

**COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
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**EXAMINATION OF THE UNITED STATES 7TH, 8TH AND 9TH PERIODIC REPORTS
OF JUNE 2013**

**ALTERNATIVE REPORT REGARDING LACK OF IMPLEMENTATION OF CERD
CONCLUDING RECOMMENDATION 29 [CERD/C/USA/CO/6] REGARDING THE
UNITED STATES IN FEBRUARY 2008 AND ACTIVITIES NEGATIVELY IMPACTING
AREAS OF SPIRITUAL AND CULTURAL SIGNIFICANCE TO INDIGENOUS
PEOPLES**

Jointly Submitted by the International Indian Treaty Council*, Indigenous World Association, Native Village of Venetie (Gwich'in Nation), Chickaloon Native Village and Chickaloon Village Traditional Council, Western Shoshone Defense Project, Pit River nation, Advocates for the Protection of Sacred Sites, Lipan Apache Women Defense, Lakota Treaty Council, United Confederation of Taíno People, Hickory Ground Tribal Town, Muscogee (Creek) Nation, Gila River Alliance for a Clean Environment, Guahan Coalition of Guam, Na Koa Ikaika KaLahui Hawaii, Koani Foundation, Aha Moku Council, AmerndAIRFA (American Indian Religious Freedom Act), Oglala Lakota Nation, Havasupai Tribe, Haskell Wetlands Walkers Student Organization and The Morning Star Institute

The Co-Submitters of this Alternative Report thank the following for their significant contributions to the content of this Report: the Gila River Indian Community Council, the Yurok Tribe, and the Indigenous Youth Foundation.

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Executive Summary

The International Treaty Council (IITC) *et. al.*¹ address the issues to be raised in the review of the United States of America's ("US") compliance as a State Party to the **International Convention on the Elimination of all forms of Racial Discrimination** (ICERD). The co-submitters of the Indigenous Peoples Joint Alternative Report respectfully call the attention of the UN Committee on the Elimination of Racial Discrimination (CERD) to critical human rights concerns that are not addressed, adequately or at all, in the US Government's 7th, 8th & 9th Periodic Reports.

The co-submitters affirm the urgent need to address the crises facing Indigenous Peoples in the US and its territories regarding the lack of full legal protection for their sacred areas, religious practices, cultures and spirituality and the continuing desecration, contamination and destruction of Sacred Areas. US federal and state laws often restrict access in private, or at all, to the sacred areas essential for maintaining the religious, cultural and spiritual practices of Indigenous Peoples. In many cases, the US has failed to implement its own laws as well as its international obligations pertaining to freedom of religion and belief when it comes to Indigenous Peoples.

This Report and the twelve (12) submissions addressing examples of specific critical cases, document a pervasive pattern of obstacles and denials regarding the realization of rights to freedom of religious practice, access to Sacred Areas, and closely related rights to land and resources, Treaties, Self-determination and FPIC. These include:

- 1) Failure by the US to recognize and respect Indigenous Peoples' religious and spiritual beliefs and practice on an equal footing with the religions brought by the non-Indigenous settlers;
- 2) Failure by the US to respect the unbreakable connection between Indigenous Peoples' lands, waters and Sacred Areas and their religious and spiritual practices and beliefs;
- 3) Consistent priority given to economic development activities rather than freedom of religious practice for Indigenous Peoples as reflected in laws, policies and court decisions including those by the US Supreme Court;
- 4) Failure by the US to fully implement Free Prior and Informed Consent regarding legislative actions, military activities and development projects impacting or threatening Sacred Areas;
- 5) Failure to honor, respect and implement Treaties, concluded between Indigenous Nations and the US, which affirm Indigenous jurisdiction over sacred lands, waters and areas, and affirm hunting, fishing and gathering essential for cultural and ceremonial practices
- 6) Failure by the US to recognize the rights of Indigenous Peoples to their traditionally owned or otherwise occupied or used lands and territories, including those legally recognized by ratified Treaties. These often include sacred and culturally important areas which now lie outside of the reservation lands currently recognized by the US, negatively impacting Indigenous Peoples' rights and ability to protect and have access to Sacred Areas including those used for culturally-important gathering, hunting and fishing;

¹ See cover page of the Report for a complete list of the co-submitters and other contributors.

- 7) The especially problematic situation faced by Indigenous Peoples who are not “federally recognized” and therefore have no federally-recognized lands, nor ability to access even the limited protections provided by US federal Laws regarding their Sacred Areas or religious practices.

We respectfully present the CERD with the following core question for the United States.

- 1) **Please provide information on measures taken to guarantee the protection of Indigenous Sacred Areas as well as to ensure that Indigenous Peoples are consulted and that their free, prior and informed consent is obtained regarding matters that directly affect their enjoyment of rights under the Convention in areas of spiritual and cultural significance.** (re-statement of conclusion and recommendation 29 of the CERD/C/USA/CO/6)

Finally, we submit the following recommendations to the Committee for consideration in their review and Concluding Observations regarding the United States report:

1. **That the US implement the UN Declaration on the Rights of Indigenous Peoples fully and without qualification, and use it as a guideline for interpretation and implementation of the ICERD regarding Indigenous Peoples sacred areas, places and sites, including those of Indigenous Peoples who are not “federally recognized”;**
2. **That the US bring its national policies and laws into conformity with the provisions of the ICERD and UNDRIP regarding Self-determination, Rights to Lands and Resources, Subsistence and Free Prior and Informed Consent;**
3. **That the US implement laws and policies that fully respect freedom of religious practice, culture and spiritual belief for Indigenous Peoples in accordance with their international human rights obligations, enforce an absolute legal prohibition of the desecration of sacred areas, and provide provisions for their protection;**
4. **That the US establish a national-level body for oversight and implementation of the US human rights obligations, including the provisions of International Human Rights Treaties and Declarations, Treaty Body recommendations and Nation-to-Nation Treaties with Indigenous Peoples, with the full and effective participation of affected communities, Indigenous Peoples and Nations.**

“Medicine Lake and Mt Shasta were gifts to our Peoples from the Creator, the One Above. These places are part of our creation and our teachings about how we leave this world.”

--- Mickey Gimmell Sr., 1944 - 2006

Pit River (Iss-Awhi) and Wintu Spiritual Leader, Member of the International Indian Treaty Council Board of Directors

Section I – Indigenous Peoples’ Sacred Areas, Free Prior and Informed Consent and the United Nations Committee on the Elimination of Racial Discrimination (CERD) Review of the US’ Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination

1. Introduction

The International Indian Treaty Council (IITC) *et. al.*² welcome the opportunity to address the issues to be raised in the review of the United States of America’s (“US”) compliance as a State Party to the **International Convention on the Elimination of All Forms of Racial Discrimination** (ICERD). The co-submitters of this Indigenous Peoples Joint Alternative Report respectfully want to call the attention of the Committee on the Elimination of Racial Discrimination (the “CERD” or the “Committee”) to critical human rights concerns that are not addressed, adequately or at all, in the US Government’s 7th, 8th & 9th Periodic Reports to the Committee. In many cases the co-submitters will present very different points of view, interpretations and analysis from those offered by the US Reports.

This is the second review of the US to be carried out by the CERD since the adoption of the UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”) by the United Nations (UN) General Assembly on September 13th, 2007. The Committee, in its conclusions and recommendations in the last review (2008) of the US, recommended that:

While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party’s obligations under the Convention relating to indigenous peoples.³

The US, after its initial “no” vote along with only three other states became the last country to reverse this position and express its support (although with some very problematic qualifications discussed below) on December 16, 2010. However, we remain deeply concerned about the lack of implementation, which is discussed in a separate Alternate Report to the CERD submitted by International Indian Treaty Council and others to the 85th Session of the CERD. UNDRIP, as the

² Ibid.

³ CERD/C/USA/CO/6 at page 10 para. 29

internationally accepted universal framework of minimum standards for the survival, dignity, well-being and rights of the world's Indigenous Peoples, therefore provides a framework for the CERD's review of the US' compliance with the Convention in relation to the specific questions raised by the CERD regarding Indigenous Peoples.

There is an urgent need to address the crises facing Indigenous Peoples in many regions of the US and its territories regarding the lack of full legal protection for their sacred areas, religious practices, cultures and spirituality. For Indigenous Peoples their cultural, spiritual and religious practice, and the sacred responsibilities that provide them with life and identity, are inextricably linked to places of ceremonial practice, emergence and renewal. For the purpose of this submission, reflecting the understanding of the Indigenous Peoples who are jointly submitting this report, "Sacred Areas" is understood to include but not be limited to landscapes, ceremonial grounds and structures, burial grounds, waterways, sacred items and areas essential for the collection of ceremonial and culturally important animal and plant foods and medicines.

The impacts of tourism, extractive industries, industrial development, toxic contamination and urbanization continue to manifest in the desecration, contamination and destruction of these Sacred Areas. US federal and state laws continue to restrict access in private, or at all, to the sacred areas essential for maintaining the religious, cultural and spiritual practices of Indigenous Peoples. In addition, in many cases the US has failed to implement its own national laws as well as its international obligations pertaining to freedom of religion and belief when it comes to Indigenous Peoples.

In its 2008 review of the US, the CERD's Concluding Observations addressed the US failure to uphold the rights of Indigenous Peoples concerning the protection of their Sacred Places and areas of cultural importance, and made strong recommendations in that regard:

29. The Committee is concerned about reports relating to activities – such as nuclear testing, toxic and dangerous waste storage, mining or logging – carried out or planned in areas of spiritual and cultural significance to Native Americans, and about the negative impact that such activities allegedly have on the enjoyment by the affected Indigenous peoples of their rights under the Convention. (Articles 5 (d) (v), 5 (e) (iv) and 5 (e) (vi)).

The Committee recommends that the State party take all appropriate measures – in consultation with Indigenous peoples concerned and their representatives chosen in accordance with their own procedures – to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention.

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.⁴

⁴ Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, 77th Sess., UN Doc. CERD/C/USA/CO/6 (2008) at para. 29.

The far-reaching implications of these recommendations addressing the US' obligations under the Convention cannot be minimized. It bears repeating that the CERD recommended that the UNDRIP be used as a "guide to interpret [US] obligations under the Convention" notwithstanding the [US] position vis-a-vis the Declaration." We understand these recommendations as encompassing Indigenous Peoples' right to Free Prior and Informed Consent (FPIC), constituting a central concern for Indigenous Peoples with regards to their ability to protect their Sacred Areas. The failure of the US to fully respect and implement this minimum standard in its' relationship(s) with Indigenous Peoples is a consistent pattern presented by Indigenous Peoples who have contributed to this Alternative Report.

In 2006, in an Urgent Action/Early Warning Decision, the CERD made recommendations to the US regarding the Western Shoshone's rights to their lands and resources, specifically calling upon the US to "Freeze any plan to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers and desist from all activities planned and/or conducted on the ancestral lands of Western Shoshone or in relation to their natural resources, which are being carried out without consultation with and despite protests of the Western Shoshone peoples."⁵ The CERD highlighted the US failure to comply with this earlier decision in its 2008 Concluding Observations and urged the US to implement its recommendations. To date, the US has not complied with the CERD's recommendations.⁶

Despite numerous efforts by Indigenous Peoples in both domestic and international fora, the US continues to deny them the substantive enjoyment of the rights contained in the ICERD and other international instruments. This Report sets out unedited chapters of US history and the myriad ways in which obstacles are placed for observance of these rights, including cultural rights, freedom of religious practice, access to Sacred Areas, and closely related rights to land and resources, Treaties, Self-determination and FPIC. Obstacles identified by the contributors to this Report include the following:

- 1) Failure by the US to recognize and respect Indigenous Peoples' religious and spiritual beliefs and practice on an equal footing with the religions brought by the non-Indigenous settlers;
- 2) Failure by the US to respect the unbreakable connection between Indigenous Peoples' lands, waters and Sacred Areas and their religious and spiritual practices and beliefs;
- 3) Consistent priority given to economic development activities rather than freedom of religious practice for Indigenous Peoples as reflected in laws, policies and court decisions including those by the US Supreme Court;
- 4) Failure by the US to fully implement Free Prior and Informed Consent regarding legislative actions, military activities and development projects impacting or threatening Sacred Areas;

⁵ Committee for the Elimination of Racial Discrimination, Sixty- eighth session Geneva, 20 February – 10 March 2006 Early Warning and Urgent Action Procedure, Decision 1 (68). United States of America, UN Doc. CERD/C/USA/DEC/1.

⁶ See the enclosed submission from the Western Shoshone Defense Project, Case N in this Report, for specific violations of sacred areas and cultural rights which continue to be carried out on their lands as a result. In addition, see the separate alternative report submitted to the CERD 85th Session by Western Shoshone and others.

- 5) Failure to honor, respect and implement Treaties, concluded between Indigenous Nations and the US, which affirm Indigenous jurisdiction over sacred lands, waters and areas, and affirm hunting, fishing and gathering essential for cultural and ceremonial practices
- 6) Failure by the US to recognize the rights of Indigenous Peoples to their traditionally owned or otherwise occupied or used lands and territories, including those legally recognized by ratified Treaties. These often include sacred and culturally important areas which now lie outside of the reservation lands currently recognized by the US, negatively impacting Indigenous Peoples' rights and ability to protect and have access to Sacred Areas including those used for culturally-important gathering, hunting and fishing;
- 7) The especially problematic situation faced by Indigenous Peoples who are not "federally recognized" and therefore have no federally-recognized lands, nor ability to access even the limited protections provided by US federal Laws regarding their Sacred Areas or religious practices.

2. Relevant Provisions of the International Convention on the Elimination of All Forms of Racial Discrimination

A) Article 5 (d)(v) – property, ownership, title, treaties and rights to lands and resources

5. (d) (v) 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:

(d) Other civil rights, in particular:

(v) The right to own property alone as well as in association with others;

For many Indigenous Peoples in the US, lack of access to Sacred Places and Areas is closely linked to a history of dispossession of their lands. This history is recounted in all the case submissions contained in this report. In addition, the violation of the over 400 Treaties concluded between Indigenous Nations and the US by the State Party have had a direct role in the dispossession of Indigenous Peoples lands, territories and resources, including sacred places.

The direct and pervasive impacts of the violation of Treaties on the desecration of Indigenous Peoples' Sacred Places is addressed in depth in the July 8, 2014 joint submission to this session of the CERD by the International Indian Treaty Council (IITC), Oglala Lakota Nation, Western Shoshone Defense Project and the Indigenous World Association (IWA) titled **"ALTERNATIVE REPORT REGARDING LACK OF IMPLEMENTATION BY THE UNITED STATES OF RECOMMENDATION 29 OF THE COMMITTEE'S 2008 CONCLUDING OBSERVATIONS: "While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party's obligations under the Convention relating to indigenous peoples."**

We respectfully call the attending of the CERD members to this section in relation to the issues raised in this report, in particular regarding the example it provides regarding the violations of the 1868 Ft. Laramie Treaty concluded between the Lakota Nation and the US and the development of the Keystone XL Pipeline.⁷ Submissions in this report by the IITC, Lakota Treaty Council, and the Western Shoshone Defense Project also provide examples of ongoing Treaty violations specifically impacting Sacred Areas and cultural rights in the US.

Moreover, we submit that this Article of the ICERD relates also to the issue of self-determination. The CERD confirmed that it is competent to examine self-determination issues when it issued its General Recommendation on Self-Determination (CERD/48/Misc.7/Rev.3 1996), which provides a framework for interpretation of the principle and its relationship to the Committee's scope of concern.⁸ We draw the attention of the Committee to consider the Alternative Report submitted to the 85th Session of the CERD by International Indian Treaty Council and others regarding the issue of Non-Implementation, and which specifically addresses the matter of the US taking a "different" approach to self-determination.

We also draw the attention of the CERD to your 2001 Concluding Observations of the US:

The Committee notes with concern that treaties signed by the Government and Indian tribes, described as "domestic dependent nations" under national law, can be abrogated unilaterally by Congress and that the land they possess or use can be taken without compensation by a decision of the Government."⁹

The dispossession and extinguishment of aboriginal title was also noted and raised as a concern by the Human Rights Committee in its 2006 Review of the US under the International Covenant on Civil and Political Rights.¹⁰ In its Fourth Periodic Report concerning the implementation of its obligations under the International Covenant on Civil and Political Rights, dated December 30, 2011, the US responded by recounting a very selective history of native land occupancy and property rights but failed to heed the recommendations of the HRC.¹¹

The ICCPR provides the fundamental right of self-determination: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." This includes the need to exercise appropriate rights to lands, territories and resources, as the main issue at hand is that of sacred sites, areas and places which are necessarily fixed in terms of geography and location, but which can constitute the beating heart and core aspect of Indigenous identity and self-determination. Indigenous religious practices, spirituality and ties to sacred sites, areas and places cannot be categorized and minimized in the same way as non-Indigenous religions or spirituality.

⁷ See Alternative Report regarding lack of implementation by the United States of Recommendation 29 of the Committee's 2008 Concluding Observations, submitted jointly by the International Indian Treaty Council, Oglala Lakota Nation, Western Shoshone Defense Project and the Indigenous World Association July 8, 2014 Available online at:

http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17613_E.pdf

⁸ Anaya, James Indigenous Peoples in International Law 2nd Edition, 2004: Oxford University Press at page 232

⁹ A/56/18 at para 400

¹⁰ See Human Rights Committee, Concluding Observations, para. 37, United States of America, Eighty-seventh session, 10-28 July 2006, UN Doc. CCPR/C/USA/CO/3, 15 September 2006 Para. 37.

¹¹ See Fourth Periodic Report, United States of America, 22 May 2012 (CCPR/C/USA/4) Paras. 684-689.

Indigenous spirituality, knowledge, cultures, health, wellness, life-ways and identities are all necessary aspects of the full realization of not only economic, social and cultural rights under international law – but also of self-determination.

The adoption of the UN Declaration on the Rights of Indigenous Peoples affirmed that Indigenous Peoples are entitled to the right of self-determination. As this report will demonstrate, actions taken by the US government which impede the ability of Indigenous Peoples to access and protect their sacred areas, effectively prevent the full and meaningful recognition of Indigenous Peoples' right to freely pursue their cultural development.

B) Article 5 (e) (iv) - economic, social and cultural rights, in particular impacts on the right to public health

Cultural development, religious practice, health and subsistence are inextricably linked for Indigenous Peoples. Indigenous Peoples' relationships with traditionally used animals and plants in many cases go beyond use for food and physical wellness. They are a fundamental basis of ceremonies, spiritual relationships with the natural world, lands and waters and are the basis of Indigenous identity as evidenced by their role in creation stories, clan membership and ceremonies for passage into manhood/womanhood, and into and out of life in this world. In the US, centuries of government actions, including Treaty violations, imposed development and laws restricting access and reducing habitats, have served to deprive Indigenous Peoples of this essential part of their wellness and existence.

In 2002, at the First Global Consultation on the Right to Food, Indigenous Peoples affirmed this sacred relationship:

[T]he Right to Food of Indigenous Peoples is a collective right based on our special spiritual relationship with Mother Earth, our lands and territories, environment, and natural resources that provide our traditional nutrition; underscoring that the means of subsistence of Indigenous Peoples nourishes our cultures, languages, social life, worldview, and especially our relationship with Mother Earth; emphasizing that the denial of the Right to Food for Indigenous Peoples not only denies us our physical survival, but also denies us our social organization, our cultures, traditions, languages, spirituality, sovereignty, and total identity; it is a denial of our collective Indigenous existence, ...¹²

By the mid 1800's, settlers under the sponsorship of the US government had decimated the Buffalo, which was the Plains Indians' primary food source and a primary source of spiritual. This not only resulted in the destruction of their independent political life, but also devastation to their primary source of spiritual power, connection and identity. In the words of the White Clay Bison Restoration Project on the Ft. Belknap Reservation in Montana USA,

Without the Buffalo, the independent life of the Indian people could no longer be maintained. The Indian spirit, along with that of the buffalo, suffered an enormous loss.

In other areas of the US, Indigenous Peoples have been severely impacted by developments such as imposed damming and mining that have affected the life cycles of the Salmon:

¹² **DECLARATION OF ATITLÁN, GUATEMALA**, *Indigenous Peoples' Consultation on the Right to Food: A Global Consultation, Atitlán, Sololá, Guatemala, April 17 - 19, 2002.*

“The cycles of our lives and the countless generations of our Peoples are merged with the life cycles of the Salmon. Salmon is our traditional food but it also defines who we are. Our spiritual and cultural existence and the survival of our future generations are based on the survival of the salmon and the exercise of our sacred responsibilities to protect the rivers, oceans, watersheds and eco-systems where they live. The health of the Salmon is one with the spiritual, cultural, and physical health of our Peoples. We declare that birthing places of all life are sacred places, including the great rivers and small streams where the Salmon spawn and the oceans where they live”.¹³

Submissions in this Report from the Venetie and Chickaloon Tribal Governments in Alaska further document this profound and essential cultural and ceremonial relationship for many if not most Indigenous Peoples.

