

THE NAVAJO NATION



The Navajo Nation Council

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NAVAJO NATION HUMAN RIGHTS COMMISSION FIRST COMMISSION 2008-2012

Statement of the Navajo Nation Regarding the United States of America's Fulfillment of International Human Rights Treaties, Covenants and Declarations and Other Obligations

Introduction

The Navajo Nation Human Rights Commission¹ ("Commission"), duly authorized by the Navajo Nation, hereby contributes to the 2010 Universal Periodic Review ("UPR") by submitting declarations and recommendations on the United States' ("U.S.") moral and legal human rights obligations to Navajos ("Diné")² and other indigenous peoples to the United Nations Office of High Commission for Human Rights of the Human Rights Council ("HRC").

The Commission conducted twenty-five border-town public hearings collecting information on race relations and human rights violations. The Commission determined that among the themes testified to at the public hearings, four thematic issues were most compelling: Sacred Sites, Relocation, Environmental Issues, and Unsolved Deaths. The fourth thematic issue, Unsolved Deaths, although extremely important, will be discussed in the Commission's contribution to the U.S.'s national report due to the page limitations directed by HRC.

This UPR report begins by commenting on efforts by the Commission and the U.S. Department of State ("State Department") to communicate on human rights issues and activities. Following is a summary discussion on three of the Commission's thematic issues: Sacred Sites,

¹ The Commission is established to "[operate] as a clearinghouse entity to administratively address discriminatory actions against citizens of the Navajo Nation, and to interface with the local, state, and federal governments and with national and international human rights organizations" according to 2 N.N.C §§ 920-924 et seq.

² Diné is the traditional name of the Navajo people.

Relocation, and Environmental Issues. Finally, the report will discuss self-determination as it relates to resources due to its critical importance to the Diné and other indigenous peoples.

The U.S. Department of State

In November 2009, the Commission participated in the Twelfth Negotiations on the Organization of American States (“OAS”) draft Declaration on the Rights of Indigenous Peoples (“draft Declaration”) in Washington, D.C. There the Commission was officially recognized and permitted to provide recommendations. In addition, the Commission met with representatives of the U.S. State Department to discuss the UPR process and report. During the first meeting, a State Department representative agreed that a comparative analysis of federal legislation, the United Nations Declaration on the Rights of Indigenous Peoples (“UN Declaration”) and other international covenants would be helpful should the U.S. review its current position.

At the second meeting the Commission recommended active listening and suggested the State Department cease the historical paternalistic “consultation” practice of collecting signatures and distributing information on available public benefits and services. At the conclusion of the second meeting, the State Department agreed with the Commission to listen actively and to schedule listening conferences in areas with a significant population of indigenous peoples and tribal governments. The State Department scheduled a listening conference at the Indian Pueblo Cultural Center in Albuquerque, New Mexico and at the Navajo Nation Museum in Window Rock, Navajo Nation (Arizona).

Sacred Sites

The traditional Diné Life Way is a holistic ceremonial existence with a very passionate traditional, cultural and spiritual bond to the land.³ Two sacred mountains, Mount Taylor, located in the State of New Mexico, and the San Francisco Peaks, located in the State of Arizona,⁴ were recently the topic of private, public and legal deliberations.

³ According to Diné teachings, the Diné descended from the earth, succeeding through five (5) worlds and arriving in the area that is between four sacred mountains, currently known as the Navajo Nation. Here the Diné lived in harmony with the earth, its plant life, the animals, the air, water, the cosmos and everything else in this environment. To them, the Holy People ordain the Diné as keeper of the earth; instilling into their lives the sacred prayers and ceremonies for living a balanced life with the natural forces that surround the earth and the universe.

