



NAVAJO NATION HUMAN RIGHTS COMMISSION  
First Commission  
2008-2012

**Listening Session with the U.S. Federal Government: The Summary  
of Testimonies and Statements Submitted by Indigenous Leaders,  
Organizations and Persons to the United States of America**

Introduction

This report is to document for submission the outcome of the March 16 and 17, 2010 “listening sessions”<sup>1</sup> to review the United States (“U.S.”) national and international human rights obligations. The report will be submitted to the Office of High Commission for Human Rights in an effort to follow through with the inquiries presented at the sessions.

The purpose of the listening sessions was to provide an opportunity to indigenous leaders, organizations and individuals to present statements to the U.S. federal government on its human rights obligations as it pertains to indigenous human rights. The information compiled will be part of the U.S. national report that will be submitted to the United Nations (“U.N.”) Universal Periodic Review (“UPR”) process. The U.S. federal government tentatively scheduled six community outreach meetings throughout the United States. The Navajo Nation Human Rights Commission (“Commission”) recommended to the U.S. Department of State that two additional sites be held near large indigenous populations where human rights would be discussed. The American Indian Law Center, Inc. and the Commission were asked to co-host the listening session at the University of New Mexico School of Law in Albuquerque, New Mexico on March 16, 2010 and at Navajo Nation Museum in Window Rock, Navajo Nation (Arizona) on March 17, 2010.

There were one hundred and sixteen participants registered for the Albuquerque, New Mexico, listening session of which thirty-seven individuals provided testimonies and statements to the U.S. federal government delegation. There were one hundred and

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<sup>1</sup> The U.S. community outreach meeting in preparation for its national report was called the “listening session”, contrary to *consultation*. It has been expressed numerous times that the term “consultation” fails to secure appropriate input and consent from the concerned indigenous peoples. Therefore, the U.S. community outreach meeting was called “listening sessions” where indigenous peoples, organizations and individuals presented statements to the U.S. federal government delegation.

forty-one participants registered for the Window Rock, Navajo Nation (Arizona) listening session of which ten individuals provided testimonies and statements.

### Albuquerque, New Mexico Listening Session

For the Albuquerque listening session, there were two panels. First panel addressed the “Right to Self-determination, Nation-to-Nation Relationship and Treaties.” The second panel addressed the “Right to Lands, Territories, Sacred Sites and Resources.” These two issues are fundamental to the livelihood of indigenous peoples in the U.S. and are considered difficult issues that are confronted daily in the U.S. Moreover, the two issues are the primary reasons the U.S. voted against the United Nations’ Declaration on the Rights of Indigenous Peoples.

It is important to note that the presenters indicated that the listening session is good start with engaging the U.S. federal government into a dialogue with indigenous nations on human rights issues. It was also noted that it would be appalling and disappointing to learn at the 2014 session the statements and recommendations presented during the 2010 UPR community outreach meeting are not addressed or implemented.

In summary, the following issues were presented during the morning session in Albuquerque, New Mexico:

1. Treaties between the U.S. and Indigenous Nations: The U.S. ratified three hundred seventy-one treaties with indigenous nations. However, these treaties are ignored or violated by the U.S. federal government. These treaties obligate the U.S. to provide, *inter alia*, health and education provisions to indigenous peoples, including the protection of the indigenous peoples’ welfare. However, the U.S. federal government is not abiding by and fulfilling its treaty obligations.
2. Insufficient funding for indigenous program services: Indigenous issues vary from nation-to-nation but the most common among all indigenous nations is the insufficient U.S. federal government funding for health, education, law enforcement, *inter alia*, for indigenous nations. These service provisions are obligations of the U.S. federal government that are either enshrined in treaties or agreements, as understood by indigenous nations.
3. Right to Self-Determination: While the U.S. federal government champions Public Law (“P.L.”) 93-638, Self-Determination and Education Assistance Act, the law requires indigenous nations to abide by mandates and other requirements to fulfill when accepting federal funding. The right to self-determination is an inherent right of the indigenous peoples that must not be regulated through federal funding mechanisms and must be recognized as equivalent to Article 1 of the Covenant on the Civil and Political Rights.
4. Nation-to-Nation Relations: The U.S. federal government attempted several times to direct its relationship with indigenous nations under the auspices of a nation-to-nation relationship. However, these attempts have failed because of changes in U.S. leadership and priorities. The U.S. failure of commitment to this

type of relationship with indigenous nations is not based on a true nation-to-nation level of democracy.

