



## **INTERNATIONAL INDIAN TREATY COUNCIL**

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United Nations Commission on Human Rights,  
60<sup>th</sup> session, March 15 – April 23, 2003

Agenda item 11, Civil and Political Rights

Written intervention submitted by the International Indian Treaty Council

### a) Detention

The Justice Department as a branch of the United States government, has a legally-binding trust responsibility to protect traditional Native religions, spiritual and cultural practices. The international community recognizes that persons under detention are not exempt from human rights protections and accords this vulnerable population special protections.

In January 2003 testimony was presented at US Civil Rights Commission Hearings in Albuquerque New Mexico addressing violations of the spiritual, cultural and religious rights of Native Prisoners in the US federal and state prison systems. Leonard Foster, Coordinator of the National Native American Prisoners Rights Advocacy Coalition, Director of the Navajo Nation Corrections Project and Board Member of the IITC testified that prisons in Arizona, California, Texas, South Dakota, Montana, Kansas, Colorado, Utah, Minnesota and New Mexico continued to violate religious freedom provisions mandated for American Indian prisoners by both US and international law.

In November 2002, Mr. Foster presented similar violations to the US Department of Justice Civil Rights Division in Washington DC, including:

a) denials of access to traditional ceremonies b) lack of equal access to religious and spiritual leaders; c) lack of equal access to religious items; d) denial of the right to wear long hair or traditional hair style according to the religious customs of respective Indian Nations; e) denials of access to ceremonial foods; f) transfer to state facilities where American Indian religious practices are prohibited and; g) denial of access to traditional counseling and ceremonies, including requested last rites ceremonies for American Indian inmates on Death Row.

Both Federal Agencies committed to investigate and address these problems, but to the knowledge of those involved, nothing has been done to date. Since that time, the IITC and the National Native American Prisoners Rights Advocacy Coalition have received reports of new and continuing violations, including State of California Department of Corrections “grooming regulations” mandating forced hair-cutting despite requests for religious exemptions for Native prisoners, and continued denial of sweat lodge ceremonies by the Texas Department of Corrections.

Recent court cases filed by Native prisoners and their advocates have upheld these denials, confirming the lack of effective redress through domestic remedies. Prison officials cited “security” concerns, which seems to be all that is required for the Justice Department, now a part of the new US “Department of Homeland Security”, to forgo civil and human rights protections, including freedom of religion guaranteed by its own Constitution.

These violations of federally and internationally protected rights has been presented at Congressional Hearings in 1978, 1992, 1994. Similar testimony has been presented by the IITC to this Commission in various past sessions, as well as at the World Conference Against Racism in 2001 and to the UN Special Rapporteur on Religious Intolerance Mr. Abdelfattah Amor on his visit to the US in 1999.

These policies directly affect the spiritual well being and cultural survival of virtually every Indian Nation because of the high population of incarcerated Indian prisoners. The adoption and enforcement by state and federal prison systems of policies and regulations to protect against Religious Intolerance and Racial Discrimination is essential to ensure Native American prisoners access to healing and recovery through traditional religious practices and worship. We call upon this Commission to recognize the urgent need for international oversight and further investigation of these serious ongoing human rights violations in order to insure that the freedom of religion for Native Prisoners is protected.

#### e) Religious Intolerance

In his report to the Commission on Human Rights on the situation in the United States, E/CN.4/1999/58/Add.1, the Rapporteur on Religious Intolerance Mr. Abdelfattah Amor presented the detrimental impacts to the Indigenous Peoples of “damage to [sacred] sites due to the execution or attempted execution of economic projects”, noting “a real lack of understanding and consideration and an indifference and even hostility on the part of the various officials and other parties involved” (para. 62).

The extensive influence of corporate energy and other economic interests on the current US administration creates pressure on all political processes in the US, resulting in unprecedented rates of ongoing and planned destruction of Indigenous Peoples’ sacred sites

The US Energy Bill now in the US Congress promotes a National Energy Policy based on corporate interests rather than basic human rights of peoples whose lands are targeted for exploitation. The “Indian Title” section of the Energy Bill undermines the National Environmental Protection Act (NEPA) and the National Historic Preservation Act (NHPA) in relation to energy projects within tribal lands and territories, violating the intention and purpose of these laws which help to protect sacred areas.

