

URGENT ACTION UNDER EARLY WARNING MEASURES
(Western Shoshone/United States)

9 August 2005
(VIA HAND DELIVERY)
Ms. Nathalie Prouvez, Secretariat
Committee on the Elimination of Racial Discrimination

Dear Nathalie:

Following is a response to the Committee's questions after Monday's briefing session.

First, regarding the submission of two documents, one from the Western Shoshone National Council, the traditional governing body of the Western Shoshone Nation and the other from individual communities of Western Shoshone People (Timbisha, Winnemucca and Yomba). We understand that according to CERD's procedure, the Committee will address the submissions as one.

These requests can be understood to provide separate perspectives on the same issue, one from a national voice and the other from the voices of specific communities. The request from the National Council provides a thorough overview of the historical backdrop to the current situation faced by the Western Shoshone Nation and its people, a critique of the United States legal and administrative systems, as well as an analysis of contemporary international law with respect to the Western Shoshone people. Correspondingly, the submission on behalf of the communities speaks to specific violations against individuals and to specific areas of land that provide evidence of persistent and ongoing patterns of racial discrimination against the Western Shoshone people on the part of the United States of America. It is suggested that these submissions be read together to provide a full history, legal analysis and evidential basis for the critical situation faced by the Western Shoshone Nation and its people.

Early Warning Procedure. Second, in response to the question regarding whether it is appropriate for CERD to invoke the Early Warning Procedure we provide the following.

In 2001, CERD noted among other concerns specific to the Western Shoshone in its Recommendations and Conclusions of the U.S. Report the "persistence of the discriminatory effects ... and destructive policies with regard to Native Americans." In the time since CERD expressed its concerns, the situation has become even more grave. Evidence of the severity of this situation includes:

- Military style seizures of hundreds of Western Shoshone livestock, causing severe economic hardship,
- Transfer of alleged "trespass fines" for Western Shoshone use of Treaty recognized ancestral lands to the U.S. Internal Revenue Service and private collection agencies,
- Reinvigorated federal efforts to open a nationwide nuclear waste repository on Western Shoshone land,
- Passage of legislation allowing for distribution of highly controversial monies set aside by the Indian Claims Commission for alleged extinguishment of Western Shoshone land on the theory of "gradual encroachment,"
- U.S. rejection of Western Shoshone requests for good faith negotiations regarding lands and resources,
- U.S. rejection of Western Shoshone concerns regarding federal and transnational corporate use of lands and resources, and

- Official statements and legislative efforts to privatize Western Shoshone lands for transfer to multinational extractive industries and energy developers.

In sum, the stage has been set for the United States to take its final measures of enforcing the collection notices through eviction or imprisonment and forcibly distributing the alleged payment for “extinguishment,” thereby opening the lands for one of the largest indigenous land thefts in modern history.

The actions being taken against the Western Shoshone stem from the conceptual foundation of U.S. Federal Indian law. By the U.S.’ own admission before CERD in 2001, it continues to rely on legal analyses based on the “doctrine of discovery,” a racist and discriminatory concept used to justify colonialism. Through application of this foundation, the U.S. denies Western Shoshone the ability to even argue their title issues in the domestic courts or to gain legislative relief due to the theory of “gradual encroachment.” This theory has been applied against the Western Shoshone solely due to their status as an Indigenous People. Although CERD members asked the U.S. to respond to their concerns regarding the U.S. position on unilateral treaty abrogation, the U.S. has never provided that response.

By refusing to recognize Western Shoshone rights to their lands and natural resources, the United States undermines Western Shoshone ability to govern their own activities including rights to hunt, fish and gather in their own ways, and to pray and perform ceremonies on their Treaty recognized ancestral lands. This behavior also severely undermines Western Shoshone ability to govern economic activities on their lands which has resulted in severe environmental destruction and the denial of fair compensation.

These actions demonstrate a serious, massive and persistent pattern of racial discrimination against the Western Shoshone Nation and its people.

Additionally, the admitted, discriminatory nature of U.S. law demonstrates that for indigenous peoples there are no adequate procedures, judicially or legislatively, to challenge racial discrimination in the United States.

Finally, CERD’s listed criteria for invoking the Early Warning Procedure are not exhaustive. It is entirely proper for CERD to invoke the Early Warning Procedure based on the U.S.’ open defiance of the findings of other international human rights bodies and its complete failure to respond to the concerns of this Committee except with the escalation of aggressive violations against the Western Shoshone Nation and its people.

Thank you for your attention to this matter. Please do not hesitate to contact us know should you have questions or need additional information.

Sincerely,
2005 Western Shoshone Delegation to the United Nations

Bernice Lalo

Steven Brady

Joe Kennedy

Thomas Wasson