



**USING THE
INTERNATIONAL
CONVENTION ON THE
ELIMINATION OF ALL
FORMS OF RACIAL
DISCRIMINATION TO
HOLD COUNTRIES
ACCOUNTABLE AT
HOME AND
AROUND THE WORLD**

A training manual on preparing
submissions to the United Nations
Committee on the Elimination of
Racial Discrimination

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Thank you

We would like to express our appreciation to the Indigenous Peoples, individuals and organizations that made contributions to the development of this manual.

Spread the word

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“Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.”

*--- Article 2, United Nations Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly
September 13th, 2007*

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About this manual

This training manual has been developed to provide information to Civil Society (organizations, groups, communities and other constituencies) and Indigenous Peoples, Nations, and Tribes and on how to utilize the United Nations Committee on the Elimination of Racial Discrimination (CERD) and participate effectively in its upcoming State (countries) reviews. Additionally, this manual will explain why these reviews provide an important opportunity for Indigenous Peoples to bring international attention to their human rights concerns and struggles.

The CERD is the treaty monitoring body for the International Convention on the Elimination of All Forms of Racial Discrimination or ICERD. States that have ratified the ICERD are obligated to submit Periodic Reports presenting their compliance with the ICERD's provisions and the steps they have taken to combat and correct racial discrimination. Indigenous Peoples can participate in the CERD's review process by submitting their own "Shadow" or Parallel Reports to inform the CERD of racial discrimination impacting them and point out omissions, deficiencies or inaccuracies in the official government reports.

The ICERD plays a very important role in the fight against racial discrimination because it creates legally binding obligations to uphold racial justice and end discrimination for all State parties. These obligations are not dependent on or subsidiary to State courts and Federal laws. Rather, the CERD Periodic Review provides a process in which State laws and practices can be examined and improved in light of a legally binding international standard to which State parties are held accountable.

The ICERD: An International Convention Addressing Racial Discrimination

The United Nations (UN) adopted its founding Human Rights Standard, the **Universal Declaration on Human Rights**, in 1948. The Universal Declaration affirms that human rights are equal and inalienable for “all members of the human family.” However, as a Declaration, UN member States considered it to be a “moral” or “aspirational” document without legally binding effects or obligations. The UN began to work on Covenants, Conventions and Protocols to make the rights in the Universal Declaration legally binding upon UN member States and to strengthen implementation of human rights within the UN system. These included the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESC) as well as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The UN General Assembly adopted the ICERD on December 21, 1965. It is now one of nine UN human rights Treaties and was the first to establish a **treaty monitoring body** as a mechanism to monitor compliance by States. The treaty monitoring body for the ICERD is the **UN Committee on the Elimination of Racial Discrimination**, called the **UNCERD** or, most often, the **CERD**. The CERD consists of eighteen international experts nominated by countries and selected by the General Assembly of the Parties to the Convention for four-year, renewable terms. The role of the CERD is to monitor compliance of the countries that have ratified the Convention (the **State parties**) and to make recommendations as to how they can improve implementation through changes in their laws, policies and practices. The CERD meets in two three-week sessions each year in Geneva, Switzerland, usually February-March and August-September.

To date, 175 States have ratified the Convention. Canada ratified the ICERD in 1970, and the United States (US) did so in 1994, making them both State parties and therefore legally obligated to uphold and implement the ICERD.

Non-Discrimination is a Fundamental Human Rights Principle

“Whereas recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”

-Preamble, Universal Declaration of Human Rights 1948

Using the ICERD to Challenge Racial Discrimination and Hold States Accountable to their Human Rights Obligations

ICERD Defines Racial Discrimination

ICERD defines discrimination in Article 1: "In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."



Community health worker Annie Alowa stands amongst US military toxic waste on the St. Lawrence Island, Alaska. Photo: Alaska Community Action on Toxics.

The ICERD requires States to repudiate and correct racial discrimination and, "...to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law... (Article 5)." Article 5 also requires States to uphold rights to health, culture, education and freedom of religion among others, and to insure that there is no discrimination in the enjoyment of these rights.

The ICERD requires the States, as a legally binding obligation, "...to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination (Article 6)."



"The conditions in the houses on the Pine Ridge Reservation were the worst seen by the Special Rapporteur during her mission." Report of the UN Rapporteur on Adequate Housing to the Human Rights Council on her country visit to the US in February of 2009. Photo: Alyssa Macy.

The Convention applies to the nullification or impairment by States, or the intent to do so, of any and all human rights, not just those falling under a standard definition of racial discrimination. The ICERD recognizes that discrimination results from deliberate acts of discrimination on the part of governments, as well as their failure to protect human rights. It also results from actions and laws that have discriminatory impacts or results. Examples include laws or regulations that deny

access for Indigenous Peoples to their sacred sites; policies which allow mining or other unsustainable development to take place without obtaining the free, prior and informed consent of the affected Indigenous Peoples; failure of State courts to take Indigenous Peoples' original understanding of Treaties into account in their proceedings; or the prohibition of sweat lodges and other ceremonies for Indigenous prison inmates.

Discrimination also includes government practices or policies which contribute to or cause discriminatory impacts, and perpetuate or fail to correct racial disparities. Examples of such disparities impacting Indigenous Peoples include disproportionate rates of incarceration, poverty, youth suicide and the removal of children from communities through government foster care systems. The ICERD provides for affirmative action, not just in education and employment, but in any situation of historical discrimination where it may be appropriate.

