

Winnemem Wintu Tribe (Indigenous People) submission

*made by Chief Caleen Sisk and India Reed Bowers, BA LLM*

*for the Human Rights Committee (ICCPR) review of the United States of America*

139th Session, October 2023

*“...self-determination is not only the fundamental right acting as the backbone of all of other rights enshrined within the UNDRIP and the rights of Indigenous Peoples but also the UN Charter itself under Article 1(2), ‘To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...’”<sup>1</sup>*

The long, yet recent, history of the United States and its strategic undermining of the Self-Determination of Indigenous Peoples since its inception, is ongoing Genocide for many or most, and for all Colonialism.

The Winnemem Wintu are an Indigenous People within what is currently named the United States. The Winnemem Wintu are a federally (ie State)-unrecognized, or federally-non-recognized / federally-non-acknowledged, Indigenous People that is led traditionally, matriarchal and matrilineal, by Chief Caleen Sisk.

The Winnemem Wintu, as an Indigenous People, have suffered losses difficult for many settlerism-indoctrinated mindsets to grasp- if they could, when they do, things might be different. The total Winnemem Wintu tribal membership hovers around 126, compared to its estimated peak of 14,000. Winnemem Wintu people’s identity and cultural continuity is that of the currently- named California’s first Indigenous People of the Buliyum Puyuk (Mount Shasta) and Winnemem Waywaket (McCloud River) watershed.

The violations of the Winnemem Wintu’s rights as an Indigenous People, under the **International Covenant of Civil and Political Rights (ICCPR)**, by the United States, rest pivotally on the USA’s deep and far-reaching violation of ICCPR Article 1(1), ***All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*** The status of being unrecognized is a serious form of legal genocide. To not recognize and put into action the rights of unrecognized and unrepresented Indigenous Peoples sets up unequal competition for basic survival and ignores basic human rights of religion, culture/traditional rights, food sovereignty and water and land rights. At the same time, recognition by the USA is not conducive to retaining tribal traditions and culture that is beneficial to the tribe’s lands and water and sacred places- it ignores and fails to protect the tribal purpose to retain own Indigenous Knowledge, and it sifts out Indigenous Peoples’ knowledge in exchange for an “economy system”, creating a major loss many people in those systems don’t even see happening.

Recalling ICCPR Article 1(2), ***All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*** Most of the Winnemem Wintu’s traditional river and sacred sites and villages are now submerged under

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<sup>1</sup> IOSDE Intervention: 'WCIP Zero Draft Document', UN EMPRIP 7th Session, 2014, <https://www.scribd.com/document/233317916/IOSDE-UN-EMRIP-Intervention-WCIP-Zero-Draft-Document-7th-Session-2014>

the McCloud Reservoir and the Shasta Reservoir, and the sacred salmon no longer breed upstream of Shasta Dam. In the face of these hardships, the Winnemem Wintu continue to strive to preserve Winnemem native language, practice Winnemem religion and traditional healing methods, and protect the rights of salmon, defend Rights to the few remaining sacred sites, ceremonial places, villages and burial grounds from further encroachment. In a good way, certain US Agencies have co-signed a co-drafted Agreement with the Winnemem Wintu as an Indigenous People, in which efforts are now being made together, and in-line with several important Indigenous Rights, to return and bring back the sacred salmon population. The reparation of major, wider encompassing Winnemem losses due to colonialism and genocide, such as reparations in the forms of true return of land and resources, formal recognition of the Winnemem Wintu self-determination and as traditionally-led, or even the providing of monies for historical damages, remains elusive and non-existent. *However*, Non-Federally-Recognized Tribes in the USA cannot apply, for example, for Fisheries Funding Opportunities (such as to restore sacred fisheries, *restoring tribal priority fish passage and tribal capacity building, fish passage and tribal capacity building, and Transformational Habitat Restoration*).<sup>2</sup> At the same time, there is blatant and serious ongoing genocidal harm, for example, being caused to children, and their Tribes and families, if not from a “Federally Recognized Tribe”; Shasta County Court (California), for example, has decided, under the Federal Law, that Tribes [Indigenous Peoples] who are non-Federally-Recognized cannot not utilize the USA Indian Child Welfare Act (ICWA)<sup>3</sup> to protect their own Tribal continuation, culture, families and children.

