agreement<sup>6</sup> and setting forth an ambitious green energy policy platform that includes making the federal government carbon neutral by 2050.<sup>7</sup> This approach aims to reduce the U.S.'s "planet-warming pollution 50 percent from 2005 levels by 2030."<sup>8</sup> In 2021, the Biden administration set forth a \$2.1 trillion bipartisan package that incentivizes the creation of solar panels, offshore wind farms, and other clean energy initiatives.<sup>9</sup> Several other measures have been undertaken by President Biden via Executive Orders, such as his plan to make the federal government carbon neutral by increasing electric vehicle (EV) use and powering federal facilities with clean energy.<sup>10</sup> At present, only 40 percent of federal energy comes from renewables, but President Biden wants to commit to fully renewable energy sources by 2035.<sup>11</sup> Even more significant is the fact that EVs currently make up only 1.5 percent of government vehicles, and President Biden's goal is 100 percent EV use within only 12 years.<sup>12</sup> Beyond the federal government, in August 2021, the Biden administration issued an Executive Order to make half of all new vehicles sold in the U.S. zero-emissions vehicles by 2030.<sup>13</sup> And, in response to the growing demand, the Biden administration has deployed the Defense Production Act (DPA) "to support the production and processing of minerals and materials used for large capacity batteries—such as lithium, nickel, cobalt, graphite, and manganese"<sup>14</sup> as well as solar panels and solar

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<sup>3</sup> World Bank Group. (2022, June 30). *Climate-smart mining: Minerals for climate action*. World Bank. <https://www.worldbank.org/en/topic/extractiveindustries/brief/climate-smart-mining-minerals-for-climate-action#:~:text=World%20Bank%20Group-,Overview,demand%20for%20clean%20energy%20technologies>

<sup>4</sup> International Energy Agency. (2021, May). *The role of critical minerals in Clean Energy Transitions – analysis*. IEA. <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions>

<sup>5</sup> *Id.*

<sup>6</sup> U.S. Department of State. (2021, February 26). *The United States officially rejoins the Paris Agreement - United States Department of State*. U.S. Department of State.

<https://www.state.gov/the-united-states-officially-rejoins-the-paris-agreement/>

<sup>7</sup> Phillips, A. (2021, December 8). *Biden wants to make federal government carbon neutral by 2050*. The Washington Post.

<https://www.washingtonpost.com/climate-environment/2021/12/08/biden-government-purchasing-climate-change/>

<sup>8</sup> Davenport, C. (2021, October 27). *Ahead of a U.N. climate summit, Democrats push to secure policies Biden can promote*, New York Times.

<https://www.nytimes.com/2021/10/27/us/politics/biden-un-climate-summit-democrats.html>

<sup>9</sup> Friedman, L. (2022, April 19). *Biden Restores Climate to Landmark Environmental Law, Reversing Trump*. New York Times. <https://www.nytimes.com/2022/04/19/climate/biden-climate-nepa-trump.html>

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> The United States Government. (2021, August 5). *Fact sheet: President Biden announces steps to drive American leadership forward on clean cars and trucks*. The White House.

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/05/fact-sheet-president-biden-announces-steps-to-drive-american-leadership-forward-on-clean-cars-and-trucks/>

<sup>14</sup> The United States Government. (2022, March 31). *Fact sheet: President Biden's plan to respond to Putin's price hike at the Pump*. The White House.

technology.<sup>15</sup> The first memo on the use of the DPA included language about tribal consultations, but the second memo did not.<sup>16</sup>

Each of these initiatives is being undertaken at a rapid rate, leaving no time to address the historical harms of the extractive industry or to better integrate Indigenous Peoples into the decision-making process. Already, Indigenous Peoples are most impacted by the climate crisis despite producing few greenhouse gas emissions themselves.<sup>17</sup> Because of their integral relationship with land, waters, and resources, Indigenous Peoples are first impacted when negative changes to the environment occur; other exacerbated impacts include loss of land and resources, discrimination, human rights violations, unemployment, and political and economic marginalization.<sup>18</sup> An increased demand for transition minerals to fuel the green energy market, directly impacts Indigenous Peoples in another way, as their lands and resources have significant concentrations of untapped transition mineral reserves.<sup>19</sup> Data shows that in the U.S., “97% of nickel, 89% of copper, 79% of lithium and 68% of cobalt reserves and resources are located within 35 miles of Indigenous reservations.”<sup>20</sup>

Extraction is linked with significant rights violations. The Business and Human Rights Resource Centre reports that there have already been 495 human rights allegations made against all 103 companies involved in transition mineral extraction globally.<sup>21</sup> The leading violation is attacks against human rights defenders, followed by violations linked to water pollution.<sup>22</sup> Other violations include development without the free, prior, and informed consent (FPIC) of Indigenous Peoples; violence against Indigenous women and increased incidences of sex trafficking; forced migration; and environmental threats to the land, water, and subsistence resources.<sup>23</sup>

Indigenous Peoples in the U.S. are subject to heightened threats due to the rising demand created by green policies which is further impacted by the web of racist laws and policies that create the legal framework imposed upon Indigenous Peoples. There are 574 federally recognized Indigenous tribes in the U.S. and

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<https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/31/fact-sheet-president-bidens-plan-to-respond-to-putins-price-hike-at-the-pump/>

<sup>15</sup> The United States Government. (2022, June 6). *Fact sheet: President Biden takes bold executive action to spur domestic clean energy manufacturing*. The White House.

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/fact-sheet-president-biden-takes-bold-executive-action-to-spur-domestic-clean-energy-manufacturing/>

<sup>16</sup> The United States Government. (2022, June 6). *Memorandum on presidential determination pursuant to Section 303 of the Defense Production Act of 1950, as amended, on solar photovoltaic modules and module components*. The White House.

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/memorandum-on-presidential-determination-pursuant-to-section-303-of-the-defense-production-act-of-1950-as-amended-on-solar-photovoltaic-modules-and-module-components/>

<sup>17</sup> Morello-Frosch, R. (2012, October). *Facing the Climate Gap*. USC Equity Research Center.

<https://dornsife.usc.edu/pere/facingtheclimategap/>

<sup>18</sup> United Nations Permanent Forum on Indigenous Issues. *Climate change and indigenous peoples*. United Nations.

[https://www.un.org/esa/socdev/unpfii/documents/background%20climate%20change\\_FINAL.pdf](https://www.un.org/esa/socdev/unpfii/documents/background%20climate%20change_FINAL.pdf)

<sup>19</sup> Block, S. (2021, June 3). *Mining Energy-Transition Metals: National aims, local conflicts - MSCI*.

<https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947>

<sup>20</sup> *Id.*

<sup>21</sup> *Transition Minerals Tracker*. Business and Human Rights Resource Centre.

<https://www.business-humanrights.org/en/from-us/transition-minerals-tracker/>

<sup>22</sup> *Transition minerals tracker: Global analysis of human rights in the energy transition*. Business and Human Rights Resource Centre. (2022, May 11). <https://www.business-humanrights.org/en/from-us/briefings/tmt-2021/>

<sup>23</sup> *Id.*

over 500 tribes that are not recognized.<sup>24</sup> There are 4 to 7 million estimated Indigenous Peoples in the U.S.,<sup>25</sup> which is inclusive of Indigenous individuals who are not enrolled in federally recognized tribes under domestic law. Although the U.S. executed 370 treaties with Indigenous tribes from 1778 to 1871<sup>26</sup> and characterizes interactions as a “government to government relationship”<sup>27</sup>, the government also characterizes tribes as “wards”<sup>28</sup> and “domestic dependent nations.”<sup>29</sup> These treaties were made under duress, used language and ideas that were not commonly agreed to or understood by all parties, and imposed colonial concepts like land ownership onto Indigenous tribes.<sup>30</sup> In short, these treaties which comprise the foundation of U.S. domestic policy were not based upon the foundation of consent, and in modernity that approach has been substituted by consultation, which has allowed the U.S. to erode reserved rights articulated by these treaties without the FPIC of affected Indigenous Peoples.<sup>31</sup>

The U.S. has a trust responsibility to tribes, meaning that the U.S. has a duty to respect tribal sovereignty and self-government.<sup>32</sup> And though the U.S. has a formal policy of consultation with tribes,<sup>33</sup> there is no domestic requirement to solicit the FPIC of Indigenous tribes. Additionally, the U.S. Congress may, at any time, exercise its plenary power<sup>34</sup> to strip tribes of their recognized rights and abrogate these treaties. This, in exercise, is done without consent and by a unilateral Congressional action that excludes the participation of the tribes impacted.

