

## **INDIGENOUS ISSUES**

Submission to the United Nations Universal Periodic Review of  
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The Western Shoshone National Council is the governing body of the Western Shoshone Nation. The Committee on the Elimination of Racial Discrimination (CERD) rendered Decision 1(68) in 2006 against the United States of America for human rights violations against the Western Shoshone. The Decision was reaffirmed during the August 2014 meeting.

Endorsements: Corporation of Newe Sogobia (CNS)

## I. SUMMARY

1. In 2006 CERD decision 1(68) gave the U.S. recommendations for future relations with the Western Shoshone Nation to avoid further lack of due process and human, civil, political, economic, social, and cultural rights violations based on racial discrimination. It urged the U.S. to stop activities on Western Shoshone lands, including land transfers to extractive industries and energy developers, or planning regarding any natural resources, without meaningful consultation and despite Shoshone protests, and remove restrictions on hunting, fishing, and gathering, and cultural and spiritual practices. Decision 1(68) was distributed widely, and to the President, to Congress, and to federal, state, and local agencies, but was ignored. The U.S. has made no effort to contact the Western Shoshone National Council to discuss these issues. Therefore the Western Shoshone National Council submitted an update to CERD in 2014 and recently received re-affirmation of the previous decision.

2. The following information was gathered by the Western Shoshone National Council, from their own experiences, and from those of Western Shoshone citizens. The Corporation of Newe Sogobia, the Western Shoshone non-profit agency, has been impacted, as well, by land actions and restrictions imposed by the U.S. Both entities hold monthly in-person meetings to discuss these issues and attend meetings of Shoshone communities to listen to their people.

## II. LEGAL FRAMEWORK

3. United States Constitution, Article VI, Paragraph 2 - The Article states: "This Constitution and the laws of the United States which shall be made in pursuance thereof and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby. Anything in the Constitution or Laws of any state to the contrary notwithstanding."

4. U.S. Statutes-at-Large, 18 Stats. 689 Treaty with the Western Shoshoni 1863 - This is a Treaty of Peace and Friendship between the Western bands of Shoshone Nation and the people and government of the United States. It is unique in that it ceded no land, but assured safe passage of all travelers through Treaty land. The Treaty is still in full force and effect.

5. International Convention on the Elimination of All Forms of Racial Discrimination - The United States is a signatory to this Treaty, which was ratified in 1994. The Western Shoshone have brought claims of human rights violations against the United States and they were awarded Decision 1(68) in 2006, which was reaffirmed in 2014.

6. United Nations Declaration on the Rights of Indigenous Peoples - After initial U.S. opposition to this declaration, in 2010 President Barack Obama published a support document for this declaration.

7. The 2010 Universal Periodic Review Outcomes report suggested that the U.S. formulate goals and policies to ensure participation of indigenous peoples in decisions affecting their natural environment, subsistence, cultural and spiritual practices, and to fully implement the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP) at federal and state levels. The U.S. accepted these suggestions, with partial acceptance of UNDRIP.

### III. U.S. COMPLIANCE WITH ITS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Issue 1. U.S. Continuing Disregard of the UN Committee on the Elimination of Racial Discrimination (CERD) Early Warning and Urgent Action Procedure, Decision 1(68) on Western Shoshone land rights.

8. The Western Shoshone National Council (WSNC) was pleased that President Barack Obama announced support for the UNDRIP and thought that this would result in a dialogue with the Western Shoshone. It called for national laws and mechanisms to give full legal recognition to indigenous land and resources based on traditional ownership, occupation, and use.

9. However, no dialogue has taken place despite certified letters, which remain unanswered, to President Obama. Federal agencies are given the CERD decision but do not respond. They say they only have to listen to U.S. courts and laws. The same agencies say they don't have to listen to the WSNC because it is not federally recognized, claiming they only have to consult with Tribes recognized under the Indian Reorganization Act of 1934. They do not recognize the Treaty as a form of federal "recognition."

10. The U.S. has made no effort to understand the difference between the Western Shoshone Nation and the Western Shoshone federally recognized tribes. The federally recognized tribes live on trust lands whose boundaries were drawn by the U.S. government. Their leaders swear allegiance to the U.S. government.