ICCPR Article 1(3). *The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.* The Winnemem have continuously faced with peaceful resistance and traditional lifeways the discriminatory,

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<sup>2</sup> See USA Government, National Oceanic and Atmospheric Administration (NOAA). As communicated to Chief Sisk: “Eligible applicants are Indian tribes (as defined in 25 U.S.C. Section 5304 (e)) and organizations that represent Indian tribes through formal legal agreements (e.g., tribal commissions, tribal consortia, tribal conservation districts, and tribal cooperatives). 23.U.S.C. Section 5304 (e) states that ‘(e)“Indian tribe” or “Indian Tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Organizations that represent Indian tribes through formal legal agreements are encouraged to provide a clear description and supporting documentation (e.g., letters of support, Memoranda of Understandings) in the application, demonstrating a relationship between the tribe(s) and organization. The documentation is further described in this Announcement in Section IV.B., Content and Form of Application. Documentation should be submitted as part of the grant application. An institution of higher education, non-profit organization, commercial (for profit) organization, U.S. territory, or state or local government, and organizations that identify as Indian tribes but do not meet the definition of “Indian tribe” above, which may include state recognized tribes, can partner with Indian tribes and organizations that represent Indian tribes through formal legal agreements, but are not eligible to submit an application directly. A partnership may involve proposed subawards, contracts, informal collaboration, or other engagement. These partners may apply directly for separate NOAA Bipartisan Infrastructure Law funding opportunities for restoring fish passage published at [www.grants.gov](http://www.grants.gov).”

To elaborate on just how large this violations are by the USA against non-Recognized Tribes [Indigenous Peoples], it has been communicated to Chief Sisk that there is, for example: “nearly \$85 million for restoring tribal priority fish passage and tribal capacity building, and NOAA will accept proposals with a federal funding request of between \$300,000 and \$12 million from non-federal partners; applications are due by 8 November 2023.” and “*Fish Passage*: Nearly \$175 million in funding is available through the Restoring Fish Passage through Barrier Removal funding opportunity. NOAA will accept proposals with a federal funding request of between \$1 million and \$20 million from non-federal partners. Applications are due by October 16, 2023.” and “*Transformational Habitat Restoration*: Up to \$240 million in funding is available through the Transformational Habitat Restoration and Coastal Resilience Grants funding opportunity. NOAA will accept proposals between \$1 million and \$25 million total over the award period. Applications are due by November 17, 2023.” But as explained in the first quote, such opportunities are not open to non-Federally-recognized Tribes directly (violation ICCPR Article 1).

<sup>3</sup> On the USA Indian Child Welfare Act (ICWA): “The law delineates the roles of State and Tribal governments in child welfare cases involving children who are members of or eligible for membership in Federally recognized Tribes. For example, it clarifies that [Federally recognized] Tribes have sovereignty and exclusive jurisdiction over their members who reside on [Federally recognized] Tribal land and establishes a process for transferring cases to [Federally recognized] Tribal court in other cases. The law is one of the key components in protecting the rights and culture of [Federally recognized] American Indian and Alaska Native children and families.” (our brackets for clarity), USA Department of Health and Human Services, Child Welfare Information Gateway, <https://www.childwelfare.gov/topics/systemwide/diverse-populations/americanindian/icwa/>

paternalistic, colonizing and genocidal nature of the top-down and controlling designs of the State's (USA's) restructuring of tribes' systems for federal recognition. Certainly, all around the world, Indigenous women are unrecognized and underrepresented, and the USA does not improve this fact by continuing its internal policies and systems of (non-)recognition. There are far more unrecognized and unrepresented Indigenous Peoples than are documented, and if one includes persons disenrolled from, for example, internalized State recognition systems, the number much further increases. Simply, so long as the United States maintains notions of superiority-dominance with its Federal Recognition system(s) and either exclusion from benefits and privileges therein for those Indigenous Peoples/people who are non-recognized or are disenfranchised, or strings attached for those who are or aim to be, the lines and lack thereof between Non-Self-Governing, Trust Territories, and still Colonized and/or Occupied Indigenous Peoples and Territories, are still blurred and unaddressed.

