

**REPORT TO**

**UNITED NATIONS COMMITTEE ON THE ELIMINATION OF  
RACIAL DISCRIMINATION**

**IN RESPONSE TO**

**UNITED STATES PERIODIC REPORT ANNEX II  
EARLY WARNING AND URGENT ACTION PROCEDURE  
DECISION 1(68) (WESTERN SHOSHONE)**

**SUBMITTED BY THE WESTERN SHOSHONE  
NATIONAL COUNCIL, THE TIMBISHA SHOSHONE TRIBE & THE  
YOMBA SHOSHONE TRIBE**

**PREPARED WITH THE ASSISTANCE OF**

**WESTERN SHOSHONE DEFENSE PROJECT  
&  
THE UNIVERSITY OF ARIZONA  
INDIGENOUS PEOPLES LAW AND POLICY PROGRAM**

**December 2007**

## A. INTRODUCTION

1. This submission responds to the United States of America's periodic report of April 2007. In a decision issued in March 2006 under its early warning and urgent action procedure, the Committee for the Elimination of Racial Discrimination ("the Committee or CERD") expressed concern over the United States of America's ("United States") treatment of the Western Shoshone and their ancestral lands.<sup>1</sup> Specifically, the Committee found the United States' "obligation to guarantee the right of everyone to equality before the law" was "not respected"<sup>2</sup> and urged the United States to "pay particular attention to the right to health and cultural rights of the Western Shoshone peoples".<sup>3</sup> The Committee called on the United States to "take immediate action to initiate a dialogue" with the Western Shoshone<sup>4</sup> and to freeze, desist and stop further harmful activities on Western Shoshone ancestral land until a final decision or settlement is reached.<sup>5</sup> The United States responded to this decision as part of its recent periodic report to the Committee.<sup>6</sup>
2. The United States' periodic report rejects the Committee's findings of human rights violations. Instead, the United States restates old arguments previously rejected by the Inter-American Commission on Human Rights ("Inter-American Commission") in *Mary and Carrie Dann v. United States* (Case 11.140, Dec. 27, 2002) ("Inter-American Decision"); a decision relied upon by the Committee.<sup>7</sup> It states that the Western Shoshone no longer have rights in their ancestral lands as held by its courts.<sup>8</sup> Finally, the United States raises procedural arguments that suggest that the Committee is prohibited from even considering the Western Shoshone's petition. By resorting to such arguments, the United States avoids a sincere examination of its past and current treatment of the Western Shoshone. It does not consider whether the actions taken against the Western Shoshone by its courts, Congress and Executive branch are either just or fair. Instead, the United States relies on judicial and administrative proceedings previously found to be discriminatory to again conclude that the Western Shoshone have had their day in court and nothing more can be done.<sup>9</sup> The United States faces no domestic legal or constitutional impediment from adopting the Committee's recommendations.
3. Not only does the United States fail to address the underlying discriminatory processes used to claim Western Shoshone lands, but in its response, the United States also fails to consider any of the Committee's recommendations to "freeze", "desist" and "stop" further harmful activities. As acknowledged by the Committee, the activities of the United States threaten the

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<sup>1</sup> See Decision 1 (68).

<sup>2</sup> *Id.* at para. 7.

<sup>3</sup> *Id.* at para. 8.

<sup>4</sup> *Id.* at para. 9.

<sup>5</sup> Decision 1(68), para. 10.

<sup>6</sup> See Periodic Report of the United States of America to the U.N. Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination, (April 2007) ("U.S. Periodic Report") paras. 342 -350; Annex II to Periodic Report ("Annex II").

<sup>7</sup> See Decision 1 (68), para. 6.

<sup>8</sup> U.S. Periodic Report, para. 349.

