



January 14, 2015

United States of America Department of State c/o NAP-RBC@state.gov
cc: Lynn Sicade, Deputy Director and Senior Advisor, DRL/MLGA, SicadeLM@state.gov
Alan Krill, Foreign Affairs Officer on the Business and Human Rights team, KrillA@state.gov

Re: Initial written submission for the US National Action Plan on Business and Human Rights

Respectful Greetings,

Please find enclosed the initial submission by the International Indian Treaty Council (IITC) for the development of the United States of America National Action Plan (US NAP) on Business and Human Rights.

This submission highlights relevant concerns expressed jointly by IITC and over 60 other Indigenous organizations, federally-recognized Tribal governments, Treaty Councils and traditional societies in reports presented to two United Nations Treaty bodies for their review of the US carried out in 2014.

The Alternative Reports submitted by Indigenous Peoples, along with the resulting Concluding Observations by the Committee on the Elimination of Racial Discrimination (CERD) and the Human Rights Committee (CCPR) Treaty bodies contained key issues that are directly relevant and provide important guidance to the US in the development of its NAP. It is our view that they need to be taken into account and included for achievement of an effective, comprehensive and non-discriminatory US NAP.

Specifically they address:

- 1) Human Rights violations by United States (US) corporations are permitted through US laws which allow the manufacture and export of pesticides from the United States that have been banned (or deregulated) for use in the US itself; violating human rights to health (including women's reproductive health), right to life, rights of the child among others;
- 2) Human Rights violations resulting from corporate and business activities which cause the destruction, desecration and contamination of Indigenous Peoples' sacred and ceremonial sites, areas and landscapes, including many located on what are now federal



lands and in areas recognized as belonging to Indigenous Nations under their ratified Treaties with the US; and

- 3) Lack of US compliance and implementation of the provisions and rights affirmed in its Human Rights obligations and commitments which include, inter alia, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Human Rights and Business Principles, and the Declaration on the Rights of Indigenous Peoples, ratified nation to nation Treaties concluded by with Indigenous Nations and the UN Declaration on the Rights of Indigenous Peoples.

In 1990, the UN Global Consultation on the Right to Development stated that, "the most destructive and prevalent abuses of Indigenous Rights are the direct consequences of development strategies that fail to respect their fundamental right of self-determination."

Unfortunately, notwithstanding historic progress in the recognition of Indigenous Peoples' in the international area, most notably the adoption of the UN Declaration on the Rights of Indigenous Peoples, this statement still defines the reality for the majority of Indigenous Peoples both in and outside the US. The implementation gap is a reality and results in pervasive violations of the individual and collective rights of Indigenous Peoples.

The United Nations Principles on Business and Human Rights, developed by Independent Expert John Ruggie and adopted by the UN Human Rights Council in June 2011 represented a significant development in the scope of application and potential for protection of human rights. They affirm that States (countries) have a duty to protect against human rights violations resulting from activities of transnational corporations and other business enterprises. They also affirm that corporations and businesses themselves have an obligation to respect human rights.

Even before these Principles were adopted, the UN Committee on the Elimination of Racial Discrimination (CERD), the Treaty monitoring body for the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), affirmed that the United States is obligated to prevent human rights violations in Indigenous communities in other countries by corporations licensed in the US as an aspect of its legally-binding compliance as a State Party to the ICERD:

30. The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the right to



land, health, living environment and the way of life of Indigenous Peoples living in these regions. (Articles 2 (1) (d) and 5 (e))

In light of article 2, paragraph 1 (d), and 5 (e) of the Convention and of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in the United States accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in the United States on indigenous peoples abroad and on any measures taken in this regard.¹ (*Emphasis added*)

The CERD made similar observations addressing the responsibility of Canada regarding, in particular, the activities of Canadian mining companies carrying out activities that violate the rights of Indigenous Peoples outside Canada in both 2007² and 2012³. It then reaffirmed its 2008 recommendation to the United States in its 2013 Concluding Observations regarding the US.⁴

In 2013, the International Indian Treaty Council joined with over 70 Indigenous Tribal Governments, Indigenous Peoples' Organizations, Traditional Societies and Treaty Councils in making 10 submissions for the reviews of the United States by the UN Human Rights Committee (CCPR) in March 2013 and the CERD in August 2013. Listed below are five of the Indigenous Peoples reports that are most relevant to the implementation of the Business and Human Rights Principles in the context of the concerns expressed above.

¹ CERD/C/USA/CO/6, February 2008, Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination, Paragraph 30.

² CERD/C/CAN/CO/18, March 2007, CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION, Concluding observations of the Committee on the Elimination of Racial Discrimination, paragraph 17.