Thus, Winnemem Wintu welcome the inclusion and implementation of Human Rights Council Resolution 48.7, "Negative impact of the legacies of colonialism on the enjoyment of human rights", adopted on the 8th of October 2021, and look forward to working with the global community with equality and equity, alongside other Indigenous Governances and the representatives of States, to improve humanity and save Mother Earth. Finally, to note: the Winnemem Wintu stand that all and any reprisals for genuinely engaging in and living fundamental Human Rights and Environment Rights must be safeguarded against as well as addressed, both when and if they happen and also if they already have.

*Suggested Questions by the Human Rights Committee for the United States of America:*

- What is the United States doing to ensure the protection, promotion, and fulfillment of the Right to Self-Determination of un/non-Federally-recognized Indigenous Peoples who are original inhabitants of lands within what it (the United States) currently considers to be its own territorial borders and boundaries? (Arts. 1 and 2)
- What is the United States doing to ensure, at the same time as the above, the protection, promotion, and fulfillment of un/non-Federally-recognized Indigenous Peoples to ***freely determine their political status and freely pursue their economic, social and cultural development***? (Arts. 1 and 2)
- In regards to ICCPR Art. 1(3), does the United States consider colonized and/or settler-occupied Indigenous Territories to be Non-Self-Governing and Trust Territories, within the scope of the intended moral and ethical essence of the terms? (Arts. 1, 4(3), 6(3))
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*Suggested Recommendations by the Human Rights Committee for the United States of America:*

- For the survival, self-determination, and thriving of future generations: *access to formal Decolonization for all Indigenous Peoples, as self-determined by each Indigenous People*, the return of and compensation for stolen ecosystems, waters, and lands, and, in addition to all of that and where sought and/or owed/deserved, payment for damages. (Arts. 1, 2 and 4(3))
- Recognize all Indigenous Peoples and their inherent right to self-determination, by default and without strings of colonial dependency, collusion or reorganization, and their rights, within that, to ***freely determine their political status and freely pursue their economic, social and cultural development***, especially if matrilineal, matriarchal, and traditionally-led. (Arts. 1, 2, 3, 6(3))

*Recalling*

CERD 2022 Concluding Observations, review of the USA:

“Indigenous Peoples

49. The Committee notes the steps taken by the State party with regard to the rights of indigenous peoples, including the adoption of Executive Order 13647 on ‘Establishing the White House Council on Native American Affairs’, of 26 June 2013, in which it was recognized that restoring tribal lands through appropriate means helped foster tribal self-determination, and the President’s Memorandum on ‘Tribal consultation and strengthening nation-to-nation relationships’, of 26 January 2021, which highlighted as priorities respect for tribal sovereignty and self-governance, commitment to fulfilling treaty responsibilities to tribal nations, and consultation with tribal nations. However, the Committee is concerned at:

[...]

(b) The obstacles to the recognition of indigenous peoples, including the high costs and burdensome procedures;

[...] 50. Drawing the attention of the State party to the United Nations Declaration on the Rights of Indigenous Peoples, and to the recognition by the Human Rights Council<sup>4</sup> that the legacies of colonialism have a negative impact on the effective enjoyment of all human rights and that indigenous peoples were victims of colonialism and continue to be victims of its consequences, the Committee recommends that the State party:

[...]

(b) Eliminate undue obstacles to the recognition of indigenous peoples;

(c) Guarantee, in law and in practice, the principle of free, prior and informed consent in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international standards, and the right of indigenous peoples to be consulted on any legislative or administrative measure that may affect their rights.”

*Attached:*

Winnemem Wintu submission to UN CERD for the Committee’s review of the USA (2022) [without attachments; see entire submission with attachments (available for download from the UN session webpage) here: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FNGO%2FUSA%2F49360](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FNGO%2FUSA%2F49360)]

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<sup>4</sup> Human Rights Council resolution 48/7

ATTACHMENT

United Nations Committee on the Elimination of Racial Discrimination (CERD) 107th Session

**Follow-up and Alternative Report (Indigenous)**

**Winnemem Wintu Tribe<sup>1</sup>**

re:

List of themes in relation to the combined 10th-12th reports of the United States of America

July-August 2022

*Submitted by:*

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<sup>1</sup> “A traditional tribe that comes from Bullium Puuyuuk (Mt. Shasta), protecting rivers, restoring salmon and fighting to preserve our culture and lifeway”, <https://www.facebook.com/winnememwintu/>