<sup>9</sup> Annex II para. 1(c).

environmental, cultural and spiritual health of the Western Shoshone.<sup>10</sup> The United States has continued with these same harmful activities, such as planning to store nuclear waste and approving the expansion of gold mining on ancestral lands. It also has failed even to attempt the initiation of a good faith dialogue with the Western Shoshone. As discussed in further detail below, the United States continues to violate the human rights of the Western Shoshone.<sup>11</sup>

4. The United States' on-going pattern of harmful and discriminatory activities on Western Shoshone ancestral lands and its refusal to engage the Western Shoshone in a meaningful dialogue continue to add to the frustration and hopelessness felt by many of the Western Shoshone. The more the United States fails to protect and even actively violates the human rights of the Western Shoshone, the greater the despair felt. This feeling of hopelessness explains why some Western Shoshone individuals have agreed to the disbursement of funds discussed by the United States in its periodic report.<sup>12</sup> The United States' conduct not only cements patterns of discrimination but also builds further hostilities and hopelessness.
5. The Western Shoshone Nation requests that the Committee make the following comments and recommendations in its concluding observations to the United States:
  - A reference that the United States' actions are not compatible with Decision 1(68) under the early warning and urgent action procedures and the International Convention on the Elimination of All Forms of Racial Discrimination ("Convention");
  - A request that the United States report back to the Committee on measures it has taken to comply with Decision 1(68), and
  - A request that the United States follow Decision 1(68).

## **B. THE UNITED STATES' ARGUMENTS**

### **Early-Warning Measures and Urgent Action Procedures and the Convention's Article 14**

6. The United States "maintains its position" that the Early Warning Measures and Urgent Action Procedures were not contemplated by the Convention and that it did not submit an Art. 14 declaration for individual complaints.<sup>13</sup> Prior to issuing its decision, the Committee considered this position and rejected it.<sup>14</sup> Additionally, the United States implicitly approved of the early warning measures and urgent action procedures as it ratified the Convention after the Committee adopted the mechanism.

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<sup>10</sup> See Decision 1(68), paras. 7(b), 7(e), 8.

<sup>11</sup> See also Updates to Committee submitted by Western Shoshone National Council et al., Aug. 8, 2006 & Feb. 7, 2007.

<sup>12</sup> See *infra*, paras. 18-21.

<sup>13</sup> U.S. Periodic Report, para. 342.

<sup>14</sup> See Decision 1(68), para. 4.

## Application of International Human Rights Law to Indigenous Peoples

7. The United States' argument that contemporary international human rights are not applicable to the Indian Claims Commission ("ICC") because it was created some 60 years ago<sup>15</sup> ignores the fact that other human rights bodies apply contemporary norms to earlier proceedings when present violations are a result of the earlier proceedings. It is a general principle of international law that rules and laws are not usually retroactively applied.<sup>16</sup> That principle, however, is only applied when the "act or fact...cease(s) to exist".<sup>17</sup> That is not the case here. As explained by the Inter-American Commission, the inter-temporal application of law is permissible here because "a state remains responsible for any violations of a human rights instrument that pre-dated its ratification or accession to the instrument, to the extent that those violations continue to have effects or are not manifested until after the date of ratification."<sup>18</sup> The United States' treatment of the Western Shoshone Nation and their ancestral lands is one story which has yet to end. The decision of the ICC continues to affect the Western Shoshone's interests today. The United States' ongoing reliance on this argument is one example of how it avoids a sincere examination of its treatment of the Western Shoshone through a lens of justice. The ICC process itself violated the rights of the Western Shoshone Nation and the activities that have followed continue to violate their human rights. By continuing to rely on the ICC decision, the United States is perpetuating this injustice on the Western Shoshone Nation. Finally, regardless of inter-temporal law, the United States is compelled to move in the direction of protecting indigenous peoples human rights under international human rights law.
8. Numerous international documents and human rights bodies recognize international human rights norms for indigenous peoples. The United States fails to acknowledge this by restating the same argument it made before the Inter-American Commission challenging the idea that "contemporary international human rights norms" exist for indigenous peoples.<sup>19</sup> Not only does the Committee reject this argument, but so did the United Nations General Assembly when it adopted the Declaration on the Rights of Indigenous Peoples ("U.N. Declaration").<sup>20</sup> Other examples of such documents outlining contemporary international human rights norms for indigenous peoples include the Committee's General Recommendation 23, issued over a

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<sup>15</sup> See Annex II, para. 18(a).

<sup>16</sup> See e.g. Vienna Convention on the Law of Treaties, art. 28 ("Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.")