5. Indian Cabinet Office: The U.S. Bureau of Indian Affairs (“BIA”) program has the responsibility to specifically address indigenous issues. However, the BIA is located in a government department that addresses forestry, natural resources, *inter alia*. In order to appropriately and effectively address indigenous issues, the U.S. federal government must develop a cabinet level post that is specifically dedicated to addressing U.S. indigenous issues.
6. Sign onto the U.N. Declaration on Rights of Indigenous Peoples: While the U.S. federal government voted against the U.N. Declaration on the Rights of Indigenous Peoples (“UN Declaration”). It is imperative the U.S. government retract the earlier decision and approve the entire declaration without any provisions to amend or diminish the UN Declaration. The Committee on the Elimination of all forms of Racial Discrimination (“CERD”) recommended that the U.S. federal government use the UN Declaration as a guide in addressing indigenous issues. Therefore, the U.S. federal government must sign onto the UN Declaration.

The following are issues that were presented during the afternoon session in Albuquerque, New Mexico:

1. Environmental Concerns: One of the priorities of the U.S. federal government is the continual development of nuclear energy. Unfortunately, the development of nuclear energy is at the expense of indigenous peoples because, where these indigenous peoples reside, the surface and subsurface resources are taken without their consent. For example, uranium mining is active in the southwest region. Nuclear energy companies secure lands where it will mine without the free, prior and informed consent of indigenous peoples. And it is the indigenous workers who are often the ones required to mine in areas where there is little regard for the life-safety and well-being of the people impacted by these activities.
2. Sacred Sites: There are multiple indigenous sacred sites in the U.S. In the southwest, without taking into consideration the indigenous peoples concerns, desecration to these sacred sites continue to transpire. One notable New Mexico site is the Los Alamos National Laboratory that was built on an indigenous sacred site. While the U.S. government enacted a number of laws in an effort to protect indigenous religious and cultural beliefs, i.e., the American Indian Religious Freedom Act, these laws do not protect indigenous religious and sacred sites. The U.S. Supreme Court refused to review the case involving the protection of the San Francisco Peaks as an indigenous religious and sacred site.
3. Lack of Indigenous Cultural Input: Often indigenous peoples are not provided an opportunity to submit input on issues pertaining to surface and subsurface development projects sponsored by the U.S. federal government. For example, mining permits are issued without the knowledge or input of indigenous peoples

concerned. Like all peoples in the world community, indigenous peoples have distinct and sustaining beliefs that tie to lands, territories and resources. The cultural beliefs of the indigenous peoples are disregarded and irreverent in favor of development.