C) Article 5 (e) (vi) – economic, social and cultural rights, in particular the right to equal participation in cultural activities

The Maastricht Principles on Violations of Economic, Social and Cultural Rights¹⁴ state that both individuals and groups can be victims of violations of economic, social and cultural rights and that certain groups suffer disproportionate harm in this respect, including of course Indigenous Peoples, but also including Indigenous women, children, youth, disabled, LGBT, low-income, occupied Indigenous Peoples, non-recognized Tribes and Indigenous Peoples, and internally displaced Indigenous persons. It is clear from the work of the CERD that the consideration of cultural rights is not only the violation of the non-discrimination pillar of the ICERD, but also of the other obligations of the state.

If we examine these obligations through the lens of the UNDRIP, it requires the state to understand the collective and individual aspects of the exercise of cultural rights under this Article of the ICERD:

Although cultural rights have not always been called collective rights in international instruments, it is logically and morally impossible not to recognize the collective elements of cultural rights, when speaking of indigenous peoples. International instruments recognize that individuals belonging to national, ethnic, religious or linguistic minorities and indigenous peoples will enjoy their cultural rights, not only individually, but also with other members of their group.¹⁵

In addition, there are not only “negative” aspects of the rights described under the ICERD – in terms of violations that are willfully exercised against rights holders; there are “positive” aspects of the rights described, as understood under Article 5(e)(vi). The right to equal participation in cultural activities requires positive action on the part of the state. There are examples from another human rights bodies and procedures, such as the Committee on Economic and Social Rights, which considered that providing subsidies for constructing places of worship for various

¹³ Consensus Outcome Document: Pel’ son’ mehl Ney-puy (*“Big Doings with the Salmon”*), Indigenous Peoples' International Gathering to Honor, Protect and Defend the Salmon, June 21st- 23rd, 2013, Hehlkeek 'We-Roy (*Klamath River*), Yurok Nation Territory, Northern California.

¹⁴ E/C.12/2000/13, Parts IV and V

¹⁵ Stamatopolou, Elsa, *Cultural Rights in International Law: Article 27 of the Universal Declaration of Human Rights and Beyond* 2007: Martinus Nijhoff Publishers at page 172-173

religions contributed to the realization of the right to participate in cultural life.¹⁶ In fact, the Special Rapporteur on freedom of religion and belief has called for respect of land-based religions of Indigenous Peoples which are closely linked to their identities.¹⁷

Further and of particular interest under Article 5(e)(vi) of the ICERD, is Article 18 clause 1 of the ICCPR providing that “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” Article 27 of the ICCPR provides a corresponding right for Indigenous Peoples in the US, “in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

Article 27 has been expressly linked to States' duty to guarantee Indigenous Peoples' right to enjoy their cultures and to the protection of their ways of life, closely linked to territory and resource use. The Committee, in its General Comment No. 23 on Article 27 in 1994, made the following observation:

7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of Indigenous Peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.¹⁸

The Inter American Commission on Human Rights and the Inter-American Court have also applied General Comment 23 to interpret the American Convention in a case involving sacred area protection.¹⁹

Article 18 of the ICCPR has been interpreted to provide protection for Native Americans' access to sacred places. In 1998 Mr. Abdelfattah Amor, then Special Rapporteur on Religious Intolerance, and the first Special Procedure to address Native American spiritual concerns in the context of international law, visited the US. In his report, he generally supported the idea of the “development of a coherent and comprehensive framework for interpreting and applying the two

¹⁶ See for example E/1999/22, para. 175 regarding the Netherlands.

¹⁷ See Report from the Visit to the United States by the Special Rapporteur, E/CN.4/1999/Add.1, paras. 52-69

¹⁸ General Comment No. 23 (1994): Article 27 (rights of minorities), 7, CPR/C/21/rev.1/Add.5 (1994) (footnote omitted).

¹⁹ *Case of the Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, 95 (Nov. 28, 2007):*

95. The above analysis [contained in General Comment No. 23, 7] supports an interpretation of Article 21 of the American Convention to the effect of calling for the right of members of Indigenous and tribal communities to freely determine and enjoy their own social, cultural and economic development, which includes the right to enjoy their particular spiritual relationship with the territory they have traditionally used and occupied.

constitutional religion clauses [i.e., freedom of religion and non-establishment clauses].²⁰ In doing so he “wholly endorse[d] the approach of taking into account the traditions of other peoples as reflected in the main United Nations human rights instruments, namely, the International Covenant on Civil and Political Rights (article 18)...”²¹

In his Conclusions and Recommendations, he highlighted his concern regarding freedom of belief of Native Americans, as “a fundamental matter and [which] requires still greater protection.”²² Even with the limitations provided in clause 2 of Article 18, he observed:

*The expression of the belief has to be reconciled with other rights and legitimate concerns, including those of an economic nature, but after the rights and claims of the parties have been duly taken into account, on an equal footing (in accordance with each party's system of values). As far as Native Americans' access to sacred sites is concerned, this is a fundamental right in the sphere of religion, the exercise of which must be guaranteed in accordance with the above- mentioned provisions of international law on the matter.*²³ (Emphasis added.)

Notably, Mr. Amor also concluded that the legislative framework that exists in the US for the protection of Native America Freedom of Religion and belief (applied then as now only to “federally recognized tribes”) was lacking:

*80. As far as legislation is concerned, while noting advances in recent years in the instruments emerging from the legislature and the executive which are designed to protect Native Americans' religion in general (American Indian Religious Freedom Act) and in particular (Native American Graves Protection and Repatriation Act, Executive Order on Indian Sacred Sites, Executive Memorandum on Native American Access to Eagle Feathers), the Special Rapporteur identified weaknesses and gaps which diminish the effectiveness and hinder the application of these legal safeguards. Concerning the American Indian Religious Freedom Act, the Supreme Court has declared that this law was only a policy statement. As for the Executive Order on Indian Sacred Sites, unfortunately, it does not contain an ‘action clause’, leaving the tribes without the needed legal ‘teeth.’ Higher standards or the protection of sacred sites are needed and effective tribal consultation should be ensured.*²⁴

²⁰ Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1998/18, Addendum, Visit to the United States of America, E/CN.4/1999/58/Add.1, 9 December 1998, para. 71

²¹ Ibid para 71

²² Ibid para. 82

²³ Ibid para. 82. Mr. Amor was the second Special Procedure to visit the United States. Agreeing with earlier observations made by Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions (see, E/CN.4/1998/68/Add.3) in his 1997 visit to the United States, Mr. Amor observed the following: : “In general, it appears that international human rights law, including treaties ratified by the United States, is seen as belonging solely to foreign affairs and not to domestic affairs and that domestic law de facto takes precedence over international law.” (Ibid. paras. 28 and 73)

²⁴ Ibid, para. 80

Amor further recommended to the US that “in the legal sphere Native Americans' system of values and traditions should be fully recognized, particularly as regards the concept of collective property rights, inalienability of sacred sites and secrecy with regard to their location.”²⁵

The enclosed submissions from Indigenous Peoples, including Tribal and Traditional governments and communities, demonstrate that Mr. Amor's recommendations have not yet been implemented by the US.

Special Rapporteur on the Rights of Indigenous Peoples James Anaya, in his official country visit to the US in 2012, heard from a number of Indigenous Peoples involved in current struggles to protect their Sacred Areas and Cultural practices.

Professor Anaya in his final report to the UN Human Rights Council in September 2012 noted Amor's report and affirmed that the basic situation of desecration and lack of access for Indigenous Peoples to sacred areas, mainly as a result of extractive activities or other types of imposed development, had not been alleviated in the 13 years that separated their country visits:

*With their loss of land, Indigenous peoples have lost control over places of cultural and religious significance. Particular sites and geographic spaces that are sacred to Indigenous peoples can be found throughout the vast expanse of lands that have passed into government hands. The ability of Indigenous peoples to use and access their sacred places is often curtailed by mining, logging, hydroelectric and other development projects, which are carried out under permits issued by federal or state authorities. In many cases, the very presence of these activities represents a desecration.*²⁶

3. The International Human Rights Framework

Fundamental rights contained in ICERD and other International norms and standards together provide a framework by which the relevant rights for Indigenous Peoples can be understood and interpreted by the Committee. These include the following:

A) Free, Prior and Informed Consent

For Indigenous Peoples, the Right of Free, Prior and Informed Consent (FPIC) is a requirement, prerequisite and manifestation of the exercise of their fundamental right to self-determination as defined in international law. It is also an essential right for the protection and defense of Indigenous Peoples' sacred areas in particular those threatened by imposed development.

With the Adoption of the UNDRIP, as well as other international standards such as General Recommendation XXIII of the UN Committee on the Elimination of Racial Discrimination (CERD) and the 2005 UN General Assembly's Plan of Action for the 2nd International Decade of the World's Indigenous Peoples,²⁷ FPIC is an undeniable operative international human rights framework to which the US is accountable.²⁸

²⁵ Ibid, para. 81

²⁶ Anaya, James, Report of the Special Rapporteur on the Rights of Indigenous Peoples, The situation of Indigenous Peoples in the United States of America 30 August 2012, A/HRC/21/47/Add.1 at page 12.

²⁷ One of the UN General Assembly's five objectives for the *Programme of Action for the Second International Decade of the World's Indigenous People* is “promoting full and effective participation of Indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as

FPIC has also been affirmed in the jurisprudence of the Inter-American Human Rights Commission, the Inter-American Court and by a number of landmark Studies by UN Special Rapporteurs.²⁹

Consent is also a fundamental Treaty Principle, to which the US is obligated and which predates its obligations under UN Conventions and Covenants. It is a foundation of the original relationship between the US and Indian Treaty Nations which the US Constitution recognizes as the “Supreme Law of the Land.” For example, the Ft. Laramie Treaty concluded on April 29th, 1869 with the Great Sioux Nation,³⁰ states in Article 16:

*“The United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn Mountains shall be held and considered to be unceded Indian territory, and also stipulates and agrees that no white person or persons shall be permitted to settle upon or occupy any portion of the same; or **without the consent of the Indians first had and obtained**, to pass through the same;”*(Emphasis added.)

The UNDRIP affirms the Right to FPIC in a number of Articles which are directly relevant to the protection and practice of Indigenous Peoples’ culture and religion. These include specifically Articles 10, 11, 19, 26, 28, 29 and 32. The closely linked right to participate in decision-making in matters which may affect them is also affirmed in Article 18. In addition the Right to Self-Determination (Article 3) and the rights affirmed in Treaties (Article 37) also imply and affirm Consent.

B) The United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”)

The adoption of the UNDRIP by the UN General Assembly on September 13th, 2007, was an historic step forward for Indigenous Peoples. A range of rights recognized by the ICCPR and ICERD are affirmed and further defined by the provisions of the UNDRIP. These include, *inter alia*, the closely related rights of Self Determination (Article 3); the recognition, observance and enforcement of Treaties concluded with States (Article 37); rights to traditional subsistence

Indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent”, GA Res 60/142, UN GAOR, 60th Sess., Supp. No. 49, UN Doc. A/60/49 (2006)

²⁸ International Labor Organization Convention No. 169 on Indigenous and Tribal Peoples, which also affirms consent, is not mentioned here because the US has not yet ratified it

²⁹ Special Rapporteur Erica-Irene A. Daes, in her landmark studies on *Indigenous land rights* (E/CN.4/Sub.2/2001/21), *Indigenous peoples’ intellectual and cultural heritage* (E/CN.4/Sub.2/1993/28), and *Indigenous peoples’ permanent sovereignty over natural resources* (E/CN.4/Sub.2/2004/30 and Add.1) recognized the historic and current violations of Indigenous Peoples’ rights as result of the appropriations of their lands and resources without their Free Prior and Informed consent, and the failure of states to insure that these rights are protected. Madame Daes also emphasized the need to respect free prior and informed consent in any effective redress and resolution as well as in legislative measures to redress violations or correct current policies. For example, in her final recommendations in the *Indigenous land rights* study Madame Daes called upon states to implement “measures to recognize demarcate and protect the lands, territories and resources of Indigenous peoples” E/CN.4/Sub.2/2001/21 paragraph 145 but she also stressed that such legislation “must recognize Indigenous peoples’ traditional practices and law of land tenure, and it must be developed only with the participation and free consent of the Indigenous peoples concerned.” (ibid, paragraph 146, emphasis added).

³⁰ “TREATY WITH THE SIOUX -- BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE-- AND ARAPAHO 15 Stat., 635. Ratified, Feb. 16, 1869. Proclaimed, Feb. 24, 1869.

(Article 20); rights to cultural and traditional knowledge (Article 31); rights and relationship to land, territories and resources (Articles 25 and 26) and the right of Free Prior and Informed Consent in various articles as mentioned above.

The CERD recommended in 2008 that the US use the UNDRIP “as a guide to interpret the State party’s obligations under the [ICERD] Convention relating to Indigenous peoples.”³¹

1) The UNDRIP and Rights to Culture, Religious Traditions and Protection of Sacred Areas

Of particular importance for this submission regarding the rights to and protection of Sacred Areas, cultural and religious practices are the following articles in the UNDRIP:

Article 11

1. Indigenous Peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous Peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

Indigenous Peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 25

Indigenous Peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

These rights apply equally and without distinction to places found within existing reservations or territorial boundaries which the US “recognizes” legally, and those that are located on lands “traditionally owned or otherwise occupied or used” by the Indigenous Peoples in question.³²

³¹ See Concluding Observations of the Committee on the Elimination of Racial Discrimination on the United States of America, Consideration of Reports Submitted by States Parties under Article 9 of the Convention, 8 May 2008 CERD/C/USA/CO/6, at para. 29

³² See, Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya: Extractive industries and Indigenous Peoples, July 1, 2013, para 35 (citing Inter-American Court of Human Rights, *Sawhoyamaya Indigenous Community v. Paraguay*, judgment of 29 March 2006, para. 128):

They are very closely tied to, and reinforced by, Article 26 which affirms the rights of Indigenous Peoples to the lands, territories and resources “which they have traditionally owned, occupied or otherwise used or acquired”.

2) The UNDRIP and the International Right to Self-Determination for Indigenous Peoples

The significance of the UNDRIP’s full and unqualified recognition of Indigenous Peoples as Peoples for the first time in an international human rights standard has far-reaching implications. The range of other instruments which are legally binding upon the US and contain rights which accrue to all Peoples clearly also apply to Indigenous Peoples. Primary among those is the Right to Self-determination, including the right to equal participation in cultural activities, as stated in paragraph 5(e)(vi) of the ICERD.

C) The UN Human Rights Committee and the International Covenant on Civil and Political Rights

In its 2014 review of the US, the Human Rights Committee Concluding Observations address specifically the issue of sacred sites, areas and places:

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

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

This observation and recommendation was one of very few directed at the US respecting Indigenous Peoples. As such, the HRC obviously prioritized this issue as a matter of urgency, couching it firmly in the framework offered by international law, also reviewed in this submission. We hope that the CERD can take this recommendation further, in the sense of the multi-faceted set of rights articulated under Article 5 of the ICERD which allows for multiple views on the scope and content of economic, social and cultural rights to be exercised by Indigenous Peoples as set out in this submission.

It should be recalled that under various sources of international law, Indigenous Peoples have property, cultural and other rights in relation to their traditional territories, even if those rights are not held under a title deed or other form of official recognition.

4. The US Domestic Framework: A History of Legal and Judicial Dispossession and Disenfranchisement

A) The Doctrine of Discovery and Resulting Laws and Policies: Impediments to Enjoyment of Rights under the CERD

Many, if not most, cases of desecration and lack of access to Sacred Places are linked to the history of US dispossession of Indigenous Peoples' lands. In many cases, sacred areas originally within traditional aboriginal lands of Indigenous Peoples are now outside their federally-recognized reservation or territorial boundaries, and therefore considered outside of their legal jurisdiction and control under US law. Many sacred areas are located what is now considered "public" or government-controlled lands, such as national forest areas, national and state parks, wilderness or protected areas, and military reservations. This history of this dispossession is recounted in many of the case submissions in the next section this Report.

In fact, discriminatory doctrines such as the Doctrine of Discovery and its resultant plenary policy are still in full force and effect in the US. Due in large part to its continuing legacy in the US and other countries, the Doctrine of Discovery was the theme of the 11th Session of the UN Permanent Forum on Indigenous Issues.³³ The UNPFII called upon States to "repudiate doctrines that serve as legal and political justification for the dispossession of Indigenous peoples from their lands, their disenfranchisement and the abrogation of their rights."³⁴

Although it has shed its original religious justifications for appropriating Indigenous Peoples' lands on the surface, the Doctrine of Discovery continues as a foundational US legal principle which has been employed many times since the initial articulation in the "Marshall Trilogy" of cases (1823-1832). This includes *Tee-Hi-Ton Indians v. United States*, 348 U.S.272 (1955), wherein the US government argued against compensation for a federal taking of Indian timber lands on the basis of the Doctrine of Discovery found in US law. In 2005, in the case *City of Sherrill v. Oneida Indian Nation of New York*,³⁵ the US Supreme Court cited the doctrine of discovery as law still prevailing in the US: "[u]nder the 'Doctrine of Discovery, fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign — first the discovering European nation and later the original states and the United States.'"³⁶

B) Continuing Legacy Land Dispossession and Treaty Violations: The Allotment Act and the Indian Claims Commission

Land loss for Indigenous Peoples in the US has occurred not only under outright dispossession, as under the Doctrine of Discovery, but through laws enacted under policies of assimilation and genocide.

For example, between 1887 and 1934, under the Dawes Act,³⁷ land owned by Native Peoples in the US decreased from 138 million acres (560,000 km²) in 1887 to 48 million acres

³³ "Doctrine of Discovery: Its continuing impacts on Indigenous Peoples and Redress for Past Conquests (articles 28 and 37 of the UN Declaration on the Rights of Indigenous Peoples)."

³⁴ UNPFII Report on the eleventh session (7-18 May 2012) E/2012/43-E/C.19/2012/13, Recommendation 4.

³⁵ 544 U.S. 197

³⁶ Id. at fn.1, citing *Oneida Indian Nation of N. Y. v. County of Oneida*, [414 U.S. 661, 667](#) (1974) (*Oneida I*).

³⁷ Act of February 8, 1887 (24 Stat. 388, Ch. 119, 25 USCA 331), Acts of Forty Ninth Congress, Second Session, 1887, also known as General Allotment Act.

(190,000 km²) in 1934. Before 1946, a Tribe had to first seek special legislation waiving the US sovereignty to file a land claim in the US courts. Between 1881 and 1945, of 135 cases filed by 67 tribes under special legislation, 103 were dismissed.³⁸ Dissatisfaction with the special legislation approach resulted in the passage of the Indian Claims Commission Act of 1946,³⁹ so that the US could completely and finally dispose of all claims against it. It soon became apparent that the ultimate purpose was to prepare Tribes for complete assimilation and terminate their special status under US law. The Act created the Indian Claims Commission, which had authority to hear and finally determine all Indian claims against the federal government that accrued before August 13, 1946.⁴⁰ Most claims brought before the Commission were based on aboriginal or Indian title as well as Treaty rights.

Despite the implicit recognition of equitable claims, the Commission and the Court of Claims interpreted the Act to limit relief to monetary compensation. Lawyers involved in the process, including those purportedly representing the Tribes and Treaty Nation claimants, proceeded on the assumption that the seizures of Tribal and Treaty lands were constitutional exercises of eminent domain, implying that the Indigenous Peoples tribes had, at most, a right to monetary compensation, not return of their lands even if they had been illegally taken. Some tribes, realizing they could compromise their title, withdrew their claims from the process. As stated by Professor Nell Jessup Newton: “The determination that money damages can be the only remedy for ancient wrongs inevitably shapes the kinds of wrongs that can be remedied. Ironically then, the worst crimes against tribes were the least remediable.”⁴¹

Between 1946 and the termination of the Indian Claims Commission in 1978, 370 claims were filed with the Commission; the US Congress dismissed the Commission with referral of 102 cases to the Court of Claims. Some of these cases remain in litigation.

A just, fair process in the US to address, adjudicate and correct Treaty violations and other land rights abrogations with the full participation and agreement of impacted Indigenous Peoples has never, to date, been established in the US. Cases submitted by the Western Shoshone, and the IITC and Lakota Treaty Council provide examples of specific human rights violations resulting from the Land Claims Commission process.

³⁸ Of the 32 cases in which compensation was awarded, offsets exceeded the award and recovery was zero. Moreover, the US government resisted paying interest on those judgments. In fact, litigation of claims based upon violation of Indian treaties were specifically excluded from the jurisdiction of the Court of Claims, which was created in 1855 to allow citizens to file claims against the United States, and amended in 1963. Act of March 3, 1863, ch. 92, § 9, 12 Stat. 765,767.

³⁹ 25 U.S.C. §§ 70-70v

⁴⁰ The Act (25 U.S.C. § 70a) created five classes of claims, three of which encompassed land claims:

- (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any fact cognizable by a court of equity;
- (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and
- (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity.

⁴¹ Nell Jessup Newton, “Indian Claims in the Courts of the Conqueror” (1992) 41 Am. U.L. Rev. 753 at 784.

