



NAVAJO NATION HUMAN RIGHTS COMMISSION

P.O. Box 1689

Window Rock, Navajo Nation (Arizona) 86515

Phone: (928) 871-7436 Fax: (928) 871-7437

www.nnhrc.navajo.org

FOR IMMEDIATE RELEASE
October 12, 2010

CONTACT: Rachelle Todea
rtodea@navajo.org

NNHRC Responds to the US Report on Human Rights

The Navajo Nation Human Rights Commission completes its response on behalf of the Navajo Nation to the US Report and sends it to 192 UN Member States in Geneva, Switzerland

ST. MICHAELS, Ariz.—United Nation dignitaries, 192 members, will read the Navajo Nation Human Rights Commission response to the United States human rights record and its obligations and they will be able to pose questions on behalf of the Navajo Nation.

The response was sent on Friday, October 11, 2010 from the Navajo Nation office services mailroom.

The chairperson of the NNRHC said, “The Human Rights Commission is very pleased with the quality of work that was generated by our staff in the timely submission of this response.” Then said, “With the visibility that we are securing in the international forum on human rights, it’s very rewarding to be able to speak on behalf of all Native American tribes as well as indigenous people throughout the western hemisphere.”

The NNHRC report is in response to the US national report to the UN. The Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights In Conjunction with the Universal Periodic Review was made public on August 23, 2010.

NNHRC submitted their report as early as possible for necessary translations for the 192 member states representatives. The report is due ten days prior to November 5, 2010, which is the official UN review date.

“It is a grand opportunity for the Navajo Nation to be able to participate in the UPR,” said NNHRC Chair Duane H. Yazzie about the UN Universal Periodic Review meaning the UN periodic review of its universal members on human rights obligations.

NNHRC compiled the report the listening sessions in Albuquerque, NM and in Window Rock, Navajo Nation (Arizona). The listening sessions were scheduled in a coordinated effort with the US State Department.

NNHRC coordinated one listening session with the UNM School of Law on March 16, 2010. Then, NNHRC coordinated the following listening session at the Navajo Nation Museum in the Nation's capital of Window Rock, Navajo Nation (Arizona).

The listening sessions are part of the UNs process to review member states obligations of human rights. The United States is up for review this year.

NNHRCs report commends the U.S. State Department for recognizing the “virtue” of indigenous peoples and their governments’ “status as sovereigns that pre-date the federal Union,” but then states, “[T]he United States fails to meet its human rights obligations to the indigenous peoples. These transgressions need to be accounted for.”

NNHRC report further states,

“The Commission deems it paramount to emphasize three main points continue to effect the Navajo Nation and its people. The three main points are: failure to protect religious sacred sites, the “forced” relocation of Diné mandated by federal legislation, and the importance of collective rights for the Diné through the right to self-determination.”

About the failure to protect religious sacred rights, NNHRC states in its report, “[i]t is unacceptable that a nation [United States] that claims to advocate for protecting human rights objects to the recognition of indigenous human rights as it pertains to religious and cultural beliefs. The failures of the United States laws and policies go beyond the Peaks and continue to cause irreversible harm.”

Following that statement, NNHRC states, “The United States restricted property rights and interest on the lands of Diné and Hopi peoples without their free, prior and informed consent and thereby imposing a foreign system of property valuation...[relocates and their descendants] are now denied the opportunity to learn, participate and pass on the Diné traditional Life Way.”

About collective rights, according to NNHRCs report, “the Navajo Nation is deprived of the inherent right and authority to exercise the full authority and management of surface and subsurface resources. Recently, the United States Supreme Court denied the Navajo Nation the opportunity to correct wrongs committed by the United States government entities over the mismanagement of resources that rightfully belong to the Navajo Nation and its people.”

