NAVAJO NATION

The Navajo Nation Council

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Navajo Nation Human Rights Commission
First Commission of the Navajo Nation
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RESPONSE TO THE UNITED STATES OF AMERICA UNIVERSAL PERIODIC REVIEW
NATIONAL REPORT TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL

Introduction


The Commission commends the United States Department of State (“U.S. State Department”) on its consultation effort and scheduling listening conferences in areas where a significant population of indigenous peoples and their governments reside. The U.S. State Department scheduled listening conferences at the University of New Mexico’s School of Law in Albuquerque, New Mexico and at the Navajo Nation Museum in Window Rock, Navajo Nation (Arizona).

The Commission further commends the U.S. State Department for recognizing the “virtue” of indigenous peoples and their governments’ “status as sovereigns that pre-date the federal Union,” the “past wrongs and broken promises in federal government’s relationship with American Indians and Alaska Natives” and “the need for urgent
change.” Nevertheless, the United States fails to meet its human rights obligations to the indigenous peoples. These transgressions need to be accounted for. The members of the U.N. HRC must ensure that international human rights treaties and covenants are appropriately implemented by the United States.

The Failures of the United States

The Commission deems it paramount to emphasize three (3) main points that continue to affect the Navajo Nation and its people (“Diné”). The three (3) main points are: (1) failure to protect religious sacred sites, (2) the “forced” relocation of Diné mandated by federal legislation, and (3) the importance of collective rights for the Diné through the right to self-determination.

In 1992, the United States ratified the International Covenant on Civil and Political Rights in which the United States agreed that “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

Since 2001, the Navajo Nation and twelve other indigenous nations located in the states of Arizona, Colorado, New Mexico and Utah sought remedies, legal and otherwise, to preserve and protect the San Francisco Peaks (“Peaks”) from economic exploitation and desecration. Domestic legislations intended to protect sacred sites such as the American Indian Religious Freedom Act of 1978, the Native American Graves Protection and Repatriation Act of 1990, and the Religious Freedom Restoration Act of 1993 failed to protect the Peaks. The indigenous peoples’ recourse was to sue the United States.

In June 2009, the United States Supreme Court denied reviewing a federal appellate court’s decision upholding the Coconino National Forest permit authorizing a private corporation to make artificial snow from reclaimed wastewater on the Peaks for economical and recreational purposes despite indigenous peoples’ objections. The sanctity of the Peaks to indigenous peoples is significant as it defines our place in the universe as intended by our Creator.

2 Navajo Nation et al. v. U.S. Forest Service, 479 F.3d 1024, 1053-1054 (9th Cir. 2007), (vacated in part on other grounds) Navajo Nation et al. v. U.S. Forest Service, 535 F.3d 1058 (9th Cir. 2008) (en banc).
It is unacceptable that a nation that claims to advocate for protecting human rights objects to the recognition of indigenous human rights as it pertains to religious and cultural beliefs. The failures of the United States laws and policies go beyond the Peaks and continue to cause irreversible harm.

Secondly, on December 22, 1974, the United States Congress ("Congress") enacted the Navajo and Hopi Indian Land Settlement Act of 1974 ("P.L. 93-531"), which ordered the relocation of Diné from their ancestral lands. The purpose of P.L. 93-531 was supposedly to resolve a conflict created by a Presidential Executive Order issued in 1882 establishing the "[Hopi] Indian Reservation" and legislation enacted by Congress in 1934 establishing the "Navajo Reservation." The United States restricted property rights and interests on the lands of Diné and Hopi peoples without their free, prior and informed consent and thereby imposing a foreign system of property valuation.

P.L. 93-531 disrupted the lives of thousands of non-English speaking traditional Diné elders whose holistic Life Way was destroyed with the "forced" relocation from their traditional homeland. Most, if not all relocatees and their descendants, particularly those relocated to larger urban communities, are now denied the opportunity to learn, participate and pass on the Diné traditional Life Way.

The United States has failed to honor the 1948 American Declaration of the Rights and Duties of Man – "since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power" – to which the United States has made commitments.