<sup>17</sup> *Id.*

<sup>18</sup> Inter-American Decision, para. 166.

<sup>19</sup> See Annex II, n. 1. Specifically, the United States complains of the Inter-American Commission's over-reliance on the *Draft* American Declaration on the Rights of Indigenous Peoples. The Inter-American Commission acknowledged that the document is a draft "and therefore does not in itself have the effect of a final declaration", but stated that the *Draft* American Declaration does "reflect international legal principles". Inter-American Decision, para. 129. In fact, the Inter-American Commission relies on the Committee's own General Recommendation 23 as an example of those "international legal principles" "securing indigenous human rights". *Id.* at para. 127; n. 97; n. 98 & n. 99. Challenging the Inter-American Commission's reliance on a draft document for finding "contemporary international human rights norms" does not pass muster when the Inter-American Commission also relies on other international documents articulating those norms, including a document authored by the very human rights body before which this complaint is being heard.

<sup>20</sup> See GA Res. 61/295 (Sept. 13, 2007).

decade ago; decisions of the Inter-American Commission, the Inter-American Court on Human Rights and various U.N. bodies; the Draft American Declaration on Indigenous Peoples; and ILO Convention No. 169.

9. The Western Shoshone are aware that the United States voted against the U.N. Declaration. In its statement of observations with respect to the U.N. Declaration, the United States explained that “it was the clear intention of all States that it be an aspirational declaration with political and moral, rather than legal force.”<sup>21</sup> The U.N. Declaration may, in fact, be aspirational in nature and therefore not technically binding on States, but the United States cannot ignore that the U.N. Declaration reflects contemporary international human rights norms which states are expected to uphold. The U.N. Declaration was neither created in a vacuum, nor can it be read in one. Its adoption is preceded by decades of recognition of these norms by various international human rights bodies.<sup>22</sup> The U.N. Declaration does not create any new authority in this context but rather affirms rights contained in existing domestic and international laws. Ironically, however, the very contemporary international human rights which are at issue here and which the United States continues to contest, the right to equality before the law and the right to property, are rights that the United States already recognizes under its own constitution. The issue here is whether the United States has discriminated against the Western Shoshone Nation in its application of those rights. As discussed below, and as already recognized by the Committee, the answer to that question is yes.

### **ICC Proceeding and the Right to Equality Before the Law**

10. To dispute the Committee’s findings that the ICC proceeding “did not comply with contemporary international human rights norms, principles and standards”<sup>23</sup> and that the United States has not “respected” the Western Shoshone’s right to equality before the law, the United States again raises an argument it made in the Inter-American Commission proceedings that this is an internal dispute.<sup>24</sup> There may be an internal dispute as to how to proceed with protecting and redressing the rights of the Western Shoshone, but the Western Shoshone as a whole are in agreement that the United States is violating their rights. As discussed below, some individuals have agreed to accept the disbursement but this does not change the fact that the rights of the Western Shoshone have been violated and continue to be violated.
11. Additionally, the United States fails to address why this dispute arose in the first place. By deflecting blame onto the Western Shoshone, the United States avoids having to examine its role in creating this dispute, which can be traced back to the United States’ lack of genuine and good faith consultation with the Western Shoshone from the outset of the ICC proceedings. As recognized by the Inter-American Commission, the ICC process not only allowed for a small group to present a claim on behalf of the entire Western Shoshone

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<sup>21</sup> Observation of the United States With Respect to the Declaration on the Rights of Indigenous Peoples, found at [http://www.usunewyork.usmission.gov/press\\_releases/20070913\\_204.html](http://www.usunewyork.usmission.gov/press_releases/20070913_204.html) (last visited Nov. 11, 2007).

<sup>22</sup> See also Concluding observations of the Human Rights Committee: Canada. 07/04/99, at para. 8. UN Doc. CCPR/C/79/Add.105 (1999).

<sup>23</sup> Decision 1(68), para. 6.