<sup>2</sup> B.A. Cultural Anthropology, Brown University (United States), LL.M. International Law of Human Rights & Criminal Justice, Utrecht University (Netherlands); Founder & Director, International Organization for Self-Determination and Equality (IOSDE) / Independent freelance consultant. [india.bowers@gmail.com](mailto:india.bowers@gmail.com)

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*for Chief Caleen Sisk and the Winnemem Wintu Tribe*

## **Follow-up and Alternative Report (Indigenous) to CERD (2022; USA review)**

### **Winnemem Wintu Tribe**

#### **“Situation of indigenous peoples (arts. 5 and 6)**

22. Measures to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policymaking and decisions that affect them. Updated information on the implementation of presidential memorandum on tribal consultation and strengthening nation-to-nation relationships of 26 January 2021 and on other efforts to fulfil treaty responsibilities to Tribal Nations.

23. Measures to protect the rights of indigenous peoples, their lands, territories, sacred sites and way of life...”<sup>3</sup>

#### ***Introduction***

By continuing to exist, the Winnemem Wintu Tribe, a federally-unrecognized, or federally-non-recognized / federally-non-acknowledged tribe, that is led traditionally, matriarchically and matrilineally by Chief Caleen Sisk, faces head-on the discriminatory, paternalistic, colonizing and genocidal nature of the top-down and controlling US Federal Recognition system re tribal status, as well as the benefits and hindrances therein. From the Winnemem Wintu 2014 Shadow Report to UN CERD for its review of the USA:

“The total tribal membership hovers around 150, compared to its estimated peak of 14,000. As noted above, most of the Winnemem Wintu’s traditional lands are now submerged under the McCloud Reservoir and the Shasta Reservoir, and salmon no longer breed upstream of Shasta Dam. In the face of these hardships, the Winnemem Wintu continue to strive to preserve their native language, practice their religion and traditional healing methods, and protect the few remaining sacred sites and burial grounds from further encroachment by the federal government.”<sup>4</sup>

Discriminatory, top-down Federal- ie State/Colonizer-controlled Indigenous and Tribal recognition systems are not only a violation of the fundamental Right to Self-Determination, but create issues of Access to

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<sup>3</sup> List of themes in relation to the combined tenth to twelfth reports of the United States of America, United Nations Committee on the Elimination of Racial Discrimination (CERD), 107th session, 8–30 August 2022, CERD/C/USA/Q/10-12

<sup>4</sup> Winnemem Wintu Tribe Shadow Report to CERD 2014, written by Jamie L. Crook, Esq., Relman, Dame & Colfax PLLC, Washington DC, Submitted by the Winnemem Wintu Tribe In Response to the United States’ June 12, 2013 Periodic Report to the United Nations Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination (not found online on the CERD site for the session; attached to this submission)

Justice and many other Human and Indigenous Rights violations, including, such as in the case of the Winnemem Wintu, the desecration of Sacred Sites, endangerment of and damage to the health and well-being of women, and threatening and creating blockages to the continuation of traditional culture-based Indigenous leadership, healing and religions.<sup>5</sup>

However, and at the same time, "...self-determination is not only the fundamental right acting as the backbone of all of other rights enshrined within the UNDRIP and the rights of Indigenous Peoples but also the UN Charter itself under Article 1(2), "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples..."<sup>6</sup>

As Elena Neale-Sacks writing for Bay Nature explains, and further quotes Chief Caleen Sisk on:

"Federally recognized tribes ... are legally entitled to certain federal resources and services, like reservations, grants, and sovereignty respected by the federal government. To access any of these things, the Winnemem Wintu would need to endure an application process that would culminate in the BIA deciding whether or not they are a tribe — a process in which Caleen refuses to participate.

'We want the freedom to be Winnemem, and we are deserving of support for the taking of our lands and waters and everything that was lost,' she said. 'But when I look at other federally recognized tribes ... they have to jump through hoops to utilize some of that federal money.'<sup>7</sup>

### *Recognizing*

Elena Neale-Sacks writing for Bay Nature details succinctly:

"The story of the Winnemem Wintu's forced eviction, like the eviction stories of Indigenous tribes across what is now the United States, began with genocide. But the genocidal chapter of Winnemem history is much more recent compared with tribes located farther east. It was just 170 years ago that Shasta City, only 13 miles southwest of the cemetery Caleen drove me to, paid settlers bounties for Native heads.