11. Membership, or enrollment, in a federally recognized Tribe is dependent on a person's "blood quantum." The Bureau of Indian Affairs uses this calculation to determine who is an Indian and who is not. Blood quantum or blood degree is calculated by adding 1/2 of each parent's Tribal heritage as listed on their original tribal rolls of grandparents or ancestors. The term is similar to an animal pedigree. To maintain tribal status in smaller tribes such as Shoshone, closely related marriages often occur with resulting genetic problems. This is a form of genocide and a denial of the human right to determine one's own identity.

12. In contrast, the Western Shoshone Nation was given to the Western Shoshone people by the Creator, Appah. Sovereignty is complete, given by the Creator, not the U.S. government. The Western Shoshone National Council recognizes its members by descendance alone. Its land base is described in the Treaty.

13. The U.S. claims that they took Shoshone land through "gradual encroachment" a term that has no legal definition and was not a legal method of ending a Treaty. The U.S. has never been able to provide documentation about how or when the land and rights were taken. The U.S. did not consult with the Shoshone and made a unilateral decision to take their land and rights.

14. In 2004, the U.S. passed a Congressional Act to distribute money for "taken" land, to individuals with at least 1/4 blood quantum. Between 2011 and 2012, the Bureau of Indian Affairs determined 5,361 Shoshone were eligible to received about \$35,000 each. Members of the Western Shoshone National Council and many others have refused the money and retain all land and Treaty rights.

15. Immediately after the money distribution, the Nevada State Assembly authorized a task force to investigate the transfer of "public land" most of which is treaty land, into Nevada State control and management by June 30, 2015. The land will be able to be sold to private extractive industries, including oil and gas hydraulic fracturing "fracking" endeavors. No effort has been made to address Western Shoshone ownership of the land. There will be even less protection of cultural, spiritual and burial sites.

16. Foreign-owned gold mining companies continue to expand and explore on Shoshone land, some concealing environmental violations affecting the health of the people. In 2013, Barrick Cortez, Inc., Barrick Gold, US., and Homestake Mining Company paid \$278,000 in fines and agreed to spend \$340,000 toward an environmentally beneficial project for filing false reports of toxic chemical releases and waste management to the U.S. Environmental Protection Agency in violation of the Emergency Planning and Community Right-to-Know Act. The violations occurred near a National Wildlife Refuge in 2005, 2006, 2007, and 2008, with releases of cyanide compounds.

17. Fish advisories for methylmercury from gold mining are increasing in some water bodies in Western Shoshone territory. Of 110 waterbodies within Western Shoshone territory, 3 have total restrictions on eating fish; 0-2 fish per month can be eaten in 20; 3-5 can be eaten in 30. All the rest of the water bodies have restrictions, but with higher limits.

18. The State of Nevada continues to actively cooperate and plan with private corporations to extract and export 176,655 acre-feet of water per year through a 263-mile pipe from Western Shoshone ancestral lands to the City of Las Vegas. Las Vegas is outside the Shoshone land base.

19. In 2012 the Bureau of Land Management approved the pipeline construction despite noting that the project would destroy 10,681 acres of forest land, 2000 acres of threatened and endangered sage grouse and desert tortoise habitat, interrupt big game migratory routes and habitat, decrease water quantity in rivers, lakes, and streams, and could lead to ground subsidence.

20. Plants and animals used by the Western Shoshone for food and medicine would not survive with diminished water quantity. Many sacred areas, burial sites, and a massacre site would be destroyed. It would deprive Western Shoshone and their relatives from practicing their religion in some traditional areas. Positively, the Seventh Judicial District Court of Nevada remanded the State Water Engineer's ruling in December 2013 and requested more information.

21. In 2013 the Department of Energy authorized 403 cannisters of weapons-grade, highly radioactive man-made Uranium-233 to be shipped in 55-gallon drums, by truck from Oak Ridge, Tennessee to Area 5 of the Nevada Test Site, now renamed the Nevada National Security Site (NNSS). The "dirty bomb" material consists of a mix of Uranium-233, requiring heavy shielding, Uranium-235, the isotope used in the first nuclear bomb, and Uranium-232, a gamma emitter. Slit trenches will be dug 48' - 50' for shallow burial.

