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June 15, 2006

Human Rights Committee
Palais Wilson, Geneva Switzerland
Hand Delivered

RE: United States 2nd and 3rd Periodic Reports

Dear Members of the Committee,

Please receive our respectful greetings. Attached please find our “shadow” or parallel report, in response to your stated concerns regarding the implementation by the United States of the International Covenant on Civil and Political Rights.

The Committee has stated several very pertinent concerns regarding Indigenous Peoples in the United States that we address in this parallel report:

1. Previous Concluding Observations Para 290 and 302; Periodic report Para 15 and 484

* Does the State Party rely on the doctrine of discovery in its relationship with indigenous peoples, and if so, what are the legal consequences of such approach?

* What is the status and force of law of treaties with Indian Tribes?

*Please indicate how the principles set forth in U.S. law and practice, by which recognized tribal property rights are subject to diminishment or elimination under the plenary powers authority reserved to the U.S. Congress for conducting Indian affairs complies with article 1 and 27 of the Covenant.

Section I addresses these concerns. **Part A** of our Parallel Report addresses the legal consequences of the United States reliance on the doctrines of discovery and conquest. These doctrines are the heart of the “plenary powers doctrine” and the so-called “trust relationship.” Early 19th Constitutional case law, they remains the law in the United States today. Racist and paternalistic rationales, these doctrines only serve to preserve the absolute power of the State over Indians and their collective rights as Peoples.

Part B of the Report address the status of treaties with Indian Tribes, describing how, under the Plenary Powers doctrine and constitutional interpretation, these treaties may be and have been violated and abrogated with impunity by the State.

Section II describes the concept of “Indian Country” and the law in the United States that Indigenous Peoples must be “dependent” on the United States federal government, their lands held in “trust,” in order to exercise the right of self determination. The power to recognize (or not) has been used by the State to deprive many “unrecognized” Indigenous Peoples of their rights as Peoples under the Covenant. **Part A** addresses the situation of the Native Peoples of Alaska, and **Part B** addresses the situation of Native Hawai’ians. The United States attitude toward these two major groups of Indigenous Peoples is that they have no rights as Peoples oxymoronicly, as they are not “dependent” on federal supervision. They have not been “recognized” and do not “exist” as Indigenous Peoples.

Section III addresses the problem of religious freedom in the United States with regard to Native Peoples and their traditional spiritual and spiritual practice. It cites the observations and conclusions of a 1999 report by the then Special Rapporteur on Religious Intolerance, Mr. Abdelfattah Amor. **Part A** of this Section addresses the issue of the failure of the United States to implement legislation guaranteeing the human rights and freedoms of the Covenant. **Part B** describes how, even though the United States owns almost 40% of all land in the United States (87.8% of the State of Nevada where the Western Shoshone are found) the lack of any recognition of Aboriginal rights continues to affect the traditional use of Indigenous Peoples. **Part C** addresses this situation with regard to Sacred Sites, article 27 of the Covenant and the Committee’s General Recommendation 23.

This Report establishes that the United States violates the rights of Indigenous Peoples under the Covenant’s articles 1, 2, 18 and 27.

We hope that this Parallel Report is helpful to the Committee in its examination of the United States. If any member of the Committee or the Committee have any questions or comments we would be happy to address them.

for all my relations,

Alberto Saldamando
General Counsel, IITC

cc: Andrea Carmen, IITC Executive Director

**Parallel Report of the International Indian Treaty Council: Second and Third
Periodic Report of the United States of America to the UN Committee on Human
Rights Concerning the International Covenant on Civil and Political Rights**

I. The Committee's Concerns

A Power over Indians:

American Indian 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 interpreting the US Constitution, decided by the US Supreme Court at the beginning of the 19th Century: Cherokee Nation v. Georgia, 30 US 1, (1831); Worcester v. Georgia, 31 US 515 (1832), and Johnson v. McIntosh, 21 US 543 (1823).

The Constitution of the United States, Article I section 8 clause 3 provides that, "Congress shall have the Power ... to regulate Commerce with Foreign Nation, and among the several States, and with the Indian Tribes." Article 2 clause 2 gives the President and the Congress the right to enter into Treaties, including treaties with Indian Tribes. These two constitutional provisions, according to the US Supreme Court, early in the life of the Republic, provide Congress "... all that is required" for complete control over Indians and their affairs. Worcester, at 559 (1832),

Cherokee Nation v. Georgia established the principle that, although Indian Tribes were Nations capable of entering into treaties with the United States, they were not fully "nations" but instead, "domestic dependent nations." Worcester v. Georgia established the principle that Indian Tribes were subject only to the power of the United States federal government and not to the state (of Georgia). Johnson v. McIntosh held that Indian tribes 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. These three doctrinal cases are still good law today.

Johnson v McIntosh also established that the power of the US over Indian tribes was based on the principles of discovery and conquest. The racism of the early 19th Century reflected in these cases is also still an active principle in the relationship between Indians and the US government, the so-called "trust relationship" the primal (in the full sense of the word) principle of that relationship. The doctrine of trust relationship was established by the Supreme Court in Cherokee Nation and Worcester, and is still the active principle in the relationship with the United States, as evidenced by the US Periodic Reports repeated reference to this doctrine. The Supreme Court established early on that the relationship "resembles that of a ward to his Guardian." (Cherokee Nation, at 16-17.) This doctrine established the constitutional principle that Indigenous Peoples are incapable of handling their own affairs. It is still "good law" today.

