

NATIONS UNIES
HAUT COMMISSARIAT AUX DROITS DE L'HOMME



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Excellency,

The Committee wishes to inform you that, at its 67th session held from 2 to 19 August 2005, it considered on a preliminary basis the requests submitted by the Western Shoshone National Council, and by the Western people of the Timbisha Shoshone Tribe, Winnemucca Indian Colony and Yomba Shoshone Tribe, asking the Committee to act under its early warning and urgent action procedure on the situation of the Western Shoshone indigenous people in the United States of America.

The Committee appreciates the frank and open preliminary discussion which took place on Monday 8 August 2005, between representatives of the United States of America and the Committee's Working Group on Early Warning and Urgent Action Procedure, together with the Committee's Coordinator on Follow-up and other Committee members.

The Committee notes with interest the assurances given by the State party that its fourth and fifth periodic reports, which were due on 20 November 2003, are being prepared, and that comprehensive information relating to the follow-up given to the Committee's 2001 Concluding observations (A/56/18, para. 380-407) will be included in these periodic reports. It regrets, however, that the State party is not in a position to undertake to submit the reports by a specific date.

H.E. Mr. Kevin E. Moley
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The Committee, bearing in mind paragraph 400 of its 2001 Concluding observations following the examination of the United States of America's initial, second and third periodic reports, notes with concern the allegation that the Western Shoshone indigenous people are being denied their traditional rights to land and that past and new actions adopted by the State party in relation to the status, use and occupation of these lands may cumulatively lead to irreparable harm to this community.

The Committee, in particular, has received information concerning reinvigorated federal efforts to open a nationwide nuclear waste repository on Western Shoshone land; passage of controversial legislation allowing for distribution of compensation for the alleged extinguishment of Western Shoshone title over land; alleged legislative efforts to privatize Western Shoshone lands for transfer to multinational extractive industries and energy developers; and alleged seizures of Western Shoshone livestock and imposition of heavy trespass fines against Western Shoshone people.

In light of the above information, the Committee considers that the opening of a substantial dialogue with the State party on these issues would help to clarify the situation before the submission and examination of the fourth and fifth periodic reports of the United States of America, the date of which is so far uncertain.

In order to facilitate this dialogue, and in accordance article 9 (1) of the Convention and article 65 of its rules of procedure, the Committee draws the attention of the State party to the following list of questions:

- 1) Has the 1863 Treaty of Ruby Valley been abrogated in whole or in part, and, if so, following which process? According to information received, the State party considers that this Treaty was not intended to acknowledge Shoshone title to lands covered by it, a reading of the legal situation contested by the Western Shoshone people. Please comment on the divergence of views, and explain how the State party reconciles its position with the principle that Indian treaties shall be construed in favor of the Indians.*
- 2) The State party reportedly maintains that the Western Shoshone people lost their rights to ancestral lands, as identified in the 1863 Treaty, as a result of "gradual encroachment" by non-Native Americans. Has such "gradual encroachment" been demonstrated in relation to Western Shoshone land? How does the State party reconcile this position with its obligations under article 5 (d) (v) of the Convention to guarantee the right of everyone, without discrimination, to own property alone as well as in association with others?
- 3) Please provide information on the decisions of the Indian Claims Commission (ICC) regarding Western Shoshone ancestral land, and, bearing in mind article 5 (a) and (c) of the Convention, indicate to what extent Western Shoshone people were informed about the proceedings before the ICC and whether they were parties and/or participated in them.
- 4) Please report on the content of the 2004 Western Shoshone Claims Distribution Act, and on how the State party has reacted to the protests formulated by Western Shoshone people against this legislation. Is the proposed compensation included in the Bill fair and adequate?

* See U.S. Department of State, Reply of the United States of America to Questions from the UN Committee on the Elimination of Racial Discrimination, 6 August 2001, p. 1-2.

- 5) Please outline the scope of Western Shoshone access to judicial process to assert their title to land and other rights related to its use and occupation.
- 6) The imposition of grazing fees, trespass and collection notices, horse and livestock impoundments, restrictions on hunting and fishing as well as arrests are reported to be inflicted on the Western Shoshone people while using what they claim as their ancestral lands. Please comment on this information, and explain the reasons why, if confirmed, these actions have been carried out.
- 7) Please inform the Committee on action taken by the State party to respond to the Committee's concern with regard to plans for expanding mining and nuclear waste storage on Western Shoshone ancestral land, and with placing their land up for auction for privatization.
- 8) How does the State party deal with land and resources having cultural and spiritual significance for indigenous peoples? In this regard, please provide information on the draft Bill H.R. 2869 "Northern Nevada Rural Economic Development and Land Consolidation Act 2003", and the reasons for its presentation, as well as on legislative discussions, if any, regarding the reform of the General Mining Law of 1872, 17 Stat. 91 (1872).
- 9) Please also provide information on the reported decision of the State party to expand mining activities in the Mount Tenabo area and to store nuclear waste in Yucca Mountain.
- 10) Which measures has the State party adopted in order to follow-up on the Committee's recommendation that the State party ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights? In this regard, please explain whether discussions have been undertaken with the Western Shoshone people with a view to finding solutions acceptable to them.

Please allow me, Excellency, to reiterate the wish of the Committee to pursue the constructive dialogue opened with your Government in 2001, and to underline that the Committee's observations and request for further information are made with a view to assisting your Government in the effective implementation of the Convention.

In this perspective, the Committee wishes to receive responses to these issues by 31 December 2005, so that they can be examined at its 68th session, to be held from 20 February to 10 March 2006.

Yours sincerely,

Mario Yutzis
Chairman of the Committee for the
Elimination of Racial Discrimination