C) Lack of Protection for the Human Rights to Freedom of Religion and Culture for Indigenous Peoples in US Jurisprudence

The First Amendment to the Constitution of the US includes the clauses, “Congress shall make no law respecting an establishment of religion” “or prohibiting the free exercise thereof.” In practice, the right to freedom of religion has been denied to Indigenous Peoples, and in the few instances where the US government has tried to accommodate Indigenous Peoples’ religious practices, these actions have been challenged by corporate and private interests.⁴² The US government, as owner/manager of public lands, routinely has acted or has permitted private actions that rendered Indian sacred places and areas inaccessible and unusable for religious ceremonies. By flooding a valley or a canyon, for example, or by building a road through a high alpine area, the US government has made it impossible in practice for Indigenous Peoples to exercise their religions. In each case, however, a federal court held that such destructive government activity was not an improper burden on the Indigenous Peoples’ freedom to exercise their religious beliefs within the guarantees of the First Amendment.⁴³

Special Rapporteur Amor took special note of US jurisprudence in this area in his 1999 report, at. Paragraph 56. He noted in particular the case of *Lyng v. Northwest Indian Cemetery Assoc’n*, 485 U.S. 439 (1988), 451-452, involving a road through a sacred area in California. *Lyng* gave a strong message to Indigenous Peoples in the US that they would not receive the same protections of religious freedom as other citizens, insofar as the “compelling interest” requirement would not be accorded to Indigenous Peoples’ exercise of their religion in public lands. In that case, a proposed US Forest Service road through lands held sacred by many Northern California tribes was allowed, in spite of the Forest Service and admission that the road would “substantially burden” the spiritual practice, destroying the sanctity of the place.

The [US] government does not dispute, and we have no reason to doubt that the logging road building project at issue in this case could have a devastating effect on traditional Indian religious practice. Even if we assume that we should accept the Ninth Circuit’s prediction, according to which the G-O Road will ‘virtually destroy the ...Indians’ ability to practice their religion,’ the Free Exercise Clause only constrains the government from ‘prohibiting religion,’ not taking actions which may make it more difficult to practice religion, but which have no tendency to coerce individuals into acting contrary to their beliefs.⁴⁴

⁴² See, e.g. *Bear Lodge Multiple Use Ass’n v. Babbitt*, 2 F. Supp. 2d 1448, 1449 n.1 (D. Wyo. 1998), aff’d, 175 F.3d 814 (10th Cir. 1999) and *Rayellen Resources, Inc. et al. v. NMCPRC, et. al.*, No.33,497, NM Sup. Ct. In this regard, please see the specific example of the Sacred Area of Mount Taylor: The Co-Submitters express their support for the Joint Alternative Report submitted to the 85th Session of the CERD Review of the United States by the Indigenous World Association and Laguna-Acoma Coalition for a Safe Environment: The Case of Mt. Taylor, a Sacred Cultural Landscape, submitted on July 21, 2014.

⁴³ See, e.g. discussion of these cases in George Lyng, “Ensuring the Full Freedom of Religion on Public Lands: Devils Tower and the Protection of Indian Sacred Sites,” available online at https://www.bc.edu/dam/files/schools/law/lawreviews/journals/bcealr/27_2/04_TXT.htm

⁴⁴ Id. at 452.

The Supreme Court went on to say, “Whatever rights the Indians may have to use the area, however, those rights do not divest the Government of its right to use what is, after all *its* land.”⁴⁵ (Emphasis added).

One commentator described the implicit discrimination and violation of human rights in *Lyng*:

By focusing on the form of impact the challenged government action creates, rather than the impairment of religious exercise, the Court has drawn a line that discriminates against American Indian religious practitioners. As a result of the free exercise analysis developed by the Supreme Court, persons practicing Western religious traditions are protected from even relatively minor burdens on their religious practices, while American Indians are not protected from government actions that essentially destroy entire religious traditions.⁴⁶

In the San Francisco Peaks case discussed in the Navajo Nation et. al. submission to the 85th Session of the CERD⁴⁷, this line of reasoning was repeated by the Ninth Circuit Court of Appeals.⁴⁸

In the US, sacred areas, which are ostensibly protected by a variety of laws and the US Constitution, can be abrogated by lesser interests such as mere programs, policies or overarching goals like economic development. Please see the enclosed submission on San Francisco Peaks, Case L in this Report provides additional information regarding this case.

D) Shortfalls in Current US Laws for the Protection of Indigenous Peoples’ Sacred Areas, Religious Practices and Cultural Property

The US stated the following in the Common Core Document paragraph 204, submitted to the CERD for the purposes of their review at the 85th Session:

Within Indian Country, tribes generally have authority over areas of spiritual and cultural significance, though certain laws of general applicability, such as environmental laws, may apply. Those areas where tribes have jurisdiction are protected by tribal law and custom. In addition, United States law provides numerous protections for the rights of Native Americans as they pertain to areas of spiritual and/or cultural significance that are found on public lands, including protection of tribal sacred sites under the National Historic Preservation Act, protection of sacred and cultural sites under the Archaeological Resources Protection Act, protection of Native American patrimony under the Native American Grave Protection and Repatriation Act, protections under the American Indian Religious Freedom Act, protections under the Religious Land Use and Institutionalized Persons Act, and a number of Executive

⁴⁵ Id.

⁴⁶ Scott Hardt, Comment, “The Sacred Public Lands: Improper Line Drawing in the Supreme Court’s Free Exercise Analysis,” 60 U.Colo.L.Rev. 601, 657 (1989)

⁴⁷ Many of the issues raised in this report are also addressed in the Alternative Report submitted jointly to the 85th session of the CERD submitted jointly by the Navajo Nation, Havasupai Tribe, Navajo Nation Human Rights Commission, and International Indian Treaty Council on July 1, 2014, entitled “ALTERNATIVE REPORT REGARDING THE CONTINUED DESECRATION OF THE SAN FRANCISCO PEAKS, A SACRED AREA”. The Co-submitters of this report express their support for the issues and concerns it raises and also encourage the careful consideration of its recommendations by the CERD members at this session.

⁴⁸ *Navajo Nation v. U.S. Forest Serv.*, 479 F.3d 1024, 1025-26 (9th Cir. 2007).

Orders. In addition, the Secretary of Agriculture has statutory authority to accommodate a range of traditional and cultural purposes of federally recognized tribes on National Forest System lands, *see, e.g.*, 25 U.S.C. 3051 et. seq.⁴⁹

Indigenous Peoples confront a complex set of laws when attempting to assert their basic and inherent human rights to religious freedom, spirituality and culture. Trying to relate multifaceted Indigenous claims respecting sacred areas as well as the various practices, activities, uses and deep spiritual relationships with these areas has proven difficult within the set of rigid institutions and categories of the US legal and political system. The bright line boundaries placed around legal definitions of "religion" and "culture" have proven nearly impossible to cross for Indigenous Peoples. Existing laws are inadequate in addressing and accommodating Indigenous belief, knowledge, spiritual and value systems based on very different world views, understandings and relationships to sacred and spiritual landscapes from that of the dominant society which defines the institutions and writes the laws. This section includes a review of laws specifically enacted to protect Indigenous Peoples' as well as other US laws that Indigenous Peoples have attempted to use, often without success.

The 1978 American Indian Religious Freedom Act (AIRFA), (Pub.L.95-341, 92 Stat. 469, 42 U.S.C. § 1996), reviewed in detail by Special Rapporteur Amor, has proven to be ineffectual as a means of substantive protection for Indigenous Peoples. Suzan Harjo, President of The Morning Star Institute described the manner in which AIRFA was curtailed at its inception in her testimony before the Special Rapporteur on the Rights of Indigenous Peoples in 2012:

[W]hen the U.S. Congress was enacting the American Indian Religious Freedom Act (P.L.95-341, August 11, 1978), the U.S. Agriculture Department and its Forest Service were allowing a logging road to cross a Native ceremonial area in Northern California and did not want AIRFA to create a cause of action for the Native religious practitioners to defend the sacred place. USDA and FS officials approached the Chairman of the House of Representatives Agriculture Committee and asked him to carry their water, which he did by threatening to kill the bill, unless the Interior Committee Chairman stated that AIRFA had no teeth to protect Native sacred sites; and the Interior Chairman made that statement and AIRFA passed and was signed into law.

Ten years later when the resultant litigation reached the U.S. Supreme Court, [the *Lyng* case] it cited that House floor colloquy as evidence that AIRFA was not a cause of action to protect Native American sacred places and declared that the U.S. Constitution's 1st Amendment freedom of religion clauses do not provide a right of action for sacred places; the high court further stated that, 'if Congress wants one, it would have to enact a special statute for that purpose. Congress has not enacted such a statute and no Administration has asked it to do so.'⁵⁰

⁴⁹ Common core document forming part of the reports of States parties, United States of America [30 December 2011] HRI/CORE/USA/2011 (12 September 2012) at page 49

⁵⁰ Statement of Suzan Shown Harjo, President, The Morning Star Institute, on the significance of the United Nations Declaration on the Rights of Indigenous Peoples in the Areas of Language, Culture and Sacred Sites, for the Conference and Consultation with the United Nations Special Rapporteur on the Rights of Indigenous Peoples, university of Arizona Rogers College of Law, Tucson, Arizona, April 27, 2012, p. 1

In response to another well-known case denying religious freedom protection, *Employment Division, Department of Human Resources v. Smith*,⁵¹ Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. §§ 2000bb to 2000bb-4. The Act was supposed to reverse the *Smith* decision, restoring a standard whereby the government cannot burden a person's exercise of religion even if the burden results from a rule of general applicability unless: (1) that burden is "in furtherance of a compelling government interest" and (2) is the "least restrictive" means of furthering that compelling interest. The effectiveness of this Act was also curtailed in a case that made it inapplicable to state actions, so that it applies only to US government actions. In the San Francisco Peaks case it proved ineffectual as well.⁵²

In 1990, in response to years of lobbying and pressure from Indigenous Peoples and their representatives, the US Congress passed the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq. (Nov. 16, 1990). It prohibits trade, transport or sale of Native American human remains and directs federal agencies and museums to take inventory of any Native American or Native Hawaiian remains and, if identifiable, the agency or museum is to return them to the tribal descendants. Enforcement of the Act has been problematic, to say the least. Indigenous Peoples have responded strongly and demanded legal protection against desecration of sacred grounds and human remains. Suzan Harjo's testimony before Special Rapporteur Anaya also addressed the US failings in implementation of NAGPRA:

This sorry record is documented by the U.S. Government Accountability Office in its July 2010 Report, the title of which reveals the GAO's conclusion, "Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act." The GAO Report details federal agencies' high rates of failures to provide inventory notices, consult with tribes or actually repatriate human remains or funerary items. For more than a decade, the national NAGPRA office would not provide inventories and other material to Native Nations, particularly with respect to the "culturally unidentifiable human remains," most of which were identifiable by tribal researchers with access to the relevant documents that were being withheld.

The NAGPRA rule on culturally unidentified human remains and associated funerary objects ...mandates return of human remains, but purports to allow museums and other holding repositories to keep funerary objects associated with those remains, thus separating the deceased person from the items he or she was buried with, which are the property of the deceased in cultures and laws throughout the world. What the NAGPRA office has done is to tell Native Peoples that we can rebury grandma, but her moccasins, clothes, jewelry and other precious items that should be reburied with her now belong to the repositories that received the contraband directly or indirectly from the very thieves who robbed her grave.⁵³

In May 1996, President Clinton signed Executive Order 13007: Indian Sacred Sites. This Executive Order directs federal agencies to protect American Indian sacred sites, including to "accommodate access to and ceremonial use of Indian sacred sites by Indian religious

⁵¹ *Smith*, *supra*.

⁵² See discussion on origins of RFRA in Joshua A. Edwards, *Yellow Snow on Sacred Sites: A Failed Application of the Religious Freedom Restoration Act*, 34 Amer. Ind. L. Rev. 1, pp. 151-169 (2010).

⁵³ *Ibid* at pp.4-5. This rule, adopted on May 12, 2010, is codified at 43 CFR 10.11(c)(4)

practitioners” on federal land. The order also directs agencies to “avoid adversely affecting the physical integrity of such sacred sites” by providing notice of proposed activities that may impact sacred sites identified by a tribe or authorized individual representing an Indigenous religion. However, similar to AIRFA, the US government has limited its applicability and impact. Section 4 of the Order states:

This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies officers, or any person.⁵⁴

(E) “Consultation” Under the US Legal Framework does not include Free, Prior and Informed Consent

It is consistently clear that the range of supposed protections for sacred areas in US law and policy do not afford Indigenous Peoples the right of free prior and informed consent when it comes to activities that threaten their sacred areas and therefore do not ensure their rights under Article 5 of the ICERD.

US limitation relegation of the right to Free Prior and Informed Consent to “a process of consultation” is discussed in section E of this Report. Despite US claims to the contrary, including in its current report to the Committee and response to the Committee’s question re: FPIC in paragraph 27, implementation of Executive Order 13175 on Consultation and Coordination with Tribal Governments has not effectuated the provision of substantive protections to Indigenous Peoples required to ensure effective protection of Sacred Areas. While it mandates agencies to put in place plans and processes for input from federally recognized tribes where they are impacted by policy development, it also contains limitations: the parties are limited to federally recognized tribes and federal agencies (who may or may not have appropriate plans in place); the role of tribes in a consultation process is limited to “timely input,” and consultation is limited to policy development.

(F) Other Relevant US Laws Continue the Pattern

Beyond US legislation directly related to Indigenous Peoples, other laws are designed to preserve and protect historic places and areas in general. While some Indigenous sacred areas and places have been designated as traditional cultural properties under these laws at the US federal and state level, they have consistently been challenged by private interests. Consultation required under these laws has also fallen far short of the standard provided by Free Prior and Informed Consent.

These include the National Historic Preservation Act, the National Environmental Protection Act, the Archaeological Resources Protection Act, the Endangered Species Act, the Clean Water Act, and the Clean Air Act.⁵⁵

The National Historic Preservation Act (NHPA)⁵⁶ provides some measure of protection for areas of historical significance on public lands, and the National Environmental Protection Act

⁵⁴ 61 Fed. Reg. 26,771 (1996).

⁵⁵ The US includes some of these laws in its response to Issue No. 27 presented by the Committee. For the purposes of this Report, only the first two of these laws are discussed in detail. The submissions refer to all of these laws.

⁵⁶ 16 U.S.C. §§ 470 to 470x-6, 1966.

(NEPA)⁵⁷ provides a process for evaluation of potential adverse effects on public lands when a federal undertaking is proposed. NHPA Section 106 requires agencies to consult with potentially affected parties prior to commencing a federal “undertaking” that may affect National Register-eligible property and to consider the undertaking’s effect on such property. With regard to sacred places and areas on public lands, Section 106 requires that federal agencies, including the Bureau of Land Management, consult with Indian tribes and Native Hawaiian organizations prior to granting permits for activities that may affect properties of traditional religious or cultural significance to Indigenous Peoples.⁵⁸

Like NHPA’s Section 106, NEPA requires federal agencies to consult with parties that may be affected by proposed federal projects, except that NEPA applies to the environment rather than historic sites. NEPA requires agencies to evaluate environmental and social impacts, and this assessment includes analysis of “ecological . . . aesthetic, historic, cultural, economic, social, or health [impacts] whether direct, indirect, or cumulative.”⁵⁹

As noted earlier in this Report, a major shortcoming in all of these Acts is that they apply only to federally recognized Tribes, thereby leaving out protection for many Indigenous Peoples in the US. Moreover, Indigenous Peoples and expert commentators have expressed dismay at the lack of protections these two acts in particular offer for Indigenous sacred sites, areas and places:

Critics have therefore denounced NHPA as “mere window dressing for Native Americans trying to save their sacred sites” because it includes “no provisions which Native Americans can use to stop the imminent destruction of their land and sacred sites, or to force the abandonment of a project which threatens significant historic property.”

Likewise, critics point out that NEPA does not require agencies to adopt the least environmentally or culturally harmful alternative. . . . Therefore, although challenges to the sufficiency of an agency’s environmental impact assessment may lead a court to invalidate agency actions all that is required is a thorough reevaluation of environmental impacts before the challenged actions are able to resume.⁶⁰

In a very current example, the US government is in effect forcing consent of Tribal governments for the Keystone XL Pipeline project. Under NHPA, section 106, the consulting agency is responsible to determine what sorts of parties must sign a Programmatic Agreement (PA), and a permit for the project will be subject to any conditions in the PA. If Tribes do not sign on as concurring parties, they will not have standing to object during the time when the PA is carried out. The right to object under this provision is reserved for signatory parties and concurring parties, so Tribes are being forced to sign on as concurring parties or risk losing all rights to address compliance with the PA including the protection of sacred areas and dispute resolution. Yet, by signing on to the PA, they would indicate their consent to its terms, which were developed without their consultation.⁶¹

⁵⁷ 42 U.S.C. §§ 4321–4370 (2006).

⁵⁸ 42 U.S.C. § 470a(d)(6)(B) (2006) and 36 C.F.R. § 800.2(c)(2) (2011).

⁵⁹ 40 C.F.R. § 1508.8 (1977).

⁶⁰ Kinnison, A. J. (2011). Indigenous Consent: Rethinking U.S. Consultation Policies in Light of the U.N. Declaration on the Rights of Indigenous Peoples. *Arizona Law Review*, 1301-1332.

⁶¹ This information was provided by Jennifer Baker, Contributing Attorney

(G) Conclusion: A Way Forward

It may be helpful for the Committee, and the US, to recall that the US has been provided with the elements for a very different framework in order to move past the historic pattern of injustice, disenfranchisement and discrimination which runs through the history of US law and jurisprudence regarding Indigenous Peoples. The UN Rapporteur on the Rights of Indigenous Peoples recommended the following way forward for the US:

Measures of reconciliation and redress should include, inter alia, initiatives to address outstanding claims of treaty violations or non-consensual takings of traditional lands to which Indigenous peoples retain cultural or economic attachment, and to restore or secure Indigenous peoples' capacities to maintain connections with sacred sites, areas and places of cultural or religious significance, in accordance with the United States international human rights commitments.⁶²

5. Proposed Questions and Recommendations for the United States

We reiterate and support the very relevant question already presented to the US by the Committee in its paragraph 27⁶³ and urge the Committee to revisit this question in light of the information presented in this Indigenous Peoples Joint Alternative Report:

1. **Please provide information on measures taken to guarantee the protection of Indigenous Sacred Areas as well as to ensure that Indigenous Peoples are consulted and that their free, prior and informed consent is obtained regarding matters that directly affect their enjoyment of rights under the Convention in areas of spiritual and cultural significance.** (re-statement of conclusion and recommendation 29 of the CERD/C/USA/CO/6)

Finally, we submit the following recommendations to the Committee for consideration in their review and Concluding Observations regarding the United States report:

1. **That the US implement the UN Declaration on the Rights of Indigenous Peoples fully and without qualification, and use it as a guideline for interpretation and implementation of the ICERD regarding Indigenous Peoples sacred areas, places and sites, including those of Indigenous Peoples who are not “federally recognized”;**
2. **That the US bring its national policies and laws into conformity with the provisions of the ICERD and UNDRIP regarding Self-determination, Rights to Lands and Resources, Subsistence and Free Prior and Informed Consent;**
3. **That the US implement laws and policies that fully respect freedom of religious practice, culture and spiritual belief for Indigenous Peoples in accordance with their international human rights obligations, enforce an absolute legal prohibition of the desecration of sacred areas, and provide provisions for their protection;**

⁶² Conclusions and recommendations, Report of the Special Rapporteur on the Rights of Indigenous Peoples, The situation of Indigenous Peoples in the United States of America, 30 August 2012, A/HRC/21/47/Add.1, para 90.

⁶³ List of issues in relation to the fourth periodic report of the United States of America (CCPR/C/USA/4 and Corr. 1), adopted by the Committee at its 107th session (11–28 March 2013), April 29, 2013, para 27.

4. **That the US establish a national-level body for oversight and implementation of the US human rights obligations, including the provisions of International Human Rights Treaties and Declarations, Treaty Body recommendations and Nation-to Nation Treaties with Indigenous Peoples, with the full and effective participation of affected communities, Indigenous Peoples and Nations.**

Section II: Case Submissions (in alphabetical order)

Case A: Amend the American Indian Religious Freedom Act and the Haskell Wetlands Walkers Student Organization

AmendAIRFA.org/Contact: Millicent Pepion, Founding member and Petition Oversight Coordinator/ Admin@AmendAIRFA.org

Issue: To Protect a Sacred Place from future highway construction projects

The sacred Wakarusa Wetlands are located just south of Haskell Indian Nations University's campus in Lawrence, Kansas. Since Haskell's inception, as an off reservation Indian boarding school, the school has accommodated students from over a 100 different Nations each year. In its earliest years Haskell students were forced to forgo their religious practices and languages and to learn the "Christian way". The Wakarusa Wetlands has always served as a spiritual sanctuary for Haskell students to pray, perform ceremonies, practice their languages, harvest traditional medicinal plants, and meditate.

The area was the original homeland of the Kaw Indigenous Nation. The Kaw were forcibly removed to "Indian Country" (modern day Oklahoma) by the US government under the Indian removal Act in the early 1800's. The Haskell students of today also hold this place to be sacred in their honor, as well as in honor of the Indian students who were forced to attend Haskell in the previous two centuries, many whom are still missing from that time period and are believed to be buried in the wetlands.

These wetlands are not just sacred to humans either. There are over 435 different plants and shrubs that have been documented and studied by Haskell students over the years. In addition, over 235 different migratory birds counted that have passed through the wetlands annually since the late 1980's. Finally, because these wetlands are clay based they are able to absorb and store large quantities of water produced by floods when the Kansas River or Wakarusa River spill over. This area is sacred to people, plants, animals, and water systems.