This responsibility of “trust” itself can and has been terminated at the will of Congress with or without the Tribe’s consent ¹ There is no principle in the relationship between Indigenous Peoples and the United States, other than that of the absolute power of the State over Indian Tribes and their lands and resources.

There is no trust in the Trust Doctrine as administered by the United States government agencies charged with the task. No doubt the Committee is informed of the Cobell case. Filed more than ten years ago, the facts of the case profoundly illustrate the abuses of the Trust Doctrine (and the continuing abuses of the Dawes Act, cited in the U.S. Periodic Report.).

The facts underlying the litigation involve a broad sweep of United States history. Although U.S. policy in the 1870s was to locate Indians on reservations, hunger for the land by non-Indians led to a break-up of most of the reservations starting in the 1880s. Thousands of individual Indians generally were allotted beneficial ownership of 80- to 160-acre parcels of land in the break-up. As trustee, the government took legal title to the parcels, established an Individual Indian Trust and thereby assumed full responsibility for management of the trust lands. That included the duty to collect and disburse to the Indians any revenues generated by mining, oil and gas extraction, timber operations, grazing or similar activities.

As a result of more than a century of malfeasance, the United States government has no accurate records for hundreds of thousands of Indian beneficiaries nor of billions of dollars owed the class of beneficiaries covered by the lawsuit. The suit encompasses approximately 500,000 Indian beneficiaries.²

These trust accounts are “managed” by the Department of Interior’s the Bureau of Indian Affairs. They were created under the Allotment and Assimilation policy of the General Allotment Act of 1887 (the Dawes Act.). Of the 140 million acres that the Tribes owned in 1887 only 50 million acres remained in 1934, when the allotment system was abolished.

The Bureau of Indian Affairs has been justly criticized for using the Trust Doctrine to extend their paternalistic control over American Indians and Tribes and their dependency. This agency of the Federal United States government, more commonly known as the “BIA,” continues to reflect the Plenary Powers doctrine of control and abuse of the Indian.

B. Treaties:

The doctrine of absolute power has been and continues to be applied to the “solemn obligations” undertaken by the State in its treaty making with Indian Tribes. Between 1787 and 1871 the United States entered into more than 600 Treaties with Indian Tribes that required of the State “the duty of protection” toward the Indians. The doctrine was

¹ : U.S. v. Kagama, 118 U.S. 375 (1886). *Menominee Tribe v US*, 391 U.S. 404, 406 (1968).

² Quote from Cobell v. Norton website, <http://www.indiantrust.com/>, visited Wednesday, May 03, 2006.

established as a response to Indian Treaties and the obligations that they required of the State, on the theory that Indians gave up their lands in exchange for promises that should be kept.³ Yet this duty was and has been marked by another constitutional principle, that of the plenary powers of the United States Congress to do what it wants with Indigenous Peoples, individually and collectively as Indians, as well as their lands and resources.⁴

All the Supreme Court of the United States requires for the “legalization” of abrogated treaties is a clear Congressional 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.⁵ The Trust Doctrine does not apply.

Since the times of Andrew Jackson (whose popular nickname was “Indian Killer”) a dispute has persisted between many Indian Nations and the United States about the legal efficacy of their treaties. To many Indians and Indian Tribes, Treaties are Sacred. According to the United States, they are merely a domestic agreement, comparable in law to a statute that may be amended or abrogated at any time. The United Nations Special Rapporteur on treaties, agreements and other constructive arrangements between states and Indigenous populations, treaties and agreements entered into by Indians and the successor States such as the United States were in fact international treaties between nations according to international law, the Law of Nations, at the time they were made,⁶ and,

279. On the other hand, 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 behaviour according to both the Law of Nations and more modern international law. The same can be said with respect to the breaching of treaty provisions. All these actions determine the international responsibility of the State involved. Many nations went to war over this type of conduct by other parties to mutually agreed upon compacts

³ U.S. v. Kagama, 118 U.S. 375 (1886).

⁴ The legal fiction that all Treaties between the State and Indians carry with them cession of Indian lands, whether by their express terms they did or did not, is revealed in its full glory in the case of the Western Shoshone, who merely entered into a treaty of peace and friendship with the United States, allowing passage by settlers through their lands.. This Treaty was so misconstrued by the United States Circuit Court, that this “safe passage” allowed by the Western Shoshone though the treaty became “gradual encroachment” that resulted over time in the loss of their lands. Western Shoshone Legal Defense and Education Association v. United States, 531 F.2nd 495.

⁵ See, e.g. South Dakota v. Yankton Sioux Tribe et. al. 522 U.S. 329 (1998), discussed infra.

⁶ Study on treaties, agreements and other constructive arrangements between States and indigenous populations, Final report by Miguel Alfonso Martínez, Special Rapporteur, E/CN.4/Sub.2/1999/20., 22 June 1999, (paragraph 194. “However, to legitimize beyond any doubt the ways and means used to take issues that originally belonged to the realm of international law away from it and to justify making them subject solely to domestic legislation unilaterally passed by the States and adjudicated by domestic non-indigenous courts, States should produce unassailable proof that the indigenous peoples in question have expressly and of their own free will renounced their sovereign attributes.”

during the period (from the sixteenth to the late nineteenth century) when the colonial expansion of the European settlers and their successors was at its peak.

This colonialist expansion is also “good law” today. 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”⁷ 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.”⁸ 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. All that was needed was the “intent to abrogate.” The Dawes Act was still “good law” and applied in this case by the Supreme Court.

