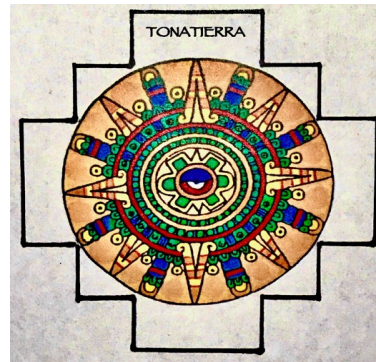


# TONATIERRA

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July 15, 2022

United Nations Committee on the Elimination of Racial Discrimination (CERD)  
107th session (08 -30 August 2022)  
Office of the High Commissioner for Human Rights  
CERD Secretariat UNOG-OHCHR  
8-14 Avenue de la Paix CH-1211 Geneva 10 Switzerland

Dear Members of the Committee,

This Comment and Information is being submitted in response to the combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017 [Date received: 2 June 2021] CERD/C/USA/10-12

- We stand in support of the efforts of the **Western Shoshone Defense Project** before CERD to pursue the international recognition, respect, and guarantees of protection for their ancestral territorial responsibilities and rights as Indigenous Peoples of the Original Nations of Mother Earth, referenced in the Treaty of Ruby Valley (1863).
- We call for the necessary international accountability regarding the ongoing failure of actions by the United States to fully implement the recommendations contained in paragraphs 8 to 10 of **CERD Decision 1(68)** of 2006 and reiterated "in its entirety" in paragraph 19 of its 72nd Session **Concluding Observations** (2008).
- With regards to the report to be delivered by the Western Shoshone Defense Project (WSDP) to the CERD 107th session this August 2022 in Geneva, we urge CERD to act upon the May 17<sup>th</sup> 2022 WSDP recommendation to CERD requesting inclusion of the issue of decolonization and the legacy of ongoing impacts of colonial policies and laws on Indigenous Peoples by the United States of America.
- The CERD should comprehensively address the discriminatory systematic violation of the Human Rights of Indigenous Peoples under the regimes of the colonizing settler states of the Americas and their international borders, as is exemplified in the Western Shoshone case and the border between US-Mexico established by the Treaty of Guadalupe Hidalgo (1848).

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July 15, 2022

## Comment and Information

In response to the:

**Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017**

**[Date received: 2 June 2021]**

**CERD/C/USA/10-12**

**United Nations Committee on the Elimination of Racial Discrimination (CERD) 107th session (08 -30 August 2022)**

Submitted by: Continental Commission Abya Yala  
Secretariat: TONATIERRA

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Reviewing the list of themes to be addressed during the Universal Periodic review of the USA before the 107<sup>th</sup> Session of CERD, this submission combines the themes of:

- Situation of Indigenous Peoples (arts. 5 and 6)
- Situation of non-citizens, including migrants, refugees, and asylum seekers (arts. 5 and 6)

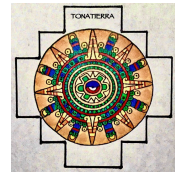
Submitted by

**Continental Commission Abya Yala**



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## CONTEXT:

***First, we must say that as Original Nations of Indigenous Peoples of Abya Yala, we are not illegals in our own continent.***

PRONOUNCEMENT OF THE ENCOUNTER OF INDIGENOUS PEOPLES OF ABYA YALA  
For Self-Determination and Decolonization  
June 05 – 10, 2022,  
Ancestral Territories of the Tongva/Gabrielino Nations  
Los Angeles, California, [USA]

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On June 10, 2022, an international declaration by 20 governments of the Organization of American States (OAS) was proclaimed on the margins of the Ninth Summit of the Americas convened by the United States Government in Los Angeles, California. The **Los Angeles Declaration on Migration and Protection**:

*"Builds upon existing efforts and international commitments and advances the vision set forth in the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration (GCM) anchored in the 2030 Agenda for Sustainable Development.*

*We make this Declaration of non-legally binding commitments to enhance cooperation and shared responsibilities on managing migration and protection in ways grounded in human rights, transparency, nondiscrimination, and State sovereignty."*

A review of the text of the declaration reveals the complete absence of any reference to Indigenous Peoples. There is **no reference** to Indigenous Peoples at all, much less a recognition of the rights of Indigenous Peoples as "**Peoples, equal to all other peoples...**"

There is absolutely no reference to Indigenous Peoples in concept, articulation, or identification in terms of a political or even "ethnic" constituency in present geopolitical terms. Not even the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)-(2007) nor the American Declaration on the Rights of Indigenous Peoples (2016) are mentioned.