Sadly, in October of 2013 these sacred wetlands will be destroyed in order to make way for a bypass freeway local lawmakers feel is needed to accommodate the growing population. This comes after a twenty year court battle with the City of Lawrence, Douglas County, and the Kansas Department of Transportation put forth by Haskell students in an effort stop the freeway from being built.

This is a spiritual issue. AmendAIRFA.org members believe that Congress needs to address specific legislation to protect sacred places in an inclusive manner for all people whom those places affect. We declare that mutual respect and dignity be given to Native peoples in concerns that affect our home communities. We respectfully request that the U.S. government adhere to our cultural, social, medical, environmental, and spiritual interests of which AmendAIRFA.org members seeks to protect.

Haskell wetlands walkers evolve in to AmendAIRFA.org pioneers

Last year, a group of Haskell students, and students from other universities, walked from the Wakarusa Wetlands to Washington DC to raise awareness about the need to protect the Wakarusa

Wetlands, and all sacred places across Indian Country. Sadly, it was during an election year and no one from Congress would come near this issue. With construction of the freeway underway those same students feel now is a good time to bring this issue back up with Congress to protect future sacred places from being desecrated.

The students have in possession a draft piece of legislation that can amend the American Indian Religious Freedom Act to “provide a right of action for the protection of Native American sacred places.” The spirit of the United Nations Declaration of the Rights of Indigenous Peoples encourages Native communities to stand up for what they believe in. We believe that a balance between Native science and Western science can be achieved for the betterment of all life.

We believe now is the time to amend the American Indian Religious Freedom Act to include the protection of Native American sacred places. Our past may be lost but our future is continuing on and will continue on forever. Holy sites such as the Wakarusa Wetlands should be saved for future generations of all peoples, plants, animals, and water systems to thrive.

Case B: The Sacred Black Hills (Paha Sapa) And The 1868 Ft. Laramie Treaty,

Submission by the Birgil Kills Straight (bkillsstraight@yahoo.com), Lakota Treaty Council, and the International Indian Treaty Council: Bill Means (bill.means73@live.com) and Danika Littlechild (danika@treatycouncil.org)

The sacred meaning and significance of the Black Hills (the Paha Sapa) to the Lakota can best be expressed in the traditional understandings and teachings of the elders. Following is the explanation of their sacredness presented to IITC for this submission by Lakota elder Birgil Kills Straight on August 27th, 2013, on behalf of the Lakota Treaty Council:

"What I have to say about the Black Hills will be easy but I will make it short. This is a part of Lakota Creation Story:

In the beginning, inyan (stone) gave life to wi (sun); we have winyan (woman) and everything that we see on earth today, came from that woman. We call her the "sacred life giver." In the First World it is the Spirit World. The Second World is "Wahutekan Oyate makece" (Root Nation world) where our spirits were in the vegetation when no other form of life existed. In the Third World, we lived as "Wahu Topa oyate" (Four-legged Nations), we were the buffalo people. Today, we live in the Fourth World which is the "Wahu Nupa makece" (Two Legged Nations/world). After this world, we will return to the Fifth World (the Spirit World) where we came from.

When the Black Hills first appeared, it is within the Sun Dance Sea or some say Pierre Sea when water extended from the Arctic to the Gulf of Mexico. We came out of the Black Hills, from a hole in the ground, as Buffalo people in the Third World. We as Lakota originated in the Black Hills. Even among pre-Christian white people, the Black Hills is the entry way into heaven. For these and other reasons, Lakota call the Black Hills Sacred."

The Black Hills (He' Sapa) are the sacred place of Creation for the Lakota. The protection of the Black Hills is an ancient, inherent and sacred responsibility for the Lakota, and was the central component of the Treaty the Lakota Nation made with the US settler government in 1868 known as the Ft. Laramie Treaty. Bills Means, Oglala Lakota, IITC Board member and co-founder

explains that “the Black Hills means as much to the Lakota as the Vatican means to Roman Catholics or Jerusalem means to Christians, Muslims and Jews.”

The sacred Black were confiscated by in response to the discovery of gold only 6 years after they were recognized by the United States ratification of the Fort Laramie Treaty with the Lakota Nation as belonging to the Lakota (Sioux) in perpetuity.

In his Final Report, the Special Rapporteur on Treaties, Agreements and other constructive arrangements between States and Indigenous Peoples Miguel Alfonso Martinez found the following with regard to “obvious and serious violations of the legal obligations undertaken by State parties”.⁶⁴

“Probably the most blatant case in point is the United States federal Government’s taking of the Black Hills (in the present day state of South Dakota) from the Sioux Nation during the final quarter of the nineteenth century.

The lands which included the Black Hills had been reserved for the Indigenous nation under provisions of the 1868 Fort Laramie Treaty. It is worth noting that in the course of the litigation prompted by this action, the Indian Claims Commission declared that “A more ripe and rank case of dishonorable dealing will never, in all probability, be found in our history” and that both the Court of Claims, in 1979, and the Supreme Court of that country decided that the United States Government had unconstitutionally taken the Black Hills in violation of the United States Constitution.

However, United States legislation empowers Congress, as the trustee over Indian lands, to dispose of the said property including its transfer to the United States Government. Since the return of lands improperly taken by the federal Government is not within the province of the courts but falls only within the authority of the Congress, the Supreme Court limited itself to establishing a \$17.5 million award (plus interest) for the Sioux. The Indigenous party, interested not in money but in the recovery of lands possessing a very special spiritual value for the Sioux, has refused to accept the monies, which remain undistributed in the United States Treasury, according to the information available to the Special Rapporteur.”⁶⁵

In 1980, the United States Supreme Court found that the US Government was guilty of “... a pattern of duress ... in starving the Sioux to get them to agree to the sale of the Black Hills...”⁶⁶ also noting the finding of the Court of Claims that “a more ripe and rank case of dishonorable dealing will never, in all probability, be found in the history of our nation.”⁶⁷

Despite clear acknowledgement of illegal wrongdoing by the US Supreme Court over 30 years ago, these illegally-confiscated Treaty lands have not been returned, and gold mining continues in

⁶⁴ Study on treaties, agreements and other constructive arrangements between States and Indigenous populations, Final report by Miguel Alfonso Martínez, Special Rapporteur, UN Doc. E/CN.4/Sub.2/1999/20, 22 June 1999, paragraph 275.

⁶⁵ Id, at para. 276

⁶⁶ *United States v. Sioux Nation*, 207 Ct. Cl. 234 at 241, 518 F.2d 1298 at 1302 (1975), cited in *United States v. Sioux Nation of Indians*, 448 U.S. 371 at 388 (1980).

⁶⁷ Ibid.

the Sacred Black Hills in violation of the Lakota Nations religious practice, cultural rights and Treaty recognized right to Consent.

Case C: Chickaloon Native Village

Contact: Lisa Wade, Council Member and Health & Social Services Director P.O. Box 1105 Chickaloon Village Traditional Council

There are three primary sacred sites presently impacted by coal mining activities of three distinct corporations within our sacred, traditional and customary use areas.⁶⁸

The first is at *Tsidek'etna* 'Grandmother's Place Creek' or Moose Creek and *Chidaq'ashla Bena* 'Lake of Grandmother's Little Place' or Wishbone Hill. The second area is Ts'es *Taci'ilaexde* 'Where Fish Run Among Rocks' or Eska Creek in Sutton. The third area is *Hnu Ch'k'el'ih* 'where we do work' or Castle Mountain in Chickaloon. All of these sacred sites are within the Matanuska River watershed in southcentral Alaska.

Our Tribal identity is intrinsically bound to, and inseparable from, our relationship with the areas impacted by these coal leases including the water, the animals, plants, air, soil and sun. Hunting, fishing, picking berries, and other cultural and traditional activities are not just techniques for surviving the harsh climates of the north, they are part of a spiritual, symbiotic relationship that is our Indigenous way of life. They are ceremony for us and only possible with abundant clean water and healthy habitat for the moose and salmon to thrive. These are sensitive areas where traditional and customary activities have taken place for thousands of years. These include potlatch hunting and gathering, rights of passage, and burial places of our ancestors.

Presently, two of the sacred areas are gated off restricting access to Tribal citizens. Exploration activities, vast roadways are being constructed through berry picking areas and cultural resource areas without consultation or consent of Chickaloon Native Village. Drilling activities are taking place during the prime hunting season even after Riversdale Alaska indicated that they would not be drilling at this crucial time for our hunters. Rites of passage for our young hunters are being delayed or they are being rerouted to less familiar areas putting our young men at risk.

Three coal leases cover more than 20,000 acres of land along the base of the Talkeetna Mountains paralleling the Matanuska River watershed in south central Alaska approximately one hour northeast of Anchorage, Alaska's largest city. These leases are immediately adjacent to numerous residential communities including our low income Tribal housing. Also impacted is our Tribal school, traditional and cultural use hunting and gathering areas, and salmon streams for which the Tribe has invested more than \$1,000,000 and thousands of hours to restore after past coal mining activities. Those past activities extend to the early 1900s, when the discovery of coal brought hundreds of miners with one of the main beneficiaries being the US Navy.⁶⁹

⁶⁸ In April of 2012, Professor James Anaya, the United Nations Special Rapporteur on the Rights of Indigenous Peoples visited Alaska and Chickaloon Native Village to hear testimony from Tribal citizens and Council Members describing these issues. A special Communication to the UN Special Rapporteur on the Rights of Indigenous Peoples was introduced. This Communication provides more detail and should be read along with this submission. See: **Chickaloon Village Tribal Council Communication to the UN Special Rapporteur on the Rights of Indigenous Peoples, Mr. James Anaya, dated April 19, 2012, Found online at: <http://cdn6.iitc.org/wp-content/uploads/12.4.19-CVTC-Coverletter-and-communication-to-SR-Anaya-web2.pdf>**

⁶⁹ *Ibid.*, at pages 1-5

Threats to our way of life are cumulative in nature as approximately 20,000 acres of land in our customary and traditional use areas have been leased for coal exploration and extraction. Damages to this vast land base could be reduced to barren rubble as some previous coal mine sites in the area already demonstrate. These are sensitive areas where traditional and customary activities have taken place for thousands of years. These include potlatch hunting and gathering, rites of passage, and burial places of our ancestors.

Threats to human health are numerous. Already Tribal citizens are experiencing increased rates of stress, depression, and anxiety over access to sacred sites being denied, over the community divide created by coal mine politics created by Usibelli Coal Mine Inc., Riversdale Alaska, and Ranger Alaska, and racial discrimination towards Tribal citizens voicing their concerns.

Another threat to our sacred sites is the failure of the State of Alaska as well as the U.S. Federal government to protect our sovereign rights and interests, and the failure of consultation guaranteed by the U.S. Federal government⁷⁰, based upon the government-to-government relationship, the self-determination of recognized Indian Tribes, and the Trust Relationship.

With Statehood, Alaska received title to large tracts of Chickaloon Native Village traditional lands in the heart of their community. The Alaska Mental Health Trust Authority (AMHTA) received surface and subsurface title to much of these lands, including lands near the Native Villages of Chickaloon and Tyonek, as well as surrounding Wishbone Hill. Although the enabling statute promised not to interfere with pre-existing rights and title, Alaska Native rights including subsistence, water and occupancy have not been given any consideration by the AMHTA or DNR. With the passing of the Alaska Native Claims Settlement Act (ANCSA), Chickaloon Native Village was left completely stripped of aboriginal title from all its traditional lands. Chickaloon Native Village was left to the mercy of the State of Alaska and AMHTA, neither of which even recognized Chickaloon Native Village's existence or right of self-determination.⁷¹

As such, the federal construct of consultation, limited as it is, and the requirements of "good faith consultations," the "government to government relationship" and the "trust relationship" are apparently not required of Alaska – in spite of the fact that Alaska's authority to regulate coal mining is delegated from the federal government. Since Alaska does not recognize the existence of Chickaloon Native Village, it refuses to consult, or exercise even a minimal duty of care. By delegating power to Alaska, the United States federal government has virtually washed its hands of its trust responsibility to Tribes.

Human rights are at serious risk of being diminished by State of Alaska leaders and legislative initiatives. Not only has Governor Parnell challenged laws supporting rural subsistence hunting and fishing, several bills in the House of Representatives and Senate have recently been introduced which will have dire consequences for Alaska's indigenous peoples.

⁷⁰ *Ibid.* at pages 7-9, in reference to the requirement for Free, Prior and Informed Consent under the UN Declaration on the Rights of Indigenous Peoples; Executive Order 13175 (2000) "Consultation and Coordination with Tribal Governments"; Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. Section 470f requiring federal agencies to consult with any Indian Tribe attaching religious or cultural significance to historic properties.

⁷¹ *Ibid.* at pages 1-2

On January 8, 2013, Alaska State Governor Sean Parnell introduced legislation related to the Alaska Land Act.⁷² The legislation was aimed specifically at streamlining State of Alaska Department of Natural Resources (DNR) permitting processes. It was drafted without formal government consultation with the 229 federally recognized Tribal Governments in the State of Alaska. Furthermore, it was designed in such a manner as to reduce public participation in permitting actions and strip away vital existing public rights resulting in potentially devastating impacts to subsistence food sources and cultural and spiritual practices.

Provisions of the legislation grant the Commissioner of the DNR ultimate authority to ignore “any other provision of law” and to grant general permits authorizing any activity on state land that the commissioner decides is “unlikely to result in significant AND irreparable harm to state land or resources.” It neglects to adequately clarify and describe ‘irreparable harm.’ Other provisions narrow how the public can participate in, and appeal, DNR decisions as well as requires that the public bare the burden of showing how they have been “substantially and adversely impacted” by DNR permitting decisions in order to take legal action. Two other pieces of legislation are pending designed which would limit public participation on large industrial projects and require bonds for challenging these projects.

One provision of great concern to Chickaloon is the stripping away of the existing right of Tribes to file for in-stream flow or water reservations. Chickaloon has had an existing application on file with the State of Alaska for Moose Creek since 2009. This application is part of Chickaloon’s ongoing remediation efforts to enhance and protect vital salmon rearing habitat in our traditional and customary use area after previous coal mining operations damaged critical salmon habitat. Should this legislation pass the Senate, our application on file would be thrown out and we would loose the ability to ensure that our sacred salmon and moose have adequate water reserves in which to survive.

House Bill 77 passed the House of Representatives on March 4, 2013; however, it stalled in the senate after Tribal and public opposition. It is presently being considered in the current legislative session. If passed, this legislation is an assault on the human rights of Alaska’s indigenous peoples and our Tribe. The impacts would manifest as resource extraction projects were expedited with limited recourse for protecting our traditional and customary use areas and our people from these projects.

House Bill 77 stalled out during the legislative session due to the overwhelming opposition by federally recognized Tribes in the state of Alaska who produced more than 40 resolutions in opposition to this legislation. Unfortunately, it is very likely that this legislation will be repackaged and introduced again during the next session once again without free prior and informed consent/adequate consultation with Tribal governments.

In June, the State of Alaska approved an air quality permit for Wishbone Hill utilizing outdated monitoring equipment from the 90’s and modeling data from more than 30 miles away from the coal lease area. These practices were called into question by numerous experts and went largely ignored by the State of Alaska. The information including the impacts to access of sacred sites for

⁷² The Alaska State Legislature http://www.legis.state.ak.us/basis/get_bill.asp?bill=HB%20%2077

potlatch hunting and subsistence uses also went ignored by the State of Alaska as presented by Chickaloon Village Traditional Council.

The State of Alaska continues to deny Tribal sovereignty to the extent that they neglect consultation on issues impacting the health and human rights of Tribal citizens. There have been no steps taken by the State of Alaska to remedy these concerns.

Case D: Gwich'in Nation – Native Village of Venetie Tribal Government

Contact: Faith Gemmill, 456 N. Alaska St. Palmer, AK 99645 Tel: 907-750-0188 Email: redoil1@acsalaska.net

Located in the Northeast Corner of Alaska⁷³, is the 1002 area: Coastal Plain of the Arctic National Wildlife Refuge, “*Iizhik Gwats'an Gwandaii Goodlit*,” understood by the Gwich'in Nation as *The Sacred Place Where Life Begins*.

The Gwich'in Nation is composed of fifteen villages strategically located along the migratory route of the Porcupine Caribou Herd in Northeast Alaska and Northwest Canada. The relationship with the Caribou has existed since time began. For the Gwich'in, a long-term decline in the herd's population or a major change in its migration would be devastating. The Porcupine Caribou Herd provides the Gwich'in Nation with their food security and represents 80% of their traditional diet. For thousands of years, the Gwich'in have depended on the animal for Physical, Cultural, Spiritual, Social and Economic means. The Gwich'in creation story tells of a time when animals had human characteristics, then there was a split between the animal and human...humans came to be. In the story it is said that Gwich'in came from the Caribou. There was an agreement between the two, from that time on the Caribou would retain a part of the Gwich'in heart and the Gwich'in would retain a part of the Caribou heart. In a spiritual sense the Gwich'in and Caribou are one, if there is harm to one, the other will also be harmed. Reliance on traditional and customary use (now termed “subsistence”) of the Porcupine Caribou Herd is a matter of survival. Beyond the importance of our basic needs, the caribou is central to our traditional spirituality. Our songs and dances tell of the relationship that we have to the caribou. The caribou is a part of us.

When the herd nears a village on its annual migration to the Coastal Plain, the entire Gwich'in community prepares to harvest food for the year. During the harvest, the Caribou are also central to the social fabric of the Gwich'in. The Gwich'in use their vast store of traditional knowledge and take the opportunity to pass on that knowledge along with Gwich'in cultural values to the younger generation.

This is the time when the life lessons are taught to the younger generation of the Gwich'in people. The women and grandmothers teach the younger women and girls very important traditional skills. The girls are taught the proper names of the animal parts and proper methods of taking care of the meat. They also learn the techniques for tanning the hides for clothing, what part of the animal is used for certain tools, such as needles, hooks, tanning tools and sinew. The elder women tell the younger ones of the family lineage and ties. It is an important time of learning the functions of the women of the tribe.

⁷³ See Special Attachments: Map

The men and grandfathers teach the hunting skills needed: the methods of stalking and taking the animal, the value of sharing what is taken, the names and memory of the hunting lands and lessons of timing. The young are taught to handle the kill with great care and respect, and to give proper thanks to the Creator for the gift. This teaches the young men of their responsibility to the tribe as a provider.

The connection between the Gwich'in and the caribou continues today, as the Porcupine Caribou Herd continues to provide the Gwich'in with basic necessities.

Today, Gwich'in community members continue to rely on the caribou to meet both their subsistence and spiritual needs. The hunting and distribution of caribou meat also enhances their social interaction and cultural expression. Caribou skins are used for winter boots, slippers, purses, bags, and other items of Native dress. Bones continue to be used as tools. Songs, stories, and dances, old and new, reverberate around the caribou further strengthening Gwich'in spiritual ties to the Caribou.

There is also a spiritual belief of the people, the elders stated that the Gwich'in must seek protection of the calving and post calving grounds of the Porcupine Caribou Herd, they must "Do It In A Good Way" and they will be successful. They were also told by the elders that as they go forward protecting The Sacred Place Where Life Begins: 1002 area, Coastal Plain of the Arctic National Wildlife Refuge, they must relay that this fight is for all humanity. If ever the area is opened up for development it will begin a cycle of destruction for all humanity. In essence the Gwich'in struggle is for all life to continue.

In the 1950s, post-war construction and accelerating resource development across Alaska raised concerns about the potential loss of this region's special natural values. In 1952-53, government scientists conducted a comprehensive survey of potential conservation areas in Alaska. Their report, "The Last Great Wilderness," identified the undisturbed northeast corner of Alaska as the best opportunity for protection. Two major consequences followed:

1. In 1957, Secretary of Interior Fred Seaton of the Eisenhower Administration revoked the previous military withdrawal on 20 million acres of the North Slope of Alaska to make it available for commercial oil and gas leasing. This was in addition to the previously established 23 million acre Naval Petroleum Reserve.
2. In 1960, Secretary Seaton designated 8.9 million acres of coastal plain and mountains of northeast Alaska as the Arctic National Wildlife Range to protect its "unique wildlife, wilderness and recreation values."

These two actions laid out a general land use pattern for northern Alaska by setting aside about 43 million acres for multiple land uses including oil and gas development, while the northeastern corner was protected for wildlife and wilderness conservation.

The U.S. House of Representatives passed legislation in 1978 and 1979 designating the entire original Range, including the now contested arctic coastal tundra, as Wilderness. The Senate's version, however, required studies of wildlife and petroleum resources, and the potential impacts of oil and gas development within the northern part of the Range. It postponed the decision to authorize oil and gas development or Wilderness designation. Differences between the House and Senate were not worked out by a conference committee in the usual manner. Instead, following

the 1980 election, the House accepted the Senate bill and President Carter signed Alaska National Interest Lands Conservation Act (ANILCA) into law. ANILCA doubled the size of the Range, renamed it the Arctic National Wildlife Refuge, and designated most of the original Range as Wilderness.

