COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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RACIAL DISCRIMINATION AGAINST INDIGENOUS PEOPLES IN THE UNITED STATES

CONSOLIDATED INDIGENOUS SHADOW REPORT

Submitted by Alberto Saldamando
International Indian Treaty Council
2390 Mission Street, Suite 301
San Francisco, California, 94110 USA
Tel: + (415) 641-4482
Fax: + (415) 641-1298
Email: alberto@treatycouncil.org
http://www.treatycouncil.org

Dedicated to Floyd Redcrow Westerman
American Indian Movement Statesman, Warrior,
IITC Spokesman, Leader and Guide
Who passed into the Spirit World on December 13, 2007

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This Shadow Report is an enlargement of the US National Indigenous Shadow Report. Contributors include: Alberto Saldamando, Working Group Co-coordinator, International Indian Treaty Council; Julie Fishel, Working Group Co-coordinator, Western Shoshone Defense Project; Indian Law Resource Center; Hope Clark, Candidate for Masters in Intercultural Service, Leadership, and Management from the School for International Training; Manuel Pino, Professor, Scottsdale Community College; Josh Clark; Jaime Arsenault; Roxanne Ornelas, University of Minnesota; Sakura Saunders, CorpWatch; and, Andrea Carmen, International Indian Treaty Council. Other major contributors are cited in the body of the report.

TABLE OF CONTENTS

Executive Summary

The **Introduction** reviews the standards by which compliance with the Convention on the Elimination of all forms of Racial Discrimination (CERD) should be measured, reviewing the recent passage of the United Nations Declaration on the rights of indigenous peoples and the lack of recognition and respect of the rights of many Indigenous Peoples and Nations within the jurisdiction of the United States (US). Many rights contained in the UN Declaration are already customary international law and recognized by the US itself but only with reference to "recognized" tribes. The Introduction also points out that the US takes the attitude that recognition of Indigenous rights, particularly political rights, are a form of "racial preference" and not a matter of rights.

The US fails in its **Obligation to Report on Indigenous Peoples**. We cite data on the overwhelming disparities in income, life expectancy, poverty and unemployment, as well as disproportionate victimization, incarceration and sentencing suffered by Indigenous Peoples on Indian Reservations, not reported by the United States. The data contained in this section as well as others (see, e.g., Violence Against Women, The Right to the Highest Attainable Standard of Health) reflect what can only be describe as a system of Apartheid and forced assimilation, by purpose or effect, on many if not most Indian Reservations, where Indigenous people are warehoused in poverty and neglect, their only option being to abandon their lands, families, languages and cultures to search for a better life.

The United States **Racist Constitutional Foundation, Legal Structure** is examined, as is the current application of racist constitutional doctrine established by the United States Supreme Court in the 1830s. Incuded in current application are the threat of termination of the Cherokee Nation, Treaty abrogation, corruption of the so-called "Trust Doctrine" and the continuing negation of Indigenous Peoples' right of self determination.

Considerable attention is paid to **Sacred Lands and the Right of Spiritual Practice**, as it continues to be of paramount importance to Indigenous Peoples, whether recognized by the US or not. The Addendum, Sacred Lands, incudes Indigenous Peoples' own testimony on the negation of religious rights in all parts of the United States. Given the disfavor in international law to the extinguishment of Aboriginal Title, and the fact that most of these Sacred Lands are owned and administered by agencies of the United States, a major recommendation of this Shadow Report is the recommendation to the United States of the return to Indigenous Peoples of these Sacred Lands, still in use by them for Spiritual and religious practice in spite of great obstacles posed by the US and its agencies. **Environmental Racism and its effects on Indigenous human rights** is examined as it permeates all aspects of Indigenous life, including Spiritual Practice examined above, as well as means of subsistence, health and well-being, culture and religion.

Other current and particularly discriminatory policies and practices are examined in **The Denial of Human Rights and Fundamental Freedoms in the Political, Economic, Social, Cultural or any Other Field of Public Life,** including the right to health, violence against women, so-called "Homeland Security" and the lack of protection for the right to vote.

Racist Science and the Collective Right of Free, Prior and Informed Consent describes how scientific inquiry in th United States particularly attacks Indigenous Peoples in their own human genome and identity and that which they hold Sacred.

US compliance with **Articles 6 and 7 of the Convention** is examined particularly with regard to the lack of any reparation or apology for Indian Boarding Schools (the kidnapping of children in order to "kill the Indian and save the man), as well as texbooks in public schools and the use of racist logos and mascots by US sports teams.

United States Racial Discrimination against Indigenous Peoples Abroad describes racism in the conduct of US foreign policy negatively affecting the human rights of Indigenous Peoples abroad. Domestic US policy, the allowing of the manufacture for export of pesticides banned in the United States affecting the life, health and well being of Indigenous Peoples abroad is also documented. The conduct of US transnational Corporations is examined, with another major recommendation that the US be held accountable for its own behavior as well as the behavior of its corporations, as they affect the rights of Indigenous Peoples abroad.

Introduction – Major Concerns and the UN Declaration on the rights of Indigenous Peoples

As described in this Shadow Report, the colonialist policies of racial subjugation have not ended for the Indigenous Peoples in the United States (US). Under US constitutional doctrine first established in the early 1800's, Indigenous Peoples can be unilaterally deprived of their lands and resources without due process of law and without compensation; indigenous governments can be terminated or stripped of their rightful authority at the whim of the federal government and their lands "allocated" as "surplus lands." Treaties made between Indigenous Peoples and the Colonialist governments and the Successor State may be arbitrarily abrogated. Religious freedoms and religious practice, Sacred Lands and the cultural integrity of Indigenous Peoples go virtually unprotected.

Of equal concern is United States policy of "non-recognition" of significant groups of Indigenous Peoples altogether. The United States makes a clear distinction between "recognized" tribes, recognized by the US as Indigenous Peoples with some Indigenous rights, and all other Indigenous Peoples in the United States. Only recognized tribes, and to a lesser extent, Alaska Native Villages, are accorded some Indigenous rights. All other Indigenous Peoples in the United States, including unrecognized and terminated Tribes, Native Hawai'ians, Pacific Islanders (including the Chamorro Native Peoples of Guam), the Native Taino Peoples of Puerto Rico, and to a significant extent, Alaska Natives are not recognized as "Indigenous" with regard of their rights as Peoples. Although recognized as Indigenous Peoples and having Native Tribal governments, Native Alaskans, are not recognized by the United States as Indigenous Peoples with full Indigenous rights. According to the US Periodic report only federally recognized Tribes are accorded these "special rights."[1]

There is an equally disturbing trend to separate Indigenous Peoples from their rights as though the recognition and respect of those rights were somehow discriminatory toward the general population, described and discussed in various contexts in this parallel report. The United States has for some time been equating the rights of Indigenous Peoples, particularly their political rights, as a form of "racial preference." The Alaska Native Claims Settlement Act, (ANCSA)'s, for example states that the settlement of the land claims was to be accomplished "… without establishing any permanent *racially defined institutions, rights, privileges, or obligations*." With the adoption of the United Nations Declaration on the rights of Indigenous Peoples, the denial of Indigenous human rights to the Indigenous Peoples in the United States becomes even more sharply defined.

It should be noted that many rights contained in the UN Declaration have been accepted as customary international law. In explaining their negative vote before the General Assembly the US admitted that it recognizes many rights recognized in the Declaration, but only recognizes them for recognized tribes. In making the case that much of the UN Declaration re-states customary international law, Professors A. James Anaya and Siegfried Weissner point out:

> “Even the U.S. Mission to the United Nations, in the explanation of its negative vote, pointed out that the “U.S. government recognizes Indian tribes as political entities with inherent powers of self-government as first peoples. In our legal system, the federal government has a government-to-government relationship with Indian tribes. In this domestic context, this means promoting tribal self-government over a broad range of internal and local affairs, including determination of membership, culture, language, religion, education, information, social welfare, maintenance of community safety, family relations, Economic [sic] activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.
>
> “The same is true for our finding according to which indigenous peoples have a right under customary international law to "demarcation, ownership, development, control and use of the lands they have traditionally owned or otherwise occupied and used." This customary norm, found partly as the result of our global surveys of state practice, was cited by the Inter-American Commission in its referral of the Awas Tingni community's complaint against Nicaragua to the Inter-American Court of Human Rights.[2]
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> “In analyzing the individual parts of the Declaration, we see that all new rules of customary international law, as found in our respective surveys of state and international practice of 1999, 2001, and 2004, still remain part of the global consensus. As stated in 1999, “indigenous peoples are entitled to maintain and develop their distinct cultural identity, their spirituality, their language, and their traditional ways of life.” Most of the provisions of the Declaration go to the preservation of culture, language, religion, and identity; and state practice in the states with indigenous peoples largely conforms to these legal tenets. Due to the strength of the indigenous renascence throughout the world, the original goal of assimilation of indigenous cultures into the maelstrom of the modern world has largely been abandoned in favor of preservation and reinvigoration of indigenous cultures, languages and religions. The legal guarantees of these claims are, however, not the real bones of contention.
>
> In any event, only a *jus cogens* norm requires virtual unanimity of all members of the world community. The internal practice of the four opposing states, as well as their consent to accord a special status and rights to indigenous peoples in principle, makes them part of the world consensus on customary international law as formulated above. At most, they can be considered persistent objectors to certain contents of the Declaration.”[3]

The United States was one of only four States, including Canada, Australia and New Zealand, voting against the overwhelming majority of States in its adoption at the General Assembly. It is expected to tell the Committee that this United Nations Declaration does not apply to it because

of its negative vote. In spite of this expected indefensible assertion, the United Nations Declaration should be the standard by which the United States' compliance with the CERD Convention is assessed by the CERD Committee.

The Western Shoshone Defense Project addresses the US responses to the Committee's concerns and UA/EW decision concerning the Western Shoshone in a separate document. The Western Shoshone document should be read in conjunction with this parallel report, as it reflects the particular experience of the Western Shoshone Peoples with many of the problems described herein. Indeed, the United States cynical insistence on referring to the Western Shoshone as "Shoshone descendants" only underlines the racist attitudes of the United States government toward Indigenous Peoples.

The Obligation to Report on Indigenous Peoples

General Recommendation XXIII urges state parties with Indigenous Peoples in their territories to: "include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention."[4]

I. Omissions of the US Periodic Report

In its most recent report (HRI/CORE/USA/2005, 16 January 2006) to the Human Rights Committee, the United States did not include full information on the situation of the indigenous peoples under its jurisdiction. For example:

- Only the statistics involving 'population by race' included all races.
- Language data regarding "spoke a language other than English at home" included Spanish, Asian or Pacific Island languages, French and German, but did not include indigenous languages.
- 'Life expectancy' data was limited to Whites and African Americans.
- 'Fertility rates' were limited to White women and Black women.
- 'Infant mortality, maternal mortality and life expectancy' data was confined to Black and White populations.
- 'Children living with one parent' included White, African American, Asian, and Hispanic children, but not indigenous children.
- Department of Labor statistics demonstrated men/women, Whites, African-American, and Hispanic statistics regarding employment, unemployment, and part-time. employment, but did not address indigenous employment and completely ignored employment rates on Indian Reservations.
- 'Poverty level' statistics were only provided for White, Black, and Hispanic families.
- 'Level of education' statistics were only provided for Whites, Blacks, and Hispanics.

- ‘Functional literacy’ statistics were only provided by age groups, not by racial or ethnic groups.
- ‘Freedom to worship and to follow a chosen religion’ data only included Protestants, Roman Catholics, Jews, and Buddhist, Hindu, and Muslim/Islam groups. There was no mention of indigenous spiritual practices.

II. Un-recognized Indigenous Peoples

The US Periodic Report offers demographic data on Indigenous Peoples in various forms. There is no unity or aggregation of data for Indigenous Peoples as a whole, as the United States Census separates Indigenous Peoples in the United States into smaller groups including American Indian and Alaska Native (AIAN). In the year 2000, the United States ceased the practice of subsuming the Indigenous Peoples of the Pacific in a separate category called Asian and Pacific Islander (API). Now the Indigenous Peoples of the Pacific are in a separate category call Native Hawai’ian and Pacific Islander (NHPI). But this recognition has not extended to their rights as Indigenous Peoples.[5] The Chamorro Peoples of Guam are subsumed in the NHPI category and the Taino Peoples of Puerto Rico, are totally ignored.

For these sub-groups there is no disaggregated data on Indigenous Peoples in the United States as a whole from the 2000 census, further diminishing the real numbers and the real human rights and fundamental freedoms of all of the Indigenous Peoples in under the jurisdiction of the United States. Data on American Indians reveal the great disparity between the general population and the well being of Indigenous Peoples living on their ancestral lands.

Worse, the Periodic Report reports primarily on recognized tribes under their obligation to report on Indigenous Peoples. It provides no information on Indian Tribes that have been terminated and have not been reinstated, except for a brief statement that “[n]umerous groups are also petitioning through an established federal process to have their tribal status determined.”[6] Many have waited decades seeking recognition.

There also exist Peoples who have not applied for recognition, wanting to stay out of the sight and mind of what they consider an oppressive system, but who consider themselves Indigenous and still maintain ties to their ancestral lands, continuing to practice their language, culture and religion. This is true for the Teton Sioux of South Dakota, the Sovereign Seminole Nation of Florida and the Sovereign Nation of Hawai’i. Their rights as Indigenous Peoples under the Convention are also not examined by the United States.[7] And, as has been noted, the situation of Native Hawai’ians and Pacific Islanders, including the Chamorro Peoples of Guam, as well as the Taino Indigenous Peoples of Puerto Rico, is not reported.

III. Indian Reservation Apartheid

“Apartheid” is a strong word. And certainly, there are recognized Tribes in the US that are now achieving certain levels of relative prosperity primarily due to federal law allowing them to operate casinos, But the data contained in this section as well as others in this report (see, e.g., Violence Against Women, The Right to the Highest Attainable Standard of Health) reflect what can only be describe as a system of Apartheid on many Indian Reservations, where Indigenous people are warehoused in poverty and neglect. By purpose or effect, their only option is forced assimilation, the abandonment of their lands, families, languages and cultures in search of a better life.

The US Periodic Report and generally accurate is data on the dire poverty, illness and the educational and economic marginalization of Indigenous Peoples including Native Americans living in urban areas. These are indigenous persons, families that have left their ancestral lands to seek what the UN Declaration on Human Rights describes as “an economic existence worthy of human dignity,” by force of law (e.g., the “Termination and Relocation” policy of the 1950s) or by force of their own despair.

But even this data does not do justice to those deplorable conditions as the data on Indigenous Peoples living on the reservation, on their ancestral lands is not described in the Periodic Report. The Periodic Report states that, “The 2004 American Community Survey showed poverty rates of 24.7 percent for the AIAN population and 18.1 percent for the NHPI group, compared to 13.3 percent overall.[8] But the grim reality is for those who remain on tribal lands, in 10% of federally recognized reservations, 50% or more of their population live below the poverty level. Several, like the Cedarville Rancheria and Roaring Creek Rancherias in California, the rate is 100%; Lakota (Sioux) Reservations in South Dakota as a whole are over 70% below the poverty level; the vast majority of Indian reservations fell between 25% and 50% of persons living below the poverty level.[9]

Education, touted by the United States as a path out of poverty has not been a solution available for Indigenous Peoples on the reservation. Indigenous persons living within tribal areas had even lower educational attainment than Indigenous persons living outside tribal areas: 24.4% of the general population and 11.5% of Indigenous Persons living off the reservations have bachelor’s degrees or more, while only 8.1% of Indigenous persons living in tribal areas have this attainment; and only 4% of Alaska Natives living in their Native Villages have bachelor’s degrees or more.[10]

It is no wonder that fully 2/3 (64.1%) of American Indian and Alaska Native populations live outside their reservations or Native Villages.[11] United States racist policy and practice toward Indians has only driven people from their lands and homes. Such policies amount to a forced assimilation: 71.1% of American Indians, on or off the reservation, and 70.6% of Alaska Natives living on or off their Native Villages speak only English at home.[12]

A.Life Expectancy on the Indian Reservation

Mortality rates and life expectancy on the reservation are not reported by the US in their Periodic Report. Neither is comprehensive data collected for Indians on Reservations. The grossly disproportionate poverty that Indigenous Peoples experience in the United States is accompanied by disturbingly low life expectancy as demonstrated by the few scattered statistics available. Recent research on diverse racial-geographic population groupings in the United States has shown "disparities in mortality experiences" to be "enormous."[13] Among those found to be most disadvantaged in this major national study were American Indians who live on or near reservation lands.

The six-county region in southwestern South Dakota that is home to both the Pine Ridge and Rosebud Reservations has the lowest life expectancy in the United States. Those who live in this predominantly-Indigenous area "can expect to live 66.6 years, well short of the 79 years for low-income rural white people in the Northern Plains."[14] If this region of South Dakota was compared with all of the countries in the Western Hemisphere, it would rank ahead of only Bolivia and Haiti in terms of its residents' longevity. By themselves, American Indian males in these South Dakota counties had a life expectancy of a mere 58 years in the period 1997-2001.[15]

Though these are the most extreme numbers on AIAN life expectancy, they are not an aberration. Indeed, the "high rates of infant mortality, cancer, diabetes and heart disease" among American Indians in South Dakota, along with their difficulty in accessing hospitals and clinics[16] are circumstances that are shared with other Indigenous Peoples on or near reservations throughout the country. The report mentions "extremely high rates of mortality from alcohol-related diseases and diabetes" among Indigenous Peoples living on the reservations it examined in general.[17] The role of alcoholism can, of course, be traced to depression and psychological hardships resulting from poverty, unemployment, and the inability to care for one's family.

B.Unemployment and Poverty in Employment

Comprehensive data on unemployment rates on the Reservation are also not included in the US Periodic Report. Such nationally comprehensive data is apparently not kept but must be examined on a State by State basis. According to the Bureau of Indian Affairs "calculations" Reservation Tribes in the State of Montana face a 66% rate of unemployment; of those employed, 36% still fell below the poverty guideline.[18]

Of the 51% of the entire available workforce of federally-recognized AIAN groups living on or near the reservation that is employed, 32 percent earn wages below the 2003 poverty guidelines established by the U.S. Department of Health and Human Services.[19]

In South Dakota, 84% (55,115 of 65,821) of the available workforce of federally-recognized Tribes on or near reservations was unemployed. Half (5,195 of 10,706) of those who were employed had an income below the federal government's national poverty guidelines. Selected statistics by tribe in South Dakota:

- Oglala Sioux Tribe of Pine Ridge – 87% (24,304 of 27,778) unemployed
- Rosebud Sioux Tribe – 80% (9472 of 11,796) unemployed; 78% of the 2324 employed earn below the poverty level
- Cheyenne River Sioux Tribe – 88% (9392 of 10,704) unemployed; *all* 1312 of those employed were reported as earning under the poverty level
- Yankton Sioux Tribe – 71% (1733 of 2435) unemployed
- Standing Rock Sioux Tribe (note that this includes those in South *and* North Dakota) – 72% (5325 of 7364)

Recognized Alaska Natives do not fare well either. While "only" 43% of their populations' available workforce was unemployed, 41% (17,672 of 43,085) of those employed had earnings under the poverty level.

The St. Regis Band of Mohawk Indians of the State of New York: 85% (7,388 of 8,696) of available workforce on or near the reservation unemployed. In the opposite part of the State of New York, the Seneca Nation reported 0% unemployment, but that 2,205 of the 2,496 (88%) of its employed members living on or near the reservation had an income below the poverty level.

Eastern Oklahoma's Seminole Nation had an unemployment rate of 77% on or near the reservation. Navajo had an unemployment rate of 54% of those living on or near reservations in their three-state region; this equals 28,535 unemployed people of the 52,782 in their available workforce. The Shoshone-Bannock Tribes of Fort Hall (State of Idaho) has an unemployment rate of 81% (8089 of 9973).

Confederated Tribes of the Colville (State of Washington) – only 28 of 6630 members of the workforce living on or near reservations are employed; all of those earn an income under the poverty wage, The combined Northern Arapaho Tribe and Eastern Shoshone Tribe of the Wind River Reservation have a 73% (5421 of 7401) unemployment rate.

The Wind River Indian Reservation (WRIR) was the site of a study in 1998 that suggests the prevalence of significant local employment discrimination. It found that 80.2% of non-Indians who lived in the immediate area of the WRIR and had at least "some college" education were employed, while barely over half (56.9%) of American Indians with this same level of education were employed.[20] One of the researchers involved in this study has since written that employment opportunities in the vicinity of the reservation "are insufficient to accommodate all qualified job seekers—not only those with basic skills but those with significant education."[21]

On the question of job availability, according to 1999 figures, "Nationally, 45.6 percent of all jobs held by Native American residents on reservations are with a local, tribal, state or federal government."[22]

Federal US policy has not changed over the centuries. By purpose or effect, Indigenous Peoples of the United States continue to face economic and socially discriminatory treatment leading to an economically coerced removal from their ancestral lands and to assimilation by the dominant culture.

C.Disproportionate Victimization, Incarceration and Sentencing

Disproportionate Victimization: The US Department of Justice (DOJ) recently reported that the rate of violent crime reported by American Indians and Native Alaskans was "well above that of other U.S. racial or ethnic groups and is more than twice the national average. This disparity in the rates of exposure to violence affecting American Indians occurs across age groups, housing locations and by gender."[23] Calling these facts "a disturbing picture," the DOJ reported, among other things, that:

- American Indians experienced a per capita rate of violence twice that of the U.S. resident population.
- From 1976 to 2001 an estimated 3,738 American Indians were murdered.
- The violent crime rate in every age group below age 35 was significantly higher for American Indians than for all persons. Among American Indians age 25 to 34, the rate of violent crime victimizations was more than 2½ times the rate for all persons the same age.
- Rates of violent victimization for both males and females were higher for American Indians than for all races.
- The rate of violent victimization among American Indian women was more than double that among all women.

Among its findings, the Department of Justice reported that although violent crime against white and black victims was primarily intra-racial, committed by a person of the same race, American Indian victims were more likely to report the offender was from a different race, compared to blacks and white victims: "In 66% of the violent crimes in which the race of the offender was reported, …nearly 4 in 5 American Indian victims of rape/sexual assault described the offender as white. About 3 in 5 American Indian victims of robbery (57%), aggravated assault (58%), and simple assault (55%) described the offender as white." [24]

Disproportionate Incarceration: Recalling that the US Census reports the American Indian/ Alaska Native Population at 1.6% of the population of the United States, this same Justice Department Study reported that, "[a]bout 5,881 violent offenders entered Federal prison during fiscal year 2001. American Indians were 16% (913) of all offenders entering Federal prison for violent crimes. The American Indian proportion of all violent offenders entering Federal prison has remained stable since 1996 — about 15%."[25]

With regard to the States' prison system there is no aggregated data on the numbers of American Indians within the 50 State prison systems. Nationally, about the same numbers of American Indians are incarcerated in proportion to their numbers in national population. But in those States with relatively large Indian populations, they are incarcerated disproportionately to their numbers in these States. As stated in the National Consolidated Shadow Report to the Committee:

"Native Americans are not counted separately from whites in the Department of Justice statistics but statistics from states with higher percentages of Native populations show that they are also overrepresented in the jail and prison population. For example, in Montana, according to the 2000 U.S. Census, Native Americans, the state's largest non-white group, comprise just 6.2 percent of Montana's population but 20 percent of those in correctional institutions. Nineteen percent of the 3,704 Montana men and boys being held in correctional institutions are Native American. Nearly one-third of the 429 women in correctional institutions are Native American."[26]

In the National Consolidated Shadow Report to the CERD Committee on the juvenile justice system in the United States, the following was reported with regard to American Indian Youth:[27]

"In addition, in some areas, Native American youth in urban areas may not be identified as Native American in the juvenile or criminal justice system. Although 1% of the U.S. youth population in 2003, identified Native youth made up a full 2% of the cases referred to juvenile courts. This is the single greatest increase among any racial group in the U.S. Similarly, in 2003, Native American youth had a higher percentage of petitioned cases waived to adult criminal court, at 1.2% of all Native American cases formally processed, than any other racial group in the U.S. When the numbers are disaggregated by offense categories, Native American youth have the highest percentage of cases in every category except drug crimes. Also in 2003, Native American youth had the highest percentage of adjudicated cases that resulted in a placement out of the home (33%), which is the most serious sentence a juvenile court judge can impose, and they had the lowest percentage of adjudicated cases that resulted in probation (56%). In some states, the disparities are even worse. In 2002, Native American youth in North Dakota were incarcerated in adult correctional centers at a rate of 16.7 for every 100,000 youth. By contrast, no other group experienced enough youth admitted to adult corrections to register at over 0 per 100,000. This data indicates an alarming level of racial discrimination against Native American youth in the juvenile justice system."