The Biden administration has stated their intent to “provide tribes with a greater role in the care and management of public lands that are of cultural significance to Tribal Nations.”<sup>35</sup> These are the lands that Indigenous Peoples were removed from, which are now national parks and forests, wildlife refuges, and public lands.<sup>36</sup> This desire is restrained by U.S. policy which is limited to consultation and does not

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<sup>24</sup>*Tribal Nations & the United States: An introduction*. National Congress of American Indians. (2020, February). <https://www.ncai.org/about-tribes>

<sup>25</sup> Braun, S. (2022, April 1). *The Indigenous World 2022: United States of America*. IWGIA. <https://www.iwgia.org/en/usa/4684-iw-2022-united-states-of-america.html>

<sup>26</sup> *Tribal Nations & the United States: An introduction*. National Congress of American Indians. (2020, February). <https://www.ncai.org/about-tribes>

<sup>27</sup> Bush, G. W. (2004, September 23). *Government-to-government relationship with tribal governments*. U.S. Department of the Interior. <https://www.doi.gov/pmb/cadr/programs/native/Government-to-Government-Relationship-with-Tribal-Governments>

<sup>28</sup> Cornell University. (1831, January). *The Cherokee Nation v. State of Georgia*. Legal Information Institute. <https://www.law.cornell.edu/supremecourt/text/30/1>

<sup>29</sup> Cornell University. (1831, January). *The Cherokee Nation v. State of Georgia*. 30 U.S. 1, pg. 18. Legal Information Institute. <https://www.law.cornell.edu/supremecourt/text/30/1>

<sup>30</sup> *Tribal Nations, Indigenous Peoples Call for the U.S. to prioritize the inherent right of consent in consultations*. First Peoples Worldwide. (2021, July 30). <https://www.colorado.edu/program/fpw/2021/07/30/tribal-nations-indigenous-peoples-call-us-prioritize-inherent-right-consent-consultations>

<sup>31</sup> *Id.*

<sup>32</sup> Administration for Native Americans. *American Indians and Alaska Natives - The Trust Responsibility*. The Administration for Children and Families. <https://www.acf.hhs.gov/ana/fact-sheet/american-indians-and-alaska-natives-trust-responsibility>

<sup>33</sup> *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*. United States Federal Register. (2000, September 11). <https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>

<sup>34</sup> U.S. Const. Art. I, §8, cl. 3. *Commerce Clause*. <https://www.law.cornell.edu/constitution/articlei#section8>

<sup>35</sup> *Biden-Harris Plan for Tribal Nations*. Joe Biden for President: Official Campaign Website. (2020, October 12). <https://joebiden.com/tribalnations/>

<sup>36</sup> Hanane S., Cusick, J., Griffin, G., Parshall, J., Rowland-Shea, J., Barnes, A., Baussan, D., Patronella, A., Spitzer, E., Khan, A., & Olinsky, B. (2021, November 2). *The Biden Administration's Conservation Plan must Prioritize*

include FPIC. For example, in its effort to recognize the significant mineral sourcing necessary to meet its goals, a recent Executive Order prioritized domestic mines to shore up U.S. supply chains and support American workers.<sup>37</sup> The Executive Order states that the U.S. will work with and collect input from Indigenous tribes.<sup>38</sup> However, these conversations are merely a form of consultation and do not require solicitation of consent, nor do they ensure that tribes are able to participate as equals in decision-making or have their perspectives meaningfully considered as part of the decision-making process.

Indigenous inclusion in green energy policy is also substantially limited. In April 2022, the Biden administration announced a commitment of \$46 million to tribal communities to address the unique aspects of climate change with the goal of “help[ing to] bolster community resilience, replace aging infrastructure, and provide support needed for climate-related community-driven relocation and adaptation.”<sup>39</sup> While these are necessary actions to combat the unique impacts of climate change that Indigenous Peoples are subject to, it does not account for the ways that other U.S. policies are continuing to increase these threats. When the Biden administration states its goal of advancing a “just transition,”<sup>40</sup> it means advancing an ethical and sustainable shift from a fossil-fuel economy. This approach does not include a perspective on uplifting remedies for the past harms of extractives on Indigenous Peoples who are the most impacted by mining. While the U.S. Department of the Interior has stated the need to produce transition minerals in a “sustainable and responsible” way,<sup>41</sup> it has not set forth the responsibility owed to Indigenous Peoples who are on and near the land where transition minerals will be extracted.

The rapid and exponential expansion of the extraction of transition minerals will increase these known human rights violations against Indigenous Peoples around the world. In the U.S., where Indigenous Peoples have already been forcibly relocated and removed to reservations, extraction will occur on ancestral lands where tribes do not have legal title or control. Therefore, when the U.S. spurs development and corporations increase pressure towards building new operations quickly, Indigenous Peoples are not able to effectively participate in the decision-making or give consent to this extraction. And there is little access to remedy for Indigenous Peoples who are already unprotected by a framework of racist laws and policies that prevent full realization of tribal sovereignty. The historic laws and policies which have resulted in social, economic, and environmental inequities will be compounded with new and increased focuses on green energy if there are no immediate changes to racist laws and policies.

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*Indigenous Leadership*. Center for American Progress.

<https://www.americanprogress.org/article/biden-administrations-conservation-plan-must-prioritize-indigenous-leadership/>

<sup>37</sup> Miller-McFeeley, B. (2022, February 3). *To create a clean energy future, mining reform must be front and center*. Earthjustice.

<https://earthjustice.org/from-the-experts/2021-june/to-create-a-clean-energy-future-mining-reform-must-be-front-and-center>

<sup>38</sup> The United States Government. (2021, January 27). *Executive Order on Tackling the Climate Crisis at Home and Abroad*. The White House.

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

<sup>39</sup> *Biden-Harris Administration announces bipartisan infrastructure law funding to build climate resilience in Tribal Communities*. U.S. Department of the Interior. (2022, April 11).

[www.doi.gov/pressreleases/biden-harris-administration-announces-bipartisan-infrastructure-law-funding-build](http://www.doi.gov/pressreleases/biden-harris-administration-announces-bipartisan-infrastructure-law-funding-build)

<sup>40</sup> The United States Government. (2021, April 23). *Fact Sheet: President Biden's Leaders Summit on Climate*. The White House.

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/23/fact-sheet-president-bidens-leaders-summit-on-climate/>

<sup>41</sup> Healy, J., & Baker, M. (2021, December 27). *As miners chase clean-energy minerals, tribes fear a repeat of the past*. The New York Times. <https://www.nytimes.com/2021/12/27/us/mining-clean-energy-antimony-tribes.html>

### III. Continuing Rights Violations of Indigenous Peoples

There are a number of ways in which the U.S.'s overarching commitment to the energy transition, via green energy policies and increased domestic sourcing initiatives, violates and will continue to violate Indigenous rights protected by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).<sup>42</sup>

- a. *The U.S. violates the requirement that it take special measures pursuant to Article 2(2) to prevent violations that will increase during the transition to green energy.*

This existing legal framework, as well as the increase in green policies that exclude Indigenous Peoples, represents continuing violations of Indigenous Peoples rights under the ICERD. Article 2 requires that parties shall take “special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.” The impacts of extraction on Indigenous Peoples, both globally and nationally, are well-known. In incentivizing the transition to green energy, the U.S. has an obligation under ICERD to provide adequate protections to Indigenous Peoples that are uniquely – and negatively – impacted but not included in the decision-making process to develop on and near Indigenous lands.

In the U.S.'s state party report to the Committee on the Elimination of Racial Discrimination (CERD), the U.S. discusses environmental justice that “focus[es] on demonstrating tangible results in minority, low income, tribal, and indigenous communities” and “support [] the efforts of partners, such as states and tribes.” The report cites Executive Order 14008 that requires federal agencies to act to “support fair and effective implementation of federal environmental laws, to provide protection from disproportionately high and adverse human health or environmental impacts on minority, low-income, tribal and indigenous populations, and to advance sustainable economies.”<sup>43</sup> This report does not reflect a concrete measure that adequately respects Indigenous rights as impacted by green policies. Nor does the U.S. report reflect an understanding of the compounded rights violations that will follow a rapid drive to extract transition minerals from Indigenous lands.

