

**Submission of the American Indian Rights and Resources Organization
To the OHCHR**

1. The American Indians Rights and Resources Organization submits this information to the OHCHR for use in the Universal Periodic Review of the United States (State) human rights record in regards to the indigenous people within its borders. The American Indians Rights and Resources Organization submits this information as a stakeholder in accordance with HRC resolution 5/1 of 18 June 2007.
2. This submission will highlight the growing trend of civil and human rights abuses the State's indigenous people are being subjected to; the State's role in creating an environment for such injustices to occur; the State's failure to uphold its trust responsibility to protect and preserve the civil and human rights of its indigenous people; and provide policies that could be expanded on or implemented that may curtail future and continued abuses against the indigenous people of the United States.
3. Some of the key words or terms that will be used in this submission include: **AIRRO; banishment; BIA; disenrollment; DOI; ICRA; moratorium; sovereignty; tribal officials; Wilkins**
4. The American Indian Rights and Resources Organization ("AIRRO") is a Native American rights organization which was established in December 2005 and is dedicated to the protection, preservation, and enforcement of the human rights of individual Indians through-out United States Indian Country. AIRRO provides information and assists individuals and/or groups who have been denied or stripped of civil or human rights at the hands of tribal governments, tribal officials, or United States officials. Over the years, AIRRO has held information gatherings and meetings; demonstrations; participated in radio and multimedia programs; and maintains a website (www.airro.org) and other web-based sites to its mission.
5. The need for AIRRO became evident when a trend of disenrollment, banishment, and the denial of membership of hundreds, and now thousands, of individual Indians started to sweep through Indian Country.
6. Disenrollment is the stripping of one's citizenship in his or her tribe. As a result, the individual Indian is denied the rights and services afforded members of the federally recognized tribe from which they have been removed from. Additionally, the individuals are no longer eligible for services and programs offered by the State to members of federally recognized tribes. Many have lost their jobs as a result of disenrollment and all are no longer eligible to participate in tribal elections or other political affairs. In some cases, disenrollments include the penalty of banishment.
7. Banishment is an act taken against individuals or groups whereby they are barred from entering and/or staying within their tribal reservation or other tribal lands. This often includes denying individuals access and use of their homes and land, Indian health medical facilities, and other services and facilities that can only be utilized through access and passage through the lands from

which they have been barred. Failure to comply with an order of banishment is punishable by further sanction including a fine, imprisonment, or both.

8. Why should disenrollment, banishment, and the denial of citizenship be considered on par with other human rights violations?

9. The best explanation is provided by Professor David Wilkins of the University of Minnesota who has written extensively on the issue. In "Self-determination or self-decimation?" he wrote:

"In a majority of disenrollment cases, however, some tribal officials are, without any concern for human rights, tribal traditions or due process, arbitrarily and capriciously disenrolling tribal members as a means to solidify their own economic and political bases and to winnow out opposition families who disapprove of the direction the tribal leadership is headed.

What was historically a rare event - the forced and permanent expulsion of a relative who had committed a terrible offense - has tragically become almost commonplace in Indian country, leaving thousands of bona fide Native individuals without the benefits and protections of the nations they are biologically, culturally, and spiritually related to."

10. The taking of ones citizenship, the denial of basic rights and freedoms, and the severing of spiritual and cultural ties are the most egregious of human and civil rights abuses. In place of actual physical genocide, disenrollment, banishment and the denial of citizenship are "killing off" generations of Indian people.

11. The State is in large part responsible for the growing problem of human rights abuses in Indian Country. Its responsibility lies with the laws it has enacted and the failures of its agencies to carry out the trust responsibility due the individual Indian.

12. The United States enjoys plenary power over the tribal nations within its boundaries and the tribal nations enjoy quasi-sovereign status subject to this plenary authority. As an exercise of its plenary authority, the United States has previously enacted legislation governing individual Indians, tribal nations and the relationship between the two.

13. Of note, the Indian Citizenship Act of June 2, 1924 recognized all Indians born in the United States as Citizens of the United States, and as United States citizens, they were to be afforded the Constitutional protections provided to all other United States citizens.

14. And, in 1968, after an investigation by the Constitutional Rights Subcommittee of the Senate Committee on the Judiciary into the problems Indian individuals face when attempting to assert their constitutional rights, the Indian Civil Rights Act (ICRA) was passed.

15. The ICRA was adopted to ensure that tribal governments respect the basic human and civil rights of individual Indians and non-Indians. The ICRA was intended to extend constitutional rights to individual Indians and thereby "*protect individual Indians from arbitrary and unjust actions of tribal governments.*" Under the ICRA tribal governments were prohibited from enacting or enforcing laws that violate certain individual rights.

16. The ICRA was, in a sense, a treaty that recognized the rights of individual Indians and prohibited tribal governments and tribal officials from infringing on those rights. The ICRA, just as most treaties entered into with the State, was not all it was made out to be. Its shortcomings lied in its enforcement and have been the death blow for most all actions taken by individuals for violations of its provisions. Save for a writ of habeas corpus, the ICRA failed to include an effective enforcement mechanism whereby the aggrieved individual(s) could hold the offending tribal government or tribal official(s) accountable for violations of tribal and/or federal law.

17. The ICRA was further neutered by the United States Supreme Court's decision in *Martinez v. Santa Clara Pueblo* which held that the ICRA, although a federal statute, was not enforceable in federal court and deference should be paid to tribes to regulate their internal matters. The Court in *Martinez* based its decision on several assumptions: First, the Court assumed that tribal forums would be available for individuals to bring causes of actions for ICRA violations, and second, the Court assumed that Secretary of the Interior would hear ICRA claims in circumstances where secretarial authority was required to ratify changes in tribal governing documents. Both of these assumptions were flawed.

18. Many tribal governments fail to provide tribal forums, such as tribal courts, in which to have ICRA violations resolved. And, in instances where tribal forums are available, they are very rarely, if ever, separate but equal arms of the tribal government free from the influence of tribal officials. The absence of an independent tribal judiciary leaves review of such decisions in the hands of those who may stand to profit from the outcome or who are the actual oppressors or violators of the individual's rights.

19. The absence of independent tribal judicial forums further strips the victims of any opportunity for recourse consistent with basic notions of due process that would be available to any other citizen of the United States. In this regard, Tribal governments and/or officials have used the United States Supreme Court's decision in *Martinez* cut away the rights of its citizenry and selectively apply law as it sees fit.

20. The State's next failure in protecting and preserving the basic rights of those it had a duty and responsibility to serve also stems from the *Martinez* case. Although the *Martinez* decision did allow for State intervention in limited instances, the Bureau of Indian Affairs (BIA), an agency within the Department of the Interior, has routinely declined to intervene in disenrollment, banishment, or denial of citizenship issues, and citing *Martinez* and tribal sovereignty, the BIA has deferred to the tribe to handle all such matters.

21. The Secretary's reluctance, through the BIA, to intervene on behalf of the individual Indian to protect their federally recognized rights, coupled with the general lack of tribal forums are contrary to the assumptions made by the Supreme Court in justifying its position in the *Martinez* decision. Despite this, the State has failed to take any action to remedy the situation and has created an environment for the continued and on-going violations of basic rights.

22. The failure of the ICRA as well as what he believed was the State's white-washing of a commissioned report to study the law and its effectiveness, was the topic of a statement by William

B. Allen, a member of the United States Commission on Civil Rights. In the statement (1991), Commissioner Allen pointed out that no federal (State) money had been spent on the enforcement of fundamental civil rights of American citizens (including the indigenous population) domiciled on reservations since the *Martinez* decision. In effect, once the Supreme Court ruled that only tribal governments would decide which rights it would afford its citizens and how those rights were enforced, the State determined it had no responsibility to individuals or role to ensure their basic rights were respected and enforced.

23. The continued and unabated abuses of Federal, State and Tribal laws by tribal officials show complete disregard for Congress' desire and intent when passing the ICRA. However, the blame does not lie with tribal officials alone. The State shares much of the blame as it has failed to address the inherent problems in the ICRA and further problems created by *Martinez* and its effects on the ability of individual Indians to seek redress for rights violations.

24. In the course of discussions with its members and those who have been affected by the rights violations described above and through a listening session it held in Sacramento, California on April 17, 2009, the AIRRO received testimony regarding the growing number of human and civil rights violations occurring in Indian Country. Those who testified and other attendees also provided input as to actions the State could take to address the issues.

25. First and foremost, the State should provide an efficient enforcement mechanism for the redress of alleged violations of the ICRA and other tribal and/or federal laws enacted to protect and preserve the rights of the individual Indian. The mechanism should include de novo review of tribal court actions by federal courts of issues involving alleged rights violations. And, in instances where there is no tribal court, individual(s) alleging violations of their human and civil rights shall be allowed to file an action in federal court and the federal court shall have jurisdiction to hear the dispute. Additionally, tribal officials, as well as State officials, shall not be allowed to invoke immunity from prosecution for alleged rights violations nor shall a tribe's sovereignty shield its officers, employees, or agents.

26. Secondly, State agencies, such as the Department of Justice, the Department of the Interior, and the State Department, shall have the authority and responsibility to investigate and/or prosecute alleged rights violations committed against indigenous people of the State. The BIA shall also be required to review and approve or deny any and all actions taken by tribal governments and/or tribal officials which may affect the rights of an individual or group.

27. BIA intervention, as a department wide policy can be effective. In limited instances and where a tribe's governing documents allow, the BIA does intervene in disenrollment or banishment issues. In a recent case involving the San Pasqual Tribe of Southern California, the BIA has intervened in a disenrollment dispute and determined that the tribe did not have the authority to strip the targeted group of their tribal citizenship. But for the BIA's intervention, review of the incident, and decision that it was illegal, the targeted individuals would have been stripped of their citizenship without any form of recourse.

28. As the number of rights violations grew and the abused looked for avenues of redress, the State's federal courts saw more and more cases involving the violations of individual Indian's rights.









And while the courts have continually thrown out such cases as tribe's and tribal officials claim sovereign immunity, courts, such as the United States 9th Circuit Court of Appeals in *Lewis v. Norton* (424 F 3d 959), lament the fact that even though a case may be "deeply troubling on the level of fundamental substantive justice" they cannot intervene "even where fairness may seem to dictate otherwise".

29. The State must be proactive in addressing the growing number of abuses committed against American Indians. The State needs to address the policies, programs, and laws governing the rights of its indigenous people. The State must take action to change the current environment, and environment it created, which allows for and fosters the wholesale denial and abolishment of basic rights.

30. The AIRRO appreciates this opportunity to submit this information. The submittal of this information goes to the heart of AIRRO's mission to educate people on the rights abuses occurring in Indian Country.

31. The AIRRO and its members believe that the actions suggested above can be effective means by which to protect the rights of individuals and would deter tribal officials from taking actions to deny or strip their citizens of their basic rights. Attached to this submission are a few of the testimonials given at the April 17, 2010 AIRRO listening session as well as a copy of David Wilkins' paper.

32. May be contacted by email at airro_01@msn.com or mail@airro.org . Written correspondence should be sent to AIRRO President John Gomez, Jr. at 41801 Corte Valentine, Temecula, CA 92592. Telephone number is (951)941-4943 and fax number is (951)694-

   
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