Disproportionately Higher Sentences: Due to the criminal jurisdictional scheme in Indian country discussed below in greater detail, Indian offenders of major crimes are prosecuted in federal court, under the Major Crimes Act, and subject to the Federal Sentencing Guidelines. If non-Indian offenders commit the same crime they are typically subject to prosecution and sentencing by the state authorities in state court. This differing sentencing scheme for Indians versus non-Indians has a disparate impact on Native American defendants, as state criminal sentences are typically lower than federal criminal sentences.[28]

In 2002, the United States Sentencing Commission created an Ad Hoc Advisory Group on Native American Sentencing Issues in response to concerns that Federal Sentencing Guidelines had a discriminatory impact on Indian offenders in Indian country. The Advisory Group noted that "there is a significant negative disparity in sentencing of Native American people …."[29] For example, the Advisory Group found that for sex offenders prosecuted in New Mexico state courts, the average sentence is 43 months, compared to 86 months in federal court.[30] For crimes of assault, the average sentence in New Mexico state court is 6 months, compare to 54 months in federal court.[31]

These incarceration and sentencing disparities violate Indian defendants "right to equal treatment before the tribunals and all other organs administering justice of the laws", pursuant to Article 5(a) of the Convention, because Indian defendants typically receive longer sentences under the Federal Sentencing Guidelines than a non-Indian would receive in state court for the same crimes. Although the Advisory Group acknowledged this disparity, it concluded that this negative disparity in sentencing of Native Americans was a jurisdictional matter, not necessarily a racial matter.[32] However, a jurisdictional scheme that makes distinctions based on the race of the defendant is in fact a form of racial discrimination, as defined by Article 1(1) of the Convention.

Racially Discriminatory Constitutional Foundations

Antiquated racist Doctrines that continue to serve as the basis for the United States relationship to Native Americans are not written in the US Constitution, but are "interpretations" of the US Constitution by the United States Supreme Court. Certainly, that "Congress shall have the Power to …regulate commerce …with Indian Tribes (Article 1 Section 8), and the power of the President and Senate to make treaties with Indian Tribes (Article II, Section 2 Clause 2) the only mention of Indians in the Constitution, could have led to a much more benign result than that described herein.

I. The Marshall Trilogy: The Origins of Racist Constitutional Doctrine

American Indian Constitutional Doctrine and law has not changed a great deal since the founding of the republic of the United States. It is still based on the so-called Marshall trilogy of cases decided by the US Supreme Court at the beginning of the 19th Century: Cherokee Nation v. Georgia, 30 US 1, (1831); Worchester v. Georgia, 31 US 515 (1832), and Johnson v. McIntosh, 21 US 543 (1823). These three doctrinal cases are still applied today.

Discrimination against Indigenous Peoples can be traced directly back to these Constitutional Doctrines developed by the Marshall Supreme Court in the 1830's. The Constitution does not provide for the making of treaties with Indian Tribes on account of their race but on account of their political status.[33] But since the 1830s Indigenous Peoples within the United States have suffered grave economic, social and political deprivation precisely because of the marginalization of their political status grounded in the racist notions of the early 19th Century.

The entire body of federal Indian law and policy has its foundations in a racist, antiquated principle – the Doctrine of Discovery and Conquest. The Supreme Court cemented this legal fiction in 1823 in the case of *Johnson v. McIntosh*[34]. In *Johnson v. McIntosh*, Justice Marshall declared that the "discovery and conquest" of the Americas by Christian European nations

divested Indigenous Peoples of their rights, *Johnson v. McIntosh* also established that Indigenous Peoples in the United States were "Domestic Dependent Nations," dependent on the United States even though they had the Constitutionally recognized power to enter into treaties with the United States. Through continuing applications of this doctrine in case law, federal policies and legislation, the judiciary, Congress, federal agencies and non-state actors perpetuate a *de jure* false and discriminatory idea of European superiority over Indigenous Peoples.[35]

1. **The Plenary Powers Doctrine**

In their 2001 Concluding Observations, the Committee expressed concern that the US government claims to be able to take land from Indigenous Peoples without compensation. The Marshall Supreme Court Doctrines established the unlimited power of Congress "regulate" not only commerce but beyond the dictates of the Constitution, the entire relationship with Indian nations, including their political status. These cases established Congressional Power to take Indigenous property, including land, money, and other property, without legal restriction and without compensation that continues to this day.

At the end of the 19th century, the United States government adopted a policy of "allotment" of Indigenous lands, carving up the lands of Indian reservations and distributing small parcels, or allotments, to individual Indians as well as to non-Indian homesteaders. Most Indigenous lands passed out of Indigenous ownership through this policy, enacted into law in the Allotment Act of 1887, also known as the Dawes Act:

> "Of the approximately 156 million acres of Indian lands in 1881, less than 105 million remained by 1890, and 78 million by 1900. Indian land holdings were reduced from 138 million in 1887 to 48 million in 1934, a loss of 90 million acres. Of this, about 27 million acres, or two thirds of the land allotted, passed from Indian allottees by sale between 1887 and 1934. An additional 60 million acres were either ceded outright or sold to non-Indian homesteaders and corporations as "surplus" lands."[36]

In addition, many Indian Nations, such as the Great Sioux Nation, are said to have lost collective lands due to unauthorized settlement near the turn of the century.

The Supreme Court of the United States in 1955 reaffirmed that the United States may freely confiscate the land and resources of Indigenous Tribes that are held by aboriginal right, that is, by reason of long historical possession and use, and this dispossession can be accomplished without any compensation.[37] This Court holding in *Tee-Hit-Ton v United States,* ignored the strong protection for property rights set forth in the Fifth Amendment of the U.S. Constitution, which provides that property may not be taken without due process of law or just compensation. No other political or racial group, community, corporation or individual in the United States faces such insecurity or discriminatory treatment with respect to their right to property.

The UN Human Rights Committee previously recommended that the United States take steps to ensure that recognized aboriginal Indigenous rights cannot be extinguished.[38] Rather than provide any assurances that extinguishment will no longer occur, the United States merely reiterated that under US law, recognized tribal property rights are subject to diminishment or elimination under the Plenary Powers Doctrine. The plenary power doctrine results in all Indigenous Peoples, recognized and un-recognized, being discriminatorily denied any certainty in their ability to continue to use and occupy lands they have held since time immemorial. This is particularly important in Indigenous Spiritual practice discussed below.

2. The "Trust" Relationship

Cherokee Nation v. Georgia also repeated the Constitutional Doctrine that, although Indigenous Nations were Nations capable of entering into treaties with the United States, they were not fully "Nations" but instead, "domestic dependent nations," (relying on *Johnson v. McIntosh*) and that Indigenous Nations did not have an enforceable title to their land, and that title was vested in the United States government and could not be sold by the tribe..

This Doctrine, established by the Supreme Court in Cherokee Nation and Worchester, is still the active principle in the relationship with the United States, as evidenced by the US Periodic Report's repeated reference to this doctrine. The Supreme Court established early on that the relationship "resembles that of a ward to his Guardian."[39]

This overtly racist and longstanding principle of federal Indian law is the United States' claim that there exists "a general trust relationship between the United States and the Indian people."[40] As a result of this racist relationship most Indigenous property of Indigenous Tribes, and some property of Indigenous individuals, is said to be held in legal "trust" status for them by the United States.[41] The U.S. claims to be responsible for administering the trust as the official trustee. Such a "trust relationship" could benefit Indigenous Peoples in some situations. But in fact, the U.S. has actually used this "trust" relationship directly against the Indigenous people it is supposed to be "protecting."

II. Current Application of Racist Constitutional Doctrines

The Doctrines of Discovery, Plenary powers, and Trust Relationship, which emerged at the beginning of the 19th Century,[42] are still considered applied law today. Furthermore, they have spawned a multitude of laws and policies, which often result in the denial of fundamental human rights that are guaranteed by the Convention to indigenous peoples.

In a 2004 decision, the Second Circuit Court of Appeals dramatically demonstrated that federal courts still today accept and apply a framework of law that is discriminatory and rooted in the racism and colonialism of 200 years ago. The rules applied are arbitrary, inconsistent, and

lacking in adherence to precedent or principles over time. In *Seneca Nation of Indians v. New York*,[43] the Court of Appeals set out this racist body of so-called law in footnote 4 of its decision:

> "Aboriginal title refers to the Indians' exclusive right to use and occupy lands they have inhabited "from time immemorial," but that have subsequently become "discovered" by European settlers. County of Oneida v. Oneida Indian Nation of New York, 470 U.S. 226, 233-34 (1985) (Oneida I); Johnson v. McIntosh, 21 U.S. 543, 572-74 (1823). Under the doctrine of discovery, European nations that "discovered" lands in North America held fee title to those lands, subject to the inhabiting Indians' aboriginal right of occupancy and use. See Oneida I, 470 U.S. at 234. Aboriginal title, however, was not inviolable. Indians were secure in their possession of aboriginal land until their aboriginal title was "extinguished" by the sovereign discoverer. See Oneida Indian Nation v. New York, 860 F.2d 1145, 1150 (2d Cir. 1988) (Oneida II). Extinguishment could occur through a taking by war or physical dispossession, or by contract or treaty, id. at 1159 (citing 3 The Writings of Thomas Jefferson 19 (Lipscomb et al. eds. 1904)), and did not give rise to an obligation to pay just compensation under the Fifth Amendment, see Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 283-85 (1955). Typically, extinguishment resulted in the joining of the possessory and ownership rights to the land in fee simple in the sovereign, but where the fee title was devised by the sovereign prior to extinguishment of aboriginal title, the devisee held the "right of preemption," which was the exclusive, alienable right to acquire fee title to Indian land upon extinguishment. See Oneida II, 860 F.2d at 1150. The right of preemption, the District Court correctly noted, is similar to a contingent future interest in the land: only extinguishment by the sovereign could trump the Indian right of occupancy and thereby perfect the right of preemption."[44]

This footnote was included by the Court in its opinion, though these matters were never briefed by the parties in the case. The Court simply assumed this body of law as established precedent. These Constitutional Doctrines continue to be applied to the most basic political rights of even recognized Indian Tribes.

1. **The Termination of Recognized Indian Tribes**

BACKGROUND: In 1887, pursuant to the Plenary Powers Doctrine, the United States Congress passed the General Allotment Act, known as the Dawes Act. The ultimate purpose of the Dawes Act[45] was to break up tribal governments, "to break up reservations, settle the Indian on his own allotment, and deal with him as a private citizen".[46] Indian lands and territories were "allotted" first to individual Indians, and the rest, called "surplus land" was sold to non-Indians. The effect on Indian nations was catastrophic. Of the 140 million acres of land that the Indigenous nations within the United States owned collectively, only 50 million acres remained when the allotment system was abolished in 1934.

In 1953 Congress adopted House Concurrent Resolution No. 108 declaring an end to federal services to various Indian nations and tribes "at the earliest possible time." Federal assistance to over 100 Indian nations ended. The Indian nations were to distribute tribal land and property to tribal citizens and to dissolve all forms of tribal government. In 1968 this policy of termination ended, and since that time various measures have been attempted to undo the damage caused by the ill-conceived legislation.

Still, even today, the United States Congress maintains that under the "plenary power doctrine" it can terminate the legal status of Indian nations and tribes, even those that are "federally recognized."

Severing U.S. government relations with the Cherokee Nation:[47] On June 21, 2007, U.S. Representative Diane Watson introduced legislation, HR 2824, in the United States House of Representatives, "[T]o sever United States' government relations with the Cherokee Nation of Oklahoma."[48] Its legislative impact would terminate the federal recognition of the Cherokee Nation, close Indian businesses providing substantial income to the Nation, terminate the employment of thousands of Indians, and cease all federal funding to the Cherokee Nation.

Representative Watson alleged that the Nation had not fulfilled its treaty obligations under the Treaty of 1866 between the Cherokee Nation and the United States government. She maintained in effect that Congress, not the Cherokee Nation, had the right to determine citizenship in the Nation. She maintained that the Cherokee Nation's failure to enroll non-Indians in the Nation constituted various violations of the 1866 Treaty. She maintained in effect that Congress, not the Cherokee Nation has the right to determine the identity of the Nation.

The right of Indigenous peoples to full and effective participation in decisions affecting their Indigenous nation: Representative Watson would have learned the factual history of the Cherokee Nation – before she introduced her discriminatory legislation – if she would have spoken with representatives of the Nation. Despite multiple requests and invitations, she consistently refused to meet with duly-chosen representatives of the Nation. The right of Cherokee leadership to "full and effective participation" in decisions affecting the Cherokee people has and continues to be completely rejected.

In this case, profound and discriminatory misrepresentations of fact regarding the Cherokee Nation and its history have been fed to and widely circulated in the American media.[49] Representative Watson represented her cause as "the most significant civil rights movement of this century." She falsely claims that the present day descendants of the Freedmen have treaty entitlements and that the Nation's denial of citizenship is racist. It is deeply disturbing that a member of Congress is using rhetoric to blatantly deny the right of self-determination to the Cherokee Nation.

The right to citizenship in the Cherokee Nation flows from the Constitution of the Cherokee Nation, not from the Treaty of 1866. The 1866 Constitution of the Cherokee Nation did grant citizenship to Freedmen and their descendants living in the limits of the Cherokee Nation, *at that time*, but the federal government limited those rights to those alive in 1902. The Cherokee people

voted in a democratic vote of the people in March 2007 to amend the Constitution's citizenship requirements to require citizens be Indian by blood. The Cherokee Nation, by voice of its people, has every right to such constitutional change, as self-determination is the right of the Cherokee Nation as a sovereign and as an Indigenous Nation. If Representative Watson had allowed the Cherokee Nation to participate fully and effectively in her legislation, she may have learned the history and lived experiences of the Cherokee people which would belay her pronounced grounds for H.R. 2824. It is the duty of the federal government to ensure effective participation by Indigenous nations in decisions affecting them as required under article 5 (c) of the Convention.[50] The Congress of the United States appeared (in floor debate) to be unaware of any obligation in this regard.

The Cherokee Nation has the right to maintain its cultural identity: On October 1, 2007, Representative Watson declared to Congress that "the Cherokee Nation's tribal courts ruled in favor of Lucy Allen, a Freedmen descendant who sued for citizenship."

For thirty years the Nation operated under its 1975 Constitution and granted citizenship only to Indians "by blood". The March 2006 Cherokee Supreme Court ruling overturned three decades of court decisions to the contrary and determined that if the 1975 Cherokee Constitution "was intended to limit membership to citizens by blood, it should have said so" and required more "specific language". The ruling also repeatedly recognized that "the Cherokee citizenry has the ultimate authority to define tribal citizenship." The ruling allowed for immediate enrollment of non-Indian descendants of the freedmen in the Cherokee Nation until the Cherokee people could vote on clarifying citizenship provisions.[51]

The March 2007 vote of Cherokee citizens to amend the Constitution provided the more "specific language" that had been required by the court. Cherokee voters reaffirmed by a landslide vote they wanted a Nation comprised of Indian people. This has been an ongoing consideration for citizenship since the revitalization of the Cherokee Nation in 1975.[52] Like the other Indian nations in the U.S., Indian ancestry is required for citizenship in an Indian nation. With this constitutional amendment, the 2,867 non-Indians who had been enrolled since the 2006 Cherokee court ruling were no longer entitled to enrollment. This is currently being reviewed in three courts.

The 2007 vote of the Cherokee people to amend their constitution was a crucial vote for the future of the Cherokee Nation and its own sense of identity. Unlimited enrollment of non-Indians claiming the right to be enrolled could debilitate the Nation and its resources. It would undermine the Nation's right to determine its own citizens, and therefore undermine the integrity of an Indigenous nation.

Representative Watson's legislation attempts to deny the Cherokee Nation's right to preserve and revitalize its own culture for its continued existence as a distinct people.

HR 2824 also threatens the Choctaw, Chickasaw, Muscogee (Creek), and Seminole Nations of Oklahoma, federally recognized tribes with their own historic ties to African descendants. Without respect for this right and the right of "full and effective participation" of Indian nations

in decisions affecting them, other rights can be ignored. The very survival of an Indian nation can be threatened.

"By proclaiming that it has the authority to terminate the legal status of "federally recognized" Indian Tribes, and failing to recognize the legal status of other Indigenous governing structures, the United States is violating the Convention by failing to ensure Indigenous Peoples have equal rights in respect of effective participation in public life and by failing to take effective measures to amend, rescind or nullify any policies which have the effect of creating or perpetuating racial discrimination, under articles 5(c) and 2(c) respectively."[53]

HR 2824 is opposed by resolution of the National Congress of American Indians (NCAI), the oldest and largest national association of American Indian and Alaska Native Tribal governments. On November 16th, 2007, the NCAI opposed this "or any other termination provision or amendment in legislation, that severs the government-to-government relationship between sovereign tribes and the United States Federal Government or any coercive legislative action which diminishes, limits or reduces funding of the United States to Indian tribes and nations."

On December 12th, 2007, the Assembly of First Nations, representing First Nations citizens of 634 Indigenous nations in Canada, adopted by consensus a resolution noting that HR 2824 "would break a long historical obligation of tribal self-government and threaten the rights of all Indian nations in the United States to determine, and thus preserve, our distinctively indigenous identities". The resolution also denounced any "termination provisions or amendments in legislation" and any legislation diminishing or reducing funding to Indian nations. Following the actions of the Indigenous peoples of North America, Indigenous peoples from the south, represented by Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica (COICA) has united with the Cherokee Nation and expressed strong support of its right to determine its own citizenship. Legislation such as HR 2824, asserting plenary powers of Congress, threatens the ability of the Cherokee Nation to survive. It undermines its right to determine its own citizens, to fully and effectively participate in decisions affecting the integrity of the Nation, and undermines its ability to continue as a distinct Indigenous people.

The precedent of H.R. 2824 is detrimental for Indigenous Nations in the future. The Cherokee Nation is being singled out and targeted with discriminatory and race-based legislation that punishes them for exercising the tenets of self-determination. The majority of Cherokee people voted in a democratic election to require citizenship to be linked to Indian ancestry. H.R. 2824 is a violation of the collective voice and vote of the Cherokee people. Threatening legislation that singles out the Cherokee Nation and its people sets an unreasonable and unjust expectation that the rights of Native and Indigenous people should be ignored, even when these rights of Cherokee people predate the establishment of the United States. The outpouring of support from Nations within and beyond the borders of the United States towards the Cherokee Nation show us the discriminatory impact that H.R.2824 would have on Indigenous Nations around the world.[54]

2. The Abrogation of Treaties between the United States and Indigenous Peoples

Article VI of the United States Constitution declares that the Constitution, and the laws and treaties of the United States made in accordance with it, are the "supreme law of the land." However, this is not the reality with regard to treaties entered into between the United States and Indian nations. Today, the United States claims to be able to unilaterally abrogate treaties made with Indian nations at any time based on the plenary power doctrine.[55] This includes the power to diminish reservation lands that were promised to Indian tribes by treaty at any time.[56]

All the Supreme Court of the United States requires to legitimate the abrogation of treaties is the expression of a clear legislative intent on the part of Congress; there is nothing illegal, immoral or unjust, according to the Supreme Court, in the abrogation of treaties between indigenous peoples and the United States.[57] The United States often attempts to downplay the inherent injustice of its treaty abrogation policy by noting that federal canons of treaty construction favor the Indians.[58] In reality, however, any benefit of these canons of construction is directly negated by the US continued use of the Plenary Powers Doctrine.

In its Periodic Report, the US states that "treaties [between the federal government and Indian nations] retain their full force and effect even today because they are the legal equivalent of treaties with foreign governments and have the force of federal law."[59] The United Nations Special Rapporteur on treaties, agreements and other constructive arrangements between states and indigenous populations, similarly concluded that treaties and agreements entered into by indigenous peoples and the United States were in fact international treaties between nations according to international law, the Law of Nations, at the time they were made.[60] He also concluded that "the unilateral termination of a treaty or of any other international legally binding instrument, or the non-fulfillment of the obligations contained in its provisions, has been and continues to be unacceptable behavior according to both the Law of Nations and more modern international law."[61]

This "unacceptable behavior" is applied as law in the United States today. In 1998, for example, the Yankton Sioux of South Dakota entered into a Treaty with the United States establishing their 430,000 acre reservation in exchange for 11 million acres of their ancestral lands, opening these lands up for white settlers. In 1855, as a result of the Dawes Act, which further reduced their reservation in 1892, the Tribe reached another agreement with regard to the cession of the un-allotted lands "left over" after the individual and tribal allotments had been accomplished under the Act. The 1892 agreement expressly provided that a previous 1855 Treaty with the Tribe "shall be in full force and effect, the same as though this agreement [over the un-allotted lands] had not been made."

In spite of this clear and unequivocal language, the Supreme Court applied a rule of "sensible construction"[62] and found that pursuant to the Plenary Powers doctrine, "Congress possesses plenary power over Indian Affairs including the power to modify or eliminate tribal rights."[63]

The Supreme Court held that the Dawes Act and its implementation was clear Congressional intent to abrogate the 1855 Treaty, and that the Tribe could not legally object to the construction of a faulty solid waste facility by the State of South Dakota on the ceded, un-allotted land. Even more disturbing is the Supreme Court's citing with approval the "negotiations" conducted by the Indian Commissioners and the Tribe:

> "I want you to understand that you are absolutely dependent upon the Great White Father to-day for a living. Let the Government send out instructions to your agent to cease to issue these rations, let the Government instruct you agent to cease to issue your clothes… Let the Government instruct him to cease to issue your supplies, let him take away the money to run your schools with, and I want to know what you would do. Everything you are wearing and eating is gratuity. Take all this away and throw the people wholly upon their own responsibility to take care of themselves and what would be the result? Not one fourth of your people could live through the winter, and when the grass grows again it would be nourished by the dust of all the balance of your noble tribe." Council of the Yankton Indians (Dec. 10, 1892), transcribed in S. Exec. Doc. No. 27, at 74;[64]

Citing this patently corrupt and coercive "negotiation" with approval as evidence of the tribe's willing and total cession of the un-allotted lands, the Supreme Court of the United States continues to apply laws and rules of racist paternalism, abuse, coercion and dependency established in the 19th Century.