Even more damnable 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;⁹

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

⁷ South Dakota v. Yankton Sioux, 522 U.S. 329, 346 (1998)

⁸ Id, Yankton Sioux, at 343 (citations omitted).

⁹ Id, Yankton Sioux, at 346-347.

dependency established in the 19th Century. There is no “Trust Responsibility.” There is no duty to protect those whose lands were stolen with impunity, brute force and State impose dependency and poverty. There are no lasting Treaties, no Sacred Word.

II. Unrecognized Indians and Indian Country

The Committee is correct in demonstrating concern over the hundreds of Tribes that were terminated under the Dawes Act, and later, from 1953 to 1968, under the Termination Policy of the Congress and now continue to seek recognition.

House Concurrent Resolution 108 (1953) ceased all aid to over 100 Tribes ordering them to distribute their property to their members and to dissolve their governments. A retrogression of the Indian Reorganization Act of 1934, not only were their remaining collective lands privatized and lost, their governments were targeted for oblivion.

This 1953 policy continued until 1968, when the present U.S. policy of so-called Tribal Self Determination was adopted by Executive Order.

The United States Periodic report is misleading in many instances, including their references only to “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.”

Alaska Natives, Native Hawai’ians or terminated Tribes are nowhere mentioned in the United States Periodic Reports. Their lack of recognition as Indigenous Peoples in the Periodic Report is at the heart of the United States failures of compliance with the International Covenant on Civil and Political Rights and the government’s obligations under the Covenant to Indigenous Peoples. With this failure of recognition the United States denies their continued identity and existence as peoples. They have no rights.

A. Alaskan Native Peoples

In 1971 Congress enacted the Alaska Natives Claims Settlement Act (ANCSA) , described by Justice Thomas of the Supreme Court, as a “comprehensive statute designed to settle all land claims by Alaska Natives.”¹⁰

In enacting ANCSA, Congress sought to en 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,

¹⁰ Alaska v. Native Village of Venetie Tribal Government et. al. 522 U.S. 520, 523, (1998); hereinafter, “Venetie.”

rights, privileges, or obligations [and] *without creating a reservation system or lengthy wardship or trusteeship*. Sec. 1601(b)¹¹

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.

Pursuant to a provision of ANCSA, two Native corporations established for the Neets' aii Gwich'in, took title in fee simple to their traditional lands, formerly reservations, foregoing the statute's provisions for monetary payment. One was the Venetie Tribal Government. In 1986 the Tribal Government sought to tax the State of Alaska and a private contractor for conducting business on tribal lands and the State of Alaska sought to enjoin the collection of the tax. Reversing the 9th Circuit Court, the Supreme Court held that Venetie was not "Indian Country" and could not therefore impose taxes.¹² Venetie had been an Indian reservation before ANCSA, but as the Supreme Court noted, it was not now under "federal superintendence." Relying on P.L. 280 (18 U.S.C. 1151), the Court found that Venetie was held in fee simple and had not been set aside for use by Indians, nor was it under federal superintendence. Finding that Venetie was not a "dependent" Indian community, the Court held that it had not the governmental power to tax. Using the language of Worcester, it could be said that Venetie was not a "domestic dependent nation"¹³ and therefore could not exercise its right of Self Determination.

Because they owned their own ancestral lands outright and could devote it to "non-Indian" uses Venetie was no longer dependent. It would not be the Federal government and the Indians involved, but the state of Alaska that would exercise primary jurisdiction over Venetie. Indians have to be dependent on the Federal government in order to be Indigenous. Again, Alaska Natives are not mentioned in the United States Periodic Reports.

¹¹ Id, at 523-524.

¹² Particularly targeting a Tribal government's ability to govern, the Congress enacted Public Law 83-280 in August of 1952. P.L. 280 generally grants the various states of the United States jurisdiction over criminal and some civil matters on Indian Reservations, in some states mandatory and in others by option of the state. Some states were granted limited, others total criminal jurisdiction. This law really only created a great confusion over who is responsible for the observance of law in many Reservations that continues to this day. In truth, Public Law 280 was meant to diminish the ability of Indian Tribes to govern themselves and grant power over Indians to the states, a traditional enemy of Indian Tribes since Worcester.

P. L. 280 established the term "Indian Country" to indicate where the states of the Union had no jurisdiction. Indian Country has now been extended to mean Tribal self government. A place that is Indian Country is governed by Indians. If it is not Indian Country, the state has jurisdiction. Since the founding of the republic, the states have long sought the resources and tax base of Indian lands and the legal significance of the term usually arises in disputes between states and Indian governments.

¹³ See, id, fn. 5, p. 530-531.

B. 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 Liliuokalani, 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."

It also recites the fact 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."

With regard to Article 1 of the Covenant, or Article 27, Indigenous Native Hawaiians, the poorest underclass of the Hawaiian Island, are also not mentioned in the United States Periodic Reports.

III. Religious Freedom

A. The requirement of an effective remedy

Part II, article 2 of the Covenant requires State Parties to the International Covenant on Civil and Political Rights are required to ensure the rights recognized in the Covenant, and to adopt legislation or other measures as are necessary to give effect to the rights recognized in the Covenant.

However, the United States takes the position that it is not necessary to adopt implementing legislation when domestic law already makes adequate provision for the requirements of the treaty, citing the Torture Convention as a case in point.