⁴ The essence of the Diné Life Way is the intimate relationship between the people and the land; particularly sites looked upon as sacred. This relationship is established at birth when a newborn child’s umbilical cord is buried near the hogan representing the

The Diné and twelve other indigenous nations located in the States of Arizona, Colorado, New Mexico and Utah⁵ sued the U.S. to preserve and protect the San Francisco Peaks from economic exploitation, desecration⁶ and participated in the process that placed Mount Taylor on the state register of historic places giving the Diné and other indigenous peoples hope. Disappointingly, federal legislation such as the American Indian Religious Freedom Act of 1978⁷, the Native American Graves Protection and Repatriation Act of 1990⁸, and the Religious Freedom Restoration Act of 1993⁹ did not protect the San Francisco Peaks.¹⁰ The U.S. Supreme Court denied reviewing a federal appellate court decision upholding a Coconino National Forest permit authorizing a private corporation to make artificial snow from reclaimed wastewater on the San Francisco Peaks for economical and recreational purposes.¹¹

Therefore, the Commission strongly advocates for the HRC to:

1. Press the U.S., and its political subdivisions, for the immediate ratification and implementation of the UN Declaration with emphasis on Article 19¹², Article 25¹³, and Article 26, Section 3¹⁴;
2. Press the U.S., and its political subdivisions, to enact federal and/or state legislation that guarantees the Diné and other indigenous peoples the birthright to implement and

change from receiving nourishment from one's birth mother to a life of nurturing from one's sacred mother, Mother Earth. Offerings of turquoise, white shell, abalone or corn pollen are made to sacred sites, which include, but are not limited to, mountains, springs, rivers, herbal gathering areas, trees, and other locations, to receive protection and blessings from the Holy People.

⁵ Arizona, Colorado, New Mexico and Utah are southwest states that are located within the United States of America.

⁶ Navajo Nation et al. v. U.S. Forest Service, 479 F.3d 1024, 1053-1054 (9th Cir. 2007), (vacated in part on other grounds) Navajo Nation et al. v. U.S. Forest Service, 535 F.3d 1058 (9th Cir. 2008) (en banc).

⁷ Pub.L. 95-341, 42 U.S.C. 1996 and 1996a, as amended

⁸ Pub.L. 101-601, 104 Stat. 3048,

⁹ 42 U.S.C. § 2000bb (1993)

¹⁰ Navajo Nation et al. v. U.S. Forest Service, 479 F.3d 1024, 1053-1054 (9th Cir. 2007), (vacated in part on other grounds) Navajo Nation et al. v. U.S. Forest Service, 535 F.3d 1058 (9th Cir. 2008) (en banc).

(“[T]he only effect of the proposed upgrades is on the plaintiffs’ subjective, emotional religious experience. That is, the presence of recycled wastewater on the Peaks is offensive to the plaintiffs’ religious sensibilities ... the diminishment of spiritual fulfillment – serious though it may be – is not a ‘substantial burden’ on the free exercise of religion” calling them mere “damaged spiritual feelings.”)

¹¹ Navajo Nation v. U.S. Forest Service, cert. denied, 129 S. Ct. 2763 (2009)

¹² “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them;”

¹³ “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;”

¹⁴ “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”

practice the fundamental legal rights under Article 18¹⁵ of the Universal Declaration on Human Rights without the fear of undue burdens or restrictions from the federal, state or local government laws, policies, rules and regulations;

3. Press the U.S., and its political subdivisions, to enact federal and/or state legislation placing a permanent moratorium on Mount Taylor, the San Francisco Peaks and other sacred sites from further economic exploitation and desecration, that respects and protects the spiritual relationship of the Diné and other indigenous peoples to the lands;
4. Press the U.S., and its political subdivisions, to recognize the inherent right of Diné and other indigenous peoples' to access Mount Taylor, the San Francisco Peaks and other sacred sites without any undue burdens or restrictions from the federal, state or local government laws, policies, rules and regulations; and
5. Press the U.S., and its political subdivisions, to actively engage in true nation-to-nation negotiations with the Diné and other indigenous nations when contemplating, drafting and implementing federal, state and/or local government laws, policies, rules and regulations that impact the Diné and other indigenous peoples' sacred sites.