In essence, the United States' claimed power to abrogate legally binding treaties dishonors the word of the United States. This means that even though Indian tribes already fulfilled their treaty obligations by giving up vast land holdings to the United States, Congress may unilaterally decide to break the government's promises to Indian tribes at any time.[65]

The Committee, in its 2001 Concluding Observations, noted its concern "that treaties signed by the Government and indigenous nations, described as "domestic dependent nations" under national law, can be abrogated unilaterally by Congress…."[66] In response, the United States merely states that "the Supreme Court long ago held that Congress had authority to alter treaty obligations of the United States…."[67] This self-proclaimed right – to unilaterally abrogate treaties lawfully entered into with Indian Nations – is a clear and gross violation of the Convention's equal protection clause found in article 5. In particular, the unilateral abrogation of treaties violates Art. 5(c) which the Committee has interpreted to require the state to consult indigenous communities and allow for effective participation in decisions that affect them.[68]

3. The Continuing "Taking" of Indian Lands

Under the Fifth Amendment to the US Constitution, Congress may not take property without due process and just compensation. Indian rights recognized by treaty, including property rights, are considered a form of property protected by the Fifth Amendment.[69] Under current federal Indian

law, however, not all Indian land rights are accorded "property right" status by the federal government. The United States only provides "property right" status to those lands that the tribe has reserved to itself by treaty, after ceding its other lands to the federal government. The title to these lands is considered "recognized" title. In contrast, the same property status is not accorded under federal law to lands held by aboriginal right – that is, by reason of long historical possession and use.

This distinction between recognized title, with accompanying property right status, and unrecognized title, generally referred to as aboriginal title, is not only false, but discriminatory as well. It emerges directly from the discovery doctrine, and fails to adequately recognize the pre-existing land rights of indigenous peoples.[70] Although both types of title can be unilaterally taken by Congress under the plenary power doctrine, only recognized title carries with it the right to compensation under the US Constitution. As a result, the government is permitted to, and all too frequently does, take traditionally held lands never ceded by the tribe to the United States, without compensation and without due process of law. This continued use of racist constitutional notions affects particularly Indigenous Peoples spiritual practice, discussed below.

In the case of *Tee-Hit-Ton v. United States*,[71] decided in 1955, the Supreme Court announced that the United States government is free to take or confiscate indigenous lands and resources held by aboriginal right (that is, by reason of long historical possession and use) without due process of law and without paying any compensation. The *Tee-Hit-Ton* decision continues to be upheld and applied by United States courts. In the case of *Karuk Tribe of California, et al. v. United States*,[72] decided in 2000, the federal circuit court held that the Karuk Tribe of Indians was not entitled to compensation for lands taken from them by an act of Congress even though those lands had been reserved for the Karuk Tribe pursuant to a federal statute and executive orders. The holding in *Karuk* expanded that of *Tee-Hit-Ton*, establishing the principle that Indian land can be taken without compensation even when the land is part of a congressionally established Indian reservation. In a strong dissent in that case, Judge Pauline Newman made the following observations:

> "It is not tenable, at this late date in the life of the Republic, to rule that Native Americans living on a Reservation are not entitled to the constitutional protections of the Fifth Amendment . . .This case is not concerned with Indian title deriving from aboriginal occupancy . . . it is concerned solely with Reservation lands duly established by governmental action . . . The argument, pressed by the panel majority, that reservations established by Act of Congress and implemented by executive order are somehow inferior in their property attributes, is without force or support."

The federal policies and conduct in both *Tee-Hit-Ton* and *Karuk* represent a brazen denial of basic property rights enjoyed by the rest of the U.S. population, and a clear violation of article 5(d)(v) of the Convention.

In its 2001 Concluding Observations, this Committee noted, with concern that "the land [Indian nations] possess or use can be taken without compensation by a decision of the Government."[73]

This issue was again raised to the United States by the UN Human Rights Committee in its 2006 List of Issues to be Taken Up in Connection with the Consideration of the Second and Third Periodic Reports of the United States of America.[74] In response, rather than provide an outline of steps to ensure extinguishment will no longer occur, the United States did not even attempt to justify this policy and only repeated the gravamen of the concern itself, stating that under US law, recognized tribal property rights are subject to diminishment or elimination under the plenary power doctrine.[75] Again, in its current Periodic Report, the United States attempts to avoid any real discussion of this policy by merely stating that the taking of property rights "may give rise to a Fifth Amendment claim for compensation."[76] The United States purposeful blindness fails to acknowledge that Congress' claimed power to take indigenous lands under the plenary power doctrine results in Indian and Alaska Native tribes, and all unrecognized Indigenous Peoples in the United States, being unfairly and discriminatorily denied their right to property and any certainty in their ability to continue to use and occupy lands, particularly Sacred Lands they have held and on which they practice their Spiritual Ceremonies since time immemorial.

4. **The Corruption of the "Trust" Doctrine**

In 1996, a group of thousands of individual Indians, with rights to mining, grazing and other royalties from land held in trust by the United States, filed a class action lawsuit against the United States. The suit, entitled *Cobell v. Norton,* still in litigation to this day, asserted that the United States as trustee has mismanaged royalty funds, by not only failing to pay these funds to the rightful indigenous owners, but also failing to even keep track of what money is owed to whom. In a 2005 memorandum decision, then presiding Federal District Court Judge Royce Lamberth wrote:

> [W]hen one strips away the convoluted statutes, the technical legal complexities, the elaborate collateral proceedings, and the layers upon layers of interrelated orders and opinions from this Court and the Court of Appeals, what remains is the raw, shocking, humiliating truth at the bottom: After all these years, our government still treats Native American Indians as if they were somehow less than deserving of the respect that should be afforded to everyone in a society where all people are supposed to be equal.[77]

Despite the fact that the "trust" relationship emerged out of the discriminatory belief that Indian peoples were incapable of directing their own affairs, many Indian nations fear that abolition of this relationship will result in further violations of indigenous peoples' right to exist as distinct peoples. Nonetheless, the "trust" responsibility can and has been terminated at the will of Congress without tribal consultation or consent, pursuant to Congress' purported plenary power.[78] This policy is in contravention to Art. 5(c) of the Convention which has been interpreted to require the state to consult indigenous communities and allow for effective participation in decisions that affect them.[79]

While Executive Order No. 13175, issued in 2000, requires executive branch agencies in the United States to consult with Indian tribal governments on a government-to-government basis, this consultation policy applies only to executive branch agencies, and not other federal agencies. Moreover, the US' consultation policy falls short of meeting the internationally accepted requirement of free, prior and informed consent.[80]

Furthermore, the United States' adherence to its own mandate of consultation has been inconsistent at best. Executive Order 13175 requires all executive branch agencies to develop consultation policies, yet a number of critically important agencies have failed to do so. For example, the Internal Revenue Service has no consultation policy in place and in fact has recently come under fire for its practice of disproportionately auditing tribal governments. Similarly, the Small Business Administration has no consultation policy in place despite administering a government contracting program that has been instrumental in bringing much needed economic growth to many Native communities.
Those agencies that do have formal consultation policies in place frequently fail to follow them, making important decisions, with profound impacts on tribal communities, without tribal input. For example, in 2006 Congress passed a national sex offender registration law that fundamentally changed the authority of Indian tribes to regulate conduct on their lands, without consulting with Indian tribes. The law and the process by which it was developed have been heavily criticized by tribal governments.[81]

Furthermore, tribal governments frequently report that even when consultation sessions are held they are largely pro forma and do not allow Indian tribes to provide meaningful input. For example, in 2006 the Bureau of Indian Affairs Office of Indian Education Programs was moved outside of the Bureau of Indian Affairs and transformed into a new Bureau of Indian Education without adequate consultation with Indian tribes. Tribal leaders opposed the reorganization and have subsequently called on Congress to hold hearings investigating the consultation process. Tribal leaders have also called for the creation of a Task Force to revise the federal government's consultation policy.[82]

5. The Continuing Denial of the Right of Self Determination: "Criminal" Jurisdiction

The United States publicly takes the position that it encourages Indian self-determination.[83] Indian self-determination, as described in US federal law,[84] is intended to support and strengthen the inherent sovereignty of Indian nations by allowing self-rule over internal affairs. Unfortunately, this policy dates only from 1970, and follows many decades of official efforts by the United States to destroy, co-opt, and fundamentally remake tribal governments. Furthermore, this policy is often disregarded by the US Supreme Court in its decisions regarding tribal jurisdiction over activities that occur within Indian reservation boundaries.

In 1832 the Marshall Supreme Court ruled *in Worcester v Georgia* that state laws can have no force within an Indian Reservation unless Congress authorized the state to apply them there.[85]

This was the rule for criminal jurisdiction until the termination era of 1953 – 1965. In 1953 Congress enacted Public Law 83-280, requiring several States to exercise full criminal jurisdiction in Indian Country, defined generally as Indian Reservations; the 44 other States were granted the discretion to assume that same jurisdiction.[86]

Most "option States that assumed jurisdiction under PL 83-280 only assumed partial jurisdiction, some limited to specific crimes or activities, others to geographical areas. To add confusion to injury, option States were later allowed to "retrocede" declarations of jurisdiction in the same manner, limiting their originally declared jurisdictional scope, geographically or substantively.

Criminal jurisdiction in Indian Country, in the other non-PL 83-280 States remains under the federal government, pursuant to the General Crimes Act 1834[87] that extended federal jurisdiction to all crimes occurring in Indian Country except those by an Indian against another Indian or Indian property. In 1885, outraged that a man named Crow Dog was released as a result of federal government lack of jurisdiction, the Congress enacted the Major Crimes Act, imposing federal jurisdiction over all persons, Indian and non-Indian, who committed certain "major crimes," including murder, rape and sexual assault, within Indian country. This Act was upheld by the Supreme Court in *United States v. Kagama,*[88] in 1886, pursuant to the plenary power doctrine and tribes status as dependent "wards" of the federal government.

Tribal criminal authority was further eroded when the Supreme Court ruled that tribal courts cannot exercise criminal jurisdiction over non-Indians.[89] This decision stripped tribal authorities of the power to prosecute crimes committed by non-Indian perpetrators on Indian lands. In addition to downgrading Indian nations' ability to exercise criminal jurisdiction within their territories, in the last twenty five years, US Supreme Court decisions have weakened the Tribal civil regulatory powers over reservation lands in the areas of zoning, taxation, and civil Tribal court jurisdiction.[90]

The present criminal jurisdictional scheme in Indian country represents a major intrusion by the federal government onto the self-government powers of Indian nations, impeding Indian nations' abilities to properly protect their citizens. Most recognized tribes have their own courts, and enact laws that govern crimes, zoning, environmental and water quality regulation, taxation, and family matters such as adoption and marriage. Although disputes about many of these matters are heard in tribal courts, increasingly, the United States courts are undermining tribal authority to assert jurisdiction over non-Indians who may commit transgressions on their territories. In *Sovereignty and Property*, Professor Joseph Singer writes:

> The Supreme Court has assumed in recent years that although non-Indians have the right to be free from political control by Indian nations, American Indians can and should be subject to the political sovereignty of non-Indians.
>
> This disparate treatment of both property and political rights is not the result of neutral rules being applied in a manner that has a disparate impact. Rather, it is the result of *formally unequal* rules.... both property rights and political power in the United States are associated with a system of racial caste.[91]

States have exclusive jurisdiction over crimes by non-Indians against non-Indians even if the crime occurs in Indian Country.[92] Tribal jurisdiction is generally confined to crimes committed by Indians within the geographical limits of its reservation and any of its dependent Indian communities. Further, tribes' criminal jurisdiction is generally limited to misdemeanor crimes[93] and those committed only by Indians.[94] "The message sent is that, in practice, tribal justice systems are only equipped to handle less serious crimes. As a result…tribal courts are less likely to prosecute serious crimes, such as sexual violence."[95] The federal government can investigate and prosecute non-Indians who victimize Indians within Indian country,[96] and only the federal authorities can investigate and prosecute major crimes – such as rape and sexual assault – committed in Indian country.[97] It is estimated that federal prosecutors decline to prosecute crimes committed on reservations nearly twice as often as those committed off-reservation.[98]

The impacts of this discriminatory jurisdictional scheme are nowhere more visible than in the field of criminal jurisdiction in Indian country. In everyday life, an individual's security depends in large part on what government (tribal, state or federal) has authority to police an area, to prosecute crimes, and to pass laws that apply there. For Indian communities, criminal jurisdiction is exercised by three separate governmental systems – federal, state and tribal. To determine which law enforcement agency has the power to respond, one must complete the following analysis: Did the crime occur in Indian Country? Is the victim Indian or non-Indian? Is the offender Indian or non-Indian? What is the nature of the crime? This analysis can be quite confusing and often victims of crimes are unsure as to which authority – tribal, federal, or state – to call for help.[99] It can also be confusing to the authorities investigating a crime.[100] As a result, many Indian victims of crimes in Indian country are left without access to justice.

III. The Failure of Recognition of Indigenous Peoples as Peoples

As has been previously noted, the United States only affords the rights of Indigenous Peoples to Tribes that it has recognized. Little mention is made in the US periodic Report of the numerous Tribes that have been terminated and not allowed "reinstatement" and of the Native Peoples of Hawai'i. No mention is made of major groups of Indigenous Peoples within US jurisdiction, Indian Nations in the mainland US who refuse to apply for "recognition" preferring to remain on their ancestral lands without having to be "wards" of the United States.

1. "Unrecognized" Indigenous Tribes

The United States employs a lengthy and demanding federal approval process to determine which Indian Nations or peoples it will "recognize" on a government-to-government basis. Without this 'federal recognition' Indigenous Peoples, including those peoples already recognized by state governments, are denied their legal and indigenous identities as well as government-to-government relations with the federal government. Even where the U.S. has

"recognized" Indigenous Nations, Congress maintains it has the power to terminate the federal recognition and legal status of entire Indigenous Nations as the threatened Cherokee attest.

The United States publicly takes the position that it encourages Indian self-determination. Indian self-determination, as defined by the federal government, is intended to support and strengthen the inherent sovereignty of Indian Nations by 'allowing' self-rule on internal affairs. This policy dates from 1970, but follows many decades of official efforts by the United States to destroy, co-opt, and fundamentally remake tribal governments.

For example, in 1934 the United States Congress passed the Indian Reorganization Act ("IRA"). The Act encouraged Indigenous Nations and Nations to restructure their governments in the image of the tri-partite federal governmental system. This system is fundamentally incompatible with most Indigenous forms of governance, and the change has caused internal tension and strife that still persists today.

In fact, many members of extended Indigenous communities that pre-existed the IRA, such as the Western Shoshone Nation and the Great Sioux Nation, question the authority of IRA sanctioned Tribal governments and rely instead on the treaties signed prior to the IRA and their very pre-existence for recognition of their political status as Nations. By failing to recognize traditional Indigenous governments and attempting to force a tri-partite "US style" government on Indian Peoples, the United States is violating Indigenous Peoples' right of self determination and right of political autonomy well established in customary international law, to control their land, as well as to practice their culture as per the Committee's General Recommendations.[101]

The United States Periodic report is misleading in many instances, including their focus on "recognized tribes." The impression the US Periodic Reports before the Committee gives is that the only Indigenous Peoples in the United States are Recognized Tribes, although there may be a problem with the process of recognition of "unrecognized Tribes." But the focus of the Periodic report is the relationship between the United States and its "Recognized Tribes." The tendency of the United States in characterizing the recognition of Indigenous Peoples rights, primarily political rights, as a form of racial privilege is most apparent in their treatment of federally unrecognized Peoples.

2. Alaskan Native Peoples

Although in their statistical data the US Periodic report recognizes that Native Alaskans are indigenous Peoples and have their own tribal governments[102] Alaska Native Peoples are denied fundamental Indigenous rights, including the right of Self Determination and aboriginal land rights. Their political rights were also deemed "racial" by United States legislation, and "extinguished."

In 1971 Congress enacted the Alaska Natives Claims Settlement Act (ANCSA) described by Justice Thomas of the Supreme Court:

> "In enacting ANCSA, Congress sought to end the sort of federal supervision over Indian Affairs that had previously marked federal Indian policy. ANCSA's text states that the settlement of the lands claims was to be accomplished "without litigation, with maximum participation by Natives in decisions affecting their rights and property **without establishing any permanently racially defined institutions, rights, privileges, or obligations** [and] *without creating a reservation system or lengthy wardship or trusteeship."* Sec. 1601(b)[103][104] (Emphasis supplied)

In addition to extinguishing all aboriginal claims to Alaska lands, ANCSA authorized the transfer of $962.5 million dollars in state and federal funds and 44 million acres of Alaska lands to state chartered private business corporations, the shareholders of which would be only Alaskan Natives. These corporations received title to the lands in fee simple and no restrictions were imposed on the transfer or sale of the land.

ANCSA and its effects on Alaska Natives were devastating:

> "The discovery of oil at Prudhoe Bay in 1968 established an alliance of the Federal Government and Multinational oil companies to promote their combined interests. This alliance provoked an urgency to further settle the land claims in Alaska to provide for a right of way for the Trans Alaska pipeline to access the resources on the North Slope and bring it to Market. The US Congress unilaterally passed the Alaska Native Claims Settlement Act (known as ANCSA) in 1971 to legitimize US ownership and governance over Indigenous peoples, our lands, and access to our resources. ANCSA created for profit Native regional and village corporations and also conveyed our ancestral lands to the newly created corporations instead of existing Tribal governments, because the US government considered Tribal governments an impediment to assimilation and a threat to US control in Alaska. The lands which were taken from us through this Act became "corporate assets" of these newly created state chartered limited liability for-profit Native Regional and Village corporations. The sole purpose of a corporation is profit at all cost, a corporation does not look out for the health and well being of the people.
>
> "ANCSA changed the dynamics of how Alaskan Natives relate to the land, but also how we relate to one another. State and Federal promoted economic development interests are aligned with these Native corporations that pursue lands and marine ecosystems for economic gain despite adamant opposition by Alaska Native Tribes whose way of life is endangered by such proposals.
>
> Now, the legacy of ANCSA is our ancestral homelands are compromised by exploitation and polluted beyond reparation. Most Alaska Natives believe ANCSA was an illegitimate infringement upon our inherent right of Self-Determination and subsistence. Many refuse to acknowledge the validity of

> the government created ANCSA Native corporations and the Act itself. ANCSA was put forth to eliminate aboriginal title to our ancestral territories, to access and exploit our resources, to assimilate Alaska Natives and incorporate us into western society and value system, but also to divide and conquer Alaska Natives, the same tactic that the US implements when dealing with Indigenous peoples throughout the world."[105]

The application of racist Constitutional Doctrines to Indigenous Peoples has led to very anomalous results, as in the Supreme Court holding that an Alaskan Indian Village is required to be a domestic dependent Nation before it can exercise the right of self determination.[106]

> In 1973, the two Native corporations established for the Neets'aii Gwich'in elected to make use of an ANCSA provision allowing them to take title to former reservation lands in return for forgoing the statute's monetary payments and transfers of nonreservation land. The United States conveyed fee simple title to the land constituting the former Venetie Reservation to the corporations as tenants in common; thereafter, they transferred title to respondent Native Village of Venetie Tribal Government (the Tribe).
>
> In 1986, Alaska entered into a joint venture with a private contractor to construct a public school in Venetie. After the contractor and the State refused the Tribe's demand for approximately $161,000 in taxes for conducting business on tribal land, the Tribe sought to collect in tribal court and the State of Alaska sued to enjoin the collection of the tax.[107]

Although the 9th Circuit Court allowed the collection of the tax, the Supreme Court of the United States reversed. The Supreme Court reasoned that the Venetie Tribe's lands were not set aside by the United States for the use of the tribe but were in fact a result of a revocation by Congress of the pre-existing reservation, and that the lands were not under superintendence of the United States, but held in fee simple and could be conveyed to and owned by non-Indians. The Supreme Court enjoined the collection of the tax. It held that as the Venetie Tribe was not a "domestic dependent nation," it did not possess the right of self determination, claimed by the Tribe, As the State of Alaska exercised primary jurisdiction over the Venetie Tribe and not the United States, it did not have the power to tax as determined by the laws of the State of Alaska.

3. Native Hawai'ians

On November 23, 1993, the United States Congress passed Public Law 103-150, a Congressional Joint Resolution apologizing to the Native Hawai'ian Peoples for the illegal and violent overthrow of the Kingdom of Hawai'i.

This so-called "Apology Bill" recites the sad history of Hawai'i, how in January 17, 1893 a "Committee of Safety" composed of American and European sugar planters, descendants of

missionaries and financiers, deposed the Hawai'ian constitutional monarch, Queen Liluokalani, and offered it to the United States for annexation.

First refused by then President Grover Cleveland as illegal and "an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress," calling the overthrow "a substantial wrong," Hawai'i was later annexed by the successor president, William McKinley.

The Apology Bill itself recites the fact that "the indigenous Hawaiian people never directly relinquished their claim to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum." It also recites the fact that, "the health and well being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachments to the land," and that, "the long range economic and social changes in Hawaii over the nineteenth and twentieth centuries have been devastating to the population and to the health and well being of the Hawaiian."

Its recitation continues, that, as with all Indigenous Peoples, "the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions."

In its Periodic Report, the United States acknowledges the government's opposition to legislation that would reaffirm the right of the indigenous people of Hawai'i to self-determination.[108] The US fails to explain or justify its position that Native Hawaiians should be treated differently from the other indigenous peoples whose homelands exist within what is now known as the United States. Again, the U.S. states simply that to allow Native Hawaiians self-determination would "divide people by their race."

The recitations in the Apology Bill are admissions of the gross violation of the Hawai'ian Peoples' political status as a Nation. The Apology Bill recognizes that the rights of Naïve Hawai'ians, as Indigenous Peoples and as a Nation, were violated by the United States. Yet the United States continues to totally disregard the political rights of the Indigenous Peoples of Hawai'i.

4. The Indigenous Peoples of Puerto Rico and Guam

Both Guam and Puerto Rico are subject to Article 73 as non-self governing territories. Article 73 requires Member States of the United Nations that have assumed responsibility for these territories are required to "… recognize the principle that the interests of the inhabitants are paramount, and accept as a sacred trust, the obligation to promote to the utmost, … the well being of the inhabitants of these territories" in order ".. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses.

The United States notes that the political relationship to Guam and Puerto Rico has not changed since their last Periodic Report in 2000.[109] To do justice to the Indigenous Peoples of Guam and Puerto Rico in this Shadow Report regarding their present political status would require it to extend greatly beyond its purpose. We only note that Article 1 in Common requires that States administering Non-Self Governing and Trust Territories "... shall promote the right realization of the right of self-determination and shall respect that right, in conformity with the provisions of the Charter of the United Nations."[110]
With regard to Guam, Leland Bettis, Executive Director of the Guam Commission on Decolonization was quoted in 2002, that, "„like many of the other Territories that remained inscribed on the list of Non-Self-Governing Territories, Guam's administering Power attempted to define rights and status of Guam as an internal matter, which was the exclusive subject of its constitutional system. He feared that "…the island and its native people might be treated in a separate and unequal manner, distinct from other jurisdictions and other people who lived under the same Constitution."[111] Unrecognized as Indigenous Peoples with Indigenous rights by the US government, his fears have proven well founded. The Native Peoples of Guam are not accorded their rights of Indigenous Peoples.

The Taino Peoples of Puerto Rico, not mentioned in the US Periodic Report, suffer the double bind of living in a colony of the United States where they are also in the minority, Their rights as Indigenous Peoples suffer the discrimination of both the United States and the government of the Commonwealth of Puerto Rico, described in more detail in the next, Sacred Lands section of this Parallel Report.

Sacred Lands and the Right of Spiritual Practice

This Parallel Report cites the many instances whereby the United States has attempted to extinguish aboriginal title.[112] We also cited the concern of competent international human rights mechanisms over this practice.[113] But Indigenous Peoples throughout the jurisdiction of the United States, recognized, terminated, unrecognized and ignored, continue their ancestral spiritual relationship to their ancestral Sacred Lands. This aboriginal use has never been extinguished in fact. Throughout the jurisdiction of the United States, Indigenous Peoples continue their Spiritual Practice on Ancestral Sacred Land in constant conflict with the United States government as they have since time immemorial.