- b. *The U.S. violates the right to equal enjoyment of human rights and fundamental freedoms pursuant to Article 1 due to known health and environmental threats attendant to extractive mineral mining.*

Increased transition mineral extraction poses a unique threat to the health of Indigenous Peoples, who frequently live on or near these development sites which can negatively impact livelihoods, biodiversity, and ecosystems. These negative impacts, in turn, violate Indigenous Peoples' ability to enjoy human rights and fundamental freedoms. CERD has previously commented on the impact of environment on health; in its 2004 recommendations to the U.S., CERD tasked the U.S. to “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.”<sup>44</sup> These threats to land, water, and resources impact all local communities near the

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<sup>42</sup> United Nations Office of the High Commissioner for Human Rights. (1965, December 21). *International Convention on the Elimination of All Forms of Racial Discrimination*. OHCHR.

<https://www.ohchr.org/en/instruments-mechanisms/instrument/international-convention-elimination-all-forms-racial>

<sup>43</sup> *Id.*

<sup>44</sup> United Nations Committee on the Elimination of Racial Discrimination. (2014, August 29). *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*. OHCHR.

[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD\\_C\\_USA\\_CO\\_7-9\\_18102\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf)

extraction sites, but Indigenous Peoples are disproportionately impacted.<sup>45</sup> Metals mining subjects nearby lands to air and water pollution that affects the waters, plants, animals, and other resources upon which many Indigenous Peoples rely for their health and subsistence, as well as for their identity, religious practices, and culture.

The U.S. Environmental Protection Agency's Toxic Release Inventory reports that metals mining is the number one industrial polluter.<sup>46</sup> This pollution impacts not only the lands, but also the people on or near those lands. Toxic materials, such as arsenic, mercury, cadmium, chromium, and lead are released into the air and water with devastating effects on people and the environments they depend on.<sup>47</sup> These materials are produced as byproducts of mining operations and are stored in "tailings dams."<sup>48</sup> Tailings produce acid-mine drainage, which results from the toxic materials being exposed to oxygen and atmospheric moisture accumulation.<sup>49</sup> Acid-mine drainage threatens the surrounding surface environment and hydrological systems as well as causing bioaccumulation of toxic materials in the surrounding food chain.<sup>50</sup> Soil and wastewater from abandoned mines in the Western U.S. have "created a legacy of chronic exposures to metal mixtures in Native American communities."<sup>51</sup> These health risks are compounded by other risk factors that are associated with health disparities like poverty and infrastructure.<sup>52</sup> For example, since the 1940s, uranium mining was an economic driver for the Navajo Nation.<sup>53</sup> However, the mines have long since been abandoned and the short-term and long-term health consequences are now known, including sustained negative health impacts to the Nation's population.<sup>54</sup> Twenty-six percent of Navajo women have tested positive for uranium in their blood.<sup>55</sup> Other studies show that uranium exposure is linked to chronic illness, kidney disease, and hypertension for all members of the population—elders to children.<sup>56</sup> In 2005, the Nation banned uranium mining with its Diné Natural Resources Protection Act in response to this harm.<sup>57</sup> This reflects a broader history where the U.S. allows mines to be abandoned without remediation when the deposits are extracted,<sup>58</sup> causing continuous exposures to pollution. In 2015, the abandoned Gold King Mine spilled and contaminated Ute Mountain Ute and Navajo lands with arsenic, lead, and other metals.<sup>59</sup> Long-term impacts of mining continue long after mining companies have

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<sup>45</sup> International Labour Office. (2017). *Indigenous peoples and climate change: From victims to change agents through decent work* and also Mearns, R., & Norton, A. (2010). *Social Dimensions of Climate Change: Equity and Vulnerability in a Warming World*. The World Bank. <https://openknowledge.worldbank.org/bitstream/handle/10986/2689/520970PUB0EPI11C010disclosed0Dec091.pdf?sequence=1>

<sup>46</sup> *Making clean energy clean, just and Equitable*. Earthworks. (2022, June 2). <https://earthworks.org/campaigns/making-clean-energy-clean/>

<sup>47</sup> Dominguez, R. (2021, September 9). *Just minerals for a just transition*. Earthworks. <https://earthworks.org/blog/just-minerals-for-a-just-transition/>

<sup>48</sup> *Tailings*. Earthworks. (2022, June 11). <https://earthworks.org/issues/tailings/>

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Lewis, J., Hoover, J., & MacKenzie, D. (2017). Mining and Environmental Health Disparities in Native American Communities. *Current environmental health reports*, 4(2), 130–141. <https://doi.org/10.1007/s40572-017-0140-5>

<sup>52</sup> *Id.*

<sup>53</sup> Mall, A., & Peterson, L. (2021, June). *Just minerals: Safeguarding protections for community*. Earthworks. <https://earthworks.org/wp-content/uploads/2021/09/Just-Minerals-FINAL.pdf>

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Lewis, J., Hoover, J., & MacKenzie, D. (2017). Mining and Environmental Health Disparities in Native American Communities. *Current environmental health reports*, 4(2), 130–141. <https://doi.org/10.1007/s40572-017-0140-5>

<sup>57</sup> Earth Island. *Navajos ban uranium mining*.

[https://www.earthisland.org/journal/index.php/magazine/entry/navajos\\_ban\\_uranium\\_mining/](https://www.earthisland.org/journal/index.php/magazine/entry/navajos_ban_uranium_mining/)

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*



left the area; in just the western U.S. there are over 160,000 abandoned mines, a remaining environmental hazard for the Indigenous Peoples who live on that land now and in perpetuity.<sup>60</sup> This is one example of many, and with increased extraction the health impacts of pollution from active and abandoned mines will be felt by Indigenous Peoples at rates higher than non-Indigenous Peoples, since they are geographically closest to the mining sites.

Many of the proposed transition mineral extraction projects also carry with them known threats to the environment during active development, which will have direct impacts on Indigenous Peoples' health. In the Salmon River Mountains in Idaho, a proposed open pit mine will produce gold and antimony, which will power batteries for solar farms.<sup>61</sup> The corporation, Perpetua, states that this mine will allow the U.S. to source domestically instead of from China, where most antimony is produced now.<sup>62</sup> With this proposed mine, the harms are already known; Perpetua states that there would be "disproportionately high and adverse impacts" for tribes in the area, which includes destruction of the fish habitat.<sup>63</sup> The mine will create deep pits, rerouted waterways, possible mercury contamination, and other pollution like refining sludge.<sup>64</sup> This activity could destroy up to 20 percent of the salmon and trout habitats.<sup>65</sup> The Nez Perce, and many other Indigenous Peoples in the area, rely on these fish not only for sustenance, but also as a key aspect of their identity and religious ceremonies; this critical relationship to fish and access to fish is a reserved right protected by a number of treaties between the U.S. and tribes in the region.<sup>66</sup> The Nez Perce have already noticed a decline in fish population due to increased mining and waterway pollution.<sup>67</sup> They have worked to restore fish stocks and preserve their identity in the face of the increased pollution.<sup>68</sup> An environmental analysis has yet to be conducted, which will determine the future of this mine.<sup>69</sup> Yet, the U.S. has a history of approving permitting projects despite known adverse impacts to Indigenous Peoples. Oil and gas development like the Dakota Access pipeline,<sup>70</sup> the Keystone XL pipeline,<sup>71</sup> and the Line 3 pipeline, depict a recent history of harmful development lacking Indigenous Peoples' consent.<sup>72</sup> If the U.S. proceeds with projects like the Salmon River mine despite known potential for pollution, there will be numerous health impacts on Indigenous Peoples who have ties to the waters and lands near the development.

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<sup>60</sup>*Id* at 130-41.

<sup>61</sup> Healy, J., & Baker, M. (2021, December 27). *As miners chase clean-energy minerals, tribes fear a repeat of the past*. The New York Times. <https://www.nytimes.com/2021/12/27/us/mining-clean-energy-antimony-tribes.html>

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* See also Galligan, T. & Reynvaan (1977). *Pacific Northwest Indian Treaty Fishing Rights* Vol 5:99. <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1130&context=sulr>

<sup>67</sup> *Id.*

<sup>68</sup> Penn, I., Lipton, E., & Angotti-jones, G. (2021, May 6). *The Lithium Gold Rush: Inside the race to Power Electric Vehicles*. The New York Times. <https://www.nytimes.com/2021/05/06/business/lithium-mining-race.html>

<sup>69</sup> Healy, J., & Baker, M. (2021, December 27). *As miners chase clean-energy minerals, tribes fear a repeat of the past*. The New York Times. <https://www.nytimes.com/2021/12/27/us/mining-clean-energy-antimony-tribes.html>

<sup>70</sup> Turkewitz, J. (2017, February 8). *Army approves construction of Dakota Access Pipeline*. The New York Times. <https://www.nytimes.com/2017/02/07/us/army-approves-construction-of-dakota-access-pipeline.html>

<sup>71</sup> Romo, V. (2018, September 11). *Native American tribes file lawsuit seeking to invalidate Keystone XL Pipeline Permit*. NPR.