Then, the report requests that members of the UN Human Rights Council ask the United States the following questions for the Navajo Nation:

1. The United States is a party to the International Covenant on Civil and Political Rights, Universal Declaration of Human Rights and American Declaration of the Rights and Duties of Man. Regardless of federalism then, why are the rights of indigenous peoples to “freely profess a religious faith, and to manifest and practice it both in public and in private,” not protected by United States federal

legislations such as the American Indian Religious Freedom Act of 1978, the Native American Graves Protection and Repatriation Act of 1990, or the Religious Freedom Restoration Act of 1993? That religious faith is embodied and grounded in the Peaks and other sacred sites.

2. As a member of the U.N. HRC with stated commitment to the American Declaration of the Rights and Duties of Man, why doesn't the United States engage in true nation-to-nation dialogue with the Diné people to develop an effective mechanism consistent with the international standard of "free, prior and informed consent" to address, *inter alia*, Indian land claims and forced relocation?

3. The United States recognizes indigenous nations "as political entities" and "as sovereigns that pre-date the federal union." Indigenous nations have always determined their political status since time immemorial. Why do the United States' laws and policies oppress indigenous nations' inherent rights to self-determination and sovereignty of Diné peoples over their lands, resources, water and minerals?

4. As a member of the U.N. HRC, when will the United States endorse the U.N. Declaration on the Rights of Indigenous Peoples?

To sum up the report NNHRC adds that "[t]he Commission would be remiss to not say that we are greatly encouraged by the United States' re-considering of its stance on the UN [Declaration on the Rights of Indigenous Peoples] under President Barack H. Obama. The Commission feels it is necessary the United States fully endorse the UNDRIP without placing reservations on any articles as steps to help correct the wrongs and broken promises to the indigenous peoples."

Yazzie said, "As the original inhabitants of the United States we have a long history of human right abuse and we can make our comment on the UPR of the US from a standpoint of firsthand experience."

Navajo Nation Human Rights Committee presented its response to the Navajo Nation Intergovernmental Committee for final approval before submitting its report to 192 UN Member States.

The Navajo Nation IGR Committee unanimously voted in favor of the report, 8-0, on October 4, 2010.

The report will be made available on the NNHRC website for download.

For more information, please contact the NNHRC office at (928) 871-7436.

###

1 **NAVAJO NATION**
2



The Navajo Nation Council

NNHRC/Report 4/2010
Friday, September 24, 2010

10
11 Navajo Nation Human Rights Commission
12 First Commission of the Navajo Nation
13 2008-2012
14
15

16 **RESPONSE TO THE UNITED STATES OF AMERICA UNIVERSAL PERIODIC REVIEW**
17 **NATIONAL REPORT TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL**
18

19
20 **Introduction**

21 The Navajo Nation Human Rights Commission (“Commission”), authorized by
22 the Navajo Nation, hereby submits its official response to the United States of America
23 (“United States”) Universal Periodic Review (“UPR”) national report to the United
24 Nations (“U.N.”) High Commission for Human Rights of the Human Rights Council
25 (“HRC”). The national report will be a component of the United States’ presentation
26 when its human rights record and obligation is under review on Friday, November 5,
27 2010 in Geneva, Switzerland.

28 The Commission commends the United States Department of State (“U.S. State
29 Department”) on its consultation effort and scheduling listening conferences in areas
30 where a significant population of indigenous peoples and their governments reside. The
31 U.S. State Department scheduled listening conferences at the University of New
32 Mexico’s School of Law in Albuquerque, New Mexico and at the Navajo Nation
33 Museum in Window Rock, Navajo Nation (Arizona).

34 The Commission further commends the U.S. State Department for recognizing the
35 “virtue” of indigenous peoples and their governments’ “status as sovereigns that pre-date
36 the federal Union,” the “past wrongs and broken promises in federal government’s
37 relationship with American Indians and Alaska Natives” and “the need for urgent

1 change.”¹ Nevertheless, the United States fails to meet its human rights obligations to the
2 indigenous peoples. These transgressions need to be accounted for. The members of the
3 U.N. HRC must ensure that international human rights treaties and covenants are
4 appropriately implemented by the United States.

