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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[16 March 1998]

1. The International Indian Treaty Council (IITC) has for many years raised the issue of indigenous peoples and their right to self-determination before the Commission on Human Rights, many times addressing this issue in the context of article 1 common to the instruments of the International Bill of Human Rights, on the right to self-determination. We have informed the Commission of situations where there is lack of recognition and observance of this right of all peoples, due to the continuation of colonialism in so-called “successor” or “independent” States.

2. Nowhere is the struggle for the observance of this right so current as the United States of America. There, in spite of Presidential directives to Federal agencies directing them to deal with indigenous peoples on nation-to-nation basis, in spite of legislation establishing the sovereignty of indigenous peoples, the United States is embarked upon a policy of the diminution of indigenous rights, and an attack on indigenous lands.

3. State Governments within the United States federal systems are seeking to curtail hunting and fishing rights, and other aboriginal rights, seeking to tax Indian tribes, and taking other measures that directly contravene the proscription contained in article 1 common to the instruments of the Universal Bill of Human Rights, that peoples cannot be denied their own means of subsistence. States within the United States federal system, with the active complicity of the United States Supreme Court, are severely affecting the right of peoples to establish their own visions of development.

4. Indeed, although the Supreme Court of the United States ruled in the “GO-Road” decision, that the Federal Government can do what it wants on “its” land, to the point of irreparable damage of sacred areas and impairment of the practice of religion by indigenous peoples, it recently ruled, with regard to the native village of Venetie, located in the State of Alaska, that indigenous peoples within the United States cannot do what they want on their land.

5. On 25 February 1998, the United States Supreme Court issued a unanimous opinion holding that the Venetie Tribe's 1.9 million acres of ancestral land are no longer under the governmental jurisdiction of the tribe. This decision represents a breach of honour since the Venetie Tribe had been promised that it would always be able to keep and govern their lands.

6. The litigation centred on the proper interpretation of the Alaska Native Claims Settlement Act of 1971, the largest tribal land claims settlement in American history. Under that Act, Congress extinguished Alaska tribal claims to 340 million acres in return for a cash payment of 962.5 million dollars and secure title to 44 million acres selected under a complex formula.

7. But in an unprecedented move in federal tribal relations, the United States Congress directed that the 44 million acres be conveyed not to the tribes, but to new native corporations which the tribes were required to establish under State law. Although the tribes did not consent to the transfer of their lands to State-chartered corporations, some 200 village tribes in the State of Alaska were required to take part in the land claims settlement.

8. The particular conflict that gave rise to litigation involved the application of the 1971 Settlement Act to the Venetie Tribe of Neetsaii' Gwich' in Indian, a remote Athabascan Tribe that inhabits a vast area north of the Arctic Circle and hundreds of miles away from Alaska's major population centres. Accessible only by air, boat, snowmobile or dog sled, tribal members largely live a traditional life based on hunting, fishing and trapping, and the tribal council administers all essential governmental services other than the federally supported local school.

9. In 1943, the Secretary of Interior set aside a 1.9 million acre reservation in order to protect the Tribe from outsiders encroaching on tribal hunting and trapping grounds. In the late 1960s, the Venetie Tribe opposed the evolving land claims settlement legislation.

10. The Tribe wrote to Congress to retain its reservation, even if doing so meant giving up the cash settlement. Congress obliged and the Tribe received no share of the monetary settlement. Still, Congress required that the land initially be conveyed to two State-chartered corporations established by the Tribe for its tribal citizens. Once the lands were conveyed, the corporations immediately reconvened the lands back to the Venetie Tribe, which continues to own the land today.

11. In ruling against the Tribe's continued right to tax, the Court reasoned that when a reservation does not exist, Indian tribes can only continue to govern their lands if those lands qualify as a “dependent Indian community” under a 1948 federal law known as the “Indian country” statute.

12. Relying heavily on two Supreme Court cases decided at early in the century, the Court interpreted that term narrowly to require that the Federal Government must have “set apart” the lands “for the use of Indians as such”, and that the Government must retain “superintendence” and “control” over how the land is used and developed. The Court then rules that Venetie's lands could not satisfy this standard because Congress initially conveyed the lands to the corporations for whatever use they might choose (and not just “for the use of Indians as such”), and because Congress had deliberately chosen to forego any control over how those choices would be made.

The Court's ruling makes clear Congress' hidden agenda in the Settlement Act to terminate tribal powers and sever the tribes from their land base.
