

**ADDITIONAL QUESTIONS SUBMITTED TO THE HUMAN RIGHTS COMMITTEE MEMBERS FOR CONSIDERATION – REGARDING QUESTION 27 INDIGENOUS PEOPLES**

**PROPOSED QUESTIONS FOR THE UNITED STATES:**

1. **QUESTION:** Further to the undertaking by the US under the UPR paragraph 83: to implement concrete measures consistent with the Covenant on Civil and Political Rights, to ensure the participation of indigenous peoples in the decisions affecting their natural environment, measures of subsistence, culture and spiritual practices: **Why hasn't the United States fully realized the concept of consultation and consent under Executive Orders 13007 and 13175? Why is the United States satisfied with “pro forma” meetings on consultation without substantively addressing the rights of Indigenous Peoples and Nations via free, prior and informed consent, especially when it relates to their sacred places? For example with specific reference to sacred places such as Mount Taylor, the San Francisco Peaks, Red Butte, Black Hills, Hickory Ground, Western Shoshone and Medicine Lake.**
  
2. **QUESTION:** The United States issued a Statement of Support for the UN Declaration on the Rights of Indigenous Peoples in December 2010. However, they have not endorsed nor implemented the Declaration in any substantive or coordinated manner, with the full participation of Indigenous Peoples and Nations. **Why has the United States not followed up on its commitment to “adopt and implement the UN Declaration on the Rights of Indigenous Peoples” further to their UPR Report in paragraph 202?**
  
3. **QUESTION:** What is the United States doing to address the fact that the Executive Orders on Consultation and Sacred Sites and related policy statements exclude Indigenous Peoples and Nations that ARE NOT **FEDERALLY RECOGNIZED**. Some examples include Indigenous Peoples, Nations and Tribes of Alaska, Hawaii and several in California.

CONSULTATION – WHITE HOUSE PROGRESS REPORT - INFORMATION

This issue was not addressed in the verbal presentation of the United States.

The United States referred the Committee Members to the *2013 White House Tribal Nations Conference Progress Report* (issued by the Executive Office of the President – published in March of 2014) herein-after the “*White House Progress Report*”.

This March 2014 *White House Progress Report* says that Attorney General Eric Holder approved a *Policy Statement on Tribal Consultation for the Department of Justice (DOJ)* in August of 2013. The stated purpose of this Policy Statement is to “implement the Executive Order on Consultation”.

Regarding President Obama's High level meetings with Tribes – these are actually a part of the White House Tribal Consultations – The experience of Indigenous Peoples are that these are “pro forma” meetings, with no real interaction or exchange, dialogue or outcomes. Trust responsibilities of the US Government are frequently violated through the processes of these high level meetings.

### SACRED AREAS and the WHITE HOUSE PROGRESS REPORT

Here are the excerpts of the Report on Sacred Areas:

#### *Protection of Sacred Sites and Repatriation of Human Remains and Cultural Items*

*The Bureau of Land Management (BLM) is working with tribes to facilitate the reburial of repatriated Native American ancestors on BLM public lands in areas with limited risk of future disturbances and are also easily accessible to tribes. BLM works with tribes to identify ways that objects recovered through law enforcement activities can be used to educate the public on the problem of looting sites on public lands and the cultural losses to tribes when such looting occurs. The goal is to help ensure that traditional sites and burials remain undisturbed and that cultural objects do not fall into the hands of private collectors.*

#### *Interagency Sacred Sites Memorandum of Understanding*

*Tribal leaders raised concerns about the destruction of sacred sites during several Tribal Nations Conferences. In response to these concerns, DOI, USDA, DOD, and DOE and the Advisory Council on Historic Preservation (ACHP) entered into a memorandum of understanding (MOU) on December 5, 2012, to work collaboratively to address the protection of and Indian access to sacred sites. The MOU required signatories to develop an action plan and on March 5, 2013, the plan was released and implementation began immediately. There have been extensive outreach efforts including the development of a website. The signatories began collecting information about training and management practices and analyzing federal statutes and executive orders related to sacred sites protection. A report documenting the signatories' progress in implementing the MOU and Action Plan will be released in mid-January.*

Problem: EO 13007 on Sacred Sites says that the sites are to be in a narrow linear location, Indigenous Peoples proposed a more inclusive definition of such areas, and were told outright “NO” that such encompassing and inclusive definitions of sacred areas and places would not be accepted further to the Interagency MOU on Sacred Sites.

Here is a quote from the ***Navajo Nation 2013 Shadow Report: Regarding the United States of America fourth periodic report on the International Covenant on Civil and Political Rights*** as it relates to indigenous peoples' sacred places and free, prior and informed consent:

In December 2012, the Forest Service stated in its final report to Native Americans after reviewing its existing policies and procedures that the Forest

Service “does not, by itself, change policy or have any effects... and does not constitute final agency action.” The final report further said, *the “Forest Service does not intend for the concept of sacred places to replace sacred sites in [Executive Order] 13007” because “sacred sites are limited to discrete, specific locations, while a sacred place might be larger scale geographic feature” such as the [San Francisco] Peaks.* The definition limiting sacred sites to “specific, discrete, narrowly delineated locations” of “religious significance” is too narrow and inconsistent with the Navajo Nation and Navajo people’s view of sacredness. The use of “sacred places” is the appropriate terminology when referring to areas identified by Native Americans as having a religious, spiritual and cultural significance. The terminology “sacred places” does not diminish the size and element of a sacred location like the terminology of “sacred sites;” and is an accurate way of referring to places in their entirety such as the Peaks. The narrowness and inconsistency of the definition of a sacred site jeopardizes the sacred places for the Navajo people.