<https://www.npr.org/2018/09/10/646523140/native-american-tribes-file-lawsuit-seeking-to-invalidate-keystone-xl-pipeline-p>

<sup>72</sup> Pember, M. A. (2021, February 24). *Enbridge Line 3 divides indigenous lands, people*. MPR News.

<https://www.mprnews.org/story/2021/02/24/enbridge-line-3-divides-indigenous-lands-people>

Within the Inyo Mountains of Death Valley, California, K2 Gold Corporation (K2 Gold) seeks to build an open pit cyanide heap leach mine to extract gold on Conglomerate Mesa.<sup>73</sup> Indigenous Peoples in the region, like the Paiute Shoshone Tribe, are opposed to the increased development which will construct service roads and create noise pollution in the Valley.<sup>74</sup> These roads would carve a path through critical habitats for migrating deer, and through sacred sites.<sup>75</sup> K2 Gold has stated that the area has “low archaeological sensitivity.”<sup>76</sup> Katherine Bancroft, the Tribal Historic Preservation Officer for the Lone Pine Paiute-Shoshone Tribe, stated, “For millennia, our peoples have relied on these lands for traditional cultural uses, including subsistence hunting, gathering edible and medicinal plants, listening to relatives share our stories, and engaging in traditional ceremony. The Mesa is home to threatened Joshua trees, Inyo Rock Daisies, and over two dozen federally recognized threatened and endangered species”<sup>77</sup>

In Alaska, the Ambler Road project seeks to build infrastructure for copper and zinc mines in the Northwest region of the state.<sup>78</sup> The U.S. permitted this project, which will allow dredged materials to be discharged into the waters and wetlands near the 211-mile road.<sup>79</sup> This pollution will harm the waters and the fish,<sup>80</sup> thus, impacting the Indigenous Peoples in the area who rely on the fish for subsistence. The construction of the road itself will disrupt the ecosystem<sup>81</sup> which also impacts the lands, waters, and animals.<sup>82</sup> These resources sustain not only the Indigenous Peoples and their health, but also their culture.<sup>83</sup> The Tanana Chiefs Conference, Huslia, Allakaket, Alatna, Evansville and Tanana tribes filed a lawsuit against the U.S. for proceeding with this road without adequate consultation.<sup>84</sup> The U.S. Department of the Interior requested that the permits stay in place while litigation is pending and the U.S. consults with tribes.<sup>85</sup> As with Salmon River, the health risks associated with known pollution and contamination of the waters and lands are known by the U.S. government, but past practices indicate that

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<sup>73</sup> Sahagun, L. (2021, March 14). *A corporation wants to mine for gold near Death Valley. Native Tribes are fighting it.* Los Angeles Times.

<https://www.latimes.com/environment/story/2021-03-14/a-corporation-wants-to-mine-for-gold-near-death-valley-native-tribes-are-fighting-it>

<sup>74</sup> Sahagun, L. (2021, March 14). *A corporation wants to mine for gold near Death Valley. native tribes are fighting it.* Los Angeles Times.

<https://www.latimes.com/environment/story/2021-03-14/a-corporation-wants-to-mine-for-gold-near-death-valley-native-tribes-are-fighting-it>

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Testimony of Katherine Bancroft before the Energy and Mineral Resources Subcommittee of House Natural Resources Oversight Hearing on Mining Reform (2021, July 27).

<https://naturalresources.house.gov/imo/media/doc/Testimony%20-%20Ms.%20Kathy%20Bancroft%20-%20EMR%20Ov%20Hrg%2007.27.21.pdf>

<sup>78</sup> Naiden, A. (2021, December 11). *Environmentalists and Alaska villages continue court challenge of permits for Ambler Road Project.* Anchorage Daily News.

<https://www.adn.com/alaska-news/rural-alaska/2021/12/10/environmentalists-and-alaska-villages-continue-court-challenge-of-permits-for-ambler-road-project/>

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Earthworks *Biden administration acknowledges legal problems with Interior's Ambler road approval* (2022, Feb. 20).

<https://earthworks.org/releases/biden-administration-acknowledges-legal-problems-with-interiors-ambler-road-approval/>

they will not be adequately considered and allowing these permits to stay in place during this review continues to harm the impacted Indigenous Peoples.

CERD has acknowledged the rights violations attendant to U.S. incursions on Indigenous lands previously. In 2006, CERD's Early Warning and Urgent Action Procedure Decision on the Western Shoshone ancestral lands stated that the U.S. must "pay particular attention to the right to health and cultural rights of the Western Shoshone people, which may be infringed upon by activities threatening their environment and/or disregarding the spiritual and cultural significance they give to their ancestral lands."<sup>86</sup> Within the context of the discriminatory legal framework and U.S. efforts to develop ancestral Indigenous lands, CERD noted that these rights must be included within federal actions. Yet, this pattern is repeating. If the U.S. continues to approve projects despite these known adverse impacts to Indigenous Peoples, the U.S. will prioritize development and mineral production over the rights of Indigenous Peoples and the threats to health that are attendant to many of these projects. Impacts to the environment and Indigenous health fundamentally threaten the ability to access fundamental freedoms.

- c. *The U.S. violates the right to equal participation in cultural activities pursuant to Article 5(e)(vi) because of the extractive mining harms and destruction of Indigenous sacred sites and religious practices.*

Additionally, extractive development also represents a threat to culture under Article 5(e)(vi), as Indigenous lands often have ties to sacred sites and resources. Mines that are on or near Indigenous lands can damage or destroy sacred sites, prohibit religious practices, and impact resources central to Indigenous identity and religion. This violates Indigenous Peoples' right to culture under ICERD as it impairs or prohibits access to a critical component of Indigenous culture.

Most development impacts lands with important religious or sacred meaning to Indigenous Peoples and there are a number of proposed mines, many in the Southwest U.S., that threaten these places and practices. On the ancestral lands of the Tohono O'odham, Pasqua Yaqui and Hopi Tribes in Arizona, Hudbay Minerals seeks to develop the Rosemont mine, an open-pit gold mine in the Santa Ritas mountains.<sup>87</sup> On these lands are burial grounds, sacred sites, and critical resources for the tribes like water, fish, and game.<sup>88</sup> The impacted tribes have sued to stop Rosemont's development, stating that it will desecrate sacred land, waterways, and wildlife.<sup>89</sup> If completed, Rosemont would be one of the largest mines in the U.S. and would leave a mile-wide crater and "a waste pile the height of a skyscraper" equivalent to 2 billion tons of mining waste.<sup>90</sup> The impacted tribes brought and won a lawsuit to block the

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<sup>86</sup> United Nations Committee on the Elimination of Racial Discrimination (2006, March 10). *Early Warning and Urgent Action Procedure for the United States*. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspzOI9YwTXeABruAM8pBAK2NoyeqcMbmXNgOOeCr1oILT6ALuItFZLrmUsh7ZwCERBkWbTA8OcfJkc5cIvbuB0RkaXAS9J6za8eS QJb7rzMU>

<sup>87</sup> Healy, J., & Baker, M. (2021, December 27). *As miners chase clean-energy minerals, tribes fear a repeat of the past*. The New York Times. <https://www.nytimes.com/2021/12/27/us/mining-clean-energy-antimony-tribes.html>

<sup>88</sup> *Id.*

<sup>89</sup> Naiden, A. (2021, December 10). *Ariz. Tribes, Enviro say copper mine suit must go on*. Law360. Retrieved from <https://www.law360.com/articles/1491023/ariz-tribes-enviro-say-copper-mine-suit-must-go-on>

<sup>90</sup> Gilger, L. (2019, August 29). *Environmentalists, tribes battle rosemont mine in Southeastern Arizona*. KJZZ. <https://kjzz.org/content/960201/environmentalists-tribes-battle-rosemont-mine-southeastern-arizona>

U.S. from permitting HudBay's project that would dump mine waste on public lands.<sup>91</sup> Yet, another lawsuit to halt the development in the region was dismissed in June 2022, which has allowed Hudbay to continue development in the region.<sup>92</sup> This does not protect or respect the connection the many tribes have to these lands.