Third, although the United States national report encapsulates the importance of individual human rights it fails to demonstrate the importance of collective human rights. While many indigenous peoples and tribal governments are starting to assert their inherent right to self-determination by meeting the economic, political and cultural needs of the community, the United States has not fully recognized these rights.

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4 The lives of children who were too young to qualify for the benefits offered to their parents and grandparents now want to revitalize and preserve their culture. These young children, who are now parents and grandparents, are seeking lands to build a home for themselves and to pass that land down to their grandchildren’s children for generations to come, which has been practiced amongst the Diné people since time immemorial.

5 Many ceremonies last for several days and draw a large number of people. Areas large enough to accommodate these traditional healing ceremonies do not exist in these urban centers nor were these ceremonies considered when rural lands where purchased for building homes. Smaller ceremonies that are commonly held in a traditional Hogan are also unavailable as urban communities and city construction ordinances exclude the building of these structures in residential zones primarily because of the necessity of an open fireplace which is central to a traditional Diné home.

challenges of the 21st century, the Navajo Nation is striving to regain greater responsibility over its communities through strategies of economic development.

The Navajo Nation and its people wish to participate in the rapidly changing and globalizing world and are approaching the future with Diné values, culture and history. Today, the Navajo Nation occupies and utilizes the resources of over 27,000 square miles of land. However, the Navajo Nation is deprived of the inherent right and authority to exercise the full authority and management of surface and subsurface resources. Recently, the United States Supreme Court denied the Navajo Nation the opportunity to correct wrongs committed by United States government entities over the mismanagement of resources that rightfully belong to the Navajo Nation and its people.7

Finally, the Navajo Nation has developed many creative ways to preserve its communities and culture while adapting to the intensity and globalization of the world economy, culture and technology. These cited hindrances by the United States through the United States Supreme Court prevent the Navajo Nation and its people from freely pursuing their economic, social and cultural development as a collective human right.

Questions to Ask from the Commission

The Commission, therefore, formally and respectfully request that members of the U.N. HRC to ask the United States the following questions:

1. The United States is a party to the International Covenant on Civil and Political Rights, Universal Declaration of Human Rights and American Declaration of the Rights and Duties of Man. Regardless of federalism then, why are the rights of indigenous peoples to “freely profess a religious faith, and to manifest and practice it both in public and in private,”8 not protected by United States federal legislations such as the American Indian Religious Freedom Act of 1978, the Native American Graves Protection and Repatriation Act of 1990, or the Religious Freedom Restoration Act of 1993? That religious faith is embodied and grounded in the Peaks and other sacred sites.

2. As a member of the U.N. HRC with stated commitment to the American Declaration of the Rights and Duties of Man, why doesn’t the United States engage in true nation-to-nation dialogue with the Diné people to develop an

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7 Navajo Nation vs. United States, 556 U. S. ____ (2009)
8 American Declaration on the Rights and Duties of Man, Chapter One, Article III
effective mechanism consistent with the international standard of “free, prior and informed consent” to address, *inter alia*, Indian land claims and forced relocation?

3. The United States recognizes indigenous nations “as political entities” and “as sovereigns that pre-date the federal union.” Indigenous nations have always determined their political status since time immemorial. Why do the United States’ laws and policies oppress indigenous nations’ inherent rights to self-determination and sovereignty of Diné peoples over their lands, resources, water and minerals?

4. As a member of the U.N. HRC, when will the United States endorse the U.N. Declaration on the Rights of Indigenous Peoples (“UNDRIP”)?

**Conclusion**

The United States’ UPR national report highlights its efforts to support its unique relationship with indigenous peoples. However, those efforts fail to meet some of the standards imposed by various international human rights treaties and covenants to which the United States is a party.

The Commission would be remiss to not say that we are greatly encouraged by the United States’ re-considering of its stance on the UNDRIP under President Barack H. Obama. The Commission feels it is necessary the United States fully endorse and implement the UNDRIP without placing reservations on any articles as steps to help correct the wrongs and broken promises to the indigenous peoples.

The UNDRIP is a significant instrument that has universal applications to countless indigenous peoples’ throughout the world. This human rights instrument provides a framework for achieving redress for indigenous peoples within the United States. The UNDRIP is broadly written so it could address a wide range of circumstances affecting indigenous human rights both now and in the future.