

UNITED STATES OF AMERICA
Submission to the United Nations Periodic Review
International Covenant on Civil and Political Rights (ICCPR)
January 14, 2019

I. Title:

- A. US Nuclear Development Violates the UN Convention on Punishment and Prevention of Genocide.
- B. US law enforced with racially discriminatory intent.
- C. Imposing Supreme Court doctrine is a travesty of justice based on religious bias, racist, fabricated doctrine of Christian discovery justifying occupation and fraud.
- D. Criminalization of Native Americans where United States jurisdiction is void.

II. Reporting Organization(s):

The Western Bands of the Shoshone Nation of Indians¹ is a government *de jure* recognized and treated with by the United States in 1863 expressing an inherent right to self-determination in exercising our thousands years-old custom internally, and externally in foreign relations and recognized with boundaries acknowledged in the Treaty of Ruby² accepted as law by Newe (Shoshone) people in 1863.

Principal Man Ian Zabarte, a descendant of Chief Kawich, brings this submission on behalf of the Western Bands of the Shoshone Nation of Indians under Newe (Shoshone) custom. Only Newe form the self-determined government for the Western Bands of the Shoshone Nation of Indians. Newe assert a right of freedom to non-interference by any nation or state in the free to exercise internal civil, legal and political affairs and do not consent to the inclusion of Shoshone property³ into the boundaries or jurisdiction of any state or territory. Newe assert a right of self-determined government and does not diminish our international sovereign personality under US domestic law rooted in Christian supremacy enshrined as the US Supreme Court Doctrine⁴ that, the Doctrine of Discovery⁵ gave European Christians immediately and automatically indigenous property and diminished indigenous sovereignty.⁶ US law provides no protection and impairs the integrity and ability of Newe to govern under US human rights abuse.

III. Issue Summary

- A. Illegal occupation, US administration of bureaucratic fraud.
- B. US violation of peremptory norm UN Convention of Prevention and Punishment of the Crime of Genocide.
- C. Failure of Due Process and fraud of the US Indian Claims Commission and California, Nevada, Utah and Idaho.

¹ Treaty of Ruby Valley (Consolidated Treaty Series Volume 127, 1863).

² *Idem*.

³ *Idem*.

⁴ *Johnson v. McIntosh* 8 Wheat. 543 (1823); *Cherokee Nation v. Georgia* 30 US 1 (1830); and *Worcester v. Georgia* 31 USC 515 (1832).

⁵ Preliminary study of the impacts on indigenous peoples of the international legal construct known as the Doctrine of Discovery. UN Economic and Social Council Permanent Forum on Indigenous Issues E/C.19/2010/13

⁶ Study on treaties, agreements and other constructive agreements between states and Indigenous populations E/CN.4/Sub.2/1999/20; at 108. relations with sovereign nations [E/CN.4/Sub.2/1992/32, paras. 138, 139; compare also E/CN.4/Sub.2/1995/27] at 109. because the "legitimization" of their colonization and trade interests made it imperative for European powers to recognize Indigenous nations as sovereign entities; at 110. In the course of history, the newcomers then nevertheless attempted to divest Indigenous peoples, as pointed out above, of their sovereign attributes, especially jurisdiction over their lands, recognition of their forms of societal organization, and their status as subjects of international law.

- D. Criminalization of Native Americans Where United States Jurisdiction is Void to create social and economic hardship (displacement/prison).

IV. Concluding Observations and ICCPR Legal Framework (2006 & 2008)

19. While noting the explanations provided by the State party with regard to the situation of the Western Shoshone indigenous peoples, considered by the Committee under its early warning and urgent action procedure, the Committee strongly regrets that the State party has not followed up on the recommendations contained in paragraphs 8 to 10 of its decision 1 (68) of 2006 (CERD/C/USA/DEC/1) (art.5).

The Committee reiterates its Decision 1 (68) in its entirety, and urges State party to implement all the recommendations contained therein.

29. The Committee is concerned about reports relating to activities, such as nuclear testing, toxic and dangerous waste storage, mining or logging, carried out or planned in areas of spiritual and cultural significance to Native Americans, and about the negative impact that such activities allegedly have on the enjoyment by the affected indigenous peoples of their rights under the Convention (arts. 5 (d) (v), 5 (e) (iv) and 5 (e) (vi)).