In accordance with the customary principles of international law cited above,[114] consistent with the United Nations Declaration of the rights of Indigenous Peoples and General Recommendation XXIII, these lands and their Spiritual use should be returned to them.

I. Sacred Lands

The then Special Rapporteur on Religious Intolerance, Mr. Abdelfattah Amor, visited the United States in 1999. In examining the situation of religious intolerance in the United States, He found that the situation of religious tolerance is generally satisfactory, but that, "[T]here are nevertheless some evident exceptions that must be pointed out, particularly as regards the situation of Native Americans."[115]

> "53. The Native Americans are without any doubt the community facing the most problematical situation, one inherited from a past of denial of their religious identity, in particular through a policy of assimilation, which most Native Americans insist on calling genocide (physical liquidation, religious conversion, attempts to destroy their traditional way of life, laying waste of land, etc.).
>
> "54. It was explained to the Special Rapporteur that it must be clearly understood that the continuation and preservation of traditional Native American religion is ensured only through the performance of ceremonies and rites by tribal members. These ceremonies and rites are often performed at specific sites which are often established by creation myths and other events of importance in the native community. These sites may also be based on special geographic features such as burial sites, areas where sacred plants or other natural materials are available, and structures, carvings or paintings of religious significance. For most Native American religions, there may be no alternative places of worship since these ceremonies must be performed at certain places and times to be effective."[116]

Mr. Amor had come to the United States pursuant to a communication by the International Indian Treaty Council concerning the forced removal of Navajo Elders from their ancestral lands in order to make way for the expansion of the Peabody coal mine. In this regard, the Special Rapporteur found that:

> "82. Because of economic and religious conflicts affecting in particular sacred sites, the Special Rapporteur wishes to point out that the freedom of belief, in this case that of the Native Americans, is a fundamental matter and requires still greater protection. The freedom to manifest one's belief is also recognized, but can be subject to limitations insofar as they are strictly necessary and provided for in article 1, paragraph 3, of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief and in article 18 of the International Covenant on Civil and Political Rights. The expression of the belief has to be reconciled with other rights and legitimate concerns, including those of an economic nature, but after the rights and claims of the parties have been duly taken into account, on an equal footing (in accordance with each party's system of values). As far as Native Americans' access to sacred sites is concerned, this is a fundamental right in the sphere of religion, the exercise of which must be guaranteed in accordance with the above-mentioned provisions of international law on the matter."[117]

The Special Rapporteur applied these recommendations particularly to the forced relocation of Navajo elders from their ancestral lands. He wrote "On the subject of Black Mesa, the Special Rapporteur also calls for the observance of international law on freedom of religion and its manifestations."[118] In the case of the Navajo elders, the reconciliation of their human rights and other legitimate concerns were not taken into account. No consideration was given their spiritual practices and beliefs by the United States government in ordering their relocation.

Economic interests, such as the coal mine, have often prevailed over Indigenous human rights. These are principally private ventures that do not have a true public interest, and their activities rarely consider the fundamental rights or freedom of others. International law had not been observed with regard to the Navajo Elders. The right to practice religion as found in article 1, paragraph 3, of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief and in article 18 of the International Covenant on Civil and Political Rights has not been respected or protected by the United States. Indeed, the United States continues to affront this most basic element of human dignity.

In his excellent analysis of United States jurisprudence on the issue of intolerance of Native American spiritual practice, the Special Rapporteur focused on a discussion of the United States Constitution and its First Amendment at the time of his visit in 1999. The Supreme Court of the United States had established the rule under the First Amendment that a law aimed at a specific religious practice would be examined with "strict scrutiny." That is, when a law is aimed at a particular religion, its restrictions on that religion must, in effect, "prohibit" the religious practice and furthermore must be justified by a "compelling governmental interest" when challenged under the First Amendment.[119]

A law of "general applicability," that is a law that is not aimed a particular religion or religious practice that "happens" to restrict a religious practice, is not held to this high standard. With regard to sacred lands, at the time of the Special Rapporteur's visit to the United States, the infamous G-O Road case[120] was, and still is, the law in the United States under the First Amendment. In that case, a proposed Forest Service road through lands held sacred by many Northern California tribes was allowed, in spite of the Forest Service and Supreme Court admission that the road would substantially "burden" the spiritual practice, destroying the sanctity of the place.

> "The government does not dispute, and we have no reason to doubt that the logging road building project at issue in this case could have a devastating effect on traditional Indian religious practice. Even if we assume that we should accept the Ninth Circuit's prediction, according to which the G-O Road will 'virtually destroy the …Indians' ability to practice their religion,' the Free Exercise Clause only constrains the government from 'prohibiting religion,' not taking actions which may make it more difficult to practice religion, but which have no tendency to coerce individuals into acting contrary to their beliefs."[121]

The Supreme Court went on to say, "Whatever rights the Indians may have to use the area, however, those rights do not divest the Government of its right to use what is, after all *its* land."[122]

The problems of access to Sacred Lands for spiritual purposes and the desecration of Sacred Lands go hand in hand. Development on Sacred Lands does in fact limit access as well as desecrate the lands used for religious purposes, many times rendering these Lands unfit for spiritual practice, destroying the sanctity of the place.

The United States government and its agencies, the Bureau of Land Management (BLM) and Forest Service (USFS) continue to harass and or deny Indigenous Peoples appropriate access to their Sacred Lands and continue a policy of allowing the desecration of these Lands for profit making enterprises. The IITC received many statements and contributions for submission from the various nations and peoples affected by the continuing lack of protection and access contained in Addendum, Sacred Lands, part A. We focus within this report on only a few, with greater detail in the Addendum, in the hope that the CERD Committee will pay heed to the earnest Spiritual aspirations of all of those whose testimonies are included in that Addendum:

1. **Recognized Tribes and Treaty Rights: The Lakota Nation and Bear Butte (Mato Paha), Black Hills, South Dakota:**

In his Final Report, the Special Rapporteur on treaties, agreements and other constructive arrangements between states and indigenous [sic] populations, Mr. Miguel Alfonso Martinez found the following with regard to "obvious and serious violations of the legal obligations undertaken by State parties":[123]

> "Probably the most blatant case in point is the United States federal Government's taking of the Black Hills (in the present day state of South Dakota) from the Sioux Nation during the final quarter of the nineteenth century. The lands which included the Black Hills had been reserved for the indigenous nation under provisions of the 1868 Fort Laramie Treaty. It is worth noting that in the course of the litigation prompted by this action, the Indian Claims Commission declared that "A more ripe and rank case of dishonorable dealing will never, in all probability, be found in our history" [citation omitted], and that both the Court of Claims, in 1979, and the Supreme Court of that country 61 decided that the United States Government had unconstitutionally taken the Black Hills in violation of the United States Constitution. However, United States legislation empowers Congress, as the trustee over Indian lands, to dispose of the said property including its transfer to the United States Government. Since the return of lands improperly taken by the federal Government is not within the province of the courts but falls only within the authority of the Congress, the Supreme Court limited itself to establishing a $17.5 million award (plus interest) for the Sioux. The indigenous party, interested not in money but in the recovery of lands

> possessing a very special spiritual value for the Sioux, has refused to accept the monies, which remain undistributed in the United States Treasury, according to the information available to the Special Rapporteur."[124]

According to the testimony in Attachment A, the Lakota people have an inherent relationship with Mato Paha as instructed by our Creator and inalienable rights to pray there and preserve our culture there. From time beyond memory, our people have gone to Mato Paha for prayer and other distinctly Lakota activities. Mato Paha is located near the town of Sturgis, SD, about 30 miles north of Rapid City. As the largest urban area in western South Dakota, Rapid City is the center of tourism for the Black Hills region, which is the target destination for much of the tourism in South Dakota. Sturgis is another target destination for much of the tourism, during August, it is the location of the annual ten-day "Sturgis Motorcycle Rally", which draws up to half a million bikers. Much of this population converges around Mato Paha, where there are a large number of alcohol stores and bars, concert venues, camping grounds, pornographic establishments and other such businesses developed solely to celebrate the Rally.

An entrepreneur from Florida proposes to build the Black Hills' biggest bar and concert venue, right on the state park boundaries of Bear Butte. This particular development of 600 acres includes a 155,000 square foot asphalt parking lot, a 22,500 square foot Saloon, an amphitheater that will seat 30,000 (the amphitheater will use the sewer water brought in from Sturgis to irrigate its' new landscaping) 24-hour dining, and an un-policed environment-all this in time for the August 2006 Motorcycle Rally. There is discussion of the development plans of a new road to be built near Bear Butte, resulting in a four-lane highway which will create more noise and traffic to desecrate not only Mato Paha, but that also will uncover a Ute burial ground. There are development plans to construct another amphitheater at the Glencoe Campground that will also seat up to 30,000.also in time for the 2006 Motorcycle Rally. There is building going on now, for the construction of a 110 dry-cabin campground at the Full Throttle Saloon-in plenty of time for the 2006 Motorcycle Rally.

2. **Dishonored Treaty, Seeking Recognition: The Winnemmem Wintu of Northern California, McCloud River:**

Mr. Mark Franco, Headman of the Winnemem Wintu, a Northern California unrecognized Tribe seeking recognition to protect their Sacred Places, writes:

> "The Winnemem Wintu Tribe is an historic tribe of California natives. Represented in the 1851 Treaty at Cottonwood Creek, the Winnemem along with other Wintu bands ceded a vast amount of territory from Sacramento to near the Oregon border to the United States, in exchange for a 25 square mile reservation along the Sacramento River.
>
> "History shows that the California legislature, much in the same way that they deal with the Winnemem today, pushed for the President of the United States,

> Millard Fillmore not to ratify any of the 18 treaties government agents signed with California tribes "in peace and friendship." The fact that the legislature had completed this duplicitous act remained sealed from the American public for over 50 years, until the treaties were discovered in the early 1900's.
>
> "This legacy of duplicity continues today for the Winnemem as the United States government, the one with which we signed a treaty, now denies that the Winnemem are a tribe at all. This action has caused the tribe an almost irreparable loss to our cultural landscape and tribal sites and now jeopardizes our healthcare, the education of our youth, our basic housing needs and the continuation of our lifeway.
>
> "In the protection of our religious freedom the tribe is fighting for the protection of our cultural sacred sites and yet undisturbed graveyards. Since the BIA and other agencies do not see us as a 'tribe,' our cultural landscape is at their mercy. We have seen burials disturbed, remains sent to colleges for study without our consent, and the remaining ceremonial sites we continue to use today in danger of flooding by the proposed Shasta Dam and its appurtenant work."[125]

As the National Parks Service has denied the Winnemem Wintu request that their ceremonies be allowed privacy on a small Sacred Shore of the McCloud River, they are forced to conduct their Ceremony under the drunken eyes and racist taunts of passing tourists.[126]

3. **Indigenous but with No Recognized Rights: the Native Peoples of Hawai'i, Mauna Kea:**

Mauna Kea is profoundly significant in Hawaiian culture and religion, representing the zenith of the Native Hawaiian people's ancestral ties to Creation itself. The upper regions of Mauna Kea reside in Wao Akua (realm of the Akua-Creator) and the summit is considered to be the temple of the Supreme Being in many oral histories throughout Polynesia, which pre-date modern science by millennia. Mauna Kea is also the head waters for the island of Hawai'i. Modern Native Hawaiians continue to regard Mauna Kea with reverence and perform many cultural and religious practices there.

For Native Hawaiians, Mauna Kea is the home of *Na Akua* (the divine deities), *Na'Aumakua* (the divine ancestors), and the meeting place of *Papa* (Earth Mother) and *Wakea* (Sky Father) who are considered the progenitors of the Hawaiian people. Mauna Kea, it is said, is where the Sky and Earth separated to form the Great-Expanse-of-Space and the Heavenly realms. Mauna Kea is both the burial ground and the embodiment of the most sacred ancestors, including *NaAli'i* and *Kahuna* (high ranking chiefs and priests).

Thirteen telescopes and supporting facilities are already built on Mauna Kea, and a consortium of institutions has proposed building another six, with underground light tunnels, around the

existing W.M. Keck Observatory. The cinder cone upon which NASA's outrigger telescope project is to be built — Pu'u Hau'oki — is one of three cinder cones that, together, were historically known as *Kukahau'ula*. *Kukahau'ula* is a male character who appears in recorded Hawaiian traditions and stories. He is the husband of *Lilinoe* and an *'aumakua* (family deity) of fishermen. *Lilinoe* is said to have been buried at the summit of Mauna Kea. She has been called "the woman of the mountain" and is known as the embodiment of fine mist — the literal meaning of her name.

4. **No recognition and no rights at all: The Taino, Native Peoples of Puerto Rico, The Sacred Caguana Ceremonial Center in Utuado, Borikén:**

> "Caguana Ceremonial Center is one of many Sacred Sites for the Taíno People.[127] — It is the largest and most complex Ceremonial Sites in the West Indies; which consists of a large central Batey ("plaza"), ceremonial dance area, ten rectangular earth-and-stone–lined Batey ("ball courts" and "plazas") and one circular Batey ("plaza").

"While the Free Associated State of Puerto Rico government, agencies, and archaeologists view Caguana Ceremonial Centers as a set of ballparks and petroglyphs, the Taíno People know her as the embodiment of a divine being who brings forth, renews, and sustains life. Caguana evokes stories through the Cemi and petroglyphs bordering the batey or batei ("ball fields"). Cemi, and petroglyphs found within the Batey, are Living Beings and Spirits that transmit Creation, Voyage, Hero, and Cosmological stories, ceremonial, agricultural, and fishing cycles. Batey arrangements transmit vital wisdom about Sacred Cosmic Lunar, Solar, and Constellation phases important to the social, economic, ceremonial, recreational, and spiritual life of the people. Caguana Ceremonial Center and all Sacred Sites, Burial Grounds, Village Sites and Ceremonial Centers must be safeguarded for future generations to live.

"Competitions held on these ancient Batey ("courts") historically substituted for warfare between autonomous Taíno communities. The recent revival of the Ceremonial Batu ("ball games") is an opportunity for young Taíno warriors both male and female, to demonstrate their skill and valor and gain the respect and esteem of their community members.

"The Institute of Puerto Rican Culture currently operates the Caguana site as an archaeological tourist park. Maintenance practices threaten the integrity of the stones, such as weed trimmers and tractors hurling pebbles and debris at the fragile, ancient stones. Guards and tour guides freely jump between the stones threatening to topple them to the ground. According to the NPS, "stones bearing petroglyphs have been worn down and decayed to the point that these prehistoric works of art may be irretrievably lost." To the Taíno, these images are not works of art, but living beings and spirits that are dying slowly under gross neglect, culturally un-sound and inappropriate maintenance, caretaking, and mismanagement by government agencies entrusted to protect, preserve and conserve for present and future generations.

> "Every year that passes, the government agencies treatment of Caguana as an archaeological recreation park instead of a Sacred, Living, Vibrant and Vital Ceremonial Center, increase these threats while more and more visitors degrade the physical, spiritual, and ceremonial integrity of this Sacred Ground. Under the guise of improvements, the National Park Service has made culturally, spiritually, physically inappropriate concrete additions and erected iron fencing. The Taíno believe this attempt to imprison and disconnect Caguana spiritually and physically from the adjacent river, surrounding Sacred Spaces, Cemi Mountain and the Natural World, has had a devastating effect on the Living Beings, Ancestors and Spirits, which dwell in these Sacred Spaces. For the Taíno, Cemi Mountain, surrounding Sacred Spaces the Natural World and river are all elements of the Sacred Grounds of Caguana that cannot be demarcated."

In all of the cases cited above, although Indigenous Peoples have sought to secure privacy and periods of time to conduct their Spiritual Practice, they are for the most part denied, under the rubric that US lands are for everyone and no-one can have exclusive use even for a brief period of time. In the litigation surrounding San Francisco Peaks, Arizona, counsel for the plaintiffs, the Navajo Nation *et.al.* listed 380 religious use permits for exclusive use by Christian Churches of Federal lands.[128] Clearly, by granting exclusive rights of use to Christian Churches and forcing Indigenous Peoples to fend for themselves in the exercise of their religious rights, having to secure permits to pray, or having to pray under the watchful eyes and cameras of tourists and bikers, the United States is discriminating against Indigenous Peoples and their religious practice.

Only a few examples of the destruction of Indigenous People's Sacred Lands and spiritual practice occurring throughout the jurisdiction of the United States are described herein and in Addendum A. United States intolerance of Indigenous Peoples rights to practice their religion affect all Indigenous Peoples in the United States, recognized or not. As is noted in many of the narratives in Addendum Sacred Lands A., many if not most of these Sacred Lands are "owned" by the United States and administered through the Bureau of Land Management (BLM), the National Parks Service (NPS) or the Forest Service (USFS).[129]

It is time that the United States returns these Sacred Lands and Places to their rightful owners, who continue their spiritual ties to these Places and have not relinquished their aboriginal title of use. The United States government should start with the Sacred Black Hills of the Lakota Nation.

II. The Religious rights of Prison Inmates

The practice of wearing long hair is long standing among many Native American males. It has cultural and spiritual significance. For example, when a family member passes to the Spirit World, hair, as a spiritual practice, is cut and buried or burned. Many Federal and State prisons, Indigenous men are forced to cut their hair or face solitary confinement and the loss of certain "privileges" until the cut their hair.

Many such prisons also prohibit the conduct of Native American ceremony including Sweat Lodge or the visitation by Native American spiritual leaders to counsel and conduct ceremony. Native American prisoners are routinely denied ceremonial objects, food and plants. All of this based on purported "security concerns" "hygiene" or similar rationalizations. The Special Rapporteur found these prison practices of particular concern.

> "84. Concerning the religious rights of Native American prisoners, apart from the recommendation made in the section on legal issues, the Special Rapporteur recommends that the positive and practical action taken in many federal prisons (fully compatible with security requirements, e.g. ending the practice of cutting their hair) should become general throughout the United States prison system and that steps should be taken to ensure, particularly through training, and perhaps through penalties for prison officers and governors, that these rights are not treated as privileges that can be granted or refused at the whim of an authority or official."[130]

Mr. Lenny Foster, Dine', a Board Member of the International Indian Treaty Council, is a Navajo spiritual adviser who works with hundreds of prisoners across the country and has testified before Congress and the United Nations on native rights. He also provided documentation and testimony that led to Special Rapporteur Amor's conclusions with regard to the denial of Indigenous prisoner's rights to practice their spirituality in United States prisons. He provides the following testimony as to the current state of religious practice of Native Americans in US prisons:

> "The Native American peoples are confronted with a major crisis and are at a crossroad with the issue of having the traditional religious, cultural and spiritual practices and beliefs not being fully recognized and approved for participation.
>
> "The paramount Native American human rights problem in the United States prison system today is the denial of the right to practice tribal religion. For the past thirty seven years there has been a movement across Indian Country to reclaim the pride and dignity through the participation in the culture and traditions and a spiritual healing and wellness has resulted.
>
> "The ability to practice the traditional native religions is paramount to the cultural survival of Native peoples. The imprisonment of large numbers of the Native peoples is a familiar way of life for many Native families throughout Indian Country. The Native peoples are incarcerated in highly disproportionate numbers to their numbers in the general population.
>
> "Recent studies have shown there are over 26,000 Native Americans in adult correctional facilities and Native prisoners are approximately 1% of the population in the United States. Native peoples make up 1.6% of the prison population in the Federal Bureau of Prisons and 1.3% of prisoners in the state

prison systems. Some states such as Hawaii, Alaska, Montana, South Dakota, and Arizona are overwhelmed and Native peoples comprise up to 30% of the prison population.

“The extreme racism and blatant discrimination that exists in the U.S. criminal justice has made it very difficult for the civil rights and human rights of the Native peoples to be recognized or affirmed. For the past thirty seven years the Native peoples have been denied their inherent right to practice their traditional native religious and spiritual beliefs, numerous lawsuits have been litigated to resolve these violations, numerous state legislations have been introduced in Arizona, New Mexico, Colorado, Utah and Minnesota and federal legislation have been introduced in U.S. Congress in 1992 and 1994 to allow Native Americans the right to practice their religion without discrimination. The lack of compliance and enforcement of these statutes has been a concern and often it has become a problem.

“The Native spiritual practices are very important for the spiritual healing and wellness of the Native peoples and it has proven to be very successful for the rehabilitation of the mind, body and spirit. This is very important for the Indian community and the Indian nations because these incarcerated thousands of young Native peoples represent important human and cultural resources to their Nations and families. It has been stated many times the traditional practices and beliefs are very important for the rehabilitation and recovery or the experience of incarceration becomes nothing more than warehousing of human beings.

“The restrictions placed on the time limit to four hours for the sweat lodge ceremony has become a major problem because the time limit prohibits the full exercise of the ceremony which takes approximately four to five hours. The lighting and heating of the stones takes two hours. The rationing of the firewood for the ceremony adds to the frustration and resentment because there should be an adequate supply to have a complete and bona fide ceremony without these restrictions placed on the Native American prisoners. The sweat lodge ceremony is a very therapeutic counseling session for recovery as it allows a cleansing and purification of the emotional, physical, psychological and spiritual well being. The wellness and a recovery from alcohol and drugs are very important for the young Native American prisoner and the spiritual services addresses that issue. It improved self esteem and dignity and decreases recidivism.

“Another problem is the lack of equal access to sacred items and materials such as the Pipe and Indian tobacco, sage, cedar, water drum, drum hide, gourd, eagle feather, corn pollen, medicine bags, pouches, bundles, willow saplings, lava rocks and proper firewood to conduct the sweat lodge ceremony. The restriction on use of tobacco for the Pipe Ceremony has become an issue because the ceremony using the tobacco has fallen in to the Smoke Free Environment in the prison

setting and this policy doesn't recognized the spiritual significance and sacredness of the use of tobacco for prayers.

"The prison policy arbitrarily and capriciously dictates what is secular and what is sacred and it is a racist policy that doesn't recognize the humanity of the Native American prisoner. The prayers and songs are important in the ceremony and the Native prisoners should not be asked to speak English only so the correctional officers can understand what is being said is racist and overt discrimination. The correctional officers should stop making racist remarks like, "I don't want them singing Indian because their music riles them up and they get hostile."

"The Sweat Lodge ceremonies, Talking Circle, Pipe Ceremonies or Tobacco Ceremonies are very important and should be done in the ancient and sacred manner so the Native prisoners receive the full beneficial emotional and spiritual healing.

"Ignorance and lack of awareness should not be an excuse for systematically or arbitrarily denying religious and spiritual rights and then justifying these denials on the basis of "security concerns."

"The Native prisoners should have equal access to traditional ceremonial foods for the annual ceremonial meal; and native prisoners should not be transferred to facilities where his religious practices and beliefs are prohibited and should only be transferred to facilities where his beliefs can be accommodated. The Native American inmates on Death Row should be allowed and permitted to visit with their spiritual leaders and have equal access to the Sweat Lodge and Pipe Ceremony for their traditional manner of worship and have their Last Rite request approved and accommodated.

"All of these problems for the Native American community and Indian Nations are serious human rights and civil right violations that need to be addressed and rectified. To deny these basic human rights and show indifference to a dignified spiritual healing is tantamount to a cultural genocide of a young generation of Native prisoners."

An example of the results of the failure to recognize the religious rights of Indigenous Prisoners and the need of those rights enshrined in the Convention is the case of a condemned man in California, who has asked for the ceremony of Sweat Lodge as his final rites. The Prison warden denied his request and the United States District Court upheld the denial. On the issue of the rights expressed in the Covenant, the United States District Judge said:

"Finally, the plaintiff advances an argument based upon the international covenant on civil and political rights. The most recent judicial decision which addresses this precise issue held that the international covenant is not self executing and that there is no judicial authority which permits a private right of

> action under the covenant. Every judicial decision which has addressed this issue has held that there is no private right of action under the covenant, and that is a decision in which this court joins."[131]

The Sweat Lodge ceremony was denied this Cherokee man on the grounds of prison security even though he had severe ortho-degenerative spinal disease that was so bad that for the month preceding his execution, he had been wheel chaired from his cell to the visiting room to meet with his attorneys. He was incapable of walking that distance from his cell to the visit area.

