

Universal Periodic Review Submission
UNITED STATES OF AMERICA
Ninth Session, November 2010

SUBMISSION OF THE NATIONAL INDIAN YOUTH COUNCIL
An Accredited Non-Governmental Organization

Interest of the NGO and Scope of Comments

The National Indian Youth Council (“NIYC”) is a nation-wide United States civil rights and advocacy organization, formed in August 1961 to make the sovereign rights of American Indians known to all and to support the basic rights guaranteed to American Indians. The methodology for the preparation of this submission was active participation in United Nations human rights activities, including elaboration of the Declaration of the Rights of Indigenous Peoples, the expert seminar on indigenous peoples and the administration of justice (Madrid 2004), sessions of the Permanent Forum on Indigenous Issues, evaluation of United States compliance with the International Convention on the Elimination of Racial Discrimination by the Committee on the Elimination of Racial Discrimination, and participation in the proceedings of the Expert Mechanism on the Rights of Indigenous Peoples. The board of directors of the NIYC is composed of indigenous individuals from throughout the United States with strong records of civil rights advocacy and community participation, and these observations are based upon their discussions. The comments on the Helsinki Final Act are based on a portion of a United States report that discussed the rights of American Indians under that Act that was authored by Board Member Dr. Shirley Hill Witt (Commission on Security and Cooperation in Europe, 1979).

The scope of this submission includes observations on United States compliance with the Charter of the United Nations, the Universal Declaration of Human Rights, the human rights instruments to which the State is a party (including the Helsinki Final Act), and over five centuries of the development of the international customary law rights of indigenous peoples of the world.

Implementation and Efficiency of the Promotion and Protection of Human Rights

The issues that arise from the scope are (1) the due recognition of the rights of American Indians, as indigenous peoples within the United States (not including Native Hawaiians, Pacific Island Peoples or other indigenous groups for these comments); (2) compliance with international obligations, including the Charter of the U.N., Universal Declaration of Human Rights, ratified human rights instruments, and customary international law; and (3) cooperation with international efforts to promote human rights. The sub-issues under this category are:

Recognition of Human Rights in the Charter of the United Nations

The concept of international human rights must be viewed in its context within the United Nations Charter: Article 55 provides that the United Nations will promote higher standards of living, full employment, and conditions of economic social progress and development. That article then goes on to provide that the United Nations will promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or, religion,” and further states that all Members will take joint and separate action to achieve those purposes. The United States of America is a Member, and American Indians are the objects of human rights under the Charter.

The United States, as a general policy, rejects legal commitments to economic, social and cultural rights as a response to what it perceives to be a “socialist” theory of human rights, and that stance, with limitations, is manifested in a pattern and practice of limited compliance with the regime of international human rights law and non-compliance with the spirit of the Charter.

As regards indigenous peoples and their sovereignty, the United States and other settler colonialists rejected the right of indigenous peoples to secession and subordinated them to the states. Accordingly states must observe the provisions of Article 73 of the Charter on non-self-governing territories, namely that there is a “sacred trust” to give due respect for the pre-existing territories and peoples within the United States, including American Indians, and to ensure “their political, economic, social and educational advancement, their just treatment, and their protection against abuses.” *See* Bennett (1978), 7-11, 12-13. If United States is not prepared to honor the full independence and sovereignty of indigenous states that made treaties with it or allied themselves with it, then the United States must otherwise promote the well-being and free political institutions of Indians under this article.

The human rights provisions of the Charter drove the Universal Declaration of Human Rights. Indigenous peoples fall under the provision of Article 2 that provides that all are entitled to the rights and freedoms stated in the Declaration, including persons who are “under any ... limitation of sovereignty,” and that includes American Indians in distinct on- or off-reservation communities or in rural or urban communities.

Compliance with International Conventions

American Indians claim rights under three major international human rights conventions that are the “law of the land” under the Treaty Clause of the U.S. Constitution. They include the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), and the International Convention on Civil and Political Rights (1976). The United States refuses to ratify the International Convention on Economic, Social and Cultural Rights (1966) for complete acknowledgment of the International Bill of Human Rights.

The Genocide Convention has no practical application in the United States because its enforcement is limited to criminal prosecution by the attorney general of the United States, the

public official who represents those who could be guilty of genocide. There are no civil remedies to prevent or remedy genocide, and the record of recent attorney generals of the United States in addressing human rights is poor.

While the International Convention on the Elimination of All forms of Racial Discrimination would otherwise be self-enforcing under the Treaty Clause of the U.S. Constitution, it cannot be enforced in any judicial forum. The central government insulates enforcement from national discrimination law, and the U.N. Committee on the Elimination of All Forms of Racial Discrimination has consistently pointed to the failure of the United States to fully comply with the Convention. It too cannot be enforced in court by victims of discrimination.

The International Convention on Civil and Political Rights does recognize the “right to culture” in its Article 27, and the authoritative “Capotorti Study” (1979) shows that there are many substantive human rights indigenous peoples have under that article. That Convention cannot be enforced in court in the United States, because of a specific reservation likely aimed at American Indians (as with a similar one to the Genocide Convention), and the United States fails to fully acknowledge the content of the right or fully implement it in national legislation.