While final ratification awaited enactment of legislation giving U.S. courts criminal jurisdiction over extraterritorial acts of torture which had not previously been covered by U.S. law, no new implementing legislation was proposed with respect to torture within the United States because U.S. law at all levels already prohibited acts of torture within the meaning of the Convention. Similarly, because the basic rights and fundamental freedoms guaranteed by the Covenant on Civil and Political Rights (other than those to which the United States took a reservation) have long been protected as a matter of federal constitutional and statutory law, it was not considered necessary to adopt special implementing legislation to give effect to the Covenant's provisions in domestic law. That important human rights treaty was accordingly ratified in 1992 shortly after the Senate gave its advice and consent.¹⁴

Thus, there are no remedies for Indigenous Peoples who are denied rights and freedoms guaranteed by the Covenant, not the least of which is the right to practice their religion under article 18.

An example of the results of the failure to adopt implementing legislation, and the loss of the rights enshrined in the Covenant 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.¹⁵

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.

In June of 1996, the International Indian Treaty Council filed a communication with Mr. Abdelfattah Amor, the then Special Rapporteur on Religious Intolerance concerning the forced relocation of the Traditional Dine (Navajo) Elders from their traditional lands. We alleged that this forced relocation would separate them from their land and deprive them

¹⁴ United States first periodic report under the International Covenant on Civil and Political Rights, July, 1994, HRI/CORE/I/Add.49 and CCPR/C/81/Add.4.

¹⁵ Darrell Keith Rich, et al., Plaintiff, vs. Jeanne Woodford, Warden of San Quentin State Prison, et al., no. c00-0827 vrw, U.S. District Court for the Northern District of California, 13 March 2000, Transcript of Hearing.

of their right to practice and manifest their religion. Mr. Amor visited the United States and particularly the Dine Elders at Black Mesa, Arizona. In his report, Mr. Amor called for “the observance of international law on freedom of religion and its manifestations” with regard to the Dine Elders.¹⁶ In other words, less diplomatic terms, he found that the United States was violating the religious rights of the Elders under Article 18.¹⁷ In spite of his recommendations, the United States proceeded in their forced evictions

In denying Indigenous religious freedom, the United States continues to rely on a Supreme Court decision, Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439 (1988), (Brennan J. dissenting). In this case, the U.S. Forest Service wanted to build a road through pristine forest held sacred by Indigenous Peoples. In spite of a study commissioned by the US Forest Service itself concluding that the proposed road would “irreparably damage” sacred areas and impair the practice of religion by Indigenous Peoples, the Supreme Court found no impediment to the building of the road.

The Constitution does not permit government to discriminate against religions that treat particular physical sites as sacred, and a law prohibiting the Indian respondents from visiting the Chimney Rock area would raise a different set of constitutional questions. Whatever rights the Indians may have to the use of the area, however, those rights do not divest the Government of its right to use what is, after all, *its* land”. (citations omitted).¹⁸

Mr. Amor commented on the United States “attitude.... that human rights are to be treated as belonging to international affairs and not as a domestic matter” citing the Special Rapporteur on extrajudicial executions, Mr. Bacre Waly’s same conclusions.¹⁹

With regard to United States legislation supposedly intended to protect Indigenous religious freedom and practice Mr. Amor came to the following conclusions:²⁰

80. As far as legislation is concerned, while noting advances in recent years in the instruments emerging from the legislature and the executive which are designed to protect Native Americans' religion in general (American Indian Religious Freedom Act) and in particular (Native American Graves Protection and Repatriation Act, Executive Order on Indian Sacred Sites, Executive Memorandum on Native

¹⁶ Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1998/18, Visit to the United States of America, E/CN.4/1999/58/Add.1, 9 December 1998, para. 83.

¹⁷ Mr. Amor made other findings with regard to article 18 rights of Indigenous Peoples, including a condemnation of the practice in many U.S. schools and prisons of forcibly cutting the hair of their wards and prisoners. See, Amor report, para 85.

¹⁸ Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439 (1988), at 452.

¹⁹ fn 16, Amor Report at para. 71. Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly, Report on Mission to the United States of America, E/CN.4/1998/68/Add.3.

²⁰ Fn. 16, Amor Report at paras. 8 and, 81.

American Access to Eagle Feathers), the Special Rapporteur identified weaknesses and gaps which diminish the effectiveness and hinder the application of these legal safeguards. Concerning the American Indian Religious Freedom Act, the Supreme Court has declared that this law was only a policy statement. As for the Executive Order on Indian Sacred Sites, unfortunately, it does not contain an "action clause", leaving the tribes without the needed legal "teeth". Higher standards or the protection of sacred sites are needed and effective tribal consultation should be ensured. These recommendations are all the more necessary in light of the October 1997 Advisory Council on Historic Preservation regulations and the January 1997 bill (see paragraph 59 (a) and (b) above). Concerning the Native American Graves Protection and Repatriation Act of 1990, it is apparent that its coverage was too limited; it is of the utmost importance that concrete solutions be found to solve the repatriation conflict between the scientific community and tribal governments. It is also essential to secure genuine de jure and de facto protection of Native American prisoners' religious rites.

81. In general, the Special Rapporteur recommends that steps should be taken to make sure that there is no conflict or incompatibility between the different federal, state and local laws, so as to arrive at a uniformity - or at least a convergence - in the legal protection of indigenous peoples' religion throughout the territory of the United States, while guaranteeing effective application of these texts, by everyone, for everyone and everywhere, all other things being equal (we may cite as an example the 1994 Executive Memorandum on Native American Access to Eagle Feathers -see paragraph 59 (c) above). It is also recommended that in the legal sphere Native Americans' system of values and traditions should be fully recognized, particularly as regards the concept of collective property rights, inalienability of sacred sites and secrecy with regard to their location. Because of the decision in the Smith case, which affects Indians inasmuch as it seems that in their case there is a lack of understanding of their values and religion, since they are asked to "prove" their religion, and in particular the religious significance of their sacred sites, the Special Rapporteur reiterates his recommendations regarding, firstly, the adoption of a unified approach to the interpretation and application of the two constitutional clauses on "non-establishment" and free exercise of religion and, secondly, the adoption of a general law on freedom of religion and conviction, on the understanding that the special status of Native Americans should be taken into account and backed up by the principle of compensatory inequality in order to arrive at greater equality.

A. Sacred Sites and the Issue of Land

The Committee has in the past recommended to the United States that "...steps be taken to ensure that previously recognized aboriginal Native American rights cannot be extinguished." The Committee also made reference and demonstrated concern on "the high incidence of poverty, sickness and alcoholism among Native Americans."

As demonstrated above, unless an Indian Tribe has a settled reservation with settled boundaries, there is no right of Indigenous Peoples to aboriginal rights, or the use of ancestral traditional lands. Indigenous People have been imprisoned for fishing or hunting, or even gathering medicines on ancestral lands, and are even now prohibited from praying at some sacred sites (see, e.g. Mt. Graham, below). We would suggest that the denial of internationally established rights of Native Americans has a great deal to do with the high incidence of poverty, illness and alcoholism that plague Indigenous Peoples in the United States.

As is shown by the Attachment herein, the United States and its states of the union, own 39.8 of the lands of the United States. Federal lands are administered by the Bureau of Land Management or the National Parks Service.

The situation of the Western Shoshone of the state of Nevada is well known to the Committee. In spite of a recommendation by the Inter-American Commission on Human Rights, the United States confiscated all of the livestock of two brave sisters, Mary and Carrie Dann, for grazing their stock on their own ancestral lands, held and administered by the Bureau of Land Management. The United States owns 87.6% of the state of Nevada. The Committee has suggested that the United States address the problem of poverty of Indigenous Peoples in a positive way and not to contribute to it!

B. General Recommendation 23 and Sacred Sites

The Committee, in examining States with regard to the right to practice language, culture and religion, has adopted General Recommendation 23:

“7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.”

In addition to the denial of cultural rights as cited above, exemplified by the IACHR case of the Western Shoshone, we also cite below a few of the great many denials of the rights and freedoms guaranteed by Article 27 with regard to access or maintenance of Sites Sacred to Indigenous Peoples in the United States. This list is by no means exhaustive.

- Rattlesnake Island, Clear Lake, California²¹

The Elem Band of Southeastern Pomo Tribe are struggling to save their 14,000 year-old ancient burial sites, ceremonial sites and village sites from development, including the

²¹ Letter to Lake County Board of Supervisors from Sherri Norris, IITC, dated January 10, 21006.

construction of housing and buildings, septic tanks, and landing docks.. Located in Clear Lake, California, documented Sacred Sites are found on all parts of the Island. Anthropological and historical reports confirm that the location is one of the most significant sacred ceremonial, cremation and burial sites. This Sacred Island was stolen from the Pomo and was left out of their Rancheria (reservation).

- Western Shoshone Territory, Nevada²²

Located within Western Shoshone ancestral territory, Yucca Mountain has long been a place of spiritual energy for the Western Shoshone and Piute tribes. In spite of protest and struggle by the Western Shoshone, it has been dug out and is slated to be used for the storage of all of the United States nuclear waste. Corbin Harney, Western Shoshone spiritual leader, tells of a traditional story that tells of Snake Mountain one day awakening and spewing out poison. This prophecy may predict the potential disaster of volcanic activity and nuclear waste leakage.

Shoshone ancestors are buried in this Sacred Mountain, and the water from it is Sacred.

Mt. Tenabo and Horse Canyon, prominent in Western Shoshone creation stories are also located within the territory. Held by the United States Bureau of Land Management (BLM) these lands are the second largest gold producing area in the world, as permitted by the BLM in favor of trans-national gold mining companies. These lands also are cited to be the next Saudi Arabia of geothermal energy production. The territory is the subject of the Dann case, a decision by the Inter-American Human Rights Commission finding violations of human rights in the taking of these lands and recommending that the United States settle the Western Shoshone land claims, ignored by the United States.

- Upper Missouri River, Montana, North Dakota and South Dakota²³

The Upper Missouri River has been used for generations of Native Americans as a site for settlement, trade, ceremony, prayer and burial. There are 1,100 archeological sites eligible for or listed on the National Register of Historical Places. Some are now beneath the waters of 6 massive dam and reservoir projects built in the second half of the 20th Century.

The National Trust for Historic Places (NTHP) listed this area sacred to 26 local Native American cultures including the Lakota, Dakota, and Nakota Sioux tribes, as one of the 11 most Endangered Historic Places in America. Scott Jones, the Cultural Resource Officer for the Lower Brule Sioux Tribe said in Senate hearings on June 4, 2006, “The River gave us life and the ability to sustain life. It is still sacred to my people today.”

²² http://www.sacredland.org/angered_sites_pages/yucca_mountain.html, visited June 15, 2006.

²³ http://www.sacredland.org/angered_sites_pages/missouri_river.html, visited June 14, 2006.

The Missouri River Basin continues to be a place of native spiritual practice and is the home to buffalo, eagles, wolves, fish, turtles and birds. As noted in its nomination to the National Trust's list of endangered places, "There is a direct relationship between the environment, traditional worship practices and the continued survival of diverse indigenous groups."

- Petroglyph National Monument, New Mexico²⁴

Another case where designation of a National Monument is no safeguard for Indigenous Sacred Places, the United States Senate overrode the Secretary of Interior's recommendation and approved the removal of an 8.5 acre corridor within the Monument in order to build a highway connecting a developer's lands to the city of Albuquerque, New Mexico. The area is of great spiritual significance, "where messages to the spirit world are communicated," says Bill Weahkee of the Five Sandoval Indian Pueblos. "We consider each of these petroglyphs to be a record of visions or expressions."

- San Francisco Peaks, Arizona²⁵

The San Francisco Peaks, part of the Coconino National Forest, are sacred to 13 tribes. For the Diné (Navajo) the Sacred Mountain of the west, Doko'oo'siid, or Shining on Top, is a key boundary marker and a place where medicine men collect herbs for healing ceremonies. To the Hopi, the Peaks are Nuvatukaovi, "The Place of Snow on the Very Top," home for half of the year to the ancestral kachina spirits who live among the clouds around the summit. When properly honored through song and ceremony, the kachinas bring gentle rains to thirsty corn plants. The peaks are one of the "sacred places where the Earth brushes up against the unseen world," in the words of Yavapai-Apache Chairman Vincent Randall.²⁶

The US Forest Service, since 1979, approved development such as roads, ski resorts with shops and tourist lodges. The Forest Service has also allowed logging. A lawsuit was filed by the Hopi and Navajo Nations, but was ultimately denied, as the American Indian Religious Freedom Act had been complied with. But as Mr. Amor noted in his report, AIRFA, as most legislation meant for the protection of Indian burial grounds and religious practice, is only a "policy statement" and cannot be enforced.²⁷ And the Forest Service is considering expansion of the resorts and proposes to use waste water to manufacture snow, risking pollution of the water table, desecrating the entire area.

²⁴ http://www.sacredland.org/endangered_sites_pages/petroglyph.html, visited June 15, 2006.

²⁵ http://www.sacredland.org/endangered_sites_pages/sfpeaks.html

²⁶ <http://www.savethepeaks.org/savethepeaks/pagetemp/background.html>, visited June 14, 2006.

²⁷ See, fn.? Below..

- Mauna Kea, Hawai'i²⁸

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.

- Haskell-Baker Wetlands, Kansas²⁹

At the end of U.S. Indian Treaty Negotiations in 1871, the U.S. government began formal assimilation policies geared toward the civilization of American Indian peoples. One result of this “civilizing” mission was the growth of Indian boarding schools from the end of the 19th century through the early 20th century. To reformers, assimilation and off-reservation boarding schools were a better alternative to policies of literal extermination, and so Bureau of Indian Affairs agents were given license to forcibly remove children from their homelands, families, and culture, all in the name of saving them. Native children stolen from their families were forced to adopt European ways and were punished severely for speaking their native language, practicing their religion, or celebrating their traditions.

²⁸ http://www.sacredland.org/angered_sites_pages/mauna_kea.html, visited June 14, 2006.

²⁹ http://www.sacredland.org/angered_sites_pages/haskell-baker.html, visited June 14, 2006.

The United States Indian Industrial Training School, as the Haskell school was first known, was one of the first boarding schools and opened in 1884 with the goal of giving American Indian students the vocational skills necessary to assimilate in order to “kill the Indian and save the man.” Haskell began its boarding school with twenty-two Indian students from various tribes across the U.S., first focusing on agricultural trades. Student life was rigid and inflexible: if a child was caught speaking their tribal language, practicing traditional customs, or not adhering to the militaristic standards of school behavior, cruel and unusual punishments were utilized to deter their “deviant” behavior—which sometimes resulted in the death of the child.

The school was located on wetlands that white settlers did not want, yet the wetlands became a place of comfort and ceremony for many of the students forced into this harsh new way of life. The wetlands served as a place of farewells, where elders left children with words of advice and prayer, and a meeting place for students to reunite with their families and friends when they were homesick. Students often went to the wetlands to perform ceremonies, pray, commune with nature and the environment, and even to bury their dead. The children’s deaths were caused by disease, suicide, sometimes the environment itself, as runaway students died of exposure in the wetlands. Students were secretly buried in the wetlands by their fellow students, who performed spirit release ceremonies using a lock of hair. Thus the area has always been a site of resistance, a fact recognized by school officials, who tried to “kill” the wetlands—cutting down vegetation and draining the water—in order to prevent the spiritual and cultural activities which took place there

Now a place of memory and spiritual practice where the memory and spirit of these children dwell, the Prairie Band Potawatomi Nation is struggling to protect the land from a highway to be built by the United States Army Corps of Engineers.

- Devils Tower, Wyoming³⁰

Administered by the U.S. National Parks Service, Devils Tower, in northeastern Wyoming near the Black Hills of South Dakota, has been a location of spiritual significance for the Lakota people throughout their history. In June, particularly important ceremonies connected to the summer solstice are held near the tower - pipe ceremonies, sun dances and vision quests. Lakota elder Johnson Holy Rock says: “If a man was starving, he was poor in spirit and in body, and he went into the Black Hills, the next spring he would come out, his life and body would be renewed. So, to our grandfathers, the Black Hills was the center of life, and those areas all around it were considered sacred, and were kept in the light of reverence.” More recently, however, people make a different sort of journey to *Mato Tipila*: the challenges of the tower’s sheer walls have attracted recreational climbers for almost 100 years.

While many threats to sacred places come from natural resource extraction and development, a different sort of battle continues in the northern plains, at a place the Lakota call *Mato Tipila* (The Lodge of the Bear), aka Devils Tower. At issue: climbing a

³⁰ http://www.sacredland.org/angered_sites_pages/devils_tower.html, visited June 15, 2006.

sacred site. Lakota scholar Vine Deloria, Jr. explains, “It’s not that Indians should have exclusive rights at Devils Tower. It’s that that location is sacred enough so that it should have time of its own. And once it has had time of its own, then the people who know how to do ceremonies should come and minister to it. That’s so hard to get across to people.”

- Woodruff Butte, Arizona³¹

For the past 10 years, the Hopi have watched as their shrines at Woodruff Butte, Arizona bulldozed to produce rock for asphalt and concrete. Although this pilgrimage site has been sacred to the Hopi for a thousand years, the owner of the private property continues to ignore Hopi concerns and assert his right to mine the butte. As Hopi Cultural Preservation Officer Leigh Kuwanwisiwma says, “We literally saw one Hopi shrine bulldozed before our presence there

Woodruff Butte is a volcanic cinder cone that is known as *Tsimontukwi* to the Hopi. It is one of nine major pilgrimage shrines that encircle Hopi traditional territory, and was for many years the site of nine clan shrines, until eight were destroyed by mining. Hopis visited the butte to offer prayer feathers and to pray for rain, to collect plants and medicines, and to gather golden eagles for their Home Dance ceremony. The butte is also a site of pilgrimage and prayer for the Zuni people, and marks the boundary of spiritual responsibility between Hopi and Zuni territory. One Hopi clan's shrines were destroyed in the 1960s when a radio tower was erected near the top of Woodruff Butte. In 1990, the butte's owner contracted to open a gravel mine to supply asphalt for the re-paving of Interstate 40 and, after hearing of Hopi protests, he offered to sell the property to the tribe for \$1 million. This amount was impossible for the Hopi, most of whom did not want to commodify or buy a sacred site, and the quarrying continued. When the present owner bought the butte in 1996, he raised the asking price to \$3 million. The Hopi tried to use the National Historic Preservation Act to prevent the destruction, arguing that because the gravel was coming from a site eligible for the National Register of Historic Places, the butte should not be damaged for federal highway construction. In 1998, a judge agreed and issued a temporary injunction and stopped the mining, pending a cultural resources inventory. Inexplicably, the archaeologist responsible for the survey failed to note the shrines and mining resumed.

- Mr. Graham, Arizona³²

Mt. Graham is known to the San Carlos Apache as *Dzil ncha si an*. The mountain is one of several which mark the boundaries of their sacred space. They view the mountain as the embodiment of spiritual energy rather than as a specific “place.” The mountain has ancient, undisturbed burials, as well as being a source for medicinal plants and a location

³¹ http://www.sacredland.org/angered_sites_pages/woodruff_butte.html, visited June 15, 2006.

³² http://www.sacredland.org/angered_sites_pages/mt_graham.html, visited June 15, 2006.

for ceremonies. It is also a landscape of enormous biological diversity, home to the endangered Mt. Graham red squirrel.

The University of Arizona (UA) selected Mt. Graham as their choice location for a 7 telescope observatory project in the 1980s. In 1988, they succeeded in getting Congress to attach a rider to the Arizona-Idaho Conservation Act which exempted the first 3 telescopes from any restrictions in the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). UA lawyers also argue that they are exempt from the National Historic Preservation Act (NHPA) and any other cultural or environmental law that would apply to the University. With the environmental and cultural concerns circumvented, UA proceeded to ignore and discredit the San Carlos Apache's claim to the mountain as a sacred place.

Mr. Abdelfattah Amor, then Special Rapporteur on Religious Intolerance commented on Mt. Graham and the telescopes pursuant to his 1998 visit to the United States. As he did with regard to the forced relocation of the Diné Elders from their ancestral lands, he called upon the United States to respect international law.³³

- Rainbow Bridge/Glen Canyon Dam, Arizona³⁴

In the past, Rainbow Bridge stood over a small tributary stream of the Colorado River near the Arizona-Utah border. The Bridge and the area around it has been considered sacred by the Dine, Paiute, Hopi, and others for centuries. Large enough to fit the U.S. Capitol dome beneath its sandstone arch, it was designated a National Monument in 1910 by President Theodore Roosevelt. In 1956, Congress authorized the Glen Canyon Dam to fill the Lake Powell Reservoir, but only on the condition that the water level not go high enough to reach the monument. By 1971, the water had reached the monument. A court case filed under the American Indian Religious Freedom Act was lost and failed to protect the site.

This world-famous natural bridge at the northern edge of the Dine (Navajo) Nation, is the site of hundreds of thousands of tourist visits every year and is recognized as a National Monument. In spite of public recognition of the value of this place, the desire for tourism continues to override protection for the sacred. At a ceremony on Memorial Day of 2001, the Dine Medicinemen's Association and Living Rivers declared, "Disrespectful behavior by inconsiderate and uninformed visitors... is degrading the importance of this shrine to those of us who hold it dear, just as Christians revere the Sistene Chapel."

- Arctic National Wildlife Refuge, Alaska³⁵

³³ Fn. 16, Amor report at para. 83.

³⁴ http://www.sacredland.org/angered_sites_pages/rainbow_bridge.html, visited June 15, 2006.

³⁵ http://www.sacredland.org/angered_sites_pages/arctic.html, visited June 15, 2006.

