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URBANIZATION AND FULL IMPLEMENTATION OF
THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

by

THE NATIONAL INDIAN YOUTH COUNCIL
A Non-Governmental Organization in Consultation with
the Economic and Social Council of the United Nations

INTRODUCTION

The Expert Mechanism solicits written submissions that address the primary themes of the agenda item on the United Nations Declaration on the Rights of Indigenous Peoples, namely implementation of the Declaration on regional and national levels, and remedies under the Declaration, including adjudication, repatriation, redress and compensation. Those themes implicate two major issues that are addressed by the Declaration — the open-ended definition of “Indigenous peoples” to effectuate the purposes of the document, and the primary human right Indigenous peoples have to claims for the improvement of economic and social conditions, including education, employment, vocational training and retraining, housing, sanitation, health and social security (Article 21).

The National Indian Youth Council (NIYC) was formed in 1961, and it is the second oldest national Indian organization in the United States of America. It has a record of advocacy of the rights of Indigenous Peoples in the United States in general, most particularly on issues of culturally-appropriate education, voting rights, health care, affirmative action, environment, religious freedom, the restoration of tribal constitutions and civil and human rights.¹ The organization has litigated Indian rights under American (United States) law.²

The NIYC is a non-governmental organization that has consultative status with the Economic and Social Council of the United Nations, and it has a board of directors with seven Indigenous members, four of whom are women. It operates employment training programs in three New Mexico cities, and it is active in the advocacy of the interests of Indians who have been urbanized — by coercion or by choice.

This submission will address issues under the Declaration that implicate (1) individual and collective

¹ Fluharty, S. National Indian Youth Council. New Mexico Office of the State Historian, 2003.

² Reported cases include National Indian Youth Council v. Bruce, 485 F.2d 97 (10th Cir. 1973) (treaty right to education); National Indian Youth Council v. Andrus, 623 F.2d 694 (10th Cir. 1980) (mining activities with negative impacts); and National Indian Youth Council v. Watt, 664 F.2d 220 (10th Cir. 1981) (same). Unreported litigation includes suits to enforce Indian parent participation in State school policies and Indian voting rights.

social and economic human rights under the Declaration; (2) the human rights of urbanized Indigenous peoples; and (3) remedies for urbanized Indigenous peoples.

GUARANTEES OF SOCIAL AND ECONOMIC RIGHTS

A recent article in The Lancet, an international peer-reviewed medical journal, highlights the underlying causes of Indigenous health disparities that stem from factors that arose from colonization, globalization, migration, loss of language and culture, and disconnection from the land.³ It states that the current estimate of the Native American Indigenous population in the United States of America is 2.5 million people. The rate of urbanization of Indigenous peoples in the United States and Canada is about 50%, according to the authors. The effects of rural-urban migrations are many and largely negative, and "Urbanization is part of the continuing transformation of Indigenous peoples' culture, perhaps its most apparent manifestation."

Aside from colonial population expansion and the dispossession of Indigenous peoples from their lands, there are contemporary factors that contribute to urbanization, according to King, Smith and Gracey:

Many push-and-pull factors determine the patterns of rural-urban migration in Indigenous Peoples. The push factors that prompt individuals to move from their traditional communities include unemployment and the consequent poor social and economic conditions; boredom and low quality of life; scarcity of housing, health facilities and educational opportunities; and political pressures. Factors pulling people back to their communities include the failure to find employment or otherwise thrive in the city, the absence of affordable or acceptable housing, and the perception that rural communities are better places to live and raise children. Emotional and spiritual connections to the land and culture are also major factors drawing people back to their origins.

The off-reservation population (2000) of American Indians and Alaska Natives is 3,092,885 of 4,119,301 people who self-identified as such, and that is 75.1% of all respondents to the United States 2000 Census who stated they were American Indian or Alaska Native.⁴ Although there are 560 Indian tribes that are formally recognized by the United States (and there are many "unrecognized" Indian tribes), most of the American Indian population does not live on a reservation of tribal lands (an "Indian reservation").

The Lancet piece argues that the disparities that impact Indigenous people create a need for effective

³ King M, Smith A, Gracey M. Indigenous health part 2: the underlying causes of the health gap. *Lancet* 2009: 76-85.

⁴ Forquera, R. Urban Indian health. Menlo Park: Henry J. Kaiser Family Foundation 2001: 2, Appendix I (Places of Residence of American Indians and Alaska Natives, 2000) (statistic in Note 3 not based on actual U.S. Census data).

reconciliation and healing (with examples in Canada and Australia; similar initiatives are going forward in the United States), and such reconciliation and healing are not possible unless something is done about those disparities. Put another way, severe social and economic inequalities drive social and economic human rights to remedy inequalities. One survey of the international law of human rights as it impacts North American Indians reached that conclusion,⁵ and the Declaration enshrines the principle in several of its articles. Article 21 is the most specific in the statement of social and economic rights, and it contains the general provision that "Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security" (Article 21(1)). It gives particular preference for the needs of elders, women, youth, children and persons with disabilities (Article 21(2) and Article 22).

