

I. Introduction: Business and Human Rights in the United States

1. The Water Protector Legal Collective (WPLC), a legal organization based in the United States, provides this submission to highlight systemic human rights concerns related to corporate impunity, extractive industries, and the criminalization of Indigenous Peoples and Human Rights Defenders (HRDs). These issues are particularly pronounced in the context of fossil fuel and mineral extraction industries, where corporate actions may often conflict with environmental and human rights concerns.
2. In 2010, the U.S. Supreme Court's ruling in *Citizens United v. FEC*ⁱ acknowledged corporations as legal persons with heightened first amendment and free speech rights, allowing them to wield considerable influence over politics. The decision has resulted in corporations' increased lobbying to push their interests. In light of the current administration Executive Order declaring a "National Energy Emergency,"ⁱⁱ as fossil fuel and transition mineral mining increases quickly, it is critical that the U.S. government work to ensure that business practices align with human rights standards and international norms.
3. This submission aims to provide the United States during the Universal Periodic Review recommendations on best practices to better adhere to its international obligations and strengthen its commitment to corporate accountability, particularly in relation to extractive industries. The U.S. government can take important steps to increase compliance of the state and private actors, with international standards for best practices for corporate responsibility, ensuring the rights of Indigenous Peoples and the environment are respected.

II. International Human Rights Standards and Best Practices

4. Several key international treaties and standards set out best practices for corporations, particularly those operating in the extractive industries, and the United States has an opportunity to bring its laws and policies into alignment with those best practices to become a leading country for implementing those best practices.
5. Internationally-accepted business and human rights standards include the OECD Guidelines for Multinational Enterprisesⁱⁱⁱ, which emphasize responsible business conduct, including respect for human rights, environmental protection, and transparency in dealings with host countries. The U.N. Guiding Principles on Business and Human Rights (UNGPs)^{iv} further outlines the corporate responsibility to avoid complicity in adverse impacts and to mitigate risks where extractive industries operate.
6. Further best practices include the Extractive Industries Transparency Initiative (EITI)^v promotes transparency in the management of natural resources, calling for companies to disclose payments made to governments. Additionally, the International Finance

Corporation Performance Standards on Environmental and Social Sustainability (IFC Performance Standards)^{vi} provide a framework for managing environmental and social risks in project financing. Good International Industry Practice (GIIP)^{vii} are the global standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

7. These international frameworks collectively underscore the importance of aligning U.S. policies with global best practices, ensuring that U.S. companies operating in the extractive sectors not only comply with domestic laws but also adhere to global norms of sustainability, human rights considerations, and transparency. Harmonizing U.S. regulations with these standards would enhance global competitiveness, improve corporate accountability, and mitigate reputational and legal risks for U.S. corporations.

III. Private and State Actors Operating Inconsistent with Business and Human Rights Standards: Dakota Access Pipeline and Transitional Mineral Mining

8. Today, approximately 54% of energy transition minerals are on or near Indigenous lands^{viii} with more than 75% of lithium, copper, and nickel reserves within 35 miles of Native American reservations.^{ix}
9. In the United States, much of the extractive industry including oil, gas and mineral mining, occurs on Indigenous lands, threatening vital water sources, as well as cultural and sacred sites and landscapes. Despite existing legislation, governmental and executive policies intended to promote and protect consultation with Indigenous Nations, the process of “Tribal Consultation,”^x is often reduced to a formality, with governmental agencies failing to engage in good faith and without adequate consultation. This inadequate consultation fails to meet both U.S. legal requirements and heightened international standards like Free, Prior and Informed Consent (FPIC), leaving Indigenous communities vulnerable to exploitation and environmental degradation.
10. These concerns are echoed in the Foley Hoag report, an independent expert report commissioned by investors behind the Dakota Access Pipeline (DAPL) to provide recommendations for the oil company. The report highlights the need for the sector and for DAPL specifically to conform to international industry standards, such as those in the International Finance Corporation (IFC), the U.N. Declaration on the Rights of Indigenous Peoples, and the standard of FPIC. The report stresses that United States federal law falls short of these standards, and companies should engage in processes that go “beyond compliance” of domestic laws and policies to reduce risk in their activities.^{xi}