The Gwich'in, who live in Arctic Village on the southern edge of the Refuge near the Brooks Range, have built their subsistence and their spirituality around the migrating Porcupine Herd of caribou for thousands of years. The coastal plain on which they live is referred to in the Gwich'in language as the "sacred place where life begins." The Gwich'in consider both the coastal plain and the caribou that give birth there to be central elements of their culture. The connection is such that every caribou is believed to contain a little human heart in it, and every human carries an element of caribou in his or her heart.

Oil drilling has been proposed at the Caribou birthing grounds where the caribou give birth to their calves even though the area has remained a location off-limits to hunting by native people as far back as any can remember. As recently as this year, legislation was adopted to require the Department of Interior to sell oil leases within two years. The Gwich'in are struggling against this legislation, as they have for many, many years.

- Indian Pass, California³⁶

Archaeological evidence indicates that native people have used the area around Indian Pass, known as the "Indian Pass-Running Man Area of Traditional Cultural Concern," for at least 10,000 years. The Quechan continue to use the network of trails in the area for spiritual practices such as Dreaming, a meditative state that requires a pristine visual and aural environment, the Keruk Death Ceremony, in which relatives cremate the deceased and assist in their journey to the other world, and spirit runs with tribal youth.

In the 19th and 20th centuries, the California desert became a prominent site for gold mining and most of the Quechan lands were taken from them. More recently, U.S. Department of Interior Secretary Gale Norton rescinded her predecessor's denial of a permit to Glamis Gold Mine and reopened the permit process. Though DOI and Glamis officials met numerous times before Norton's decision was announced, members of the Quechan Nation read about it in the newspaper. In June 2002, amid increasing publicity, the National Trust for Historic Preservation listed Indian Pass as one of the Eleven Most Endangered Historic Places in America.

Excavating a giant 880-foot deep open-pit gold mine amidst the Indian Pass trail system and its ceremonial sites would destroy the integrity of a pristine environment and ancestral locations used for prayer and meditation. The 1,600-acre construction project would intrude on natural ridges and bring ceaseless machinery noise to a quiet desert. Digging huge open pits would forever destroy archaeological sites. Massive waste piles will build up and there will be extensive ground disturbance caused by pipelines, water wells, roads and electrical lines. Glamis does not plan to backfill the largest and deepest of the three proposed open pits due to high costs, leaving a permanent 88-story-deep industrial crater on protected public lands.

³⁶ http://www.sacredland.org/angered_sites_pages/indian_pass.html, visited June 15, 2006.

- Medicine Lake, California³⁷

Medicine Lake lies nestled within an ancient volcanic caldera northeast of Mount Shasta, on an eastward extension of the southern Cascade Range. The Medicine Lake Highlands are valued for their pristine beauty and solitude and its exceptionally pure waters. The whole Medicine Lake Highlands area has been and continues to be a place of great spiritual significance to the Native People of Southern Oregon and Northern California, people of the the Abjumawi and Atwamsini (Pit River Tribe), Modoc and Shasta Tribes. The Medicine Lake Highlands have been used to obtain spiritual power. It is a place to become someone. A man without power is nothing, according to the Elders of the Tribe. So in order to become someone, a person would seek their power or vision at Medicine Lake or in the Highlands. This is why the Medicine Lake Highlands are important, in order to do something for our people, for the land, and for the Creator, and not just for ourselves.

Medicine Lake is threatened by a proposed geothermal developments (as many as six plants) plugging into a twenty mile 300 megawatt transmission corridor. Each includes an 18 acre power plant site, 4 miles of above ground 36 inch diameter steam pipelines (+500 degrees F), acres of well sites with wells 3,000 to 6,000 feet deep. Potential impacts would drastically alter the natural integrity of the area, disrupt visual quality, bring noise, sulfuric acid odor, contaminate water quality for miles around, disturb wildlife, pollute the air, affect traditionally used plants used for food and medicine, and cause great harm to this sacred area.

- Bear Butte (Mato Paha), South Dakota³⁸

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. When our people were eventually forced onto reservations, we came with two items. One, the sacred White Buffalo Calf Pipe brought to us by Grandfathers' messenger, Pte San Win. The Pipe is to guide us, and to protect us in times of hardship and tragedy. The other, a Star Map, which identifies sacred places in the Star Nation and their corresponding places on Earth. Mato Paha is one of the places our ancestors fought to retain for future generations and for the Lakota Way of Life to exist. This concept is known as Sacred Above Is Sacred Below, and it is imbedded in our identity as Lakota Oyate. Through this ancient philosophy, we are beholden to defend Mato Paha.

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

³⁷ <http://www.ienearth.org/med-lake>, visited June 15, 2006.

³⁸ <http://www.defendbearbutte.org/history.htm>, visited June 15, 2006.

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.

Conclusion

The United States violates the rights of Indigenous Peoples under the Covenant's articles 1, 2, 18 and 27.

The United States does not permit individual complaints under the Covenant. But there are a great many egregious violations of the human rights and fundamental freedoms of Indigenous Peoples by the United States. Whatever rights recognized tribes might have, they must continue to be dependent on the good will of the United States in order to preserve those rights. Worse, "unrecognized" Indigenous People have no rights as Indigenous Peoples. And after two centuries of unbridled impunity and theft of ancestral lands, unless the land happens to be within a reservation, Indigenous Peoples have no rights of traditional use, and cannot freely practice their culture or religion.

The International Indian Treaty Council hopes that this parallel report is useful to the Human Rights Committee in the examination of the United States and their compliance with their obligations under the International Covenant on Civil and Political Rights.

June 15, 2006