Relocation

On December 22, 1974, the U.S. Congress ("Congress") enacted the Navajo and Hopi Indian Land Settlement Act of 1974 ("P.L. 93-531"), which ordered the relocation of Diné from their ancestral lands. The purpose of P.L. 93-531 was allegedly to resolve a conflict created by a Presidential Executive Order issued in 1882 establishing the "[Hopi] Indian Reservation" and federal legislation enacted by Congress in 1934 establishing the "1934 Navajo Reservation." The U.S. imposed property rights and interests on the Diné and Hopi peoples without respect for their close bond to their lands and sacred sites or their pre-existing and well-established traditional settlement patterns. The Hopi settlement of Moenkopi was beyond the 1882 Hopi Reservation's exterior boundaries and several thousand traditional Diné settlements were located within the

¹⁵ Article 18 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

1882 Hopi Reservation's exterior boundaries. In fact, many of these pre-existing and well-established traditional settlements went largely ignored by the U.S. until July 22, 1958, when Congress enacted P.L. 85-547 authorizing the Hopi Tribal Chairman and the U.S. Attorney General to file a "quiet title" lawsuit to the 1882 Hopi Reservation. Eventually Congress enacted P.L. 93-531, disrupting the lives of thousands of non-English speaking traditional Diné elders whose holistic Life Way was severed from their traditional homeland. Most, if not all relocatees and their descendants,¹⁶ particularly those relocated to larger urban communities, are now denied the opportunity to learn, participate and pass on Diné traditional healing practices and ceremonies.¹⁷

The U.S., its political subdivisions, and the Diné and Hopi governments were not prepared for the consequences of P.L. 93-531, the largest relocation of any people in the U.S. since the Japanese internment of 1940.¹⁸ The money required to finance such an undertaking was underestimated. The number of indigenous peoples¹⁹ to be relocated was underestimated. The amount of land necessary to sustain the traditional Diné Life Way was underestimated, and the United States and its political subdivisions failed to comprehend the complex process involved and the traumatic impact on the Diné and Hopi when moving entire communities. P.L. 93-531 projected the relocation to be completed by 1986, and expected the costs of relocating approximately six thousand Diné to be about forty million dollars. However, relocation activities have not ended and the total cost to date has exceeded five hundred million dollars.²⁰

Therefore, the Commission strongly advocates for the HRC to:

¹⁶ The lives of children who were too young to qualify for the benefits offered to their parents and grandparents now want to revitalize and preserve their cultural. These young children, who are now parents and grandparents, are seeking lands to build a home for themselves and to pass that land down to their grandchildren's grandchildren for generations to come, which has been practiced amongst the Diné people since time immemorial.

¹⁷ Many ceremonies last for several days and draw a large number of people. Areas large enough to accommodate these traditional healing ceremonies do not exist in these urban centers nor were these ceremonies considered when rural lands were purchased for building homes. Smaller ceremonies that are commonly held in a traditional hogan are also unavailable as urban communities and city construction ordinances exclude the building of these structures in residential zones primarily because of the necessity of an open fireplace which is central to a traditional Diné home

¹⁸ As noted by Professor Thayer Scudder, renowned Social Scientist of Community Resettlement, Special Rapporteur of the United Nations Commission on Human Rights, "the forced relocation of over 12,000 Native Americans is one of the worst cases of involuntary community resettlements that I have studied throughout the world over the past 40 years. P.L. Law 93-531 is a major violation of the people's (Diné) human rights, including more specifically a violation of their religious rights."

¹⁹ One thousand (1,000) Navajos vs. one hundred (100) Hopis.

²⁰ Text of H.R. 956 [110th]: To repeal section 10(f) of Public Law 93-531, commonly known as the "Bennett Freeze"

1. Press the U.S., and its political subdivisions, for the immediate ratification and implementation of the UN Declaration with emphasis on Article 10²¹ and Article 11, Sections 1 and 2²², and repealing all federal, state and/or local government laws, policies, rules and regulations that prohibits the option to return as provided under Article 10;
2. Press the U.S., and its political subdivisions, to make supplemental appropriations to purchase comparable lands when Article 10 cannot be satisfied and immediately place these lands into federal trust for the specific purpose of building homes with adequate space for farming, ranching, and more importantly, traditional and ceremonial healing practices for those who were directly impacted by P.L. 93-531; and
3. Press the U.S., and its political subdivisions, to actively engage in true nation-to-nation dialogue with the Diné and other indigenous nations to develop an effective mechanism to review the Indian Lands Claims Act and appropriately address the taking of pre-occupied lands or territories of the Diné and other indigenous peoples that are consistent with the international standard of “free, prior and informed consent.”