<sup>24</sup> See U.S. Periodic Report, para. 344(c); Annex II paras. 1(c), 33(b).

peoples without proof of consent, it also prevented the intervention of interested parties in the ICC proceedings.<sup>25</sup> This is not genuine consultation. These insufficiencies of the ICC process, in addition to those identified by the Inter-American Commission in its 2002 decision, gave rise to the Committee's findings. The United States may characterize this as an internal dispute, but it is only so because of the United States' own insufficient administrative process.

### **Consultation with the Western Shoshone Nation**

12. States must consult with indigenous peoples "whenever consideration is being given to legislative or administrative measures which may affect them directly."<sup>26</sup> This consultation must be made in "good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures."<sup>27</sup> The United States asserts that it is engaging in consultations with the Western Shoshone through the application of its domestic laws.<sup>28</sup> However, the many consultations listed by the United States do not amount to meaningful consultations. How could they when the mining continues, the destruction of Western Shoshone spiritual and cultural areas continues, water depletion and air contamination escalates, the military testing persists, and the sale of their ancestral lands remains ongoing? United States law is ineffective in terms of ensuring meaningful consultations with the Western Shoshone Nation because of its underlying discriminatory policies based upon such antiquated principles as the doctrine of discovery and congressional plenary power which form the foundation of federal Indian law in the United States.<sup>29</sup>

### **Right to Own, Develop, and Control Land**

13. The lack of response by the United States to the Commission's concerns over the activities occurring on Western Shoshone ancestral lands is another example of how the United States' is failing to consider their role in the history of the legal proceeding involving Western land rights. Instead of recognizing the problems associated with the ICC proceeding, the lack of consultation with the Western Shoshone Nation and the hopelessness that is now felt among many of the Western Shoshone people, the United States argues that the Western Shoshone no longer have rights in their ancestral lands.<sup>30</sup> The message is that if the Western Shoshone have no rights in the land, then there is nothing the United States can do. However, as acknowledged in the introduction, the United States does not face any constitutional impediment to adopting the Commission's recommendations.

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<sup>25</sup> See Inter-American Decision, para. 113.

<sup>26</sup> ILO Convention 169, art. 6(1); see also U.N. Declaration, Art. 19; The United States reminds the Committee that it is not a signatory to ILO Convention 169. See United States Rpt., para. 350. What it fails to accept is that ILO Convention 169 contains "provisions concerning indigenous peoples right(s)...that resonate with the general principles of international law regarding indigenous peoples." *Aurelio Cal v. Attorney General of Belize*, No. 171 of 2007, para. 130 (Belize). The same can be said of the United Nations Declaration on the Rights of Indigenous Peoples. See *id.* at para. 132.

<sup>27</sup> ILO Convention 169, art. 6(2).

<sup>28</sup> See Annex II, paras. 31-32.

<sup>29</sup> Western Shoshone Defense Project, Indigenous Peoples Law and Policy Program, "The Status of Compliance by the United States Government with the International Convention on the Elimination of Racial Discrimination" January 22, 2006 at paras. 4-5.

<sup>30</sup> See U.S. Periodic Report, para. 349.

14. Connected to this argument is the assertion that the United States is under no obligation to provide lands to the Western Shoshone Nation, rather than money, as compensation.<sup>31</sup> The Committee's General Recommendation, state that monetary restitution may suffice in certain circumstances,<sup>32</sup> however, the United States is required to "take steps to return those lands" and "compensation should as far as possible take the form of lands and territories".<sup>33</sup> Instead of taking steps to protect and recognize the Western Shoshone Nation's legal right in their ancestral lands, the United States again relies on a flawed administrative proceeding and a Supreme Court decision which did not address the merits of the Western Shoshone land rights claim as evidence that nothing more can be done. In spite of the Western Shoshone's repeated calls for land, and with the knowledge that the ancestral lands provide the Western Shoshone with spiritual and physical sustenance, the United States refuses to take any steps in the direction of securing Western Shoshone land rights.
15. The vast majority (80% - 90%)<sup>34</sup> of the land within the boundaries of the ancestral lands of the Western Shoshone Nation is managed by the United States Bureau of Land Management, Department of the Interior, as "unappropriated public domain." It is the default category in the United States' system of public land management and is subject to "appropriation" under the public land laws, including appropriation free of charge by mining companies under the 1872 Mining Law<sup>35</sup>, or "reservation" by agencies of the federal government. It is considered by most non-Shoshone observers to be a vast wasteland because of its Great Basin Desert ecological status. It would not be inherently difficult for the federal government to return or confirm control of large tracts of this land to the Western Shoshone Nation or its constituent tribal entities because there are a minimum of private property interests involved.

