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Human Rights Committee issues report telling U.S. to change
discriminatory policies toward Indigenous Peoples

GENEVA – The United Nations Human Rights Committee issued a strong report last week urging the United States government to review its discriminatory policies towards indigenous peoples and to grant Native people the same degree of judicial protection that is available to other citizens of the US.

The UN Human Rights Committee is the entity charged with monitoring compliance with the International Covenant on Civil and Political Rights by countries that have ratified the Covenant. The United States ratified this Covenant in June, 1992. The Covenant covers a broad range of fundamental human rights that should be afforded to all peoples within a country. Article 1 establishes the right of self-determination, a right of central importance to Indian peoples in this country. Article 27 provides that “ethnic, religious or linguistic minorities ... shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” Other rights contained in the Covenant include rights to equality under the law, to freedom of expression and association, and to freedom from arbitrary government action.

One of the monitoring duties of the Human Rights Committee is to review compliance reports submitted by the ratifying countries every five years and to make “concluding observations and recommendations” to those countries regarding their compliance with the Covenant. The United States’ second and third reports to the Human Rights Committee were due on July 1998 and July 2003, respectively. But the United States did not submit its combined second and third reports until October 21, 2005.

The Committee reviewed the US’ reports at its July 2006 session in Geneva. As part of its review process, the Committee invited interested NGOs to provide the Committee with additional information regarding the US’ compliance with the Covenant. The Indian Law Resource Center heavily participated in this review process, submitting written reports and providing testimony to the Committee regarding the US’ failure to comply with articles 1 and 27 of the Covenant with regard to its treatment of indigenous peoples.
In addition to the information received by the Indian Law Resource Center, other indigenous NGOs provided information that informed the Committee, particularly with regard to the ongoing suppression of the inherent sovereignty of the Native Hawaiian people.

According to Lucy Simpson, staff attorney at the Indian Law Resource Center, “By every measure, Indian tribes continue to rank at the bottom in terms of economic and social well-being. The federal government continues to take tribal lands and resources, in many cases without payment and without any legal remedy. Because of the federal government’s insistence that it has essentially limitless power, under the plenary power doctrine, and the government’s constant intrusion into Indian affairs, Indian peoples are often prevented from properly governing their lands or carrying out much-needed economic development. This denial of simple justice deprives Indian peoples of a fair opportunity to advance the interests of their communities. No other people in the country is in such an untenable and insecure position.”

In its report on the US, the Human Rights Committee acknowledged this unfair and discriminatory treatment of Indian peoples. The Committee noted with concern the discriminatory treatment of indigenous peoples by the United States particularly regarding their land rights. The Committee also recommended that the US grant indigenous peoples the same degree of judicial protections that are available to other citizens.

The Committee said that the US has failed to take any action to address the Committee’s previous recommendations relating to the US’ unfair and unilateral extinguishment of aboriginal and indigenous rights. While noting that the guarantees provided by the Fifth amendment apply to the taking of land where treaties have been concluded between the federal government and Indian tribes, the Committee raised concerns that in other situations – in particular where land was assigned by creating a reservation or is held by reason of long possession and use – tribal property rights can be extinguished on the basis of congressional plenary power without due process and fair compensation.

The Committee also expressed concerned that the concept of permanent trusteeship over Indian and Alaska native tribes and their lands, as well as the actual exercise of this trusteeship in managing the so-called Individual Indian Money (IIM) accounts, may infringe upon the full enjoyment by indigenous peoples of the rights guaranteed under the Covenant.

Finally, the Committee expressed regret that it did not receive sufficient information on the consequences to the Native Hawaiians Peoples for the illegal overthrow of the Kingdom of Hawaii, which resulted in the suppression of the inherent sovereignty of the Hawaiian people.

The report concluded that the US should take further steps in order to secure the rights of all indigenous peoples under articles 1 and 27 of the Covenant to give
them greater influence in decision-making affecting their natural environment and their means of subsistence as well as their own culture.

The Human Rights Committee’s Concluding Observations can be found at http://www.indianlaw.org/un_hr_committee1.html. For more information or to read the reports submitted or testimony provided to the Committee by the Indian Law Resource Center, go to http://www.indianlaw.org/un_hr_committee.html.

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