Environmental Issues

Although the mass relocation discussed above was premised on the rights and interests of the Diné and the Hopi to lands delineated by a Presidential Executive Order in 1882 and the federal legislation enacted by Congress in 1934, the traditional and customary use of these lands were clearly understood by the Diné and Hopi long before any foreign colonization. Eventually the pages of history disclosed that the relocation occurred because the Diné and Hopis lived on top of the richest coal beds in North America.²³ To access and exploit these resources, large transnational energy companies aggressively lobbied the U.S. to relocate Diné and Hopis without

²¹ “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation, and where possible, with the option of return”

²² “Indigenous peoples have the rights to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.” and “States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.”

²³ Begaye, Enei M., *Mining the Sacred Water of Black Mesa*, Voices from the Earth, vol. 3, no. 4, (Winter 2002), “Since 1965, Peabody Western Coal Company has been operating two strip mines on Black Mesa—the Kayenta and Black Mesa mines. Together, these mines constitute one of the largest strip mining operations in the United States. The Black Mesa mine supplies coal to the Mohave Generating Station (MGS) outside of Laughlin, Nevada. Electricity from this plant powers southern California, Las Vegas, and central Arizona.”

delay. Consequently, Diné and Hopi coal is now providing heat and electricity to non-indigenous homes throughout the southwest region of the U.S. leaving behind environmental desolation and destruction.

The inherent right of the Diné and other indigenous peoples includes the right to preserve and protect their lands, resources, waters and minerals from economic exploitation, and to advance a healthy and sustainable physical and mental environment that is culturally relevant, respectful of indigenous culture and traditional healing ceremonies, and does not directly contribute to climate change. The Diné and other indigenous people have the inherent right to protect, restore, conserve, manage and develop their natural, cultural and historic resources for future generations.

Therefore, the Commission strongly advocates for the HRC to:

1. Press the U.S., and its political subdivisions, for the immediate ratification and implementation of the UN Declaration with emphasis on Article 29, Section 1²⁴;
2. Press the U.S., and its political subdivisions, to legally recognize and respect the inherent right of the Diné and other indigenous peoples to protect, restore, conserve, manage and develop their lands, resources, waters and minerals for future generations without undue influence by transnational corporations or foreign governmental agencies; and
3. Press the U.S., and its political subdivisions, to actively engage in true nation-to-nation negotiations with the Diné and other indigenous nations when contemplating, drafting and implementing federal, state and/or local government laws, policies, rules and regulations that impacts indigenous lands, resources, waters and minerals.

Self-Determination as it relates to Resources

Exercising the inherent right of self-determination, as provided for in Article 3 of the UN Declaration, is an inalienable and fundamental right of the Diné and other indigenous peoples just as Article One of the International Covenant on Civil and Political Rights recognizes nation/states' inherent right of self-determination. Since time immemorial, the Diné have lived among the four sacred mountains in accordance with the same understanding of self-

²⁴ “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.”

determination as contemporary legal thinkers. The principle of permanent sovereignty over natural resources in modern law arose from the struggle of colonized peoples to achieve political and economic self-determination after the Second World War. The principle is: peoples and nations must have the authority to manage and control their natural resources and in doing so to enjoy the benefits of their development and conservation.

Today, the Diné continue to live within the four sacred mountains and possess over twenty-seven thousand square miles (seventeen million acres) of lands, resources, waters and minerals. Nonetheless, early foreigners applied the archaic “Doctrine of Discovery” and the self-righteous principle of “Manifest Destiny” to claim lands and impose cruel and inhumane acts and policies on America’s indigenous peoples. These actions robbed, destroyed and imposed strict limitations on the natural advancement and implementation of indigenous peoples’ self-determination.²⁵

This colonial and paternalistic concept continues in the present day allowing large transnational corporations and foreign governments to exploit Diné resources and infringe upon the Diné and other indigenous peoples’ inherent right to “freely pursue their economic, social and cultural development” without any regard for the Diné Life Way or the Diné’ and other indigenous peoples’ inherent right to directly manage their surface and subsurface resources. For example, the Navajo Nation declared a moratorium on uranium mining in 1983²⁶, then in December 1992 former Navajo Nation President Peterson Zah signed an Executive Order Moratorium on Uranium Mining²⁷ and finally the Navajo Nation Council adopted the Diné Natural Resources Protection Act of 2005²⁸ which legislatively prohibit uranium mining within Diné lands and territories. Despite the Navajo Nation’s clearly stated position against uranium mining new mining is planned within bordering “checkerboard” lands that could contaminate Diné lands and water. In addition, in 2009, the U.S. Supreme Court denied the Navajo Nation the opportunity to correct wrongs committed by the U.S. government over the management of Diné

²⁵ The United Nations is well aware of these atrocities as it has stated its concern in preamble paragraph in Resolution 61/295 the following: “Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests”.

