“Holding the United States Accountable for Racism and Racial Discrimination in the United States and around the World”

A training manual on preparing “Shadow Reports” for submission to the United Nations Committee for the Elimination of all forms of Racial Discrimination

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“Working For The Recognition and Rights of Indigenous Peoples”
“Trabajando Por el Reconocimiento y los Derechos de los Pueblos Indígenas”
“Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.”


“Our word is sacred to us and so are these Treaties. The US government came to us, not the other way around. They asked us to lay down our arms and to live in peace and friendship with them in perpetuity. They said they would respect our traditional land rights in return. We have held up our end of the bargain. When can we expect the same from them?”

---James Main Sr., IITC Board member, Elder, Gros Ventre (White Clay) Nation, Montana

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The United Nations General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) on December 21, 1965. It officially entered into effect on January 4, 1969. The ICERD is one of seven major human rights treaties adopted by the United Nations (UN) and was the first to establish a mechanism to monitor compliance by countries.

The monitoring body for the ICERD is the United Nations Committee for the Elimination of Racial Discrimination, called the UNCERD or, most often, the “CERD”. The CERD consists of 18 international experts nominated by countries and selected by the UN General Assembly to monitor compliance of countries which have ratified the Convention (the “State Parties”). The CERD assesses States' compliance with provisions of the Convention through regularly scheduled “periodic reviews”. In preparation for these periodic reviews, reports are submitted to the CERD by the State governments in question as well as by “Civil Society” (non-governmental) groups impacted by racial discrimination. In addition, “early warning” and “urgent action” procedures were established by the CERD in 1994 to monitor critical pending and developing situations.

To date, 173 States (countries) have ratified the Convention. The United States (US) ratified the Convention in 1994, thus making it a “State Party” to the ICERD.

The ICERD plays an important role in the fight against all forms of racial discrimination because “it creates obligations with respect to racial justice that are legally binding for all its signatories.”¹ One of the mandates of the ICERD is that countries collect data on racial discrimination and where necessary, create affirmative action or corrective measures. Further, it “does not distinguish between intentionally discriminatory acts and those that have discriminatory effects.”²

The ICERD provides a legal framework that Peoples, organizations and activists around the globe can use to bring attention to discrimination based on race by the countries in which they live. It also provides an official process for them to provide alternative viewpoints and information which is taken into account by the CERD when it reviews the situation of racial discrimination in countries which are parties to the Convention. This is a high-profile international process where Indigenous Peoples can have a significant impact on the outcome.

The US has legal obligations under international human rights treaties and Conventions it has ratified, including the ICERD. These obligations are not dependent on US courts and US laws. In fact, they provide checks and balances on US laws and practices by making them accountable and subject to legally-binding international standards.

Although there is an individual and group complaint procedure provided for under Article 14 of the ICERD, it requires that the State party formally agree that the CERD can receive and hear these complaints. To date, the US has not made the required declaration under Article 14 that establishes this complaint procedure. However, like all ICERD State Parties, the US is required to file “Periodic Reports” formally informing the CERD on its compliance with the provisions of
The ICERD: An International Convention Addressing Racial Discrimination

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

The Convention applies to the nullification or impairment, or the intent to do so, of any and all human rights, not just those falling under a narrow definition of “racial discrimination”. Most importantly, the Convention relies on international definitions of human rights, not just how the US’ defines those few rights found in the Amendments to the Constitution or how the Supreme Court decides to interpret them.

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

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

CERD General Recommendation

Treaty Monitoring Bodies like the CERD often adopt general comments or recommendations to “guide” the States in their implementation of a human rights Covenant or Convention. These are international standards that interpret the Convention as requirements of compliance by the State Parties. CERD General Recommendation XXIII specifically addresses Indigenous Peoples and was adopted in 1997. It is of central importance to Indigenous Peoples as it addresses a range of vital issues including lands, resources, culture, language and free prior informed consent. CERD General Recommendation XXIII is printed in full below:

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

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

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

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

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

6. The Committee further calls upon States parties with indigenous peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention.
the Convention. Indigenous Peoples, organizations and tribes can also submit information independently, under this procedure.

The US filed its 4th, 5th and 6th Periodic Reports as one document with the CERD in April 2006. It will be examined on the basis of this report by the CERD at its 72nd session from February 18th-March 7th, 2008. At that time, the CERD will question representatives of the US government, typically lawyers from the Department of State and Department of Justice, as well as other relevant federal agencies. The CERD’s questions will be based not only on the content of the US’ Periodic Report, but on issues raised by Non-Governmental Organizations (NGO’s), Indigenous Nations, tribes and organizations who have also submitted “Shadow” or Parallel Reports to the CERD.

This training manual has been developed to provide information to Indigenous Nations, tribes and organizations on the process of submitting these Shadow or Parallel Reports to the CERD for its upcoming review of the US, and to explain why this is such an important opportunity. Indigenous Peoples can speak for themselves to inform the CERD on the true state of racial discrimination in the US and point out omissions, deficiencies, and inaccuracies in the official government reports. This will assist the CERD experts to hold the US accountable to its obligations under international human rights law. After their review in March 2008, the CERD will publicize a report on its conclusions about the US’ compliance and recommend actions the US should take to improve the situation and address ongoing violations. Indigenous Peoples will then be able to use this report and recommendations to pressure the US to change situations of racial discrimination impacting their communities.

