

# INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

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## **Statement by MARTIN AVERY, Esq.**

### **Board Member of the Indian Law Resource Center**

#### **Before the United States Department of State Window Rock, Navajo Nation (Arizona)**

**March 17, 2010**

Good morning. My name is Martin Avery, and I am a citizen of the Navajo Nation and a board member of the Indian Law Resource Center, a non-profit law and advocacy organization dedicated to protecting and promoting indigenous peoples' human rights. I am from Coyote Canyon, New Mexico which is located on the eastern part of the Navajo Nation. I am an attorney with membership in the bar associations of the Navajo Nation and the State of New Mexico.

On behalf of the Indian Law Resource Center, it is my pleasure to make the following statement. I am providing a paper copy of my statement, along with additional comments prepared by the Indian Law Resource Center.

For many Navajos and other Native Americans, human rights law is not an issue that regularly receives much attention. Most Indian individuals are more concerned about putting food on the table, keeping warm on cold winter nights, finding employment, and getting to work and school on unpaved roads – issues of basic survival and infrastructure. What too often goes unsaid is that the plight of most Native Americans is directly attributed to the persistent refusal of the United States to honor and respect the human rights of Native American peoples and their governments.

I grew up in a traditional Navajo hogan with a dirt floor and no running water or electricity. We used a wood stove for heating and cooking. Still today, the home I grew up in does not have indoor plumbing and electricity – things that most everyone else in America takes for granted. This lack of basic infrastructure is not limited to a few homes throughout the Navajo Nation. It is rampant throughout our Indian communities.

Our communities also suffer from other infrastructure delinquencies, such as few paved roads. This winter the Navajo Nation, as well as the Cheyenne River Sioux and other Indian nations, were crippled by heavy snows. The lack of paved roads led to impassable muddy roads when the weather did finally warm up. These conditions left many people, including children and elders, without heat, food or access to medical care.

We suffer from high unemployment rates, averaging between 35% to 50% depending on the season. These issues are not limited to the people of the Navajo Nation. They are rampant throughout Indian country. It has been well documented that Native Americans suffer from chronic unemployment, and poverty. Many do not finish high school. In fact, the Secretary of Interior, Ken Salazar, during the November White House Tribal Nations Conference announced the depressing statistic that only 50% of our Indian youth will graduate from high school and even fewer will attend college.

Many of our people suffer from chronic health care issues, and we are seeing resulting symptoms of these conditions in the form of suicide, alcoholism, domestic violence, and even gang proliferation.

An alarming statistic announced by the U.S. Department of Justice, and recently condemned by the UN Committee on the Elimination of Racial Discrimination, is that one in three Native American women will be raped in their lifetime. Women form the backbone of our Native communities, and this violence disrupts the stability and productivity of their families and entire Indian nations. The prevalence of violence against Native women means Native children are much more likely than other children to witness or experience violence in their lifetimes, opening the doors to increased risks for a number of lifelong health and behavioral issues. Studies show that children who are victims of or witness domestic and other kinds of violent assaults are more likely to engage in risky behaviors, such as drinking and illicit drug use; they have more health problems, and are more likely struggle educationally and economically throughout life. Children who experience violence face a significantly higher risk of teen pregnancy, suicide, and drug abuse, and are more likely to become violent perpetrators themselves. These increased risks are corroborated by the statistics on Indians in the United States: Native teens have birthrates nearly 50% higher than non-Indian teens. They are more likely to drop out of high school and more likely to commit suicide. They start drinking at a younger age, drink more frequently and heavily, and face more negative consequences of drinking than other youths. Alcohol related death rates for Native youth are roughly 17 times the average of all other races.

All of these statistics and conditions can be attributed to the deplorable treatment of Native Americans by the United States throughout its history.