The Convention relies on international definitions of human rights, not just how the States choose to define or qualify them in terms of their national laws. Current efforts to defend the rights affirmed in Treaties, address high levels of violence against Indigenous women, ensure traditional ceremonies for Indigenous prisoners, protect sacred sites from desecration by mining and tourism, halt removal of Indigenous children from their families and communities, and defend traditional subsistence rights are just a few examples of struggles based on internationally recognized human rights. Placing Indigenous Peoples' issues within an international human rights context and framework can strengthen local organizing efforts by bringing international attention to these issues and applying international pressure on States to resolve them.

The ICERD provides a legal framework that Peoples, organizations and activists around the world can use to bring attention to discrimination based on race in the countries in which they live. It also provides an official process to bring forth alternative viewpoints and information. *This is a high-profile international process where Indigenous Peoples can have a significant impact on the outcome.*

CERD's State Review Process

The CERD monitors and assesses State parties' compliance with provisions of the Convention through regularly scheduled **Periodic Reviews**, usually every four-six years.

Racism: An Evolving International Concept

Over the decades, the struggle against racism and racial discrimination at the UN has been closely linked to anti-colonialism and the struggles for self-determination. Racism was originally defined in terms of overt legal and political systems such as apartheid. As the eradication of racism has advanced, its practices and manifestations have also become more sophisticated in practice and difficult to identify. The CERD now considers cases of economic, social, cultural and environmental racism, including their specific impacts on Indigenous Peoples.

In preparation for these reviews, reports are submitted in advance to the CERD by the State governments being examined. These **Periodic Reports**, inform the CERD on their compliance with the provisions of the Convention. State parties' reports tend to paint a positive picture of their compliance, and often minimize or ignore situations which are of great concern to Indigenous Peoples and members of groups who are experiencing ongoing racial discrimination.

“The CERD is a very important body within the UN that can help Indigenous Peoples to protect their rights. In particular, General Recommendation 23 talks about the obligations that State parties have towards Indigenous Peoples as relates to their cultural rights, traditions and languages. In addition, it also requires that State parties obtain the free, prior, and informed consent of Indigenous Peoples before they can develop projects affecting their traditional lands and territories. Articles 1-7 of the ICERD are also useful for Indigenous Peoples to protect their cultural lifeways, lands and territories. The CERD and the ICERD are important tools for our struggle to combat racism and discrimination, to gain equality in exercising our rights, and to assert and defend our human rights as peoples and as individuals.”

-- Francisco Cali Tzay, CERD member and Vice President

All CERD reviews take place in Geneva during CERD annual sessions. There is not an opportunity provided for non-State parties to directly address the CERD during the official sessions. However, there are side events or briefings scheduled around the dates of the State review which are typically held during lunch breaks. During this time, Civil Society and Indigenous Peoples' representatives can meet with CERD members to present their issues and answer questions.

During the review, CERD members question the State party government officials about their report. The CERD's questions are based not only on the content of the State party report, but also on issues raised in Shadow Reports. Following the Periodic Review, the CERD makes a number of specific recommendations to the government under review about how to improve laws, policies and programs to eliminate racial discrimination. The CERD will also call attention to specific situations of racial discrimination that fail to meet the State parties' obligations to uphold and implement the ICERD. These recommendations are called the **Concluding Observations**.

Unlike some other UN complaint procedures, all of the CERD's Concluding Observations, along with reports from States and Civil Society are published on the CERD's web site. The outcomes and results are accessible to the participants, media and the general public. This makes the CERD process particularly useful for calling international attention to critical situations, building broad public support and creating pressure on States to be accountable to their human rights obligations and take steps to resolve critical situations. For more information on attending a session, dates and credentialing requirements please visit the CERD website.

The “Shadow” or Parallel Report Process

What is a Shadow Report?

A **Shadow Report** is information submitted to a UN treaty monitoring body, in

this case the CERD, by representatives of Civil Society and Indigenous Peoples. This includes Non-Governmental Organizations, Indian Nations, Tribal or First Nation governments, grassroot communities, community organizations and traditional societies. Individuals can make submissions to the CERD if the State party has accepted the protocol for doing so under Article 14 of the ICERD. To date, neither Canada nor the US have accepted this protocol.

Under the ICERD, States are required to consult with and collect input from Civil Society and Indigenous Peoples which may be affected by racial discrimination or are involved in any of the concerns or issues covered by the State report to the CERD. Unfortunately, the common practice by most States is to ignore this provision and fail to consult or to include input from those who are most affected by racial discrimination, including Indigenous Peoples. If Civil Society and Indigenous Peoples feel that a State report does not adequately cover their concerns, or if relevant information or critical issues are being misstated, minimized, omitted or ignored, they can file their own Alternative or Shadow Reports providing the CERD with a more accurate picture from their own perspectives. Shadow Reports provide an important opportunity to point out issues that were not adequately or accurately addressed in the State report and also whether effective consultation occurred during its development.



IITC and Teton Sioux Nation Treaty Council/ Tetuwan Oyate delegates attending the UN CERD, February 2008, Geneva. Photo: International Indian Treaty Council.

CERD General Recommendation XXIII on Indigenous Peoples

Treaty monitoring bodies like the CERD often adopt general comments or recommendations to guide State parties in their implementation of a human rights Covenant or Convention. General Recommendations are international standards in their own right that interpret the Convention as requirements of compliance by the State parties.

In 1997, the CERD adopted General Recommendation XXIII which specifically addresses Indigenous Peoples under the ICERD. This standard for compliance with the ICERD requires State parties to provide Indigenous Peoples with conditions that allow for sustainable economic and social development compatible with their cultures, and to ensure that Indigenous Peoples can exercise their rights to practice, preserve and revitalize their traditions, and languages.