6 **The Failures of the United States**

7 The Commission deems it paramount to emphasize three (3) main points that
8 continue to affect the Navajo Nation and its people (“Diné”). The three (3) main points
9 are: (1) failure to protect religious sacred sites, (2) the “forced” relocation of Diné
10 mandated by federal legislation, and (3) the importance of collective rights for the Diné
11 through the right to self-determination.

12 In 1992, the United States ratified the International Covenant on Civil and
13 Political Rights in which the United States agreed that “[i]n those States in which ethnic,
14 religious or linguistic minorities exist, persons belonging to such minorities shall not be
15 denied the right, in community with the other members of their group, to enjoy their own
16 culture, to profess and practice their own religion, or to use their own language.”

17 Since 2001, the Navajo Nation and twelve other indigenous nations located in the
18 states of Arizona, Colorado, New Mexico and Utah sought remedies, legal and otherwise,
19 to preserve and protect the San Francisco Peaks (“Peaks”) from economic exploitation
20 and desecration.² Domestic legislations intended to protect sacred sites such as the
21 American Indian Religious Freedom Act of 1978, the Native American Graves Protection
22 and Repatriation Act of 1990, and the Religious Freedom Restoration Act of 1993 failed
23 to protect the Peaks. The indigenous peoples’ recourse was to sue the United States.

24 In June 2009, the United States Supreme Court denied reviewing a federal
25 appellate court’s decision upholding the Coconino National Forest permit authorizing a
26 private corporation to make artificial snow from reclaimed wastewater on the Peaks for
27 economical and recreational purposes³ despite indigenous peoples’ objections. The
28 sanctity of the Peaks to indigenous peoples is significant as it defines our place in the
29 universe as intended by our Creator.

¹ “Report of the United States of America Submitted to the U.N. High Commissioners for Human Rights In
Conjunction with the Universal Periodic Review”, Page 11.

² 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).

³ Navajo Nation v. U.S. Forest Service, cert. denied, 129 S. Ct. 2763 (2009)

1 It is unacceptable that a nation that claims to advocate for protecting human
2 rights objects to the recognition of indigenous human rights as it pertains to
3 religious and cultural beliefs. The failures of the United States laws and policies go
4 beyond the Peaks and continue to cause irreversible harm.

5 Secondly, on December 22, 1974, the United States Congress (“Congress”)
6 enacted the Navajo and Hopi Indian Land Settlement Act of 1974 (“P.L. 93-531”), which
7 ordered the relocation of Diné from their ancestral lands. The purpose of P.L. 93-531 was
8 supposedly to resolve a conflict created by a Presidential Executive Order issued in 1882
9 establishing the “[Hopi] Indian Reservation” and legislation enacted by Congress in 1934
10 establishing the “Navajo Reservation.” The United States restricted property rights and
11 interests on the lands of Diné and Hopi peoples without their free, prior and informed
12 consent and thereby imposing a foreign system of property valuation.

13 P.L. 93-531 disrupted the lives of thousands of non-English speaking traditional
14 Diné elders whose holistic Life Way was destroyed with the “forced” relocation from
15 their traditional homeland. Most, if not all relocatees and their descendants,⁴ particularly
16 those relocated to larger urban communities, are now denied the opportunity to learn,
17 participate and pass on the Diné traditional Life Way.⁵

18 The United States has failed to honor the 1948 American Declaration of the
19 Rights and Duties of Man – “[s]ince culture is the highest social and historical expression
20 of that spiritual development, it is the duty of man to preserve, practice and foster culture
21 by every means within his power” – to which the United States has made commitments.⁶

22 Third, although the United States national report encapsulates the importance of
23 individual human rights it fails to demonstrate the importance of collective human rights.
24 While many indigenous peoples and tribal governments are starting to assert their
25 inherent right to self-determination by meeting the economic, political and cultural

⁴ 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 culture. 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.

