

## UNITED STATES OF AMERICA

### Special Decisions or action taken Re: Reporting, Including Urgent Action Procedure

CERD, A/60/18 (2005)

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#### **Chapter IV. Follow-up to the consideration of reports submitted by states parties under article 9 of the Convention**

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418. At its 1728th meeting, on 19 August 2005, the Committee decided to request the Chairman to send a letter to the Government of the United States of America, informing it that the Committee had considered on a preliminary basis the requests submitted by the Western Shoshone National Council and by the Western people of the Timbisha Shoshone Tribe, Winnemucca Indian Colony and Yomba Shoshone Tribe, asking the Committee to act under its early warning and urgent action procedure on the situation of the Western Shoshone indigenous people in the United States of America.

419. The Chairman, on behalf of the Committee, expressed appreciation for the frank and open preliminary discussion that took place on 8 August 2005 between representatives of the United States of America and the Committee's working group on early warning and urgent action procedures, together with the coordinator on follow-up and other Committee members. The Chairman stated that the Committee had noted with interest the assurances given by the State party that its fourth and fifth periodic reports, which were due on 20 November 2003, were being prepared and that comprehensive information relating to the follow-up given to the Committee's 2001 concluding observations<sup>3</sup> would be included in these periodic reports. It was to be regretted, however, that the State party was not in a position to undertake to submit the reports by a specific date.

420. The Chairman also stressed that the Committee had noted with concern the allegation that the Western Shoshone indigenous people were being denied their traditional rights to land and that actions taken by the State party in relation to the status, use and occupation of these lands may cumulatively lead to irreparable harm to this community.

421. In light of the above information, the Chairman informed the Government of the United States of America that the Committee considered that the opening of a substantial dialogue on these issues would help to clarify the situation before the submission and examination of the fourth and fifth periodic reports of the State party. In order to facilitate this dialogue, and in accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, the Committee drew the attention of the Government to a list of questions regarding which it was requested to send responses by 31 December 2005, so that they could be examined at its sixty-eighth session, to be held from 20 February to 10 March 2006.

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<sup>3</sup> [Official Records of the General Assembly], *Fifty-sixth Session, Supplement No. 18 (A/56/18)*, paras. 380-407.

**CERD/C/SR.1738/Add.1 (2006)**

COMITÉ POUR L'ÉLIMINATION DE LA DISCRIMINATION RACIALE

Soixante-huitième session

COMPTE RENDU ANALYTIQUE DE LA DEUXIÈME PARTIE (PUBLIQUE)

DE LA 1738<sup>e</sup> SÉANCE

le vendredi 24 février 2006, à 11 h 35

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PRÉVENTION DE LA DISCRIMINATION RACIALE, Y COMPRIS LES MESURES D'ALERTE RAPIDE ET LA PROCÉDURE D'ACTION URGENTE (point 5 de l'ordre du jour)

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Situation des Shoshones de l'Ouest

3. Le Comité a par ailleurs reçu une communication de la Mission permanente des États-Unis auprès de l'Office des Nations Unies à Genève, datée du 15 février 2006, dans laquelle l'Ambassadeur des États-Unis affirme que son pays estime, en substance, que la question soulevée par les Shoshones de l'Ouest ne relève pas de la procédure des mesures d'alerte rapide et d'action urgente. Compte tenu que les États-Unis n'ont pas fait la déclaration prévue à l'article 14 de la Convention, l'État partie demande au Comité de ne pas poursuivre l'examen de la pétition qui lui a été adressée par des Shoshones au titre de cet article. En outre, comme les États-Unis comptent aborder la question de la situation des Shoshones dans leur prochain rapport périodique, ils considèrent qu'il n'est pas nécessaire de se faire représenter devant le Comité à sa session en cours. En conséquence, le Groupe de travail recommande au Comité de surseoir à l'examen de la pétition présentée par les Shoshones de l'Ouest jusqu'à ce que les membres du Comité aient entendu le point de vue des représentants de cette tribu au cours d'une réunion informelle qui aura lieu ultérieurement, au cours de la session. Le Groupe de travail se réunira à nouveau à l'issue de cet entretien et soumettra au Comité de nouvelles propositions concernant la voie à suivre en la matière.