### **Right to Health and Culture**

16. Finally, the United States challenges the Committee's recommendation that it "pay attention to the right to health and cultural rights of the Western Shoshone peoples, which may be infringed upon by activities threatening their environment and/or disregarding the spiritual and cultural significance they give to their ancestral lands."<sup>36</sup> The United States simply states that it has not discriminated against the Western Shoshone in this respect.<sup>37</sup> The past and current activities conducted by the United States on Western Shoshone ancestral lands can only be characterized as showing a complete disregard of Western Shoshone culture and health. These lands are where the Western Shoshone pray, have buried their ancestors, find sustenance and live. Does the United States treat all its citizens in this manner? If not, then this treatment can only be described as discriminating against the Western Shoshone with respect to their rights to health and culture.

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<sup>31</sup> See Annex II, para. 33(d).

<sup>32</sup> See CERD Gen. Recomm. 23, para. 5.

<sup>33</sup> *Id.*; see also U.N. Declaration, art. 28.

<sup>34</sup> See Bureau of Land Management, Nevada State Office, Map of BLM-managed lands in Nevada, [http://www.blm.gov/nhp/pubs/rewards/2003/nv\\_map.pdf](http://www.blm.gov/nhp/pubs/rewards/2003/nv_map.pdf) (last visited Dec. 5, 2007).

<sup>35</sup> Ch. 152, 17 Stat. 91 (May 10, 1872).

<sup>36</sup> Decision 1(68), para. 8.

<sup>37</sup> See U.S. Periodic Report, para. 345.

17. The sense of hopelessness felt among many of the Western Shoshone directly implicates their right to health. Numerous studies show that when indigenous peoples are disposed from their lands, it is “almost coupled with rising illness.”<sup>38</sup> These illnesses include depression.<sup>39</sup> For close to 70 years, the Western Shoshone have fought to protect their ancestral lands and instead have watched as their land is taken away: the cumulative effects of the ICC proceeding, the Supreme Court’s affirmation of that proceeding and its refusal to examine the merits of the Western Shoshone’s land claim, the continued concessions given to mining and power companies, the harassment by the United States of individual Western Shoshone and the refusal by the United States to adopt the report by the Inter-American Commission and the recommendations of this Committee reveal themselves in the individual members of the Western Shoshone. Given this history, it is not surprising that many now feel no hope and have decided to opt for the disbursement.

### C. ON-GOING HUMAN RIGHTS VIOLATIONS

#### Disbursement of ICC funds to Western Shoshone

18. The United States alleges that “most of [Western Shoshone] wish to receive compensation as awarded by the ICC”.<sup>40</sup> Even if this were an accurate statement, the disbursement of funds is an attempt to draw attention away from the United States’ ongoing violation of Western Shoshone human rights and its attempts to divide Western Shoshone communities. As mentioned briefly above, contrary to what the United States presented in its periodic report, there has been no certified vote by Western Shoshone on distribution, and in fact seven of the nine tribal councils and the traditional council have issued resolutions and official communications opposing the distribution.<sup>41</sup> Despite this clear opposition, the United States continues to rely on two “straw polls”, which a small committee of individuals purported to conduct in 2002, to create the impression that the Western Shoshone people are in favor of receiving the ICC money.<sup>42</sup>

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<sup>38</sup> Progress Can Kill: How Development Destroys the Health of Tribal Peoples, Survival International, 4 (2007) (found at [http://www.survival-international.org/lib/downloads/source/progresscankill/full\\_report.pdf](http://www.survival-international.org/lib/downloads/source/progresscankill/full_report.pdf)) (last visited Dec. 3, 2007) *citing to* Global Health Watch 2005-2006: An Alternative World Health Report. People’s Health Movement. Medact. Global Equity Gauge Alliance and Zed Books: London; Dounias, E., Kishi, M., Selzner, A., Kuniawan, I., Levang, P. 2004. No Longer Nomadic: Changing Punan Tubu Lifestyle Requires New Health Strategies. Cultural Survival Quarterly 28(2), 15-20.; Froment, A. 2001. Evolutionary Biology and the Health of Hunter-Gatherer Populations, pp239-261. In C. Panter-Brick, R. Layton and P. Rowley-Conway (Eds.). Hunter-Gatherers: An Interdisciplinary Perspective. Cambridge University Press: Cambridge.