The part of the original Range that was not designated Wilderness was addressed in Section 1002 of ANILCA, and is now referred to as the "1002 Area." Section 1002 outlined additional information that would be needed before Congress could designate the area as Wilderness, or permit oil development. Studies of the 1002 Area included a comprehensive inventory and assessment of the fish and wildlife resources, an analysis of potential impacts of oil and gas exploration and development on those resources, and a delineation of the extent and amount of potential petroleum resources. **In Section 1003 of ANILCA, Congress specifically stated that the "production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the [Refuge] shall be undertaken until authorized by an act of Congress."**

Since then, the 1002 area of the Arctic National Wildlife Refuge has been a hot button issue, highly controversial when a bill comes forward in the House of Representatives or the US Senate. The Gwich'in seek permanent protection of the 1002 area of the Arctic National Wildlife Refuge. This political position was affirmed at the Gwich'in Nintsyaa Gathering in 1988, and re-affirmed at the most recent Gwich'in Gathering in 2012 by resolution:

NOW THEREFORE BE IT RESOLVED: That the United States President and Congress recognize the rights of the Gwich'in People to continue to live our way of life by prohibiting development in the calving and post-calving grounds of the Porcupine Caribou Herd; and

BE IT FURTHER RESOLVED: That the 1002 area of the Arctic National Wildlife Refuge be made Wilderness to protect the sacred birthplace of the caribou.

Every year there is an effort in the State of Alaska or in the US Congress to access the Coastal Plain of the Arctic National Wildlife Refuges by pro-drilling forces. The most recent effort is by Alaska Governor Sean Parnell who on May of 2013 escalated his fight with the Obama administration over potential oil drilling in the Arctic National Wildlife Refuge by formally submitting a plan to conduct seismic research in the region.⁷⁴

No Free Prior and Informed consent has been ensured in the case of the Gwich'in and The Arctic National Wildlife Refuge. As cited above, the laws that govern the land now rest in an act of the United States Congress to either open the area to oil and gas development or protect it permanently as wilderness. The Gwich'in have consistently called upon the US to affirm permanent protection, despite this, there is always new pressure to gain access to the 1002 area of the coastal plain of the Arctic National Wildlife Refuge.

Case E: Gila River – Arizona Freeway (South Mountain Loop 202)

Gila River Alliance for a Clean Environment (GRACE) Submission on the Issue of the Arizona Freeway (South Mountain Loop 202) Through Sacred Mountains that would cause Major and Disparate Cultural Impacts to the Gila River Indian Community (GRIC) Tribal Members of

⁷⁴ See: <http://www.adn.com/2013/05/20/2909179/state-pushes-offer-to-help-pay.html> See also: <http://www.adn.com/2010/12/06/1591148/battle-over-anwr-begins-heating.html>

Arizona and Violate their Rights to Self-Determination, to Maintain their Distinct Cultural Identities and Connections with their Traditional Lands, and their Free Prior and Informed Consent.

As an Akimel O’odham woman, I regard Muhadeg (South Mountain) as a place of spiritual significance to the O’odham tribes. The mountain is central to the O’odham creation story and continues to be a place to hold ceremonies by and for the O’odham people. The mountain is also sacred to us because of the plant life we use for medicinal and ceremonial purposes and also because of the wildlife we hunt to sustain ourselves. The construction of this freeway would greatly harm the wellbeing of the mountain and therefore will bring harm to the O’odham.... Also, as an advocate for my children, I wish to state my opposition to the Loop 202 expansion, aka, the South Mountain Freeway as I see it as a threat to their religious freedoms being that Muhadag is considered our most valued place of worship and must be protected for our future generations.

-Testimony by Renee Jackson of Akimel O’odham

The Gila River Alliance for a Clean Environment⁷⁵ (GRACE) is a grassroots organization of the Akimel O’odham⁷⁶ (River People) and Maricopa⁷⁷ (Pee Posh) Indigenous Peoples of the Gila River Indian Community (GRIC). Founded in 2002, it advocates for the protection of the environment and the sacred and cultural sites of the GRIC and its Peoples. Established in 1859 as the first reservation in part of what later became Arizona in 1912 and located 17 miles south of downtown Phoenix, the GRIC covers 372,000 acres and is the seventh largest federally recognized reservation in Arizona.⁷⁸

Located in the immediate exterior of the north end of the GRIC on city park preservation land,⁷⁹ the Ma Ha Tauk, Gila, and Guadalupe mountain ranges, together popularly known as the South Mountain, “figures prominently in oral traditions of both the Akimel O’Odham (River People) and the Pee Posh (Maricopa).”⁸⁰ The Akimel O’odham believe that South Mountain is where their creator emerged and as a traditional land, it is where burial sites, archeological sites, and shrines are housed. Tribal members use the South Mountain for many activities. South Mountain is where tribal members “pray...fast...prepare...gather...strength.”⁸¹ It is part of “a

⁷⁵ GRACE Contact: Lori Riddle; P.O. Box 11217; Bapchule, AZ 85121; 520-610-3405; contaminatedinaz@yahoo.com.

⁷⁶ The Akimel O’odham are native to central and southern Arizona and are descendants of the Hohokam, whose artifacts have been dated as far back as 10,000 years ago. (The Gila River Indian Community, History: the Gila River, <http://www.gilariver.org/index.php/about-tribe/profile/history> (last visited July 6, 2013)).

⁷⁷ The Maricopa are a Yuman tribal people and started migrating from their lower Colorado River area homes in the mid-1700s. (The Gila River Indian Community, History: the Gila River, <http://www.gilariver.org/index.php/about-tribe/profile/history>).

⁷⁸ ADOT, South Mountain Study Team, *Chapter 2 Gila River Indian Community Coordination* <http://www.azdot.gov/south-mountain-loop-202-docs/eis/chapter2/chapter2.pdf> (last visited July 6, 2013).

⁷⁹ The preservation land is called the South Mountain Park Preserve and it is one of the largest city parks in the U.S.

⁸⁰ Gila River Indian Community Resolution NO. GR-41-07, designating the South Mountain Range (Muhadag, Avikwaxos) as a Sacred Place and Traditional Cultural Property of the Gila River Indian Community.

⁸¹ YouTube, South Mountain Freeway Proposal - Public Comments /Part 2 Dec. 21, 2009, <https://www.youtube.com/watch?v=zGW3LwbaI5Y>

heritage that goes back hundreds and thousands of years.”⁸² Rituals and ceremonies are performed there and tribal traditionalists pick and harvest traditional cultural foods and medicines.

In 2007, the GRIC Tribal Council adopted a tribal resolution affirming that the South Mountain is “a sacred place/traditional cultural property...that...must be kept inviolate.”⁸³ The resolution states the GRIC Community Council “strongly opposes any alteration of the South Mountain Range for any purpose...and any alteration...would be a violation of the cultural and religious beliefs of the Gila River Indian Community and would have a negative cumulative effect on the continuing lifeways of the people of the Gila River Indian Community.”⁸⁴ “Because of its association with cultural practices and beliefs of a living community that (a) are rooted in that community’s history and (b) are important in maintaining the continuing cultural identity of the community,” the South Mountain is a traditional cultural property eligible to be included in the National Register of Historic Places (NRHP)⁸⁵ and with this status, use or alteration would require federal consultation.⁸⁶

However, without ensuring adequate consultation, on April 26, 2013, the Arizona Department of Transportation (ADOT) released a Draft Environmental Impact Study (DEIS)⁸⁷ identifying its proposal and preferred alternative for building a major highway –the South Mountain Loop 202– that would cut and blast through the southwestern edge of South Mountain⁸⁸ and is taking action to complete the proposal and get the project implemented despite being fully aware of and acknowledging the sacredness and spiritual and cultural significance of the mountain.⁸⁹

If this project is implemented, there would be profound negative impacts on the cultural and spiritual well-being of the Indigenous Peoples of the GRIC.

GRACE believes that all people should be able to access, participate and contribute to their cultural life in a continuously developing manner without discrimination. GRACE argues that by funding this project, the United States is discriminating against them as an Indigenous People by approving destruction of GRIC heritage and culture that is central and fundamental to their continued practice and development of GRIC culture. GRACE also argues that the GRIC tribal members’ inherent rights to their cultural and spiritual traditions, and history and philosophy have been violated. It asserts that the United States is in the process of violating the GRIC tribal

⁸² *Id.*

⁸³ Gila River Indian Community Resolution NO. GR-41-07.

⁸⁴ *Id.*

⁸⁵ National Park Service, National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties 1990, available at www.cr.nps.gov/nr/publications/bulletins/nrb38/htm. Tribal lands includes “all lands within the exterior boundaries of any Indian reservation.” (16 U.S.C. § 470w (14)).

⁸⁶ 106 of the NHPA requires that federal agencies having direct or indirect jurisdiction over a proposed “undertaking” are required, before granting a license or permit, to “take into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for inclusion in the National Registry” using a “reasonable and good faith effort.” 16 U.S.C. § 470f.

⁸⁷ ADOT, Loop 202 (South Mountain Freeway) <http://www.azdot.gov/southmountainfreeway/>. The DEIS comment period begin on 4/26/2013 and ended 7/24/2013).

⁸⁸ ADOT, South Mountain Study Team, *South Mountain Freeway Draft EIS Summary*, 13 available at http://www.azdot.gov/Highways/Valley_Freeways/Loop_202/South_Mountain/PDF/FHWA-AZ-EIS/00-SMDEIS-Summary-Chapter.pdf.

⁸⁹ The DEIS states that “the mountains are considered sacred—playing a role in tribal cultures, identities, histories, and oral traditions...Many traditional religious and ceremonial activities continue on the mountains.” (ADOT, South Mountain Study Team, *Summary* at 39.)

members right to self-determine (i.e. right to maintain and strengthen their distinct cultural institutions), right not to be subjected to destruction of their culture; right to protect and develop past and future manifestations of their culture; right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned lands; right to protect and develop their cultural heritage and oral traditions; and right to determine priorities for use of their lands.

GRACE argues that the United States has violated its obligation to consult and cooperate in good faith with the tribal members in order to obtain free and prior informed consent. Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments”, requires proper consultation. The federal government’s consultation requirement is based on the trust relationship that it has with all Tribes. Here, this trust relationship is broken by the federal government not making a reasonable and good faith effort to include the Tribal public in consultation and to ultimately support an unnecessary project that will desecrate sacred land.

The GRIC’s treatment is a telling example of the federal government’s rampant disrespect of Indigenous Peoples’ cultural and religious practices and economic development being prioritized over Indigenous Peoples’ fundamental human rights.

Case F: Havasupai Tribe and Destruction of Sacred Areas by Uranium Mining

Issue: Uranium Mining in Grand Canyon, Submitted by Carletta Tilousi, Havasupai Tribal Member and former Havasupai Tribe Council Member

The Havasupai Tribe is comprised of 776 members and is located at the bottom of the Grand Canyon, in the State of Arizona. The Havasupai Indian Reservation is approximately 188,000 acres and its surrounding lands and waters, many of which are now located on federal lands in and around the Grand Canyon National Park, are of immense cultural, religious, spiritual and historic importance to the Havasupai Tribe. However, due to dispossession of many of their aboriginal lands, myriad places, plants, and animals that possess cultural, religious, spiritual and historic importance for the Havasupai Tribe are situated on US federal public lands. This includes sacred sites, burial grounds, and locations of religious practices. Given this situation, the Tribe relies upon the federal and state governments’ responsible management and protection of these lands. At present, these lands and sacred areas are under threat of further destruction from extraction of uranium.

In 1986, the Arizona Department of Environmental Quality (“ADEQ”) approved the issuance of several air quality and water quality draft permits for three uranium mines in Northern Arizona: Canyon Mine, the EZ Mine, Pinenut Mine, and also a Water Discharge Authorization Permit for EZ Mine. Energy Fuels, Inc., a Canadian corporation, owns these mines. The ADEQ failed to consult with Havasupai tribe and its tribal members before ADEQ made a decision to the issuance of the permits.

Formal ADEQ public hearings were held to receive public comments in Fredonia and Flagstaff, Arizona, which are both at least two-days travel (one way) from the Havasupai Reservation, in December 2010 and January 2011. Havasupai Tribe leadership attended a hearing in Flagstaff in early January and provided testimony opposing the issuance of permits, explaining that the Tribe strongly opposed the issuance of the permits due to the adverse impact uranium mining would have on air and water quality, tribal health and sacred sites located within close proximity to the

mining area. The Havasupai Tribe and tribal members continue to oppose the issuance of any of the above-referenced permits regarding air and water quality.

In particular, the Havasupai Tribe relies upon the water quality of Havasu Creek and its surrounding springs, which are connected to the Redwall-Muav aquifer, to sustain the physical, cultural and religious needs of its people. As such, any uranium contamination of the air and/or ground and surface waters would adversely and disproportionately affect the health, cultural integrity and religious practices of the Havasupai Tribe and other surrounding Native American Tribes who rely upon the air and water quality of the nearby springs for drinking water and for numerous ceremonial practices.

The Havasupai people have sacred sites, burial grounds, and religious practices in and around the proposed mining areas. In particular, Red Butte has recently been designated as eligible for listing as a Traditional Cultural Property by the federal government under the National Historic Preservation Act, and designated as a Traditional Cultural Property under Arizona State law. Canyon Mine is situated directly on this Traditional Cultural Property. Nevertheless, the ADEQ has failed to take this into account in its permitting process. The issuance of air and water quality permits that would allow mining in this area, and the areas surrounding EZ Mine and Pinenut Mine, would disproportionately, directly and adversely affect the Tribe in its religious, spiritual and cultural practices. Because the Tribe will not disclose the exact locations of its burial grounds, sacred sites or locations of religious practices, it has been deprived of its rights to freedom of religious practice and religious protection. Special Rapporteur Amor documented this lack of understanding and consequent discriminatory treatment in his report on the US:

60. In general, the charge is often made that legislation derived from a western legal system is incapable of comprehending Native American values and traditions. Native Americans are being asked to "prove their religion", and in particular the religious significance of sites, most of which are situated on land belonging to the federal, state or local Governments and some on private land; but the need to provide "proof" conflicts with certain values, because the sacred site has to remain secret; furthermore, to reveal its location would allow the authorities to interfere in matters of religion.⁹⁰

Uranium extraction is an incredibly invasive activity that has a multitude of effects on the surrounding environment. In 1986 the Environmental Impact Statement (EIS) concluded that "uranium mining would have no significant cultural or religious impacts to sacred places in around Red Butte and Canyon mine." The Havasupai Tribe maintains that the EIS did not effectively and meaningfully evaluate the effects of uranium mining on air and water quality. Significant climatic and geological events such as the occurrence of earthquakes, increased winds, and several serious flooding events have impacted both the air and waters surrounding Canyon Mine and Red Butte. In particular, the Village at Supai has been impacted by increased quantities of silt and waste that have descended from the top of the Canyon to the bottom due to the increased flooding. These major events have not been taken into account in determining whether to issue any of the above-mentioned permits, in particular, the Canyon Mine permit.

⁹⁰ Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1998/18, Addendum, Visit to the United States of America, E/CN.4/1999/58/Add.1, 9 December 1998.

In the case of Canyon Mine, the Havasupai's watershed is directly at issue. The Redwall-Muav aquifer is situated below the Canyon Mine. It is that aquifer that the Tribe relies upon to sustain the physical, cultural, spiritual and religious wellbeing of the Havasupai. The Havasupai rely on Havasu Creek for drinking water, agricultural uses and ceremonial purposes. If the Tribe's water supply is contaminated from the uranium mining, the Tribe has no other water supply upon which to rely.

Since the EIS was completed over 25 years ago, statutory and regulatory changes in the Clean Air Act and Water Act have been enacted; they relate specifically to radiation, radon, particulate matter and dust emissions—all of which were not taken into consideration in 1986. The Havasupai Tribe has requested that a new Environmental Impact Statement ("EIS") for Canyon Mine be prepared. This is allowed under federal law and regulations, especially where there is new information that would significantly alter the initial decision.

Additionally, the US Forest Service's 1986 approvals did not analyze the Canyon Mine's potential effects to Red Butte as a historic property under the NHPA. The Forest Service recently commenced consultation with the Havasupai Tribe concerning the Canyon Mine's impacts to Red Butte, and claims that it intends to continue consultation. The Forest Service is refusing to undertake and complete a NHPA Section 106 Process relating to adverse impacts to the Red Butte TCP, including consulting with the Tribe for the purposes of developing a Memorandum of Agreement, prior to allowing Canyon Mine to restart mining operations, as required under NHPA and its regulations.⁹¹ In failing to do so, the Havasupai Tribe is being denied its right to free, prior and informed consent, among other violations.

Case G: Indigenous girls, Self-determination, Religious Freedom and FPIC

Contact: Margo Tamez, Lipan Apache Women Defense - Email: margo.tamez@ubc.ca

This case raises the emerging issue/case of adolescent Ndé girls who have been striving to receive and to practice their Ndé cultural and spiritual traditions through the Isanaklesh Gotal ceremony. The ceremony involves an 8-day process guided by a Nadeklesh, her Godmother, who is a respected traditional knowledge keeper. Pervasive barriers exist in the traditional and customary homelands of the Ndé ('Lipan Apache'), currently under the jurisdictional control of Texas and the United States.

Militarization, the lack of FPIC, the negation of Treaties, Convenios, Crown grants, and a deep pattern of non-recognition are interlocking forces which operate together to maintain racism and discrimination against Indigenous peoples locally and regionally. When the Ndé act collectively to practice sacred traditions, acts which reaffirm Ndé world views, history, philosophies, and continued existence, these then act as serious barriers to the exercise and enactment of collective spiritual/religious observances of the Isanaklesh Gotal ceremony.

The Ndé are a historical Tribe of North America who are experiencing distinctly different treatment by Texas and the United States with regard to recognition, Free Prior and Informed

⁹¹ 16 U.S.C. § 470f, 36 C.F.R. § 800.13(b)(1).

Consent, access to justice, access to juridical personality, and accountability for the serious structural barriers imposed on the exercise of religious expression by Ndé female youth.

The racism and discrimination experienced by a certain Ndé female youth's quest to receive her Isanaklesh Gotal ceremony raises concerns about the situation of U.S. unrecognized Indigenous Peoples, the State's passivity with regard to Ndé Aboriginal Title existing in Texas, both of which are well understood and accepted in international law as inherently tied to Indigenous peoples' right to self-determination with lands and territories and Indigenous peoples' rights to repair, recovery, recuperate and to revitalize Indigenous knowledge systems.

By foregrounding this unique situation of an Ndé female teen, her situation alerts the members of the CERD about severe structural, social, and political barriers which prevent Indigenous peoples from exercising inherent rights to Indigenous religious, cultural, and land-based expressive practices in customary and traditional homelands.

This situation points to negative indicators for the collective exercise of rights by current-day Ndé adolescent girls. However, this is especially concerning for Ndé girls with maternal ties to the militarized lands in the Texas-Mexico region, and specifically those whose family members are actively defending traditional lands from the state's dispossession, vis-à-vis the border wall and related policies. The racial and gender dimensions of discrimination are imposing a significant burden upon Ndé female teens, preventing them from practicing land-based, culturally, and spiritually-based Indigenous identity, which is a violation against Indigenous self-determination, and a serious concern.

Ndé girls choose to practice the traditional Isánáklesh Gotal ceremony, a foundational initiation held sacred to Ndé peoples. This is an urgent, time sensitive matter especially as officials in Texas and the U.S. have publically iterated plans to militarize a "seamless border" in the Texas-Mexico region.⁹²

This case suggests that the rhetoric, discourses, legislation, and implementation of the U.S. war on terror, war on drugs, and anti- 'Mexicans' and 'Mexico' immigration has a strong tendency to obscure the severe impacts of these types of policies on Indigenous peoples, especially Indigenous female youth.

Further, the patterns of post-9/11 militarization and low intensity conflict methods deployed in the Texas-Mexico region now reveal that Indigenous girls and women experience serious discrimination in the exercise of spiritual-religious beliefs. This situation is giving voice to an extremely marginalized sector of Indigenous peoples – girls—and their true experiences on the ground alongside their families who attempt to enact traditional interactions and relationships with their customary homeland. This case gives insight into the forced, destructive and

⁹² The CERD is well familiar with this situation under the special Early Warning/Urgent Action procedure submitted by Ariel Dulitzky, Director, Human Rights Clinic, School of Law, The University of Texas at Austin and Professor Margo Tamez at the University of British Columbia. In addition, an Shadow Report was submitted for the 85th Session of the CERD on "The Situation at the Texas Mexico Border and the Racially Discriminatory Impact of the Boarder Wall on the Lipan Apache Peoples in Texas", submitted by Human Rights Clinic at the University of Texas at Austin School of Law, the Lipan Apache Band of Texas and the Lipan Apache Women Defense, Margo Tamez University of British Columbia (February 2014).

assimilative impacts of militarization on Indigenous female youth in the Texas-Mexico region, a place heavily privatized by state and corporations, and bifurcated by international borders. However, in this case, Ndé peoples never ceded nor extinguished their inherent rights to their lands and hold numerous legal instruments as evidence of a robust history of territorial defense and intimate relationships with a homeland.

Discrimination is compounded by the inter-locking dynamics of Indigenous peoples' land defense in the region. The prominent roles of Ndé women and male relatives in land defense also amplifies the vulnerability of a teen girl within a larger nexus of local, regional, and national racism which targets Indigenous peoples in the front lines of the defense against current-day forms of repression and destruction.