A. Dakota Access Pipeline

11. The Dakota Access Pipeline (DAPL) began construction in 2016 became operational in 2017, and cuts across four states: North Dakota, South Dakota, Iowa, and Illinois. DAPL continues to be opposed by the Oceti Sakowin (the Seven Council Fires or Great Sioux Nation) as the pipeline crosses unceded Treaty territory under the 1868 Fort Laramie Treaty.^{xii} DAPL, during construction, required horizontal directional drilling (HDD) under Lake Oahe, a part of the Missouri River, and is the primary source of water for the Standing Rock Sioux Reservation and Cheyenne River Reservation. Over 12 million people live in the Missouri watershed, which provides municipal water supply for over 3 million people, feeding at least 891 intakes for federal, private, and Tribal irrigation.
12. In 2017, the easement process was expedited under the first Trump administration, ending the stall in construction in 2016 when the U.S. Army Corps of Engineers refused to grant the easement for the construction to cross Lake Oahe. As a result, the construction of DAPL moved forward without adequate consultation with the Standing Rock Sioux Tribe. This same easement under Lake Oahe was invalidated by a D.C. Circuit Court in 2021.^{xiii} DAPL continues operating today without that easement or a full environmental impact statement.^{xiv}

B. Other Pipelines

13. There are nearly 1.4 million miles of pipelines that provide gas distribution, 300,000 miles in gas transmission, over 200,000 miles in oil pipelines, and over 100,000 miles that engage in gas gathering in the United States^{xv}. There are multiple Indigenous-led oppositions to various pipelines including Enbridge Line 3 and Enbridge Line 5. Although construction concluded for Line 3 in 2021, Line 5 construction is pending. Both of these pipelines impact the Great Lakes - equating to nearly 20% of the world's surface freshwater, making it the largest system of freshwater in the world;^{xvi} and the Mississippi River - one of the largest in North America. Line 3 did not engage adequately in consultations with Indigenous Nations, nor has Line 5. Currently, 7 Indigenous Nations in current day Michigan have withdrawn from consultations discussions with the U.S. Army Corps of Engineers because they have all learned the agency plans to fast track the easement process for HDD under the Straits lakebed under Trump's executive order declaring an energy emergency.^{xvii}

C. Transition Mineral Mining

14. Mining activities are on the rise due to increased demand for electrical vehicles and other modes of transitioning from fossil fuels, as well as precious minerals needed for technological demands.
15. The electric battery revolution in the United States will require billions of gallons of water to mine lithium in some of the driest regions of the world.^{xviii} The extraction process

most often involves pumping underground water to the surface to create evaporation pools where lithium-rich brine can be collected. The cost of such mining activities is immense: the water table drops, and fresh water sources disappear, leaving Indigenous Peoples and rural communities without enough water to drink or irrigate their crops. Wells and lagoons that once brimmed with water have now dried up near mining sites. Open pit mining produces 37 tons of CO₂ per ton of lithium mine, and results in a concave pit. Open pit mining also requires large swaths of land to be clear-cut and forever changed to clear the way to blast deeply within the earth to access Spodumene, the mineral rock in which lithium is found.