Northwest of the Rosemont Mine in Arizona is the Big Sandy River Valley, which may also house a proposed lithium mine.<sup>93</sup> This mine threatens a sacred hot spring, known as Ha'Kamwe' by the Hualapai Tribe.<sup>94</sup> The valley itself was a salt route, connecting tribes in central Utah to California and the coast; its importance is depicted in Indigenous songs and oral traditions.<sup>95</sup> Indigenous Peoples have many uses of the lands, including harvesting native plants from the riverbanks.<sup>96</sup> It is also the Hualapai Trail of Tears, the site of the U.S. forced removal and march to Big Sandy.<sup>97</sup> USA Lithium Ltd. did not tell the Tribe that it had begun exploration on the nearby lands, which are managed by the U.S. Bureau of Land Management (BLM), and tribal members recount seeing the installment of a new network of roads and over 50 test wells, which span 300 feet deep into the earth.<sup>98</sup> In 2020, the BLM invited the Tribe to consult on the project but denied the Tribe's request to be a coordinating agency.<sup>99</sup> The Hualapai also offered to provide education about the site's cultural and religious significance, but the BLM again rejected that offer.<sup>100</sup> And yet, the project's environmental assessment indicates that the cultural and religious values are "to be determined" and that there is consultation underway.<sup>101</sup> The BLM has also indicated that there are four cultural sites, and it will attempt to avoid only one.<sup>102</sup> This U.S. agency's assessment of the region does not reflect the cultural value of this Valley to the Indigenous Peoples that have ties to the land, and has repeatedly excluded them from the development process.

Another Arizona development project is the Resolution Copper Mine on Chi'chil Bildagoteel (Oak Flat), which is sacred ground to the San Carlos Apache Tribe in Arizona.<sup>103</sup> It is also the site of a U.S. government massacre of Indigenous Peoples.<sup>104</sup> The land was protected in 1955 by President Eisenhower against mining incursions, later invalidated during the Obama administration with a land swap law that

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<sup>91</sup> EarthJustice (2022, May 12). *9th U.S. Circuit Court of Appeals Upholds Landmark Ruling Blocking Arizona Copper Mine*.

<https://earthjustice.org/news/press/2022/9th-u-s-circuit-court-of-appeals-upholds-landmark-ruling-blocking-arizona-copper-mine>

<sup>92</sup> Abbott, D. (2022, June 13). *Hudbay wins latest court battle over the Rosemont Mine as heavy equipment continues to roll in the Santa Rita Mountains*. Arizona Mirror. Retrieved from

<https://www.azmirror.com/2022/06/01/hudbay-wins-latest-court-battle-over-the-rosemont-mine-as-heavy-equipment-continues-to-roll-in-the-santa-rita-mountains/>

<sup>93</sup> Healy, J., & Baker, M. (2021, December 27). *As miners chase clean-energy minerals, tribes fear a repeat of the past*. The New York Times. <https://www.nytimes.com/2021/12/27/us/mining-clean-energy-antimony-tribes.html>

<sup>94</sup> *Id.*

<sup>95</sup> Krawczyk, K. (2021, June 10). *Mining for lithium, at a cost to indigenous religions*. Energy News Network.

<https://energynews.us/2021/06/10/mining-for-lithium-at-a-cost-to-indigenous-religions/>

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Healy, J., & Baker, M. (2021, December 27). *As miners chase clean-energy minerals, tribes fear a repeat of the past*. The New York Times. <https://www.nytimes.com/2021/12/27/us/mining-clean-energy-antimony-tribes.html>

<sup>104</sup> *Id.*

opened it up to development.<sup>105</sup> The Resolution Copper Mine is jointly owned by Rio Tinto and BHP Billiton and could supply up to a quarter of the U.S. demand for copper.<sup>106</sup> It will create 1.4 billion tons of ore from tailings that will be dumped outside of Phoenix, as well as use groundwater and disrupt natural resources including wildlife.<sup>107</sup> Apache Stronghold, an Indigenous non-profit organization, filed a suit to stop development, and states that the mine violates their religious rights and the 1852 Treaty of Sante Fe.<sup>108</sup> The U.S. Court of Appeals denied the Apache claim to Oak Flat on June 24, 2022, which allows this mine to proceed and states that the land transfer to the mining companies, “do [] not coerce the Apache to abandon their religion by threatening them with a negative outcome.”<sup>109</sup> The proposed mine will leave a 1.8-mile-wide crater, erasing the sacred site, a place for the Apache peoples to pray, dance, and practice ceremonies central to their religion.<sup>110</sup> This project, permitted by the U.S., does not merely impact the Apache’s right to culture, it destroys a central component.

There are over 50 different lithium projects in Nevada,<sup>111</sup> where 20 federally recognized tribes reside on 32 reservations.<sup>112</sup> Thacker Pass, a proposed lithium mine with a lifespan of 41-years, will destroy a dormant volcano on the lands of the Fort McDermitt Paiute and Shoshone Peoples.<sup>113</sup> And once active, the project is estimated to multiply the U.S. production of lithium by tenfold the U.S.<sup>114</sup> These lands are known as Peehee muh‘uh, meaning rotten moon, and are central to the Paiute and Shoshone culture as they were the site of a U.S. massacre.<sup>115</sup> Thacker Pass, in its lithium brine extraction process, will pollute

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<sup>105</sup> Stern, R. (2015, April 22). *A copper mine near Superior and Oak Flat Campground is set to destroy a unique, sacred recreation area - for fleeting benefits*. Phoenix New Times. <https://www.phoenixnewtimes.com/news/a-copper-mine-near-superior-and-oak-flat-campground-is-set-to-destroy-a-unique-sacred-recreation-area-for-fleeting-benefits-7287269>

<sup>106</sup> Block, S. (2021, June 3). *Mining Energy-Transition Metals: National aims, local conflicts - MSCI*. <https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947>

<sup>107</sup> Whitman, E. (2022, June 4). *New report provides terrifying detail of mining destruction coming for Oak Flat*. Phoenix New Times. <https://www.phoenixnewtimes.com/news/resolution-copper-mine-rosemont-environmental-report-forest-service-11342414>

<sup>108</sup> Kelety, J. (2022, July 2). *Biden administration says Oak Flat Land Swap should proceed despite lawsuit*. Phoenix New Times. <https://www.phoenixnewtimes.com/news/biden-administration-says-oak-flat-land-swap-should-proceed-11558259>

<sup>109</sup> Thompson, D. (2022, June 28). *U.S. Court of Appeals denies Apache claim to Oak Flat, approves copper mine in Arizona*. Native News Online. <https://nativenewsonline.net/environment/u-s-court-of-appeals-denies-apache-claim-to-oak-flat-approves-copper-mine-in-arizona>

<sup>110</sup> Healy, J., & Baker, M. (2021, December 27). *As miners chase clean-energy minerals, tribes fear a repeat of the past*. The New York Times. <https://www.nytimes.com/2021/12/27/us/mining-clean-energy-antimony-tribes.html>

<sup>111</sup> Holzman, J. (2022, April 19). *Mining for clean energy could undermine Biden's environmental justice goals*. Scientific American. <https://www.scientificamerican.com/article/mining-for-clean-energy-could-undermine-bidens-environmental-justice-goals/>

<sup>112</sup> *Map of Nevada tribes*. Nevada Indian Territory. <https://nevadaindianterritory.com/map/>

<sup>113</sup> Penn, I., Lipton, E., & Angotti-jones, G. (2021, May 6). *The Lithium Gold Rush: Inside the race to Power Electric Vehicles*. The New York Times. <https://www.nytimes.com/2021/05/06/business/lithium-mining-race.html>

<sup>114</sup> Flin, B. (2021, December 2). *'like putting a lithium mine on Arlington Cemetery': The fight to save sacred land in Nevada*. The Guardian. <https://www.theguardian.com/us-news/2021/dec/02/thacker-pass-lithium-mine-fight-save-sacred-land-nevada>

<sup>115</sup> Holzman, J. (2022, April 19). *Mining for clean energy could undermine Biden's environmental justice goals*. Scientific American. <https://www.scientificamerican.com/article/mining-for-clean-energy-could-undermine-bidens-environmental-justice-goals/>

aquifers and water supply for the nearby Indigenous Peoples.<sup>116</sup> It will also impact ancestral burial sites, resources that are harvested for medicines and ceremonies, and local wildlife like golden eagles, which are sacred to the tribes.<sup>117</sup> Projects like Thacker Pass, in their pollution of the environment and location of development, can therefore impact more than the lands and health, but also the culture of Indigenous Peoples whose identity and religious practices are tied to their ancestral lands, waters, and resources. In a statement, “Atsa Koodakuh wyh Nuwu” (People of Red Mountain) stated, “Thacker Pass is essential to the survival of our traditions. Our traditions are tied to the land. When our land is destroyed, our traditions are destroyed.”<sup>118</sup> A mine that destroys these lands and resources would permanently destroy access to those practices, and their right to culture.