The structural constraints imposed on the Ndé obstruct the need to celebrate and transmit a crucial component of the oral tradition which connects present-day realities to creation stories, history, food systems, ecology, and kinship relations in Kónitsaqáí gokíyaa—Ndé customary and traditional lands. The denial of recognition, respect, and accountability by the state in this situation is having serious impacts on the transmission of Indigenous knowledge between Ndé generations—specifically between elder women and female teens.

The structural impediments to knowledge transfer from the Nadekleshen (Elder Female Sponsor) to Ndé girls, reduces the girls' capacity to disseminate crucial ceremonial knowledge to her own future generations, which is a critical and urgent issue confronting Ndé survival of U.S. and Texas programs of 'progress' in the region. The case of an adolescent Ndé girl seeking to receive the Isánáklesh Gotal in the traditions of Ndé sacred knowledge customs, is a serious concern.

Context:

In the aftermath of 9/11, the war on terror, the U.S. border wall construction, the humanitarian crisis spawned by failed democracy and run-away corruption in the U.S.-Mexico border region, and the escalating crisis stemming from discriminatory legislations enacted against Mexican and Indigenous migrants, it is the Ndé peoples who have consistently raised a collective voice to the international arena and have been raising awareness about the impacts of structured violence on Indigenous peoples from the Texas-Mexico region.

Since 2006, when the United States passed legislation to construct the border wall, Ndé peoples have been attempting to exercise the right to self-determination on fundamental levels at the country level.

The state negates the juridical personality of Ndé, even though the U.S. has an extensive record of treaty-making with Ndé leaders.

The state's construction of walls, edifices and other architectural and technological systems across Indigenous lands are occurring without the Indigenous Peoples' free, prior and informed consent. The containment and the process of decision-making by powerful elites in Texas and the U.S. are working in a manner which impedes, intimidates, reduces and often completely dissolves Indigenous Peoples' capacity to practice sacred ceremonial traditions. Indigenous spiritual practices holistically impart Indigenous world-views, philosophies, epistemologies, science, and grounding to Indigenous youth, who are at tremendous risk for assimilation and loss

of culture and at risk for many related psychological, mental, physical, and emotional illnesses related to inter-generational colonization and associated trauma.

The revitalization of the Isanaklesh Gotal ceremony occurring in the Ndé society is crucial to rebuilding Ndé self-governance and self-reliance. The female youth, adults, and elders are working against incredible obstacles to recuperate and to strengthen Ndé knowledge systems, which develop holism through relationships of balance, sustainability, and respect. In order to reconstruct and rebuild Ndé society, and to transition to a decolonization and justice-focused paradigm, it is crucial for Ndé to strengthen Indigenous knowledge systems, memory and significant cultural, historical and educational pedagogies that are core to the Isanaklesh Gotal ceremony, also known as the ‘Apache Puberty ceremony.’ In a region experiencing significant erosion of rule of law and democracy, the CERD must determine the extent to which the Ndé are obstructed from being Ndé, as this is evident in the case of a young female Ndé seeking her rite of passage ceremony.

The Ndé have experienced racism, discrimination, and serious patterns of genocide in Texas and the United States, however the militarization of the Texas-Mexico region takes this history to a new extreme. Physical mega-wall structures are a built world reflecting a historical pattern of racism, genocide, and punitive policies toward Ndé and Ndé sites of memory. How do Ndé exercise the right to be Ndé? Militarization, as an overt policy of state denial and non-acknowledgement of Ndé, also naturalizes the broader domestic policy of legislated erasure of legal claims to Aboriginal Title and obfuscates the state’s responsibility to alter its dangerous course.

This particular case briefly relates an Ndé adolescent girl’s struggle to achieve/receive her ceremonial rite of passage, Isánáklésh Gotal, the transformative ritual which structures the celebratory change from youth to womanhood. This section briefly summarizes the barriers the Ndé are facing to ensure this ceremony occurs for Ndé girls, though illustrates the layers of procedural erasures and administrative exclusions that impede Ndé from exercising fundamental rights to religion, identity, and membership in the Apache Nation. There is a critical importance and urgency, all Apache Peoples know and place this ceremony as a crucial act of being connected to ancestral and ongoing forms of intimate bonding “in the space between earth and sky.”

Being obstructed from holding her ceremony in her maternal territory, and from participating in the processes of being inducted into the larger Apache world, and being held in high regard as “an exemplary Apache woman” the state’s obstructions to the continuance of the Ndé peoples existence and being in the Texas-Mexico border takes on particularly painful tones as is in limbo from being a link in the continuance of the Ndé origin story, oral history and knowledge for her clan and future generations.

Questions:

The issue here is, how does an Ndé adolescent girl, currently preparing to undergo the most important ceremony of her life as an Apache girl, undertake gaining access to the sacred

watershed, land, elements, and family members—in the shadow of the border—a highly militarized zone? Ndé are forbidden from participating in acts of aggression and hostility, or other forms of conflict, when preparing for ceremony, yet to defend their homeland in Texas and the U.S., the state's non-recognition of the Ndé's inherent self-determination and sovereignty forces an adversarial, combative and eminently violent process.

How do the Ndé exercise self-determination as a highly vulnerable group, in the racist climate of south Texas—and gain the ability to access customary lands which the state literally has control over, and refuses to acknowledge the Ndé juridical existence and inherent rights to those lands? How does an Ndé girl maintain her will, when her maternal grandmother's lands are currently bifurcated by the U.S. border wall—and her grandmother is a litigant against the authoritarian state? —How can the CERD begin to implement the structuring of transitional justice with these mitigating factors which put Indigenous Peoples in a stand-off with the state? Ndé girls' future capacity to disseminate the traditional ceremony to her future generations is severely threatened by her and her Clan's in-access to sacred lands to which her Nadekleshen and traditional history are inextricably linked

Multiple borders and Ndé rights to exist across and beyond international borders:

There is the example of Ch'eekeé 'Ikék 'ejagał, an Ndé girl currently living in Canada as a result of economic forces which pushed her family to migrate north for economic employment. Yet another Euro-American physical and cultural border puts a burden upon her from accessing to traditional knowledge and the exercise of being Ndé.

On the one hand, the lands of Ch'eekeé 'Ikék 'ejagał's maternal grandmother are inaccessible and heavily militarized by the wall, drones, boots on the ground, Border Patrol. The government's plans to build more layers of the border wall across her maternal customary lands is part of the state's plan to operationalize immigrant 'reform' laws. On the other hand, the Lipan Apache Band of Texas, seeking to address the bureaucratic administrative maze of Texas and the United States to gain access to Ndé sacred maternal lands in the Lower Rio Grande region, has as of this writing been refused "permission" to access customary and traditional homelands due to a "ban on fire."

To perform the ceremony on lands identified as historically and culturally significant to Lipan Apaches/Ndé, and specifically relevant to the Cúelcahén Ndé (Tall Grass People Clan). Ch'eekeé 'Ikék 'ejagał is a clan member of the Cúelcahén and has rights to these lands traditionally. However, the Lipan Apache Band of Texas is being impeded from exercising their rights to perform the ceremony for Ch'eekeé 'Ikék 'ejagał, and to exercise self-determination in customary lands (currently under jurisdiction of Texas State Parks). The ceremony requires the use of fire for eight days, and the State of Texas is neglecting to support Ndé Peoples' needs for a sacred fire for the ceremony. While there is a fire ban in effect due to the drought, Daniel Castro reports that an official of the state indicated that "private property owners next door to the sacred site, under the state's jurisdiction, are allowed to make controlled and contained fires. That is discrimination."

Responsibility and Accountability:

The Lipan Apache Band of Texas position is that the USA has a responsibility to uphold the UN ICERD, and to promote the implementation of access to sacred and spiritual sites of significance, which are inherently still the property of the Ndé and were never surrendered to the state voluntarily.

This is a crucial case to examine the access to justice for full enjoyment of Ndé to exercise:

- Indigenous continuity through the transmission of Indigenous women's knowledge;
- the crucial protection of Indigenous oral history and memory;
- the vital preservation of Ndé identity through collective and shared communal celebration of retracing, recovering, and reclaiming Ndé origin stories;
- Ndé histories of women as dynamic shapers of cultural adaptation and change in modernity and industrialization;
- Ndé philosophies under significant periods of repression;
- transmission of self-determination and being to another generation of Ndé women.

The current discriminatory climate in southern Texas and the Texas-Mexico border region—emboldened by non-recognition of Ndé by the USA and the State of Texas— impedes the enactment of this crucial ceremony for Ch'eekeé 'Ikék 'ejagał, her Clan, and her Nadekleshen, her sponsor, an elder of 84 years of age.

This has deep and broad implications and applications for Ndé girls, families, and clans—many of whom experience displacement, urbanization, and forced economic migration away from Kónitsaąí gokiyaa—in the United States, Mexico and now... Canada.

Xenophobia, anti-Indigenous, anti-Mexican, and anti-Latino discourses, rhetoric, and policy have exacerbated the barriers which exist for Ch'eekeé 'Ikék 'ejagał, her Nadekleshen, and the Cúelcahén Ndé and Goschich Hada'didla' Ndé clans.

The Ndé are actively seeking the decisive action, support and critical insights of the ICERD to help them conduct the Isánáklesh ceremony in the maternal lands which are undergoing serious threat and dramatic change in the post 9/11 period.

For Ch'eekeé 'Ikék 'ejagał, and the Ndé peoples, the inherent right to conduct this crucial rite of passage in Kónitsaąí gokiyaa, in the literal lands of her mother, grandmothers, and maternal grandmothers—which are currently divided by the border wall and a heavily militarized climate—has been a three-year odyssey, with many ruptures in the process due to barriers that at times overwhelm the Ndé capacity to be more than merely 'survivors' in a perpetual state of limbo.

Ch'eekeé 'Ikék 'ejagał and her Nadekleshen are constrained by the need to conduct ceremonial time in accordance with the relevant Ndé cultural protocols; however, many of these traditional protocols are impeded by discriminatory barriers to Ndé which exist at many levels of Texas and U.S. society—in state schools, in religious organizations, in civic procedures, in state governance, and in the federal government's one-size-fits all approach to federally unrecognized Tribes—negation. The USA's negation of Ndé self-determination, Treaties and other relevant Mechanisms connected to inherent Ndé Aboriginal Title. Ch'eekeé 'Ikék 'ejagał's situation

requires the urgent attention of the CERD in order to interrogate the structural barriers which impede her from receiving the traditional ceremony in her maternal homeland.

The United States of America, a powerful and wealthy state with an entrenched history of settler colonialism, is allowing pervasive and gross violations against Ndé peoples, Ndé land Title holders, Ndé extended clans, and Ch'eekeé 'Ikék 'ejagał. Gross neglect is an understatement for the state's seemingly willful and painful denial of ICERD's most fundamental principles.

Conclusion:

This report has highlighted Ndé peoples' background, histories, current challenges, ongoing human rights cases, and an emerging case, all which reveal nuanced and profound dimensions of the USA's non-compliance with the principles and tenets of the International Covenant on the Elimination of Racism and Discrimination as it applies to Indigenous Peoples.

Without the state's recognition of Ndé and being held to account to a long history of Ndé Treaties, Convenios, Crown grants, and other agreements related to inherent Ndé sovereignty and self-determination, the Ndé have serious misgivings and doubts about the U.S. ratification of the ICERD. Ratification without contemporary action, historical clarification, redress, truth, and transitional justice has no positive effect for Indigenous peoples in the Texas-Mexico region.

In other words, although the ICERD is binding upon the U.S. in international law, on the ground—in Texas and in the U.S.—in reality, the pervasive racism which is normed in the U.S. mainstream dictates a rigid resistance toward meaningful integration of the ICERD into domestic law and policy. The state fails to shape domestic laws and policy-making to the minimum human rights standards as articulated in the Convention.

In a word, the U.S. is non-compliant, and has not been held to account to en masse violations against Ndé Peoples. This domestic policy of denial and abuse has opened the doors for other Peoples to violate Ndé rights and inherent self-determination. Cumulative effects of the racist and discriminatory policies enacted through militarization, globalization, industrialization, extractive capitalism, and dispossession are stripping away the future for Ndé teen girls who are aspiring to be exemplary Apache women—and preventing them from becoming the core leaders who will address the Ndé future in a thoughtful, productive and meaningful way.

Case H: Muscogee (Creek) Nation and Hickory Ground Tribal Town

Issue: The United States Government's Failure to protect Hickory Ground Sacred Area

Contact: Brendan Lutwick, Attorney brendan@lutwick.com

On behalf of the Muscogee (Creek) Nation ("MCN"), a federally-recognized Indian tribe, please accept this request to call upon the United States to protect the religious and cultural rights of the MCN and sacred land known as "Hickory Ground," a property listed on the National Register of Historic Places. Hickory Ground includes a ceremonial ground, burial sites and individual Muscogee graves. Hickory Ground was obtained with federal funds under the pretense of historic preservation. However, to date, 57 known sets of human remains and sacred funerary objects have been allowed by the US to be intentionally exhumed in violation of US federal law and international human rights standards including Article 5 of the ICERD.

The MCN historically occupied millions of acres of territory throughout the Southeastern United States, including the present-day US state of Alabama. The Creek Nation was a confederacy consisting of semi-autonomous “tribal towns,” each led by a traditional chief called a “Mekko.” Each town possessed a ceremonial ground where a sacred fire was kept. The traditional Creek religion was practiced and the deceased were buried with sacred funerary objects. Hickory Ground Tribal Town (“*Oce Vpofa*” in the Muscogee language) is a tribal town that formerly was located at present-day Wetumpka, Alabama, which also served as the last capital of the National Council of the Creek Nation prior to their forced removal by the United States (the infamous “trail of tears”) to “Indian Territory” (present-day Oklahoma) in the 1830s.

The Creek tribal towns, including *Oce Vpofa*, continue to exist as distinct tribal entities within the MCN, carrying on the traditions of their ancestors. Tribal town affiliation is matrilineal; thus the members of *Oce Vpofa* in Oklahoma are the lineal descendants of the ancestors buried at the historic Hickory Ground in Wetumpka, Alabama.

Hickory Ground was listed as an “historic property” on the National Register of Historic Places under the National Historic Preservation Act in 1980, based on its significance as the last capital of the Creek Nation prior to removal and undisturbed archeological remains located there. In 1980, the Alabama Historic Commission nomination included the following:

Hickory Ground or *Oce Vpofa* is primarily significant as the last capital (1802-1814) of the National Council of the Creek Nation in the Creek’s original homeland.... It is one of the few Creek Indian sites known to have been inhabited as late as 1832 ... and one of the few remaining such sites which has not been extensively disturbed or destroyed.... The site is prime development property. The present owner has delayed plans to sell to developers while a historic preservation discretionary fund application for acquisition by the Creek Nation is being prepared.”

However the Creek Nation’s plans did not materialize and this sacred area was given to another group by the US government with a false promise to the MCN that this sacred ground would be preserved and protected. A neighboring tribe was federally recognized in 1984, and the US Secretary of the Interior accepted 8 parcels of land into trust for the new tribe. Seven of these parcels were in an area where members of the newly-recognized tribe were located; the eighth parcel, Hickory Ground, was located over 100 miles away, and taken into trust by the US for the new tribe even though there was no significant population of that tribe in that immediate area.

The new tribe applied for a federal historic preservation grant to acquire the property, which was awarded by the U.S. Dept. of Interior to fund the acquisition. In its applications, the new tribe promised to preserve the land for the benefit of all Creek Indians, including “the existing Hickory Ground tribal town in Oklahoma,” and to protect the remains “without excavation.”

Members of the MCN who are lineal descendants of the exhumed ancestors requested the remains to be reinterred at the ceremonial ground in accordance with Muscogee spiritual beliefs. Disregarding the rights of MCN and lineal descendants, the US made a series of policy and legal decisions that failed to protect and preserve the sacred area. In April 2012, the burials were relocated in order to construct a \$246 million casino resort on the sacred burial ground.

In 1999, the National Park Service entered into an agreement with the new tribe granting them authority over Hickory Ground without consulting with or obtaining the consent of the MCN; this

made MCN's aboriginal lands and place of religious and cultural significance subject to another tribe's authority under its Tribal Historic Preservation Office. This was done in total disregard of Executive Order 13175, which ensures the US must obtain meaningful and timely input from the MNC, and Executive Order 13007, which required federal agencies to avoid adversely affecting the physical integrity of Hickory Ground as a Native American sacred place.⁹³

Starting in 1991, human remains were removed from Hickory Ground, in direct violation of federal laws and without consent of the MCT or the linear descendants. The US government, through the Department of the Interior and the National Park Service, has consistently failed to consult with the MCN and have failed to respect international human rights obligations regarding protection of sacred sites. Remains were excavated without obtaining an ARPA permit. The Archaeological Resources Protection Act (ARPA) § 470cc (b)(2) governs excavation on federal lands. However US government officials limited their investigation to one location and concluded that ARPA had not been violated.⁹⁴ Despite a number of official objections by the MCN, including to the US Department of Interior and the United States Senate Committee on Indian Affairs, the US issued a permit for further excavation at Hickory Ground in 2003.

Excavations proceeded without any consultation with the MNC. In 2006, archaeologists reported that approximately 425 human features had been excavated, and warned that "proposed development of the property would be expected to encounter additional...human remains...[and] construction in these areas would be extremely harmful to these items."

The US refuses to require compliance with federal laws designed to foster accountability and prevent harm to sacred areas. Under the mandates of the National Historic Preservation Act (NHPA), §(2)(A), the National Park Service must review a tribe's historic preservation office at least every 4 years. This has never been done in the case of the tribe currently excavating human remains. In the case of Hickory Ground, not only does the US fail to comply with federal laws designed to protect sacred sites, but it also fails to accord the Muscogee (Creek) Nation rights affirmed in the ICERD and other human rights instruments.

It has been more than one year since the Hickory Ground Tribal Town and the Muscogee (Creek) Nation in Okmulgee, Oklahoma, have filed for an injunction to stop the development and desecration of the historic, ceremonial and burial ground, Hickory Ground, in Wetumpka, Alabama, from which the Muscogee Peoples were forcibly moved to Indian Territory. To date, the federal district court has not rendered a decision. In the interim, Poarch Band of Creek Indians opened its casino expansion on Dec. 17, 2013.

Muscogee Nation Chief Tiger wrote to Members of the Oklahoma congressional delegation on Dec. 16, 2013, "to remind you of the ongoing violation of federal laws and public policy concerning the excavation of Muscogee (Creek) Nation ancestors and human remains in Wetumpka, Alabama. It is also to request your oversight and action on behalf of approximately 77,000 Muscogee (Creek) citizens and your constituents in Oklahoma....Over the past decade the Poarch Band excavated at least 57 sets of human remains of Muscogee ancestors from Hickory Ground in order to build a hotel and casino. To the shock of Muscogee (Creek) people, the

⁹³ Executive Order 13007, issued in 1996 by President Clinton, provides at Sec. 1(a) that "In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall (2) avoid adversely affecting the physical integrity of such sacred sites."

⁹⁴ Note that the Alabama Historical Commission disagreed with the US investigator's conclusions.

Poarch Band casino was rushed to completion without proper respect for traditional or cultural standards, federal laws and public policies. Non-native and Native nations, including ours, have built many casinos, but not one of them is built on top of a sacred place and certainly none on top of a human burial site....The Poarch Band also denies access to the site by Muscogee (Creek) Nation citizens who are direct lineal descendants of Hickory Ground, who wish to memorialize our ancestors and to conduct ceremonies there. When other tribal leaders have attempted to use our national organizations to address this issue, the Poarch Band representatives have claimed this is an “Indian-against-Indian” matter and that no one else should intercede. Actually, this is a developer- against-Indian matter, and one that no non-Indian developer could get away with.”

On Dec. 30, 2013, Chief Tiger wrote to President Barack Obama imploring him “to protect our historic ancestral burial and ceremonial grounds in Wetumpka, Alabama, known as Hickory Ground. In our language, this hallowed ground is Oce’Vpoka Cvko Rakko, Hickory Ground Ceremonial Ground/ Tribal Town of the Mvskokvlke, Muscogee Nation. We urgently request that you proclaim Hickory Ground to be a national monument under the American Antiquities Act....”

Muscogee Nation and Hickory Ground await response to these requests, as well as to the federal district court’s decision.⁹⁵

Case I: NaKoa Ikaika KaLahui Hawaii - Papahānaumokuākea Sacred Area Northwest Hawaiian Islands (NWHI) – USA Nomination as a UNESCO World Heritage Site

Contact person: Mililani Trask, Convener NaKoa Ikaika KaLahui Hawaii, Inaugural member of the UN Permanent Forum on Indigenous Issues Tel: (808) 990-0529 mililani.trask@gmail.com

Papahānaumokuākea is of great spiritual and cultural importance to Indigenous Hawaiians with significant cultural sites found on the islands of Nihoa and Mokumanamana. Mokumanamana has the highest density of sacred sites in the Hawaiian Archipelago and has spiritual significance in Hawaiian cosmology.

The traditional “Code of Conduct” for the Aha Moku districts, “*No laila oiai oe e komo ana I keia wahi kapu nou keia Kuleana e ho’oko.*” “Therefore, as you enter this sacred place, this responsibility is place upon you.” The significance of this traditional saying by our kupuna or elders is that it applies to every one of us who are responsible for the well-being of our islands, including the NWHI.

