

**Submission to the United Nations
Universal Periodic Review of
United States of America**

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**Submitted by the
The Nipmuc Nation &
The Chappaquiddick Wampanoag Tribe**

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A. Introduction

1. This Submission is made in regard to the Human Rights Council’s Universal Periodic Review (UPR) of the United States, which is scheduled to take place in May 2015.
2. The primary focus of this submission is the United States (and subsidiaries) actions and non-actions relating to the United Nations Declaration on the Rights of Indigenous Peoples (“UN Declaration” or “Declaration”), as well as the International Covenant on Civil and Political Rights (“ICCPR”) and the International Convention Against All Forms of Racial Discrimination.
3. The Nipmuc Nation (“Nipmuc”) and the Chappaquiddick Wampanoag Tribe (“Chappaquiddick”) are two separate indigenous communities located within the United States, specifically the Commonwealth of Massachusetts (“Massachusetts”). Although they are recognized by the government of Massachusetts, they are not recognized by the United States federal government. As recently noted by the Committee Against Racial Discrimination (“CERD”) as part of its periodic review of the United States, federal recognition is replete with “ongoing obstacles, including high costs and lengthy and burdensome procedural requirements.”¹
4. Although this submission does highlight the experiences of the two indigenous communities with regards to recognition by the federal government, the tribes’ goals extend beyond recognition. Primarily, the tribes seek to regain back some of their traditional lands which would allow them to strengthen and maintain their community, protect their sacred sites and practice their traditional ceremonies. Additionally,
5. The specific issues raised in this submission relating to two state recognized tribes located within the Commonwealth of Massachusetts were not part of the first Universal Periodic Review of the United States. However, the previous UPR yielded several recommendations encouraging the United States to endorse the UN Declaration on the Rights of Indigenous Peoples, which it has subsequently done.

B. Reporting Indigenous Communities

6. The Nipmuc Indians are the tribal group occupying the central part of Massachusetts, northeastern Connecticut and northwestern Rhode Island. The Nipmuc Nation is a state-recognized band with approximately 500 enrolled members today based at the Hassanamisco Reservation located in Grafton, Massachusetts. This small 3.5-acre reservation is the only parcel of Nipmuc land never to have changed hands; its occupation by Nipmuc people dates back to before contact and colonization. The Nipmuc Indians of Massachusetts have several bands today, including the Chaubunagungamaug of Webster and Natick Nipmuc of Natick, in addition to the Nipmuc Nation.

¹ CERD, Concluding Observations on the combined seventh to ninth periodic reports of the United States of America, U.N. Doc. No. CERD/C/USA/CO/7-9 (29 August 2014).

7. The Chappaquiddick Wampanoag Tribe is a historical Massachusetts tribe. Its ancestral homelands are Chappaquiddick Island, Cape Poge, and Muskeget. The Chappaquiddick Wampanoag were a tribe at the time of first contact, when the United States became a country in 1776, and when Massachusetts became part of the Federal Union in 1789. The tribe had two reservation areas on Chappaquiddick until the late 1800s. Today, Chappaquiddicks live in Martha's Vineyard, the larger island next to Chappaquiddick, on the mainland in Massachusetts and Rhode Island (ancestral homelands of the Wampanoag Nation), and throughout the United States. One Wampanoag individual has a home and retains clear title to his allotted lands on Chappaquiddick Island, a descendent of the Chappaquiddick Tribe and Wampanoag Tribe of Gay Head (Aquinnah); he is a citizen of the Wampanoag Tribe of Gay Head (Aquinnah). Tribal citizens visit and use the traditional lands at Chappaquiddick Island, and many of them are or were parties to petitions to register land by non-Indians within the last 20 years.

C. History of Relationship between Tribes and Massachusetts

8. The history between the indigenous communities and Massachusetts is long, spanning close to 400 years. This history is replete with hundreds, if not thousands of legislative acts, numerous transfers of land, several treaties, periods of violent conflict and appeals. Two of the most significant and damaging pieces of legislation and policy were the Praying Towns/Plantations and the 1869 Indian Enfranchisement Act.
9. From 1640 to 1670, John Eliot, often called the "Apostle to the Indians", established with royal permission, 14 Praying Plantations mainly within Nipmuc territory, but also within Wampanoag territory. The purpose of these plantations or towns was to Christianize the Indians. Nipmucs and other Indians within these towns had to dress, act, eat, and pray the way the English did. Many Nipmucs did move into these towns, some because they wanted the protection afforded them from larger more aggressive tribes in the region, some because the towns offered protection from the English, and some because the towns were placed right where they lived and they had no real choice. After the King Philips War, most of the Praying Plantations were abandoned. The exceptions were assigned English guardians who managed the financial lives of the occupants.
10. The Indian Enfranchisement Act was a legislative act to investigate the condition of the Indians residing within the Commonwealth of Massachusetts. John Milton Earle was appointed Indian commissioner and assigned the task of determining whether any real Indians still existed and if they should be granted the same rights as other members of the Commonwealth. This act gave citizenship to Indians in Massachusetts but also removed all barriers to the purchase of reservation land. As a result, in 1870, the Nipmuc reservation in Dudley/Webster was sold and its occupants removed. In 1891, tribal members received compensation for the sale of their land in the amount of \$61.62 each. On Chappaquiddick, the allotment of the reservations and the removal of alienation, lead to non-Indians taking possession of the majority of the reservation lands.