These projects are not limited to the western U.S., but rather found throughout the country on any lands that hold promise for extraction. The Menominee Indian Tribe of Wisconsin is threatened by the proposed Back 40 mine, an open pit metallic sulfide mine that would provide minerals and serve as a processing site for gold, copper, zinc, and other metals.<sup>119</sup> The Menominee’s sacred place of origin sits at the mouth of the Menominee River, which is also home to several sacred sites and burial mounds.<sup>120</sup> The Back 40 could contaminate this waterway and destroy these important cultural resources and is currently in the permitting process.<sup>121</sup> The design for the mine is nearing completion and the developer has failed to consult the Menominee at any stage in planning the design.<sup>122</sup> Once the design is complete the developer will initiate permitting processes and construction activities that will not only irreparably damage the cultural and spiritual significance of Menominee sacred places but will also jeopardize the health of the Menominee river and the flora and fauna which depend on its clean flows.<sup>123</sup>

The U.S. has not acknowledged to date the ways that increased development significantly threatens many Indigenous Peoples’ rights. In the U.S.’s state party report to CERD, the U.S. states that five agencies have entered into a Memorandum of Understanding to protect Indigenous sacred sites, which has included education, training and “periodic listening sessions with tribes.”<sup>124</sup> While these steps are important, listening sessions do not rise to the level of protection that implementing FPIC would offer to Indigenous Peoples whose right to culture is threatened with each new development on their lands.

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<sup>116</sup> *Id.*

<sup>117</sup> Cultural Survival, First Peoples Worldwide, Batani Fund, Aborigin Forum, Earthworks, and the Society for Threatened Peoples. (2022, March 1). *Joining together for a just transition: Indigenous Leadership in Emerging Green Economies*. Cultural Survival Quarterly Magazine.

<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/joining-together-just-transition-indigenous-leadership>. See also Flin, B. (2021, December 2). *'like putting a lithium mine on Arlington Cemetery': The fight to save sacred land in Nevada*. The Guardian.

<https://www.theguardian.com/us-news/2021/dec/02/thacker-pass-lithium-mine-fight-save-sacred-land-nevada>

<sup>118</sup> People of Red Mountain. (2021, May 20). *People of red mountain statement of opposition to Lithium Nevada Corp's proposed Thacker Pass Open pit lithium mine*. Sierra Nevada Ally.

<https://sierranevadaally.org/2021/05/20/people-of-red-mountain-statement-of-opposition-to-lithium-nevada-corps-pr-opposed-thacker-pass-open-pit-lithium-mine/>

<sup>119</sup> The Back Forty Mine Project. *No Back 40 Mine*. <http://www.noback40.org/>

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> U.N. Committee on the Elimination of Racial Discrimination (2021, June 2). *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*.

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUSA%2f10-12&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUSA%2f10-12&Lang=en)

- d. *The U.S. violates Indigenous Peoples' economic rights pursuant to Article 5(e) by perpetuating extractive dealmaking that does not benefit the tribes most impacted by the development.*

While Indigenous tribes could provide 10 percent of the U.S.'s total energy, and 6.7 percent of U.S.'s renewable energy capacity,<sup>125</sup> they are excluded from the conversation and decision-making. Clean Energy Finance Forum states: "Barriers to accessing capital, limited technical expertise and transmission infrastructure, regulatory hurdles, and minimal knowledge of sovereignty and federal Indian law amongst business and financial institutions currently prevent tribes from actualizing benefits of the renewable energy transition."<sup>126</sup> In effect, the operating practice has excluded Indigenous Peoples from participating in the energy transition. And worse, the new policies do not consider the harmful impacts to tribes. At once there is limited opportunity and increased harm caused by the energy transition. Though the Executive Order on Tackling the Climate Crisis at Home and Abroad references Indigenous Peoples, it merely notes that the policy will bring jobs to Indigenous communities often plagued by pollution and economic shifts.<sup>127</sup> Jobs are temporary, though, and the extractive nature of these projects should provide sustainable returns to the communities most impacted. In CERD's 2014 Concluding Observations, CERD stated: "the adverse effects of economic activities related to the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the rights to land, health, environment and the way of life of indigenous peoples and minority groups living in those regions."<sup>128</sup> Without a policy that reflects this, the rising demand for transition minerals will uniquely and disproportionately impact Indigenous Peoples economic rights under ICERD.

- e. *The U.S. violates Indigenous Peoples' rights to adequate remedies pursuant to Article 6 because the legal frameworks do not provide adequate damages, nor do they recognize the harm of these rights violations.*

There are inadequate remedies available to Indigenous Peoples due to a discriminatory historical legal framework. When lands, waters, resources, culture, and sacred sites are destroyed, Indigenous Peoples are unable to seek adequate reparation or damages under the ICERD. There is no framework that adequately protects Indigenous rights. These remedies do not address the underlying discriminatory principles that allow for these violations to take place.

The Mining Law of 1872 is foundational to extractive development in the U.S. and inhibits Indigenous Peoples' ability to challenge development that they have not consented to. The Mining Law gives priority

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<sup>125</sup> Milbrandt, A., Heimiller, D., & Schwabe, P. (2018, July). *Techno-Economic Renewable Energy Potential on Tribal Lands*. <https://www.nrel.gov/docs/fy18osti/70807.pdf>. See also Tallmadge, M. (2019, December 11). *What is holding back renewable energy development in Indian Country?* Clean Energy Finance Forum. <https://www.cleanenergyfinanceforum.com/2019/12/11/what-is-holding-back-renewable-energy-development-in-indian-country>

<sup>126</sup> Tallmadge, M. (2019, December 11). *What is holding back renewable energy development in Indian Country?* Clean Energy Finance Forum. <https://www.cleanenergyfinanceforum.com/2019/12/11/what-is-holding-back-renewable-energy-development-in-indian-country>

<sup>127</sup> The United States Government. (2021, January 27). *Executive Order on Tackling the Climate Crisis at Home and Abroad*. The White House. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

<sup>128</sup> United Nations Committee on the Elimination of Racial Discrimination. (2014, August 29). *Concluding observations on the combined seventh to ninth periodic reports of United States of America*. OHCHR. [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD\\_C\\_USA\\_CO\\_7-9\\_18102\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf)

to development on public lands, often at the cost of Indigenous Peoples and Tribes whose treaty rights were understood to protect their rights to hunt, fish, and practice religion on those lands.<sup>129</sup> This law, which is currently being reviewed, has not been meaningfully updated since 1872 and prioritizes development over rights. Other avenues for legal recourse, such as challenging permitting or environmental assessments, have resulted in varying legal success but not reparation for the damages caused by these developments.

Further, Indigenous relationships with the land are unique in that they encompass not just an economic relationship but, in many cases, a cultural, spiritual, and ancestral dimension. Where groundwater can be cleaned, and eroded soil restored, there are no ways to repair an interrupted ecosystem, one that has been permanently disturbed. This harm will then disrupt the lives of the people whose culture, religion, and way of life are tied to the plants and animals that thrive on those lands. There is no adequate or sufficient remediation. The aftermath of extraction is catastrophic for Indigenous Peoples, and there is no remedy once completed; thus, the solution must occur before the drill hits the soil. The complete destruction of an Indigenous sacred site, for example, can never be remedied.