The Committee recommends that the State party take all appropriate measures, in consultation with indigenous peoples concerned and their representatives chosen in accordance with their own procedure, – to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention.

The Committee further recommends that the State party recognize the right of Native Americans to participate in decisions affecting them, and consult and cooperate in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans. While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party's obligations under the Convention relating to indigenous peoples.

V. Current U.S. Government Policy or Practice

The current US government policy is a pattern and practice of ongoing abuse and non compliance with the recommendations of the committee. American jurisprudence is a caricature of justice premised on the Christian Doctrine of Discovery⁷ to perpetrate crimes against humanity, prior to, and since 2014. The practice is one of "cultural triage"⁸ that is viewed as meeting the minimum threshold of genocide under the Convention.⁹ Secrecy is employed by the US administration at all levels. Currently, the US seeks to remove access to information of the US under regulations of the Secretary of the Interior for freedom of information (FOIA).

The US acts in derogation of the sovereignty of Western Bands of the Shoshone Nation of Indians exceeding authority granted to the state party by the people in it's constitution, and therefore is inconsistent with, and runs afoul of, the structure and design of the US federal system of government established by the US Constitution.

⁷ Idem at note 5.

⁸ Native American Cultural Resource Studies at Yucca Mountain, Nevada (1990) University of Michigan Institute for Social Research, Contract Number DE-AC-08-87NV10576 "*...the forced choice by and ethnic group to a development project.*" pp. 167.

⁹ UN GA Convention on Prevention and Punishment of the Crime of Genocide, 9, December 1948, UN Teary Series, Vol. 78, p. 277; US Proxmire Act (18 USC 1091).

In 1861 the US adopted the Common Law of England authorizing Christian values in Nevada.¹⁰ In 1862 the US passed the Homestead Act to authorize US occupation and patented title by US. In 1934 the US authorized creation of tribes to undermine the self-determined government of the Western Bands of the Shoshone Nation of Indians. In 1947 the US imposed secrecy on human radiation experiments¹¹ on military/civilian occupied lands within the exterior boundaries of the Western Bands of the Shoshone Nation of Indians.

In 1850 California legalized Indigenous slavery and murder, repealed in 1967.¹² The US provided reimbursement to the State of California through commercial banks for “Indian hunters.”

In 1946 the US authorized one of the tribes created by under US domestic law¹³ to file a claim¹⁴ to property owned by the Western Bands of the Shoshone Nation of Indians that resulted in a finding that, NO taking had occurred¹⁵ calling the process sufficient to preclude further claims against the US by the Western Bands of the Shoshone Nation of Indians, a act that should have not been done.

Between 1951 and 1994 the US conducted 924 nuclear weapons tests and 100 atmospheric nuclear tests killing, in secret, groups and individual citizens of the Western Bands of the Shoshone Nation of Indians living peaceably in our own country. The US culture of secrecy is manifest “*intent*” to kill groups and individual Newe citizens of the Western Bands of the Shoshone Nation of Indians. The US is perpetrator of crimes against humanity to destroy Newe life-ways and use legal fiction of the Supreme Court, “*the plenary power of Congress*,”¹⁶ to justify theft of Indigenous peoples property, a failure of due process. The systematic process makes abuse regular, an institutional racism¹⁷ under the Secretary of the US Department of the Interior, purported trustee for incompetent federally recognized domestic tribes. There is a genuine and pervasive failure of trust because US domestic law provides too little protection for Indigenous people demonstrated by the case of the Timbisha Shoshone tribe that was overthrown¹⁸ for acts bringing to light US abuse at the UN Human Rights Commission CERD in 2008.

The US continues military entrenchment within the boundaries of the Treaty of Ruby Valley at China Lake Naval Weapons; Supersonic Operations Areas; plans to expand military entrenchment with 1.7 million acre US Navy expansion near Fallon; an 800,000 acre US Air Force at Nellis, and military Red Flag exercises led by the US of multi-national military forces violating the territorial integrity of the Western Bands of the Shoshone Nation of Indians.

Civilian use and occupancy of Indigenous property uses legislation to facilitate migration of Americans to trespass and occupy Newe property by, and through the Clark County Public Lands Proposal: the Southern Nevada water importation project¹⁹ under the authority of Nevada State Engineer give away 40,000 acre feet of water that is the property of the Western Bands of the Shoshone Nation of Indians.

