

Update to Early Warning and Urgent Action Procedure Request
Submitted by the Gwich'in Steering Committee et al.

*Respectfully Submitted to the Committee on the Elimination of Racial Discrimination
on the 10 of December 2020*

I. Background.

On 13 November 2019, the Gwich'in Steering Committee, Land is Life, Cultural Survival, First Peoples Worldwide, and the University of Colorado's American Indian Law Clinic submitted a request to the *Committee on the Elimination of Racial Discrimination* ("Committee") under its early warning and urgent action procedures.¹ The submitting organizations commend this Committee for considering the provided information during its 101st session and issuing a letter to the United States of America ("United States") requesting that the State party provide information on the status of the proposal and a number of measures related to the situation faced by the Gwich'in Nation.² On 4 September 2020, the Gwich'in Steering Committee et al. provided an update on recent actions taken by the United States that further escalated the urgency and seriousness of the situation.³ The submitting organizations again commend this Committee for considering the new information during its 102nd session and issuing a second letter reiterating the Committee's wish to engage in a constructive dialogue with the United States to ensure the effective implementation of the International Convention on the Elimination of All Forms of Racial Discrimination ("Convention").⁴ In the past week, the United States has taken additional actions that require the immediate attention of the Committee to prevent conflict and to limit the scale and seriousness of violations of the Convention by the United States.

¹ Request for Early Warning Measures and Urgent Action Procedures to the United Nations Committee on the Elimination of Racial Discrimination in Relation To The United States of America (Nov. 13, 2019). Retrieved from: <https://www.colorado.edu/program/fpw/sites/default/files/attached-files/gwichin_steering_committee_request_to_cerd.pdf>.

² Letter to Permanent Representative Andrew Bremberg, 7 August 2020. Retrieved from: <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_9242_E.pdf>.

³ Update to 13 November 2019 Early Warning and Urgent Action Procedure Request Submitted by the Gwich'in Steering Committee et al. (Sept. 4, 2020). Retrieved from: <https://www.colorado.edu/program/fpw/sites/default/files/attached-files/gwichin_steering_committee_update_to_cerd_04_09_2020.pdf>.

⁴ Letter to Permanent Representative Andrew Bremberg, 24 November 2020. Retrieved from: <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_9300_E.pdf>.

II. Recent actions by the United States require the immediate action of this Committee.

On 7 December 2020, the United States announced that a lease sale will take place on 6 January 2021.⁵ As indicated in the previous update, once the lease sale occurs, it will be nearly impossible for the Gwich'in to invalidate the lease sale and to prevent permanent destruction to the area that they refer to as *Izhik Gwats'an Gwandaii Goodlit* or *The Sacred Place Where Life Begins*. The United States announced the lease sale with 10 days remaining on the public comment period for the *Call for Nomination*, which is unusual and does not conform to regular practices. Additionally, it only provides 23 days for sealed bids to be received by the United States.⁶ This demonstrates the United States' ongoing efforts to fast-track the oil and gas sales without adequate assessment of the impacts of the exploration and development on Indigenous rights and the environment and without adequately consulting with or obtaining the free, prior and informed consent of the Gwich'in and other impacted Indigenous Peoples.

In addition to the lease sale, the United States is rushing to approve seismic exploration of roughly 451,000 acres in the Coastal Plain, as well as an additional 92,000 acres of land within a neighboring area of the Refuge.⁷ On 23 October 2020, the United States released a plan of operations for seismic exploration, allowing for only a two-week public comment period.⁸ The exploration includes the use of 90,000 pound trucks sending vibrations into the ground and can have serious, immediate and lasting impacts on land and resources that the Gwich'in rely on to sustain their way of life including denning polar bears, the fragile tundra and the Porcupine Caribou.⁹ Seismic exploration is so destructive that the land still bears scars from activity that took place 40 years ago.¹⁰ Despite the rushed process and the public comment period occurring at the same time as the national elections, the United States received over 80,000 public comments expressing opposition to the seismic exploration. Despite this, on 8 December 2020, the United States took the next step in approving the permit, by publishing a *Proposed Incidental Harassment Authorization for Polar Bears in the Arctic Refuge*, stating that activities could begin as soon as 21 January 2021.¹¹

⁵ *Notice of 2021 Coastal Plain Alaska Oil and Gas Lease Sale and Notice of Availability of the Detailed Statement of Sale*, 85 Federal Register 78,865 (Dec. 7, 2020). Retrieved from: <<https://www.govinfo.gov/content/pkg/FR-2020-12-07/pdf/2020-26788.pdf>>.