Environmental Racism and its effects on Indigenous human rights

Environmental Racism in the United States affects all aspects of Indigenous life ways and their survival as Peoples. It affects our health and well being and the health and well being of our future generations, Their major means of subsistence, their Spiritual and cultural practice, and life itself, both of our people and all our relations are severely and negatively affected. Environmental racism affects biodiversity, traditional medicines and traditional knowledge, cultural expression, all that is required to continue being Indigenous, of being who we are.

You cannot damage the land without damaging those who live upon it. You cannot destroy the land without destroying those with a Spiritual and material relationship with it. Ongoing and planned actions by the United States and its corporate and private entities are taking place on lands that Indigenous Peoples have traditionally and currently use for hunting, gathering, religious, cultural, and other traditional uses.[132] The use of the land for these purposes serves as a vehicle to share knowledge about traditional Indigenous practices between elders and youth. The destruction of the lands and natural environment on and surrounding Indigenous Sacred Lands proves devastating to the perpetuation of Indigenous culture**.**

The International Indian Treaty Council (IITC) and the Indigenous Environmental Network (IEN) participated in the Third World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) held in Durban, South Africa in 2001. IEN in consultation with IITC developed language on environmental racism and justice which was included in the Declaration and Programme of Action documents of the WCAR.

Recognizing this new form of racial discrimination against Indigenous Peoples in the United States, environmental racism is the implementation of environmental, natural resource, and development schemes that nullify or impair the enjoyment of the human rights and fundamental freedoms of Indigenous Peoples. This new form of environmental discrimination is an assault on Indigenous Peoples' human rights and public health including their right to their unique special social, cultural, spiritual and historical life ways and worldviews. Environmental racism results in the devastation, contamination dispossession, loss or denial of access to Indigenous peoples' biodiversity, their waters, and traditional lands and territories. Environmental racism is now the

primary cause of human health effects of Indigenous Peoples and the forced separation and removal of Indigenous Peoples from their lands and territories, their major means of subsistence, their language culture and spirituality all of which are derived from their cultural, physical and spiritual relationship to their land.

The intentional locating of hazardous waste sites, landfills, incinerators, and polluting industries like coal fired power plants, nuclear power plants and all types of mining on Indigenous lands and communities inhabited by Indigenous Peoples have created devastating impacts to all aspects of the environment, culture, spirituality and human health. These violations have been caused by governments and the private corporate sector policy, laws, practice, action or inaction which intentionally or unintentionally disproportionately targets and harms the environment, health, biodiversity, workers employed in these industries, quality of life and security of communities.

These issues have led to and continue to lead to the ruination of Indigenous Peoples' lands, waters, and environments by the implementation of unsustainable processes such as mining, biopiracy, deforestation, the dumping of contaminated toxic waste, oil and gas drilling and other land use practices that do not respect Indigenous ceremonies, spiritual beliefs, traditional medicines and life ways, the biodiversity of Indigenous lands, Indigenous economies, and means of subsistence and the right to health.

Closely linked to Indigenous rights to self-determination, culture and health, is the right to access food and water. The effects of the continuing exploitation of Indigenous Lands by mining or the pollution of these lands and waters from toxic waste and other industrial hazards has led to environmental damage to the land and water that the Indigenous Peoples depend upon for their subsistence and that they consider to be sacred. The following are only three examples of how, for Indigenous Peoples, all things are related. Other examples abound throughout this Shadow Report.

I. The Right to Life: The Nuclear Fuel Chain and Environmental Racism

Over 1,000 abandoned uranium mines and mills on the Navajo Nation that have not been reclaimed in over 50 years by the federal government or the corporations who reaped millions of dollars in the mining and milling processes. These contaminants pose a continuing health hazard to traditional Navajos who live in close proximity to these sites

The Navajo Nation, which spans the New Mexico-Arizona border, was polluted in 1979 when an accident at the United Nuclear Corporation's Church Rock Mill near Gallup, New Mexico released 94 million gallons of radioactive waste into the Puerco River. The river flows through reservation communities impacting a population of 10,000 Navajos who live along the river using shallow wells and springs which flow from the Puerco to draw water for livestock and personal needs. Despite the fact that the spill is considered the second worst nuclear accident in

U.S. history after the Three Mile Island Nuclear Power Plant meltdown in Pennsylvania, and the designation as superfund site by the EPA the area remains un-reclaimed almost 30 years after the spill.

Indigenous uranium miners in the U.S were exposed to radioactive contaminants in the mining and milling of uranium from the mid 1940's through the early 1990's. In the late 1970's Indigenous miners asked for help to determine whether their cancerous related illness were related to their work experiences in the uranium mines and mills, due to the fact, that miners and millers in the 1950's and 60's were never informed by the mining companies, the federal government and individual states of the dangers of exposure to radioactive contaminants. As a result Congress in 1990 passed the Radioactive Exposure Compensation Act (RECA), which initially only covered three populations underground uranium miners, populations living downwind from atomic testing sites, and atomic veterans who were present at nuclear weapons testing. In 2000, Congress amended RECA to include all uranium workers such as millers who were also exposed and were not included in the 1990 legislation.

According to the Department of Justice, who is responsible for claims filed under RECA over 15,000 claims have been filed by all uranium workers of this number 5,500 were claims by Indigenous miners, claims approved totaled 4,200 for all workers and 1,050 approvals for Indigenous uranium workers. The current legislation only compensates uranium workers who worked before 1971, post 1971 workers are now petitioning Congress to amend RECA 2000 to include the post 71 working population as documentation has shown that they too were exposed to excessive levels of radioactive contaminants after the 1971 date. Thousands of RECA claims are now filed with the federal government. Health studies are now being conducted by the University of New Mexico Medical School to address the growing concern of kidney failure correlated with uranium working populations.

The Jackpile Mine on the Laguna Pueblo Reservation in New Mexico grew to be the largest open pit uranium mine in North America from 1952-1982. Although the mine is called successfully reclaimed it continues to be monitored for radioactive emissions. The mine site is 2,000 feet from the Laguna village of Paguate which has a population of 2,500 people. Numerous Laguna miners who worked at Jackpile have filed claims under RECA, as over 80% of the male workforce worked in the mine and cancer clusters have developed in the Pueblo among mining and non-mining populations.

Water quantity and quality were directly impacted by the mining of uranium in the Grants Mineral Belt in New Mexico. The Grants Mineral Belt was the most intensely mined area for uranium in the U.S. from 1950-1990. Laguna, Acoma and the Navajo Nation have all experienced impacts of depleted water sources from uranium development in the mineral belt. In the de-watering process necessary in uranium mining and milling many underground sources of water used by the three tribes went dry. Surface water sources like the Puerco River became contaminated due to the close proximity of mines and mills which spread contaminants through run-off and wind. These contamination issues have impacted domestic water consumption and use as well as agriculture and livestock watering and have drawn correlations to cancerous related illnesses among the impacted population The response by state and federal regulating

agencies to these important water issues are important at this point in time due to climate change and drought conditions in the Southwest.

Indigenous peoples in the U.S. have been continuously organizing to resist the siting of hazardous wastes sites on reservations. According to the Nuclear Regulatory Commission over 42 tribes in the United States have been approached by waste disposal companies and the federal government. Currently the Goshute Tribe in Utah is being considered for a low level nuclear Monitored Retrievable Storage Site despite vehement opposition by a majority of tribal members and the state of Utah. Disposal of spent fuel and high level radioactive waste being proposed by the U.S government at Yucca Mountain, Nevada has been an on-going proposal for over 25 years. Yucca Mountain is a sacred site to the Western Shoshone. Transportation of nuclear waste to repository sites poses a problem for the entire country.

These issues exemplify only one area of environmental racism the nuclear fuel chain and its impact on Indigenous Peoples in the United States. The nuclear legacies negative impacts on the environment, human health and the tradition and culture of indigenous peoples led the Navajo Nation Council to pass the Dine Resource Protection Act, in April 2007, banning all forms of uranium mining on the Navajo Nation the largest reservation in the U.S in land area. Currently with developing nations like India and China driving up the price of uranium on the world market (currently at 60.00 per pound, U.S. dollars) the uranium companies are back with mining proposals on or near Indigenous lands and territories in the U.S specifically the Southwest, Northwest and the Great Plains. Despite all the documentation of all the negative impacts of the past uranium mining boom in the U.S. the federal government continues to create policies that favor the uranium industry. Sacred sites like Mount Taylor in north central New Mexico are being threatened by this new wave of uranium development to the extent that the Navajo Nation, the All Indian Pueblo Council, representing 19 Pueblo Tribes in New Mexico, Laguna and Acoma Pueblos have passed resolutions opposing uranium mining and milling on the sacred mountain. Many of the examples stated above are structured as a response or implementation procedure using the United Nations Declaration on the Rights of Indigenous Peoples.

As stated in the United Nations Declaration on the Rights of Indigenous Peoples in Article 29:

1. *Indigenous Peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection without discrimination.*
2. *States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.*
3. *States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restroing the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.*

As the Bush administration has advocated the use of nuclear power as an answer to global warming and climate change indigenous peoples must strongly consider the historical past that have left the legacy of health impacts from human exposure, land, air and water contamination, contamination to traditional food sources, sacred sites, tradition and culture from past uranium exploration and production.

II. Environmental Racism and the Right to Food

The U.N. Special Rapporteur on the Right to Food has placed special attention on the significance of the rights to food and water in relation to indigenous peoples.

> "In international law, the right to adequate food and the fundamental right to be free from hunger applies to everyone without discrimination, yet the right to food of indigenous peoples is frequently denied or violated, often as a result of systematic discrimination or the widespread lack of recognition of indigenous rights…[u]nderstanding what the right to food means to indigenous peoples however is far more complex than merely examining statistics on hunger, malnutrition or poverty. Many indigenous peoples have their own particular conceptions of food, hunger, and subsistence…[and] understand the right to food as a collective right. They often see subsistence activities, such as hunting, fishing, and gathering as essential not only to their right to food, but to nurturing their cultures, languages, social life and identity. Their right to food often depends closely on their access to and control over their lands and other natural resources."[133]

The Committee on Economic, Social and Cultural Rights' General Comments 12 and 15 succinctly spell out that State parties should recognize the essential role of international assistance and cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the rights to food and water.[134] In this way, States are obliged to respect these rights of persons living in other states and guarantee that their policies do not contribute to violations of the right to adequate food in other countries or to safe drinking water. They have the duty to promote and help other states (through international assistance and cooperation) to implement the right to food and water in a manner that is culturally appropriate.

In addition to loss of traditional foods and medicines, the United States has failed to implement legislation that will enable the U.S. to assert leadership in protecting American Indian and Alaska Natives (and the American public) from toxic and deadly substances that persist in the environment creating toxic body burdens. This inaction has placed American Indian and Alaska Natives in a situation where our human rights have been jeopardized by the U.S. failing to ratify within the Senate, the POPs Stockholm Convention (2004).

III. Health and Environmental Racism

The term POPs is short for persistent organic pollutants. POPs are long-lived chemicals that build up in the food chain and slowly poison animals and humans. POPs travel thousands of miles and enter the soil, oceans, rivers, plants, and animals far from where they are produced or used. Indigenous peoples who maintain a land-based culture can be heavily exposed to POPs from their diet. In this way, POPs threaten our culture and our future. The most well-known examples of POPs are PCBs (transformer fluids), DDT (a pesticide) and dioxin, an unwanted byproduct of manufacturing and one of the most toxic man-made substances known. Historical tribal hunting and fishing rights are undermined by POPs contamination. ...Dioxin, PCBs, DDT and nine other chemicals are considered to be "a serious threat to human health" throughout the world by the United Nations. ...

Many of our American Indian and Alaska Native tribal members may now carry enough POPs in their bodies to cause serious health effects, including reproductive and developmental problems, cancer, and disruption of the immune system. Tribal nations in the Arctic region, the Great Lakes, Maine, the Columbia River basin region, and other locations are exposed to especially high levels of these pollutants. POPs migrate on wind and water currents, where they bio-accumulate and bio-magnify in the food chain, contaminating the traditional foods of many of our tribal members. The propensity of POPs to travel such long distances means that no country can fully protect its citizens by acting alone. The effort to control POPs must truly be a global one as demonstrated in the Stockholm Convention. American Indian and Alaska Natives and Native organizations continue to support the Stockholm Convention on POPs. We believe that U.S. participation in the Convention is essential to eliminate POPs and other persistent toxic substances on a global level and especially in the Arctic region. Our tribes are convinced, however, that any domestic implementing legislation must enable the U.S. to fully carry out its obligations under the treaty, and must reflect the Convention’s precautionary spirit and public health emphasis.

Indigenous Peoples have special cultural and spiritual relationships to traditional foods that create increased consumption patterns compared to non-Indigenous populations. Unfortunately, the main way POPs enter our bodies is through food. POPs have been found in eagles, cormorants, ducks, geese, caribou, reindeer, raccoons, rabbits, quail, deer, moose, bison, turtles, crocodiles, sheep, cows, polar bears, seals, whales, and fish. POPs accumulate in fat and their concentration increases at each step of the food chain. For example, PCBs have been found to accumulate in the livers of sheep. In addition, dieldrin, a pesticide, accumulates in the wool of sheep that eat from contaminated land. Advisories prohibiting or discouraging the consumption of traditional foods affect Indigenous Peoples' right to practice our cultural and spiritual ways. Store-bought food does not solve the contamination problem, since it may also be contaminated.

In many areas of our Indigenous territories, our communities are being told not to eat the contaminated fish and animals. Advisories are being posted everywhere. According to a report by Health Canada, "Great Lakes residents who consume larger amounts of certain species of contaminated fish and wildlife than the general population are at an increased risk of exposure to toxic pollutants." The report names affected subpopulations that include anglers, their families, and Indigenous Peoples.

To Indigenous Peoples, fishing and hunting are not sport or recreation, but part of a spiritual, cultural, social and economic lifestyle that has sustained us from time immemorial. In some areas, fishing and hunting rights are treaty rights. When we no longer can eat fish and wild meat, high protein food is often replaced with junk food like potato chips and soft drinks. In addition, the active social part of harvesting of traditional foods is replaced by a less active lifestyle. The junk food diet is less healthy and has contributed to problems with obesity, high blood pressure and chronic diseases like diabetes. Cutting off traditional food supplies from Indigenous Peoples could be a form of cultural genocide.

Children are more vulnerable than adults to many kinds of pollution, and POPs are no exception. Toxic exposures during fetal development, infant life, and childhood can have lifelong effects including increased susceptibility to cancer, and damage to the immune and reproductive systems. These health effects may not be apparent until much later in life, making them difficult to link to early-life exposures. For example, a study of children whose mothers ate PCB-contaminated fish from the Great Lakes during pregnancy showed that they had lower intelligence and problems with reading comprehension. These damaging effects were still observed when the children were 11 years old. After birth, POPs can also enter children during breast feeding. Many POPs have been detected at significant levels in the breast milk of Mohawk and Inuit women as well as women from many countries worldwide. The average breast-fed baby in North America grossly exceeds the World Health Organization "acceptable" daily intake of dioxin.

Indigenous Peoples unjustly contaminated by POPs include:

- Yaqui farming communities of Mexico
- Mohawks of Akwesasne in the Great Lakes
- "River Peoples" of the Colombia River Basin in Washington and Oregon
- Inuit, Cree and Dene of Canada, and
- Alaska Natives.

The Denial of Human Rights and Fundamental Freedoms in the Political, Economic, Social, Cultural or any Other Field of Public Life

I. The Right to the Highest Attainable Standard of Health

The United States has a longstanding trust responsibility to provide health care services to American Indians and Alaska Natives. The Secretary of the United States Department of Health

and Human Services through the Indian Health Services is supposed to carry out this responsibility. Since its passage in 1976 the Indian Health Care Improvement Act (IHCIA) has provided the programmatic and legal framework for carrying out the federal government's trust responsibility for Indian health. The IHCIA is the law under which health care is administered to American Indians and Alaska Natives, passed in 1976 it was last reauthorized in 1992. Like other key legislation, it must be regularly updated to stay current and meet needs. Native leaders and experts obtained consensus about priorities for the next reauthorization but today in 2007 the act is still not reauthorized. Last year the Justice department blocked it in the last days of the 109th Congress. The present administration continues to raise objections, so belatedly so that it is difficult for the Indian community and Capital Hill to act. (Friends Committee on National Legislation 10/18/2007)

IHCIA establishes objectives for addressing health disparities of Indians as compared with other Americans. It enhances the ability of Indian Health Services (IHS) and tribal health programs to attract and retain qualified Indian health care professionals and data. It provides innovative mechanisms for reducing the backlog in health facility needs. It facilitates greater decision-making regarding program operations and priorities at the local tribal level in order to improve services to tribal populations.

The IHCIA applies only to US recognized Tribes, including Alaska Natives. Comprehensive statistics on the health conditions and life expectancy of Indigenous Peoples in the United States do not exist as such due to the unresolved ambiguities in minority categorization of the national census noted above. With regards to Native Hawai'ians and Other Pacific Islanders, complete disaggregated information on mortality rates do not exist. It is, however, known that these figures are much higher than those of the Asian Americans with whom they were once bound in demographic surveys and censuses.[135]

Even more difficult is ascertaining solid health-related data on AIAN populations living off reservations. One challenge, for example, is that AIAN mortality is significantly undercounted, as it is often up to a certifying physician, coroner, medical examiner, or funeral director to identify the race of the deceased. Public health specialists name this misclassification as a serious detriment to assessing and addressing the needs of the Indigenous population. Furthermore, one representative study of Washington State death certificates argues that "this misclassification is *systematic* (i.e., it varies directly with year of death and urban residency and inversely with blood quantum) and that these biases may be worsening over time."[136]

What data is available indicate that those Indigenous persons who do choose to leave reservations continue to struggle to achieve equal access to, and enjoyment of, basic health services. One disturbing piece of data finds that rates of sudden infant death syndrome (SIDS) among urban AIAN populations were at least twice that of the general population, and American Indians were alone among their peers in not experiencing significant decreases in rates of SIDS.[137] American Indians also report dissatisfaction more consistently and for far more reasons in their experiences with health care than do White (Non-Hispanic) individuals. Indigenous participants in a Minnesota study of this issue were likely to cite cultural misunderstandings,

perceived disrespect for their religious beliefs, mistrust of providers, and general racial discrimination as barriers to accessing health services.[138]

According to the Convention, States Parties are expected to "prohibit and bring to an end" the conditions that produce all of these disparities (noting their discriminatory *effect*) between the health and well-being of Indigenous Peoples and that of the majority population. It is clear that the United States government has not lived up to even its domestic legal commitment to Indigenous Peoples' health care needs. The Indian Health Care Improvement Act, for example, states,

> The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy.

But the problem is not simply one of Indigenous poverty or the racial "disparate impact" that economic inequalities produce. Nor is it simply passive, widespread neglect of, and ignorance about, Indigenous Peoples' health needs, although these certainly contribute to the problem. Concrete policy decisions are also to blame for the poor health conditions and life expectancy of Indigenous Peoples of the United States, and for these the government has no excuse.

American Indians and Alaska Natives are eligible to receive free comprehensive health care services through a federally-funded program called Indian Health Services (IHS). However, "the system of health care delivery for American Indian and Alaska Natives has been funded at levels dramatically lower than those of other government health programs."[139] This disparity in funding compares IHS with Medicare and Medicaid; the spending-per-beneficiary gap is not only significant, but has also grown eight-fold over the past 20 years.[140] The funds allocated to IHS simply are not sufficient to meet the needs of, or fulfill the promises made to, its target population. One public health specialist has noted that elders are particularly hard hit by this situation: "When given a choice, most tribal nations and urban Indian clinics focus their limited, insufficient funds on creating and protecting the next generation."[141] She also notes that urban American Indians suffer from the fact that IHS clinics are rarely accessible to them, and the 34 urban Indian health organizations supported by IHS contracts and grants are only allocated 2% of the program's small budget.[142]

Some legal scholars have begun to identify the problem's source in the fact that spending on AIAN health care is deemed "discretionary," and thus open to reduction, interruption, and "incremental termination." They point out that "promises made to American Indian and Alaska Natives through the Constitution, statutes, case law, and treaties have been subject to the annual willingness of Congress and the president to provide sufficient funds."[143] Beyond the unfair burden that this puts on AIAN activists to invest time and resources on annual advocacy, "discretionary" status means that spending does not undergo "automatic annual adjustment keyed to increased costs and the number of eligible people."[144] Put more simply, dollar amounts designated for AIAN health funding are not commensurate with the urgent and growing needs of their target population in the same way as other federal health programs are designed to be.

Congress should act to officially extend the life of the IHCIA authorization and to update the bill to reflect both current needs of Indian health and the current methods of health care delivery and systems enjoyed by most Americans. Equally importantly, it should receive the necessary funding to be effective. The Native American Community needs to be supported to coordinate mental health, substance abuse, domestic violence, and child abuse services into comprehensive behavioral health programs. Mental and behavioral health services need to be brought into a system that moves away from treating symptoms and into a synthesized delivery system that treats the whole person. This method and approach to mental and behavioral health will integrate areas such as substance abuse, suicide prevention, violence prevention -- areas so critically in need of attention and action in Indian country.

There is a critical need for health promotion and disease prevention activities in Indian country.13% of Indian deaths occur in those younger than 25, a rate 3 times higher than the average U.S. population. The U.S. Commission on Civil Rights reported in 2003 that, “American Indian youths are twice as likely to commit suicide...” Indians are 630 % more likely to die from alcoholism, 650 % more likely to die from tuberculosis, 318 % more likely to die from diabetes and 204 % more likely to suffer accidental death, compared with other groups.

Infant mortality rate is 150% greater than that of Caucasian infants. The life expectancy for Indians is nearly 6 years less than the rest of the U.S. population. Suicide for Indians is 2 1/2 times higher than the national average. Indians are 2.6 times more likely to be diagnosed with diabetes. There are fewer mental health professionals available to treat Indians than the rest of the U.S. population. Healthcare expenditures for Indians are less than half of what America spends for federal prisoner

In the words of Sen. Charles Grassley of Iowa “the legislation requires reporting of data on Indians served, the status of their health care, and efforts being made to upgrade facilities that may not be in compliance with Social Security Act requirements. This is invaluable information that will aid us in ensuring that we're providing quality care to Indians." (Jerry Reynolds, Indian Country Today, September 14, 2007)

II. Freedom from Violence - Violence against Indigenous Women

According to U.S. Department of Justice statistics, the incidence of sexual violence experienced by American Indian and Alaska Native women is two and a half times that experienced by all other women in the United States. Specifically, more than one out of three American Indian and Alaska Native women (34.1%) will be raped in her lifetime and 3 out of 4 will be physically assaulted.[1] Furthermore, about nine out of ten American Indian victims of rape or sexual assault were estimated to have assailants who were non-Indian – either white or black.[2] These statistics are not news to Native women and Native communities, who have been dealing with this reality for far too long. In fact, it is widely recognized that these statistics do not reflect the reality of this problem – the actual incidence of sexual violence against Native women is likely much

higher than these statistics show. Even so, the numbers available are shocking. For example, during a single weekend at one Indian Health Service emergency room, located within an Indian reservation, seventy women were treated for rape trauma.[3] The high rates of sexual violence against Native women, particularly those crimes committed by non-Indians, is directly tied to the discriminatory criminal laws that apply in Indian country that forbid Indian nations from prosecuting non-Indians. These discriminatory laws impede upon the ability of Indian nations to adequately protect their female citizens.[4]

In 2005, Congress reauthorized the Violence Against Women Act, and it was signed into law in 2006. Title IX of the Act addresses Safety for Indian Women. In Title IX, Congress made a specific finding that " Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women; and The unique legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women."[145] Clearly, Title IX is an important attempt by the federal government to meet its obligations to fulfill its trust responsibility to protect Native women. It also shows Congress' willingness to implement legislation to protect Native women. Unfortunately, the US has not yet fully implemented Title IX, nor has Congress providing sufficient funding to fully implement Title IX. Even with full implementation, it is likely that the present criminal jurisdictional scheme within Indian country will continue to result in Indian women victims of major crimes in Indian country are left without adequate access to justice through the federal system. Amnesty International recently issued a report which concluded that "In order to achieve justice, survivors of sexual violence frequently have to navigate a maze of tribal, state and federal law. The US federal government has created a complex interrelation between these three jurisdictions that undermines equality before the law and often allows perpetrators to evade justice. In some cases this has created areas of effective lawlessness which encourages violence.[146]

In short, even with the enactment of VAWA, the current criminal jurisdictional scheme -- which makes distinctions based on the race of the victim and the accused -- impedes the ability of Indian nations to properly protect its citizens. Further, it impedes upon the US' ability to meet its responsibilities under the trust doctrine, as well as its international human rights obligations under Article 5(b) of the Convention.

