

# THE INDIGENOUS WORLD 2000/2001

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Compilation and editing of this edition of The Indigenous World has been coordinated by Anette Molbech.

**Cover and Typesetting:** Jorge Monrás

**Spanish translation:** Mario Di Lucci

**Spanish proofreading:** Janet Ferrari

**English translation:** Elaine Bolton

**English proofreading:** Elaine Bolton & Birgit Stephenson

**Regional editors:**

*The Arctic & North America:* Kathrin Wessendorff

*South America; Mexico & Central America;*

*The Pacific & Australia:* Diana Vinding

*Asia:* Christian Erni

*Africa:* Marianne Jensen

*Indigenous Rights:* Lola García-Alix

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**INTERNATIONAL WORK  
GROUP FOR INDIGENOUS AFFAIRS**

Classensgade 11 E, DK 2100 - Copenhagen, Denmark

Tel: (+45) 35 27 05 00 - Fax: (+45) 35 27 05 07

E-mail: iwgia@iwgia.org - www.iwgia.org

## THE UNITED STATES OF AMERICA

With the beginning of the new millennium, Native peoples in the United States continue to battle for greater self-determination. Consequently, indigenous peoples are addressing issues concerning the sustainable development of reservation lands, the protection of sacred sites on public and private lands, the ownership of intellectual property, the gambling industry, problems with the Native American Graves Protection and Repatriation Act, and the role of state and federal agencies in tribal affairs.

Demographic realities and health factors are major obstacles to more self-governance and self-sufficiency. According to the 1999 census, 2.4 million people identify themselves as Native Americans. Only 1.7 million of these individuals are actually enrolled in a federally recognized tribe, however. Of enrolled tribal members, approximately 900,000 live on reservations. The remaining population resides mostly in urban areas located in one of six states: Oklahoma, California, Arizona, Alaska, Washington, or New Mexico.

Because of high mortality rates, the average age amongst Native Americans is eight years younger than the population at large. Cardiovascular disease is the leading cause of mortality among Native peoples. Among teenagers and adults in their early twenties, homicide, suicide, accidents, and alcohol-related deaths are endemic problems. The Bureau of Indian Affairs [BIA], the agency that oversees Native affairs, estimates that alcohol-related deaths among Native peoples are four times greater than the United States average.

Unemployment continues to plague Native peoples. Approximately 50% of the adults living on the more than 300 reservations in the United States are unemployed. Of the adults employed, 30% live below the poverty guidelines established by the Department of Health and Human Services. If all enrolled Native Americans are included, unemployment stands at 14.4%, as compared to 6.3% for the rest of the United States' citizens.

In order to fulfill President Clinton's Native American Initiative discussed during his visit to Pine Ridge Reservation in 1999, the Bureau of Indian Affairs (BIA) has requested \$9.4 billion dollars for 2001 from the federal budget. This is 14% more than was requested in 2000. With this money, the BIA wants to strengthen programs critical to the future of Native peoples. These programs include the education of 50,000 elementary and secondary students attending 185 schools; the continuation of 25 tribally-controlled community colleges; the training of law enforcement personnel; social services for the elderly and disabled; better management of trust land re-

sources; the maintenance of over 25,000 miles of roads on rural and isolated reservations; and the implementation of land and water claim settlements.

### **Sustainable Development of Reservation Lands**

Two conditions, chronic to reservations, limit the ability of tribal councils to create opportunities for sustainable development. First of all, reservation land is held in trust by the federal government. As a result, the BIA's responsibility to aid the efforts of Native communities to obtain greater self-determination are in conflict with the agency's role as protector of the reservation's resources. The case Cobell versus Babbitt clearly illustrates this problem. As Secretary of the Interior during Clinton's administration, Babbitt oversaw the Bureau of Indian Affairs. While acting as Secretary of the Interior, Babbitt was sued by Elouise Cobell over the Bureau's management of trust funds. As the lead plaintiff, Ms. Cobell was requesting that the BIA provide the records of over 500,000 individual trust accounts. These accounts include royalties for the leasing of allotted land to ranchers and farmers as well as corporations involved in resource extractions. Currently, the Department of the Interior cannot find records for 100 million trust funds or 2.4 billion dollars held in escrow for Native peoples. In 1999, Royce Lamberth, a Federal District Judge found Babbitt, as well as the Secretary of the Treasury and former Secretary for Indian Affairs, in contempt of court. The judge is demanding that the BIA determine all monies owed to Native peoples, beginning with the Allotment Act of 1887. Presumably, the problem will be resolved by Gale Norton, President Bush's appointment to the Secretary of the Interior.