The US provides *ad velorem* taxes, grants equal to taxes (GETT), and payments equal to taxes (PETT) for occupation of Newe lands by Nevada, California, Utah and Idaho for US occupancy. Nothing is provided to the Western Bands

¹⁰ Nevada Territorial Act 12 Statute 209-214 (1863).

¹¹ US Atomic Energy Commission, Letter to Dr. Fidler regarding SECRET “Medical Experiments on Humans” April 17, 1947.

¹² An Act for the Protection and Governance of Indians, Statutes of California, Chapter 133, April 22, 1850.

¹³ Indian Reorganization Act of June 18, 1934, (PL 73-383), 25 USC CH. 14, Subch. V subsection 461.

¹⁴ Indian Claims Commission Act of August 13, 1946, 60 Statute 1050, 25 USC 70a).

¹⁵ United States Indian Claims Commission Final Report August 13, 1946-September 30, 1978 pp.125 (case 326-K).

¹⁶ Idem at note 4.

¹⁸ <http://www.indianlaw.org/tst/home> Indian Law Resource Center website.

¹⁹ Southern Nevada Water Authority Clark, Lincoln and White Pine Counties Groundwater Development Project http://www.snwa/assets/pdf/gdp_concept_plan.pdf (May 2007).

of the Shoshone Nation of Indians for the US occupation and use. In the proposed Yucca Mountain nuclear waste repository \$15 billion was distributed to all parties but indigenous people. Not providing funding to understand and mitigate risks posed by nuclear waste the US is “*environmental racism*,” preying upon the already vulnerable Indigenous people by forcing “...*the most hazardous substances created by humans*”²⁰ upon us. Taxes from property owned by the Western Bands of the Shoshone Nation of Indians is money laundering and fraud by Nevada, California, Utah and Idaho organized crime orchestrated by the US Secretary of Interior and ignored by the US Justice Department.

The US has authorized the largest claim of uranium to mine in 2018 of Newe property and authorizes hydraulic fracking that releases radiation.²¹ Because of past exposure to radiation in US/UK fallout from testing WMDs, the Shoshone Nation cannot endure any increase in risk from any source. This position is made clear by the National Academy of Sciences Report: Biological Effects of Ionizing Radiation VII, that as risk increases radiation increases in the non-linear threshold model and hormesis is rejected. The US seeks to trespass by shipping 1000 kilos of plutonium to Newe country for disposal²² failing to comply with and complete US environmental review presenting a document prepared 10 years earlier for another purpose.²³

US and California, Utah, Idaho and Nevada violate hunting rights of the Western Bands of the Shoshone Nation of Indians and criminalization Newe practicing our own custom. Newe then cannot obtain employment. The US authorized drugs, alcohol, prostitution, gambling, fraud (land expansion), chaining of staple food trees (pinion), and animal resource depletion.

VI. Human Rights Committee General Comments

Mr. Jose Ayala Lasso, U.N. High Commissioner for Human Rights has requested information “...*on the use of nuclear weapons...and their consequential and cumulative effects, and on the dangers they represent to life, physical security and other human rights*,” for Implementation of Sub-Commission resolution 1996/16. The text of the resolution is contained in U.N. document E/CN.4/1997/2.

VII. Other UN Body Recommendations

Study on treaties, agreements and other constructive agreements between states and Indigenous populations E/CN.4/Sub.2/1999/20; at 108. relations with sovereign nations [E/CN.4/Sub.2/1992/32, paras. 138, 139;compare also E/CN.4/Sub.2/1995/27] at 109. because the “legitimization” of their colonization and trade interests made it imperative for European powers to recognize Indigenous nations as sovereign entities; at 110. In the course of history, the newcomers then nevertheless attempted to divest Indigenous peoples, as pointed out above, of their sovereign attributes, especially jurisdiction over their lands, recognition of their forms of societal organization, and their status as subjects of international law.

Rapporteur on the Rights of Indigenous Peoples James Anaya submitted a report to the 21st session of United Nations Human Rights Council titled “The situation of indigenous peoples in the United States of America” [A/HRC/21/47/Add.1, 30 August 2012]. It contained the following observations, conclusions and recommendations which are directly relevant to achieving the full and effective implementation of the Committee’s 2008 Concluding Observations in a number of areas: **III. The disadvantaged conditions of indigenous peoples: The present day legacies of historical wrongs, C. Lands, resources and broken treaties**

²⁰ US Government Accounting Office, A Report to Congress, Spent Nuclear Fuel Accumulating Quantities at Commercial Reactors Present Storage and Other Challenges GAO-12-797.

