

**ICCPR List of Issues Submission
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**The Rights of Indigenous Peoples in the United States of America:
Duty to Consult and the Right of Self-Determination**

**Suffolk University Law School
Indian Law and Indigenous Peoples Clinic**

Located in Boston, Massachusetts, Suffolk University Law School's Indian Law and Indigenous Peoples Clinic supports tribal governments located primarily in New England with their nation-building activities and advocacy efforts.

Issue Summary

Recognizing and respecting the land and natural resources rights of indigenous peoples within the United States remains a problem. Despite treaty commitments, indigenous traditional lands and the natural resources found on those lands remain under constant threat especially given the recent extractive industries boom taken place in the United States. For example, in the Upper Peninsula of Michigan where several Indian tribes depend on the land for sustenance, extractive industries have ravaged natural resources so as to render indigenous rights to hunt, fish, and gather obsolete. Additionally, a complete disregard for native cultural customs and spiritual needs has led to the destruction of important religious and ceremonial sites, such as Eagle Rock, a sacred site to many tribes in the Upper Peninsula region which was blasted through to create a mine tunnel. The lack of meaningful consultation regarding activities with devastating impacts on tribal lands and natural resources has also left indigenous peoples without a voice in the direction of these projects as well as prevented them from exercising their free, prior and informed consent.

Additionally, federal and state laws settling land claims made by indigenous communities, located primarily in New England, have severely limited the ability of these tribes to exercise their right of self-determination. These laws not only settled land claim lawsuits brought by tribes, but many of these laws also addressed aspects of the jurisdictional relationship between tribes, states and the federal government. Since their enactment, the states and the courts have interpreted these laws in such a manner that prevents these tribes from enjoying the ability to freely pursue their economic, social and cultural development. Unlike the majority of other tribes in the United States, these tribes are increasingly subject to state laws and prevented from enjoying some of the privileges and protections that federal law provides Indian tribes.

Concluding Observations

Previous Concluding Observation (Paragraph 37): *The Committee, while noting that the guarantees provided by the Fifth Amendment apply to the taking of land in situations where treaties concluded between the Federal Government and Indian tribes apply, is concerned that in other situations, in particular where land was assigned by creating a reservation or is held by reason of long possession and use, tribal property rights can be extinguished on the basis of the plenary authority of Congress for conducting Indian affairs without due process and fair compensation.*

Previous Concluding Observation (Paragraph 37): *The State party should review its policy towards indigenous peoples as regards the extinguishment of aboriginal rights on the basis of the plenary power of Congress regarding Indian affairs and grant them the same degree of judicial protection that is available to the non-indigenous population.*

Previous Concluding Observation (Paragraph 37): *The State party should take further steps to secure the rights of all indigenous peoples, under articles 1 and 27 of the Covenant, so as to give them greater influence in decision-making affecting their natural environment and their means of subsistence as well as their own culture.*

U.S. Government Report: Paragraphs 10-15, 18, and 31

In its 2011 periodic report to the Human Rights Committee, the United States outlined several steps it has taken to remedy its relationship with Indian tribes. For example, the United States lent its support to the United Nations Declaration on the Rights of Indigenous Peoples in 2010 and made an effort to strengthen cooperation between the government and federally recognized tribes via the White House Tribal Conferences held yearly since 2009. It explained that through this dialogue, President Obama has drafted and implemented several Executive Orders to address the challenges facing American Indians. Of particular relevance is Executive Order 13175 on Consultation and Coordination with Tribal Governments that requires federal agencies to employ processes to ensure native participation in the development of certain policies having tribal implications. However, the United States noted indigenous peoples' concerns over access to sacred sites and stated that it is working to address them through its initiatives.

Legal Framework

Article 1: Self-Determination

Article 27: Rights of Minorities

Human Rights Committee General Comments

- Article 1 - General Comment 12 available at <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/f3c99406d528f37fc12563ed004960b4?Opendocument>
- Article 27 - General Comment 23 available at <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/fb7fb12c2fb8bb21c12563ed004df111?Opendocument>

Other UN Body Recommendations

- Special Rapporteur on the rights of indigenous peoples
 - Report on the Mission to the United States (2012), available at <http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/.Pages/AnnualReports.aspx>
 - Analysis of the duty of States to consult with indigenous peoples on matters affecting them: insight into how duty to consult may be addressed by Governments, indigenous peoples, the United Nations system, and other stakeholders (2009), available at <http://daccess-ods.un.org/TMP/9062003.49330902.html>.
- Permanent Forum on Indigenous Issues

- Indigenous Peoples - Lands, Territories and Natural Resources (2007), available at http://www.un.org/esa/socdev/unpfii/documents/6_session_factsheet1.pdf
- Analysis of the duty of the State to protect indigenous peoples affected by transnational corporations and other business enterprises (2012), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/240/59/PDF/N1224059.pdf?OpenElement>.

Recommended Questions

1. How is the United States ensuring that each level of government, including federal, state, local and municipal, is meeting their legal obligations to consult with indigenous peoples on matters that may affect them, including obtaining their consent with regards to activities that would have a significant impact on indigenous peoples lands and natural resources?
2. What measures is the United States using to establish a greater awareness and respect for indigenous cultures and customs, in particular religious beliefs and ceremonies, so as to combat the destruction of sacred sites?
3. Provide information on how Indian tribes, especially those located in New England, are treated under federal and state laws setting their land claims especially with regards to their ability to exercise their self-determination and self-governance.

Suggested Recommendations

1. The United States should ensure that each level of government, including federal, state, local and municipal, understands its obligations under international human rights law to consult with and seek the consent of indigenous peoples, especially with regards to activities that may significantly impact their lands and natural resources.
2. The United States should devote more efforts to establish greater awareness and respect for indigenous cultures and customs in an attempt to prevent the destruction of sacred sites.
3. The United States should revisit and amend federal laws settling Indian land claims to ensure that those affected Indian tribes are able to fully exercise their right of self-determination.