D. Right to Traditional Lands

11. When Massachusetts was first “discovered”, the English king granted lands to various groups and individuals. Once it was further discovered that these lands were occupied, the colonists began “buying” or trading for land with the Native people. Since Natives living here in Massachusetts had a different concept of owning land, these treaties and agreements did not have the same meaning for Native people as they did for the colonists.
12. Transfers of land to the colonists began in Nipmuc country as early as 1641. From the beginning, every transaction had to be approved by either royal or colonial authority. After the King Philips War or Metacom's Rebellion of 1675, Native people became wards of the colony/state and assigned guardians. The practice of selling Indian land for debt-paying (both Native debts and the guardians') became common. And even after the federal Trade and Intercourse Act of 1790, the sale of Native land continued. Today the Nipmucs occupy one small 3.5 acre of land. This is not enough to sustain the tribe. Attempts to recoup land from the state have been unsuccessful.
13. The Chappaquiddick tribe made several petitions to the Massachusetts Bay Colony. They sent a representative to England to deliver their grievance to King George III of England. The colony was ordered to remedy the Wampanoags' complaints but, by that point, the king's power in Boston had been weakened. When the ancestral lands of the Chappaquiddick Wampanoag were divided in 1788, the best land was not given to the indigenous people. According to John Milton Earle, "...that (land) belonging to the (Chappaquiddick) Indians is bleak and exposed, the soil light, sandy, gravelly, and barren, and without wood.... Young men usually go to sea, or seek other employment, away from home, until they have obtained money enough to build them a comfortable house..." Prior to 1869, the Chappaquiddick Wampanoag had two reservations on Chappaquiddick Island; the Cleared Lands Reservation on North Neck and the Woodlands Reservation. That land allotment lead to non-Indians taking possession of the majority of the reservation lands.
14. International human rights law recognizes the legal rights of indigenous peoples to their traditional lands:
 - Article 25 of the Declaration provides, “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”;
 - Article 26 states, “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”)
15. Under international human rights law, “States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.” As noted above, the reclamation of traditional lands and natural resources is a primary goal of

both submitting indigenous communities. Lack of access and control of traditional territories creates the following challenges for these communities:

- Access and maintain sacred sites and significant spaces;
- Perpetuate traditional subsistence activities, and
- Maintain a cohesive social community as a result of geographic dispersal.

E. Right to Natural Resources

16. Many of the treaties and agreements created between Natives and Europeans in Massachusetts contained references to aboriginal hunting and fishing rights. In 1982, the Commonwealth of Massachusetts reaffirmed these rights in a legislative resolution that “recognized the ancient and aboriginal claim of Indians within the Commonwealth of Massachusetts to hunt and fish the wildlife of this land for the sustenance of their families”. Yet and despite several attempts by the tribes and the MA Commission on Indian Affairs to engage the Commonwealth's parks department, tribal members are continually challenged in their right to hunt and fish without license in the state. Some cases have resulted in arrests of tribal members.

F. Right to Education

17. Although Europeans did not settle on these shores until the early 1600s, elementary school textbooks portray the history of this land as beginning with the Pilgrims. Indigenous history is regulated to a paragraph or two in educational textbooks, contributing to a commonly-held belief that tribes no longer exist in Massachusetts or New England. Attempts by Nipmuc and Wampanoag to include Native history in the state-mandated curricula have been met with limited success, despite recognition in the Declaration that “Indigenous Peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.”
18. Tuition waivers for higher-education are offered to Native students. Unfortunately the tuition is a small fraction of the actual cost. In Massachusetts state schools, the cost of attendance is split between tuition and “fees.” The fees are usually four to five times the amount of the tuition – the difference is even higher at the university level. The intent behind offering these tuition waivers to Native college students was to make amends for the lost trust funds held by the state and due to the tribes.
19. Finally, most local education systems do not apply for federal formula funding to benefit Indian children. Funds are needed to conduct a census so we can better access the standard educational needs of Massachusetts Tribes, especially tribes that are not federally recognized.