The Winnemem Wintu who survived the Gold Rush-era terror were shoved off much of their land. And while the methods for displacement became more subdued over time, they haven't stopped. In the last century, as the federal government has been forced to confront California's environmental shortcomings, it has turned to Winnemem Wintu land for water. And doing so has displaced them even more.

[...] The 1941 act stated that "the Secretary of the Interior shall determine the amount of money to be paid to the Indians as just and equitable compensation." Unless just and

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<sup>5</sup> From IOSDE news, August 2014, <http://iosde.org/3/post/2014/08/august-12th-2014.html>

<sup>6</sup> IOSDE Intervention: 'WCIP Zero Draft Document', UN EMPRIIP 7th Session, 2014, <https://www.scribd.com/document/233317916/IOSDE-UN-EMRIP-Intervention-WCIP-Zero-Draft-Document-7th-Session-2014>

<sup>7</sup> "A Process of Survival: In the last century, the federal government has tried to build its way out of California's water crisis. The parallel story of the Winnemem Wintu's displacement is a reminder that we can't conjure water out of thin air", article by Elena Neale-Sacks, in Bay Nature, 15 March 2022, <https://baynature.org/2022/03/15/a-process-of-survival/>



equitable compensation was \$0, the federal government never upheld this part of the act. According to Caleen, the Winnemem were simply informed that much of their land would be flooded. The one thing they *were* supposed to receive was another place to live — more land elsewhere. But this promise was never fulfilled. “The only thing they did in compliance with that law was create this Indian cemetery,” said Claire Cummings, an attorney who has worked with the Winnemem Wintu for about 30 years.

[...] Although the Winnemem have fought to hold onto their land every step of the way, they’ve faced an uphill battle, in part because they are not recognized as a tribe by the federal Bureau of Indian Affairs. The reason is long and bureaucratic, and boils down to a discrepancy between a Supreme Court ruling and a BIA decision — some California tribes, including the Winnemem Wintu, won a lawsuit for resources and recognition that lasted from 1928-72, but in 1978, the BIA began a new formal recognition process, and the Winnemem Wintu were left off their list of tribes.”<sup>8</sup>

### ***Recalling***

“Access to justice in the promotion and protection of the rights of indigenous peoples”, the Study by the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), dated 30 July 2013, submitted to the UN Human Rights Council/General Assembly:

“6. A particular dimension of access to justice relates to overcoming long-standing historical injustices and discrimination, including in relation to colonization and dispossession of indigenous peoples’ lands, territories, and resources. Injustices of the past that remain unremedied constitute a continuing affront to the dignity of the group. This contributes to continued mistrust towards the perpetrators, especially when it is the State that claims authority over indigenous peoples as a result of that same historical wrong.

7. Harm associated with historical injustices continues today and thus must be taken into account. Many of the contemporary challenges faced by indigenous peoples are rooted in past wrongs. [...]

#### IV. The relationship between access to justice and other rights of indigenous peoples

##### A. Self-determination

19. The right to self-determination is a central right for indigenous peoples from which all other rights flow. In relation to access to justice, self-determination affirms their right to maintain and strengthen indigenous legal institutions, and to apply their own customs and laws.

20. Simultaneously, indigenous peoples have the right “to participate fully, if they so choose, in the political, economic, social and cultural life of the State”.<sup>9</sup> Here, the right to self-determination requires recognition of the legal standing of indigenous peoples as

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<sup>8</sup> “A Process of Survival: In the last century, the federal government has tried to build its way out of California’s water crisis. The parallel story of the Winnemem Wintu’s displacement is a reminder that we can’t conjure water out of thin air”, article by Elena Neale-Sacks, in Bay Nature, 15 March 2022, <https://baynature.org/2022/03/15/a-process-of-survival/>

<sup>9</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 5. (original footnote)

collectives, and of their representative institutions, to seek redress in appropriate forums.<sup>10</sup> Moreover, in these cases, remedies must be collective.

## 1. Barriers

21. Indigenous peoples have faced considerable challenges in obtaining international and national respect for their self-determination, in part due to State fears that such recognition could undermine States' own legal, economic, cultural, and other forms of authority.