CERD General Recommendation XXIII calls upon State parties to guarantee Indigenous Peoples' rights to their traditional lands and reaffirms that

CERD General Recommendation XXIII

CERD General Recommendation XXIII specifically addresses Indigenous Peoples and is of central importance because it addresses a range of vital issues including land, resources, culture, language and free, prior and informed consent. It should be used and referred to when Indigenous Peoples present information to the CERD regarding State compliance and/or shortfalls. CERD General Recommendation XXIII is printed in full below.

1. In the practice of the Committee on the Elimination of Racial Discrimination, in particular in the examination of reports of States parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, the situation of indigenous peoples has always been a matter of close attention and concern. In this respect, the Committee has consistently affirmed that discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination.

2. The Committee, noting that the General Assembly proclaimed the International Decade of the World's Indigenous Peoples commencing on 10 December 1994, reaffirms that the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination apply to indigenous peoples.

3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized.

4. The Committee calls in particular upon States parties to: (a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation; (b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity; (c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics; (d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent; (e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.

5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

Indigenous Peoples' free, prior and informed consent must be obtained before actions or projects are undertaken that may affect them. It also calls upon States to return lands that were taken from Indigenous Peoples' without their free, prior and informed consent.

ICERD and the United Nations Declaration on the Rights of Indigenous Peoples

Shadow Reports filed by Indigenous Peoples for a Periodic Review should make reference to the **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**, which was adopted by the UN General Assembly in September of 2007. The UNDRIP provides an important framework and "minimum standard" for presenting and interpreting the human rights obligations contained in the ICERD in relationship to Indigenous Peoples. Using it in this context further encourages the CERD to apply the Declaration in its assessment of State compliance and to provide interpretations and examples of the rights contained in the ICERD and General Recommendation XXIII in terms of the rights affirmed in the Declaration.



Maori protest Foreshore and Seabed Act, Aoteroa (New Zealand). Photo: Wikipedia.

Canada voted against the adoption of the UNDRIP at the UN Human Rights Council in June of 2006 when it was adopted by that body. Both the US and Canada went on to vote against its adoption at the General Assembly on September 13th, 2007. In the CERD's Concluding Observations regarding Canada in 2007, the CERD stated, "The Committee recommends to the State party that it support the immediate adoption of the United Nations Declaration on the Rights of Indigenous Peoples..." The CERD also stated in its Concluding Observations during the 2008 review of the US, "While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples 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." Since that time, both countries have reversed their positions in response to growing international pressure including these CERD recommendations.

In the view of many Indigenous Peoples and UN experts, by highlighting the UNDRIP and linking its implementation to compliance with the ICERD in this way, the CERD has effectively elevated the obligations of Canada, the US and all State parties.

The UNDRIP specifically affirms non-discrimination and equality in the exercise of rights in many of its articles and preambular paragraphs. These include:

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust, – *Preamble*

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind, – *Preamble*

Indigenous Peoples have utilized the ICERD's reporting procedures to call attention to:

- Treaty violations and extinguishment of aboriginal title
- Land and natural resources appropriations, including mining and extractive industries
- Lack of due process, free, prior and informed consent and equality under the law
- Discrimination in criminal justice and court systems
- Disproportionate violence against Indigenous women
- Removal of children into State custody and racism in education
- Destruction of sacred sites and cultural discrimination
- Environmental racism and other violations by State parties to the Convention

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur, – *Preamble*

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith, – *Preamble*

Indigenous Peoples and individuals are free and equal to other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity. – *Article 2*

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right. – *Article 9*

Many, if not most, of the Declaration's provisions address rights that are also affirmed in the ICERD. Therefore it is important to mention specific provisions of the UNDRIP in Shadow Reports and Urgent Action and Early Warning Submissions to the CERD.

Indigenous Peoples and the CERD Shadow Report Process

Maori of Aotearoa (New Zealand)

In February of 2005, New Zealand presented a Periodic Report to the CERD for review. Shadow Reports were also submitted by Maori organizations for consideration during the State review. In March of 2005, the CERD issued its Concluding Observations and outlined a number of concerns about the Foreshore and Seabed Act of 2004. The CERD's concerns included the

“political atmosphere that developed in New Zealand following the Court of Appeal's decision in the Ngati Apa case, which provided the backdrop to the drafting and enactment of the legislation” and referred to the State's obligations under Article 2(1)(d) and Article 4 of the Convention.

The CERD stated that, “the legislation appears to the Committee, on balance, to contain discriminatory aspects against the Maori, in particular in its extinguishment of the possibility of establishing Maori customary titles over the foreshore and seabed and its failure to provide a guaranteed right of redress, notwithstanding the State party's obligations under articles 5 and 6 of the Convention.”

In response to information presented by the Maori for the Periodic Review of New Zealand in August of 2007, the CERD also expressed concern with New Zealand's characterization of its historic Treaty settlements as a “special measure.” In an important finding for the principle of Treaty Rights and State obligations to uphold them, the CERD stated that, “[t]he Committee draws the attention of the State party to the distinction to be drawn between special and temporary measures for the advancement of ethnic groups on the one hand and permanent rights of indigenous peoples on the other hand.”

Mayan Peoples of Guatemala

The Mayan Peoples also submitted Shadow Reports in 2006 and again in 2010 addressing the lack of effective consultation, the lack of meaningful representation and the denials of free, prior and informed consent by the Guatemalan Government in regard to proposed mineral mining activities in that country amongst other issues. These concerns were addressed in the latest CERD report on that country in August of 2010. Guatemala was asked to provide additional information on how these matters are being resolved and to take steps to prevent racism and racial violence against Indigenous Peoples. The CERD in its 2010 Concluding Observations stated:

- “The Committee reiterates its concern about the absence of domestic legislation under which the dissemination of ideas based on notions of superiority or racial hatred, incitement to racial discrimination and violent acts directed against indigenous peoples or persons of African descent in the State party are classified as punishable acts (art. 4 (a)).”



