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The United States Refuses to Comply with International Human Rights Law that Prohibits the Discriminatory Denial of Indigenous Land Rights

Briefing Paper for March 2006 UN Human Rights Committee Session

The struggle of the Western Shoshone people exemplifies the ongoing problems with United States domestic legal doctrines pertaining to indigenous peoples. The Western Shoshone people have endured numerous and ongoing human rights violations by the United States. These continuing violations highlight the United States government's unwillingness to comply with its obligations under the International Covenant on Civil and Political Rights, and other relevant international human rights laws, with regard to the rights of indigenous peoples in the United States, and the Western Shoshone in particular.

History of the Western Shoshones' Struggle for Land Rights

The Western Shoshone are indigenous peoples who are in current possession and actual use of ancestral lands in Central Nevada and parts of Idaho, Utah and California where they have lived since time immemorial. As indigenous peoples, their identity, culture, spirituality and economy are tied to these lands. On these lands they continue to hunt, fish and graze livestock in accordance with their traditional, subsistence lifestyle. They also perform spiritual exercises on the lands and gather plants for medicinal and religious purposes.

In 1863, the Western Shoshone entered into a Treaty of Peace and Friendship (the "Treaty of Ruby Valley") with the United States. The Treaty affirmed the boundaries of the Western Shoshone lands. It did not cede title to the lands, but merely gave to the U.S. limited access and use for specified purposes. Despite the Treaty of Ruby Valley, the United States unilaterally assumed complete control over 24 million acres of ancestral Western Shoshone lands. Today, the United States continues to deny the ongoing existence of Western Shoshone rights to their ancestral lands. That denial is based on a discriminatory and unjust administrative proceeding of the Indian Claims Commission (ICC), a commission established by the U.S. Congress to adjudicate Indian claims and later replaced by the Court of Claims. The ICC adopted a "stipulation" that Western Shoshone land title had been extinguished through acts of gradual encroachment. The ICC proceeding later served as a bar to further judicial relief in the U.S. Courts by the Western Shoshone people.

Having been denied justice through the United States' administrative and judicial

tribunals, Mary and Carrie Dann, sisters and traditional elders of the Western Shoshone Nation, and the Dann Traditional Family eventually took their case to the international level in a last chance attempt at justice. There, the Danns filed a complaint with the Inter-American Commission on Human Rights, maintaining that the United States has violated and continues to violate their basic human rights by attempting to take their traditional land through discriminatory means. Having heard the Danns' allegations and the United States' response, the Inter-American Commission issued a groundbreaking report in 2002 finding that the United States' attempts to remove the Danns from their ancestral lands violates their basic human rights to property, to equality before the law, and to a fair trial. The Commission recommended that the United States provide the petitioners with an effective remedy for the infringements of Western Shoshone property rights over ancestral lands and that the United States review its laws, procedures and practices regarding indigenous peoples, in particular the right to property.

In addition to their efforts with the Inter-American Commission, the Danns participated in proceedings before the United Nations' Committee on the Elimination of Racial Discrimination ("CERD") in 2001. At that time, CERD called into question some of the United States' policies, noting that treaties signed by the government and Indian tribes can be unilaterally abrogated by Congress and that the land Indian tribes possess can be taken without compensation. CERD went on to express concern with regard to the United States' plans to expand mining and nuclear waste storage on Western Shoshone ancestral lands, to place their land up for sale by private auction, all without any consultation with the indigenous communities affected. Finally, CERD recommended that the United States follow the policy of prior informed consent, and ensure effective participation by indigenous communities in decisions affecting them.

In the time since the Inter-American Commission issued its final report in 2002 and CERD issued its concluding observations in 2001, the U.S. has done nothing to attempt to remedy the human rights violations identified by these bodies. Instead, the United States has intensified its tactics to intimidate and threaten the Western Shoshone. As a result, the Western Shoshone filed a second request for urgent action with CERD in July of 2005. Just days ago, CERD issued an historic decision against the United States through its Early Warning and Urgent Action Procedure. In its decision, CERD expressed concern that the Western Shoshone people are being denied rights to their traditional lands due to the U.S.' contention that Western Shoshone rights to their lands were extinguished by "gradual encroachment." CERD also expressed concern that the United States has not respected its obligation to guarantee the right for everyone to equality before the law in the enjoyment of civil, political, economic, social and cultural rights. Finally, CERD expressed concern regarding the rights of the Western Shoshone to own, develop, control and use their communal lands, territories and resources.

Violations by the United States of the Covenant on Civil and Political Rights

In addition to violating various provisions of the American Declaration on the Rights and Duties of Man and the Convention on the Elimination of All Forms of Racial Discrimination, the United States is also in violation of its obligations under the Covenant on Civil and Political

Rights to ensure the Western Shoshone's enjoyment of their rights to self-determination and culture, and their right to equal protection of the law.

This Committee can look to past and current actions and omissions of the United States to find its disregard for its obligations under the Covenant. First and foremost, the treatment of Western Shoshone land rights as "extinguished" by the United States is inconsistent with article 1 of the Covenant. In this Committee's last report on the United States, it noted its concerns that U.S. laws on extinguishment and unilateral abrogation of treaties are inconsistent with obligations under the Covenant and recommended "that steps be taken to ensure that previously recognized aboriginal Native American rights cannot be extinguished". Next, the discriminatory process by which the United States made its determination that these lands were extinguished demonstrates a violation of equal protection guaranteed under article 26. Along the same lines, the Inter-American Commission concluded that the Western Shoshone were not afforded their right to equal protection of the law under Article II of the American Declaration. Finally, in violation of protections of cultural rights guaranteed under article 27, the Western Shoshone have continually been denied effective participation in decisions affecting their traditional lands and resources. As noted in this Committee's General Comment No. 23, "the enjoyment of [cultural] rights [protected under article 27] may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them."

Conclusion

The United States has denied Western Shoshone access to and use of their lands to the detriment of the Western Shoshone people and their survival. Several Western Shoshone individuals and groups have been prosecuted for trespass on their own land. At the same time, the United States has permitted non-indigenous individuals and mining companies to use and occupy Western Shoshone lands. United States' law enforcement officials have conducted military-style raids against Western Shoshone ranchers, seizing livestock that is crucial to basic subsistence. The United States has also failed to protect Western Shoshone people from environmental damage by nuclear waste storage, open pit cyanide heap leach gold mining, and other industrial and military activities on their land. With these ongoing harms, the United States has demonstrated that it will not fulfill its obligations to the Western Shoshone people under international human rights law. This denies the Western Shoshone people the legal remedy against discriminatory laws and policies to which they are manifestly entitled. It also threatens their traditional land and resources and the very survival of their culture. The international community should support Carrie Dann, other Western Shoshone, and all similarly situated indigenous peoples and should demand that the United States fully comply with its human rights obligations to indigenous peoples.