

Using the International Convention on the Elimination of all forms of Racial Discrimination to Hold States Accountable for Racial Discrimination

“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

The International Convention on the Elimination of all forms of Racial Discrimination (ICERD):

- Entered into effect January 4, 1969, and is one of nine major human rights treaties adopted by the United Nations (UN).
- Provides a legally binding framework that Indigenous Peoples, organizations and human rights activists can use to call attention to cases of racial discrimination by States.
- Does not distinguish between intentionally discriminatory acts and those that have discriminatory effects.
- Was the first UN human rights Treaty to establish a compliance-monitoring system for the “State parties” or Countries which have ratified it. The United States (US) and the other 173 State parties to the ICERD have a legal obligation to comply with its provisions.
- CERD’s Concluding Observations and recommendations, Country reports and submissions by Indigenous Peoples and civil society are public and are posted on the CERD web page: <http://www2.ohchr.org/english/bodies/cerd/>

The United Nations Committee on the Elimination of Racial Discrimination

The UN Committee on the Elimination of Racial Discrimination (CERD), made of 18 international independent experts, is the treaty monitoring body for the ICERD. The CERD conducts Periodic Reviews of the State parties’ compliance with the Convention and makes recommendations on how they should change or improve their policies and practices. As part of this process, all State parties must submit a report to the CERD assessing their compliance which includes seeking input from civil society and Indigenous Peoples. If this is not done, or if the input they provided is not adequately reflected, Indigenous Peoples and civil society organizations can submit their own Alternative or “Shadow” Reports challenging the State’s self-assessment and providing additional/missing information. These Alternative Reports as well as presentations made by Indigenous Peoples and other organizations during the CERD sessions are carefully reviewed by CERD members. They are reflected in their questions to the State parties during the review process and in their final recommendations to the State parties under review.

The CERD also accepts Early Warning and Urgent Action submissions. These can be filed at any time when violations of the provisions of ICERD are imminent, developing or getting worse and have not received adequate response by States. States must respond to these submissions.

CERD Affirms Rights to Land and Free, Prior and Informed Consent

CERD General Recommendation 23, August 18, 1997, calls upon States:

- “To 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.”
- “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.”



Blanche Arlene Okbaok-Garnie and daughter, Teller, Alaska. Photo: Alaska Community Action on Toxics.

In recent years, the CERD has made strong recommendations to correct violations of ICERD affecting Indigenous Peoples in the US, Canada, Sweden, Finland, Colombia, Peru, Philippines, Mexico, New Zealand, Guatemala and other States. For example, in March 2012, following its last country review of Canada, CERD issued recommendations calling on Canada to:

- Ensure respect for Treaties, Treaty rights and land title;
- Prevent Canadian-based transnational mining corporations from violating human rights of Indigenous Peoples in other countries;
- Correct disproportionate rates of incarceration;
- Strengthen efforts to eliminate violence against Indigenous women;
- Implement Free, Prior and Informed Consent regarding development on Indigenous lands;
- Correct high rates of poverty and lack of adequate housing, employment, health services, access to drinking water and education among others;
- Create a national plan of action to implement the UN Declaration on the Rights of Indigenous Peoples;
- Discontinue removal of Indigenous children from their communities.



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

CERD’s 2008 Concluding Observations and recommendations to the US included:

- “The Committee remains 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 Committee further recommends that the State party 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.”
- “The Committee encourages the State party to take appropriate legislative and 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.”
- “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.”

The US, Peru and El Salvador are among the seven States to be reviewed during the CERD’s 85th session from August 11 – 29, 2014. All three will be reviewed during the first week of the session, August 11 – 15, 2014. Alternative Reports providing updates on current situations, threats and violations of the ICERD, as well as information about the implementation of the CERD’s previous recommendations to these States, are due by the end of June 2014.

The IITC has developed a training manual on how to utilize and participate effectively in the CERD. It can be downloaded online at www.treatycouncil.org.



For more information

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The International Indian Treaty Council (IITC), founded in 1974, is an Indigenous organization working for the protection of human rights, cultures, treaties and traditional lands from the local to the international levels. In 1977, IITC was the first Indigenous organization to receive Consultative Status with the United Nations Economic and Social Council, and in 2011 was the first to be upgraded to General Consultative Status.

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