22. The Expert Mechanism is aware of long-standing complaints from indigenous peoples that they lack standing to bring complaints relating to loss of sovereignty and self-determination under international law or to enforce treaties between indigenous peoples and States, for example standing as States before the International Court of Justice.”<sup>11</sup>

### *Noting*

#### *“Government-to-Government Relationship”*

The troublesome fact of the United States, a genocidal settler colonial State, ultimately if not completely controlling the terms, structures, and conditions of “Government-to-Government” relationships with Indigenous Peoples it recognizes as original to what it now considers its own bordered territories is not only a deep conundrum, it is an ongoing violation of the deepest kind in that it undermines both actual self-determination as well demands restructuring of governance and other systems of traditional Indigenous Culture and Lifeways.

The U.S. Government Accountability Office states:

“Indian tribes are distinct political entities whose inherent sovereignty predates the United States but has been limited in certain circumstances by treaty and federal law. This sovereignty is reflected in the government-to-government relationship between federally recognized tribes and the U.S. government.

There are 574 ethnically, culturally, and linguistically diverse federally recognized tribes in the United States. As Congress found in the Indian Trust Asset Reform Act, ‘the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indians.’ As stated in the Act, ‘the fiduciary responsibilities of the United States to Indians also are founded in part on specific commitments made through written treaties and agreements securing peace, in exchange for which Indians have surrendered claims to vast tracts of land.’ Nevertheless, U.S. policy towards tribes and their members has varied widely over hundreds of years. [...]

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<sup>10</sup> See, for example, the submission of Natural Justice: Lawyers for Communities and the Environment. (original footnote)

<sup>11</sup> “Access to justice in the promotion and protection of the rights of indigenous peoples”, Study by the Expert Mechanism on the Rights of Indigenous Peoples, 30 July 2013, UN General Assembly / Human Rights Council Twenty-fourth session, Agenda item 5: Human rights bodies and mechanisms, A/HRC/24/50, [https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-50\\_en.pdf](https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-50_en.pdf)

In 2018, the U.S. Commission on Civil Rights reported that—due to things like historical discriminatory policies, insufficient resources, and inefficient federal program delivery—Native Americans continue to rank near the bottom of all Americans<sup>12</sup> in terms of health, education, and employment. Further, the COVID-19 pandemic has had a disproportionate impact on the public health and economies of tribal nations.

Several federal agencies are responsible for providing direct services or funding to federally recognized tribes and their members—including the Bureau of Indian Affairs (BIA), the Bureau of Indian Education (BIE), and the Indian Health Service (IHS). These agencies face a number of challenges to improving the effectiveness and efficiency of their tribal programs<sup>13</sup>.<sup>14</sup>

The U.S. Department of Interior, Bureau of Indian Affairs (BIA) states (on its homepage under “Discover”):

“We maintain government-to-government relationships with Indian tribes, and facilitate support for tribal people and tribal governments. We promote safe and quality living environments, strong communities, self sufficient and individual rights, while enhancing protection of the lives, prosperity and well being of American Indians and Alaska Natives.”<sup>15</sup>

### *Concluding*

Together, Elena Neale-Sacks writes and Chief Sisk states (emphasis by India Reed Bowers):

“[...] I asked Caleen what she wants most for her tribe. Her answer was simple — she wants the Winnemem to survive. Not just as individuals, dispersed in neighborhoods throughout the state and country, but as Winnemem Wintu. She doesn’t want the tribe to apply for federal recognition if it means giving up a part of who they are. She doesn’t want to have to ask permission from various landowners to hold ceremonies on her tribe’s lands. She certainly does not want Shasta Dam to be raised, which could inundate even more important cultural sites.

‘If there was any justice for Winnemem people to continue to be Winnemem, that would be a miracle,’ [Chief Sisk] said. “We’re backed up to the farthest point that we can go, that we have to break the law to be here, to have our family here, because there’s no other avenues unless we just want to give it up and just go live in a neighborhood. Forget about being Winnemem. Forget about going to the river and praying.