22. The uranium, which originally was used at the Indian Point Reactor in New York, is 200-300 rems, 1500 times more radioactive than the low-level waste already buried at the NNSS. Exposure to 400-450 rem, over a short period of time, is lethal. To allow the waste to be stored, the Department of Energy weakened nuclear waste acceptance criteria allowing 5 times more radioactive material. Western Shoshone are concerned that acceptance of this waste will increase the likelihood of more radioactive waste disposal and the opening of the Yucca Mountain repository on Western Shoshone territory.

23. There has been no consultation with Tribes about this or the re-opening of Yucca Mountain, on Shoshone land, as a potential national high-level waste site. In an August 2013 decision, the US Court of Appeals for the District of Columbia Circuit, ruled that President Obama and the Nuclear Regulatory Commission were "flouting the law" when they stopped working on site suitability of Yucca Mountain. Thus, Yucca Mountain, on Western Shoshone territory, is back on the drawing board for construction of the Yucca Mountain High Level Nuclear Waste Repository.

24. Meanwhile, while there is no safe disposal method for nuclear waste in the U.S., the DOE continues to propose new reactors which will create waste. Further, as part of the Stockpile Stewardship Program, to make sure the U. S. stockpile is secure and to examine plutonium behavior, sub-critical underground tests have been conducted. Test Bacchus was exploded September 15, 2010, Barolo B was detonated February 2, 2011, and Pollux was detonated December 5, 2012.

25. The U.S. is presently involved in legislative and regulatory efforts to prevent the Western Shoshone from their traditional ways of harvesting foods and medicinal herbs, threatening the health and spiritual and cultural traditions of the Western Shoshone. Federal agencies have formed a partnership to remove native food trees from 300,000 acres and use them as a demonstration project of biomass availability.

26. Pinyon trees produce pine nuts, traditional staple food of the Western Shoshone used for medicine, ceremony, food, shelter, campfires, and cooking, and it holds deep

spiritual and cultural significance to the Shoshone people. In the 20th century, U.S. federal agencies, the Bureau of Land Management and the U. S. Forest Service, developed resource management plans that limited the amount pine nuts that persons could harvest to twenty pounds. The agencies applied these regulations to indigenous harvesting despite federal protection of native hunting, fishing, and gathering rights.

27. Federal agencies have labeled the tree as a problem and have devastated millions of acres by prescribed burns, supposedly to curtail large wildfires. But the Western Shoshone feel that if they had been permitted to maintain the forests through their traditional management practices, the trees would not have overgrown.

28. In 2010 Senator Harry Reid encouraged the Secretaries of Interior and Agriculture to engage in a demonstration project, the Nevada Pinyon-Juniper Partnership. The project identified approximately 300,000 acres for experimentation from 2013-2033. The trees will be removed with chainsaws, masticators, and prescribed burns. A biomass industry will be developed to benefit private corporations. It is estimated that 20-60 million tons of biomass will result. The Western Shoshone National government has never been contacted or consulted on this project.

#### Recommendations

29. The Western Shoshone National Council recommends that: 1) the U.S. government immediately abide by the recommendations of CERD Decision 1(68); 2) the U.S. government immediately initiate response to Western Shoshone National Council requests for negotiation on treaty and land rights, 3) that the definition and implementation of "consultation" be modified, by law, to be more than a procedure, but to give full respect and weight to indigenous concerns, in order to comply with the full intent of all such laws to protect human, cultural, and religious-spiritual rights, 4) and that an institution or other body be developed within the U.S. to more closely monitor and report on compliance with human rights laws.

#### IV. CONCLUSION

30. In summary, the U.S. has not made plans or progress toward fulfilling the recommendations of CERD decision 1(68). The U.S. should immediately do so, begin negotiations with the Western Shoshone National Council, change laws concerning consultation to be more inclusive and dialogue-driven, and establish an independent institution or entity to monitor and report on compliance with human rights laws.