**Indigenous Peoples and the ICERD**

Indigenous Peoples including the Western Shoshone (US), Mayans (Guatemala), First Nations of Canada and Maori (New Zealand) have submitted Shadow Reports and utilized the early warning and urgent action procedures to bring attention to State violations of the ICERD directly impacting their Peoples. The CERD has developed

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**Francisco Cali, Mayan Kaqchikel, CERD Committee Member & IITC Board President**

“The CERD is a very important body within the UN body that can help Indigenous Peoples to protect their rights. In particular, General Recommendation XXIII talks about the obligations that State Parties have towards Indigenous Peoples as it relates to their cultural rights, traditions and languages. In addition, it also requires that State Parties obtain the free prior informed consent of Indigenous Peoples before they can develop projects affecting their traditional lands and territories. Articles 1-7 of the ICERD are also useful tools for Indigenous Peoples to protect their cultural lifeways, lands and territories. The CERD and the ICERD are important tools for our struggle to combat racism and discrimination and to gain and equal position in society to assert our rights as a peoples and as individuals. I think it is very important for us to understand the ICERD and use this mechanism as a tool to defend the rights of our Peoples within the United Nations.”
Early Warning and Urgent Action procedures that allow NGO's and others to initiate communication to the CERD about particularly threatening or damaging situations. In these cases, the CERD can require the State to report on an urgent bases (for more information on the early warning and urgent action procedures, see “Opportunities for making submissions to the CERD” on page 8).

The Western Shoshone have successfully used the early warning and urgent action procedures to raise serious questions challenging the legitimacy of the Indian Land Claims Commission process and the purported “loss” of their ancestral lands in violation of the Treaty of Ruby Valley. As a result of the Shadow Reports submitted by Canadian and other First Nations Peoples, the 2007 CERD report on Canada called attention to a range of issues of discrimination and violations of human rights impacting Indigenous Peoples in and outside of that country. The Maori of Aotearoa (New Zealand) submitted information under the early warning and urgent action procedures to the CERD criticizing New Zealand’s Foreshore and Seabed Legislation that closed off the possibility for Maori to claim freehold title of the foreshore and seabed through the Maori Land Court.

In addition, the Mayan Peoples of Guatemala also submitted Shadow reports in 2006 and 2007 addressing the lack of effective consultation, lack of meaningful representation and the denials of free prior informed consent by the Guatemala Government in regards to proposed mineral mining activities in that country among other issues. These concerns were addressed in the latest CERD report on that country, Guatemala was asked to provide additional information on how these matters are being resolved.

Following is a more detailed overview of some of these actions and the CERD’s responses:

**Western Shoshone**

For over three decades, Western Shoshone, in particular, sisters Carrie Dann and recently deceased Mary Dann, resisted US efforts to declare their traditional lands "public" or federal lands. The Western Shoshone have consistently argued that

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**Carrie Dann, Western Shoshone**

"We are very pleased with the CERD's decision against the United States. Hopefully, the United States will begin to address its poor history with the Indigenous Peoples and begin to act in a more honest and good faith manner. The struggle of the Western Shoshone Nation is the struggle of all indigenous peoples. It is not just about abuse of power and economics – it is about the stripping away of our spirit. It is about being forced to live in two worlds – the real world and a world of made up laws and legal constructs which attempt to render us invisible. Laws which claim to transfer power from the sacred things to the almighty dollar. When we have been beaten down, time and time again, when we have to stand by and watch our world and our people collapsing in front of us, the one thing that keeps us going is our spiritual beliefs – our knowledge of the traditional teachings. The CERD decision confirms what the Western Shoshone and other Indigenous Peoples have been saying for a very long time - it is a first step that we can use in our ongoing work and in our corporate engagement and public education strategies. We also hope this decision and the Western Shoshone struggle can be used to encourage and strengthen other peoples’ struggles to protect their spirituality, the lands, resources and their rights as Indigenous Peoples."
the 1863 Treaty of Ruby Valley recognized the borders of the Western Shoshone and their human rights under international law and that the US had never acquired title to their lands.

Beginning in 1992, the Western Shoshone worked with groups including the Western Shoshone Defense Fund (WSDF) and the University of Arizona College of Law’s Indigenous Peoples Law and Policy Program to bring international attention to their struggle to preserve their ancestral lands. Due to these early efforts, the Shoshone received a brief mention in the CERD’s review of US compliance of the ICERD in 2001. The small mention also included key issues of land rights, impacts of toxic contamination and free, informed and prior consent.4

In 2005, the Western Shoshone also used the early warning and urgent action procedures to inform the CERD of their struggle, which resulted in specific questions to which the US had to respond. These questions addressed fundamental issues for the Western Shoshone and many other Indian Nations in the US related to the purported “loss” of their ancestral lands and the legitimacy of the Indian Claim Commission process. For the second examination of this case, the CERD raised a series of written questions, requiring the US to respond specifically to the issues raised by the Western Shoshone. The CERD issued a full Urgent Action decision in 2006 stating in part that the "Committee has received credible information alleging that the Western Shoshone Indigenous Peoples are being denied their traditional rights to land, and that the measures taken and even accelerated lately by the State party in relation to the status, use and occupation of these lands may cumulatively lead to irreparable harm to these communities".5

