CONSULTATION WITH THE HONORABLE JAMES ANAYA
Special Rapporteur on the Rights of Indigenous Peoples

POINTS ON INDIGENOUS HUMAN RIGHTS IN THE UNITED STATES
BY THE NATIONAL INDIAN YOUTH COUNCIL

The National Youth Council ("NIYC") is a longstanding non-governmental organization accredited to the Economic and Social Council of the United Nations. This brief statement of points on the situation of urban Indians in the United States is prepared for a consultation with Special Rapporteur James Anaya.

Urban Indians in the United States

The United States has, in recent times, consistently ignored the rights and situation of Urban Indians, those American Indians who do not reside within the boundaries of an Indian reservation or lands in "Indian Country." Urban Indians are a significant element of the American Indian population and the most recent figures in *The American Indian and Alaska Native Population: 2010* (January 2012) shows that as of April 1, 2010, in the United States population of 308.7 million persons, 2.9 million or 0.9% of total population were American Indian or Alaska Native. *Id.*, at 3. The American Indian population of the United States largely resides in the West of the continental United States, and 78% of that population resides outside areas reserved for them (called "Indian Country"). *Id.*, 5, 12-13. 67% of individuals who self-identify as American Indian or Alaska Native alone live in an Indian area (a large majority), but 92% of those who self-identify as being of a combination of races or ethnicity live outside those areas. In other words, 92% of the American Indian population that identifies as being Indian and some other ethnicity are Urban Indians.

The government of the United States disclaims any obligation to Urban Indians, yet the Declaration on the Rights of Indigenous Peoples is clear that they possess the full range of human rights, and they are peoples for its purposes. The United States Supreme Court has ruled that individual Indians are the beneficiaries of "the undisputed existence of a general trust relationship between the United States and Indian people." *United States v. Mitchell*, 463 U.S. 206, 225 (19983); *see also Livingston v. Livingston*, 601 F.2d 1110 (10th Cir. 1979); *Peyote Way Church of God v. Thornburgy*, 922 F.2d 1210 (5th Cir. 1991) and *St. Paul Intertribal Housing Board v. Reynolds*, 564 F. Supp. 1408, 1412 (trust responsibility owed to individual Indians). The governmental responsibility to Indians as individuals dates from the initial days of the American Republic and that principle is enshrined in the federal statute that authorizes federal monetary benefits for Indians, The Snyder Act of 1921, Public Law 76-85 (November 2, 1921) (codified at 25 U.S.C. § 13).

Accordingly, Urban Indians are entitled to the full protection of the Declaration on the Rights of Indigenous Peoples, and they also have particular issues to be addressed under that document, including the human right of participation in the farming of policies and laws that include them or should include them; inclusion in the trust responsibility under American Indian Law doctrine; violence against native women; special attention to cultural and spiritual issues; the right to education

and services; and the right to personal sovereignty (a particular issue of the NIYC).

The Right of Participation

The Expert Mechanism on the Rights of Indigenous Peoples is engaged in the process of elaborating the full content of indigenous rights in the Declaration, and among them is the right of participation. It is an element of the right to full, prior and informed consent in governmental action. In the U.S. federal system that includes full participation at tribal, municipal (cities and counties), State and federal levels.

The NIYC has consistently made submissions on various national-federal policies on the right of Indian participation, pointing out the status and situation of Urban Indians under international and municipal law and the trust responsibility owed to Indian individuals, and the United States has consistently limited participation and consultation policies to encompass only elected "Indian leaders" of the various "recognized" United States tribes. That specifically excludes Indian civil society, Indian non-governmental organizations, and urban individuals. The United States position is in violation of international human rights law.

Trust Responsibility

It has been said that American Indians have a social mortgage on all the land, and that is the basis of the unique American Indian Law doctrine of a trust responsibility to Indians; and particularly to individual American Indians and Urban Indians as a group. The trust responsibility to Urban Indians is consistently ignored, and such is discrimination on the basis of race, ethnicity and national origin.

Violence Against Native Women

While there is legislation pending in the United States Congress to address the situation of violence against American Indian women, it does not fully track the findings of the United Nations Committee on the Elimination of Racial Discrimination on that point. That is, the 8 May 2008 report by CERD on the United States report under the International Convention on the Elimination of all Forms of Racial Discrimination notes a high incidence of sexual violence against native women but then makes four areas of recommendations concerning (1) setting up and *adequately* funding prevention and early assistance, counseling and shelter services; (2) providing training for those who work within the criminal justice system to aid women; (3) undertaking information campaigns for native and minority women on their rights and services; and (4) *ensuring* the proper detection, investigation and prosecution of rape and sexual violence. Committee on the Elimination of Racial Discrimination (CERD), Doc. No. CERD/C/USA/CO/6 (8 May 2008), ¶ 26, concluding observations on United States report under Article 9 of the anti-discrimination convention. While there are proposals to expand the criminal jurisdiction of Indian tribes to include non-Indians (a measure likely to be defeated), there are none to assure *adequate* funding of services in Indian Country and nearby off-reservation areas, provide training or inform native women of their rights. One unexamined issue is violence against American Indian and Alaska Native women in border towns and near-reservation

Indian areas, and a close examination of the statistics on the high victimization of native women shows that many such offenses occur off-reservation and against Urban Indian women. These points must be brought to the attention of the United States.

Cultural and Spiritual Issues

The Declaration clearly protects cultural and spiritual rights, and some of the more emergent issues are dealing with the residual effects of Indian boarding schools, the prevention of injurious extractive industry practices (particularly including uranium mining), and the protection of sacred sites and places where there are spiritual and religious usufructuary rights (e.g. right to prevent artificial snow-making in an abusive manner on the San Francisco Peaks in Arizona and the right of cultural status for Mt. Taylor in New Mexico to modify uranium extraction and milling activities). More attention must be given to such rights, with Urban Indians having a place at the table to do so.

Education and Other Services

The federal government has been consistently cutting education and health services for Urban Indians, and there is no full recognition on the part of either the federal government or States that there exists a trust obligation to Urban Indians to provide such services. Significant education for governmental leaders is required to address this point.

Personal Sovereignty

The NIYC has made the point to the Expert Mechanism on the Rights of Indigenous Peoples that among the human rights held by American Indians, and particularly Urban Indians, there is a right to "personal sovereignty." That is an individual right for all to fully develop their individual capabilities and talents in an environment that supports the individual and nourishes his and her ability to full develop and function as an indigenous individual. There must be recognition of that right and an elaboration on its meaning and means to address it.

Respectfully submitted,

Cecelia Belone, President
National Indian Youth Council
A Non-Governmental Organization accredited to ECOSOC