4. Assimilation of Indigenous Peoples: One of the U.S. federal governmental policies was to assimilate indigenous peoples, perpetuate cultural genocide by relocating indigenous children from their homes and placing them in boarding schools. The practice continues to be exercised under the auspices of the Doctrine of Discovery by the U.S. federal government.
5. U.S. Border Issues: Some indigenous lands extend beyond nation/states borders. There is a strong need to recognize that indigenous families occupied lands and territories beyond the U.S. borders. Many indigenous populations today have family members that cannot pass through border crossings because of additional security provisions enacted by the U.S. federal government. The acceptance of indigenous peoples' passports must be an acceptable form of record to allow families to pass between countries without unnecessary scrutiny and relentless discrimination that many indigenous peoples encounter daily.
6. Training on U.N. Declaration: Other nation/states provide training opportunities for their indigenous nations and all peoples about the UN Declaration and/or on other indigenous international human rights instruments. However, the U.S. federal government has not made an effort to inform the indigenous nations and peoples about the UN Declaration and other indigenous international human rights instruments.
7. Relocation: Many Navajo and Hopi families' lives were disrupted from "forced" relocation and their cultural life-way obstructed. It is recognized in the international community that indigenous peoples cannot be removed from their lands without their free, prior and informed consent.
8. Permanent Sovereignty over Lands and Right to Manage Resources: Indigenous peoples do not have the full right to manage the surface and subsurface resources and minerals. To manage the resources and minerals, indigenous nations and peoples must submit a request through a permitting process overseen by the U.S. federal government. In order for indigenous peoples to survive socially, politically and economically they must exercise permanent and exclusive sovereignty over their lands, territories, resources (surface and subsurface) and minerals without the interference from the U.S. federal government.
9. Intellectual and Cultural Property: Non-indigenous peoples are practicing indigenous cultural ceremonies for financial profit. For example, an incident took place at Sedona, Arizona, where there were several fatalities when a non-indigenous person operated a sweat-lodge ceremony for financial profit. Indigenous nations advocate against the marketing and exploitation of their peoples' traditional ceremonies that resemble or replicate the cultural teachings of indigenous peoples.

10. Land Claims: The U.S. federal court in collaboration with U.S. federal government attorneys settled a land claims submitted by the Sioux Nation. The settlement was made without the consent of the indigenous nations and peoples concerned. The Sioux Nation is currently negotiating with U.S. President Obama to correct the fraudulent action by the U.S. federal government.
11. Save Indigenous Languages: Indigenous languages are in the process of being lost. It is paramount to indigenous peoples that their languages remain and be recognized as intellectual property. The U.S. federal government must assist by issuing directives to appropriate federal agencies and sufficient funding to indigenous nations to ensure the preservation and protection of indigenous languages.
12. Free Leonard Peliter: More often indigenous peoples do not have the financial resources to defend themselves in courts for crimes they are alleged to have committed and are forced to enter into plea agreements that often consist of jail or prison time and/or fines. In this respect it is largely believed Mr. Leonard Peliter was wrongly imprisoned and must be expeditiously released.
13. Indigenous Treaties equivalent to International Treaties: The U.S. Constitution, Article VI, states that treaties are the supreme law of the land. The U.S. federal government has entered treaties with indigenous peoples like it enters unilateral or bilateral treaties with other nation/states in the international community. Treaties with indigenous nations must be respected and treated as sacred and similar to international covenants, conventions and treaties.
14. Indigenous Prisoners Rights: Indigenous prisoners' cultural rights are often ignored. For example, male prisoners with long hair are often forced to cut their hair. Many indigenous nations recognize long hair as an individual possessing deep cultural knowledge of one's heritage and beliefs. This requirement is a violation of the indigenous prisoners' cultural right to practice his/her indigenous cultural and religious beliefs.

#### Statements from the U.S. Federal Government

The U.S. federal government was provided an opportunity to respond to the questions and comments raised during the listening session. Although various U.S. federal government agencies were present, they were reluctant to respond directly to the questions raised by the indigenous leaders, organizations and individuals. The points shared by the U.S. federal government delegation were that rights of indigenous issues are complex and require significant amount of time to address. And it would be in the best interest of both the U.S. federal government and indigenous peoples to address domestic policies that can be amended to accurately reflect the rights of indigenous peoples.

#### Window Rock, Navajo Nation (Arizona) Listening Session

For the Window Rock listening session, there were five panels. The first panel addressed the "Sacred Sites" on and near the Navajo Nation. The second panel addressed

“Relocation” of Navajo and Hopi families. The third panel addressed “Environmental Issues” as they affect the Navajos. The four panel addressed “Unsolved Deaths as it relates to Border Town Racism” and the final panel addressed the “Right to Self-determination as it relates to Resources.”