First Nations of Canada

In response to Canada’s Periodic Report to the CERD and its periodic review in March 2007, Shadow Reports were submitted by a range of First Nations and organizations. They called attention to the discriminatory position and actions of Canada in its opposition to the United Nations Declaration on the Rights of Indigenous Peoples, in particular its provisions upholding free, prior and informed

Ron Lameman, Beaver Lake Cree Nation, Executive Direction, Confederacy of Treaty Six First Nations

“The Indigenous Peoples of Canada and especially the Treaty Peoples of Treaty No. 6 Territory were very pleased and indeed owe a debt of gratitude to the International Indian Treaty Council for the proactive approach taken in assisting in the very timely and professional response to the Government of Canada’s report to the CERD Committee. The assistance of IITC achieved a number of important accomplishments with regard to the UN reporting processes and how they affect the Indigenous Peoples of a given country situation [in this case Canada]. These include but by no means are limited to the following:

• It showed not only the UN but the Indigenous Peoples of Canada how one-sided the reports can be if the subjects being reported on have no meaningful participation on what is being reported.

• It finally hit home to many of the Indigenous Nations/Peoples what is really happening in the International Community and the rosy picture that Canada paints about its dealings with Indigenous Peoples. In other words, Canada is portraying itself as a champion of Human Rights in the world when in reality the Indigenous Peoples of the Land are still living in the “Fourth World” as so eloquently put by our late great leader George Manuel.

• This initiative has rallied the Indigenous Peoples of Canada around the issue of the reporting requirements that Canada has to the International Treaty Monitoring Bodies which happen on a periodic basis. This experience will ensure that the Indigenous Peoples of Canada will demand more accountability of the Government of Canada in the future and insist that any future reporting processes will include their participation from the outset.”
consent, rights to land and resources, self-determination and treaty rights. The IITC and the Confederacy of Treaty Six First Nations, the International Organization of Indigenous Resource Development, the Assembly of First Nations, the British Columbia First Nations Leadership Council and the Native Women's Association of Canada were among the Indigenous organizations and Nations that filed Shadow Reports to the CERD. These submissions served as the basis of the CERD's examination of Canada with regard to Canadian discrimination against Indigenous Peoples.

As a result, the CERD’s report on Canada, released on March 8, 2007, pointed to a range of violations impacting Indigenous Peoples in that country. These included treaty violations, institutional racism and discrimination within the criminal justice and court systems, high levels of violence against Indigenous women, continued removals of Indigenous children from their homes and communities, unequal applications of laws, violations of the principle of free prior informed consent, and discrimination and human rights violations in Canada’s land claims and settlement processes. The CERD urged Canada “to engage, in good faith, in negotiations based on recognition and reconciliation” for Indigenous Peoples’ rights regarding the settlement of land and natural resources claims.

In a ground-breaking finding, based on community and tribal testimonies about the actions of Canadian mining companies in Canada, Alaska, Montana and Guatemala, CERD expressed concerns that transnational mining companies registered in Canada are negatively impacting the human rights of Indigenous Peoples. The CERD urged Canada to “take measures” to ensure accountability of Canadian transnational mining companies with regard to Indigenous Peoples’ human rights in other countries, providing Indigenous Peoples with a legally-binding UN mechanism to hold countries accountable for human rights violations committed by multi-national corporations for the first time in history!

Opportunities for making submissions to the CERD

Early Warning Procedure
The early warning procedure was introduced to CERD’s regular agenda in 1994 and provides a way in which NGO’s and communities can submit information to the CERD about pending conflicts or immanent threats to human rights when they have not received an adequate preventative domestic response. This procedure is primarily used to prevent existing problems from escalating into more serious conflicts, particularly if such a conflict has previously occurred.

Urgent Action Procedure
The urgent action procedure was also introduced in 1994 as a way for the CERD Committee to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. Under these procedures, CERD can examine a situation without any Periodic Report from the State Party concerned.

Individual Communication
This procedure allows individuals or groups of individuals to submit their claims as victims of a violation of the Convention directly to CERD provided that the State has made a declaration to recognize CERD’s “competence” or authority to consider such submissions under Article 14 of the Convention. Unfortunately, to date, the US has not accepted the competency the CERD to accept cases filed by individual or groups under the provisions of Article 14.
Maori of Aotearoa

The Maori of Aotearoa (New Zealand) have also used the early warning and urgent action procedures to challenge the Foreshore and Seabed Act of 2004. This piece of legislation vested “full legal and beneficial ownership of New Zealand’s public foreshore and seabed in the Crown.” This was strongly opposed by the Maori who argued that it discriminated against the Maori, their customary title to the foreshore and seabed that had never been extinguished, and violated both the Treaty of Waitangi and the ICERD.

In 2004, several Maori organizations including Taranaki Maori Trust Board, Te Runanga o Ngai Tahu and the Treaty Tribes Coalition, submitted a petition to the CERD under the early warning measures and urgent action procedures requesting that New Zealand withdraw the legislation. The CERD was convinced of the urgency of the Maori submission and requested further information from the New Zealand government.

In February 2005, the CERD reviewed the Maori early warning and urgent action petition, and analyzed both the New Zealand government and Maori submissions. In March 2005, the CERD issued their decision and outlined a number of concerns they had about the Foreshore and Seabed Act. The CERD’s concerns included the “political atmosphere that developed in New Zealand following the Court of Appeal's decision in the Ngati Apa case, which provided the backdrop to the drafting and enactment of the legislation" and referred to the State’s obligations under article 2(1) (d) and article 4 of the Convention (the full text of ICERD is available in the Appendix).