<sup>39</sup> *See id.* at 25-30.

<sup>40</sup> Annex II, paras. 1(c), 17.

<sup>41</sup> *See* Battle Mountain Indian Colony, Resolution No. 02-BM-11 (May 14, 2002); Elko Band Council, Resolutions 2004-EBC-22 (June 1, 2004) and 2004-EBC-23 (June 1, 2004); South Fork Band Council, Resolution No. 03-SF-20 (June 11, 2003); Te-Moak Tribe of Western Shoshone, Resolution No. 04-TM- 34 (May 20, 2004); Wells Band Council, Resolution 24-WBC-02 (June 13, 2003); Winnemucca Indian Colony, Resolution 6-2003-04 (July 12, 2003); Yomba Shoshone Tribe, Resolution YT-05-03 (March 7, 2003). We have also received information that the Timbisha Shoshone Tribe passed a resolution opposing this issue and that the traditional council sent an official communication to the US government in opposition of the distribution. Copies can be obtained upon request.

<sup>42</sup> *See* Annex II para. 17(b). The “vote” or poll that the State referenced was not certified by any tribal or traditional government and could not pass even one element of a fully-informed democratic process. For example, despite repeated requests, there has been no documentation of who the “voters” were, how the ballots were collected,



19. In passing the *Western Shoshone Claims Distribution Act* (“*Distribution Act*”)<sup>43</sup>, the United States Congress bypassed both the traditional council and the federally-recognized tribal councils and is now seeking an individual distribution without Western Shoshone representational oversight. In March 2007, the United States published a final rule to open up the enrollment process for any person of quarter Western Shoshone descent to file applications to receive monies in the judgment fund.<sup>44</sup> The “notice of final rule” states that distribution will be on an individual Western Shoshone descent basis and that governmental consultation is not required.<sup>45</sup> Reports from Western Shoshone advocates indicate that Western Shoshone people are being led to believe that the distribution monies are for “damages” and not for extinguishment of land and that Western Shoshone people are being pressured to sign applications for distribution or their children will be excluded from receiving education funds.<sup>46</sup> However, according to the final rule, the distribution does not result in a taking or affect property rights<sup>47</sup> and “those listed on the per capita payment roll, and their lineal descendants will be eligible to receive the education funds.”<sup>48</sup> The overall concern of the Western Shoshone is that once the payment is distributed the United States will be embolden in their position that the matter has been settled and that they are free to open up lands and resources for privatization.
20. Western Shoshone opposition to the distribution is further evidenced by the proceedings before the Committee, of which the Western Shoshone National Council and four Western Shoshone communities are a party to. This proceeding and the resolutions passed by the Western Shoshone communities demonstrate that the United States’ assertions of Western Shoshone support for distribution are unsubstantiated. The United States has yet to show that it has satisfied the minimum standard of free and informed consent required to justify deprivation of Western Shoshone rights to their ancestral lands.<sup>49</sup> Finally, many of those that have agreed to accept the disbursement have done so out of a sense of hopelessness. As their voices continue to go unheard, some Western Shoshone people have concluded that this is their only option.
21. The United States has yet to provide documentation as to how they have engaged in fully informed consultation with the Western Shoshone Nation. The *Distribution Act* does not explain what the distribution funds are for and there is no mention of land within the text of the legislation. The United States’ assertion that the law specifically states that sharing in the

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counted and secured, what information was given regarding the basis for distribution, and how the actual balloting process was monitored.