This is relevant and timely for the 107<sup>th</sup> Session of CERD, for the Los Angeles Declaration of 2022 now represents the complete transfer of power from the colonial era of the "Divine Right of Kings" as the foundation of the "American" Westphalian system of international law, to the neocolonial-neoliberal era of the "Divine Right of States."

As an upgraded version of the "**Doctrine of Discovery of Christendom**", for the surviving Indigenous Peoples of the Original Nations of Abya Yala, the

Declaration of Los Angeles 2022 adds another layer to the multinational corporate *coup d'état* that motivated the **Monroe Doctrine** in 1823 and is sustained by the present multinational regional trade agreements among the corporate elites of the states of the Americas and their accomplices of the international financial institutions.

The Declaration of Los Angeles is an attempt to eliminate the international crime of systemic discrimination against Indigenous Peoples, not by eliminating the policy and practice of discrimination but by normalizing it and organizing it within the colonial constructs of the continental settler state infrastructure of "America" and making it invisible.

No one, none of the government representatives attending the OAS Summit of the Americas, none of the Indigenous Peoples participating in the **Continental Indigenous Encounter Abya Yala** in parallel and autonomous session in Los Angeles – no one argues for the **protection and privilege of organized crime** in addressing the issues of systematic violation of the human rights of migrants, refugees, or of any marginalized Indigenous Peoples in diaspora.

Yet colonization is a crime. The pervasive normalization and indoctrination of the dehumanizing regimes of the social schema of colonialism in the Americas is the epitome of organized crime. It is crime so well organized it continues to lurch forward as "normal" in policy and practice with no venue for review or rectification.

Colonialism is an international crime since UN GA1514 (1960) and the **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)** addresses this fact thus:

*Article 15*

*Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of the 14 December 1960, the provisions of this Convention shall in no way limit the rights of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.*

The reference of Article 15 of the ICERD to objectives to be achieved in General Assembly Resolution 1514 (XV) is predicated by the goal of the eradication of colonialism in all its forms, since:

*Convinced that the continued existence of colonialism prevents the development of international economic cooperation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,*

*Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,*

*The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.*

*All 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.*

## **USMCA-TMEC-CUSMA**

In paragraph 128 – Rights of Indigenous Peoples of the US reports submitted to CERD on 2 June 2021 (CERD/C/USA/10-12), the US government refers to:

*"Effective participation in public life based on free, prior, informed consent, as set forth in the UN Declaration on the Right of Indigenous Peoples, the United States understands 'free, prior, informed consent' to call for a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before the actions addressed in those consultations are taken."*

This comment is indicative of the policy of the US government to reduce the international standard of "**Free, prior, and informed consent (FPIC)**" to a domestic regulatory construct of bureaucratic consultations designed by the settler state apparatus. The proceedings are restricted to the strata of tribal leaders within the US federal government recognition as "Native American" under the US Department of the Interior by way of the US Commerce Clause of the US constitution. Lost in the translation and revealed in the reduction is the fact the term "**Indigenous Peoples**" is a term of art in international law and does not equate in terms of self-determination to the US domestic construct of "Native American".

Also revealed in this comment on Free, Prior and Informed Consent is the duplicity of the US government in terms of the negotiations that delivered the **US-Mexico-Canada Agreement** (USMCA) on international trade in 2020. All three of these governments endorsed the Declaration of Los Angeles 2022.

On December 12, 2019, TONATIERRA communicated with the Tom Lantos Human Rights Commission (TLHRC) of the House Committee on Foreign Affairs to urge a full public hearing on the issue of **Free, Prior, and Informed Consent** (FPIC) before the vote of approval on the **USMCA** in the US Congress.

Specifically, we called for a full public hearing before the appropriate committees and/or Working Group formations of the US Congress for the purpose of informing the US congressional representatives on the right of Indigenous Peoples to Free, Prior, and Informed Consent (FPIC) as stipulated in the UN Declaration on the Rights of Indigenous Peoples regarding projects which impact their collective rights.

Completely disregarding this message, the House of Representatives passed the USMCA on December 19, 2019, and the Senate Finance Committee then passed the United States-Mexico-Canada Agreement on January 9, 2020. On January 16th, the full US Senate advanced the legislation for signature into US law by US President D.Trump.

During the entire process, there has been no substantive and responsible participation of Indigenous Peoples, in full and complete recognition of the right to Self Determination, as Indigenous Peoples equal to all other peoples, and not simply rubber stamp "Feathered Folk" working to diminish the Inherent Human Rights of the Original Nations of Indigenous Peoples under the development agenda of the corporate-state cartels for whom the USMCA-CUSMA-TMEC was designed to serve.