The CERD raised concerns about “the apparent haste with which the legislation was enacted and that insufficient consideration may have been given to alternative responses to the Ngati Apa decision...". The CERD also stated that, “the legislation appears to the Committee, on balance, to contain discriminatory aspects against the Maori, in particular in its extinguishment of the possibility of establishing Maori customary titles over the foreshore and seabed and its failure to provide a guaranteed right of redress, notwithstanding the

Claire Charters, Maori, Attorney, Aotearoa Indigenous Rights Trust

“The CERD is especially important for Indigenous Peoples because it has established a strong jurisprudence on the protection of Indigenous Peoples' land rights. As a result, Maori were able to petition the CERD, successfully, to censure New Zealand's confiscation of Maori property interests in the foreshore and seabed in 2004 and invoking the Committee's early warning and urgent action procedure. The CERD's decision has had a lasting impact. It supported the Maori objection to the government's actions and is being used to lobby the government for greater constitutional protection of Maori rights. Further, Maori are now participating more actively in United Nations treaty body procedures. For example, a number of Maori organisations presented Shadow Reports to the CERD when it considered New Zealand's state report in August 2007.”
State party's obligations under articles 5 and 6 of the Convention.”

It is only the second time in the history of the New Zealand government that an international body has found the State to be in breach of a human rights treaty outside of the State reporting process.

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

These successful efforts to provide accurate information about racism towards Indigenous Peoples in various States under review by the CERD reflect the kinds of issues, presented in the framework of international human rights, that can be presented by Indigenous Peoples in the US. We know that this UN body can not, in itself, resolve our struggles. However, it can provide us with an important tool to advance our concerns and bring them to light internationally. This process can help us to put pressure on States like the US, their institutions and agencies, to take steps to resolve and correct critical issues affecting our communities.

The United States to be Reviewed by the CERD in Early 2008

The CERD will review the US' compliance with the CERD Convention and its Periodic Report at its next session in February and March, 2008, in Geneva, Switzerland. During that session, CERD Members will question US government officials about their report which was submitted earlier this year (available on the CERD and IITC web sites). They will make recommendations for improving policies and programs to combat racism in the US and point out situations of racial discrimination which, in their view, violate provisions of the ICERD and the US' obligations to uphold them.

In order to provide the CERD with accurate information and suggested recommendations, many organizations have already started to form issue-based working groups. The IITC and the Western Shoshone Defense Project (WSDP) have agreed to coordinate an "Indigenous Peoples Working Group" to develop a joint Indigenous Peoples' submission to the CERD. It will include input and information received from Indigenous Peoples, Tribes, organizations and communities in the US who want to be included, as well as information submitted by Indigenous Peoples from other countries who also may be negatively impacted by US policies or activities.

The “Shadow” or Parallel Report Process

What is a “Shadow Report”?

A “Shadow Report” is information submitted to a UN Treaty Monitoring Body, in this case the CERD, by representatives of what the UN calls “Civil Society” or non-State entities. These include Non-governmental Organizations, Indian Nations, Tribal or First Nation governments, grass roots communities, local organizations, families or even individuals. Under the CERD, States are required to consult with and collect input from "Civil Society" entities which may be affected by racial discrimination or are involved in any of the concerns or issues to be covered by their report to CERD. Unfortunately the common practice by most States, including the US, is to ignore this provision and to fail to seek this consultation or include any input which is critical
The Indigenous Peoples’ Working Group for Development of a joint Shadow Report to the CERD

The Indigenous Peoples Working Group is coordinated by IITC and the WSDF. These organizations are working together to compile information for the submission of a joint Shadow Report regarding issues of racial discrimination in the US as they pertain to Indigenous Peoples. Indigenous Nations, tribes and organizations are encouraged to submit information in the form of reports, statistics, timelines, testimonials, first hand anecdotes, elders’ statements, interviews, photos, etc., directly to the Working Group via IITC and/or WSDF. Your information will be credited to the sources in the report unless you request otherwise.

Information is currently being received addressing a range of issues in the US. These include discrimination and racial bias in schools and the education system, desecration of burial grounds and sacred sites, high levels of violence against Indigenous women, bias and cutbacks in the Indian health system, violations of freedom of religion for Indian prisoners, denials of free prior informed consent and threats to subsistence ways of life by mining, timber and oil companies, and impacts on Indigenous Peoples by US border and immigration policies, among many others.

The joint Indigenous Peoples’ Shadow Report will be submitted by the end of December 2007 to the CERD. The deadline for submitting information to IITC and/or WSDF is the 30th of November 2007 at the latest.

Information can be forwarded to:

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You are also welcome to submit independent Shadow Reports to the CERD directly. See page 12 for that contact information.

IITC is available to provide technical assistance, answer questions or to make presentation to interested tribes or organizations. Please contact us if you need this support or have any questions.
of their policies or practices. States tend to file Periodic Reports that are self-serving, self-congratulatory, and that put their own “spin” on issues and omit embarrassing or incriminating realities.

If organizations, Peoples, communities or tribes feel that the US report does not adequately cover their concerns, or if key relevant information is being misstated, omitted, misinterpreted or ignored, they can file a “Shadow” report providing the CERD with the true and accurate picture from their own perspective.

