Submission

THE RIGHT OF INDIGENOUS INDIVIDUALS TO HOUSING AS A HUMAN RIGHT

Dine` bi Siihasin
An Unincorporated Association in the Navajo Nation

Introduction

Dine` bi Siihasin is an unincorporated association of Navajo individuals and nonprofit organizations that was organized in January of 2012 to advocate for the human right to housing within the Navajo Nation. This is a submission to the conference and consultation with the United Nations Special Rapporteur on the Rights of Indigenous Peoples held on April 26-27, 2012 to put forward the views of the organization on the international human rights it advocates. They include the human right to housing; the human right to organize to secure human rights; and claims to the protection of human rights by the Navajo Nation as a "state" with treaties with the United States of America. This submission explains the basis for those claims under the Declaration on the Rights of Indigenous Peoples.

The Declaration Protects Individual Rights

The Declaration on the Rights of Indigenous Peoples, United Nations General Assembly Resolution No. A/61/l. 67 (7 September 2007), is clear about the fact that it does protect the rights of indigenous peoples as individuals. The eighth preamble paragraph recognizes "the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States," and the ninth welcomes "the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur." Dine` bi Siihasin is one such organization of indigenous peoples that asks for respect and the promotion of the human rights of Navajos to decent housing and to regularity in programs that provide it, and it gives notice that it has organized as an association of indigenous individuals to seek, in particular, social and cultural enhancement of all Navajos with the end of ending discrimination and oppression in the form of the mismanagement of housing programs in the Navajo Nation.

The Declaration Applies to the Navajo Nation as a "State"

The nineteenth preamble to the Declaration states that one of the purposes of the document is to encourage States to comply with all obligations under international instruments, and the fourteenth preamble notes that rights affirmed in treaties between States and indigenous peoples are matters of international concern, interest, responsibility and character.

When General William T. Sherman and Colonel Samuel F. Tappan, as treaty commissioners,

negotiated the Navajo Nation's Treaty of June 1, 1868 on May 28-30, 1868 they initially negotiated with about 7,000 Navajos before requiring the appointment of a "chief" and council for final negotiations and a treaty. Of the 29 Navajos who signed the Treaty on June 1, 1868, 17 were individuals who were not identified as members of the "Council." That recognized the fact that the Treaty was in fact negotiated with Navajo individuals who were informally organized, and that arrangement remains through today.

The Navajo Nation was, as of June 1, 1868, a "state level" society and, as the United Nations studies show, given that those who negotiated and concluded treaties with indigenous peoples saw them as "states," the Navajo Nation was, and is, a "state" for purposes of compliance with the Declaration on the Rights of Indigenous Peoples.

Indian Country Today is a recognized Indian Country editorial organ, and on January 28, 2008 it published an opinion with the title *Declaration, human rights and equality* and noted that "The international community now recognizes and upholds indigenous rights for all nations and indigenous peoples." *Id.*, A2. The piece went on to conclude that the nation-states will be held to the universal human rights standards in the Declaration "but so will indigenous governments and communities." Why? "This is a sign of full entry into the world human rights movements, but it confers not only protections, but obligations to uphold human rights within indigenous communities, and to observe international human rights standards for all peoples, including non-Indians living in Indian territory." *Id.*

The Navajo Nation is a "state" within the meaning of the Declaration and international human rights standards and indeed, it should observe all human rights standards as a sign of its competence and maturity as a modern state.

Individual Indians Have the Ability to Assert Rights

The ninth preamble to the Declaration welcomes "the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement in order to bring an end to all forms of discrimination and oppression wherever they occur." Article 5 affirms the right of indigenous peoples "to maintain and strengthen their distinct political, economic, social and cultural institutions," and that shows that the right to organize includes many different kinds of organization and that the concept of "civil society" applies within indigenous communities. It applies to the Navajo Nation and its must recognize, listen to and respond to non-profit organizations and non-governmental organizations.

Article 21(1) of the Declaration says that "Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions," including "housing." Article 18 makes it clear that "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions." The first article supports the efforts of Dine` bi Siihasin to advocate for housing rights as a human

right, and the second supports the right to form an association to advocate for rights with the Navajo Nation, the States, counties, municipalities and any other governmental organ, as part of the civil society recognized in Article 18.

Housing is a Human Right

There is growing consensus that among the various human rights, housing is important. As noted, the right to housing is specifically recognized as an indigenous human right in Article 21(1) of the Declaration. There is growing recognition that it is indeed a human right, and there is a framework for exercise of the right in the United States. *See*, Maria Foscarinis, *The Growth of a Movement for a Human Right to Housing in the United States*, 20 Harvard Human Rights J. 35 (2007) and George H. Cortelyou, *An Attempted Revolution in Native American Housing: The Native American Housing Assistance and Self-Determination Act*, 25 Seton Hall Legis. J. 429 (2001) (establishment of the human right and its exercise under U.S. legislation).

Dine` bi Siihasin is an organization of Navajos and Navajo nonprofit organizations that seeks to elaborate and declare human rights under U.S. Indian housing law and to ask that the Navajo Nation recognize such rights to reform its housing statutes and programs.

Conclusion

Din` bi Siihasin asks the Special Rapporteur to give special attention to the following human rights:

1. The right of indigenous individuals to organize as part of indigenous civil society.

2. The fact that Indian nations are included in the obligation to observe the Declaration.

3. The obligation of Indian nations to observe the human right to housing of its individuals.

Respectfully submitted,

Dine` bi Siihasin
P.O Box 2365
Bloomfield, NM 87413