Deeply imbedded in United States Indian law and policy are discriminatory doctrines that deny American Indian tribes and nations basic security in their homelands, deny them effective control over the use and development of their resources, and even deny them the right to exist as tribes except at the sufferance of Congress. Most of these doctrines have been created by federal court decisions. Under these federal legal rules, Indian and Alaska Native tribes are denied certain important constitutional rights that are accorded to all other groups and individuals in the United States.

For example, the lands and resources owned by tribes “since time immemorial” – owned by aboriginal title – can be taken by the government for any reason, without

compensation and without due process of law. This is the decision made by the Supreme Court in the case of *Tee-Hit-Ton Indians v. United States*.

Another example goes to the heart of United States law and policy towards Native Americans. Congress maintains that it has the power to terminate Indian nations at any time. In other words, Indian nations and tribes have no real right to exist under US law and we exist at their will.

The United States also insists that it may freely violate treaties made with Indian nations and tribes. During the recent financial crisis it was interesting to hear federal officials with respect to bonuses being paid to bankers state unequivocally that the federal government cannot breach its contracts with others. But it does so, often, in the case of Indian treaties. Treaties are contracts but the United States violates them regularly with impunity.

The United States has stated its policy of increased tribal self-governance and self-determination, but it has failed to provide the necessary tools and resources to make these policies truly meaningful. Despite this stated policy, we continue to see the United States' disrespectful treatment of Native governments with respect to its failure to provide adequate funding for tribal programs, failure to accord tribal nations equality before the law, failure to recognize tribal rights to Native lands, failure to recognize our rights to cultural preservation, and failure to recognize our rights to our Native resources. This is discriminatory and wrong. For indigenous peoples, the right of self-determination is closely associated with the right freely to control our lands and natural resources.

The persistence of this framework of truly unjust and unworkable law has deprived the Native peoples of this country of the opportunity to correct the social and economic injustices that they suffer. It is responsible, more than any other factor, for the long continuing poverty, political marginalization, and social ills that are almost universal in Indian country.

The United States Congress apologized this past December for past maltreatment of Native Americans. But saying you're sorry should mean that you won't do it again- that you will make changes in the law to ensure that Indian peoples are protected from such acts in the future. Unfortunately, the federal government has not done so for Native peoples. This is similar to a bully punching you, saying he is sorry, then punching you again and so on.

I was involved as a representative of the Navajo Nation in the 1990's when the United Nations began work on the Draft Declaration on the Rights of Indigenous Peoples. In September 2007, after more than a decade of hard work the Declaration was adopted by the United Nations General Assembly by a vote of 143 in favor, 4 against and 11 abstaining. The four nations that voted against the Declaration were Canada, New Zealand, Australia and the United States. Recently, Australia has announced its adoption of the Declaration leaving only New Zealand, Canada and United States as the stubborn holdouts against the rest of the world. From a Native American perspective, the no vote

by the United States is not surprising given its history of discriminatory treatment of Indian nations and tribes. But, given the United States' assumption of a strong leadership position in the world, it is shameful.

Adoption of the UN Declaration by the United States would be viewed by Indian country and the indigenous community as a sincere and genuine commitment to respect the most basic rights to fairness, equality before the law, respect for treaty commitments, rights to our lands and resources, rights to education and cultural preservation, and perhaps most importantly, our rights to self-determination and self-governance for Indian peoples. If the United States is unwilling to formally adopt the Declaration we can only view it as a reaffirmation of its deplorable history.

On the home front, Congress should adopt a resolution promising never to again take Indian or tribal property without due process of law or fair market compensation. Never again should Congress terminate any Indian nation or tribe and never again violate or abrogate a treaty with an Indian nation without making full compensation and without first obtaining their informed consent. Congress should examine and change all federal laws and regulations and court made laws that deprive Indian nations and tribes of constitutional rights and their rights provided under international law.

Without such a commitment from Congress, the federal policy of self-governance and self-determination will remain an illusion to Indian people. As a result Native Americans may never attain the benefits and opportunities promised by the United States.

Thank you for the opportunity to make this statement.