**Why do Shadow Reports?**

**If we don’t tell them, they won’t know**

Official UN Guidelines on States’ Periodic Reports calls for the involvement and consultation of Civil Society and NGO’s in their preparation. Unfortunately, the common practice is that States, including the US, ignore this provision. They tell UN Committees like the CERD only what they want to tell them. Indigenous Peoples crucial concerns are usually either minimized or omitted completely.

**It encourages the United States to be honest**

A Shadow Report is an opportunity for Indigenous Peoples, Tribes and grass roots activists to ensure that the true state of racial discrimination is presented to the International Community and that our key concerns and issues are explained and documented from our own point of view. It helps us to see that the US is held accountable to the international human rights obligations which it has agreed to uphold.

**It defines our issues as human rights issues**

As has been pointed out by UN experts as well as the IITC, human rights are invisible in the US. Most people, including Indigenous Peoples, don’t know how international human rights standards apply to their own situations and struggles. In fact, most if not all of our struggles are struggles for our human rights and fundamental freedoms. Current efforts to address high levels of sexual violence against Indian women, ensure traditional ceremonies for Indian prisoners, protect sacred sites from desecration by mining and tourism and defend traditional subsistence rights are just a few examples of struggles based on internationally-recognized human rights. Placing our issues within an international human rights context and framework can help to advance local organizing efforts by applying international pressure. It changes the debate to a human rights, international issue.

**It’s not “just us”**

When an international body declares that the US is violating Indigenous Peoples our human rights, it further justifies and lends support to our struggles. It’s just not us saying it but the international community and international experts.

**It helps to educate grass roots Peoples and activists about human rights**

Our issues and concerns are human rights issues, and we should learn how to use international human rights standards and the mechanisms that hold States accountable to them in our struggles. This knowledge can lead to new strategies and networking possibilities with the UN, Indigenous Peoples in other countries and international Indigenous and non-Indigenous NGOs.
It places a higher burden on the United States

The ICERD is a legally binding Convention which goes much further to protect human rights than US law and the US Constitution. The ICERD recognizes that discrimination results not just from deliberate acts of discrimination on the part of the government but also from actions and laws that have a discriminatory impact. Examples would include laws or regulations that deny access for Indians to their Sacred Sites, allow mining or other unsustainable development to take place without obtaining the Free Prior Informed Consent of affected Indigenous Peoples or prohibit sweat lodge and other ceremonies for Indigenous prison inmates. It also provides for affirmative action, not just in education and employment, but in any situation of historical discrimination where it may be appropriate.

It challenges States' impunity and confronts hypocrisy

States, including the US, want to point the finger at other countries in the UN, while hoping that their own violations are ignored or “swept under the rug.” Shadow Reports from Indigenous Peoples, whose lands rights, Treaties and human rights have been and continued to be violated in this country, set the record straight. They can bring about some high-level scrutiny and international pressure on the US to begin to resolve and address these human rights violations, here at home.

How to Develop and Submit a “Shadow Report” to the CERD

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

If you can see that your issue or concern has been omitted or is not stated accurately in the US report, and if the issue is one that your community or tribe has identified as a critical concern, you might consider the value of taking it into the international spotlight in this way. Remember, you are presenting information about the violations of your Nations’ or communities’ human rights either as a result of a direct action or the failure to protect your rights by the US government, its agencies and representatives. These can include the US Justice Department, the BLM, BIA, the EPA, the State or federal courts, Department of Corrections, the education or health systems, and now as a result of the CERD response to Canada earlier this year, corporations licensed by the US.

Thinking about it strategically can help Indigenous Peoples, communities and organizations decide to move key issues of concern into the international arena via the CERD and to use the attention and pressure created in support of local and national activism, advocacy, public education and organizing.
It is important to mention that in Shadow Reports filed by Indigenous Peoples from now on, including for the upcoming US review, the UN Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly on September 13th 2007 can be used as a framework for presenting a range of human rights issues impacting Indigenous Peoples. The CERD should be encouraged to use the Declaration to assess States’ compliance and to provide interpretations and examples of the rights contained in the ICERD and General recommendation XXIII.

There is no set format for writing Shadow Reports. The following is offered as guidance and is based on information from the International Human Rights Law Group’s US Racial Discrimination Program and the IITC with the input of a CERD member. More information can be found on the ICERD web site.\textsuperscript{12}

CERD members have limited time to review the large amounts of information they receive. The US report will no doubt be large with many Shadow Reports submitted by a range of NGO’s and organizations addressing racial justice issues in this country. Therefore reports should be as succinct as possible (up to 40 pages plus any attachments are permitted, but 10-15 pages is recommended for individually-filed reports). Whenever possible, relevant information should include factual data and documentation such as statistics, maps, citations, names and dates, timelines, eye witness accounts, testimonies and statements from impacted community bodies. Indexing and numbering the paragraphs makes it easier for referencing the document by the CERD members.