#### Summary Remarks from the Navajo Nation Branch Chiefs

The opening remarks were presented by Harrison Tsosie, *Deputy Attorney General*, representing the Office of the Navajo Nation President, Hon. Lawrence T. Morgan, *Speaker* of the Navajo Nation Council, and Hon. Herb Yazzie, *Chief Justice* of the Navajo Nation. All three-branch chiefs stressed the importance of an open dialogue with the U.S. federal government, especially when evaluating its human rights obligations as it pertains to treaty rights the Navajo Nation entered into with the U.S. federal government. It was clearly indicated that there is a significant difference between the inconceivable circumstances of the mid 1800’s when Navajos entered the Treaty of 1868 with the U.S. federal government, and today when the listening session consists of indigenous peoples representing the U.S. federal government, which gives hope that the U.S. will live up to its human rights obligations and treaties entered with indigenous nations.

#### Summary statement on Sacred Sites

The National Historic Preservation Act and the American Indian Religious Freedom Act do not protect the rights of indigenous peoples to practice their cultural and religious beliefs in private, in public and maintain permanent relationship to sacred sites. The example is in the case of *Navajo Nation et al. v. U.S. Forest Service*, 479 F.3d 1024, 1053-1054 (9th Cir. 2007) where the U.S. Supreme Court refused to review the case on appeal. Thirteen indigenous nations submitted testimony that the San Francisco Peaks is a sacred mountain, an equivalent to other peoples’ churches where it is a place of reverence and respect for God. It is very unfortunate that the U.S. laws such as the National Historic Preservation Act, American Indian Religious Freedom Act, Native American Graves Protection & Repatriation Act and Religious Freedom Restoration Act do not fully protect religious freedoms of the indigenous peoples.

#### Summary statement made on Relocation

The Navajo and Hopi families directly affected by the U.S. law to relocate those living on the wrong side of the partitioned lands on the Navajo and Hopi Nations have suffered and continue to suffer from human rights violations perpetrated by P.L. 93-531. While some Navajo families have moved from their original homelands to various locations on the Navajo Nation, others relocated to places off the Navajo Nation in communities and cities foreign to these families. Particularly for those families that were relocated to far away cities, the families have either lost their properties not only at their original homelands but also the newly acquired modern houses purchased through the relocation programs.

Moreover, the forthcoming generations are negatively impacted by the relocation as they find themselves unable to return to the Navajo Nation to not only practice their cultural and religious beliefs but to find a place to live on the Navajo Nation. While some Navajos entered accommodation agreements to remain near or on their original homelands, their land use areas cannot accommodate or facilitate their cultural and religious beliefs, as their land use areas are so minimal that they cannot conduct the elaborate ceremonies that require multiple acres of land. Thus, the accommodation agreements truncate the inherent rights to practice their cultural and religious beliefs of the indigenous peoples concerned.

#### Summary statement on Environmental Issues

The environment is a sacred element in the Navajo society. In particular, water is a sustenance and characteristic state of living. Mining and other extraction activities on the Navajo Nation have disrupted the Navajo people's cultural and religious ties to family and communal sacred sites in and around the mining areas. As a result of intense extraction activities, natural springs where the community would have pristine clear natural water have depleted. While the international community has recognized the need to ensure that when indigenous lands are compromised, in all respects that the indigenous peoples concerned must be provided free, prior and informed consent to any disturbance and development. However, Navajos living in and around the mining areas were not provided these rights. It is therefore recommended that the U.S. federal government sign onto the UN Declaration.

#### Summary Statement on Unsolved Deaths as it relates to Border Town Racism

It is evident there are measurable levels of racism in various facets of the communities in the border towns surrounding the Navajo Nation. The differential treatment towards indigenous individuals in the border town's range from not being seated in the restaurants to failing to investigate and bring closure on the death of indigenous individuals. For example, when a non-indigenous person is murdered in a border town, every effort and resources are engaged to ensure that immediate conclusion is reached with the crime. However, in contrast, when an indigenous person is murdered in a border town, more often the case is left unsolved while the family members of the deceased grieve. The murders of indigenous individuals in the border towns must be treated equal in importance to the lost of non-indigenous individuals.