4. M. PILLAI s'étonne que les États-Unis établissent, dans leur lettre, un lien entre les mesures d'alerte rapide et la procédure d'action urgente et l'article 14 de la Convention. Il aimerait savoir si l'affaire relative aux Shoshones de l'Ouest relève de cet article.

5. M. THORNBERRY juge ambiguë la lettre de la Mission permanente des États-Unis car elle semble remettre en question la légitimité de la procédure des mesures d'alerte rapide et d'action urgente. Il estime cependant qu'il convient d'attendre l'issue de la réunion qui aura lieu ultérieurement avec les représentants des Shoshones de l'Ouest avant de prendre une décision quant à la manière de traiter la pétition.

6. M. AVTONOMOV rappelle qu'il n'y a aucun lien entre la procédure d'action urgente, dont il est ici question, et celle qui peut être engagée au titre de l'article 14 de la Convention. Le Comité a

estimé que l'affaire soulevée par la communauté shoshone méritait d'être examinée dans le cadre de la procédure d'action urgente car il est envisagé de construire un site nucléaire sur les terres où vit ce peuple tribal.

7. Le PRÉSIDENT confirme que la procédure des mesures d'alerte rapide et d'action urgente est totalement distincte de celle menée par le Comité au titre de l'article 14 de la Convention. Il indique que le Comité décidera de la suite à donner à la question soulevée par les Shoshones de l'Ouest après s'être entretenu avec des représentants de cette tribu à une séance ultérieure.

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**CERD, CERD/C/SR.1781 (2006)**

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-ninth session

SUMMARY RECORD OF THE 1781st MEETING

Held at the Palais des Nations, Geneva,  
on Wednesday, 16 August 2006, at 10 a.m.

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PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES  
AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

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United States of America

37. Ms. JANUARY-BARDILL said that the Committee had asked the Government of the United States of America for information about the situation of the Western Shoshone people, who had been the subject of two requests for urgent action. The information had not been received by the date requested, July 2006, and the working group therefore needed to discuss the action which should be taken.

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## **CERD, A/61/18 (2006)**

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### **CHAPTER II. PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES**

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19. The following decisions were adopted by the Committee under the early warning and urgent procedures at its sixty-eighth and sixty-ninth sessions:

#### **A. Decision 1 (68) on the United States of America**

##### **A. Introduction**

1. At its sixty-seventh session held from 2 to 19 August 2005, the Committee considered on a preliminary basis requests submitted by the Western Shoshone National Council, the Timbisha Shoshone Tribe, the Winnemucca Indian Colony and the Yomba Shoshone Tribe, asking the Committee to act under its early warning and urgent action procedure on the situation of the Western Shoshone indigenous peoples in the United States of America.

2. Considering that the opening of a dialogue with the State party would assist in clarifying the situation before the submission and examination of the fourth and fifth periodic reports of the United States of America, due on 20 November 2003, the Committee, in accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, invited the State party, in a letter dated 19 August 2005, to respond to a list of questions, with a view to considering this issue at its sixty-eighth session.

3. Responding to the Committee's letter, the State party, in its letter dated 15 February 2006, stated that its overdue periodic reports are being prepared and that they will include responses to the list of issues. The Committee regrets that the State party has not undertaken to submit its periodic reports by a specific date, that it has not provided responses to the list of issues by 31 December 2005 as requested, and that it did not consider it necessary to appear before the Committee to discuss the matter.

4. The Committee has received credible information alleging that the Western Shoshone indigenous peoples are being denied their traditional rights to land, and that measures taken and even accelerated lately by the State party in relation to the status, use and occupation of these lands may cumulatively lead to irreparable harm to these communities. In light of such information, and in the absence of any response from the State party, the Committee decided at its sixty-eighth session to adopt the present decision under its early warning and urgent action procedure. This procedure is clearly distinct from the communication procedure under article 14 of the Convention. Furthermore, the nature and urgency of the issue examined in

this decision go well beyond the limits of the communication procedure.

