Testimony Before the United Nations Human Rights Committee

My name is Lucy Simpson and I am a staff attorney with the Indian Law Resource Center. I would like to thank the Committee for allowing me the opportunity to present this briefing.

In a joint effort between the Indian Law Resource Center, the Western Shoshone Defense Project and the University of Arizona’s Indigenous Peoples Law and Policy Program, we submitted a detailed report to this Committee on the United States’ treatment of indigenous peoples generally and the Western Shoshone in particular. Today, I make this presentation to you today on behalf of these organizations.

In addition to our written report, I have prepared two briefing papers, one summarizing the unjust elements of Federal Indian law and the other summarizing the history of the Western Shoshone struggle for justice. I ask that you refer to our full report or the summaries found within the two briefing papers should you require more detailed information about the discriminatory legal policies impacting indigenous peoples within the United States generally and the Western Shoshone in particular. Today, I would like to take this opportunity to brief you about the latest developments that have occurred regarding the ongoing plight of the Western Shoshone people and the recent findings of the UN Committee on the Elimination of Racial Discrimination.

Just days ago, on March 10, CERD issued an historic decision urging the United States to “freeze,” “desist,” and “stop” actions being taken or threatened to be taken against the Western Shoshone people. This decision challenges the United States government’s assertion that it owns Western Shoshone traditional lands. These traditional lands cover approximately 60 million acres, stretching across what is now referred to as the states of Nevada, Idaho, Utah and California.

Western Shoshone rights to these lands - which they continue to use and occupy today - were recognized by the United States in 1863 by the Treaty of Ruby Valley. The United States now claims that these same lands are federally owned, due to the finding by a discriminatory federal administrative process that denied the Western Shoshone people fair access to U.S. courts. The Western Shoshone traditional land base has been and continues to be used by the United States for military testing, open pit cyanide heap leach gold mining and nuclear waste disposal planning. In addition, the United States has engaged in military-style seizures of
Shoshone livestock, trespass fines in the millions of dollars and ongoing armed surveillance of Western Shoshone who continue to assert their original treaty rights.

This recent CERD decision is historic in that it is the first time a United Nations Committee has issued a full decision against the United States regarding its discriminatory Federal Indian law and policy. The decision expressed particular concern that the United States’ basis for claiming federal title to Western Shoshone land rests on a theory of “gradual encroachment” and the discriminatory administrative process of the Indian Claims Commission. CERD pointed out that the Inter-American Commission on Human Rights also found that the Indian Claims Commission process violated “international human rights norms, principles and standards that govern determination of indigenous property interests.” CERD also expressed concern that the United States has not respected its obligation to guarantee the right for everyone to equality before the law in their enjoyment of civil, political, economic, social and cultural rights. Finally, CERD expressed concern regarding the rights of the Western Shoshone to own, develop, control and use their communal lands, territories and resources. Essentially, the decision highlights the human rights violations that the United States is committing against the Western Shoshone people as we speak.

Although CERD’s decision is based on the United States’ violation of the Convention on the Elimination of All Forms of Racial Discrimination, I would posit that the United States’ actions also violate corresponding obligations under the Covenant on Civil and Political Rights. This Committee can look to past and current actions and omissions of the United States to find its disregard for its obligations under the Covenant. First and foremost, the treatment of Western Shoshone land rights as “extinguished” by the United States is inconsistent with article 1 of the Covenant. In this Committee’s last report on the United States, it noted its concerns that U.S. laws on extinguishment and unilateral abrogation of treaties are inconsistent with obligations under the Covenant and recommended “that steps be taken to ensure that previously recognized aboriginal Native American rights cannot be extinguished”. Next, the discriminatory process by which the United States made its determination that these lands were extinguished demonstrates a violation of equal protection guaranteed under article 26. As noted by CERD, the Inter-American Commission also concluded that the Western Shoshone were not afforded their right to equal protection of the law under Article II of the American Declaration on the Rights and Duties of Man. Finally, in violation of protections of cultural rights guaranteed under article 27 of the Covenant, the Western Shoshone have continually been denied effective participation in decisions affecting their traditional lands and resources. These acts by the United States violate the Western Shoshone’s right to exert self-determination over their lands and resources, and intrudes upon their exercise of culture through the continual interference with their relationship to their traditional lands.

The United States has historically demonstrated its refusal to fulfill its obligations to the Western Shoshone people under international human rights law. This denies the Western Shoshone people the legal remedy against discriminatory laws and policies to which they are manifestly entitled. It also threatens their traditional land and resources and the very survival of their culture.
The ongoing struggle of the Western Shoshone people is but one example of how the United States’ discriminatory policies of Federal Indian law detrimentally affect indigenous communities within the United States. To this day, indigenous peoples of the United States continue to live under a regime of discriminatory and unjust laws and policies. This unjust framework of law, which so profoundly determines the welfare of indigenous peoples in the United States, must be reformed if indigenous peoples are to rebuild their economies, maintain their cultures, and contribute to the attainment of a pluralistic society. I call upon this Committee to take a serious look at the unjust and unfair policies of the United States and how these policies are harming the indigenous peoples of this country.

In the time since the Inter-American Commission on Human Rights issued its final report in 2002 and CERD issued its concluding observations in 2001, the United States has done nothing to attempt to remedy the human rights violations identified by these bodies. Instead, the U.S. has intensified its tactics to intimidate and threaten the Western Shoshone. It is our hope that with this newest decision by CERD, the United States will begin its own serious review of its discriminatory policies affecting the indigenous peoples of this country.

In closing, I hope that this Committee and the larger international community will support the Western Shoshone people, and all similarly situated indigenous peoples within the United States, and demand that the United States fully comply with its human rights obligations to indigenous peoples.

Thank you.