One of the 18 CERD members is assigned to be in charge of one country report at each session, and to serve as that country “Rapporteur” for the session. Each county Rapporteur makes a detailed examination of the information presented by that country as well that provided in the Shadow Reports from “Civil Society” groups (i.e. Indigenous Peoples, NGO’s etc.). All the CERD members receive all the information presented as well, but it is difficult for them to read all of it if the reports are too voluminous and large in number. We will not know ahead of time which CERD member has been assigned to be the county Rapporteur for the US review until the session begins, as that information is not made public ahead of time. The names and resumes of all the CERD members are available on the CERD web site.\textsuperscript{13}

Shadow Reports can contain:
- A cover letter to officially transmit your submission and provide your contact information
- A table of contents (including information on any attachments)
- An Executive Summary (1–2 pages summarizing your issue/s)
- An Introduction statement
- The main body of the submission can:
  - Describe the situation and the issue(s) you are presenting.
  - Identify and reference the key article(s) of CERD involved (an abbreviated reference in the main body of the text, with a full copy of the relevant primary articles of the Convention in an appendix).
  - Identify relevant state laws and policies, and the present the government’s implementation record, i.e. compliance with Free Prior Informed Consent, equal protection and representation, and other related provisions.
  - Provide indicators such as statistical data and relevant case studies.
  - Cite resolutions, declarations or decisions on relevant issues from traditional and tribal councils, elders groups or other key community leadership bodies.
• Provide statements and eye witness accounts with as many facts (names, dates, places, statistics, documented impacts etc.) as possible, summarized in the body of the text and/or included as attachments or an appendix if they are lengthy.
• Identify obstacles to achieving full implementation of CERD including court decisions and legal procedures, existence or lack of effective mechanisms for due process and redress etc.
• Provide a list of questions that you would like the CERD to ask the US directly in response to key problems and issues.
• Make recommendations for solutions to the problems you are addressing.

In addition to, or instead of, submitting information for the Joint Indigenous Peoples’ Shadow Report, Tribes and Organizations can submit individual reports directly to the CERD. The contact information for submission is as follows:

Nathalie Prouvez  
Secretary of the Committee on the Elimination of Racial Discrimination  
Treaties and Commission Branch  
Office of the High Commissioner for Human Rights  
Tel. +41.22.917.93.09 - Fax +41.22.917.90.22  
e-mail: nprouvez@ohchr.org  
Palais Wilson - 52, rue des Pâquis, CH-1201, Geneva, Switzerland  
Mailing address: UNOG-OHCHR, CH-1211 Geneva 10, Switzerland

Joyce Fucio  
Administrative Assistant  
Secretariat of the Committee on the Elimination of Racial Discrimination  
Treaties and Commission Branch  
Office of the High Commissioner for Human Rights  
Tel. +41.22.917.94.09 - Fax +41.22.917.90.22  
e-mail: jfucio@ohchr.org  
Palais Wilson - 52, rue des Pâquis, CH-1201, Geneva, Switzerland  
Mailing address: UNOG-OHCHR, CH-1211 Geneva 10, Switzerland

The cover letter should be addressed to the Secretary, asking her to deliver the information to the CERD members.

There is no official deadline for submission of Shadow Reports. However, organizations should allow sufficient time for CERD Members to review their reports. It is suggested that Indigenous Peoples, Tribes and organizations submit their Shadow Reports for the upcoming US Review by early January 2008 at the latest.

Ordinarily the CERD needs to receive 20 hard copies of your full report with any attachments by mail or courier, or by hand delivery. If you submit it before January 15th, the CERD Secretariat may be able to make the copies for you and distribute them to the CERD members (suggestion: if you submit via email ask specifically if the CERD Secretariat will be able to make the copies for you; if not, you will have to either hand deliver or send copies via a postal service to the address above).
Shadow Reports received in time (usually one month in advance which is in this case January 15th, 2008) will be posted on the CERD web site, unless you request that they not do so.

There is not an opportunity provided for non-State parties to directly address the CERD members during the official sessions. However, there will be an opportunity to participate in a “side event” or briefing session scheduled around the dates set for the US report. NGO’s and Indigenous Peoples will be able to summarize their issues (in a very succinct format, as it is only one and half hours total for all the NGO’s and organizations who want to present) and to answer questions from the CERD members informally. Please contact IITC or check the UNCERD web site as the time grows closer to see when the US is assigned an exact date for its review during the 3 weeks of the CERD’s next (72nd) session. The entire session will take place from February 18th – March 7th, 2008 in Geneva, but the US review will be conducted in two 3-hour sessions, spread out over 2 days.

If you would like to attend the session, please check with the CERD website to see what the credentialing requirements will be.

Thank you, for all our relations.

"Our ancestors gave their lives so that we could be here today and to ensure that our Nation would continue. We must not waste what we have been given nor relinquish our inheritance."

-- Beverly J. LeBeau, Elder, Pit River Nation, California
Excerpts from a Recent Indigenous Peoples’ Shadow Report to the CERD

- The Nations and Peoples of Treaty No. 6 continue to have respect for and hold Sacred the true spirit and intent of Treaty No. 6. However, the government of Canada along with the provincial governments of this country continue tosteamroll ahead with their modern version of Manifest Destiny by instituting discriminatory legislation, policies and regulations that violate the Treaty and collective rights of the Indigenous Nations of Treaty No. 6 territory.

- Our peoples continue to suffer disproportionate rates of incarceration, children in foster care, youth suicides, health problems, substandard housing, contaminated water and a range of other conditions… at least one out of every 18 First Nation children is in child care custody today in this County. And there have been many cases of deaths of our young Native children and babies in foster care custody that have never been fully investigated or examined.