## B. Concerns

5. The Committee expresses concern about the lack of action taken by the State party to follow up on its previous concluding observations, in relation to the situation of the Western Shoshone peoples (A/56/18, para. 400, adopted on 13 August 2001). Although these are indeed long-standing issues, as stressed by the State party in its letter, they warrant immediate and effective action from the State party. The Committee therefore considers that this issue should be dealt with as a matter of priority.

6. The Committee is concerned by the State party's position that Western Shoshone peoples' legal rights to ancestral lands have been extinguished through gradual encroachment, notwithstanding the fact that the Western Shoshone peoples have reportedly continued to use and occupy the lands and their natural resources in accordance with their traditional land tenure patterns. The Committee further notes with concern that the State party's position is made on the basis of processes before the Indian Claims Commission, "which did not comply with contemporary international human rights norms, principles and standards that govern determination of indigenous property interests", as stressed by the Inter-American Commission on Human Rights in the case *Mary and Carrie Dann versus United States* (Case 11.140, 27 December 2002).

7. The Committee is of the view that past and new actions taken by the State party on Western Shoshone ancestral lands lead to a situation where, today, the obligations of the State party under the Convention are not respected, in particular the obligation to guarantee the right of everyone to equality before the law in the enjoyment of civil, political, economic, social and cultural rights, without discrimination based on race, colour, or national or ethnic origin. The Committee recalls its general recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources, and expresses particular concern about:

(a) Reported legislative efforts to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers;

(b) Information according to which destructive activities are conducted and/or planned on areas of spiritual and cultural significance to the Western Shoshone peoples, who are denied access to, and use of, such areas. It notes in particular the reinvigorated federal efforts to open a nuclear waste repository at the Yucca Mountain; the alleged use of explosives and open pit gold mining activities on Mont Tenabo and Horse Canyon; and the alleged issuance of geothermal energy leases at, or near, hot springs, and the processing of further applications to that end;

(c) The reported resumption of underground nuclear testing on Western Shoshone ancestral lands;

(d) The conduct and/or planning of all such activities without consultation with and despite protests of the Western Shoshone peoples;

(e) The reported intimidation and harassment of Western Shoshone people by the State party's authorities, through the imposition of grazing fees, trespass and collection notices, impounding of horse and livestock, restrictions on hunting, fishing and gathering, as well as arrests, which gravely disturb the enjoyment of their ancestral lands;

(f) The difficulties encountered by Western Shoshone peoples in appropriately challenging all such actions before national courts and in obtaining adjudication on the merits of their claims, due in particular to domestic technicalities.

### C. Recommendations

8. The Committee recommends to the State party that it respect and protect the human rights of the Western Shoshone peoples, without discrimination based on race, colour, or national or ethnic origin, in accordance with the Convention. The State party is urged to pay particular attention to the right to health and cultural rights of the Western Shoshone people, which may be infringed upon by activities threatening their environment and/or disregarding the spiritual and cultural significance they give to their ancestral lands.

9. The Committee urges the State party to take immediate action to initiate a dialogue with the representatives of the Western Shoshone peoples in order to find a solution acceptable to them, and which complies with their rights under, in particular, articles 5 and 6 of the Convention. In this regard also, the Committee draws the attention of the State party to its general recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources.

10. The Committee urges the State party to adopt the following measures until a final decision or settlement is reached on the status, use and occupation of Western Shoshone ancestral lands in accordance with due process of law and the State party's obligations under the Convention:

(a) Freeze any plan to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers;

(b) Desist from all activities planned and/or conducted on the ancestral lands of Western Shoshone or in relation to their natural resources, which are being carried out without consultation with and despite protests of the Western Shoshone peoples;

(c) Stop imposing grazing fees, trespass and collection notices, horse and livestock impoundments, restrictions on hunting, fishing and gathering, as well as arrests, and rescind all notices already made to that end, inflicted on Western Shoshone people while using their ancestral lands.

11. In accordance with article 9 (1) of the Convention, the Committee requests that the State party provide it with information on action taken to implement the present decision by 15 July 2006.