THE SPECIFIC RIGHTS OF URBANIZED INDIGENOUS PEOPLES

Article 10 of the Declaration specifically recognizes the historical fact of the intentional and forcible relocation of Indigenous peoples from their lands as an aspect of urbanization in requiring that:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

The prohibition against forcible removal and relocation without free, prior and informed consent also frames social and economic human rights guarantees that result from historical patterns of forcible removal and coerced relocation.

The Declaration on the Rights of Indigenous Peoples does not define the term "Indigenous people," and it does not require any form of tribal or political affiliation to enjoy human rights. Accordingly, urbanized indigenous peoples fully share in the right of self-determination under Article 3 so that they too may "freely determine their political status and freely pursue their economic, social and cultural development."

The National Indian Youth Council firmly asserts that such rights are not simply secured by the Declaration and associated international customary law rights, but also the substantive law of the United States of America. That is, the United States has an affirmative trust responsibility to assure the welfare of Indians as individuals,⁶ and the United States statute that authorizes programs of benefits and services for Indians, the Snyder Act of 1924, is "for the benefit, care, and assistance of

⁵ Zion J. North American Indian Perspectives of Human Rights. In: An-Na'im A, ed. Human rights in cross-cultural perspectives. Philadelphia: University of Pennsylvania Press, 1991: 191-220.

⁶ United States v. Mitchell, 463 U.S. 206, 224-225 (1983).

the Indians throughout the United States.”⁷ The NIYC made those points clear in its submission to President Barack Obama’s transition team.⁸

All American Indians, including off-reservation people who have been urbanized by intentional dispossession or social and economic forces, have the right of full enjoyment, as individuals or collectives, of all human rights declared in positive and customary human rights law under Article 1 of the Declaration. As indicated, they have the right to demand improvement of their economic and social conditions (enumerated in Article 21).

The Government of the United States has largely locked urbanized Indigenous peoples (whether Indian, Alaska Native, Native Hawaiian, or otherwise) out of the process of negotiating rights, benefits and entitlements. That violates their right, under Article 18 of the Declaration, to participate in decision-making in matters that affect their rights, the right to have their representatives recognized, and the right to have their own decision-making institutions. When, for example, Indian health or education is under discussion, “urbanized” Indigenous peoples have the right to participate in decision-making on those subjects. When Indian leaders are summoned for consultation, that must include representatives of urbanized Indigenous peoples. Urbanized Indigenous peoples have the authority to establish their own institutions under Article 18 and a similar right to administer national programs and benefits for improvement under Article 21 of the Declaration.

The United States of America has a human rights obligation, under Article 19 of the Declaration, to consult with groups of urbanized Indigenous peoples, cooperate with them, and get their free, prior and informed consent to legislative or administrative measures that may affect them. That also applies to such decisions made by non-federal actors, including the States, counties, municipalities, and other organs of municipal government.

Indigenous peoples of the United States are entitled to all rights as Indigenous peoples under the Declaration, whether or not their groups or tribes are “recognized” by the central government and whether or not they assert their rights and interests as part of a recognized tribe.

REMEDIES

There will be discussions of formal remedies for Indigenous peoples in general under the Declaration, and the NIYC supports them. The organization has a particular interest in remedying violence against Indigenous women; addressing the severe impacts of residential or boarding schools; and taking effective action to deal with other social ills.

The National Indian Youth Council is particularly concerned about the development of contemporary

⁷ 25 United States Code Section 13.

⁸ National Indian Youth Council. Urban Indian communities & the 2009 presidential transition. Albuquerque: National Indian Youth Council 2009: 8, 5.

Indian Country crime policy because the United States federal government proposes to rehash cosmetic programs of the past. The United States fails to address concerns voiced by the United Nations Committee for the Elimination of Racial Discrimination (CERD) on the crisis of widespread violence against native women (including women in urban areas, whose situation has escaped notice), and repeated calls from Indigenous communities that the root causes of crime must be addressed — namely social and economic conditions. Current government proposals fail to recognize CERD recommendations for effective support and remedies for Indigenous women who are victims of violent crime (often sexual offenses) and adequate law enforcement — in both Indian reservations and urban areas (particularly border towns adjacent to reservations).

The organization supports full and effective remedies to effectuate the rights of Indigenous peoples and to address their needs in legislative or adjudicative remedies. Such remedies should benefit Indigenous peoples as a whole, and more particularly, it should address the specific problems and needs of identified groups, including people in urban areas.

Most of the Indigenous peoples of the world deal with governments as legally-recognized “tribes” or governmental groups, or as recognized interest groups. However forces of urbanization, marginalization, relocation, labor force recruitment, and other forces create groups of urbanized Indigenous peoples that are distinct, identifiable, and relevant, and urbanized Indigenous peoples exist in numbers that often exceed numbers in traditional rural areas.

The National Indian Youth Council calls upon the United Nations, acting through the Expert Mechanism, to recognize and articulate the rights of Indigenous peoples identified in this submission, and the rights outlined above.

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