- Transnational and Multinational Corporations, many of them based in Canada, continue to be unchecked in their raping and pillaging of Mother Earth and our homeland. Today, to give just one example, First Nations elders and leaders from the Northwest Territories who live downstream from the open pit “tar sands” mining sites have spoken out, calling for a moratorium of the extraction of “tar sands”. Tar sands extraction has had and continues to have a massive destructive environmental impact… Vast areas of traditional subsistence hunting and fishing territories have been desecrated, contaminated and destroyed, and more are being threatened.

- We are very concerned that principle of free prior informed consent is not only violated in Canada. We are also extremely concerned regarding the failure to implement free prior informed consent by Canadian mining companies operating in other countries, on or near the traditional territories of Indigenous Peoples, posing dire threats to their health and means of subsistence. The words and spirit of the CERD is founded on the principle of non-discrimination. It does not stipulate that the state parties for the CERD are not required to uphold their obligations if the impacts fall on Peoples whose homes are outside the country. Of course such an exemption would be blatantly discriminate on its face.

- In Alaska, many Indigenous tribes and villages have expressed their strong opposition to the proposed Pebble Mine, the project of Northern Dynasty Minerals, a Vancouver Canada based corporation. Pebble Mine gold and copper mine would create a 1000 square mile open pit mining district at the headwaters of the two most famous salmon producing river drainages in Alaska --the Mulchatna/ Nushagak River drainage and the Newhalen / Kvichak River drainage, both of which feed into the renowned Bristol Bay, the richest salmon fishery in the world. The proposed Pebble Mine, which would be the first of many, would include the largest dam in the world, larger than Three Gorges Dam in China, and made of earth not concrete, to hold back the toxic waste created in the mining process.

- We have enclosed several formal resolutions from Indigenous village Councils located in proximity to the proposed mine stating their clear opposition to the plan, which includes the diversion of pristine rivers used by Native communities for subsistence fishing since time immemorial. The Northern Dynasty Corporation Pebble Mining project would undermine these communities’ health, way of life, sustainable social and economic development and traditional means of subsistence upon which their identity and survival is based… Despite their opposition, expressed formally in writing by the Indigenous Peoples who would be directly impacted through their representative tribal council governments, this Canadian company is proceeding with its plans, once again violating the free prior informed consent of Indigenous peoples with dire consequences for their ecosystems, lands waters and means of subsistence.

- In Guatemala, the Glamis Gold mining company, a Canadian corporation (now owned by Goldcorp Mining as of November 2006, yet another Canadian mining company with corporate headquarters in Vancouver Canada), is proceeding to advance plans to install open pit gold mines using cyanide for ore extraction in the traditional homelands of Mayan Indian Communities in Sololá.

- Opposition to these mining activities by Indigenous Peoples in Guatemala has increased. A community referendum was held on June 19, 2005 in the municipality of Sipakapa, home to the Mayan Sipakapense Peoples in the southwestern department of San Marcos. Out of 2,486 persons who voted, only 39 voted in favor of the mine. This clearly counters the mining company’s arguments that most people want to benefit from mining as a new source of jobs for the community.

- A few weeks after the Sipakapa referendum, another one was held in the municipality of Río Hondo in the eastern department of Zacapa, regarding the construction of a dam that would severely affect the communities’ environment. 2,735 persons or 96% of the voters, cast a “NO” vote. Even before the Sipakapa referendum, Montana/Glamis stated in a press release that it would not abide by the results, and warned two NGO’s, without naming them, of what might happen as a result of the referendum.

- ...These are pressing concerns for the rights and survival of Indigenous Peoples and are, in our view, of direct relevance to the mandate of the CERD Committee. We look forward to your response.”

ICERD Information on the World Wide Web

ICERD Relevant websites

The Office of the High Commissioner for Human Rights (OHCHR) is the main international human rights website: http://www.ohchr.org/english


The ICERD and other Treaty Monitoring Bodies: http://www.ohchr.org/english/bodies/index.htm

The CERD Committee information: http://www.ohchr.org/english/bodies/cerd/index.htm

Scheduled Examinations (by date), including the US Periodic Report (see Addendum 2, pages 112-119, for references to the Western Shoshone: http://www.ohchr.org/english/bodies/cerd/sessions.htm


Early Warning Procedures (left Column) Western Shoshone
http://www.ohchr.org/english/bodies/cerd/early-warning.htm

Other Sites of Interest

Non-conventional human rights processes or “Mechanisms”

UN Indigenous Human Rights Activities are found on the OHCHR home page under Issues (click to issues at the top of top of the page, or go directly to http://www.ohchr.org/english/issues/indigenous/index.htm. Scroll down to Indigenous. These links will take you to what are called “non-conventional mechanisms.” The CERD Committee and Convention are “conventional mechanisms.”)