G. Right to Culture: Protecting Indigenous Children

20. The Indian Child Welfare Act (“ICWA”) does not protect all Native children. Its intent is to protect those children belonging to federally-recognized tribes. In Massachusetts, state-recognized tribes and their children have no benefit under ICWA. For decades, tribes within Massachusetts have gone before judges to try and obtain this protection for their children, to

no avail. There are active cases within the Nipmuc Nation and other Nipmuc bands that would benefit from ICWA if those provisions were extended to the all Native children without regard to federal tribal status.

21. ICWA applies in child custody proceedings involving Indian children. An “Indian child” is defined as an unmarried person under the age of 18 who is a member of and Indian tribe or who is eligible for membership and has a biological parent who is a member of an Indian tribe. For purposes of ICWA, the term “Indian tribe” is limited to tribes recognized by the US government. This means that ICWA only obtains when the Indian child in question is from a federally recognized tribe. In the Commonwealth, the Mashpee Wampanoag and the Aquinnah Wampanoag are entitled to ICWA protection. Children from other federally recognized tribes are also entitled to ICWA protection, but ICWA does not explicitly cover children from state recognized tribes or First Nations.
22. The Commonwealth does not presently afford ICWA protection to First Nations and state recognized tribes. Rather children from these tribes are treated like non-Indian children in child placement proceedings. Thus, ICWA protections such as heightened evidentiary burdens to protect parental rights, notice provisions that allow tribes to learn of and intervene in placement proceedings involving their children and placement preferences that seek to prevent Indian children from losing their culture are not brought to bear in cases involving children of state recognized and First Nations tribes. Without extension of ICWA protections, the threat posed to these children through separation from Indian culture and the threat to the future of state recognized and First Nations tribes will continue unabated in the Commonwealth.
23. To avert these results, the Commonwealth should extend ICWA protections to First Nations and state recognized tribes. The same considerations that lead Congress to enact the federal ICWA apply with equal force to these tribes. Further, considering the greater challenges faced by many of these tribes based on their lack of federal recognition in the US, the justification for extending ICWA protections is compelling. By extending ICWA protections to state recognized and First Nations tribes, the Commonwealth will serve the best interests of Indian children and Indian communities in the Commonwealth and promote the spirit of the federal ICWA.

H. Recognition by the United States: Obstacles to Recognition of Tribes)

24. Nipmuc Nation received a positive preliminary finding in 2001. This ruling was overturned in 2002 and a final ruling against recognition was issued by the Bureau of Indian Affairs (BIA) in 2004. While the governmental center of Nipmuc Nation, including its state-recognized reservation, resides entirely within the Commonwealth of Massachusetts, the state of Connecticut has been the Nipmucs most vehement opponent. Connecticut has expended “significant resources” to defeat the Nipmuc petition. Today, while actively seeking reform to the regulations governing the recognition of tribes in the United States, the BIA continues to protect the “significant resources” expended by the state of Connecticut in the proposed revisions by including a “Third-Party Waiver”. This waiver allows third-parties to prevent tribes from re-applying under the revised regulations.

25. Federal recognition criteria does not consider the impact of violation of indigenous rights by the State of Massachusetts and violation of Federal law, and the impact of the U. S. to honor its trust responsibility to the tribes of Massachusetts that were known tribes in 1776. Additionally, the cost of funding a Federal Recognition is out of reach for most non-federally recognized tribes with a petition research, lawyers, anthropologists and genealogists at a price tag greater than one million dollars.
26. Massachusetts laws had the effect of giving certain tribes an advantage over other tribes, such as the Massachusetts Act Concerning the Indians of the Commonwealth in 1862 and the Incorporation of Mashpee as a Town. The Wampanoag Tribe of Gay Head (Aquinnah), one of the two federally recognized tribes in Massachusetts, became district of the Massachusetts per the Massachusetts Act Concerning the Indians of the Commonwealth in 1862. Mashpee, also a federally recognized tribe, was incorporated as a town in 1870. These acts placed those tribes in a better position to keep their communities intact and demonstrate continuous political authority, one of the important criteria for Federal Recognition. Tribal members in the Mashpee and Aquinnah communities held town positions and exercised authority over town residents, in the early years the residents were tribal members. Chappaquiddick was not designated to be a separate district or town, as it became part a previously established town on the Island of Martha's Vineyard. Additionally, the allotment of Indian lands placed it t and other tribes at a disadvantage.