16. Open pit mines also use large amounts of water and a similarly operated lithium mine in Nevada, United States has used 12 billion gallons of fresh groundwater reserves since 2020,
17. causing the groundwater supply to dry up rapidly.^{xix} Any water that is left after water intensive activities will be severely contaminated with toxic materials that will kill off keystone species and leave the water polluted for at least 300 years.
18. As is the case for oil and gas activities, Indigenous Peoples and Nations experience the highest rates of disparate impacts for lithium and other mining activities, as is the case at Thacker Pass for the Northern Paiute and Western Shoshone,^{xx} and proposed copper mining at Oak Flat for the San Carlos Apache.^{xxi}

IV. Extractive Interests May Endanger Indigenous Peoples and Legal Tactics Used By Corporations May Suppress Civil Society Free Speech

19. Indigenous Peoples and Nations are often at the heart of extraction of fossil fuels and transition minerals, facing significant adverse impacts as a result. Because these communities are frequently found in areas rich in natural resources, these are often sought after by corporations without adequate consideration of their rights to land, water, sacred and cultural sites. Despite legal protections under U.S. law, their rights are constantly under threat due to the lobbying power of extractive industries. Historical legal frameworks and political dynamics may overlook these protections leaving Indigenous communities in a vulnerable position; thus, there is a clear need for stronger protections from both state and private actors.
20. In addition, increasingly, corporations are using legal tactics designed to suppress free speech and advocacy in an overall move to limit civic space. For civil society organizations, this is of particular importance and concern. One stark example that is ongoing is the strategic lawsuit against public participation (SLAPP) against Greenpeace entities in *Energy Transfer v. Greenpeace*. In this case, Energy Transfer - the owner and operator of DAPL, sued Greenpeace entities to recuperate financial losses due to the delay in construction of DAPL allegedly resulting from their advocacy at Standing Rock. Energy Transfer claims that Greenpeace entities were not only deeply involved in the #noDAPL protests, but also coordinated the protests and paid Indigenous protestors to be

present in the prayerful resistance camps in 2016-2017 on unceded Treaty territory of the Oceti Sakowin.^{xxii}

21. Energy Transfer received a jury verdict holding Greenpeace entities liable for all of its claims for action for just over \$666 million dollars.^{xxiii} Part of the defamatory claims Greenpeace entities were held liable for were: 1) DAPL traverses Standing Rock Sioux Tribe's lands; 2) Energy Transfer and DAPL used excessive force against peaceful protestors; and 3) Energy Transfer and DAPL intentionally desecrated Standing Rock Sioux Tribe's cultural resources. Foremost, Greenpeace entities are not in a position to answer for these statements - not only were multitudes of civil society organizations, as well as human rights experts based in both the United Nations and Organization of American States mechanisms reporting closely on the adverse impacts experienced by the Indigenous, grassroots-led #noDAPL movement, but these statements are also true. The lands DAPL crosses are unceded Treaty territory lands for which the Standing Rock Sioux Tribe, as part of the Oceti Sakowin, is a successor - those are their lands. The excessive use of force by both local law enforcement and private security and military actors hired by Energy Transfer is well documented.^{xxiv} The destruction of the Standing Rock Sioux Tribe's cultural and burial sites are also well documented by human rights experts.^{xxv}
22. This case has set a concerning precedent, as the favorable jury verdict gives legal cover for an attempt to rewrite Indigenous history and further chills free speech activities of civil society organizations that would express opposition to extractive industry interests or advocate for corporate accountability. It is thus important for both public and private actors to honor their obligations under domestic and international standards.

V. Prior Universal Periodic Review Recommendations

23. During the Third Cycle of the Universal Periodic Review recommendations included: eliminating the gap between Indigenous and non-Indigenous populations;^{xxvi} addressing housing and sanitary concerns for Indigenous communities;^{xxvii} and to develop norms to ensure FPIC of Indigenous Peoples when projects could potentially impact their territories and original ways of life in accordance with Sustainable Development Goals 10 and 16.^{xxviii} There were no recommendations regarding the protections of free speech, adherence to business and human rights principles, or human rights defenders in the context of extractive industry during the Third Cycle Review.