The Papahānaumokuākea Marine National Monument is the single largest conservation area in the USA, and one of the largest marine conservation areas in the world. It encompasses 139,797 square miles of the Pacific Ocean (362,073 square kilometers) - an area larger than all the country's national parks combined. On July 30, 2010 Papahānaumokuākea was inscribed as a mixed (natural and cultural) World Heritage Site by the delegates to the United Nations

⁹⁵ In a recent news story (Publication: Indian Country Today May 30, 2014) an account of events on the 13th of May 2014, Save Hickory Ground activists tried to hold a rally on the sidewalk outside a convention center during the a conference (the National Indian Gaming Association’s Annual Tradeshow & Conference - NIGA), but security guards forced them to leave and it is unclear who ordered that removal. As such, even a peaceful demonstration regarding the issue has been prevented. Read more at <http://indiancountrytodaymedianetwork.com/2014/05/30/save-hickory-ground- rally-shut-down-niga-155088?page=0%2C2>

Educational, Scientific and Cultural Organization's (UNESCO) 34th World Heritage Convention in Brasilia Brazil.

When the US nominated this area for inscription on the list of World Heritage Sites, the supporting documentation submitted to UNESCO acknowledged that the area was considered “sacred” not only to Hawaiians but to other Polynesians as well. The US report states:

Native Hawaiians explored and settled the archipelago, inhabiting the main Hawaiian Islands and venturing into the region to the northwest, now known as Papahānaumokuākea. This chain of far-flung islands and atolls, and the waters surrounding them, continue to be respected a sacred zone, a place containing the boundary between Ao, the world of light and the living, and Pō, the world of the gods and spirits, of primordial darkness, from which all life comes and to which it returns after death. Papahānaumokuākea is as much a spiritual as a physical geography, rooted deep in Native Hawaiian creation and settlement stories. Many oral traditions say that Native Hawaiians are genealogically related not only to the living creatures that make up the land and ocean ecosystems, but to the islands and atolls themselves. In relatively recent times, the islands of Papahānaumokuākea have become known as the Kūpuna (Revered Elders or Ancestors) Islands, in part because they are geologically older than the main Hawaiian Islands, and because, according to Hawaiian oral tradition, these islands themselves are ancestors to Native Hawaiians. Thus, Hawaiians not only look to their Kūpuna Islands for ‘ike (knowledge), but they also have a deeply embedded kuleana (privilege and responsibility) to care for their kūpuna.

Each island is a teacher...the most famous Hawaiian creation chant, the Kumulipo, tells of the birth of the world from the darkness of Pō, beginning with the simplest known form of life, the coral polyp, and progressing to the more complex forms ...As time passes, life begins created in sibling pairs, a land creature or plant for every sea creature or plant. These twins almost always share similar names; they are often also linked in real-life cycles, with one blooming on land as the other becomes fertile or abundant in the sea.⁹⁶

During the lengthy hearing & nomination process, over 200 public hearings were held, but no Indigenous consultations were conducted. Hawaiians joined with the Guahan Coalition of Guam, opposed the nomination based on cultural and subsistence reasons, and requested that the Obama Administration conduct consultations. Communications setting out such objections and calling for appropriate Indigenous consultations were sent to the U.S. Ambassador to UNESCO Mr. H.E. David Killion⁹⁷, White House Senior Policy Advisor for Native American Affairs Kimberly TeeHee, the International Union for Conservation of Nature, the International Council on Monuments and Sites, and Mr. Francesco Bandarin of UNESCO.

No response was received from the United States. Discussions held with the White House Indian Affairs staffers attending the United Nations Permanent Forum on Indigenous Issues (9th Session)

⁹⁶ Native Hawaiian Culture and Papahānaumoku, page 20-21, US Nomination Documents to UNESCO, <http://papahānaumokuākea.gov/management/> web site of the US NOAA

⁹⁷ Letter from Rowena Akana, Office of Hawaiian Affairs to David Killion, Permanent Delegation of USA to UNESCO dated July 12, 2010; and, NaKoa Ikaika KaLahui Hawaii - ECO-SOC Affiliate to the Indigenous World Association, The Koani Foundation, The Guahan Coalition for Peace and Justice & numerous other Indigenous NGOs of Guam to David Killion, Permanent Delegation of USA to UNESCO dated July 19, 2010

in New York revealed that the Obama Administration did not support ‘consultations’ with Hawaiians and the Indigenous of Guam because we are not ‘federally recognized Indians’. According to the White House, Obama staffers and Kimberly TeeHee, the United States has no obligation to consult with Hawaiians or Indigenous Peoples of the US Trust Territories because the Executive Order 13175 on Consultation and Coordination with Tribal Governments only requires consultation with federally recognized American Indian “Tribal” Governments. Hawaiians and Chamorro Peoples are not federally recognized and are therefore not “Indians” for the purposes of consultation under the Executive Order.

The result of this World Heritage inscription and the complete absence of consultation in the process leading up to it, is that Indigenous Hawaiians are not allowed free cultural access to the area for spiritual and cultural purposes unless approved by the US National Oceanic and Atmospheric Administration (NOAA) pursuant to the US criteria which states that only Hawaiians who are “PONO” (righteous) may access the area for cultural practice, and then only through the NOAA procedures. In 2013 the US sequestered all funding for the UNESCO site for research, culture and tourism. The area is now used exclusively use for US military exercises.

Case J: Pit River Nation & the Advocates for the Protection of Sacred Sites

The Medicine Lake Highlands, California USA – A Sacred Place – Radley Davis Email: RadleyDavis09@gmail.com

Submitted by the Pit River Nation & the Advocates for the Protection of Sacred Sites

“To our People and many other tribal Nations, Medicine Lake is a very beautiful and special place. Medicine Lake and Mt Shasta were gifts to our Peoples from the Creator, the One Above. These places are part of our creation and our teachings about how we leave this world.

There is only one place like that for us, where if you bathe in the water in the Lake, and follow the rules the Creator set down for that place, there can be healing for anyone. It is sacred to the tribes from all directions that traveled hundreds of miles to come there. It is a place of peace and healing, where you can both see and feel the spirits that are there. Our Spiritual People and healers received knowledge and power there, and it was a place of meditation and training where they went to receive these gifts to protect all life.

Captain Jack and the Modoc People fled to Medicine Lake as a stronghold when the armies came after them in 1872. There were 3000 soldiers against 50 Indian men, women and children. In that battle, the armies could not defeat the Modocs, and only one Indian lost their life. The place protected them that way. That is how strong this place is.”

Statement made in June 2004 by the late Mickey Gemmill Sr. Pit River (Iss-Ahwi) and Wintu Spiritual Leader, Member of the IITC Board of Directors from 2000-2006

The Medicine Lake Highlands (Highlands) consist of roughly 73,000 acres of forests, lakes and unique volcanic geological formations in the Modoc, Klamath, and Shasta-Trinity National Forests in Northern California, USA. Since time immemorial, the Pit River Tribe and other

Indigenous Peoples have used the Highlands for religious purposes and cultural ceremonies. As Pit River elder Willard Rhoades disclosed regarding Medicine Lake,

“In creating this world, when it was moist, the maker of life stopped here to rest and drink and wash and imparted himself into this water. Through this sacred water we are connected to healing and that’s why we respect this place deep in our heart.”

In April 2013, through their Declaration to the world, the Advocates for the Protection of Sacred Sites (APOSS) and Pit River Tribe defined threats to sacred Indigenous territories, lands, waters, ceremonial places, rights and ways of life and in particular, the threats of hydraulic fracturing, geothermal development and related wide-ranging destructive impacts on the Highlands. In February 2013, the Pit River Tribal Council reaffirmed the importance of protecting the sacred Highlands by issuing a resolution strongly opposing geothermal development and any other industrial activities there.

In the 1980s, The United States Bureau of Land Management (BLM) issued over two dozen geothermal leases in the Highlands, set to expire in 10 years unless the leaseholder identified and diligently pursued commercial production. Although no geothermal power has ever been produced or identified in the subsequent 30 years, BLM has continued to extend the leases. The Pit River Tribe and its Allies have litigated the illegal lease extensions since 2004, and the 9th Circuit has twice affirmed that a previously-approved development plan violated federal law. Nevertheless, BLM and Calpine Corporation, which now holds all the leases, continue to advocate developing the Highlands.

In particular, the lessee proposes to develop up to five power plants and their associated cooling towers, wellfields, production and injection pipeline system, access roads, and electricity transmission lines across the Medicine Lake landscape. The development of such industrial-scale projects will, as the BLM and Forest Service have already concluded, have significant adverse impacts on the area’s cultural uses and environment values. Moreover, it has become clear that any development will require hydraulic stimulation, known as “enhanced geothermal systems” or EGS, to extract heat from the rocks. Similar to fossil fuel fracking, EGS requires the continuous use and subsequent disposal of large amounts of acids and water, potentially threatening the area’s pristine water quality and resources.

This case is another clear example of an energy corporation and federal government entities not respecting a tribe’s culture and traditions to protect a sacred place and to disregard its own evidence that building these power plants will cause irreparable harm to all in its path.

To prevent the destruction of the sacred Highlands by industrial development, the Pit River Tribe, APOSS and their Allies respectfully requests consideration of the following recommendations:

1. Recommend the United States Secretary of Interior fulfill the trust responsibility to the Pit River Tribe by directing BLM to exercise its authority to cancel the leases for noncompliance with the *Geothermal Steam Act*’s due diligence requirements.
2. In the alternative, recommend the State introduce legislation to “buy-back” the geothermal leases from Calpine. Models for funding such a buy-back include the *Soldedad Canyon High Desert California Public Lands Conservation and Management*

Act introduced in 2011, and the highly successful *Santini-Burton Act*, funding land purchases to protect Lake Tahoe from the sale of surplus federal land around Las Vegas.

3. Recommend the State introduce legislation to designate the Highlands as a National Monument or seek and support a presidential designation under the *Antiquities Act* of 1906. In addition to well-documented historic and cultural values, the Highlands support outstanding environmental resources and unique natural volcanic features.

Case K: The Taino Peoples of Borikén (Puerto Rico) with regard to sacred areas: Caguana Ceremonial Center, Utuado, Puerto Rico; Jácanas (PO29), Ponce, Puerto Rico

Contact: R. Múkaró Borrero, President, United Confederation of Taíno People (UCTP) Email: mukaro@uctp.org, Office of International Relations and Regional Coordination, P.O Box 4515, New York City, NY 10163

Issue: Lack of recognition and racially discriminatory exclusion denies and consequently violates the human rights and fundamental freedoms of Indigenous Peoples’ in “Insular Areas” where the United States is currently exercising jurisdiction.

International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) Article 5 stipulates that State parties “guarantee the right to 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... (d)(vii) the right to freedom of thought, conscience and religion”, and “(e)(vi) the right to equal participation in cultural activities”, is directly applicable in this case.

- 1) **To date, the United States has failed to adequately address the special situation of Indigenous Peoples’ in “Insular Areas” such as Puerto Rico, where the United States is currently exercising jurisdiction. The Co-Submitters therefore request the Committee question the United States as follows:**
 - a. **Why do “consultations” and “listening sessions” conducted by the United States fail to include Indigenous Peoples’ in “Insular Areas” where the United States is currently exercising jurisdiction.**
 - b. **Why does the United States fail to report on or implement free, prior and informed consent of Indigenous Peoples’ in “Insular Areas” where the United States is currently exercising jurisdiction.**

The Fourth periodic report of the United States of America to the ICCPR, on pg. 4, notes that the “United States continues to exercise sovereignty over a number of Insular Areas, each of which is unique and constitutes an integral part of the U.S. political family.” Within this framework of U.S. Insular Areas, the Fourth periodic report identifies, for instance, the island of Puerto Rico as “a Commonwealth that is self-governing under its own constitution...” While the report stress the effort of the U.S. to “ensure that Puerto Ricans are able to express their will about status options and have that will acted upon,” as well as concern for “job creation, education, healthcare, clean energy, and economic development,” the lack of recognition of the Taíno People in Puerto Rico ensures that their voices and will are silenced about all issues related to their rights as Indigenous Peoples, including the right to self-determination and free prior and informed consent.

Affirming Indigenous Peoples as distinct within the pluri-cultural Commonwealth of Puerto Rico, the 2010 U.S. Census reveals over 35,000 people residing in Puerto Rico recognized themselves as American Indian, “alone or in combination with some other race.” Only 350 of these individuals identified themselves as connected to recognized U.S. mainland American Indian Tribes while others recognized themselves specifically as Taíno. The Taíno People are verifiably pre-Columbian inhabitants of Puerto Rico and other Caribbean Islands, and were the first Indigenous Peoples in the Americas to be called “Indians” (American Indians, Amerindians). Despite this well-known history, the Taíno are not formally recognized by the United States.

Indeed, the core and the heart of the issue is the United States’ failure to formally recognize the Taíno People and other Indigenous Peoples within Insular areas. This denies their human rights and fundamental freedoms in all respects including access to Sacred Areas, Burial Sites, Ceremonial Centers, Ancestral Remains and Funerary Objects. In contrast to the inequity of the specific situation of the Taíno People and Indigenous Peoples within insular areas, other American Indians, Native Alaskans, and Native Hawaiians, for example, can exercise their rights under the Native American Grave Protection and Repatriation Act (NAGPRA) and the National Historic Preservation Act. This legislation includes, inter alia, provisions for American Indigenous Peoples to take part in the discussions and decisions regarding their sacred sites.

At minimum, the Taíno People have a right to the same protective provisions created for other American Indians, Native Hawaiians, and Alaskan Natives.

The discriminatory treatment of the Taíno People was presented to the CERD in 2008, the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (2008), and the 2009 Universal Periodic Review in official submissions, yet these international mechanisms have not only ignored the specific issue as it relates specifically to the Taíno People, but also the broader issue of the denial of Human Rights and fundamental freedoms and related situations of Indigenous Peoples in all “Insular areas” under the jurisdiction of the United States.

The United States claims “plenary power” over Puerto Rico and its “native inhabitants” based on Article IX of the 1898 “Treaty of Peace between the United States of America and the Kingdom of Spain (The Treaty of Paris): “The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.” The Taíno People of Puerto Rico justly claim their right to be secured in the free exercise of their religion as affirmed under Article X of the same Treaty of Paris, which explicitly provides that “The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.”

With respect to the right of the Taíno People to freely exercise their religion, Taíno Peoples call for (1) the removal of ancestral remains from museum and institutional displays, throughout Puerto Rico and Vieques, used to promote or generate tourism; (2) Taíno access, administration and management of Sacred Sites, Burial Sites, Ceremonial Centers and places, Funerary and Ceremonial Objects, and Ancestral Remains throughout the Island, must be respected through the implementation of proper spiritual protocols; and (3) that all governmental projects, laws, regulations that impact upon Taíno Rights including tourism projects be carried out with the free prior and informed consent of the Taíno People, in order to protect and safeguard the integrity of local Taíno culture, traditions, customs and spirituality.

In particular, the United Confederation of Taíno People (UCTP) draws attention to racially discriminatory violations of human rights and fundamental freedoms with respect to the Caguana Ceremonial Center and Jácanas (P029 archeological site) Caguana Ceremonial Center is a National Historic Landmark under the management of the United States National Park Service (NPS) located in Utuado, Puerto Rico. Additionally, Puerto Rico's Department of Natural Resources deferred decision making at Jácanas in Ponce, Puerto Rico to U.S. federal agencies, and denied the right of the Taíno People to free prior and informed consent, and self-determination. Consequently, the Taíno People continue to be denied entry into Jácanas for religious purposes. The right to consultation with regard to access to this Sacred Site, including Burial Site, Funerary Objects and Ancestral Remains located at and removed from Jácanas to an unverified location in the U.S. mainland by the U.S. Army Core of Engineers, was consciously violated by said agency. The specific exclusion of Taíno Peoples' by the Army Corp of Engineers in the consultation process with regard to Jácanas violates the National Historic Preservation Act with respect to notice and consultation with the Taíno People, "interested parties" as defined by the Act.

Additionally, Taíno have been denied entry into the Caguana Ceremonial Center and community members forced to pay admission to enter and pray, then denied the right to sing their ceremonial songs and dance, and play their drums. Among other violations, the UCTP has duly noted the mismanagement and endangerment of the Sacred Stones that line the Ceremonial Batey (plazas) at Caguana, the failure to make provisions for Indigenous community access, and the violation of Taíno spiritual protocols.

Access to sacred and ceremonial places in Borikén (Puerto Rico) are vital to Taíno identity, freedom of thought, conscience and religion, as well as the right to equal participation in cultural activities. ICERD Article 5, for instance, is directly applicable in this case. Indeed, the ICERD and the Treaty of Paris make it clear that the United States must be compelled to recognize its human rights obligations to the Taíno Peoples and all Indigenous Peoples within Territories and "Insular areas" over which the U.S. continues to exert sovereignty. These "Insular Areas" include the Commonwealth of Puerto Rico; Guam, an unincorporated, organized territory of the United States; American Samoa, an unincorporated, unorganized territory of the United States; the U.S. Virgin Islands, an unincorporated, organized territory of the United States; and the Northern Mariana Islands, a self governing commonwealth in political union with the United States.

Case L: Western Shoshone Nation

Contact: Western Shoshone Defense Project, 242 2nd Street, Crescent Valley NV 89821 Tel: (775) 468-0230

This summary of the Western Shoshone Nation case has been provided for illustrative purposes. The Co-Submitters of this Alternative Report express their support for the submission of another Alternative Report to the 85th Session of the CERD regarding Western Shoshone and the Review of the United States, by the Western Shoshone Defense Project.

In 1863, the Western Shoshone Nation signed the Treaty of Ruby Valley with the United States, relinquishing no land whatsoever but permitting peaceful transit of settlers across their lands on the way to settle and mine gold in neighboring California. By the turn of the century, the US had claimed jurisdiction over nearly all Western Shoshone lands, now known as Nevada, in blatant violation of the Treaty of Ruby Valley. The Indian Claims Commission (ICC), established by the

US in 1946 to adjudicate Treaty violations and other land claims by Indigenous Peoples, heard the Western Shoshone case in 1974, with the US government representing the Shoshone in a case against their own government. No Shoshone were allowed to testify. The US claimed that they had acquired Western Shoshone lands through “gradual encroachment” beginning in the 1870’s. A monetary settlement was awarded to the Western Shoshone by the ICC at the price of 15 cents an acre, the estimated land value in 1872, for mineral-rich land that was never for sale in the first place.

Because the ICC authorized this payment, which was then accepted unilaterally by the US government as “trustee” for the Western Shoshone, the United States has continued to claim that the case was “settled”. The US makes this claim, despite the fact that Western Shoshone people continue to dispute it and have pending actions both at the United Nations and the Organization of American States human rights systems.

In 1992, the Western Shoshone submitted their case to the Inter-American Commission which examined the relevant land title claims as well as the “settlement” process used by the ICC and the US courts. The Inter-American Commission concluded that “these processes were not sufficient to comply with contemporary international human rights norms, principles and standards that govern the determination of Indigenous property interests”.

After the US refused to abide with this outcome or to change their policies whatsoever as a result, the Western Shoshone moved forward on their urgent action submission to the UN Committee on the Elimination of Racial Discrimination (“CERD”). The CERD also expressed concern that the United States’ position was “made on the basis of processes before the Indian Claims Commission, ‘which did not comply with contemporary international human rights norms’ as stressed by the Inter-American Commission”:

“The Committee is concerned by the State party’s position that Western Shoshone peoples’ legal rights to ancestral lands have been extinguished through gradual encroachment, notwithstanding the fact that the Western Shoshone Peoples have reportedly continued to use and occupy the lands and their natural resources in accordance with their traditional land tenure patterns. The Committee further notes with concern that the State party’s position is made on the basis of processes before the Indian Claims Commission, “which did not comply with contemporary international human rights norms, principles and standards that govern determination of Indigenous property interests”, as stressed by the Inter-American Commission on Human Rights in the case *Mary and Carrie Dann versus United States* (Case 11.140, 27 December 2002)”.

Despite the CERD’s concerns expressed on this and other occasions to the US regarding the ongoing violations of Western Shoshone human rights, activities being carried out on Western Shoshone lands in violation of their Free Prior and Informed Consent and Treaty rights have continued and in fact have increased in intensity and scope.

For example, the Western Shoshone have continued to suffer the impacts of mining carried out by Barrick Gold Corporation, based in Toronto Canada, and permitted by the United States. Of particular concern to the Western Shoshone has been the destruction and desecration of the sacred mountain Mt. Tenabo where a massive open pit gold mine is continuing to move forward despite their clear and consistent opposition.

As Western Shoshone grandmother Joyce McDade stated at a protest by the Western Shoshone on January 18th 2009, *“Denabo has special significance for Western Shoshone, it means the writing on the rocks walls of the mountain put there by our Creator. We go to pray to our Creator to give us strength to keep us going. How can we pray to our creator when the place is being blown up?”*

Barrick has been engaged in gold mining operations in Western Shoshone Treaty Territory known as Nevada USA since 1965, producing massive environmental and cultural destruction. In November 2008, nearly two years after the CERD issued the recommendation to Canada regarding preventing human rights violations by Canadian Corporations, Barrick carried out a massive clear cut of pine trees to make way for a huge open pit gold mine known as the Cortez Hills Expansion Project. This took place on one side of Mt. Tenabo, a mountain in the centre of a sacred area called Newe Sogobia by the Western Shoshone used for sweat lodges and other ceremonies, as well as traditional food and medicinal plant gathering.