Banned pesticides bottles in Rio Yaqui, Sonora Mexico. Photo: Francisco Villegas.



Canadian-owned Glamis Gold Ltd.'s Marlin Mine, Guatemala. Photo: Keith Vass.



Do not eat the fish! Photo: Nicholas Hans Pascetta (Flickr: hanspecans).

- CERD urged “the State party in its national legal system to recognize the indigenous legal system and to ensure respect for, and recognition of, the traditional systems of justice of indigenous peoples, in conformity with international human rights law. The Committee also recommends that the State party guarantee the right of indigenous peoples to an appropriate system of legal interpreters and of bilingual counsel and court officials in judicial proceedings.”
- Recommended that “that the State party redouble its efforts to ensure full participation by indigenous people, especially women, in all decision-making bodies...”

The CERD also made the following recommendation to Guatemala, addressing the many concerns Indigenous Peoples had presented regarding impacts of mining in that country recommended that the State party:

“Establish suitable procedures, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169, to effectively consult the communities that may be affected by development projects or the exploitation of natural resources with a view to obtaining their free, prior and informed consent. The Committee reminds the State party that the absence of implementing regulations for Convention No. 169 does not prevent it from conducting prior consultations. In the light of its general recommendation No. 23 (para. 4 (d)), the Committee recommends that the State party consult the indigenous population groups concerned at each stage of the process and that it obtain their consent before executing projects involving the extraction of natural resources.”

Indigenous Peoples and Nations of Canada

In February of 2012, a large delegation of Indigenous Peoples, including Treaty Chiefs, attended the CERD review of Canada in Geneva, Switzerland. The International Indian Treaty Council (IITC) provided training and coordinated input from fourteen Indigenous Nations and organizations to develop a Joint Indigenous Peoples Alternative Report addressing a wide range of concerns in preparation for this review. This was one of more than twenty submissions submitted to the CERD from Indigenous Peoples and Civil Society for their review of Canada.

The CERD’s Concluding Observations issued on March 9th, 2012 [CERD/C/CAN/CO/19-20], contained a number of important recommendations for actions to be taken by Canada based on the information and concerns presented by Indigenous Peoples and Nations. These included recommendations that Canada take measures to:

- Ensure respect for Treaties and Treaty rights and consider establishing a Treaty Commission to address Treaty rights issues;
- Prevent Canadian-based transnational corporations from violating the human rights of Indigenous Peoples in other countries, referencing in particular Canadian mining companies and reiterating a key 2007 recommendation in even stronger terms;
- Address the disproportionate rates of incarceration of Indigenous Peoples, including Indigenous women;
- Strengthen its efforts to eliminate violence against Indigenous women;
- Implement free, prior and informed consent regarding development projects affecting Indigenous Peoples lands; implement fair and culturally sensitive process for settlement of land and resource rights claims and establishing land title;
- Correct the high rates of poverty and economic marginalization of Indigenous Peoples regarding housing, employment and adequate drinking water among other concerns;
- Create a national plan of action, in cooperation with Indigenous Peoples, to implement the UNDRIP; and
- Discontinue the removal of Indigenous Peoples from their homes and communities.



Father and baby at International Expert Group Meeting on Indigenous Children and Youth in Detention, Custody, Foster-Care and Adoption, Tsleil Waututh Nation, British Columbia, Canada, March 2010. Photo: Nadir Bekirov.

Indigenous leaders who participated in this process stressed the importance of active participation leading up to and during the CERD's review session. They credited this broad participation in achieving these very positive responses from the CERD and in preparation for next steps and implementation. Chief Perry Bellegarde, Treaty 4 Spokesperson and Chief of the Little Black Bear First Nation, attended the CERD review of Canada in Geneva. He expressed appreciation for the CERD's report, commenting that, "The CERD's recommendation that Canada 'give serious consideration to the establishment of a Treaty Commission with a mandate to resolve Treaty rights issues' is one which I urge Canada to implement." Danika Littlechild (Ermineskin Cree Nation) IITC Legal Counsel emphasized "it is important that we continue the momentum and ensure that Canada actually implements the recommendations of the CERD, especially those relevant to Indigenous struggles in Canada. The CERD has laid out a road map for progress on these issues, including calling for a formal mechanism for implementation."

Canada was previously reviewed in March of 2007 and Shadow Reports were submitted by a number of Nations and organizations, including the Confederacy of Treaty Six First Nations, the Assembly of First Nations, the First Nations Summit, the IITC and the International Organization of Indigenous Resource Development. These called attention to the

discriminatory position and actions of Canada in its opposition to the UNDRIP, in particular the provisions upholding free, prior and informed consent, rights to land and resources, self-determination and Treaty rights.

In its 2007 Concluding Observations, the CERD recommended that Canada:



First Nation Chiefs and other Indigenous delegates attend the CERD review of Canada on February 22nd – 23rd, 2012 in Geneva. Photo courtesy of Karine Gentelet.

- “...engage, in good faith, in negotiations based on recognition and reconciliation” for Indigenous Peoples’ rights regarding the settlement of land and natural resources claims;
- “Support the immediate adoption of the UN Declaration on the Rights of Indigenous Peoples”;
- “...explore ways to hold transnational corporations registered in Canada accountable” for human rights impacts of their activities in and outside Canada; and
- “...allocate sufficient resources to remove the obstacles that prevent the enjoyment of economic, social and cultural rights by Aboriginal peoples” and “provide information on limitations imposed on the use by Aboriginal people of their land.”