In Mexico, the text of the USMCA was never even made available to the public until TONATIERRA elicited a copy in January of 2020 in Arizona. In terms of Canada, suffice to recall that the Canadian government has not responded to the 2012 CERD request to produce legitimate documentation to establish that Canada had underlying title to the lands and resources of the Indigenous Nations which are presently in the state of Canada. No Peace and Friendship Treaties or any other document ever gave title to the British Crown.

The USMCA has been promoted as a necessary "update" of the **North American Free Trade Agreement** (NAFTA). In distinction from NAFTA which was adopted in 1994 thirteen years before adoption of the UN Declaration on the Rights of Indigenous Peoples (2007), the signatories of USMCA must comply with the minimum standards of **FPIC** or the corporate consortia investing in any development project in violation of FPIC will immediately become financially liable and exposed to the risk of legal challenges and financial penalties that must be presented before their constituencies (states) and shareholders (corporations).

This principle is now well established, having been the subject of the Soft Woods Lumber Dispute (1982) between the US and Canada which acknowledged the proprietary rights of Indigenous Peoples over territories and resources in the international trade tribunals. Recognizing this fact, the **World Bank** has restructured its procedures, protocols and practices regarding Indigenous Peoples and the right of Free, Prior, and Informed Consent under the **Environmental and Social Standard 7** to shield its interests.

Subsequently, on November 20, 2020, the Tom Lantos Human Rights Commission conducted a virtual hearing on Human Rights of Indigenous Peoples in the Americas. The commission is to be commended for addressing the overarching theme of Human Rights of Indigenous Peoples in a continental context, which is not only appropriate but necessary in order to achieve a comprehensive historical understanding and analysis of the systemic nature of human rights violations against Indigenous Peoples which persist in the continent. The same can be said of the work of CERD in reviewing the issues of racial discrimination across the continental spectrum of American states.

The TLHRC addressed the issue of human rights of Indigenous Peoples in Latin America some ten years ago. During the virtual hearing on the 20th of November, the substance of the testimonies during the virtual hearing echoed a common denominator of dispossession, discrimination, dehumanization, colonization and genocide that has been normalized in the Americas since October 12, 1492. That the "Latin American" chapter in this history has been reviewed by the TLHC is significant in the defense of internationally recognized human rights norms, but the issues of human rights violations against Indigenous Peoples in the Americas is not limited to the **Roman Civil Law** successor states of Latin America. The Anglo-American successor states on the continent, whose origin derives from the **English Common Law** of Christendom, must also come under review in the context of internationally recognized human rights principles and norms as enshrined in the Universal Declaration of Human Rights, and other relevant human rights instruments such as the UN Declaration on the Rights of Indigenous Peoples (2007).

A comprehensive historical understanding and analysis of the systematic human rights violations against Indigenous Peoples in the Americas [North-Central-South] must necessarily integrate a critical position in regard to the nefarious and racist Doctrine of Discovery of Christendom (October 12, 1492) which continues to be normalized by the successor states across the continent.

The criteria for such a comprehensive historical understanding and analysis of the systematic human rights violations against Indigenous Peoples in the Americas must derive from the **Right of Self Determination of Indigenous Peoples, equal to all other peoples**. In fulfillment of the United Nations mandate for decolonization, the continued normalization of the doctrine of "Internal Colonization" of Indigenous Peoples by the states of the Americas under the so called "**Blue Water Rule**" must be denounced as illegitimate and discriminatory.

A comprehensive historical understanding and analysis of the systematic human rights violations against Indigenous Peoples in the Americas [North-Central-South] must necessarily integrate a critical position in terms of the international trade policies of the "Corporate Metropolitan States" in competition and systemic collusion over the extraction of natural resources and labor of the Original Nations of Indigenous peoples of the **Great Turtle**

**Island-Abya Yala.** As both example and evidence, the "*Privileges and Prerogatives Granted by Their Catholic Majesties to Christopher Columbus (1492)*" outline the rewards and protections of the initial colonial enterprise of seeking World Trade Organization routes to the Indies on behalf of the European Royalty. These packages of privilege and profit are institutionalized today via the multilateral international trade agreements such as the recently adopted US-Mexico-Canada Agreement USMCA (2020).

On this point, we would concur with the statement by TLHRC co-chair James P. McGovern (D-MA) made during the virtual hearing on November 20:

*"We should be examining the impacts of our trade agreements on Indigenous Rights."*

Such a comprehensive examination, as proposed in this Comment and Information to the 107<sup>th</sup> Session of CERD, would necessarily link the **legacy of colonialism** and the resulting **diaspora of forcibly displaced** Indigenous Peoples in particular at the US-Mexico international border.

Additionally, this approach would add to the call by CERD for the US government to address the disparate impact of environmental pollution upon communities belonging to racial and ethnic minorities, as well as indigenous peoples, who continue to be disproportionately affected by the negative health impact of pollution caused by the extractive and manufacturing industries.

Regarding the adverse effects of economic activities related to the exploitation of natural resources in countries outside the United States by transnational corporations registered in the USA on the rights to land, health, environment, and the way of life of Indigenous Peoples and minority groups living in those regions, the Committee has called upon the US government to:

*"Take appropriate measures to prevent the activities of transnational corporations registered in the State party which could have adverse effects on the enjoyment of human rights by local populations, especially Indigenous Peoples and minorities, in other countries."*

*Concluding observations on the combined seventh to ninth periodic reports of the United States of America (2014)*

Furthermore, being that the USMCA of 2020 includes a chapter on Indigenous Rights, the designation of Indigenous Peoples in the USMCA is definitive, in terms of the recognition of Indigenous Peoples as "**peoples**". In the context of the 2007 UN Declaration on the Rights of Indigenous Peoples, which was not yet in place in 1994 during the original NAFTA agreement, the recognition of Indigenous Peoples in an international commercial agreement necessarily is **accompanied and contextualized** by the recognition of **the Rights of**



**Indigenous Peoples** as articulated and affirmed in the principles and articles of the UN Declaration on the Rights of Indigenous Peoples.

Additionally, since Mexico is a treaty signatory to **ILO Convention 169** and must report to the international community on a regular basis on how the rights of Indigenous Peoples as migrant workers are being protected, there is an open question before the TLHRC and the US Congress as a whole, which is how is the prevention of discrimination towards Indigenous Peoples as migrant workers with families being addressed under the framework of USMCA? What instruments of accountability exist in the US and Canadian labor markets and economic institutions that guarantee recognition and respect for the human rights of **Indigenous Peoples as migrant workers with families**? Why was this issue ignored in the Declaration of Los Angeles 2022?

In fact, the issue of family separation and Indigenous Peoples in terms of US immigration policies and practices continues under the present administration in Washington and goes beyond just the separation of individual families. With the violent invasion of Mexico fomented by the "White Supremacy" concept of **Manifest Destiny** in 1845, and subsequent imposition of the international border between the two republics without the consent of the Indigenous Peoples, the separation and dispossession of Indigenous Nations in terms of territory and ancestral cultural confederacies is ongoing.

The present reality is that the generational trauma perpetrated by the Zero Tolerance policy of the previous administration has left a scar of separation among entire indigenous communities that numbers in the thousands.

In order to address this issue of racial discrimination against Indigenous Peoples, in particular by the Customs and Border Protection department of the United States Department of Homeland Security, clarifications on the following issues are required:

- 1) How many indigenous children have died while under CBP custody, and what protocols of procedure and accountability are in place to address this issue? Why has CBP not responded to specific requests for information regarding the deaths of Maya children in CBP custody?
- 2) What are the protocols and procedures that CBP implements when facing a child that is sick while in custody?
- 3) How does the staff of CBP address the issue of institutional language deficiency, the lack of competency to communicate in an appropriate indigenous language with indigenous children and families who are under CBP custody?
- 4) What measures are in place to effectively rectify the damage and help heal the victims of family separation as a consequence of the Zero

Tolerance policy and other such circumstances of family separation that are ongoing presently in consequence to the activities of CBP?

- 5) What are the mechanisms for communication and translation of documents in indigenous languages presented to CBP detainees in the procedures of deportation? What policies are in place to address the deficiency of competent language services?
- 6) Under the subject of **Racial profiling and illegal surveillance** quoted here from the 2014 document **Concluding observations on the combined seventh to ninth periodic reports of the United States of America** (CERD/C/USA/CO/7-9), the CERD states:

*Recalling its general recommendation No. 31 (2001) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to intensify efforts to effectively combat and end the practice of racial profiling by federal, state and local law enforcement officials, including by:*

*(c) Ending immigration enforcement programmes and policies which indirectly promote racial profiling, such as the Secure Communities programme and the Immigration and Nationality Act section **287(g)** programme;*

In paragraph 19 of the Combined tenth to twelfth periodic reports by the United States of America submitted to CERD on 2 June 2021, the US confirms that the 287(g) program is still in place in a modified version.

*As part of DHS's commitment to improving policies and operations, ICE is currently reviewing its 287(g) program. The 287(g) program utilizes two models: the jail enforcement model (JEM) and the warrant service officer (WSO) model. JEM authorizes certain state or local law enforcement personnel to identify and process for removal non-citizens with criminal convictions or pending charges who are arrested by state and local law enforcement agencies. WSO authorizes certain state and local law enforcement personnel to serve and execute administrative warrants to incarcerated non-citizens in their agency's jail. ICE is required to provide continuous oversight of partnering state and local law enforcement agencies and to inspect these partnering agencies every two years to ensure compliance with ICE policies and procedures.*

What are the protocols and procedures for reporting incidents and patterns of racial profiling and racial discrimination by the state and local law enforcement agencies under the present 287(g) policy? Where are these reports available to the public?

## Conclusion

When the United States ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) on October 21, 1994, it committed to condemn racial discrimination and to “pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.” To implement this policy, the federal government committed to “engage in no act or practice of racial discrimination” and to “prohibit and bring to an end, by all appropriate means, . . . racial discrimination by any persons, group or organization.” Most importantly, it committed to “ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation” and to “take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”

The CERD has recommended that the State party create a permanent and effective coordinating mechanism, such as a national human rights institution to ensure the full implementation of the Convention throughout the State party and the territories under its effective control, monitor compliance of domestic laws and policies with the provisions of the Convention and systematically carry out anti-discrimination training and awareness-raising activities at the federal, state and local levels.

CERD has also called for the US to commit to on a national action plan to combat racial discrimination:

*While noting various measures taken by the State party to combat prejudice and promote understanding and tolerance, the Committee expresses concern at the absence of a national action plan to combat racial discrimination and to implement its recommendations. It is also concerned about the lack of inclusion of human rights in the school curricula.*

*The Committee recommends that the State party adopt a national action plan to combat structural racial discrimination, and to ensure that school curricula, textbooks and teaching materials are informed by and address human rights themes and seek to promote understanding among racial and ethnic minority groups.*

In light of the developments and information included in this comment to the 107<sup>th</sup> Session of CERD, may we humbly suggest that the time has come to effectively move these proposals forward and not depend on the racist power structure of the settler state party to lead the way towards the worthy goal of not just the elimination of racial discrimination, but the realization of the full expression of humanity’s global interdependence with each other and the

**Territorial Integrity of Mother Earth.**

**PRONOUNCEMENT OF THE ENCOUNTER OF INDIGENOUS PEOPLES OF  
ABYA YALA  
For Self-Determination and Decolonization  
June 05 – 10, 2022,  
Ancestral Territories of the Tongva/Gabrielino Nations  
Los Angeles, California, [USA]**

To the delegates of the diverse Indigenous Peoples of Abya Yala summoned to join our collective efforts in the defense of our territories and our culture, we take opportunity of this meeting parallel to the summit of leaders of the organization of American states - OAS to comment on the statement from President Biden regarding U.S. Immigration Policy.

**First**, we must say that as Original Nations of Indigenous Peoples of Abya Yala, we are not illegals in our own continent.

**Second**, we have the right under the 1951 Refugee Convention and its 1967 Protocol to migrate when our lives are at risk and to seek asylum from countries that are signatories to the convention.

**Third**, we recognize, as indigenous peoples, that the migratory phenomenon has been provoked by the causes of:

- The colonial legacy of violent dispossession of our territories by armed and political actors in favor of large extractive industries and megaprojects that invade and pollute rural water resources. Such industries contribute to droughts and losses in the agriculture of indigenous peoples.
- The great concentration of investment in urban centers and the destruction of rural development with monocultures.
- The corruption of public servants in charge of protecting human rights, communities, and the environment.
- The control of migration flows as an illicit industry of exploitation, including the cartels.
- The member states of the OAS, instead of developing their internal national economies, depend on remittances from migrant workers to sustain the viability of the economies of the receiving countries.
- The impact of climate change on water reserves and agricultural production.

For this reason, we of the Indigenous Peoples subscribed here during this Encounter Abya Yala demand that the member states of the OAS assume their responsibility and guarantee a dignified life for all peoples, including the Indigenous Peoples. The inadequate and incorrect use of economic resources by the states does not provide the basic services necessary for the "Living with Wellness" of the peoples, who then have to flee exposing themselves to death and the systematic violation of human rights both in our territories of origin and outside of them.

**ENCOUNTER OF INDIGENOUS PEOPLES OF ABYA YALA  
Continental Commission Abya Yala**