III. Racism in "Homeland Security"

The Department of Immigration, previously in the Department of Justice, was moved to the Department of Homeland Security. The old department of immigration began a policy of forcing border crossers into the desert, where, it was believed, they would be discouraged in crossing because of the life threatening conditions under which they would be forced to cross.

Under the guise of Homeland Security, and under the rubric of "homeland security", the United States has increasingly become paranoid and isolationist, and is ahead of schedule in building a barrier, a steel wall along 700 miles of the US Mexican border.[147] This wall and US xenophobia greatly affect Indigenous Peoples whose lands straddle both sides of the border.

1. **Death along the Border:**

The end result of US policies is many deaths of undocumented immigrants, many of whom are Indigenous. A written testimony in the Spanish language provided the International Indian Treaty Council by Sebastian Quinac, an Indigenous person from Guatemala working with the American Friends Border Project in Tucson, Arizona, cites his finding of dead and dying bodies of Indigenous people from Latin America:

> "July 12, 2007
> "An indigenous [man] from Oaxaca lost all contact with his family in his village and with his brother who was in Los Angeles CA. According to what he told me, as he was coming with a group of 10 migrants and the coyote [person paid to cross the workers] he still had contacts in his memory. But when he fell to the ground from severe dehydration he lost all his memory. The next day I took him to the Mexican Consulate to contact his family in Oaxaca, Mexico. In the meantime he told me that out of the 10 immigrants that were coming with the coyote, only 6 continued walking after that he fell to the ground. In the group were 2 Guatemalans, 2 from Puebla and the rest were from Oaxaca. The first to fall in the desert was a Guatemalan and then one from Puebla. In the end he told me, that he has 4 children and his wife. He had to leave his family because there is no work where they live."[148]

2. **Desecration and Denial of Access to Sacred Places:**

In October of 2006, a Tohono O'odham elder made the following statement to the International Indian Treaty Council:

> Statement of José Garcia, October 12, 2006
> Lieutenant Governor of the Tohono O'odham Tribe, in Sonora, Mexico
>
> "My name is José Garcia. I am the Lieutenant Governor of the Tohono O'odham in Sonora, Mexico living in what is now the northern part of Mexico. The Ancestral lands of our Tribe are divided by the United States/Mexican Border. Our traditional ancestral lands extend from the San Pedro River in Arizona, to Baja California, as far south as Caborca, Sonora. It includes the cities of Nogales, Arizona, Magdalena, Sonora, all the way to west of Peñasco in Mexico.
>
> "To the north, our Nation has a recognized federal tribal land base, one of the largest in the United States. In Mexico, our lands are recognized as Ejidos and

Communities: including Pozo Verde, Quitovac, and Pozo Prieto. In all, there are five communities and their annexes, which are recognized by the government of Mexico. Our land documents in Mexico were either misplaced or lost, so now we have land problems.

Our people live on both sides of the border, and we maintain relations with each other on a regular basis, crossing the border to attend baptisms, weddings, funerals and our traditional ceremonies, maintaining our Spiritual practice in spite of the obvious difficulties the border poses for us.

"We understand that the United States is to build a steel wall on the border and we are concerned as to how it will affect us, that it will further divide our people. It will certainly be an obstacle not only to immigrants but to the Indigenous Peoples of both the United States and Mexico.

"We really need to look at it. It affects our centuries old traditions and customs. We also understand that they are planning a second wall to go behind the first. The Tohono O'odham Nation has Ok'd a vehicular wall, but not this second wall. It will block our customs and traditions and is not any solution to the problem. The problem is one of poverty and the lack of economic opportunity in Mexico. The migration of people, crossing into the United States, will continue as people search of a better way of life.

Just to tell of a few examples of how it will affect our traditions, in July of every year we have an annual Cleansing Ceremony in Quitovac, Sonora, Mexico at a natural spring. Our people from both sides of the border attend.

"One mile north of the international border on tribal land in the United States, O'odham in Mexico and the United States we celebrate our Deer Dance every summer. O'odham from Mexico need to pass the border into the United States for this ceremony. We have places of traditional harvest of the saguaro fruit south of Cubabi, Mexico. The area of the harvest extends over both sides of the border. The harvest of this fruit is very traditional and sacred to the O'odham people. About one hour's drive south of Sasabe, Sonora, at a place that is closed off, medicine men gather medicinal clay.

"In Mexico, we have a very sacred place called Ho'oki, where there was a woman who was killing our children, and we dance to put her to sleep. When salt was not available, O'odham made a pilgrimage to the coast each year and our elders informed us of the very sacred places along the way. This pilgrimage is not currently being carried out, but the pilgrimage could be revived. We have catacombs located near several of our villages in Sonora, Mexico, and other catacombs located in the United States on tribal land. These sites have been there for many centuries.

> "Other ceremonial places exist all along the border, on both sides. Because of the border and the divisions that the border causes our Nation, many of our ways are slowly disappearing. For example, our Nation has for many, many years, performed a religious pilgrimage to Magdalena, Sonora, and many of our Nations' people from the US travel there. But lately crossing has become very difficult. In San Francisquito, Sonora, Mexico, one of the O'odham was recently fired upon while crossing the international border from Mexico into the US. The shots were fired at him from Mexico.
>
> "In my opinion, the most sacred object is our territory. If we do not have a land base, we risk losing our language, history, culture, customs, traditions and religious ceremonies. The border wall will block the restoration of our lands in Mexico and interfere with continuing our way of life, the Himadag.
>
> "The O'odham and their Creator should be the ones to decide their own destiny."

3. **The confiscation of Indigenous lands:**

Since July, Lipan Apache elders of el Calaboz, TX have been the targets of threats/harassments by Border Patrol, Army Corps of Engineers, NSA, & the U.S. related to the proposed building of a fence on their levee. NSA has been demanding elders give up their lands for the levee–telling them that they'll have to travel 3 miles to go through checkpoints, to walk, recreate, to farm & herd goats/cattle on their own Apache lands.

> "In mid July 2007, I was informed by telephone that Homeland Security plans to split my property with a wall/fence. The informant (Border Patrol Agent Rick Cavazos) indicated that the government, under a National Security Directive, plans to build a fence on my private property with or without my consent or approval. For the record, land grant title holders currently own properties which extend to north of the levee but also south of the levee of the Rio Grande. Of this, the only 'choice' given me is that I can access my land south of the levee via a proposed checkpoint that will be built three miles east of my property (Garza Road). Many elders in our community will be denied basic freedoms to access their private property, due to the burden this 'access' will impose on their daily lives. The government denies the economic, social and cultural divides which are entrenched in the agrarian, land-based cultures indigenous to South Texas. Significant sectors of our communities will not be economically or socially positioned to travel three miles and through a security check-point to access their land grant private property holdings. Effectively, this measure would seriously sever an indigenous community from cultural resources, and cause immeasurable injury to community economic, social, ecological proprietorship and future development."[149]

Homeland Security Secretary Michael Chertoff recently made clear the government's intent to use the power of eminent domain, confiscation, to build the fence along the border in Texas.[150]

Representatives of 19 Indigenous Nations of the Americas met in Tucson, Arizona, on November 17, 2007, to examine the situation of the Border and Indigenous Peoples. They issued a report, wherein they expressed their "… collective outrage for the extreme levels of suffering and inhumanity, including many deaths and massive disruption of way of life, that have been presented to this Summit as well as what we have witnessed in our visit to the border areas during the Summit as a result of brutal and racist US policies being enforced on the Tohono O'odham traditional homelands and elsewhere along the US/Mexico border."

Recalling article 36 of the United Nations Declaration on the rights of Indigenous Peoples[151], the participants called upon the United States government, *inter alia,* to cease its inhumane border policies and respect Indigenous rights.

IV. **Voting Rights**

Indian people were not made citizens of the United States until 1924. Even after passage of the Indian Citizenship Act, it took nearly 40 years for all 50 states to give Native Americans the right to vote. For years, a number of states denied American Indians the right to vote because they were deemed to be "under guardianship." In other places, Indians were denied the right to vote unless they could prove they were "civilized" by moving off the reservation and renouncing their tribal ties. New Mexico was the last state to remove all express legal impediments to voting for Native Americans in 1962.

Since the passage of the Voting Rights Act in 1965, at least 73 cases have been brought under the Act or the Fourteenth or Fifteenth Amendment in which Indian interests were at stake.[152] The discriminatory trends that emerge from these cases closely track the experience of African Americans, shifting from *de jure* to *de facto* discrimination in voting rights as time progressed. Recent cases focus on the discriminatory application of voting rules with respect to registration, polling locations, and voter identification.[153]

Native people continue to face ongoing struggles when trying to exercise their right to vote today. A 2006 report on voting discrimination against Alaska Natives documented that 24 Native villages, accessible only by air, did not even have polling places in the competitive 2004 election.[154] The report also documented that Alaska continues to administer "English-only" elections, despite a federal law that clearly requires Alaska to offer minority language materials for indigenous language speakers.

Persistent discrimination against Native voters in South Dakota has also been documented. Raymond Uses the Knife, a Cheyenne River Tribe council member, testified before a National

Voting Rights Commission that poll workers on the Pine Ridge Indian Reservation failed to provide the required minority language assistance to Lakota speakers:

> "Polls on the reservation are … very limited. Accessibility is not there, and the issues pertaining to language proficiency [are] very, very real. A lot of people are Lakota speakers. Lakota is our number one language and English our number two language. So when it comes time to vote … and you don't understand the English, you want to ask questions, and the … poll watchers there from the county governments or their representatives … and you want know what's going on, … sometimes you're made to feel like you have no business there, … like you're taking up too much of their time…."[155]

Overt hostility to Native political participation is very much still present in South Dakota. In 2002 a South Dakota State legislator stated on the floor of the Senate that he would be "leading the charge . . . to support Native American voting rights when Indians decide to be citizens of the state by giving up tribal sovereignty."[156] The failure to guarantee the right to vote to Native Americans in the United States is a violation of Article 10 of the Convention.

Racist Science and the Collective Right of Free, Prior and Informed Consent

I. The Indigenous Human Genome[157]

In April 2005, the National Geographic Society and the IBM Corporation announced the launch of their five-year, $40 million "Genographic Project (GP)" funded by the Waitt Family Foundation of Gateway Computer fortunes. The project intends to collect over 100,000 blood or other genetic samples from Indigenous peoples around the world in order to support their theories of ancient human migrations. In North America, the project seeks samples from approximately 100 different tribes.

The Genographic Project is essentially a renewed attempt to further the goals of the much protested Human Genome Diversity Project (HGDP) which many Indigenous Peoples and their organizations worked hard to stop throughout much of the 1990's. Indigenous Concerns include:

Speculation about Human Migration and Histories: We know, in fact, that this kind of genetic analysis can only lead to new speculative theories about human history, or advance old theories. There's nothing wrong with a study of human history *per se*, but this project is being undertaken at our expense. However, it is quite likely this project will advance new theories of our origins that may contradict our own knowledge of ourselves. There can be no claim as to

which understanding is correct, and will result in a clash of knowledge systems. Moreover, there could be serious political implications that result from a so-called "scientific" assertion that Indigenous peoples are not "Indigenous" to their territories, but instead are recent migrants from some other place. This cuts at the heart of the rights of Indigenous peoples, which are based upon our collective, inherent right of self-determination as peoples, under international human rights law.

Bioethical Issues: All of the standard issues come to bear here, such as guarantees that insure strict adherence to free and prior informed consent, not only of the individuals involved but also of the Indigenous nations impacted or potentially impacted by this project. A standard ethical requirement in human research is that the benefits must outweigh the risks. In this type of research there will be no benefit to Indigenous peoples, yet the research creates substantial risk to the individuals and peoples affected. In the past, we've seen abuses such as the widespread secondary uses of genetic materials taken from Indigenous peoples without consent in well-known cases such as the Nuu-cha-nulth of British Columbia and the Havasupai Tribe of Arizona.

Commercialization of Human Genes: Human genes, cell lines, data, and products derived from human genes are considered patentable subject matter in US patent law and further promoted in international trade agreements. As we've seen in the past, there have been attempts and even patents granted on the genetic material of Indigenous peoples. For instance, in 1994 a patent for a cell line derived from the Hagahai people of Papua New Guinea was granted to the US Department of Commerce. The US also sought patents over Solomon Islanders and the Guaymi of Panama around the same time. Most Indigenous peoples do not consider biological material extracted from their bodies to be commodities. On the contrary, many Indigenous peoples consider their biological materials sacred and imbued with a life force of its own. Even if the Genographic Project does not pursue commercial development of the genetic material as they have promised, other scientists with access to the materials may be able to do so in the future.

Even if no commercial products are developed, the basic premise that our human DNA is available for exchange for some benefit offered in exchange, typically called a "benefit sharing agreement," results in the transformation of our genetic material into something marketable and alienable. The Genographic Project's Legacy Fund has been established to create an appearance of benefit to Indigenous peoples where otherwise there would be none by offering funding opportunities for cultural preservation projects.

Promotion of Genetic Research on Our Ancestors: A serious concern is this type of research necessitates, promotes, and encourages genetic research on DNA extracted from the remains of our ancestors, referred to as "ancient DNA." Any genetic analysis of human remains requires some destructive analysis, i.e., the crushing of bones, extraction of tissue, hair, or bone marrow, etc. Needless to say, this is a horrific affront to the sanctity of our ancestors.

Prized Racist Science: This project intends to make Indigenous peoples the subjects for scientific curiosity. The research is designed around a racial research agenda, when we know there is no biological basis for race. Race-based science is bad science, and results in racially interpreted outcomes. All of this occurs in a field in which there is no accountability, no legal framework to hold violators accountable for misuse of genetic material, and the risks for Indigenous peoples are many.

In May 2006, these concerns were echoed by an international expert body, the United Nations Permanent Forum on Indigenous Issues (UNPFII), in its recommendation "that the Genographic Project be immediately suspended and report to the Indigenous peoples on the free, prior and informed consent of all the communities where activities are conducted or planned." The UNPFII also requested "the World Health Organization and the Human Rights Commission investigates the objectives of the Genographic Project." To date these UN recommendations have not been formally addressed by the GP.

And most recently, on September 18, 2007 the Affiliated Tribes of the Northwest Region (ATNI) have issued a resolution opposing the GP, "calling upon the National Geographic Society to cease the Genographic Project in its entirety in all regions." The ATNI represents the Tribes in Alaska, Washington, Oregon, Idaho, Montana and Northern California.

Despite the widespread opposition posed by Indigenous peoples and others, Spencer Wells, lead geneticist of the Genographic Project (GP), the Foundation for the Future awarded him the Kistler Prize. The Kistler Prize Committee professes to recognize "original contributions to the understanding of the connection between the human genome and human society, especially those contributions stemming from research conducted with courage and conviction despite opposition from peers or the public." Although Indigenous opposition to the GP has been characterized as "uninformed" and "anti-science," the concerns raised by Indigenous peoples are based on sound ethical, legal and cultural arguments.

By bestowing the Kistler Prize on Spencer Wells the Foundation for the Future is rewarding unethical behavior and violations of human rights. For example, in the summer of 2006, the GP took samples from Alaska Natives without approval from the Alaska Area Institutional Review Board (IRB) responsible for ensuring oversight of human subject research involving Alaska Natives. As a result, the University of Pennsylvania IRB temporarily withheld approval and the protocol is undergoing further review. The Alaska Area IRB also demanded that all collected samples be immediately returned, and has undertaken its own critical review of the Genographic Project's Research Protocol.

The Prize also appears to be self-serving because the GP receives support to carry out the goals of the failed Human Genome Diversity Project (HGDP) of the 1990's. The HGDP, a project initiated in 1991, which also sought to collect DNA samples from Indigenous peoples worldwide, was rife with intractable ethical issues that ultimately led to its demise in the mid-1990s. Although the GP has publicly tried to distance itself from the HGDP, both projects share similar goals and intellectual leadership. Indeed, Dr. Wells was a former student of the HGDP founder, Luigi Luca Cavelli-Sforza, and his mentor now serves on both the Advisory Board of the Genographic Project as well as the Advisory Panel that assists with selecting the Kistler Award recipient.

Indigenous peoples, as vulnerable populations, should be afforded every ethical protection possible in any proposed research that may affect their lives. Indigenous peoples exist under political, social, economic, and cultural duress, typically living in, or emerging from, colonial

rule and oppression. The GP puts vulnerable populations at significant risk, while the research itself is of no benefit to those same populations. IPCB's Legal Analyst, Le`a Kanehe explains that "the risks posed to Indigenous peoples by this project are numerous and include the loss of aboriginal status, loss of collective rights to land, psychological harm, undermining of social institutions, and inter and intra-tribal conflict." "The outcomes of the GP generate no benefit to its research subjects, but instead, will only bring political, social, and cultural harm to Indigenous peoples," notes IPCB Board Chairwoman Judy Gobert. "This is not the kind of science deserving of any award."

II. The Wild Rice Genome: 1Manoomin and the Anishinaabeg[158]

In the absence of consultation with our leaders, genetic research on manoomin/wild rice genome has been undertaken at the University of Minnesota. The commercially driven genetic modification and engineering that surely will result threatens to desecrate wild strains of our sacred plant and food with bio-pollution, and undermines our religion, culture, and economy. This constitutes discrimination of our indigenous rights as defined in the International Convention on the Elimination of All Forms of Racial Discrimination[1] and particularly as clarified in 1997 with respect to indigenous peoples by the Committee on the Elimination of Racial Discrimination in its General Recommendation 23, "The Rights of Indigenous Peoples."[2] Further clarification for how to apply the principles of the International Convention to the contexts of indigenous peoples, the status of their treaty rights, and their relationships to land, plants, and medicines are elaborated in the General Assembly's Declaration of the Rights of Indigenous Peoples.[3]

Sacred Food and Medicine: Wild rice, or *manoomin*, is a sacred food and medicine integral to the religion, culture, livelihood, and peoplehood of the Anishinaabeg. According to our sacred migration story, in the long ago, a prophet at the third of seven fires, beheld a vision from the Creator calling the Anishinaabe to move west (to a land previously occupied long ago) until they found the place "where food grows on the water," and the Anishinaabeg of the upper Mississippi and Western Great Lakes have for generations understood their connection to *anishinaabe akiing* (the land of the people) in terms of the presence of this plant as a gift from the Creator. In the words of White Earth's Tribal Historian "Wild rice is part of our prophecy, our process of being human, our process of being Anishinaabe … we are here because of the wild rice. We are living a prophecy fulfilled."

In our Ojibwe language, *manoomin* is animate, grammatically referred to as "him/her" not "it," a non-human person, not just an inanimate "resource". It is as urgent as it is difficult to adequately translate and appreciate such a worldview in the language of a culture and society which has scientific advisory boards for the study of humans and even animals but not plants. According to Anishinaabe author Basil Johnson, "in essence each plant ... was a composite being, possessing an incorporeal substance, its own unique soul-spirit. It was the vitalizing substance that gave to its physical form growth, and self-healing." It is the belief of the Anishinaabeg that the rice will always grow where they live. Menominee chief Chieg Nio'pet said that his people did not need

to sow rice because it would follow them wherever they went. He told of how Shawano Lake had never had *manoomin* until his people moved there and similarly when they were banned from Lake Winnebago the rice that had been plentiful there all but disappeared"(Doerfler, 5). Whatever happens to the land and to *manooomin* happens to the Anishinaabe.

Our ceremonies and *aadizookanag,* sacred stories, too, tell of our people's relations with this plant. As Joe LaGarde, puts it, wild rice and water are the only two things required at every ceremony. *Manoomin* accompanies our celebrations, our mourning, our initiations, our feasts, as a food and as a spiritual presence. It holds special significance in traditional stories, which are only told during ricing time or when the ground is frozen. "In these stories, wild rice is a crucial element in the realm of the supernatural and in their interactions with animals and humans; these legends explain the origin of wild rice and recount its discovery" by Wenabozhoo, or Nanabozho, the principal *manidoo*, spirit, in our sacred *aadizookanag*. *Manoomin* is as central to our future survival as a people as it is to our past. As we try to overcome tremendous obstacles to our collective health, the sacred food of *manoomin* is not just food, it's medicine. "Wild rice is consequently a very special gift, with medicinal as well as nutritional values—belief reflected in the Ojibwe use of wild rice as a food to promote recovery from sickness as well as for ceremonial purposes." (Vennum, 62)

The traditional wild rice harvest is perhaps the most special time of the year in our way of life, perhaps comparable to our Christmas or Easter. Families gather at rice camps, eat traditional foods, tell traditional stories, and speak our language. People take vacation time return home to the reservation for a celebration of plant and peoplehood. The harvest traditionally has been overseen by "rice chiefs." Schooled in our oral traditions and informed by generations of keen and close observation, we know this plant well, what varieties are green and ripe in what corners of which lakes and streams at which times. We know how much to "knock" into the canoe and how much to leave for the lake. But we do not plant, and cannot cultivate wild rice, for it is our belief that this gift from the Creator is just that: a gift to be harvested with respect, and not a product or resource to be used up.

This gift has sustained us for generations as a sacred food, medicine, and presence, but also as a means to our livelihood. Today as in the past, *manoomin* feeds our families, brings strength to our children, and nourishment to our elders. Today as in the past, the extra *manoomin* that we harvest according to our traditions of respect has also served us as a trade good and an important means of survival in the modern economy. "Manoomin has always been generous to those who gather and use her in a respectful way," as spiritual leader Edward Benton Banai puts it, but "any effort to over-harvest or commercialize wild rice has met with failure."[4]

Treaty Rice: Our future relationship with *manoomin* was on the minds of our leaders, when they signed treaties with the United States. They went out of their way to secure our rights in our traditional lands, both on and off reservation, to gather wild rice, in a number of different treaties. For example, in Article 5 of the 1837 "Treaty With The Chippewa," for example, guarantees "the privilege of hunting, fishing, and gathering the wild rice upon the lands, the rivers, and the lakes included in the territory ceded" to the United States and these off-reservation rights were robustly upheld by the U.S. Supreme Court in *Minnesota v. Mille*

Lacs Band of Chippewa Indians 526 U.S. 172 (1999). Threats to wild rice, off-reservation or on, violate rights expressly reserved in our treaties.