⁶ *Id.*

⁷ *Marsh Creek East Seismic Exploration* (Oct. 23, 2020). Retrieved from: <<https://eplanning.blm.gov/eplanning-ui/project/2003258/510>>.

⁸ Xiang Chiang-Waren, *The Public Gets Just Two Weeks to Weigh In on Seismic Testing in the Arctic Refuge*, AUDOBON (Oct. 30, 2020), <https://www.audubon.org/news/the-public-gets-just-two-weeks-weigh-seismic-testing-arctic-refuge>.

⁹ *Id.*

¹⁰ Henry Fountain, *White House Releases New Plan for Seismic Tests in Arctic Refuge*, N.Y. TIMES (Oct. 23, 2020), <https://www.nytimes.com/2020/10/24/climate/anwr-seismic-tests-arctic-refuge.html>.

¹¹ *Marine Mammals; Incidental Take During Specified Activities; Proposed Incidental Harassment Authorization for Polar Bears in the Arctic National Wildlife Refuge, Alaska*, 85 Federal Register 79, 082 (Dec. 8, 2020). Retrieved from: <<https://www.govinfo.gov/content/pkg/FR-2020-12-08/pdf/2020-26747.pdf>>.

The United States is fast-tracking the upcoming lease sale and seismic permit approval due to the upcoming transition of administrations.¹² The incoming Biden administration will take office on 20 January 2021 and has already stated that it opposes oil and gas exploration and development in the Refuge.¹³ The outgoing Trump administration's efforts to rush this development represents a pattern of serious, massive, and persistent discrimination towards Indigenous Peoples and presents an immediate threat to the health, safety, and security of the Gwich'in. Now, more than ever, it is critical that this Committee take steps to prevent further violations of the Convention.

III. The Committee must intervene immediately to avoid further conflict and prevent severe violations of the Convention by the United States.

Given the severe harm that would result from the United States' actions, the submitting organizations humbly request that the Committee immediately intervene and elevate the matter by undertaking the following actions:

- (a) Send a follow-up letter to the United States urging them to halt the planned January lease sale and seismic permit approval until responding to this Committee's requests for additional information;
- (b) Request that the United States respond to the Committee's previous letters no later than 31 December 2020;
- (c) Request that the Secretariat collect information from field presences of the Office of the High Commissioner of Human Rights and specialized agencies of the United Nations, national human rights institutions, and non-governmental organizations on the situation under consideration; and,
- (d) Adopt a decision including the expression of specific concerns, along with recommendations for action, addressed to:
 - (i) The United States;
 - (ii) The Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, the Special Rapporteur on the situation of

¹² Tegan Hanlon, *Trump Rushes To Lock In Oil Drilling In Arctic Wildlife Refuge Before Biden's Term*, NPR (Dec. 3, 2020), <https://www.npr.org/2020/12/03/942052004/trump-administration-sets-last-minute-oil-lease-sale-for-arctic-wildlife-refuge>.

¹³ The Biden Plan for a Clean Energy Revolution and Environmental Justice, BIDEN FOR PRESIDENT, <https://joebiden.com/climate-plan/#> (last visited Nov. 13, 2020).

human rights and fundamental freedoms of indigenous people, or the independent expert on minority issues;

- (iii) Other relevant human rights bodies or special procedures of the Human Rights Council;
- (iv) Regional intergovernmental organizations and human rights mechanisms including the Inter-American Commission on Human Rights;
- (v) The Human Rights Council; and
- (vi) The Secretary-General through the High Commissioner for Human Rights, together with a recommendation that the matter be brought to the attention of the Security Council.

Thank you for your immediate attention to this escalating matter.