²⁶ "Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico" Crownpoint, New Mexico. NUREG-1508, US Nuclear Regulatory Commission, Washington DC, February 1997.

²⁷ Navajo Nation Office of the President. Executive Order Moratorium on Uranium Mining. Dec. 9, 1992.

²⁸ 18 N.N.C. §§ 1301 *et seq.*

lands, resources and minerals.²⁹ “As a result, it has become clear that meaningful political and economic self-determination of indigenous peoples will never be possible without indigenous peoples’ having the legal authority to exercise control over their lands and territories.”³⁰

Therefore, the Commission strongly advocates for the HRC to:

1. Press the U.S., and its political subdivisions, for the immediate ratification and implementation of the UN Declaration with emphasis on Article 3³¹;
2. Press the U.S., and its political subdivisions, to actively engage in true nation-to-nation negotiations with the Diné and other indigenous nations to amend all federal, state and/or local government laws, policies, rules and regulations, and take all necessary legislative and administrative measures to assure that the Diné and other indigenous peoples enjoy complete ownership of and benefits from their lands, resources, waters and minerals;
3. Press the U.S., and its political subdivisions, to be less concerned with the use of the term “sovereignty” or “permanent sovereignty” in the development of federal, state and/or local government laws, policies, rules and regulations that recognize and protect complete ownership of and benefits from the lands, resources, waters and minerals and more with whether the language employed fully protects the rights of Diné and other indigenous peoples over their lands, resources, water and minerals;
4. Press the U.S., and its political subdivisions, to recognize the authority of Diné and other indigenous peoples to manage, conserve and develop their lands, resources, waters and minerals according to their own laws, policies, rules and regulations and institutions;
5. In situations where the Diné or other indigenous peoples, for valid legal reasons, do not own or control the natural resources pertaining to all or a part of their lands or territories, the Diné and other indigenous peoples concerned must nevertheless share in the benefits from the development or use of these resources without any discrimination and must be fairly compensated for any damage that may result from development or use of the resources;

²⁹ Navajo Nation vs. United States, 556 U. S. ____ (2009)

³⁰ Daes, Ms. Erica Irene, Special Rapporteur, OHCHR: Expert Seminar on Indigenous Peoples' Sovereignty, Friday, 20 January 2006

³¹ “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development;”

6. Press the World Bank and other multilateral development banks to uphold and support the human rights of the Diné and other indigenous peoples in relation to the extractive industry sector, and abstain from supporting extractive industry projects that affect the Diné and other indigenous peoples without prior recognition of and effective guarantees for Diné and other indigenous peoples' rights to completely own, control and manage their lands, territories, resources, waters and minerals;
7. Press the U.S. for the creation of an ad hoc committee, in full consultation with the Diné and other indigenous peoples, with the responsibility of studying, implementing and promoting permanent sovereignty over lands, resources and minerals, and advance and monitor the progress of the U.S. in recognizing and implementing this right, and provided the necessary resources to assist the U.S. and the Diné and other indigenous peoples to reach constructive arrangements to resolve disputes or problems concerning lands, resources and minerals;
8. Press the United Nations Permanent Forum on Indigenous Issues to give repeated attention to the Diné and other indigenous peoples' permanent sovereignty over lands, resources and minerals, and the steps taken by UN bodies, programmes, funds and agencies to implement and protect this right;
9. Press the United Nations Secretariat to convene an expert seminar giving further attention to the inherent right of the Diné and other indigenous peoples' permanent sovereignty over lands, resources, waters and minerals;
10. Press the United Nations Special Rapporteur to prepare an updated study on the views of states/nations, non-governmental organizations and the Diné and other indigenous peoples in regard to the inherent right of the Diné and other indigenous peoples' permanent sovereignty over lands, resources, waters and minerals; and
11. Press the U.S., and its political subdivisions, to take all necessary domestic and international measures to carry out these recommendations.