In a very important recommendation, the CERD urged Canada “to engage, in good faith, in negotiations based on recognition and reconciliation” for Indigenous Peoples’ rights regarding the settlement of land and natural resources claims. The failure to implement these and other 2007 CERD recommendations to Canada regarding the rights of Indigenous Peoples was addressed in the 2012 alternative report, and also was the focus of many of the CERD members direct questions to the Canadian government during the review process.

The entire text of the CERD’s 2012 Concluding observations on Canada’s report can be found on CERD’s web page: <http://www2.ohchr.org/english/bodies/cerd/cerds80.htm>. IITC’s joint shadow report with the Confederacy of Treaty 6 First Nations, Dene Nation and others, as well as the other submissions by Indigenous Peoples and civil society for this review can also be found on this web page.

Indigenous Peoples and Nations in the United States

The CERD last reviewed the US in February of 2008. The IITC and the Western Shoshone Defense Project coordinated the development of a joint Indigenous Peoples' Shadow Report reflecting the contributions of over forty Indigenous Nations, Tribal governments, communities, traditional societies, organizations and networks. The IITC also provided technical

assistance to several Tribes and organizations who wanted to submit their own stand alone reports.

Indigenous Peoples from the US also attended the review session in Geneva and were able to brief the CERD directly about concerns and issues addressing racism in the US. These concerns included: the destruction of sacred sites; denial of religious freedom for Indigenous prisoners; physical and sexual violence against Indigenous women; US imposition of membership criteria on Tribes; export of banned pesticides by US corporations; the continuing generational legacy of boarding school policies; land appropriations; Treaty violations, lack of access to equal justice under the law; imposed development and environmental racism; and denial of traditional subsistence and right to food. An overall and consistent concern was the continued opposition by the US of the UNDRIP.

In its 2008 Concluding Observations, the CERD recommended that the US:

- Use the UNDRIP as a “guide to interpret the State Party’s obligations under the Convention relating to Indigenous Peoples,” notwithstanding its vote in opposition at the UN General Assembly.
- Consult with Indigenous representatives regarding sacred sites “...in accordance with their own procedures – to ensure that activities carried out in areas of spiritual and cultural significance do not have a negative impact on the enjoyment of their rights under the Convention.”
- Stating that it was “deeply concerned about the incidence of rape and sexual violence...particularly with regard to American Indian and Alaska Native women and female migrant workers” the CERD recommended that the US “increase its efforts to prevent and punish violence and abuse against women” and recognize the right of Native Americans “to participate in decisions affecting them, and consult and cooperate in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans.”
- “...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.”



Carletta Tilousi (Havasupai) speaks about her Nations opposition to uranium mining at the US’ Universal Periodic Review Listening Session with the US State Department, Albuquerque, New Mexico, March 2010. Photo: Valerie Taliman.

The full report of CERD’s Concluding Observations regarding the US is available online:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/419/82/PDF/G0841982.pdf?OpenElement>

The Saami of Sweden

Sweden was reviewed by the CERD at its August of 2008 session, and the Saami People were actively engaged in submitting information regarding their struggles for land and resources rights including the demarcation and protection of traditionally used reindeer grazing areas.

CERD's Concluding Observations included recommendations that Sweden:



Reindeer heard in motion. Photo: Dylan Cembalski (Flickr: livewell).

- Provide Saami villages (samebyar) with legal aid in court proceedings concerning right to land and natural resources;
- In cases concerning Saami land and resource rights amend the rules of evidence so that the burden of proof no longer rests solely with the Saami parties;
- Finalize the work of the Boundary Commission (Gränsdragningskommissionen) by providing additional resources so that correct boundaries for Saami reindeer grazing areas can be established;
- Take into account the oral tradition of the Saami culture in legal proceedings; and
- Address rights to grazing lands that the Saami have already lost in past court proceedings.

The full report of CERD's 2008 Concluding Observations regarding Sweden is available online: <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-SWE-CO-18.pdf>

These and other important efforts by Indigenous Peoples around the world have provided the CERD with vital information about racial discrimination from the perspectives of the directly impacted Peoples in States under review. These efforts have resulted in very significant, even historic recommendations to the States in question, advanced the recognition of Indigenous Peoples' rights, and contributed to effective strategies to hold States accountable for human rights violations.

Indigenous Peoples recognize that the CERD (or any UN human rights body) cannot, in itself, resolve all struggles. However, these bodies are important tools for addressing concerns when national or domestic processes have failed to do so and building pressure on States to resolve and correct critical issues affecting Indigenous Peoples and communities.

Other Opportunities for making submissions to the CERD

The Early Warning and Urgent Action Procedures

The CERD developed **Early Warning and Urgent Action** procedures that allow Civil Society and Indigenous Peoples' representatives to initiate communication to the CERD about particularly urgent, threatening or damaging situations. In these cases, the CERD can require the State to report on an urgent basis. Indigenous Peoples including the Western Shoshone, Mayans, Maori, and most recently, Indigenous Peoples in Arizona and New Mexico, have utilized the Early Warning and Urgent Action procedures to call attention to State violations of the ICERD directly impacting their Peoples. These cases demonstrated how domestic remedies (i.e. federal courts, administrative hearings, appeals processes, etc.) have been exhausted without satisfactory result from the point of view of the impacted Peoples, or are ineffective or unavailable.

The **Western Shoshone of Nevada (US)**, have successfully used the Early Warning and Urgent Action procedures to challenge the legitimacy of the Indian Land Claims Commission and the purported "loss" of their ancestral lands in violation of the Treaty of Ruby Valley. For over three decades, the Western Shoshone, in particular, sisters Carrie and Mary Dann, resisted US efforts to declare their traditional lands public or federal lands. The Western Shoshone have consistently argued that the 1863 Treaty of Ruby Valley recognized the borders of the Western Shoshone and their human rights under international law and that the US had never acquired title to their lands.

Beginning in 1992, the Western Shoshone worked with groups including the Western Shoshone Defense Fund and the University of Arizona Indigenous Peoples Law and Policy Program to bring international attention to their struggle to preserve their ancestral lands. Due to these early efforts, the Western Shoshone received a brief mention in the CERD's review of US compliance in 2001. The small mention also included key issues of land rights, impacts of toxic contamination and free, prior and informed consent, and laid the foundation for continued work.

In 2005, the Western Shoshone used the Early Warning and Urgent Action procedures to further inform the CERD of their continued struggle which resulted in specific questions to which the US had to respond. The CERD raised a series of written questions addressing fundamental issues for the Western Shoshone and many other Indian Nations in the US related to the purported "loss" of their ancestral lands and the legitimacy of the Indian Claims Commission process. The CERD issued a full Urgent Action decision in 2006 stating in part that "the

Early Warning Procedure

The early warning procedure was introduced to CERD's regular agenda in 1994. This unique procedure provides a way in which Indigenous Peoples, organizations and communities can submit information to the CERD about imminent pending conflicts or imminent threats to human rights when they have not received an adequate preventative domestic response, or effective "domestic remedies" are not available. Cases can be submitted at any time, whether or not the State in question is under review by the CERD.

Urgent Action Procedure

The urgent action procedure was also introduced in 1994 as a way for the CERD Committee to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. Under these procedures, CERD can examine an urgent situation outside of the Periodic Review process of the State Party concerned. This procedure is primarily used to prevent existing problems from escalating into more serious conflicts, particularly if such a conflict has previously occurred.

Individual Communication

This procedure allows individuals or groups of individuals to submit their claims as victims of a violation of the Convention directly to CERD provided that the State has made a declaration to recognize CERD's "competence" or authority to consider such submissions under Article 14 of the Convention. Neither Canada nor the US have made the declaration required to allow individual communications under the ICERD.

Committee has received credible information alleging that the Western Shoshone are being denied their traditional rights to land, and that the measures taken and even accelerated lately by the State party in relation to the status, use and occupation of these lands may cumulatively lead to irreparable harm to these communities." This decision has resulted in international recognition and support for this struggle.

Maori of Aotearoa (New Zealand) also submitted information under these procedures criticizing New Zealand's Foreshore and Seabed Act of 2004. This legislation vested "full legal and beneficial ownership of New Zealand's public foreshore and seabed in the Crown" and closed off the possibility for Maori to claim freehold title of the foreshore and seabed through the Maori Land Court. This law was strongly opposed by the Maori who argued that it discriminated against the Maori as their customary title to the foreshore and seabed had never been extinguished and that it violated both the Treaty of Waitangi and the ICERD.

In 2004, several Maori organizations including the Taranaki Maori Trust Board, the Te Runanga o Ngai Tahu and the Treaty Tribes Coalition, submitted a petition to the CERD under the Early Warning and Urgent Action procedures requesting that New Zealand withdraw the legislation. The CERD was convinced of the urgency of the Maori submission and requested further information from the New Zealand government. These efforts contributed to the growing pressure on the New Zealand government to resolve this case which had gained international notoriety.

The International Indian Treaty Council, the Havasupai Nation and the Inter Tribal Council of Arizona filed a joint submission to the CERD using the Early Warning and Urgent Action procedures in February of 2011 to prevent desecration of the sacred San Francisco Peaks targeted for development by a commercial ski resort using sewage waste water to make manufactured snow. The **Navajo Nation** made its own submission that was added to the joint filing. The development of the resort would result in profound desecration of an important religious site for many Indigenous Nations and was adamantly opposed by the impacted Peoples. Unfortunately, these activities were not able to be stopped through court proceedings, demonstrating the continued ineffectiveness of domestic remedies in this and many other sacred sites cases in the US. After reviewing materials submitted by Indigenous Peoples, the CERD issued a letter to the US in March of 2012, reiterating its recommendations to the US in 2008 regarding protection of Indigenous Peoples' sacred sites. The CERD expressed its concerns about the "potential impacts of the Ski Resort project on Indigenous Peoples' cultural and spiritual beliefs" and requested additional information from the US about "the process by the state party to obtain their free, prior and informed consent with regards to the project." Pending review of the US response, which was received too late for review at the CERD's August 2012 session, the case is scheduled for

How to Develop and Submit a Shadow Report

There is no set format for writing Shadow Reports. This manual provides a general framework to consider in the development of Shadow Reports. Additional helpful information can be found on the ICERD web site at: <http://www2.ohchr.org/english/bodies/cerd/>.

The decision to develop a Shadow Report should take into consideration how useful this process may be to the submitting Nation, organization, community or Tribe as part of a larger strategy. The International Human Rights Law Group writes that, “the usefulness of creating a Shadow Report can be evaluated by its function in providing additional information to CERD which is absent from the national government’s report. It is also useful in an ongoing way to monitor national responses, to conduct domestic media and education campaigns, and to critique the national and State government’s stands on racial discrimination.”

Indigenous Peoples have successfully utilized the submission of Shadow Reports and other filings to the CERD, as well as the CERD’s final recommendations, in their media and public education strategies through press conferences and press releases. They have also used their participation in this process as well as its outcomes, in negotiations with States, agencies and corporations to address critical human rights concerns.

CERD members have limited time to review the large amounts of information they receive and often not able to read full reports if they are too numerous and lengthy. Therefore reports should be as succinct as possible (up to 40 pages including attachments is permitted, but 10-15 pages is recommended for those that are not jointly filed by a number of Nations and organizations). Whenever possible, relevant information and factual data, such as statistics, maps, citations, names and dates, timelines, eyewitness accounts, testimonies, tribal resolutions and statements from impacted community and Treaty bodies, should be included. Indexing and numbering the paragraphs makes it easier for referencing the document by the CERD members. An executive summary highlighting the main content in the beginning is recommended and appreciated by the CERD. Finally, a few key questions for the CERD members to ask the State party under examination, as well as suggested recommendations, can also be included.

One of the eighteen CERD members is assigned to be in charge of each country report at each session, and to serve as that country’s Rapporteur for the session. Each country Rapporteur makes a detailed examination of all the information presented by that country and in the Shadow Reports submitted by Civil Society and Indigenous Peoples’ representatives. It is difficult to determine which CERD member has been assigned to be the Rapporteur for a specific State review until the session begins, as that information is not made public ahead of time. The names and resumes of all the CERD members are available on the CERD web site.

Shadow Report recommended components

Shadow Reports can contain:

- A cover letter to officially transmit your submission and provide your contact information.
- A table of contents (including information on any attachments).
- An Executive Summary (1–3 pages summarizing your issue/s).
- An Introduction statement.
- In the main body of the submission:
 - Describe the situation and the issue(s) you are presenting;
 - Identify and reference the key article(s) of the ICERD involved (an abbreviated reference in the main body of the text, with a full copy of the relevant primary articles of the Convention in an appendix), as well as any relevant provisions of General recommendation XXIII;
 - Point out if the State report omitted or misrepresented the situation, and whether or not there was adequate and effective consultation during its preparation;
 - Identify relevant state laws and policies, and the present the government's implementation record, i.e. compliance with free, prior and informed consent, equal protection and representation, and other related provisions;
 - Provide indicators such as statistical data and relevant case studies;
 - Refer to previous CERD recommendations that have not be implemented fully or at all;
 - Cite provisions of the UNDRIP that are relevant to the issues you are addressing;
 - Cite resolutions, declarations, and decisions on relevant issues from traditional and tribal councils, elders groups or other key community leadership bodies (full texts can be included in an appendix or annex);
 - Provide statements and eyewitness accounts with as many facts (names, dates, places, statistics, documented impacts, etc.) as possible, summarized in the body of the text and/or included as attachments or an appendix if they are lengthy;
 - Identify obstacles to achieving full implementation of the ICERD including court decisions and legal procedures, laws and policies, existence or lack of effective mechanisms for due process and redress etc.;
 - Provide a list of questions that you would like the CERD to ask the State directly in response to key problems and issues;
 - Make recommendations for solutions to the problems you are addressing; and
 - Suggest specific questions that the CERD should ask the government.

Making Your Submissions

You must submit twenty hard copies of the full report with any attachments by mail or courier or by hand delivery. The CERD Secretariat will not make copies for the CERD members! It is also recommended that you email your materials to the followings contacts, with a note informing them when the materials were mailed. A cover letter should be included and addressed to the Secretariat, asking them to deliver the information to the CERD members.

The contact information for submissions to the CERD is as follows:

Gabriella Habtom
Human Rights Officer and Secretary of the
Committee on the Elimination of Racial Discrimination
Human Rights Treaties Division
Office of the High Commissioner for Human Rights
Palais Wilson, office 1- 043
Phone: +41 (0)22 917 91 93
Fax: +41 (0)22 917 9008
E-mail: ghabtom@ohchr.org

Chedra Bullock
Human Rights Treaties Division
Office of the High Commissioner for Human Rights
Geneva, Switzerland
Tel: +41 (0)22 917 9440
email: cbullock@ohchr.org

Physical Address: Palais Wilson - 52, rue des Pâquis, CH-1201, Geneva, Switzerland
Mailing address: UNOG-OHCHR, CH-1211 Geneva 10, Switzerland

There is no official deadline for submission of Shadow Reports. However Civil Society and Indigenous Peoples' representatives should allow sufficient time for CERD Members to review their reports. It is suggested that Shadow Reports be submitted four-six weeks before a scheduled review, especially if they will require translation into English. Shadow Reports received in time (usually about a month in advance) may also be posted on the CERD web site, unless you request otherwise.

Submissions to the Early Warning and Urgent Action Procedures should be submitted at least one-two weeks before a CERD session begins. Consideration of submissions received outside of that time frame may be delayed until the next session. In that case, updates may be requested, affirming the continued urgency. There is no intersessional consideration of submissions to the CERD, and the CERD will not review Early Warning and Urgent Action submissions during the same session that the State in question is undergoing its periodic review.



Unmarked trucks storing toxic pesticides in a Yaqui Indigenous community, Sonora Mexico. The export of banned pesticides by US-based corporation and the resulting human rights violations were addressed in the Indigenous Peoples' joint shadow report to the CERD in 2008, producing strong recommendations by CERD regarding US responsibility for such violations. Photo courtesy of Jittoa Bat Natika Weria.