Compliance with the Helsinki Final Act

The United States endorsed the Helsinki Final Act of 1975, and the United States Conference on Security and Co-Operation in Europe (a national statutory body) recognized the nationhood status of American Indian tribes and the rights of Indians as “national minorities” in the human rights principles of the Final Act that establish the rights of national minorities and the self-determination of peoples. Despite the recognition of Indian rights in an international instrument, the United States consistently denied that Indians possess international human rights or that they are the subjects of international law. Accordingly the United States is not in compliance with the Final Act in its refusal to honor the international human rights of American Indians, in disregard of its pledge, and refusal to recognize the international human rights and full self-determination of American Indians.

Disregard of the Declaration on the Rights of Indigenous Peoples

The United States was among four states that refused to support adoption of the Declaration on the Rights of Indigenous Peoples (2007), and it is among three that currently oppose it (with Canada now voicing limited support). It is a specific elaboration United States obligations under the U.N. Charter and the international instruments reviewed above, and the provisions of the Declaration accurately summarize principles of international customary law regarding the sovereignty and independence of tribal states and the material and cultural rights of individual Indians.

The Declaration does not distinguish between indigenous groups organized as “tribes” or other forms of political organization, and it does not separate indigenous individuals who live in indigenous communities or those who live separate and apart from such communities; whether on- or off-“reservation,” in American usage.

The National Indian Youth Council wishes to draw the attention of the world community to the specific human rights situation of American Indians who claim tribal membership but who do not live in an “reservation” area or “Indian Country” in the United States or who self-identify as Indian and live in an “urban” or “off-reservation” area. The 2000 United States Census indicates that 75% of all individuals who claim identity as “American Indian” do not live on an Indian reservation or designated Indian Country.

The United States national law on the obligations to Indians is clear: The trust relationship (*see* Bennett (1978) at 7-11 for the origin of the trust obligation in international law) is one owed to individual Indians, as stated by the United States Supreme Court in *United States v. Mitchell*, 463 U.S. 206, 224-225 (1983). The basic statute on the obligations of central government to Indians, the Snyder Act of 1921, authorizes the expenditure of moneys “for the benefit, care, and assistance of the Indians throughout the United States.” Despite that, the United States has retrenched its obligations in policies to channel benefits through “recognized” Indian tribes and to ignore the needs of three-quarters of the Indian population. Many Indians cannot not get benefits because of that approach.

That retrenchment is mirrored in recent a recent policy initiative of the Interior Department, and other federal agencies, to limit “consultation” on policy and laws to the representatives of “recognized” Indian tribes and exclude other stakeholders with interests in their formation, including individual Indians and their organizations. The NIYC has made its objections known.

The United Nations Committee on the Elimination of Racial Discrimination issued 8 May 2008 observations on United States compliance with the International Convention on the Elimination of Racial Discrimination and found that its response to reports of widespread rape and sexual violence against Native women was poor. While the Committee recommended concrete steps to remedy identified shortcomings, they are being ignored by the United States. Additionally, the United States is not taken adequate steps to address crime and violence in “Indian Country,” and the primary problem is the refusal of the United States to honor the obligations set forth above with adequate resources.

American Indians have the right, under Article 3 of the Declaration of the Rights of Indigenous Peoples, to freely pursue their economic, social and cultural development in exercising the right of self-determination, and the United Nations Charter requires adequate support for the ability to enjoy those rights to development and self-determination. Article 21 of the Declaration guarantees the right of *all* American Indians to “the improvement of their economic and social conditions,” including education, employment, vocational training and retraining, housing, sanitation, health and social security.

Recommendations

The primary problem identified here is the failure of the United States to cooperate with international efforts to promote human rights. There are inadequate efforts under the Charter of the United Nations and under the international human rights instruments the United States has ratified. The United State refuses to make commitments to honor major economic, social and

cultural rights; it refuses to acknowledge that indigenous peoples have human rights under international law; it is not in compliance with the primary human rights convention to prevent racial discrimination; and it has retrenched from its position that American Indians do indeed enjoy international human rights under the Helsinki Final Act. The U.N. Committee on the Elimination of Racial Discrimination has recommended that the United States should use the Declaration on the Rights of Indigenous Peoples as a “guide” to interpret its obligations under the Convention. While that is a diplomatic and restrained recommendation, we believe that more is needed:

The United States must commit to the principles of the Declaration on the Rights of Indigenous Peoples and it must further make a positive commitment to (1) honor international human rights, including the rights of indigenous peoples; (2) create effective remedies to address violations of human rights in the United States; (3) create an effective national human rights enforcement and advocacy body; and (4) end policies of isolationism and particularism in addressing international human rights. All American Indians must enjoy “Indian rights.”

Respectfully submitted,

The National Indian Youth Council
Cecelia Belone, President
318 Elm Street S.E.
Albuquerque, New Mexico 87102

Tel: (505) 247-2251

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