Western Shoshone Elder Carrie Dann who visited the site after these pine trees (an important source of the traditional food called pinon nuts) were clear cut and viewed the destruction including piles of uprooted trees and unfenced polluted ponds. She called it a “war zone against the trees by the Barrick Gold Company”.

In a written statement submitted to the International Indian Treaty Council on January 9th 2012, Larson Bill of the Western Shoshone Defense Project affirmed that this struggle is continuing and that no improvement has yet been seen in the behavior of Barrick Gold corporation or the US government that permits these operations in spite of their Treaty and human rights obligations to the Western Shoshone Nation. Mr. Bill further stated that: *“Under the shadow of the U.S. policies and laws, the Canadian mines will continue to overlook the sacred connection of the Shoshone People to their lands and all living things upon it”*.

International Indian Treaty Council (IITC) Affiliates in Lands and Territories currently part of or under the jurisdiction of the United States:

Indigenous Tribal and Traditional Nation Governments: Pit River Tribe (California), Wintu Nation of California, Redding Rancheria (California), Tule River Nation (California), Muwekma Ohlone Nation (California), Coyote Valley Pomo Nation (California), Round Valley Pomo Nation (California), Independent Seminole Nation of Florida (Florida), Native Village of Venetie Tribal Government/Arctic Village Traditional Council (Alaska), Chickaloon Village Traditional Council/Chickaloon Native Village (Alaska), Stevens Village Traditional Council (Alaska), Native Village of Eklutna (Alaska).

Indigenous Organizations, Networks, Communities and Societies: National Native American Prisoners' Rights Coalition, White Clay Society/Blackfoot Confederacy (Montana), Indigenous Environmental Network (National), Columbia River Traditional Peoples (Washington/Oregon), Rural Coalition Native American Task Force (Minnesota), Yoemem Tekia Foundation, Pascua Yaqui Nation (Arizona), Tohono O'odham Nation Traditional community (Arizona), Oklahoma Region Indigenous Environmental Network (Oklahoma), Wanblee Wakpeh Oyate (South Dakota), IEN Youth Council, Cactus Valley/Red Willow Springs Big Mountain Sovereign Dineh Community (Arizona), Leonard Peltier Defense Committee, Eagle and Condor Indigenous Peoples' Alliance (Oklahoma), Seminole Sovereignty Protection Initiative (Oklahoma)

Mundo Maya (California), Los Angeles Indigenous Peoples Alliance (California) American Indian Treaty Council Information Center (Minnesota), Vallejo Inter-Tribal Council (California), Three Fires Ojibwe Cultural and Education Society (Minnesota), California Indian Environmental Alliance (CIEA), Wicapi Koyaka Tiospaye (South Dakota), Indigenous Peoples Working Group on Toxics (National), North-South Indigenous Network Against Pesticides (multi-regional based in US), the International Indian Women's Environmental and Reproductive Health Network (multi-regional based in US) and United Confederation of Taino People: Borikén (Puerto Rico/United States), Kiskeia, (Dominican Republic), Barbados, Guyana (Arawaks), Bimini (United States), Jittoa Bat Natika Weria (Yaqui Nation, US and Mexico).



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85247

RESOLUTION NO. GR-41-07

A RESOLUTION DESIGNATING THE SOUTH MOUNTAIN RANGE (*Muhadag, Avikwaxós*) AS A SACRED PLACE AND TRADITIONAL CULTURAL PROPERTY OF THE GILA RIVER INDIAN COMMUNITY.

WHEREAS, the Gila River Indian Community Council ("the Community Council") is the governing body of the Gila River Indian Community ("the Community"); and

WHEREAS, the Community Council on January 6, 1982, did adopt Ordinance No. GR-01-82 under Title XV of the Gila River Indian Community Law and Order Code in which "[i]t is...declared as a matter of Community policy and legislative determination, that the public interests of the Pima-Maricopa people and the interests of all other persons living within the jurisdiction of the Gila River Indian Community require that the Community adopt a means whereby all sites, location, structures, and objects of sacred, historical or scientific interest or nature will be protected from desecration, destruction, theft, or other interference."; and

WHEREAS, the Community Council through Resolution GR-15-89 did approve the Policy Statement of the Four Southern Tribes (Salt River Pima-Maricopa Indian Community, Ak Chin Indian Community, Tohono O'odham Nation, and the Gila River Indian Community) which outlines the Four Tribes intent to protect, promote, and preserve cultural affinity to the HuHuKam; and

WHEREAS, the Community Council has always held the preservation of historical, archaeological, cultural, religious sites as a high priority and recognizes the need to protect the cultural heritages of the Akimel O'Odham (Pima) and the Pee Posh (Maricopa); and

WHEREAS, the identification and authentication of sacred places / traditional cultural properties is the sole responsibility of the federally recognized tribe according to its unique culture; and

WHEREAS, the Community does recognize certain locations to be sacred places / traditional cultural properties based on the unique cultural and spiritual beliefs of the Akimel O'Odham (Pima) and the Pee Posh (Maricopa); and

GILA RIVER INDIAN COMMUNITY
RESOLUTION GR-41-07
PAGE 2 OF 2

WHEREAS, all, but not limited to, of the places referenced in the oral traditions of the Akimel O'Odham (Pima) and the Pee Posh (Maricopa) are culturally and spiritually significant to the continuing life ways of the Akimel O'Odham (Pima) and the Pee Posh (Maricopa); and

WHEREAS, the *Muhadag* (Pima language) also known as (a.k.a.) *Avikwaxós* (Maricopa language), a.k.a. Greasy Mountain (English language), and geographically known as the South Mountain, South Mountain Range, or Salt River Mountains (Range) figures prominently in oral traditions of both the Akimel O'Odham (Pima) and the Pee Posh (Maricopa)

NOW THEREFORE BE IT RESOLVED, that the Community Council hereby does acknowledge and recognize that the South Mountain Range in its entirety is a sacred place / traditional cultural property and must be kept inviolate.

BE IT FURTHER RESOLVED, that the Community Council hereby strongly opposes any alteration of the South Mountain Range for any purpose would be a violation of the cultural and religious beliefs of the Gila River Indian Community and would have a negative cumulative affect on the continuing lifeways of the people of the Gila River Indian Community.

BE IT FINALLY RESOLVED, that the Governor, or in his absence, the Lieutenant Governor, is hereby authorized to sign and execute such documents as are necessary to effectuate this resolution.

CERTIFICATION

Pursuant to authority contained in Article XV, Section 1, (a) (7), (9), (18), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960, and approved by the Secretary of the Interior on March 17, 1960, the foregoing Resolution was adopted on the 4th of April, 2007, at a Regular Community Council Meeting held in District 3, Sacaton, Arizona at which a quorum of 10 Members were present by a vote of: 9 FOR; 0 OPPOSE; 1 ABSTAIN; 5 ABSENT; 2 VACANCIES.

GILA RIVER INDIAN COMMUNITY


GOVERNOR

ATTEST:


COMMUNITY COUNCIL SECRETARY



Muscogee (Creek) Nation

George P. Tiger
Principal Chief

Executive Office

Roger Barnett
Second Chief

December 30, 2013

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500-0004

Re: Proposed Hickory Ground National Monument

Dear Mr. President:

The Muscogee (Creek) Nation implores you to protect our historic ancestral burial and ceremonial grounds located in Wetumpka, Alabama, known as Hickory Ground. In our language, this hallowed ground is Oce'Vpoka Cvko Rakko, Hickory Ground Ceremonial Ground/Tribal Town of the Mvskokvlke, Muscogee Nation. We urgently request that you proclaim Hickory Ground to be a national monument under the American Antiquities Act of 1906 (16 USC 431-433).

The Muscogee (Creek) people are descendants of a remarkable ancient cultural continuum which, before A.D. 1500 spanned the entire region known today as the South Eastern United States. Early Muscogee people constructed magnificent earthen pyramids along the rivers of this region as part of elaborate Muscogee ceremonial complexes. Our Muscogee ancestors later built expansive towns within these same broad river valleys in Alabama, Georgia, Florida, South Carolina, Louisiana, Arkansas, and other present states. The Muscogee were not one tribe, but a union of more than 60 nations and tribal towns. This union evolved into a united confederacy that, in the Euro-American described "historic period," was the most sophisticated political organization north of Mexico. United member nations and tribal towns within this political structure maintained political autonomy and distinct land holdings, which remains the same in this time.

Subsequent archaeological investigations found that Muscogee (Creek) Indians derived from "prehistoric South Appalachian woodland cultures" such as "Western Lamar" in the region of present Georgia and Alabama. While there were local variations, all were said to share what is termed "Mississippian culture." They resided in fortified towns, which included flat-topped pyramid temple mounds surrounding a central plaza. The "Mississippian culture" declined after A.D. 1400 and then the Muscogee built single-mound ceremonial centers among separate towns and nations that were either related or allied. Muscogee (Creek) towns and settlement patterns were recorded in the accounts of travelers who visited them. Some early writers, such

as James Adair, David Taitt, William Bartram, Benjamin Hawkins, and Spanish and French travelers before them, provided detailed accounts of what they witnessed when traveling in or through Muscogee (Creek) territory.

During the early eighteenth century, the Muscogee (Creek) towns and nations numbered around sixty, with a population of some fifty thousand. Most of the towns and nations were situated on the fertile plains bordering large creeks and rivers among stands of hickory, oak, and walnut trees. Many towns were established along the banks of rivers, extending for miles and including outlying "town plantations," where the families cultivated, grew, and stored their crops. Each Muscogee (Creek) town is a ceremonial ground with a center like the former "Mississippian" plaza for ceremonial dances, contests, and other activities. At one edge is a rotunda, council house, or area where elders and other adults transact town business. These towns were characterized by Euro-American observers as having a play area, a burial area, a ceremonial area, and a living area. Even though there was at least one formal burial ground, it was and is the Muscogee custom to bury relatives in the living areas, next to the homes, often with their own small "soul houses" above ground. This means that burials mark, characterize, and are an integral part of Muscogee territory and both daily and ceremonial life.

Muscogee (Creek) society is organized by clans, grounds, and nation. Mothers and grandmothers determine clan membership in the society. Clan members also are loyal to a tribal town/ceremonial ground, unlike many other Indian tribes. A person usually follows the mother's town or ground, but a person's town/ground also may be where he or she participates in ceremonies. Muscogee (Creek) people may be citizens in either or both of their nation and town/ground. Muscogee (Creek) Nation and towns/grounds meet regularly and make decisions as needed. A Mekko rules each town/ground, with the assistance of advisors, and serves for life. Several Mekkos were among those laid to rest at the Hickory Ground burial ground.

All of the former "Upper Creek" towns are important to the cultural heritage of Alabama, some of which rose to special prominence during the eighteenth and nineteenth centuries. Oco Vpofv, Hickory Ground, is one such town, and it holds ceremonial, cultural, and historical importance to the state of Alabama and our Muscogee (Creek) people. Hickory Ground also is of US national significance as the home of Alexander McGillivray (Hoboi Hili Miko, Good Child Chief), who was the head of the Muscogee Delegation that met with President George Washington and entered into the Muscogee (Creek) Nations' first treaty with the United States, the Treaty of New York of 1790.

In the 1980s, Hickory Ground was placed on the National Register of Historic Places, due to its significance as the Capitol of the Muscogee (Creek) Nation prior to Removal. Hickory Ground was held in protected status by the state of Alabama and remained undisturbed under its care and protection. In 1984, the federal government officially recognized the Poarch Band of Creek Indians as an Indian tribe. The Poarch Band descends from Muscogee (Creek) people, but they were not forcibly removed to Indian Territory and lived in Alabama as white people. The Poarch formed one of a handful of "Creek Indian" clubs. The newly recognized Poarch Band of Creek Indians acquired Hickory Ground with federal funds and promised to preserve the undisturbed burials against excavation and to protect the ceremonial ground from development.

Horribly, the Poarch Band violated its promise to preserve Hickory Ground. Over the past decade, the Poarch Band excavated at least 57 sets of human remains of Muscogee ancestors from Hickory Ground in order to build a hotel and casino. Poarch Band is thought to have rolled over, ground up, dug up, or carted away thousands of Muscogee ancestors for the casino construction. In 2006, doctoral students who were members of the archeological team reported

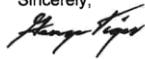
to Muscogee observers that they witnessed activities of a kind that violated scientific ethics and standards governing archaeological digs and even salvage archaeology. To the shock of Muscogee (Creek) people, the Poarch Band casino was rushed to completion without proper adherence to traditional or cultural norms, federal laws and policies, or human sensibilities worldwide.

Today, citizens of the Muscogee (Creek) Nation routinely return to our homelands for medicine gathering, spiritual renewal, honoring our ancestors, and making pilgrimages and maintaining ties to our historical roots. We understand that Poarch Band has resolved that no Muscogee (Creek) person is permitted to have access to Hickory Ground, which is a clear violation of both the spirit and the letter of the American Indian Religious Freedom Act, and it has caused our citizens to be arrested for trespassing, when they were attempting to conduct ceremonies for and pay their respects to our ancestors.

We ask that the development on top of our Hickory Ground be halted and razed, and that our beloved ceremonial, burial, and historic place be allowed to return to its natural state before it was "taken care of" by the Poarch Band. We ask that you proclaim Hickory Ground as a National Monument, with an educational component that helps to edify the public about Muscogee (Creek) Nation, peoples, cultures, and history, so that this present atrocity is not repeated in the future.

Should your staff need more information or have any questions, please do not hesitate to contact me or a representative of my Executive Staff at (800) 482-1979.


Sincerely,



George Tiger
Principal Chief

Copies to: Senior Policy Advisor for Native American Affairs Jodi A. Gillette
Secretary of the Interior Sally Jewell
Assistant Secretary of the Interior for Indian Affairs Kevin K. Washburn

Case K: Pit River Nation & the Advocates for the Protection of Sacred Sites Attachments

<u>DOLORES RAGLIN</u> TRIBAL CHAIRMAN		PIT RIVER TRIBE 36970 Park Ave. Burney, CA. 96013 Telephone 530-335-5421 Fax No: 530-335-3140
<u>CORINA LEGO</u> TRIBAL VICE-CHAIR		
<u>IDA RIGGINS</u> TRIBAL SECRETARY		

ELEVEN AUTONOMOUS BANDS

<u>ITSATAWI</u>	RESOLUTION NO: 13-02-12 DATE: February, 15, 2013 SUBJECT: Medicine Lake Highlands Resolution	<u>HEWISEDAWI</u>
<u>ASTARIWI</u>	SUBJECT: Resolution strongly opposing geothermal development and <i>any</i> other industrial development activities in the sacred Medicine Lake Highlands, located in Northeastern California.	<u>ILLMAWI</u>
<u>ATSUGEWI</u>	WHEREAS, the Pit River Tribe of California (Includes the XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias) is a federally recognized Indian tribe organized under Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), codified at 25 U.S.C. 476, et seq., as amended, by the Act of June 15, 1935 (49 Stat. 378); and	<u>KOSEALEKTE</u>
<u>APORIGE</u>	WHEREAS, the Pit River Tribe of California ("TRIBE") is composed of eleven autonomous bands located in Northeastern California since time immemorial, they are as follows: 1) Atwamsini, 2) Atsugewi, 3) Astarawi, 4) Aporige, 5) Ajumawi, 6) Hewisedawi, 7) Illmawi, 8) Itsatawi, 9) Kosealekte, 10) Hammawi, and 11) Madesi; and	<u>HAMMAWI</u>
<u>AJUMAWI</u>	WHEREAS, the TRIBE is represented and governed by the Pit River Tribal Council ("COUNCIL"), a body who is duly elected under the Constitution of the Pit River Tribe, adopted on Sunday, 16 August 1987, and approved by the Assistant Secretary of the Interior-Indian Affairs, on Thursday, 3 December 1987; and	<u>MADESI</u>

ATWAMSINI

Resolution No: 13-02-12
Date: February 15, 2013
Subject: Medicine Lake Highlands Resolution

WHEREAS, the Calpine Energy Corporation is proposing a new utilization plan to develop up to five 100-Mega Watt Power Plants in the sacred Medicine Lake Highlands, and

WHEREAS, the Bureau of Land Management (BLM), Modoc/Shasta/Trinity National Forest (NF), and the Klamath (NF), continue to approve geothermal projects in the sacred Medicine Lake Highlands in spite of the Pit River Tribe's strong opposition, and

WHEREAS, geothermal development would ultimately threaten the underlying aquifer – which is California's largest pure spring system that flows into the Fall River joining the Pit River and winds into the Sacramento River before reaching the San Francisco Bay, and

WHEREAS, the project would require injection and extraction of large amounts of toxins and toxic plumes exuding dangerous levels of arsenic, mercury and hydrogen sulfide that are known to cause cancer or birth defects, and

WHEREAS, have devastating impacts on the habitats of animals and migration routes; on the trees and plants, and on the visual and air quality, and

WHEREAS, this project would have irreversible negative impacts on the freedom of religion and the cultural practices of the Pit River tribe and other Indian Tribal Nations in the region for whom the Medicine Lake Highlands is of great spiritual, cultural and religious significance, and

WHEREAS, environmental analysis has determined that the Medicine Lake Highlands are not developable and historic preservation documents state unequivocally that impacts of geothermal projects on Native American cultural values in the Medicine Lake Highlands would be significant and adverse, and

WHEREAS, the COUNCIL is empowered by Articles VII of the Constitution to enact all ordinances and resolutions, which shall be necessary and proper for carrying into effect the tribal council's

Resolution No: 13-02-12
Date: February 15, 2013
Subject: Medicine Lake Highlands Resolution

powers and responsibilities, contracting with federal, state and tribal agencies, private enterprises, individuals and organizations; and

WHEREAS, the area of the Medicine Lake Highlands is highly significant to the cultural and religious ways of the Tribe as a whole. The COUNCIL and its nation has deep ties to the Medicine Lake Highlands as a place of refuge, ceremony, healing, prayer, fasting and other sacred traditional uses, and

WHEREAS: the COUNCIL invokes the United States Government's Trust Responsibility to the Indian Peoples of this land, Executive Order 13007 on Indian Sacred Sites, Executive Order 12898 on Environmental Justice, the American Indian Freedom of Religion Act, the National Environmental Policy Act, the National Historic Preservation Act, the National Register Bulletin 38 on Traditional Cultural Properties, and the repeated promises of good will by the United States Government, and

WHEREAS: the COUNCIL unanimously adopted a resolution on March 29th, 2012 affirming the United Nations Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly in 2007 and also endorsed by the United States on December 16th, 2010

WHEREAS: the United Nations Declaration on the Rights of Indigenous Peoples is the minimum standard for the dignity, survival and well-being of Indigenous Peoples and recognizes the rights of Indigenous Peoples pertaining to cultural practices, (Article 11), access to and protection of sacred sites (Article 12), spiritual relationship with traditional lands and waters (Article 25), environmental protection (Article 29) and Free Prior and Informed Consent regarding development projects (Article 32) among a number of other relevant provisions;

WHEREAS: Internationally, the COUNCIL further invokes the legally binding international Covenants and Conventions, to which the United States is obligated including the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination, which also call upon State Parties to respect the cultural and religious rights as well as other relevant rights of Indigenous Peoples;

Resolution No: 13-02-12
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NOW THEREFORE BE IT RESOLVED that the COUNCIL invoke these statutes, Declarations, Resolutions, decrees and Conventions and reaffirms its strong opposition to any and all geothermal industrial development projects in the sacred Medicine Lake Highlands and to know and understand that geothermal development is incompatible with existing long-standing spiritual and cultural uses of the area and its natural resources, and the human rights of Pit River and other Tribes.

BE IT FURTHER RESOLVED that the sacred responsibility to maintain the health and integrity of the Natural World for future generations is also a central element of Pit River Peoples' spirituality, traditional ceremonial practices, religious expressions and ceremonial practices, and

BE IT FURTHER RESOLVED that the COUNCIL respectfully request that the U.S. Congress, Department of Interior, the Bureau of Land Management and the National Forest to stop all proposed geothermal development in the sacred Medicine Lake Highlands.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the under-signed Tribal Chairperson, Dolores Raglin of the Pit River Tribe, do hereby certify the Pit River Tribal Council is composed of eleven autonomous bands of which 9 were present, constituting a quorum at a regular scheduled, noticed, convened and held meeting this 15 day of February 2013, and the resolution was adopted by a vote of 9 yes 0 no 0 abstaining, and that said resolution has not been rescinded in any way.

Dolores A. Raglin
Tribal Chairperson, Dolores Raglin

2-15-13
Date:

Ida Raglin
Tribal Secretary, Ida Raglin

2/15/2013
Date:

Tribal Council Member Signatures:

Jim Brown

2-15-13

Date:

Jim Brown

2-15-13

Resolution No: 13-02-12
Date: February 15, 2013
Subject: Medicine Lake Highlands Resolution

Myra McInnis
Wendy
Anna Barnes
Kenon Ward
Randy Quinn
Reginald Lu Alamy
Frank

Date:

Date: 2-15-13 MM

Date: 2-18-13

Date: 2/18/13 2/15/13 W

Date: 2/18/13 2/15/13 W

Date: 2-18-13 2-15-13 W

Date: 2-18-13 2-15-13 W

Date: 2-15-13

Date: 2/15/13

Date:

Date: