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Written statement* submitted by the International Indian Treaty Council (IITC), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Consideration of the UPR Report, United States of America, by the International Indian Treaty Council

The International Indian Treaty Council (IITC) commends the Human Rights Council on its implementation of the Universal Periodic Review (UPR). We have witnessed many States, from the least developed to the developed, approach the UPR process with good faith, true introspection, and apparently sincere commitments. We firmly believe that it can become a very valuable tool in the Council's work to implement international human rights standards all over the world.

The United States conducted extensive consultations and "listening sessions" in 2010 with many elements of civil society in preparation for their UPR report to this Council. Indigenous Peoples had consultations in Albuquerque New Mexico and on the Navajo Reservation, where Tribal and Traditional leaders as well as Indigenous NGOs voiced their concerns to the US State Department and other federal agencies. Indigenous Peoples also participated in other consultations held around the country.

Unfortunately, despite broad participation and active outreach, the United States' UPR report to the Council and their oral responses to questions from Council members failed to adequately reflect the input presented during these consultations addressing a number of vital human rights concerns.

We are also concerned that the United States may respond to questions and recommendations made at the examination based on whether they were made by States it considers to have a "political agenda", rather than on the merits.

For example, one State recommended the release of long-standing political prisoners including American Indian political prisoner Leonard Peltier. Mr. Peltier was incarcerated on false and perjured testimony and has spent decades in prison despite worldwide support for his release by Amnesty International, IITC and many others. Freedom for Leonard Peltier was also a common call in the UPR consultations, which was not mentioned by the US in its report to this body.

Mr. Lenny Foster, IITC Board Member and Director of the Navajo Nation Prison Project, presented this issue in both the San Francisco and Albuquerque consultations. He recently commented:

"I have been visiting Mr. Leonard Peltier as his spiritual advisor since May of 1985, and have observed a mature and reverent person. It is my opinion that he has exemplified a model inmate and observer of the rules and regulations of the Federal Bureau of Prisons for the past 34 years. He qualifies for release based on his behaviour. He is also experiencing serious health conditions including diabetes and high blood pressure that the Bureau of Prisons has left untreated. Mr. Peltier needs immediate medical attention and medication. The United States can demonstrate its good faith by releasing Leonard Peltier. His release will provide an opportunity for reconciliation and healing of a long-standing injustice between Indigenous Peoples and the United States."

His release is well within the clemency powers of the President. The IITC encourages the United States to respond to this recommendation positively and without delay.

Another State recommended that the US "... ensure the participation of indigenous peoples in the decisions affecting their natural environment, measures of subsistence, culture and spiritual practices.". Indigenous Peoples presented urgent threats to sacred areas vital to their religious and cultural practices, in particular from imposed development including coal, gold, and uranium mining, commercial recreation and oil drilling, in Arizona, Nevada,

New Mexico, Nebraska, South Dakota, California and Alaska. Protection of these sacred sites was a nearly-universal call presented by Indigenous Peoples during the consultations. However this was also not mentioned in the US report.

The CERD has also expressed its concerns and presented specific recommendations to the US in this regard which also remain unaddressed. We again call upon the United States to acknowledge and respond to these severe, ongoing, widespread and pervasive human rights violations.

During the UPR examination, many States also recommended that the United States complete its review process and endorse the United Nations Declaration on the Rights of Indigenous Peoples. Some States recommended that it do so without reservation.

On December 16th 2010 President Barack Obama announced that the United States had changed its position and would now “lend its support” for the Declaration. The words of the President were positive, including his reaffirmation of the “Nation-to-Nation relationship” between Indian Nations and the US government.

However, the United States’ written “Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples” disseminated that same day presented another vision. It contained a number of limitations and qualifications regarding key rights in the Declaration and the scope of their intended implementation, falling far short of the full and unqualified endorsement called for by Indigenous Peoples and Human Rights organizations during the review process.

Some of these are the very same qualifications that the US had attempted, unsuccessfully, to include in the text of the Declaration during the many years of negotiations in Geneva. Of particular concern is the statement that the U.S. plans to recognize “a new and distinct international concept of self-determination specific to indigenous peoples. ...” different from the existing right of self-determination in international law. This interpretation has no basis in the actual text of the Declaration or the principles of international human rights standards which uphold non-discrimination and equal rights. In Article 3, the Declaration defines Self-determination for Indigenous Peoples consistent with the language affirming this right for “All Peoples” in the International Covenants on Human Rights.

The US “Announcement of Support” also attempts to redefine the Right to Free Prior and Informed Consent contained in many provisions of the Declaration as “consultation,” a much more limited and diminished standard. This definition is not consistent with the Declaration and is also not in keeping with a number of other international standards affirming FPIC, including General Recommendation XXIII of the CERD.

Another concern is the US’ intention, stated several times throughout the document, to apply the provisions of the Declaration only in its “dealings” and relations with “federally-recognized tribes”. This excludes Native Hawaiians, the Taino Peoples of Puerto Rico, and a number of other Indigenous Peoples within the US, including many whose tribal status was unilaterally terminated by the US government in the past. Other Indigenous Nations within the US do not seek to be “federally recognized”, and continue to maintain their sovereign independence. Yet they are undoubtedly Indigenous Peoples according to the provisions of the Declaration.

The US statement also defined its recognition of Indigenous Peoples’ right to lands, territories and natural resources as extending only to those lands and territories that they “... currently possess by reason of traditional ownership, occupation, or use as well as those that they have otherwise acquired”. This definition once again falls below the minimum standard set out in Article 26 which affirms that “Indigenous Peoples have rights to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired”. The history of dispossession of Indigenous Peoples' lands and resources

in the United States, including those recognized in their Nation-to-Nation Treaties with the US, is well known and extensively documented. By recognizing only rights to land currently possessed, the US is again attempting to replace the rights of Indigenous Peoples affirmed in the Declaration with a narrower and more limited interpretation.

Several references in the document are made to implementation of rights in accordance with existing federal laws and policies. Both the Inter-American Commission on Human Rights and UN CERD have questioned the validity of the US' current laws and policies with regard to the taking of Indigenous Peoples lands. They noted that under the laws and mechanisms it has put in place, the United States can (and does) take Indigenous lands and resources, and violate the Treaties concluded with them, without due process or the consent of the affected Indigenous Peoples.

The UN Declaration is an international standard adopted overwhelmingly by the U.N. General Assembly. It constitutes "the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world." The Declaration cannot be subject to selective redrafting or new interpretations by the US or any other state attempting to redefine or limit the inherent rights it recognizes. It also cannot be limited by narrow interpretations subject to existing federal laws and policies.

We call upon the United States to reassess its position and express full support for all of the Declaration's provisions. The next step will be to evaluate and, wherever needed, raise its own laws and policies up to the minimum standard in the Declaration. These actions will convey the good faith, mutual respect and true spirit of partnership which the Declaration intends to promote.

We urge the Human Rights Council to continue its impressive UPR work and encourage member States to continue treating the process with dignity and equality, subjecting all States to the same level of examination and expectation of follow-through and implementation. The UPR process should serve as a model for accountability and a basis for affirming that international human rights, including the rights of Indigenous Peoples, are inherent, inalienable and the foundation for Peace, Justice and Friendly Relations among all Peoples and all States.

For all our relations.