#### Summary statement made on Self-Determination as it relates to Resources

The U.S. federal government in variety of respects has dealt with indigenous right to self-determination. In recent history, the U.S. federal government opined that indigenous peoples must be afforded the opportunity to control their affairs without terminating their trust relationships with the U.S. federal government. In 1975, the U.S. federal government enacted the Indian Self-Determination and Education Assistance Act through which funding opportunities are available to indigenous nations. However, in order to receive the funds, indigenous nations must enter into contracts with the U.S.

federal government through which external policies are imposed. The U.S. federal government attempted to direct its agencies to interface with indigenous nations on a nation-to-nation relationship, a concept known as “internal self-determination.” The right to self-determination is an inherent right of the indigenous peoples that must not be regulated through funding mechanisms and must be recognized equally under Article 1 of the Covenant on the Civil and Political Rights.

The following are issues that were presented during the afternoon session in Window Rock, Navajo Nation (Arizona):

1. Public Education: There is tremendous need to educate the general public on the rights of indigenous peoples, particularly in the area of indigenous peoples’ cultural and religious beliefs. The international community has recognized that indigenous peoples have managed their natural resources, surface and subsurface, since time immemorial. However, it is very difficult for the U.S. federal government to recognize the indigenous peoples’ cultural and religious beliefs that sustained a balanced relationship between the peoples and their natural environments. While the U.S. federal government fails to fully recognize the Navajo people’s cultural and religious beliefs, the Navajo people continue volunteer and honorably participate in armed forces of the U.S. federal government.
2. Repeal Public Law 93-531: The Navajo-Hopi Land Settlement Act, P.L. 93-531, irreparably devastated Navajo families that were and continue to be subjected to removal from their homelands to locations on and off the Navajo Nation. It was the will of the Navajo people to remain on their original homelands yet they were “forced” to relocate. The effects of “forced” relocation include, *inter alia*, post-traumatic stress syndrome, spiritual deterioration and the annihilation of intergenerational cultural, religious beliefs and life-way.
3. Navajo Language is Sacred: In the State of Arizona, the general public through an initiative enacted law that discriminates against indigenous languages by requiring all employees in public offices to communicate only in the English language. The Navajo language is a sacred language spoken by over eighty thousand Navajos and was instrumental during World War II when the U.S. federal government utilized the Navajo language through the use of codes to communicate among the armed forces. It is imperative the U.S. federal government ensure the protection and preservation of indigenous languages.
4. Extradition of Navajos: The Navajo Nation enacted extradition laws in which it states that “[a]ny person lawfully arrested for violating Navajo Nation criminal law(s) or detained by Navajo Nation Court order shall not be released to any other jurisdiction, including the (U.S.) federal government, except pursuant to formal extradition procedures as set forth in 17 N.N.C. § 1951 et seq.”<sup>2</sup> However, it is unfortunate when the U.S. federal government ignores the Navajo Nation

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<sup>2</sup> 7 N.N.C. § 607. Extraditions.