*f. The U.S. permits violates the right to security and the right to peaceful assembly and association pursuant to Articles 5(b) and 5(d)(viii) as there is a pattern of increased violence against Indigenous women; increased violence to Indigenous human rights defenders; and increased law enforcement harassment and militarization near protest sites.*

Globally, extraction is tied to violence against Indigenous Peoples. Former United Nations (UN) Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz, noted that the extractive sectors cause “serious violations of indigenous peoples’ land, self-governance and cultural rights.”<sup>130</sup> This bears out in several ways for Indigenous Peoples around the world. For Indigenous Peoples who oppose development, they may be forced to relocate, severing their connection to ancestral lands.<sup>131</sup> For those who stay, some—including children—provide labor to the mining companies absent any regulations to protect their economic and social rights.<sup>132</sup> Reports of exploitative labor practices, dangerous working conditions, and other labor abuses towards Indigenous workers demonstrate the inappropriate working conditions with little oversight.<sup>133</sup> Companies quickly move in short-term workers to meet the demand for labor, and this increase in temporary workers coincides with an increase in criminal activity such as

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<sup>129</sup> Healy, J., & Baker, M. (2021, December 27). *As miners chase clean-energy minerals, tribes fear a repeat of the past*. The New York Times. <https://www.nytimes.com/2021/12/27/us/mining-clean-energy-antimony-tribes.html>

<sup>130</sup> Aylwin, J. & Rohr, Johannes (2021) *Int’l Work Grp. for Indigenous Affair; the UN Guiding Principles on Business & Human Rights: Progress Achieved, The Implementation Gap and Challenges for the Next Decade*.

<https://www.iwgia.org/en/resources/publications/305-books/4419-the-un-guiding-principles-on-business-human-rights-and-indigenous-peoples-%E2%80%93-progress-achieved,-the-implementation-gap-and-challenges-for-the-next-decade.html>

<sup>131</sup> *Data reveals transition minerals 'mining abuses'*. reNEWS. (2021, February 3).

<https://renews.biz/66196/new-data-reveals-transition-minerals-mining-abuses/>

<sup>132</sup> *Human rights abuse cannot be the price paid for Essential Energy Transition*. Business & Human Rights Resource Centre. (2021, February 2).

<https://www.business-humanrights.org/en/from-us/media-centre/human-rights-abuse-cannot-be-the-price-paid-for-essential-energy-transition/>

<sup>133</sup> *Id.*



assaults and sex trafficking of Indigenous women and girls.<sup>134</sup> These workers, who reside in temporary housing and have limited contracts, often face no repercussions for crimes against Indigenous women because there are logistical problems with locating them, or jurisdictional issues with prosecuting them within the current criminal law regime in Indian Country.<sup>135</sup>

In the U.S., after the discovery of oil in the Bakken Formation of North Dakota in 2006, the region experienced an increase in workers to the area and more importantly the creation of “man camps,” which are temporary camps that house oil and gas workers.<sup>136</sup> As a result, the area experienced an exponential increase in the level of violence against Indigenous women. The U.S. Bureau of Justice found that violent crime increased by 30 percent in oil producing counties in the Bakken, and that 53 percent of these crimes were committed by strangers to the victim.<sup>137</sup> There was no elevated crime in other counties during the same time period.<sup>138</sup> This threat of violence is certain to increase with extraction; the National Congress of American Indians has already passed a resolution calling attention to the harm attendant with proposed man camps at Thacker Pass.<sup>139</sup>

There is also a known increase in police harassment and an increasingly militarized response to Indigenous Peoples protesting the development of their land. In its 2021 response to a request under its Early Warning and Urgent Action Procedure regarding the Line 3 pipeline, CERD identified “allegations of arrests, racial profiling, and excessive use of force, including alleged incidents of the intentional infliction of pain, against persons from the Anishinaabe communities by law enforcement officials and private security companies.”<sup>140</sup> This is a shared experience by Indigenous Peoples globally, and in the U.S., which has committed to further actions chilling the right to peaceful assembly. In the last 5 years, the U.S. has passed over 35 laws designed to chill public protest.<sup>141</sup>

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<sup>134</sup> Fox, L. (2019, July 4). *'man camps' may be a threat to Yukon Indigenous women and girls, say advocates*. Yukon News.

<https://www.yukon-news.com/news/man-camps-may-be-a-threat-to-yukon-indigenous-women-and-girls-say-advocates/>

<sup>135</sup> *Id.*

<sup>136</sup> *Violence from Extractive Industry 'man camps' endangers indigenous women and children*. First Peoples Worldwide. (2020, January 29).

<https://www.colorado.edu/program/fpw/2020/01/29/violence-extractive-industry-man-camps-endangers-indigenous-women-and-children>

<sup>137</sup> Finn, K. (2020, March 30). *Recalibrating risk assessment for indigenous women*. GreenMoney Journal.

<https://greenmoney.com/recalibrating-risk-assessment-for-indigenous-women/>

<sup>138</sup> Martin, K., Barrick, K., Richardson, N. J., Liao, D., & Heller, D. (2019, February 12). *Violent Victimization Known to Law Enforcement in the Bakken Oil-Producing Region of Montana and North Dakota, 2006-2012*.

<https://www.ojp.gov/pdffiles1/bjs/grants/252619.pdf>

<sup>139</sup> The National Congress of American Indians (2022, June 12-16). *The National Congress of American Indians Resolution #ANC-22-007: Supporting Indigenous Safety through Opposing Man-Camps for Thacker Pass*.

<https://ncai.assetbank-server.com/assetbank-ncai/action/viewDownloadSharedAsset?download=75486967435a4e61393853722f597a356678666c34673d3d&asset=3151515a30736d6e4c4c4667304136593075696b43413d3d>

<sup>140</sup> Shepherd, V. (2022, April 29). *Letter to U.S. Representative from the U.N. Committee on Elimination of Racial Discrimination*. OHCHR.

[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_ALE\\_USA\\_9558\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_9558_E.pdf)

<sup>141</sup> International Center for Not-for-Profit Law. (2017, January). *US Protest Law Tracker*. ICNL.

<https://www.icnl.org/usprotestlawtracker/?location=&%3Bstatus=enacted&%3Bissue=&%3Bdate=&%3Btype=legislative>

In CERD's 2014 Concluding Observations to the U.S., the Committee asked the U.S. to "intensify its efforts to prevent and combat violence against women."<sup>142</sup> However, the U.S. has not acknowledged this direct link to violence in its state party report to CERD. Although the report does discuss violence in Indian Country,<sup>143</sup> it does not indicate the known link between extractives and how increased development will increase the violence. Failure to acknowledge and address the ways that violence is often attendant to extraction continues to create a discriminatory pattern of permitting development that leads to disproportionately high rates of violence against Indigenous Peoples.

*g. The United Nations Declaration on the Rights of Indigenous Peoples informs ICERD violations relating to Indigenous Peoples, including the right to FPIC.*

The standard by which Indigenous rights should be upheld is measured by adherence to the UN (United Nations) Declaration on the Rights of Indigenous Peoples ("the Declaration"), which sets forth the "minimum standards for the survival, dignity, and well-being" of Indigenous peoples.<sup>144</sup> The Declaration articulates corresponding rights under the ICERD that further delineate the unique rights of Indigenous Peoples.<sup>145</sup> These rights include individual and collective rights to land, resources, and self-determination, including the right to culture – which includes sacred sites (Articles 11 and 12), the right to self-determined development priorities (Article 23 and 23), and more.

Indigenous Peoples' self-determined control and use of the areas impacted by extraction is thus protected by the Declaration, which states that Indigenous Peoples "have the right to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired," as well as to "own, use, develop and control" these lands and resources.<sup>146</sup> Recent research suggests that the majority of global transition mineral extraction occurs "on or near Indigenous Peoples or Peasant lands with adverse conditions for human rights-compatible permitting, consultation, and consent."<sup>147</sup> Thus, the Declaration should guide the U.S. – and all state's – development as these lands are often traditionally or presently owned or used by Indigenous Peoples.

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<sup>142</sup> United Nations Committee on the Elimination of Racial Discrimination (2014, August 29). *Concluding observations on the combined seventh to ninth periodic reports of United States of America*.

[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD\\_C\\_USA\\_CO\\_7-9\\_18102\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf)

<sup>143</sup> United Nations Committee on the Elimination of Racial Discrimination. (2014, August 29). *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*. OHCHR.