⁵ 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

⁶ “Report of the United States of America Submitted to the U.N. High Commissioners for Human Rights In Conjunction with the Universal Periodic Review”, Page 26-27.

1 challenges of the 21st century, the Navajo Nation is striving to regain greater
2 responsibility over its communities through strategies of economic development.

3 The Navajo Nation and its people wish to participate in the rapidly changing and
4 globalizing world and are approaching the future with Diné values, culture and history.
5 Today, the Navajo Nation occupies and utilizes the resources of over 27,000 square miles
6 of land. However, the Navajo Nation is deprived of the inherent right and authority to
7 exercise the full authority and management of surface and subsurface resources.
8 Recently, the United States Supreme Court denied the Navajo Nation the opportunity to
9 correct wrongs committed by United States government entities over the mismanagement
10 of resources that rightfully belong to the Navajo Nation and its people.⁷

11 Finally, the Navajo Nation has developed many creative ways to preserve its
12 communities and culture while adapting to the intensity and globalization of the world
13 economy, culture and technology. These cited hindrances by the United States through
14 the United States Supreme Court prevent the Navajo Nation and its people from freely
15 pursuing their economic, social and cultural development as a collective human right.

16 17 **Questions to Ask from the Commission**

18 The Commission, therefore, formally and respectfully request that members of the
19 U.N. HRC to ask the United States the following questions:

- 20 1. The United States is a party to the International Covenant on Civil and Political
21 Rights, Universal Declaration of Human Rights and American Declaration of the
22 Rights and Duties of Man. Regardless of federalism then, why are the rights of
23 indigenous peoples to “freely profess a religious faith, and to manifest and
24 practice it both in public and in private,”⁸ **not** protected by United States federal
25 legislations such as the American Indian Religious Freedom Act of 1978, the
26 Native American Graves Protection and Repatriation Act of 1990, or the
27 Religious Freedom Restoration Act of 1993? That religious faith is embodied and
28 grounded in the Peaks and other sacred sites.
- 29 2. As a member of the U.N. HRC with stated commitment to the American
30 Declaration of the Rights and Duties of Man, why doesn’t the United States
31 engage in true nation-to-nation dialogue with the Diné people to develop an

⁷ Navajo Nation vs. United States, 556 U. S. ____ (2009)

⁸ American Declaration on the Rights and Duties of Man, Chapter One, Article III

- 1 effective mechanism consistent with the international standard of “free, prior and
2 informed consent” to address, *inter alia*, Indian land claims and forced relocation?
- 3 3. The United States recognizes indigenous nations “as political entities” and “as
4 sovereigns that pre-date the federal union.” Indigenous nations have always
5 determined their political status since time immemorial. Why do the United
6 States’ laws and policies oppress indigenous nations’ inherent rights to self-
7 determination and sovereignty of Diné peoples over their lands, resources, water
8 and minerals?
- 9 4. As a member of the U.N. HRC, when will the United States endorse the U.N.
10 Declaration on the Rights of Indigenous Peoples (“UNDRIP”)?

11 **Conclusion**

12
13 The United States’ UPR national report highlights its efforts to support its unique
14 relationship with indigenous peoples. However, those efforts fail to meet some of the
15 standards imposed by various international human rights treaties and covenants to which
16 the United States is a party.

17 The Commission would be remiss to not say that we are greatly encouraged by
18 the United States’ re-considering of its stance on the UNDRIP under President Barack H.
19 Obama. The Commission feels it is necessary the United States fully endorse and
20 implement the UNDRIP without placing reservations on any articles as steps to help
21 correct the wrongs and broken promises to the indigenous peoples.

22 The UNDRIP is a significant instrument that has universal applications to
23 countless indigenous peoples’ throughout the world. This human rights instrument
24 provides a framework for achieving redress for indigenous peoples within the United
25 States. The UNDRIP is broadly written so it could address a wide range of circumstances
26 affecting indigenous human rights both now and in the future.