<sup>43</sup> Pub. L. 180-270, July 7, 2004, 118 Stat. 805

<sup>44</sup> Notice of Final Rule, Federal Register, March 5, 2007, Vol. 72, No. 42, at 9836-9840 (“Final Rule”).

<sup>45</sup> *Id.* at 9839-9840.

<sup>46</sup> Phone interview with Julie Fishel, Western Shoshone Defense Project, Crescent Valley, Nevada (March 30, 2007).

<sup>47</sup> Final Rule, *supra* note 42 at 9839.

<sup>48</sup> *Id.* at 9836.

<sup>49</sup> See CERD Gen. Recomm. 23, para. 4(d); see also Inter-American Decision, para. 140-141 (calling for “fully-informed and mutual consent”).

judgment funds would not constitute a waiver of treaty or other rights is erroneous.<sup>50</sup> These references have been removed from the *Distribution Act*.

## Continued Violations

22. Protests by the Western Shoshone and the Committee's decision have not hindered the United States' activities on the Western Shoshone's ancestral lands. The United States is:
- Continuing with plans to store nuclear waste on Western Shoshone ancestral lands;<sup>51</sup>
  - Moving forward with a water pipeline that will drain water from aquifers beneath Western Shoshone lands to the Las Vegas area;<sup>52</sup>
  - Continuing approval processes of gold mining expansions in spiritually and culturally significant areas;
  - Approving the construction of a coal fired electric power plant on Western Shoshone ancestral lands;<sup>53</sup>
  - Allowing grazing on lands which hold spiritual and cultural significance to Western Shoshone;
  - Moving forward with the sale of Western Shoshone ancestral lands for mining expansion plans and oil and gas leasing; and
  - Threatening controlled burning of almost 60,000 acres of Western Shoshone ancestral lands.<sup>54</sup>
23. It is clear that under the Committee's early warning measures and urgent action procedures, the actions of the United States constitute a serious, massive and persistent pattern of racial discrimination continuing to require immediate attention. It is the Western Shoshone petitioners' contention that the United States' periodic report fails to alleviate the Committee's concerns articulated in its 2006 Decision. At no point does the United States hint that there may be room for improvement regarding its treatment of the Western Shoshone. It even goes as far as to suggest that the Committee is without authority to address the petition.

## D. REQUEST

24. The Western Shoshone Nation requests that the Committee make the following comments and recommendations in its concluding observations to the United States:

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<sup>50</sup> Annex II, para. 17(b).

<sup>51</sup> In October 2007, the Department of Energy issued for public comment two Draft National Environmental Policy Act documents. See [http://www.ocrwm.doe.gov/info\\_library/newsroom/documents/Press\\_Release\\_EIS\\_10-05-07\\_Final.pdf](http://www.ocrwm.doe.gov/info_library/newsroom/documents/Press_Release_EIS_10-05-07_Final.pdf) (last visited Nov. 28, 2007). On December 3, 2007 the Department of Energy held a public hearing in Las Vegas, NV to discuss plans to build a railway to the proposed Yucca Mountain nuclear waste dump. See Keith Rogers, "Nuclear Waste Storage Project: Yucca plans draw public's ire", *Las Vegas Review-Journal*, (Dec. 4, 2007).

<sup>52</sup> In April 2007, the Nevada State Engineer approved a major portion of the groundwater rights applications submitted by the Southern Nevada Water Authority. See [http://www.snwa.com/html/wr\\_gdp.html](http://www.snwa.com/html/wr_gdp.html) (last visited Nov. 16, 2007).

<sup>53</sup> The company is moving ahead with the state permitting process and construction is expected to begin next year. See <http://pucweb1.state.nv.us/PUCN/Electric/ProposedGen.aspx> (last visited Nov. 16, 2007).

<sup>54</sup> See also Updates to Committee submitted by Western Shoshone National Council et al., Aug. 8, 2006 & Feb. 7, 2007.

- A reference that the United States' actions are not compatible with Decision 1(68) under the early warning and urgent action procedures and the International Convention on the Elimination of All Forms of Racial Discrimination ("Convention");
- A request that the United States report back to the Committee on measures it has taken to comply with Decision 1(68), and
- A request that the United States follow Decision 1(68).