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

International Convention on the Elimination of All Forms of Racial Discrimination
Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

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

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

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

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

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

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

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

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

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

Have agreed as follows:

PART I

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

Article 2
1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations; (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists; (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization; (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3
States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.
Article 4
States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:
(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5
In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
(a) The right to equal treatment before the tribunals and all other organs administering justice;
(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
(d) Other civil rights, in particular:
(i) The right to freedom of movement and residence within the border of the State;
(ii) The right to leave any country, including one's own, and to return to one's country;
(iii) The right to nationality;
(iv) The right to marriage and choice of spouse;
(v) The right to own property alone as well as in association with others;
(vi) The right to inherit;
(vii) The right to freedom of thought, conscience and religion;
(viii) The right to freedom of opinion and expression;
(ix) The right to freedom of peaceful assembly and association;
(e) Economic, social and cultural rights, in particular:
(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
(ii) The right to form and join trade unions;
(iii) The right to housing;
(iv) The right to public health, medical care, social security and social services;
(v) The right to education and training;
(vi) The right to equal participation in cultural activities;
(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

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

Article 7
States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

Article 8
1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;
   (b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9
1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and
   (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.
2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

Article 10
1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 11
1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.
3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.
4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.
5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12
1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;
(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.
5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.
6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.
8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

Article 13
1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the
parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

Article 14
1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;

   (b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available local remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;

   (b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.

Article 15
1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December
1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;

(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

**Article 16**
The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

**PART III**

**Article 17**
1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 18**
1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention. 2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article 19**
1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

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

**Article 20**
1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.
2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

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

**Article 21**

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

**Article 22**

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

**Article 23**

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

**Article 24**

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

(a) Signatures, ratifications and accessions under articles 17 and 18;

(b) The date of entry into force of this Convention under article 19;

(c) Communications and declarations received under articles 14, 20 and 23;

(d) Denunciations under article 21.

**Article 25**

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.
Endnotes


2 Human Rights Project.

3 Although the Convention requires that States Parties report generally every two years, the US has only reported twice, in September of 2000 (1st, 2nd and 3rd Periodic Report) and this latest Report in 2006. This first Periodic Report can be found on the US Department of State website, http://www.state.gov.

4 In the CERD examination of the first US Periodic Report, Indians received only a brief mention. However, key issues, such as land rights, impacts of toxic contamination and free prior informed consent (in the Western Shoshone case) were underscored (see below). Online: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.56.18,paras.380-407.En?Opendocument

384. The Committee notes the persistence of the discriminatory effects of the legacy of slavery, segregation, and destructive policies with regard to Native Americans.

400. 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. It further expresses concern with regard to information on plans for expanding mining and nuclear waste storage on Western Shoshone ancestral land, placing their land up for auction for private sale, and other actions affecting the rights of indigenous peoples. The Committee recommends that the State party ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights, as required under article 5 (c) of the Convention, and draws the attention of the State party to general recommendation XXIII on indigenous peoples which stresses the importance of securing the “informed consent” of indigenous communities and calls, inter alia, for recognition and compensation for loss. The State party is also encouraged to use as guidance the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.


8 Committee on the Elimination of Racial Discrimination. (66th Session).

9 Download the full CERD report on New Zealand, online: http://www.ohchr.org/english/bodies/cerd/cedrs71.htm, scroll down page to New Zealand and download “Concluding Observations” document.

10 Some ideas and language in this section are borrowed from a paper by Margaret Huang of the U.S. Human Rights Network. For more information on the US Human Rights network, visit: http://www.ushrnetwork.org/


12 http://www.ohchr.org/english/bodies/cerd/

13 For a full list of all CERD members. visit: http://www.ohchr.org/english/bodies/cerd/members.htm

International Indian Treaty Council

The International Indian Treaty Council (IITC) is an organization of Indigenous Peoples from North, Central, South America and the Pacific working for the Sovereignty and Self Determination of Indigenous Peoples and the recognition and protection of Indigenous Rights, Treaties, Traditional Cultures and Sacred Lands.

A VOICE FOR INDIGENOUS PEOPLES

The International Indian Treaty Council (IITC) is an organization of Indigenous Peoples from North, Central and South American working for the sovereignty and self-determination of Indigenous Peoples and the recognition and protection of their human rights, treaties, traditional cultures and sacred lands. IITC was founded in 1974 in Standing Rock, South Dakota to serve as a voice for Indigenous communities and Peoples internationally. In 1977, IITC was the first Indigenous organization to receive Consultative Status to the UN Economic and Social Council.

The symbol of the sacred pipe uniting the hemisphere was chosen for the IITC by the elders to represent the common bonds of spirituality, ties to the land and respect for traditional cultures common to all Indigenous Peoples.

One of IITC’s “guiding principles” affirms that “Indigenous Peoples speak for themselves before the world community” as an integral aspect of self-determination. The IITC actively works to insure Indigenous Peoples’ participation in a range of key international bodies such as the UN Human Rights Council, the Permanent Forum on Indigenous Issues, the Conference of the Parties to the Convention on Biological Diversity and Article 8(j) working group, UN Development and Environmental Programmes, the Commission on Sustainable Development, International Union for the Conservation of Nature, UN Food and Agriculture Organization, World Trade Organization, World Intellectual Property Organization, UN Treaty Monitoring Bodies, various UN World Conferences and international bodies addressing Global Climate Change and Persistent Organic Pollutants among others.

IITC has worked to develop and implement international standards and mechanisms recognizing and protecting the rights of Indigenous Peoples, in particular the UN and OAS Declarations for the Rights of Indigenous Peoples, and uses a variety of international mechanisms and bodies to redress and prevent human rights violations affecting Indigenous communities.

IITC disseminates information about opportunities for international activism and involvement to Indigenous communities and tribes, and educates and builds awareness about Indigenous struggles among non-Indigenous Peoples and organizations.

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