VI. United States Government Response

24. During Third Cycle Review, under the first administration of President Trump, the United States country report addressed violence against Indigenous women and consultations with Indigenous Nations,^{xxix} and addressed free speech concerns.^{xxx}

25. Several of the provisions addressed in regards to violence against Indigenous women are no longer applicable as the task forces that were developed to combat violence in Indian Country have been disbanded and consultation practices are either being fast tracked or ignored.
26. Free speech concerns that are addressed in the country report include defining actions that are not protected by the Constitution and include inciting violence or injury to persons or property, as well as harassment or intimidation. The country report also states that it does not criminalize speech that is expressive conduct no matter how offensive or harmful it is to other groups. However, civil society organizations are experiencing chilling of free speech and related activities due to current political policies due to an increase in power from extractive industries.
27. The U.S. has not specifically addressed business and human rights principles in the context of extractive industry.

VII. Other U.N. and Regional Human Rights Bodies Recommendations

28. During its 107th Session, the CERD recommended the United States take proactive measures against excessive use of force by law enforcement against Indigenous Peoples;^{xxxix} ensure Indigenous Peoples were not met with excessive force from neither local law enforcement nor private military and security companies during peaceful protest;^{xxxix} ensure that laws against environmental pollution, particularly that affecting Indigenous Peoples, are enforced and that transnational corporations registered within the country do not have adverse effects on human rights and ways of life of Indigenous Peoples;^{xxxix} and further action to uphold bilateral Treaties made with Indigenous Nations, strengthen FPIC practices, and protect Indigenous Peoples from adverse impacts of extractive industry and other infrastructure projects.^{xxxix} The CERD also recommended the United States ratify other multilateral human rights treaties,^{xxxix} and to continue consultations with civil society.
29. Since the CERD review of the United States in 2022, the conditions informing the concluding observations noted here in this submission have all worsened.
30. During its 139th Session, the CCPR recommended the United States take proactive steps to prevent excessive force by law enforcement against Indigenous Peoples;^{xxxix} ensure Indigenous Peoples' right to life in the context of climate change and in particular ensure there is safe and clean drinking water made available;^{xxxix} guarantee the right to peacefully protest for environmental activists and Indigenous protestors while preventing administrative and criminal sanctions against such activity, and provide appropriate training for law enforcement;^{xxxix} guarantee access and effective protection of Indigenous Peoples' lands and sacred sites from adverse impact of extractive industries, military infrastructure and toxic and nuclear waste, as well as complying with FPIC procedures

and adhering to bilateral Treaties with Indigenous Peoples.^{xxxix}

31. Since the CCPR review of the United States in 2023, the conditions informing the concluding observations noted here in this submission have all worsened.

VIII. Recommended Questions

32. How does the United States plan on ensuring private actors located and incorporated within its borders adhere to the U.N. Business and Human Rights Principles?
33. How does the United States plan to respect Indigenous rights such as FPIC, and work to build better relationships with Indigenous Nations?
34. How does the United States plan to uphold and protect constitutional free speech and other activities standards, and work towards protecting civil society organizations against retaliatory SLAPP lawsuits?

IX. Suggested Recommendations

35. The United States should ratify remaining multilateral human rights treaties.
36. The United States should reaffirm its commitment to the U.N. Business and Human Rights Principles and the U.N. Declaration on the Rights of Indigenous Peoples.
37. The United States should ensure domestic implementation of the multilateral human rights treaties it has ratified and align domestic norms with international best corporate practices.
38. The United States should implement the U.N. Declaration on Human Rights Defenders.
39. The United States should implement a federal anti-SLAPP statute aligned with the European Union’s anti-SLAPP statute, to prevent interests that seek to chill free speech from weaponizing the judicial system against their political opponents.

ⁱ 558 U.S. 310 (2010), <https://supreme.justia.com/cases/federal/us/558/310/>.

ⁱⁱ See E.O. - Declaring A National Energy Emergency (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/>.

ⁱⁱⁱ OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (June 8, 2023), https://www.oecd.org/en/publications/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en.html.

^{iv} Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (Jan. 1, 2012), <https://www.ohchr.org/en/publications/reference-publications/guiding-principles-business-and-human-rights>.

^v Extractive Industries Transparency Initiative (2024-2028), <https://eiti.org/sites/default/files/EITI%20Strategic%20priorities%202024-2028.pdf>.