Manoomin is inextricably bound up with the religion and peoplehood of the Anishinaabeg, and this is why the threats which is why it is so important that the sanctity and integrity of this plant be preserved. The research and modification that produced paddy grown monoculture strains of rice has desecrated *manoomin*, violated our religious, cultural and treaty rights, and severely undermined our own economic well being by lowering prices. If artificially produced or engineered varieties of wild rice were to compromise the wild manoomin that has existed in the lakes for thousands of years, it will compromise our entire Anishinaabe way of life. In the words of White Earth Anishinaabe Joe LaGarde, "if we lose our rice, we won't exist as a people for long. We'll be done too."

Articles 6 and 7 of the Convention

Especially relevant in the field of education for Indigenous Peoples, Article 6 of the Convention requires States to assure effective protection and remedies against acts of racial discrimination, as well as the right to seek just and adequate reparation or compensation for any damages suffered as a result of such discrimination. The United States has failed to address the dictates of this Article particularly with regard to Boarding Schools.

I. Boarding Schools

The history of Indian Boarding Schools in the United States is known to the Committee and described by the United States in its Periodic Report. That history includes the physical and mental abuse of indigenous children that lasted for almost a century.[159]

Attendance at these boarding schools was mandatory, and children were forcibly taken from their homes for the majority of the year. They were forced to worship as Christians and speak English (native traditions and languages were prohibited). Sexual/physical/emotional violence was rampant. While not all Native peoples see their boarding school experiences as negative, it is generally the case that much if not most of the current dysfunctionality in Native communities can be traced to the boarding school era.

Native children were generally not allowed to speak their Native languages or practice their spiritual traditions. As a result, many Native peoples can no longer speak their Native languages. Survivors widely report being punished severely if they spoke Native languages. However, the U.S. has grossly underfunded language revitalization programs. A survivor of boarding schools in South Dakota testifies to these abuses:

> "You weren't allowed to speak Lakota. If children were caught speaking, they were punished. Well, some of them had their mouths washed out with soap. Some of their hands slapped with a ruler. One of the ladies tells about how they jerked her hair, jerked her by the hair to move her head back to say "no" and up and down to say "yes" I never spoke the language again in public.

Because boarding schools were run cheaply, children generally received inadequate food. Survivors testify that the best food was saved for school administrators and teachers.

Survivors report that they received inadequate medical care. They also report that went they were sent to infirmaries, they were often sexually abused there.

> "I just suspect, you know, that he must have been sick and had appendicitis. And he was thrown over the hood of a bed, the metal bedstead. And he was thrown over that and whipped. And uh he must have been sick. And so whatever it was, he wasn't doing or he got punished for it and got whipped and then he got sick and died from it. He had a ruptured appendix."

Children report widespread physical abuse in boarding schools. They also report that administrators forced older children to physically and sexually abuse younger children. Children were not protected from the abuse by administrators or other children.

> "If somebody left some food out and you beat the other one to it, they would be waiting for you. So there was a lot of fighting going on, a lot of the kids fighting with each other, especially the bigger kids fighting the littler ones. That is what you learned. They used to send the boys through a whipping line. And we were not too far from there and the boys lined up, I don't know how many, in a line, and they all wore leather belts. They had to take off their leather belts and as the boy ran through, they had to whip them."

Sexual, physical, and emotional abuse was rampant. Many survivors report being sexually abused by multiple perpetrators in these schools. However, boarding schools refused to investigate, even when teachers were publicly accused by their students. In 1987, the FBI found that one teacher at the BIA-run Hopi day school in Arizona, John Boone, had sexually abused over 142 boys, but the school's principal had never investigated any allegations of abuse. J.D. Todd taught at a BIA school on the Navajo Reservation before twelve children came forward with allegations of molestation. Paul Price taught at a North Carolina BIA school between 1971-1985 before he was arrested for assaulting boys. In all cases, the BIA supervisors ignored complaints from the parents before their arrests. An in one case, Terry Hester admitted on his job application that he has been arrested for child sexual abuse. He was hired anyway at the Kaibito Boarding School on the Navajo Reservation, and was later convicted of sexual abuse against Navajo students. According to one former BIA school administrator in Arizona:

> "I will say this. . . child molestation at BIA schools is a dirty little secret and has been for years. I can't speak for other reservations, but I have talked to a lot of other BIA administrators who make the same kind of charges."

Despite the epidemic of sexual abuse in boarding schools, the Bureau of Indian affairs did not issue a policy on reporting sexual abuse until 1987, and did not issue a policy to strengthen the background checks of potential teachers until 1989. The Indian Child Protection Act in 1990 was passed to provide a registry for sexual offenders in Indian country, mandate a reporting system, provide rigid guidelines for BIA and IHS for doing background checks on prospective employees, and provide education to parents, school officials and law enforcement on how to recognize sexual abuse. However, this law was never sufficiently funded or implemented, and child sexual abuse rates are dramatically increasing in Indian country while they are remaining stable for the general population. Sexual predators know they can abuse Indian children with impunity. According to the *American Indian Report*: "A few years ago . . .a patient who had worked in a South Dakota-run facility where many of his victims were Indian children. . . was caught and acquitted. . .After [he] was released, he attacked three more kids and is now serving a 40-year sentence."

Other Survivors testify:

> "There was the priest or one of the brothers that was molesting those boys and those girls."
>
> "It seems like it was happening to the little ones. The real little ones. And that…I know that guy that they were accusing of that would always be around the little ones…the little kids…the little boys."
>
> "One of the girls, who was nine, nine or ten. jumped out the sixth floor window. The older girls were saying the nuns and the priests would take advantage of her and finally one of them explained to us younger ones what it was. And she finally killed herself. That was the most overt case that I can remember. They have been others that I have made myself forget because that one was so awful."

As a result of all this abuse, Native communities now suffer the continuing effects through increased physical and sexual violence that was largely absent prior to colonization. However, the US fails to redress these effects by not providing adequate healing services for boarding school survivors.

Children were also involuntarily leased out to white homes as menial labor during the summers rather than sent back to their homes. In addition, they had to do hard labor for the schools, often forced to do very dangerous chores. Some survivors report children being killed because they were forced to operate dangerous machinery. Children were never compensated for their labor. "We had to wash all the kids' clothes, and the priests', and their clothes, and iron them. The other thing that one of our nuns, she saved stamps. I remember she'd soak them, and we would get the stamps, put them in our hand, peel off the stamp, put it over here, and dry them…like you had to put them all in rolls. I don't know what she'd do with them."

Thousands of children have died in these schools, through beatings, medical neglect, and malnutrition. The cemetery at Haskell Indian School alone has 102 student graves, and at least

500 students died and were buried elsewhere. These deaths continue today. On December 6, 2004), Cindy Sohappy was found dead in a holding cell in Chemawa Boarding School (Oregon) where she had been placed after she became intoxicated. She was supposed to be checked every fifteen minutes, but no one checked on her for over three hours. At the point, she was found not breathing, and declared dead a few minutes later. The US Attorney declined to charge the staff with involuntary manslaughter. Sohappy's mother is planning to sue the school. A videotape showed that no one checked on her when she started convulsing or stopped moving. The school has been warned for past fifteen years from federal health officials in Indian Health Services about the dangers of holding cells, but these warnings were ignored. Particularly troubling was that she and other young women who had histories of sexual assault, abuse, and suicide attempts were put in these cells of solitary confinement.

Two paraphrased testimonies:

> "Two children died in school, and the administrators took the bodies home. However, the parents weren't there, so they administrators dumped the bodies on the parents house floor with no note as to what happened to them."
>
> "I used to hear babies crying in my school. Years later, the school was torn down, and they found the skeletons of babies in the walls."

Tim Giago, in submitting the above text and testimonies, retells a personal story of his own boarding school experience as well as what others have been willing to share with him about their own personal experiences. He tells the story about his sister and her friends. "… when I speak about the time my eight year old sister, along with dozens of Lakota girls the same age, was raped at the mission school by a pedophile". He continues to talk about the lingering effect of these abuses on the community, which helps to tie in CERD article 5 to show the continuing effects of these abuses, either by federal agents or allowed by federal agents. "My younger sister told me about her abuse on her deathbed and I, along with her three children, finally understood why she had become a violent, alcoholic woman for so much of her life. She died angry at the world and all alone. If only she had spoken sooner maybe we could have helped her."[160]

II. Textbooks

Article 7 of the Convention requires States Parties, "to adopt immediate and effective measures, particularly in the field of teaching, education, culture and information with a view to combating prejudices which lead to racial discrimination and to promote understanding, tolerance and friendship … as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and this Convention."

The United States has no national program or practice in the selection of textbooks for use in public schools. Such decisions are left up to local school boards that more often than not reflect the blind prejudices of their local constituencies and the racism described in this Shadow Report. The United States could be expected to hide behind federalism, as it does in other matters, playing the helpless giant in spite of the fact that the United States, by its federal funding of public schools has a great deal of influence on such matters.

Textbooks in the United States are meant to "indoctrinate blind patriotism."[161] Titles of current American history text books include The American Way, Land of Promise, The United States – A History of the Republic, the American Tradition, the Great Republic, and Rise of the American Nation. The history of the United States and its genocide of Indigenous Peoples cannot be taught without discrediting their chauvinistic purpose.

This is most apparent in their description of Columbus' "discovery" of the so-called new world and Thanksgiving Day that these books have engrained in the collective unconscious of the dominant culture. In their process of hero-making, all the heroes are white and all the impediments to progress are Indians.

Columbus is usually portrayed as a great adventurer that brought European progress to the Americas, albeit accidentally. Canonized by textbooks, he is only one of two people still honored by a national holiday (the other being Lincoln.) American history itself is divided by a Pre-Columbian line.

The myth spawned by textbooks and engraved into the American psyche is that he was a humble man who died penniless never knowing what he had discovered. The truth is that Columbus was a murderer and a thief on a very large scale, claiming and taking lands and peoples he did not own. He was the vanguard of Europe's and Christianity's drive to conquer, the precursor of the lust for gold. As described above, even US racist constitutional doctrines are based upon this doctrine of "discovery and conquest."

It is not even true that he "discovered" the new world. There is a great deal of evidence that trade between the Americas and Africa existed before and during his journey, but it is easier to repeat the myth.[162] He searched for gold wherever he went, and if the Natives were uncooperative or unable to deliver it, he would cut off their hands. He spawned a reign of terror throughout the Caribbean in his gold lust, his men hunting Indians for sport or dog food.[163] He is also responsible for the enslavement of Indians, not only enslaving Indigenous Peoples directly, sending over 5,000 people for sale to Europe and promoting a slave trade of Indians in the Caribbean, but also establishing the *encomedia* system, forcing Indians to work for Spaniards on their own ancestral lands, causing terrible depopulation.[164]

> "In 1989, then President Bush invoked Columbus as a role model for the nation: 'Christopher Columbus not only opened the door to a New World but also set an example for us all by showing what monumental feats can be accomplished through perseverance and faith.'"[165]

"When they glorify Columbus, our textbooks prod us toward identifying with the oppressor."[166]

All of the facts about Columbus and more are well known and available in primary source material. But they are not included in US textbooks. Only Columbus the hero remains, his myth justifying even today all the bad that happens to the heathen Indian, literally *de facto* **and** *de jure*. It is "Manifest Destiny" justified by God, another American myth found in textbooks and taught in public schools.

With regard to Thanksgiving Day, the myth perpetuated by US textbooks is that they were the first settlers in the Americas. As Christians they conquered the wilderness through faith in God. They were helped by friendly Indians in surviving their first winter who gave them food and showed them how to plant corn... "After harvesting their crops they and their Indian friends celebrated the first Thanksgiving."[167]

This myth perpetuates the notion that the colonization of the United States was peaceful and welcomed by Native inhabitants. The truth, available in primary source material is that the Pilgrims settled on an abandoned Indian Village that had been wiped out by European diseases that the Pilgrims themselves also carried; estimates vary, but it is now accepted that before the European invasion, the Indigenous population of North America was between 10 to 20 Million.[168] By the time the Pilgrims "landed" the Northeast United States had been grossly depopulated of Native Americans. The Pilgrims themselves stole from the surviving Indians, even robbing their graves, some giving thanks to God for the European plagues of diseases visited upon the Natives.[169]

The "Pilgrims" were even enslaving Indigenous Peoples in New England, and shipping them off to the Caribbean in exchange for Black slaves:

> "The Center of Native American slavery, like African American slavery, was South Carolina. Its population in 1708 included 3,960 free whites, 4,100 African Slaves, 1,400 Indian slaves and 120 indentured servants, presumably white. These numbers do not reflect the magnitude of Native slavery, however because they omit the export trade. From Carolina, as from New England, colonists sent Indian slaves (who might escape) to the West Indies (where they could never escape), in exchange for black slaves. Charleston shipped more than 10,000 Natives in chains to the West Indies in one year."[170]

The Thanksgiving myth is re-enacted by schoolchildren throughout the United States. It has become an American morality play, elaborated and expanded, even grander and more paternalistic in every re-telling:

> "The civil ritual we practice marginalizes Indians. Our archetypal image of the first Thanksgiving portrays the groaning boards in the woods, with the Pilgrims in their starched Sunday best next to their almost naked Indian guests. As a holiday greeting card puts it, 'I is for the Indians we invited to share our food. The silliness of it all reaches its zenith in the handouts that schoolchildren have carried

> home for decades, complete with captions such as, 'They served pumpkins and turkeys and corn and squash. The Indians had never seen such a feast.' When Native American novelist Michael Dorris's son brought home this 'information' from his New Hampshire elementary school, Dorris pointed out that, 'the Pilgrims had literally never seen 'such a feast,' since all the foods mentioned are exclusively indigenous to the Americas and have been provided *by* [or with the aid of] the local tribe.
>
> "The notion that 'we' advanced people provided for the Indians, exactly the converse of the truth, is not benign."[171]

Textbooks describing he Thanksgiving myth, with its vision of friends arriving for dinner establish a false vision of Indians welcoming colonist Europeans, and willingly giving them their possessions, their food and their land. The myth serves the purpose of establishing the Peaceful Christian Pilgrims and the backward, nearly naked heathen wild Indians' willing and justified subservience. This myth perpetuates the heathanization of Native Americans and the "gift" of Christianity, long an excuse for genocide. These myths not only serve to cement the notion of the superiority of the dominant culture and the dominant race, but also racist paternalism: "they provide for us, we are Dependent, we are and should be "Wards."

Textbooks in the United States justify the oppression and 'conquest' of Indigenous Peoples on a much larger scale than just the Columbus and Thanksgiving Day myths. The concept of Manifest Destiny, that God established the European colonists' so called "Conquest of the West," is another example of racist discrimination taught daily in US public schools. These racist notions are the stuff of United States textbooks. These myths justify 'conquest' and the domination of Indigenous Peoples, the heathen wild Indian. Their effect, not only on the Dominant culture and it view of Indians, as reflected throughout this Report, but worse, the effect on Indigenous children, is devastating. "If our oppressor has been so good to us, then we must really be bad."

The aims and purposes of Article 7 of the CERD Convention, of "…combating prejudices which lead to racial discrimination and to promote understanding, tolerance and friendship … as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and this Convention," in education are ill served to the extreme.

III. Racist Sports Mascots and Logos

Primarily through the life-long hard work and agitation of noted Native Americans including the recently deceased Veron Bellcourt of the American Indian Movement (AIM) and Ms. Elsie Meeks of Illinois, many Indian racist logos and mascots have been eliminated by sports teams at the local, regional and national level. Notably, "Chief Illiniwek, mascot of the University of Illinois, as a result of Ms. Meeks work, has finally been dropped.

But a great many remain. The logo of the Cleveland Indians, a professional baseball team is one example of a particularly offensive logo. It is widely disseminated by the Cleveland Indians and worn on the sleeves of the team in all of its appearances including the 2007 World Series televised all over the world, in spite of protests by, and in total disregard of, Indigenous Peoples.

Although the United States would probably respond that racist mascots and logos are an exercise of free speech that it has reserved under the Convention, they reveal the depth and pervasiveness of the racism against Indigenous Peoples so deeply engrained in the history and psyche of the United States and the dominant culture.

United States and its Transnational Companies Violations of the Human Rights of Indigenous Peoples Abroad

In the Concluding Observations on Canada in 2007, the Committee noted with concern the reports of the adverse effects of the activities of Canada's transnational corporations on the right to land, health, living environment and ways of life of Indigenous peoples outside Canada. The Committee urged Canada to take appropriate legislative and administrative measures to prevent these adverse activities and to explore ways of holding these companies accountable.[172]

Transnational corporations registered in the United States are responsible for the same negative effects on Indigenous Peoples abroad and the United States should be held to the same standards.

In addition to being complicit the racial discrimination practiced by their trans-nationals, the United States itself practices Environmental Racism indirectly and directly affecting the rights of Indigenous Peoples abroad. These direct racist practices should be stopped.

I. US Transnationals Abroad

Bechtel and Freeport McMoran:[173] Environmental problems abound at previous Bechtel construction sites, especially in the mining industry. One such project is the world's largest gold mine, the Grasberg mine in the remote highlands of the western half of New Guinea on the sacred mountains of the Amungme peoples, which is operated by Freeport McMoRan of Louisiana. Bechtel helped build the original gold mine in 1970. In 1998 Bechtel helped Freeport expand production and consequently waste dumping from 120,000 tons a day to 260,000 tons a day. On the other side of the island Bechtel built the Ok Tedi gold mine in Papua New Guinea.

Eight years ago an environmental review of the Freeport mining operations by the U.S. Overseas Private Insurance Corporation revealed that the mine was having an "irreversible impact" on the surrounding tropical forests.

Freeport daily dumps hundreds of thousands of tons of toxic waste from the mining operations directly into local rivers. When an accident at the mine dumpsite claimed four lives in May 2000, local activists demanded once again, as they have many times before, that the mine be shut down until there are suitable environmental safeguards to prevent such accidents. Bechtel refuses to make any comments on the Freeport gold mine. "Our contract with Freeport does not allow us to say anything about this project," says a Bechtel spokesman.

At the Ok Tedi mine indigenous peoples have succeeded in finding some justice. The dam Bechtel was building to contain the waste collapsed before gold was even extracted in 1984. In 1996 when the local people took them to court, BHP, the Australian operators of the mine agreed to spend up to $115 million to contain the toxic waste that they were dumping into the Fly River at a rate of 80,000 tons a day from the mine.

Asked why Bechtel's designs allowed waste to be dumped directly into local rivers at all these sites, a practice that is completely illegal in the United States, Berger replied somewhat cryptically: "These projects were completed in accordance with environmental standards and permits that were applicable and approved at the time of design and construction. As always, Bechtel is committed to meeting the environmental requirements of the day and to contributing to the body of knowledge supporting more sustainable development in the future."

Occidental Petroleum: On May 10, 2007, a group of 25 indigenous Achuar Peruvians filed suit against Occidental Petroleum (Oxy), demanding cleanup and reparations for environmental damages allegedly caused by Oxy over a period of 30 years, during which time the company ignored industry standards and environmental regulations by dumping a total of 9 billion barrels of toxic oil byproducts in watersheds used by the Achuar people for fishing, drinking, and bathing.[174]

During this time, Oxy used earthen pits, prohibited by U.S. standards, to store drilling fluids, crude oil, and crude by-products. These pits, dug directly into the ground, were open, unlined, and routinely overflowed onto the ground and into surface waters, leaching into the surrounding soil and groundwater.[175]

Oxy violated several international rights norms – including several in the American Convention on Human Rights and the International Convention on Civil and Political Rights – in its actions on Achuar territory, including the right to life, the right to health, the right to a healthy environment, and indigenous people's rights.[176] Oxy also violated Peru's General Water Law and General Health Law, as well as environmental statutes meant to be applied in the hydrocarbon sector.[177]

Weyerhaeuser: Canadian provincial governments have granted Weyerhaeuser control over 35 million acres of forests in Canada without the consent of local indigenous people, Grassy Meadows First Nation, who have legal, customary and ethical rights to the land.[178]

Weyerhaeuser is the company responsible for logging on Grassy Narrows' land in the Trout Lake Management Unit, and buying approximately 50 percent of the fiber that Abitibi logs on Grassy Narrows' land in the Whiskey Jack Forest Management Unit.[179]

While logging company representatives have met with community members, as required by the province as a condition of their license, community members complain that they were never genuinely consulted because their values and interests have not been respected. In 2002, community members launched a series of blockades to prevent or slow down logging operations. Despite growing tensions, the federal government has refused to intervene, citing the provincial jurisdiction over natural resources. For its part, the provincial government has allowed logging to continue despite an apparently flawed consultation process and the fact that the community has clearly withheld its consent.[180]

Barrett Resources and Hunt Oil:[181] An area known as Block 67 is being explored by US-based Barrett Resources, and overlaps the Napo Tigre reserve of the Huaorani peoples of Peru, an Indigenous Peoples that has remained in voluntary isolation from the modern world.[182] Similarly, Block 88, operated by a concession led by Texas' Hunt Oil, overlaps the Kugapakori-Nahua reserve negatively affecting the Arabela, Auca (Huaorani). The Kugapakori, Nahua, and Kirineri Indigenous Peoples of Peru are similarly negatively affected by Hunt Oil and its Camisea Pipeline.[183]

Hunt Oil's block is part of the Camisea Pipeline Project, a project highly criticized for its poor construction and environmental damage. The pipeline leaked five times in less than two years, from late 2004 to March 2006, prompting an outcry against TGP and forcing the government of former president Alejandro Toledo to order an audit to investigate the leaks.[184]

Increased barge and other river traffic, spills and erosion of soil into the rivers are blamed by some indigenous community representatives for a reduction in catch for communities dependent on fish for protein. "The companies involved in the project seem to take an ambiguous position on the lack of fish," said Oxfam America's policy advisor Ian Gary. "They are compensating communities for impacts from river traffic, while denying the project has had any impact on fish population." In some villages, families got as little as $20 a year in compensation for impacts.

According to an audit E-tech International, shoddy construction is to blame for the repeated leaks. The report confirmed an earlier independent audit that came to the same conclusion.

Del Monte, Dole and Chiquita Banana: These US transnationals funded rightwing death squads while sourcing bananas from war-torn regions of Colombia.[185] U.S.-based mining corporation Drummond Company, Inc. has been accused of similar relationship with the paramilitary groups.[186] The CIA has also obtained evidence that the head of Colombia's army, Gen Mario Montoya, a key US ally in Latin America, collaborated with right-wing paramilitaries and drug traffickers, according to an internal document leaked to the *LA Times*.[187]

Freeport McMoRan: When Freeport McMoRan Copper and Gold Company began its mining operations in West Papua in 1967, they never consulted with or received the consent of the indigenous landowners of the mineral rich territory. With the help of the Indonesian military (TNI), Freeport confiscated Amungme and Kamoro lands and forcibly relocated entire communities away from the mine.[188] At the official opening ceremony of the mine in 1973, President Suharto renamed the territory Irian Jaya--an acronym for "Follow Indonesia Against Holland." Henceforth the Papuan, or Melanesia population, who numbered about a million, were renamed Irianese and the use of the geographical name West Papua was forbidden.[189] Papuan rebels, organized into the Free Papua Movement (OPM) in the 1970s, have been waging an independence struggle ever since. The TNI has bombed, strafed and reportedly napalmed villages suspected of supporting the OPM. Military operations against villages are typically justified by reference to incidents actually engineered by the TNI.[190] An estimated 100,000 Papuans, or 10 percent of the population, have been killed by the Indonesian military since 1961.[191]

A $6 billion class-action lawsuit brought by indigenous groups in 1996 charged Freeport with human rights abuses, the robbery of ancestral lands, violations of environmental law and "planning the demise of a culture of indigenous people whose rights were never considered" as mine development proceeded.[192] By 1998 Freeport was dumping 200,000 tons of toxic mine tailings per day into the local rivers, causing more ecological damage than the notorious neighboring mines of Ok Tedi and Bougainville (see map).[193]

This practice is illegal in the U.S. and was cited as the primary reason for the cancellation of Freeport's political risk insurance by the U.S. government's Overseas Private Investment Corporation (OPIC) in 1995. OPIC's letter to Freeport said that the massive deposition of tailings from Freeport's mine posed "unreasonable or major environmental, health, or safety hazards with respect to the rivers...the surrounding terrestrial ecosystem, and the local inhabitants."[194] The suit was eventually dismissed by a U.S. court but the company's complicity in human rights abuses by Indonesian soldiers employed by the company to guard the company's mine persist to this day.