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<sup>12</sup> Linked page: <https://www.gao.gov/products/gao-20-270t>

<sup>13</sup> US Government Accountability Office, “Tribal and Native American Issues”, <https://www.gao.gov/tribal-and-native-american-issues>

<sup>14</sup> US Government Accountability Office, “Tribal and Native American Issues”, <https://www.gao.gov/tribal-and-native-american-issues>

<sup>15</sup> U.S. Department of the Interior, Bureau of Indian Affairs (BIA), <https://www.bia.gov/>

Forget about the songs and the dances. That’s what they’re asking us to give up if we want to be Americans. Or is there somewhere in America that would allow the first peoples to continue the way they believe? Why can’t we do that?”<sup>16</sup>

***Question(s) for CERD to the USA:***

1. What is the U.S.’s concept-plan in mind for accomplishing, via FPIC and Rights to Self-Determination, and without genocidal effect including prevention of cultural genocide (respect and equality to traditional leaderships, including matriarchal and spiritual), equal status between/or/for/by “recognized” and “un-recognized”/“non-recognized”/“non-acknowledged” Tribes and Indigenous Peoples in the context of US Federal Government-to-Government and Nation-to-Nation relationships, where the U.S. considers original Indigenous Peoples to be existing within, partially or wholly, its own Nation-State borders, rights, and boundaries?

***Recommendations for CERD to the USA:***

Reiterated<sup>17</sup> from the *2014 Winnemem Wintu Shadow Report to CERD re USA*<sup>18</sup>

“By reminding the United States of its obligations under the CERD, the Committee will contribute to the Winnemem Wintu people’s centuries-long struggle for the survival of their culture and community”<sup>19</sup>:

1. Emphasize to the United States that its obligations under the CERD ... require that the United States obtain the free [prior] and informed consent [FPIC] of indigenous communities prior to approving any project that will affect that community’s territory or resources.
2. Implore the United States to honor the Winnemem Wintu’s sovereignty [and *Right to Self-Determination*] by satisfying the U.S. Government’s long unfulfilled statutory and contractual obligations to the Tribe and by once again formally recognizing the Tribe [but

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<sup>16</sup> “A Process of Survival: In the last century, the federal government has tried to build its way out of California’s water crisis. The parallel story of the Winnemem Wintu’s displacement is a reminder that we can’t conjure water out of thin air”, article by Elena Neale-Sacks, in Bay Nature, 15 March 2022, <https://baynature.org/2022/03/15/a-process-of-survival/>

<sup>17</sup> [ ] sections signifies new additional language added for the purpose of this 2022 submission.

<sup>18</sup> Winnemem Wintu Tribe Shadow Report to CERD 2014, written by Jamie L. Crook, Esq., Relman, Dame & Colfax PLLC, Washington DC, Submitted by the Winnemem Wintu Tribe In Response to the United States’ June 12, 2013 Periodic Report to the United Nations Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination (not found online on the CERD site for the session; attached to this submission)

<sup>19</sup> Winnemem Wintu Tribe Shadow Report to CERD 2014, written by Jamie L. Crook, Esq., Relman, Dame & Colfax PLLC, Washington DC, Submitted by the Winnemem Wintu Tribe In Response to the United States’ June 12, 2013 Periodic Report to the United Nations Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination (not found online on the CERD site for the session; attached to this submission)

without colonizing/colonial/genocidal requirements to re-organize Tribal Governance and Systems for said Government-to-Government or Nation-to-Nation relationship ie ‘Federal Recognition’, and instead under the Tribe’s own terms and via its traditional spiritual leadership].

3. Return of and compensation for stolen waters and lands, and funds for repairing of damages, first and foremost to the lifeways and rehabilitation of the salmon and the salmon’s environments that the Winnemem honor as central to their own lifeways, survival, spirituality, and traditions as a Tribe and Indigenous People original to the region.
4. Remind the United States of its obligations as a signatory to the CERD to facilitate and enable the Winnemem Wintu to observe cultural rituals including the BaLas Chonas [girl’s coming of age puberty] ceremony.
5. Conclude that the United States’ implementation of the proposed dam expansion legislation would violate the State Party’s obligations under the Convention, including Articles 1(1), 1(4), 2(1)(c), 2(2), and 5(e)(vi) in the absence of meaningful consultation with the Winnemem Wintu, and any other indigenous groups that would be adversely affected by the action.

*Attachments (chronological)*

1. Winnemem Wintu Tribe / IOSDE / Sacred Places Institute, Intervention on Item 3(c) (continued): Youth, Self-Harm and Suicide, UNPFII 14<sup>th</sup> Session (2015)
2. Winnemem brief to CERD re USA (distributed during session, 2014)
3. Winnemem Shadow Report to CERD re USA (2014)
4. IOSDE / Bowers letter to Tom Tidwell, Forest Service Chief, United States (US) Forest Service (Washington D.C.), on behalf of the Winnemem Wintu (19 July 2013)