^{vi} IFC Performance Standards on Environmental and Social Sustainability (Jan. 1, 2012),

<https://www.ifc.org/content/dam/ifc/doc/mgrt/ifc-performance-standards.pdf>.

^{vii} The World Bank Environmental and Social Framework (Aug. 4, 2016),

<https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf>.

^{viii} Julia Simon, *Demand for minerals sparks fear of mining abuses on Indigenous peoples' lands*, National Public Radio (Jan. 29, 2024), <https://www.npr.org/2024/01/29/1226125617/demand-for-minerals-sparks-fear-of-mining-abuses-on-indigenous-peoples-lands>.

^{ix} Julia Simon, *Demand for minerals sparks fear of mining abuses on Indigenous peoples' lands*, National Public Radio (Jan. 29, 2024), <https://www.npr.org/2024/01/29/1226125617/demand-for-minerals-sparks-fear-of-mining-abuses-on-indigenous-peoples-lands>.

^x *What is Tribal Consultation?*, U.S. Dept. of Interior - Indian Affairs, <https://www.bia.gov/service/tribal-consultations/what-tribal-consultation>. Presidential Memorandum, Tribal Consultation and Strengthening Nation-to-Nation Relationships (Jan. 26, 2021), <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>. See *Tribal Comments Received during U.S. Department of the Interior Consultations on the November 5, 2009 Presidential Memorandum*, <https://www.doi.gov/sites/doi.gov/files/executive-summary-tribal-comments-received-on-2009-pres-memo.pdf>. See *Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions*, U.S. Dept. of the Interior (Jan. 2017), <https://www.doi.gov/sites/doi.gov/files/report-improving-tribal-consultation-and-tribal-involvement-jan-2017.pdf>. E.O. 13175, Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000), <https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>. See *A Detailed Plan for Improving Interior's Implementation of E.O. 13175*, U.S. Dept. of Interior, <https://www.doi.gov/sites/doi.gov/files/detailed-plan-for-improving-interiors-implementation-of-e.o.-13175-omb-submission.pdf>. National Environmental Protection Act & Agency Planning, 40 C.F.R. §1501, <https://www.ecfr.gov/current/title-40/chapter-V/subchapter-A/part-1501>. National Historic Preservation Act (Section 106 Process), 36 C.F.R. § 800, <https://www.ecfr.gov/current/title-36/chapter-VIII/part-800>.

^{xi} *Public Summary of Foley Hoag LLP Report, "Good Practice for Managing the Social Impacts of Oil Pipelines in the United States,"* Foley Hoag LLP. Attached as Appendix 1.

^{xii} Treaty of Fort Laramie 1868, <https://www.archives.gov/milestone-documents/fort-laramie-treaty>. *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980), <https://supreme.justia.com/cases/federal/us/448/371/>.

^{xiii} Mike Soraghan, *Tribe expands legal push to shut Dakota Access oil pipeline*, E&ENews (Oct. 14, 2024), <https://www.eenews.net/articles/tribe-expands-legal-push-to-shut-dakota-access-oil-pipeline/>.

^{xiv} Mike Soraghan, *Tribe expands legal push to shut Dakota Access oil pipeline*, E&ENews (Oct. 14, 2024), <https://www.eenews.net/articles/tribe-expands-legal-push-to-shut-dakota-access-oil-pipeline/>.

^{xv} *U.S. Oil and Gas Pipeline Mileage*, Bureau of Transportation Statistics, <https://www.bts.gov/content/us-oil-and-gas-pipeline-mileage> (last visited Apr. 6, 2025).

^{xvi} *The Great Lakes Fact Sheet*, Safe Drinking Water Foundation (Jan. 17, 2017), <https://www.safewater.org/fact-sheets-1/2017/1/23/the-great-lakes>.

^{xvii} Izzy Ross, *Seven tribes withdraw from federal talks over Line 5 tunnel permit*, GreatLakesNow (Mar. 26, 2025), <https://www.greatlakesnow.org/2025/03/seven-tribes-withdraw-from-federal-talks-over-line-5-tunnel-permit/>. See E.O. - Declaring A National Energy Emergency (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/>.

^{xviii} Reporters from the Howard Center for Investigative Journalism, *Lithium Liabilities: The untold threat to water in the rush to mine American lithium*, AZ PBS (Jan. 25, 2025), <https://cronkitenews.azpbs.org/howardcenter/lithium/stories/lithium-liabilities.html>.

^{xix} See Vera, M.L., Torres, W.R., Galli, C.I. *et al.* Environmental impact of direct lithium extraction from brines. *Nat. Rev. Earth Environ.* 4, 149–165 (2023), <https://www.nature.com/articles/s43017-022-00387-5#Glos7>; MIT Climate Portal, *How is Lithium Mined?* (Feb. 12, 2024), <https://climate.mit.edu/ask-mit/how-lithium-mined>; Sierra Club, *Guidance on Lithium Mining and Extraction*, <https://www.sierraclub.org/sites/www.sierraclub.org/files/Lithium-Mining-Guidelines.pdf>; Arizona PBS, *Lithium Liabilities: The untold threat to water in the rush to mine American lithium*, (Jan. 25, 2024), <https://cronkitenews.azpbs.org/howardcenter/lithium/stories/lithium-liabilities.html>.

^{xx} *"The Land of Our People, Forever" United States Human Rights Violations against the Numu/Nuwu and Newe in the Rush for Lithium*, Human Rights Watch (Feb. 6, 2025), <https://www.hrw.org/report/2025/02/06/land-our-people-forever/united-states-human-rights-violations-against-numu/nuwu>.

^{xxi} Anita Snow, *Oak Flat Timeline: Native American vs. pro-mining interests*, Associated Press (June 28, 2023),

<https://apnews.com/article/oak-flat-sacred-apache-copper-mine-26fa76965cf75a4addb4108c4818af09>.

^{xxii} Karen Zraick, *The Case Against Greenpeace Puts a Spotlight on Native History*, The New York Times (Feb. 27, 2025), <https://www.nytimes.com/2025/02/27/climate/greenpeace-energy-transfer-standing-rock-history.html>.

^{xxiii} *Energy Transfer lawsuit verdict*, Greenpeace USA (Mar. 20, 2025), <https://www.greenpeace.org/usa/energy-transfer-lawsuit-verdict/>.

^{xxiv} *Shadow Report Answering the Private Security and Indigenous Peoples Theme of Review for the United States CERD 107th Sess.*, Water Protector Legal Collective (July 22, 2022), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FNGO%2FUSA%2F49366&Lang=en.

^{xxv} UNPFII Expert Member Chief Edward John, *Firsthand observations of conditions surrounding the Dakota Access Pipeline*, UNPFII (Nov. 1, 2016), <https://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/Report-ChiefEdwardJohn-DAPL2016.pdf>.

^{xxvi} A/HRC/46/15 at 26.144.

^{xxvii} A/HRC/46/15 at 26.287.

^{xxviii} A/HRC/46/15 at 26.326.

^{xxix} A/HRC/WG.6/36/USA1 at 52-57.

^{xxx} A/HRC/WG.6/36/USA1 at 21 & 23.

^{xxxi} CERD/C/USA/CO/10-12 at 20-21.

^{xxxii} CERD/C/USA/CO/10-12 at 22-23.

^{xxxiii} CERD/C/USA/CO/10-12 at 45-46.

^{xxxiv} CERD/C/USA/CO/10-12 at 49-50.

^{xxxv} CERD/C/USA/CO/10-12 at 59.

^{xxxvi} CCPR/C/USA/CO/5 at 36-37.

^{xxxvii} CCPR/C/USA/CO/5 at 38-39.

^{xxxviii} CCPR/C/USA/CO/5 at 60-61.

^{xxxix} CCPR/C/USA/CO/5 at 66-67.