³ CERD/C/CAN/CO/19-20, 9 March 2012, Committee on the Elimination of Racial Discrimination Eightieth session, 13 February– 9 March 2012, Consideration of reports submitted by States parties under article 9 of the convention, concluding observations of the Committee on the Elimination of Racial Discrimination, Canada, paragraph 14.

⁴ CERD/C/USA/CO/7-9, 29 August 2013, Committee on the Elimination of Racial Discrimination Concluding observations on the combined seventh to ninth periodic reports of United States of America, paragraph 10.



Please note that the three joint submissions addressing desecration of Sacred Sites and Areas submitted by IITC with others to the CCPR and the CERD included many examples of threats and/or ongoing desecration resulting from activities by businesses and corporations. These include, in particular, extractive industries such as mining. They also include recreation and other business activities which are either condoned or allowed by the US government despite its obligations to uphold National and International laws and standards protecting the human rights to freedom of religious practice.

The full texts of these submissions can be downloaded from the web pages of these Treaty Bodies (links included below):

1) UNITED NATIONS HUMAN RIGHTS COMMITTEE, 110TH SESSION, CONSIDERATION OF THE FOURTH PERIODIC REPORT OF THE UNITED STATES OF AMERICA UNDER ARTICLE 40 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, INDIGENOUS PEOPLES CONSOLIDATED ALTERNATIVE REPORT, *Co-submitted by the International Indian Treaty Council, Indigenous World Association, Native Village of Venetie (Gwich'in Nation), Chickaloon Native Village and Chickaloon Village Traditional Council, Laguna Acoma Coalition for a Safe Environment, Western Shoshone Defense Project, Pit River Nation, Advocates for the Protection of Sacred Sites, Lakota Treaty Council, Kónitsqáí Ndé (Big Water People Clan) and Cúelcahén Ndé (Tall Grass People Clan) of the Lipan Apache Band of Texas, Lipan Apache Women Defense, United Confederation of Taíno People, Hickory Ground Tribal Town, Muscogee (Creek) Nation, Gila River Alliance for a Clean Environment, Guahan Coalition of Guam, Na Koa Ikaika KaLahui Hawaii, Koani Foundation, Aha Moku Council, Amend AIRFA (American Indian Religious Freedom Act), Haskell Wetlands Walkers Student Organization and The Morning Star Institute with additional contributions by the Pueblo of Laguna, the Gila River Indian Community Council, the Navajo Nation Human Rights Commission, the Yurok Tribe, Indigenous Youth Foundation and the Havasupai Community Tribal Members, September 13, 2013* [http://cdn5.iitc.org/wp-content/uploads/2014/02/ICCPR-IITC-Consolidated-Alternate-Report-UPDATES-February-2014_web.pdf].

2) COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 85TH SESSION, AUGUST 13-14, 2014, EXAMINATION OF THE UNITED STATES 7TH, 8TH AND 9TH PERIODIC REPORTS OF JUNE 2013, ALTERNATIVE REPORT REGARDING LACK OF IMPLEMENTATION OF CERD CONCLUDING RECOMMENDATION 30 [CERD/C/USA/CO/6] REGARDING THE UNITED STATES IN FEBRUARY 2008 AND IMPACTS OF THE CONTINUED PRODUCTION AND EXPORT OF UNREGISTERED



PESTICIDES, jointly submitted by the International Indian Treaty Council, Advocates for Environmental Human Rights, Alaska Community Action on Toxics, Native Village of Savoonga, Native Village of Gambell, North-South Indigenous Network Against Pesticides and International Indigenous Women's Initiative for Environmental and Reproductive Health, July 15, 2014
[http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17655_E.pdf].

3) COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

85th SESSION, EXAMINATION OF THE UNITED STATES 7TH, 8TH AND 9TH PERIODIC REPORTS, ALTERNATIVE REPORT REGARDING LACK OF IMPLEMENTATION BY THE UNITED STATES OF RECOMMENDATION 29 OF THE COMMITTEE'S 2008 CONCLUDING OBSERVATIONS: "While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party's obligations under the Convention relating to indigenous peoples", Submitted jointly by The International Indian Treaty Council (IITC), Oglala Lakota Nation, Western Shoshone Defense Project and the Indigenous World Association (IWA) July 8, 2014,
[http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17613_E.pdf].

4) COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 85TH SESSION, AUGUST 13-14, 2014, EXAMINATION OF THE UNITED STATES 7TH, 8TH AND 9TH PERIODIC REPORTS OF JUNE 2013, ALTERNATIVE REPORT REGARDING LACK OF IMPLEMENTATION OF CERD CONCLUDING RECOMMENDATION 29 [CERD/C/USA/CO/6] REGARDING THE UNITED STATES IN FEBRUARY 2008 AND ACTIVITIES NEGATIVELY IMPACTING AREAS OF SPIRITUAL AND CULTURAL SIGNIFICANCE TO INDIGENOUS PEOPLES, Jointly Submitted by the International Indian Treaty Council, Indigenous World Association, Native Village of Venetie (Gwich'in Nation), Chickaloon Native Village and Chickaloon Village Traditional Council, Western Shoshone Defense Project, Pit River nation, Advocates for the Protection of Sacred Sites, Lipan Apache Women Defense, Lakota Treaty Council, United Confederation of Taíno People, Hickory Ground Tribal Town, Muscogee (Creek) Nation, Gila River Alliance for a Clean Environment, Guahan Coalition of Guam, Na Koa Ikaika KaLahui Hawaii, Koani Foundation, Aha Moku Council, Amernd AIRFA (American Indian Religious Freedom Act), Oglala Lakota Nation, Havasupai Tribe, Haskell Wetlands Walkers Student Organization and The Morning Star Institute, July 25, 2014, with contributions from the Gila River Indian Community Council, the Yurok Tribe and the Indigenous Youth Foundation, July 25, 2014
[http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17778_E.pdf].



5) COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 85TH SESSION, AUGUST 13-14, 2014, EXAMINATION OF THE UNITED STATES 7TH, 8TH AND 9TH PERIODIC REPORTS OF JUNE 2013, ALTERNATIVE REPORT REGARDING THE CONTINUED DESECRATION OF THE SAN FRANCISCO PEAKS, A SACRED AREA, *Submitted jointly by the Navajo Nation, Havasupai Tribe, Navajo Nation Human Rights Commission, and International Indian Treaty Council; July 1, 2014* [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17600_E.pdf].

As a response to these submissions by IITC et al, and those by other Indigenous Peoples, the CCPR issued the following relevant recommendation to the US:

25. The Committee is concerned about the insufficient measures being taken to protect the sacred areas of indigenous peoples against desecration, contamination and destruction as a result of urbanization, extractive industries, industrial development, tourism and toxic contamination. It is also concerned about restricted access of indigenous people to sacred areas essential for preservation of their religious, cultural and spiritual practices and the insufficiency of consultation conducted with indigenous peoples on matters of interest to their communities (art. 27).

The State party should adopt measures to effectively protect sacred areas of indigenous peoples against desecration, contamination and destruction and ensure that consultations are held with the communities that might be adversely affected by State party's development projects and exploitation of natural resources with a view to obtaining their free, prior and informed consent for the potential project activities.⁵

In response to the Alternative Reports submitted by Indigenous Peoples for its 2014 review of the US, in its Concluding Observations CERD made several recommendations for improved compliance to the US which are directly relevant to the UN NAP as follows:

10. While welcoming the acknowledgment by the State party that low income and minority communities are exposed to an unacceptable amount of pollution, as well as the initiatives taken to address the issue, the Committee is concerned that individuals belonging to racial and ethnic minorities as well as indigenous peoples

⁵ United Nations Human Rights Committee, Concluding observations on the fourth report of the United States of America [CCPR/C/USA/CO/4], 23 April 2014



continue to be disproportionately affected by the negative health impact of pollution caused by the extractive and manufacturing industries. It also reiterates its previous concern regarding the adverse effects of economic activities related to the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the rights to land, health, environment and the way of life of indigenous peoples and minority groups living in these regions (CERD/C/USA/CO/6, para.30) (arts. 2 and 5(e)).

The Committee calls upon the State party to:

- (a) Ensure that federal legislation prohibiting environmental pollution is effectively enforced at state and local levels;**
- (b) Undertake an independent and effective investigation into all cases of environmentally polluting activities and their impact on the rights of affected communities, bring those responsible to account, and ensure that victims have access to appropriate remedies;**
- (c) Clean up any remaining radioactive and toxic waste throughout the State party as a matter of urgency, paying particular attention to areas inhabited by racial and ethnic minorities and indigenous peoples that have been neglected to date; and**
- (d) Take appropriate measures to prevent the activities of transnational corporations registered in the State party which could have adverse effects on the enjoyment of human rights by local populations in other countries, especially by indigenous peoples and minorities.**

24. While acknowledging the steps taken by the State party to recognize the culture and traditions of indigenous peoples, including the support for the United Nations Declaration on the Rights of Indigenous Peoples announced by President Obama on 16 December 2010, the issuance of Executive Orders 13007 and 13175 and the high-level conferences organized by President Obama with tribal leaders, the Committee remains concerned at:

- (a) Lack of concrete progress achieved to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policy-making and decisions that affect them;
- (c) Insufficient measures taken to protect the sacred sites of indigenous peoples that are essential for the preservation of their religious, cultural and spiritual practices against polluting and disruptive activities, resulting inter alia from resource extraction, industrial development, construction of border fences and walls, tourism, and urbanization;
- (e) The lack of sufficient and adequate information provided by the State party on the measures taken to implement the recommendations of the Committee in its Decision 1(68) regarding the Western Shoshone peoples (CERD/C/USA/DEC/1) adopted under the Early Warning and Urgent Action Procedure in 2006, as well as



the ongoing infringement of the rights of the Western Shoshone peoples (arts.5 and 6).

Recalling its general recommendation No. 23 (1997) on indigenous peoples, the Committee calls upon the State party to:

(a) Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them based on their free, prior and informed consent;

(c) Adopt concrete measures to effectively protect the sacred sites of indigenous peoples as a result of the State party's development or national security projects and exploitation of natural resources, and ensure that those responsible for any damages caused are held accountable;⁶

Most recently, the outcome document of the High Level Meeting of the UN General Assembly called the World Conference on Indigenous Peoples, in which the US participated actively, underscored UN member States' commitments to uphold the rights affirmed in the UN Declaration on the Rights of Indigenous Peoples. The WCIP Outcome Document included a commitment to the right to Free Prior and Informed Consent related to development activities as follows:

20. We recognize commitments made by States, with regard to the United Nations Declaration on the Rights of Indigenous Peoples, to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.

A number of other paragraphs are also directly relevant to the NAP process and should be reflected in the outcome of this process. These include:

3. We reaffirm our support for the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on September 13, 2007, and our commitments made in this respect to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and

⁶ CERD/C/USA/CO/7-9, 29 August 2013, Committee on the Elimination of Racial Discrimination Concluding observations on the combined seventh to ninth periodic reports of United States of America, paragraphs 10 and 24.



implementing legislative or administrative measures that may affect them, in accordance with the applicable principles of the Declaration.

23. We intend to work with indigenous peoples to address the impact or potential impact on them of major development projects, including those involving the activities of extractive industries, including with the aim of managing risks appropriately.

24. We recall the responsibility of transnational corporations and other business enterprises to respect all applicable laws and international principles, including the United Nations Guiding Principles on Business and Human Rights⁶ and to operate transparently and in a socially and environmentally responsible manner. In this regard, we commit ourselves to taking further steps, as appropriate, to prevent abuses of the rights of indigenous peoples.⁷

In light of the above, the IITC makes the following Recommendations to the US State Department in its development of the NAP. We recommend that:

- 1) The US NAP use the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination to interpret and guide its implementation of the United Nations Principles on Human Rights and Business as a framework for the development of its NAP on Business and Human Rights;
- 2) The US NAP affirm the rights contained in the UN Declaration on the Rights of Indigenous Peoples, also affirmed in the UN General Assembly's Outcome Document from the UN World Conference on the Rights of Indigenous Peoples, to Free Prior and Informed Consent regarding legislative and administrative measures as well as development activities which affect their lands, territories and resources both within and outside the US;
- 3) The US NAP uphold the rights affirmed in the Nation to Nation Treaties it concluded with Indigenous Nations to interpret and guide its implementation of the United Nations Principles on Human Rights and Business and its development of its NAP;

⁷ United National General Assembly Sixty-ninth session, Item 66 of the provisional agenda, Rights of indigenous peoples, Draft resolution submitted by the President of the General Assembly, Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples", A/61/L.1.



- 4) The US NAP incorporate and implement the recommendations of the CERD and CCPR Treaty Bodies with regards to the protection of Indigenous Peoples' sacred areas, sites and landscapes as a central component of its NAP; and
- 5) The US NAP include a commitment to take immediate steps to halt the production and export by US Corporations of pesticides and other toxic chemicals that have been banned/not registered for use in the United States. This should include revising US toxics laws and policies that continue to permit this practice.

Thank you for addressing these urgent and ongoing concerns expressed by many Indigenous Peoples and Tribes in the United States, as well as Indigenous Peoples impacted by US corporate activities outside the US, in the development of the US NAP. We urge the US State Department and the White House, in their development of the US NAP, to recommend needed changes in the US polices and laws that allow business and corporate activities that violate US Human Rights obligations both within and outside the US.

Please contact me directly for additional information or questions about the issues addressed in this submission via email andrea@treatycouncil.org, or via cell phone (520) 273-6003.

For All Our Relations,

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