II. United States Complicity: the Manufacture and Exportation of Banned Pesticides

In 2001, the Special Rapporteur on Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Ms. Fatma-Zohra Ouhachi-Vesely visited the United States. She found that the United States allowed the manufacture and exportation of pesticides that were banned for use in the United States to other, primarily developing countries.[195] She cited a report on the alarming levels of exportation:

"United States Customs records reveal that 3.2 billion pounds of pesticide products were exported in 1997-2000, an average rate of 45 tons per hour. Nearly 65 million pounds of the exported pesticides were either forbidden or severely restricted in the United States […]. In the 1997-1999 periods, shipments of banned products were found in Customs Records […] 57 per cent of these products were shipped to a destination in the developing world. Nearly half of the remaining 43 per cent were shipped to ports in Belgium and the Netherlands. Though it is not possible to make a final determination from available data, it is likely that the final destinations of a large number of these shipments were also developing countries. In the same report, it is noted that:

"[B]etween 1996-2000, the United States exported nearly 1.1 billion pounds of pesticides that have been identified as known or suspected carcinogens, an average rate of almost 16 tons per hour […] these figures have particular import in regard to children in developing countries. According to the International Labour Organization, 65 to 90 per cent of the children estimated to be working in Africa (80 million), Asia (152 million) and Latin America (17 million) are working in agriculture. Evidence that children have heightened susceptibility to the carcinogenic effects of pesticides has even greater significance for developing countries. There, children live and work in conditions that involve almost continuous exposure, ranging from contact in fields to contaminated water, pesticide-contaminated clothing, and storage of pesticides in homes.[196]

Noting that the United States has not ratified relevant International treaties, the Special Rapporteur encouraged the Government of the United States of America to ratify the Basel Convention and its Ban Amendment, the Stockholm Convention on Persistent Organic Pollutants, and the PIC Convention.[197]

The PIC Convention requires that a receiving country demonstrate its Prior Informed Consent before it receives such banned and dangerous chemicals. The Rapporteur noted that as soon as the PIC Convention was adopted, according to United States Customs records, for the year 2000, no banned pesticide export was recorded and exports of pesticides subject to the PIC treaty decreased 97 per cent from the 1997 total of nearly 3 million pounds. We note that the United Nations Declaration on the Rights of Indigenous Peoples as well as CERD General Recommendation XXIII would require the exercise of Free Prior Informed Consent by Indigenous Peoples who are exposed and detrimentally affected by exposure these highly toxic substances. The IITC has received extensive documentation from many such communities, in particular in Mexico and Guatemala, affirming that this is, in fact, not the case.

During her visit to the United States Mme. Vesely also met with government officials. "US officials told me that pesticides banned in the United States but exported cannot be regulated if

there is a demand overseas, because of free-trade agreements.[198] The Rapporteur, Ms. Vesely justifiably found that the US policy is based upon, among other unacceptable premises, "… on an untenable premise that pesticides deemed unacceptable for the residents and environment of the United States are somehow acceptable in other countries. Clearly, countries such as the US often choose to offer their citizens a higher degree of protection than they insure for others in other countries and fail to monitor the human rights impacts of this practice by US corporations. One of the most common reasons for doing so is to acknowledge different levels of economic and social development among States. However this disparity is difficult to justify in respect of pesticides found to be so dangerous that they are banned from sale or use."[199]

As one farm worker who is a member of a Yaqui community in Mexico expressed in a meeting with the US's Environmental Protection Agency in the San Diego, California USA in 2001, commenting on the US's policy of banning pesticides for use in the US but still permitting their production for export, "Why are the lives of our Yaqui children in Mexico worth less than the lives of your children here in the US?"

There are a great many difficulties in tracing the use abroad of banned pesticides manufactured in the US. In Mexico and Guatemala, for example, there is no labeling of origin or content of pesticides. They are given names like "Veloz" (speedy), or "Ninja" in Guatemala. As the Special Rapporteur pointed out, "Even if something is marked 'poison' it tends to be shipped in large amounts, then transferred to smaller containers without proper labeling for local sale and use. And the people actually using the products often cannot read anyway."[200]

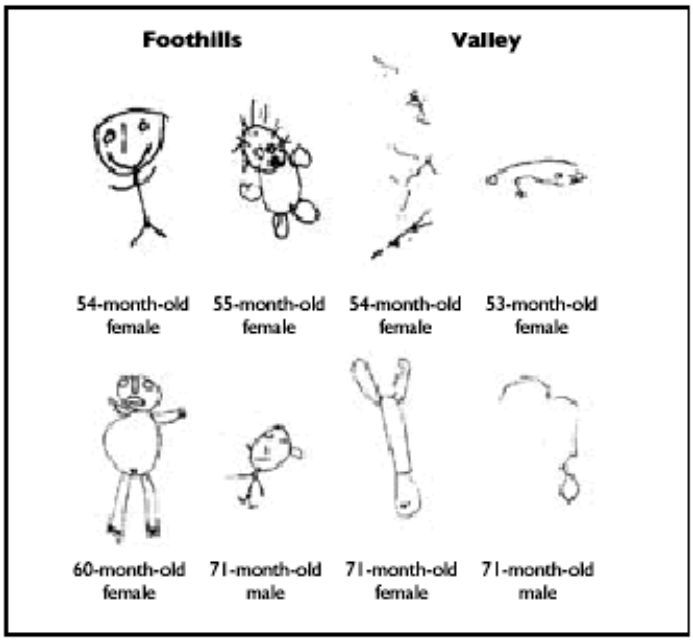
In an investigation conducted by the International Indian Treaty Council in Sonora, Mexico, on Indigenous Yaqui ancestral lands, we took the testimony of an indigenous agricultural worker that he was told to bury large pesticide canisters because they indicated that the pesticide was banned. Other Yaqui family members, farm workers and midwives have presented testimony to the IITC about increasing levels of birth defects, cancers and deaths due to toxic exposure from indiscriminate aerial spraying, storage and use of highly toxic pesticides in communities and unsafe working conditions with no safely precautions or information about the dangers provided.

This current and ongoing investigation of the use of banned pesticides within and around Yaqui lands, if not proving conclusively that the toxic chemicals used by industrialized agriculture there are manufactured specifically in the United States, demonstrate clearly the dire consequences for Indigenous Peoples exposed to them. This is one more example of the export of banned and dangerous toxics form the "developed/industrialized" to the "developing" countries with the impacted communities at the bottom end uniformed, sickened and killed. During her visit, Mme. Vesely commented on the practices in the exportation of banned pesticides, which the US government openly admitted according to the Rapporteur. "Just because something is not illegal, it may still be immoral. Allowing the export of products recognized to be harmful is immoral."[201]

In 1997 a University of Arizona scientist conducted a study of the health effects of industrial agricultural pesticides in the homelands of the Yaqui Indians in Sonora, Mexico,[202] a few hours south of the border. Yaquis living or working near the fields are exposed to frequent aerial spraying of pesticides. For some, their only source of water is contaminated irrigation canals.

In addition to the impacts of pesticides sprayed from airplanes which affect all segments of the community, Yaqui farm workers who are not provided with any protective gear carry poisons home in pesticides-soaked clothing, unknowingly spreading the contamination to their children. This study detected high levels of pesticides in the cord blood of newborns and in mother's milk, and found birth defects, learning and development disabilities, leukemia and other severe health problems in Yaqui children. Cancer and other serious illnesses are very high among family member of all ages. Deaths from acute pesticides poisoning are increasing. In addition, these toxics bio-accumulate, persist and travel in the environment, moving to the North, Arctic Indigenous Peoples (Alaska, Canada and Greenland) report high levels of contamination of mothers' breast milk and subsistence foods.

The study, done by Dr. Elizabeth Guillette,[203] combined with personal testimonies, provides strong and compelling evidence of the direct impacts of pesticide use on the physical and behavioral development of the Yaqui community's children. The comparison of Yaqui children in the valley (where pesticide use is heavy) with Yaqui children in the foothills of the Sierra Madre Occidental mountains (where pesticide use is minimal) showed dramatic differences in motor skills—eye-hand coordination and balance—as well as cognitive skills which were observed in recall, simple problem solving and ability to draw simple stick figures:



The inset is of drawings of a person by children living in the Yaqui Valley of Sonora, Mexico where pesticide use is intensive, compared to drawings by Yaqui children of the same age in the foothills areas where such exposure is minimal, pursuant to the study by Dr. Guillette. Valley children had significantly less stamina and hand-eye coordination, poorer short-term memory and were less adept at drawing a person (right) than were children in the foothills (left) where

traditional methods of intercropping control pests in gardens and insecticides are rarely used indoors.

Clearly, United States policies allowing banned pesticides to be manufactured and exported by US based corporations are immoral and wrong, and violate the human rights of the impacted communities where they are eventually applied without their free, prior and informed consent. The United States is grossly and detrimentally affecting the human rights of indigenous peoples both in the US and in other countries through this practice. As Mme. Ouachi-Veseley stated in her report to the Commission of Human Rights, "[i]n particular, the right to life, the right to health, the right to found a family, the right to a private life are most commonly violated by the effects of pesticide use."[204]

The production, export and unmonitored use of banned, prohibited and dangerous toxics including pesticides violate a range of human rights for Indigenous Peoples. This practice is a clear example of environmental and economic racism violating the human rights of communities, including many indigenous communities, who are never informed of their status or the dangers they pose, in particular to babies, children and the unborn. Many of these human rights are protected under International Laws and Conventions including the ICERD. These rights include the Rights of the Child, Right to Health, Food Security, Development, Life, Physical Integrity, Free Prior Informed Consent, Cultural Rights, the Right to be Free from all Forms of Racism and Racial Discrimination and the Right of All Peoples not to be Deprived of Their Own Means of Subsistence.

The amounts of exported banned pesticides as well as their effects on a human being, particularly expectant mothers and unborn children are truly alarming. In November 2007 the National Congress of American Indians representing over 400 federally recognized tribes in the United States, at their 2007 Annual Conference in Denver Colorado, USA, adopted a resolution by consensus addressing these issues. It calls upon the US to halt the production and export of banned and dangerous pesticides because of the impacts on health, subsistence rights/right o food and well being of Indigenous Peoples in the US and in other countries, and the violation of their free prior informed consent. It also called upon the US to fully disclose the details related to this practice: [205]

> WHEREAS, the production, export and unmonitored use of banned, prohibited and dangerous toxics including pesticides violates a range of human rights for Indigenous Peoples around the world including the Rights of the Child, Right to Health, Food Security, Development Life, Physical Integrity, Free Prior Informed Consent, Cultural Rights, the Right to be Free from all Forms of Racism and Racial Discrimination and the Right of All Peoples not to be Deprived of Their Own Means of Subsistence.
>
> NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby respectfully request that the Senate Indian Affairs Committee (SIAC) hold oversight hearings on this critical issue and its impacts on the contamination of subsistence food

resources, health, human rights and development of Tribes and Indigenous communities, in and outside the United States; and

BE IT FURTHER RESOLVED, that the NCAI respectfully requests that the US government fully disclose to the impacted Tribes and to the general public the specific corporations, factories and storage locations for chemicals which are banned for use in the United States but continue to be produced and exported, along with their known health effects; and

BE IT FURTHER RESOLVED, that the NCAI respectfully requests that the impacted Tribes and communities seek information and educate themselves as to the potential harmful effects to their peoples, subsistence and cultural resources of pesticides and other toxic chemicals, as well as their rights and options in this regard including the restoration of traditional agricultural knowledge, practices, seeds and farming methods which are chemical-free; and

BE IT FURTHER RESOLVED, that NCAI respectfully calls upon the US government to halt the production, storage, export and use of pesticides and other chemicals which have been banned for use in this country or which are known to be hazardous to human health and development until the free, prior and informed consent of the affected tribes and Indigenous Peoples is obtained, whether they live near the point of production and use or are affected through the movement of such toxics through the environment and the food chain; and

BE IT FURTHER RESOLVED, that NCAI calls upon the US government and its Agency for International Development (US AID) to cease funding programs which promote the use of DDT, an internationally-banned pesticide which accumulates and persists in the global food chain and in human bodies, and to instead provide funding for safe and effective alternatives for malaria prevention in Africa and elsewhere; and

III. Direct US Government Environmental Racism Abroad:

In addition to allowing its transnational corporations to destroy Indigenous lands and resources, as well as directly abetting its chemical corporations to export dangerous pesticides banned in the United States, to other countries, the United States itself practices environmental racism abroad. Its foreign policy is to further business interests abroad at the expense of human rights and Mother Earth itself. Although it claims to observe the right of self determination of (some recognized tribes) Indigenous Peoples, it was one of only four States to vote against the UN Declaration, and now claims not to be bound by it in any way, free to destroy biodiversity and the environment. Mme. Veseley pointed out that the US has not adopted International conventions meant to protect people from dangerous chemicals, but instead promotes their

proliferation. The government of the United States also directly engages in Environmental racism directly.

Plan Colombia – Colombia and Ecuador: Ecuadorian Indigenous Peoples took legal action in federal court in the U.S., charging that a U.S. company that was contracted to carry out fumigation of illicit crops in neighboring Colombia recklessly sprayed their homes and farms, causing illnesses and deaths, and destroying crops in its ill-begotten effort to eradicate the coca plant and illicit drug trafficking.[206]

They claimed that DynCorp sprayed the herbicide almost daily, in a reckless manner, causing severe health problems (high fever, vomiting, diarrhea, dermatological problems) and the destruction of food crops and livestock. In addition, the plaintiffs alleged that the toxicity of the fumigant caused the deaths of four infants in this region.[207]

Indigenous groups from Colombia also opposed the spraying. In 2001, Emperatriz Cahuache, president of the Organization of Indigenous Peoples of the Colombian Amazon, came to Washington and showed reporters a map illustrating how the areas of coca and marijuana cultivation overlaps with indigenous territories and the areas that have been fumigated. "These fumigations are contaminating the Amazon and destroying the forest," said Cahuache.[208]

In December 2006, 1660 citizens of the Ecuadorian provinces of Esmeraldas and Sucumbios who were not part of the class-action lawsuit described above filed a separate lawsuit against DynCorp in US federal court in Florida. The provinces of Carchi, Esmeraldas and Sucumbios also sued DynCorp in Florida federal court over the spraying, in lawsuits filed in December 2006, and March and April 2007. The plaintiffs in these four cases allege that DynCorp's spraying of fumigants injured the residents of these provinces, for which they are bringing claims under Florida state law (what laws are they using? Are there effective remedies?), Ecuadorian law and international law.[209]

Colombia and the Palm Industry: Monies from USAID, ostensibly used to 'demobilize' the right wing paramilitaries in Colombia and the substitution of drug crops, are being used to expand the palm industry.[210] The expansion of the palm industry carries serious consequences for the Indigenous communities of Colombia, who rely on the biological diversity of the lands that they inhabit. Already, The Constitutional Court of Columbia has recognized the "cultural extinction" of the Embera-Katío Indigenous Community of Chajeradó and Urrá, which stated that the changes to their lands due to monocultures, made their cultural life impossible.[211]

An approximate projection of the indigenous lands which will be affected by oil palm plantations gives the following results:

Department	Ethnic groups	Indigenous territories potentially affected[42]
Chocó	Embera-Katío	Up to 11
Cauca	Embera-Katío, Eperara-Siapidara	Up to 15
Putumayo	Inga, Witoto, Paez, Awa, Siona	Up to 25
Vichada	Amorúa-Guahibo, Guahibo, Cubeo-Curri, Piapoco, Sáliba	Up to 20
Arauca	Macaguaje, Kuiba-Hitnu, Guahibo	Up to 4
Meta	Guahibo, Guanano, Guayabero	Up to 9
Casanare	Kuiba, Sáliba	Up to 8
Guajira	Wayuu	Up to 9
Antioquia	Kuna-Tule	1
Total	Potentially 18	Potentially 102

Source HREV (preliminary data)

According to Colombian president Alvaro Uribe, "Four years ago Colombia didn't produce a liter of biofuel. Today, because of our administration, Colombia produces 1.2m liters per day."[212] Further, Uribe urged local palm oil producers in 2007 to more than double the land they have under cultivation within four years, thus encouraging the displacement and human rights abuses.[213]

According to the UN High Commission for Refugees, there is an average of 200,000 cases registered every year over the past four years, according to the UN High Commission for Refugees, with most coming from palm oil-growing areas on the Caribbean coast.[214] According to the NGO Human Rights Everywhere, of the estimated 1,874,917 to 3,832,525 people in Colombia that have been displaced by violence, two out of three displaced people owned land at the time of displacement.[215]

A large body of evidence illustrates that displacement for industries such as mining and African Palm was directly forced by the right wing paramilitaries. Today, a large proportion of the land stolen or illegally appropriated remains in the hands of paramilitary commanders, or under the control of corporations, which claim legal title to the land.[216]

IV. US military bases on Indigenous communities in the Philippines[217]

"Environmental contamination affects whole communities but is most significant for women and children, because they tend to show signs of disease earlier than men. The military bases cause more pollution than any other institutions. Bases store fuel, oil, solvents, and other chemicals as well as weapons, including defoliants like Agent Orange, depleted uranium-tipped bullets, and nuclear weapons. The Status of Forces Agreements(SOFAs) between the US and host governments ensure legal protection for US bases and military personnel but do not adequately

protect local communities from crimes committed by US troops. The US accepts no legal responsibility for environmental cleanup of bases."

Conclusion and Recommendations

The United States perpetuates a constitutional and legal system that legitimizes discriminatory practices towards Indigenous Peoples by failing to protect their rights to property, religious freedom and practice, despoiling spiritually significant areas, denying Indigenous Peoples' control and management of resources and self-determination even on their own lands.

The federal government, acting through Congress and the executive, continues to take tribal lands and resources, in many cases without payment and without any legal remedy for the tribes. Congress frequently deals with Indian property and Indian claims by enacting legislation that would be forbidden by the Constitution if it affected anyone else's property or claims. Because of the federal government's essentially limitless power and constant intrusion under the plenary power doctrine, Indian governments cannot function properly to govern their lands or to carry out much-needed economic development. Constantly under threat of termination or worse, this denial of simple justice has long served to deprive Indigenous Nations of a fair opportunity to advance the interests of their communities. No others in the country are in such an untenable and insecure position.

Disproportionately poor, unemployed, incarcerated, victimized by crime, by every measure, even in mortality Indigenous Peoples in the United States continue to rank at the bottom of every scale of economic and social well-being. Even their right to vote is violated.

US Policies and practices severely affect the rights of Indigenous Peoples abroad, by the aerial spraying of herbicides in Colombia, and the manufacture for export of banned pesticides, and their support of paramilitary squads, sometimes disguised as "security" for their transnational corporations, as well as the lack of accountability of their transnationals affecting Indigenous Peoples and their rights.

Recommendations:

1. Racist Constitutional Doctrines:

- Although there have been no dialogues or conversations with Indigenous Peoples with regard to the abolition of the racially discriminatory constitutional doctrines described in this Shadow report, including the so-called Trust Relationship, there is a well founded fear among many that simply abolishing the present relationship between recognized tribes and the United States would lead to individual States exerting jurisdiction over Indigenous Peoples, the loss of land and its collective nature, and many rights valued by

recognized tribes as well as unrecognized Indigenous Peoples. Consultations should take place with Indigenous Peoples, including the right to free, prior and informed consent, with the view of abolishing these racist doctrines while protecting the rights of Indigenous Peoples as reflected by international customary law and the United Nations Declaration on the Rights of Indigenous Peoples.

- That the United States recognize all Indigenous Peoples in the United States as Indigenous Peoples with Indigenous rights, consistent with the United Nations Declaration on the Rights of Indigenous Peoples and with international customary law, including terminated Tribes, unrecognized Tribes, Alaskan Natives, Native Hawai'ians and the Taino Peoples of Puerto Rico. It should also comply with its Charter responsibilities of ensuring the well being of the Native Peoples of Guam and Puerto Rico.

- The "Plenary Powers Doctrine" should be immediately abolished. Consistent with the United Nations Declaration on the Rights of Indigenous Peoples, General recommendation XXIII, and customary international law, Indigenous lands taken under this doctrine should be restored.

- The United States should begin a process of reinstating abrogated and unrecognized Treaties with Indigenous Peoples, with the view of respecting and adhering to their terms, and provide, with the free prior and informed consent of the Indigenous Peoples affected, restitution and where appropriate, compensation for damages as a result of their abrogation or failure of recognition.

2. Sacred Lands and Religious Freedom:

- Consistent with the United Nations Declaration on the Rights of Indigenous Peoples, General recommendation XXIII, and customary international law, Sacred Lands should be returned to Indigenous Peoples with particular attention paid to the Black Hills of South Dakota to the Lakota Nation.

- Indigenous Peoples should be allowed to practice their religion without the necessity of permits or the observation and encumbrances of tourists, bikers and rock climbers;

- Development that affects the Sanctity of Sacred Lands should immediately cease and should only be allowed with the free, prior and informed consent of the Indigenous Peoples affected; and,

- Prison Inmates, in both Federal and State prisons should immediately be allowed their religious practice as is allowed all other religions in United States prisons, including but not limited to, last rites for condemned Indigenous inmates.

3. Environmental Racism

- Development with potential harm to Indigenous Peoples' rights, whether on recognized reservations or not, should not be done without their free, prior and informed consent. The United States should take immediate steps to remediate and compensate for the legacies of development harmful to Indigenous Peoples.

- The United States should be held accountable for its behavior and that of US trans-national corporations that violate the rights of Indigenous Peoples abroad. It should immediately cease these racist policies and practices and take appropriate legislative and administrative measures to prevent these adverse activities and to explore ways of holding transnational companies registered in the United States accountable. Particularly, the United States should:

    - Outlaw the manufacture of banned pesticides for export.
    - Stop the spraying of herbicides in Colombia and other countries
    - Cease their economic and logistical support of paramilitary death squads under the guise of "economic development."

4. US Apartheid and Coerced Assimilation

- The United States must cease its *de facto* system of apartheid on Indian Reservations as places to warehouse its Native American poor, leaving them only option for "an economic existence worthy of human dignity" the abandonment of community, language and culture.

- The United States must comply with its Treaty Obligations as well as customary international law, and provide the means by which Indian Reservations can develop and provide for future generations in keeping with their cultures and traditions.

- Congress should act to reauthorize and update the Indian Health Care Improvement Act to reflect both current needs of Indian health and the current health care systems enjoyed by most Americans. Equally importantly, it should receive the necessary funding to be effective.

- In order to better protect tribal female citizens from sexual violence, the United States should recognize full tribal criminal jurisdictional authority over all crimes occurring within Indian country. In addition, Congress should provide adequate funding to fully implement Title IX of the Violence Against Women Act.

- The United States should afford Native Americans the full right to participate in government by addressing the rampant voting discrimination practices throughout the nation, and particularly in South Dakota.

5. Articles 6 and 7 of the CERD Convention

- The United States should provide just and adequate reparation and compensation for any damages suffered by indigenous victims of abuse by the United States under its historical practice of mandating that Native children attend federally sponsored boarding schools.

- The United States should promote the development of textbooks and the teaching of culturally appropriate and historically accurate curriculum for all school age children, particularly Native American children, of the dignity and worth of Indigenous Peoples and cultures, as well as their human rights.

1 US Periodic Report para. 339.
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