²¹ Technologically Enhanced Naturally Occurring Radioactive Material (r226 & r228).

²² Order: South Carolina v. US 2017 WL 7691885 (aff’d. 907 F.3rd 742 (4th Cir. 2018).

²³ Complex Transformation Supplemental Programmatic Environmental Impact Statement (DOE/EIS-0236-S4). National Environmental Policy Act (42 USC A 4321); Council on Environmental Quality 40 CFR 1502.9C(1); NEPA 10 CFR 1021.314(a).

38. Many Indian nations conveyed land to the United States or its colonial predecessors by treaty, but almost invariably under coercion following warfare or threat thereof, and in exchange usually for little more than promises of government assistance and protection that usually proved illusory or worse. In other cases, lands were simply taken by force or fraud. In many instances treaty provisions that guaranteed reserved rights to tribes over lands or resources were broken by the United States, under pressure to acquire land for non-indigenous interests. It is a testament to the goodwill of Indian nations that they have uniformly insisted on observance of the treaties, even regarding them as sacred compacts, rather than challenge their terms as inequitable.

41. In addition to millions of acres of lands lost, often in violation of treaties, a history of inadequately controlled extractive and other activities within or near remaining indigenous lands, including nuclear weapons testing and uranium mining in the western United States, has resulted in widespread environmental harm, and has caused serious and continued health problems among Native Americans.

Organization of American REPORT N° 113/01 October 15, 2001²⁴

148. In accordance with the analysis and conclusions in the present report, the Inter-American Commission on Human Rights recommends to the United States that it: 1. Provide Mary and Carrie Dann with an effective remedy, which includes adopting the legislative or other measures necessary to ensure respect for the Danns' right to property in accordance with Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands. 2. Review its laws, procedures and practices to ensure that the property rights of indigenous persons are determined in accordance with the rights established in the American Declaration, including Articles II, XVIII and XXIII of the Declaration.

149. The Commission decides to transmit the present report to the United States in accordance with Article 43 of its Rules of Procedure and to provide the State a period of 60 days to comply with the recommendations set forth herein. The time period shall be counted as from the date of transmission of the present report. During this period, the State shall not be authorized to publish the report. The Commission also decides to notify the Petitioners of the adoption of this report.

VIII. Recommended Questions:

- Will the US recognize there is a bonofide title dispute and enter into negotiations with the Western Bands of the Shoshone Nation of Indians?
- Will the US provide the Western Bands of the Shoshone Nation of Indians funding to conduct independent baseline health assessment and health surveillance monitoring to defend them against nuclear threats from nuclear development?
- Will the US stop the trespass and NOT dispose of nuclear material on the property of the Western Bands of the Shoshone Nation of Indians at the Nevada National Security Site?
- Will the US transport plutonium to the Nevada National Security Site violating the treaty of Ruby Valley?
- Will the US overturn and expunge convictions for Newe by US at all levels CA, NV, UT, AZ

IX. Suggested Recommendations

- Adopt the Treaty on the Prohibition of Nuclear Weapons to protect the Western Bands of the Shoshone Nation of Indians from radioactive releases by the US?
- The US must investigate, charge and bring trial for crimes against humanity under the US Convention or US domestic laws for the prevention and punishment of the crime of genocide?.
- Require proof of ownership for any occupied land, land expansion and land disposals.
- Provide restitution and damages for tax fraud and money laundering of NV, CA, ID and UT).

²⁴ REPORT N° 113/01 CASE N° 11.140 MARY AND CARRIE DANN UNITED STATES October 15, 2001.

- Affirm Shoshone cultural affection to their property including protection of hunting fishing gathering within the boundaries of the Treaty of Ruby Valley.
- Moratorium on federal land disposal/expansion.
- Negotiate to create treaty reservation as a permanent land base for the Western Bands of the Shoshone Nation of Indians to include membership for all descendants of the Western Bands of the Shoshone Nation of Indians off-set by occupancy of American settlers.
- Expunge convictions for all Western Shoshone.
- Stop unearthing Shoshone burials and return all burials, funerary objects and cultural artifacts to the Western Bands of the Shoshone Nation of Indians.