Multi National Oil Companies, the Bush Administration, State of Alaska, and US Department of Interior continue to infringe upon the rights of the Gwich'in Nation by seeking oil development of the coastal plain of the Arctic National Wildlife Refuge. The coastal plain of the Arctic National Wildlife Refuge is the birthplace and nursery for the Porcupine Caribou Herd. The Gwich'in call this place *Izhik Gwats'an Gwandaii Goodlit*, "The Sacred Place Where Life Begins".

The Gwich'in Nation of Northeast Alaska and Northwest Canada rely upon the Porcupine Caribou Herd to meet their primary physical, cultural, spiritual and social needs. Their creation story tells how the Gwich'in Nation came from the caribou, and that an agreement was made so that:

*"The Gwich'in would retain part of the caribou heart and the caribou would retain part of the Gwich'in heart for all time"*

The Gwich'in continue to practice the songs and dances expressing their profound and unbreakable spiritual connection to the caribou. They believe that if the caribou are gone, the Gwich'in will be gone

The Gwich'in Nation anticipates that Arctic Refuge drilling will be attached to the US Budget bill in 2004. The Gwich'in call upon the US Congress to uphold its legal obligations to defend Freedom of Religion and human rights by instead enacting permanent protection of the coastal plain of the Arctic National Wildlife Refuge.

In Northern California, the US Forest Service and Bureau of Land Management illegally leased 66 square miles in the sacred Medicine Lake Highlands and approved geothermal development by the State of California-funded Calpine Energy Corporation. Calpine proposes to build a network of geothermal power plants to produce electricity for the Bonneville Power Administration, transforming this pristine area into a contaminated industrial zone and irreparably destroying conditions for continuation of spiritual, cultural and religious practices there.

This area is essential to the religious, spiritual and cultural practice of the Pit River, Modoc, Klamath, Karuk, Shasta, Wintu and other Indigenous Nations. Their creation stories tell how the Creator made the world from Mount Shasta and left instructions on how to live in the features of what are now called the Medicine Lake Highlands. Archaeological evidence indicates inhabitation for over 10,000 years. Traditional religious activities carried out there include ceremonies, vision questing, healing, prayer, plant gathering and ceremonial hunting.

The Pit River Nation and other affected Indigenous Peoples were not consulted about this geothermal project until 1996, and have continued to vehemently oppose such development. Calpine Corporation, in its filings with the California Energy Commission, and in its US Department of Energy application, admitted the irreparable damage that geothermal development will inflict on the cultural and spiritual uses of the Sacred Medicine Lake Highlands. Nevertheless it has not withdrawn its plans.

This critical threat to human rights of the Native Peoples is the result of a process that has profoundly discriminated against them and largely ignored their religious freedom rights. Telephone Flat, located in the heart of this recognized Traditional Cultural District, was denied for development in May 2000 by the Clinton Administration, but the decision was reversed by the Bush Administration in November 2002 over the adamant objections of the impacted Indigenous Peoples. The fate of this sacred area and of the Indigenous Peoples whose religious and spiritual lives depends on safeguarding its integrity, remains in the balance as a result of corporate greed backed by US government policy.

Spirit Mountain in Montana, USA, is an example of what occurs when such projects are not be halted. The Sacred Mountain of the Gros Ventre (White Clay) Indian Nation, used for ceremonies, prayer, fasting and medicine gathering since time immemorial, was reduced to a cyanide-contaminated tailings pile as a result of open pit gold mining from 1979-1998 by Pegasus, a multi- National Canada-based mining company.

The environmental, cultural and spiritual effects are irreversible and devastating. No amount of remediation or clean-up can restore a mountain which no longer exists, or repair the violation of Freedom of Religion suffered by an entire Nation as a result.

The IITC calls upon this Commission to recognize that once the destruction of Indigenous Peoples' sacred sites occurs it is too late to provide a remedy. We call upon the Commission to provide enforcement for the Human Rights instruments, Covenants, Conventions and Declarations which insure Freedom of Religion and Cultural Development for all persons and Peoples without discrimination, before such cases of irreparable harm can occur.