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUSA%2f10-12&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUSA%2f10-12&Lang=en)

<sup>144</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295. <https://www.refworld.org/docid/471355a82.html>

<sup>145</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295. <https://www.refworld.org/docid/471355a82.html>. See Art. 3 self-determination; Art. 7(2) right to peace and security; Art. 8(2)(b) effective redress for actions that deprive them of lands, territories or resources; Art. 11-12 culture, including sacred sites; Art. 17(3) discriminatory conditions of labor; Art. 19 FPIC; Art 20 political, social, and economic systems including subsistence & development; Art. 23 and 32 self-determined development priorities, including redress and mitigated impact; Art. 24 right to spiritual relationship with lands, territories, waters, and resources; Art. 26 right to traditional lands, territories and resources, including ownership, control, and development; Art. 29 right to conservation and protection of environment, including disposal of hazardous materials; Art. 37 recognition of treaties; Art. 40 effective remedies

<sup>146</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295. <https://www.refworld.org/docid/471355a82.html>

<sup>147</sup> Owen, J. R., Kemp, D., Harris, J., Lechner, A. M., & Lèbre, É. (2022, May 31). *Fast track to failure? energy transition minerals and the future of consultation and Consent*. Energy Research & Social Science. <https://www.sciencedirect.com/science/article/pii/S2214629622001694?via%3Dihub>

Another critical right that is articulated in Article 32 of the Declaration is that of FPIC.<sup>148</sup> FPIC requires that countries to “consult and cooperate in good faith” with Indigenous Peoples and their self-identified representatives to seek FPIC “prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”<sup>149</sup> Indigenous Peoples as a collective have a right to give or withhold their consent voluntarily and without coercion when they are affected by a project or activity.<sup>150</sup> They must be provided with the information needed to make this decision well in advance of the activity occurring. This right allows for a robust exercise of the collective right to self-determination, as it enshrines Indigenous communities’ ability to determine priorities for their peoples, lands, and resources.

CERD’s 2008 Concluding Observations included a recommendation that the U.S. adopt the Declaration as a guide for fulfilling its obligations as a state party to ICERD.<sup>151</sup> CERD’s 2014 Concluding Observations again reiterated that the U.S. “guarantee, in law and in practice” the right to FPIC.<sup>152</sup> When the U.S. endorsed the Declaration in 2010, it did so with reservations, including that its domestic frameworks were sufficient to protect these rights. While the Declaration is not a binding treaty, CERD has recommended that the “declaration be used as a guide to interpret the State party’s obligations under [ICERD] relating to indigenous peoples.”<sup>153</sup> Further, the Declaration does not have its own treaty body to enforce its guidelines. Therefore, it is appropriate for the CERD to address violations of these principles as they relate to issues covered by ICERD.

Since then, the U.S. has made no such efforts to codify or integrate the Declaration in part or in whole and remains committed to a substandard consultation-level engagement with Indigenous Peoples.<sup>154</sup> The U.S. has diminished FPIC to consultation, which is now essentially a box-checking procedure instead of a right that must be upheld and assessed iteratively. Thus, Indigenous Peoples do not have the ability to give or withhold consent for projects that affect them. This lack of power has consistently led to significant rights violations. Projects may thus be permitted even when Indigenous Peoples have expressed firm opposition in consultations as well as via litigation, media, protest, and other public outlets. Similarly, U.S. permitting is not required to account for impacts that occur beyond modern reservation boundaries, leaving Indigenous tribes with little recourse.

The U.S. is strong in its commitment to not uphold FPIC. In the U.S.’s state party report to CERD, it states, “the United States understands ‘free, prior, informed consent’ to call for a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before the actions

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<sup>148</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly*, Article 32. Adopted on 2 October 2007. <https://www.refworld.org/docid/471355a82.html>

<sup>149</sup>*Id.* at art. 17.

<sup>150</sup>*Id.* at art. 19.

<sup>151</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, United Nations 72nd Session. (2008 March 7), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/419/82/PDF/G0841982.pdf?OpenElement>

<sup>152</sup> United Nations Committee on the Elimination of Racial Discrimination (2014, August 29). *Concluding observations on the combined seventh to ninth periodic reports of United States of America*. [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD\\_C\\_USA\\_CO\\_7-9\\_18102\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf)

<sup>153</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, United Nations 72nd Session. (2008 March 7), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/419/82/PDF/G0841982.pdf?OpenElement>

<sup>154</sup> Memorandum from the Office of the President of the United States. *Tribal Consultation and Strengthening Nation-to-Nation Relationships*. 86 Fed. Reg. 7491 (Jan. 29, 2021). <https://www.federalregister.gov/d/2021-02075>

addressed in those consultations are taken.”<sup>155</sup> Meaningful consultation is not the standard of FPIC enshrined in the Declaration. FPIC permits a process that allows for Indigenous Peoples to consent or veto actions that impact their lands, waters, resources or peoples. The practice of extraction without consent not only violates ICERD in numerous ways, but also demonstrates the ways in which U.S. law is in direct contravention of critical rights under the Declaration, rights that are the foundation of Indigenous sovereignty and self-determination.

**IV. We encourage CERD to ask the U.S. the following questions:**

- a. How will the U.S. better integrate special measures into new and existing U.S. policies and agency actions so that the impact of increased mining for transition minerals does not perpetuate known harms to Indigenous Peoples?
- b. How will the U.S. reform its permitting and environmental assessment process to better incorporate Indigenous Peoples and seek their FPIC, when they reside on or near development projects, including when these projects impact ancestral or sacred lands? How will the consultation process be strengthened to reach the heightened level of FPIC enshrined by the Declaration and ensure full and effective participation of Indigenous Peoples?
- c. Please provide detailed information on the way that known human rights violations are being integrated into the process of approving and permitting extractive projects on and near Indigenous lands. Specifically, please detail how the ongoing and proposed projects at the Salmon River Mountains, Inyo Mountains, Ambler Road, Big Sandy River Valley, Oak Flat, Thacker Pass, Back 40 mine, and on ancestral Western Shoshone lands adequately address the opposition of the impacted Indigenous Peoples and how their rights under ICERD and the Declaration will be upheld.

**V. General recommendations:**

- a. Respect, protect, and fulfill Indigenous people’s rights to participate fully, in the political, economic, social, and cultural life of the State and secure their right to FPIC.
- b. Reform policies and proposed legislation that incentivizes the green economy to incorporate Indigenous Peoples’ rights under ICERD, the Declaration, and treaties between the U.S. and Indigenous tribes.
- c. Require that the consultation process and government-to-government relationship between the U.S. and Indigenous Peoples incorporate the right to FPIC.
- d. Require that corporations and companies that develop on or near Indigenous lands and territories, both ancestral and presently occupied, obtain the FPIC of Indigenous Peoples.
- e. Recognize that the U.S., consistent with the commitments that it has made under CERD and the Declaration, recognize the denial of rights to Indigenous Peoples as a human rights issue and begin to take action to rectify the above described human rights abuses.

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<sup>155</sup> United Nations Committee on the Elimination of Racial Discrimination. (2014, August 29). *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*. See page 128. OHCHR. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUSA%2f10-12&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUSA%2f10-12&Lang=en)

## VI. Conclusion

A true just transition that integrates Indigenous Peoples rights must be threaded throughout the U.S.'s new green energy policies. A low-carbon future is simply not possible without transition minerals,<sup>156</sup> which means that a low-carbon future necessitates some extraction and development on Indigenous lands. But there must be a focus on the people located where these transition minerals are mined, instead of simply prioritizing output. If the U.S. continues to pass policy after policy that does not reflect this truth, it will continue to further entrench historic inequities. It is known that extractive industry negatively impacts people and the planet; without changes the green economy driving transition mineral extraction will perpetuate this “boom or bust” practice that leaves Indigenous Peoples environmentally and economically depleted on their own lands. The U.S. will perpetually exclude Indigenous Peoples access to these mineral reserves and decisions will be made without Indigenous consent, allowing development to proceed in a way that threatens each of the rights discussed above. The UN Global Consultation on the Right to Development accurately stated: “the most destructive and prevalent abuses of Indigenous rights are the direct consequences of development strategies that fail to respect [Indigenous Peoples’] fundamental right of self-determination.”<sup>157</sup> In the U.S. the failure to solicit consent from Indigenous tribes is not only a violation of their human rights, but also their treaty rights. As climate change has revealed and perpetuated existing inequity in global communities, the U.S. must not rush to address climate change in ways that further these disparities and erode Indigenous rights.

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<sup>156</sup> Hund, K. Climate-Smart Mining: Minerals for Climate Action. The World Bank.  
<https://www.worldbank.org/en/topic/extractiveindustries/brief/climate-smart-mining-minerals-for-climate-action>

<sup>157</sup> Carmen, A. (2015, March). *Corporations and the Rights of Indigenous Peoples: Advancing the Struggle for Protection, Recognition, and Redress at the Third UN Forum on Business and Human Rights*. Cultural Survival Quarterly Magazine.  
<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/corporations-and-rights-indigenous-peoples-advancing>