- extradition laws. It is vital that the U.S. federal government respect and abide by Navajo laws.
5. *Uranium Tailing Spill:* The Navajos living around and downstream of the Churchrock, Navajo Nation (New Mexico), uranium mining experienced a devastating tailing spill. It was the second largest spill in U.S. history; only second to the Three Mile Island Nuclear Generating Station in Dauphin County, near Harrisburg, Pennsylvania, U.S. The victims in the Three Mile Island incident were compensated for their exposures. However, there was disparate treatment of the people that were exposed in the Churchrock incident from those that were involved in the Three Mile Island incident. The Navajos at Churchrock were never compensated and must be appropriately compensated or redressed.
  6. *Abuse of Indigenous Women:* Indigenous women are often treated differently when they are victims of sexual abuse and assault. The sexual assaults frequently occur at locations where immediate medical services are not readily available. When such services can be rendered, the U.S. federal medical providers refuse to testify against the suspects, which lead to lenient sentences of the perpetrators. It is very difficult for indigenous women to trust in the justice systems.
  7. *Profiling Indigenous Persons:* Discrimination against indigenous peoples has been an ongoing issue. However, in the twenty first century, indigenous persons continue to be discriminated against. For example, the McKinley County Sheriff's office investigated smuggling of marijuana in the Thoreau, Navajo Nation (New Mexico) area. Instead of focusing on the non-indigenous suspects, the Sheriff's personnel focused their attention and started profiling the indigenous persons.
  8. *Cultural Properties:* As highlighted at the Albuquerque listening session, non-indigenous persons practicing indigenous cultural ceremonies for financial profit without the free, prior and informed consent of indigenous peoples concerned. According to indigenous cultural and religious beliefs, sweat lodging is a sacred purification ceremony conducted by indigenous peoples. It is a violation of indigenous human rights to have non-indigenous persons consort sacred indigenous ceremonies for their profit.

#### Statements from the U.S. Federal Government

U.S. Department of State is taking the lead in representing the U.S. on its human rights obligations. The other U.S. government agencies that attended the listening sessions were engaged to provide input and gather information provided by the indigenous leaders and peoples. The U.S. federal delegation stated that the listening sessions were comprehensive learning experiences and gain renewed perspective on issues pertaining to indigenous human rights. They also stated they gain insight into the other government agencies' roles when working with indigenous peoples throughout the U.S. As noted at the Albuquerque listening session, while the statements submitted by the indigenous leaders and peoples were well intended, the points shared by the U.S. federal government delegation was that rights of indigenous issues are complex and will

require significant amount of time to address. And it would be in the best interest of both the U.S. federal government and indigenous peoples to address domestic policies that can be amended to accurately reflect the rights of indigenous peoples.

#### Summary Statement from the Commission

Duane H. Yazzie, *Chairperson* of the Commission, indicated that the listening session is great start in addressing indigenous human rights issues with indigenous nations, organizations and peoples. It would be disappointing if the statements and recommendations presented during the 2010 UPR community outreach meeting in Albuquerque, New Mexico or Window Rock, Navajo Nation (Arizona) were not addressed or implemented. To show the indigenous nations, organizations and peoples that the U.S. federal government is listening, the U.S. federal government free Leonard Peliter and sign onto the UN Declaration within ninety days.

#### Question posed to the U.S. Federal Government at the Listening Sessions

While the U.S. federal government was unable to answer direct questions posed to them by the indigenous leaders, organizations and peoples during the listening sessions, it is paramount that the Office of High Commissioner for Human Rights forwards the following questions when the United States of America is under review:

1. Why do indigenous peoples from one of the richest countries in the world have to live in third world conditions and with deplorable conditions in health care?
2. When will the U.S. implement the CERD recommendations and how will they implement them?
3. When will the U.S. begin including indigenous peoples in any discussion regarding local, regional and national environmental policies?
4. When will the U.S. provide the same financial assistance to indigenous peoples as it does to in foreign countries for the development of self-determination?
5. Why do you representatives of the U.S. have reservations regarding signing and endorsing the UN Declaration?
6. How would you like to be told that you couldn't feed your families because non-Indigenous peoples want to hunt and fish for economic and recreational exploitation?
7. What will the U.S. do to mitigate the impact of colonization in Indian Country?
8. What is the U.S. going to do about decolonizing Alaska?
9. What is the U.S. going to do about Alaska Native Claims Settlement Act and the human rights violations of this Act?
10. What is the U.S. going to do about protecting the indigenous animals?
11. When will the U.S. recognize and address the intergenerational and historical trauma because of colonization?
12. When will the U.S. provide appropriate economic reparations for all of the resources that it has stolen under the doctrine of discovery and plenary power?