Resources

UN CERD general website: <http://www2.ohchr.org/english/bodies/cerd/>

Schedule of review of Periodic Reports: <http://www2.ohchr.org/english/bodies/cerd/sessions.htm>

Periodic Report submitted to the CERD for the 2012 Examination of Canada: http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CAN.19-20_en.doc

Consolidated Indigenous Shadow Report submitted to the CERD for the 2007 Examination of the United States 4th, 5th, and 6th Periodic Reports: <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN8.doc>

UN Permanent Forum on Indigenous Issues: <http://www.un.org/esa/socdev/unpfii/index.html>

UN Declaration on the Rights of Indigenous Peoples: <http://www.un.org/esa/socdev/unpfii/en/declaration.html>

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

SOURCE: <http://www2.ohchr.org/english/law/cerd.htm>

International Convention on the Elimination of All Forms of Racial Discrimination

Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion, Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

PART I

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
 - (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
 - (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
 - (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
 - (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

- (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.
- 2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
 - (i) The right to freedom of movement and residence within the border of the State;
 - (ii) The right to leave any country, including one's own, and to return to one's country;
 - (iii) The right to nationality;
 - (iv) The right to marriage and choice of spouse;
 - (v) The right to own property alone as well as in association with others;
 - (vi) The right to inherit;

- (vii) The right to freedom of thought, conscience and religion;
- (viii) The right to freedom of opinion and expression;
- (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
 - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training;
 - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, 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.

PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee; (b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.
2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

Article 10

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.
3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.
4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.
5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention; (b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.
5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.
6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.
8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.
2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.
3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
2. Any State Party which makes a declaration as provided for in paragraph I of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of

a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.
4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.
5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.
6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications; (b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged; (b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.
8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.
9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph I of this article.

Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.
2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies; (b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories

mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.
4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III

Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.
2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

Article 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

Article 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

- a. Signatures, ratifications and accessions under articles 17 and 18;
- b. The date of entry into force of this Convention under article 19;
- c. Communications and declarations received under articles 14, 20 and 23;
- d. Denunciations under article 21.

Article 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

Human Rights & Capacity Building Training Program

“This training was like planting a seed which can grow into something strong and good for our community”.

Yaqui Indian elder following an IITC human rights training, 2009



Historic advances in the recognition of Indigenous Peoples' rights have taken place in recent years. With the US announcement of support on December 16th 2010, no countries remain in opposition to the United Nations (UN) Declaration on the Rights of Indigenous Peoples. Full and unqualified implementation with the informed and active engagement of Indigenous Peoples, Nations, Tribal leaders and community members is the current focus.

IITC's Human Rights Training and Capacity-Building Program increases Indigenous Peoples' knowledge about their human rights affirmed by the UN Declaration and other international standards. Trainings encourage the informed and direct participation of Indigenous Peoples in international bodies and discussions which impact their rights and survival, and build their capacity to use international human rights processes to address critical situations and struggles. IITC's trainings are conducted by experienced Indigenous trainers, drawing upon IITC's 38 years of “hands on” experience and expertise working in the international arena to defend Indigenous Peoples' rights, ways of life and survival.



IITC's human rights trainings incorporate multi-media presentations, small group and plenary formats and issue-based discussions to address the specific concerns and interests of hosting Nations, Tribes and communities. They are offered in both English and Spanish, and can range in length from basic introductory presentations of 1 -2 hours to in-depth trainings over 1 - 2 days. Follow-up sessions, mentorship at international bodies and legal/technical assistance for developing submissions to United Nations and Organization of American States (OAS) human rights bodies are provided upon request.

Human Rights & Capacity Building Training Program

Trainings are also offered to non-Indigenous organizations, educational institutions and agencies interested in learning about the human rights concerns of Indigenous Peoples and building cross-cultural human rights campaigns.

- ✦ Using, implementing and applying the UN Declaration on the Rights of Indigenous Peoples, the International convention on the Elimination of All Forms of Racial Discrimination (ICERD) and other international human rights standards;
- ✦ An overview of the UN Human Rights system, and opportunities for participation by Indigenous Peoples including tribal leaders, women and youth;
- ✦ History of Indigenous Peoples' international work and achievements;
- ✦ Utilizing UN complaint procedures, such as UN Special Rapporteurs and Treaty Monitoring Bodies to address human rights violations and pressure countries to change their actions and policies;
- ✦ Developing a “human rights-based approach” to support community/tribal justice campaigns and hold countries accountable for human right obligations;
- ✦ Advancing International recognition and implementation of Treaties and Agreements between Indigenous Peoples and States;
- ✦ Using the OAS Human Rights system and developing a strong “American Declaration on the Rights of Indigenous Peoples” to defend Indigenous Peoples' human rights;
- ✦ Using a human rights framework to strengthen work addressing environmental justice, protection of sacred sites, traditional knowledge and cultural practices, food sovereignty, community and reproductive health, climate change, extractive industries and environmental toxins.





International Indian Treaty Council

Working for the Rights and Recognition of Indigenous Peoples

Consejo Internacional de Tratados Indios

Trabajando por el reconocimiento y los derechos de los Pueblos Indígenas

The International Indian Treaty Council (IITC), founded in 1974 in South Dakota, is an organization of Indigenous Peoples from North, Central, South America, the Caribbean and the Pacific working for sovereignty and self-determination for Indigenous Peoples and the recognition and protection of their human rights, Treaties, traditional cultures and sacred lands. In 1977, IITC was the first Indigenous organization to receive Consultative Status to the United Nations Economic and Social Council (ECOSOC). In 2011, IITC became the first Indigenous organization to be upgraded to General Consultative Status in recognition of its long-standing and wide-ranging work within the United Nations system on behalf of Indigenous Peoples.

For more information or to schedule a training contact:

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