

**YACHAY WASI Sacred Sites Event - SUBMISSION 16 – USA - Received April 22, 2006**

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**CASE STUDY OF SPIRIT MOUNTAIN, A SACRED PLACE**

II. Conclusions:

“From a traditional perspective, the health of our Peoples cannot be separated from the health of our environment, the practice of our spirituality and the expression of our inherent right to self-determination, upon which the mental, physical and social health of our communities is based.”

Spirit Mountain in Montana, is now reduced to a contaminated pile of mine tailings. It had provided for the biological diversity, the food, clean water and the spiritual well-being of the Gros Ventre Nation Indigenous communities since time immemorial. This devastating loss and irreparable damage have caused far-reaching impacts and consequences that will last for many generations. It is damage and loss known by Indigenous Peoples in all parts of the world.

Called “development,” particularly by transnationals, it is not development in the true sense of the word and clearly not sustainable, but exploitation and destruction of the environment, the biodiversity, the water, the Sacred places and the cultural practices that Indigenous Peoples and communities have kept in balance since time immemorial.

Much has been said and commitments have been made with regard to the importance of mountains to biodiversity, the role of Indigenous Peoples in the maintenance of a sound environment, and the dreadful condition of the world’s water resources. The Convention on Biodiversity and its Contracting Parties make commitments recognizing the role of Indigenous communities in the preservation of biodiversity, most of which are yet to be realized.

Unsustainable resource extraction activities, such as the Pegasus gold mine in northern Montana, are rarely addressed by the CBD COPS or other United Nations fora and even more rarely are condemned. Instead, the international mining industry, the International Council of Mining and Metals (ICMM) has approached the Commission on Sustainable Development, the World Summit on Sustainable Development (WSSD) and the International Union for the Conservation of Nature (IUCN) seeking partnerships and promoting the concept of “sustainable mining,” a basic contradiction in terms. Transnational mineral extraction is inherently destructive and the resources are non-renewable. Indigenous Peoples are not alone in condemning this contradiction. Razil Ismaili, President of the United Nations General Assembly in 1977, recognized that “...mining can never be sustainable and remains one of the most unsustainable practices that threatens communities and the environment.”

There is a disconnection between the Convention on Biodiversity, the legally binding human rights obligations of States, and the actions of transnational corporations such as the Pegasus Mining Corporation, now Apollo Gold.

Recently, The Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions, adopted the draft Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and the Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities. The Akwé: Kon Voluntary Guidelines contain much that is needed to protect Sacred Areas and Sacred life giving water and biodiversity, in the form of impact assessments and environmental impact statements. Critical elements necessary for the protection of Sacred Areas and their biodiversity are found in Part V., General Considerations, including transparency and the right of prior informed consent of the affected indigenous and local communities.

The Akwé: Kon Voluntary Guidelines are meant to be completely voluntary on the part of States parties to be incorporated into environmental assessment legislation and practices. But many of the elements of the Akwé: Kon guidelines are not voluntary at all, and are already legally binding obligations of States. General Recommendation XXIII of the Committee on the Elimination of Racial Discrimination, the treaty monitoring body of the CERD Convention, to which many CBD States parties are bound, states:

“3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized...

“4. The Committee calls in particular upon States parties to:

...(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

“5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.”

General Comment 23 of the Human Rights Committee, the treaty monitoring body of the International Covenant on Civil and Political Rights, with regard to the ICCPR’s Article 27 guaranteeing the freedom to exercise culture, language and religion, echoes the CERD Committee:

3.2 The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article – for example, to enjoy a particular culture – may

consist in a way of life which is closely associated with territory and use of its resources. This may be particularly true of members of indigenous communities.

7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting, and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions that affect them.

These standards have been applied to states parties of these conventions and are legally binding on the 151 States Parties to the ICCPR and 169 States Parties to the CERD Convention and therefore to most of the Contracting Parties to the CDB. And, as this case study was being finalized, Dr. Emil Salim, the eminent person appointed by the World Bank to conduct an Extractive Industries (EI) review, published his report. He recommends to the World Bank that these important human rights standards be observed in their Indigenous policies and operational directives.

### III. Recommendations:

**Recommendation 1:** The International Indian Treaty Council would endorse the Akwé: Kon voluntary guidelines and urge their adoption by the COPS. Observance of Indigenous Peoples' human rights and fundamental freedoms is of critical need and importance.

**Recommendation 2:** Contracting States to the Convention on Biodiversity are called upon to developed national plans pursuant to Article 6 of the Convention. The IITC recommends that an Indigenous expert or working group (with regional representation) be authorized by the Ad Hoc Intersessional Working Group on Article 8(j) and Related Provisions, and the COPS, to examine these national plans. The Indigenous Expert or Regional Working Group, in consultation with national or local Indigenous communities, would report to the COPS on the respective national plans' adherence to the CBD. If no national plan has been adopted by a Contracting Party, the expert or working group could also comment and recommend to the COPS as well as to the State concerned, particularly where such a plan is or would be critical to the biodiversity and Indigenous Peoples in that State.

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