A second factor that limits a tribe's ability to gain greater self-sufficiency and self-determination is the often abysmal educational facilities on reservations. According to the 2001 BIA budget report, many reservation schools are structurally unsound and/or of insufficient size to educate incoming students. Only 65.5% of Native peoples graduate from high school, compared with 75.2% for the U.S. population as a whole. Even worse is the fact that a mere 9.3% of Native students graduate from college versus 20.3% for the nation at large. Without decent educational opportunities, few businesses are interested in investing resources on reservation lands.

President Bush promised to provide 1 billion dollars to Native American schools during his campaign. Whether this will be reflected in his budget is not yet known. Without these funds, though, it will be impossible for the Federal Government to meet the goals

of the American Indian Initiative [AII]. Introduced during the end of President Clinton's term, the AII's purpose was to channel medical, economic, and educational resources into the reservations.

### **Native American Gaming**

Native American gaming has become for some Native reservations a viable economic alternative to unemployment and high poverty rates. In 1987, the Supreme Court of the United States passed the Cabazon decision, which permitted gambling on Native reservations. Due to the phenomenal growth of the industry, Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988. Basically, this act provided a regulatory framework and supervisory body for reservation gambling. Half of the over two billion dollars generated from this activity is received by ten of the 184 tribes involved in the industry. Although the Supreme Court permitted Native communities the power to determine whether or not they wanted to offer gambling, the IGRA has successfully ruled that a tribe must enter into a compact with the state in which the reservation is located. Some states have been hesitant or even hostile to the possibility of legalized gambling within their boundaries. This has proved to be of major controversy in the state of Nebraska, for example. In this area, the Santee tribe has opened a casino that provides slot machines. Twenty-three jobs have been created as a result. Unfortunately for the Santee, Nebraska legislators perceive the casino as illegal since the tribe never entered into a compact with the state. Each day that the casino remains open causes the tribe to be fined several thousand dollars. Even so, the tribe held a special election and voted to keep the casino operating. Ultimately, they hope that the people of Nebraska will also vote to permit them to continue running a casino. Unfortunately, the legislature has yet to allow the issue to be voted on by the citizens of the state. During the last two years, the state committee responsible for this issue has kept the other legislators, as well as the state's citizens, from voting on the Santees' right to offer gaming.

It is unclear if Gale Norton, in her role as the Secretary of the Interior and the ultimate overseer of Indian affairs, will aid the Santees' struggle against the state of Nebraska. Her views on state versus tribal rights are difficult to determine. At the time of her confirmation to Bush's cabinet, Norton stated, "decisions of government are best made by those who are affected. What is true for states is true for tribes. Self-governance is important and I support this as a concept."

## **Environmental Protection of Native Lands**

Beginning in the 1980s and continuing through the 1990s, the Nuclear Regulatory Agency has attempted to entice reservation communities to accept nuclear waste. As an incentive, Native councils willing to listen to various proposals concerning the creation of nuclear dumps were offered financial incentives of several hundred thousand dollars. Because the state of Oklahoma has the most Native communities, with varying amounts of land, these tribes have become the main targets for the agency. In response, 31 tribes in Oklahoma formed the Inter Tribal Environmental Agency [ITEC] to keep these dumps off of their lands. At a national level, Native communities have formed the National Environmental Coalition of Native Americans [NECONA] to help maintain reservations free of nuclear waste dumps.

In May 2000, Native communities in the Mojave Desert of California successfully halted the storage of nuclear waste in Ward Valley. With the help of NECONA and a consortium of environmental groups, the project was stopped in order to protect the desert tortoise and running trails sacred to Native peoples in the region.

Hopefully, the Pyramid Lake Paiute tribe of Nevada will be equally successful in halting the development of a sewage treatment plant by the Truckee Company based in California. According to the Paiute, the 42 million dollar sewage expansion project will negatively impact on the Truckee River and Pyramid Lake. Both of these regions are important to the subsistence needs of the Pyramid Lake Paiute community.

## **Protection of Sacred Sites on Public and Private Lands**

Native peoples have had little success in protecting sacred sites that are not located on tribally-owned land. Invariably, the Supreme Court has ruled against Native peoples on this issue. In 1996, President Clinton addressed the issue by requesting that federal agencies, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. A caveat to these laudable points, however, is the fact that they are mere suggestions. Currently, federal agencies are under no legal obligation to protect sites that affect the usage of lands under their control. As a result, land containing sacred sites can continue to be used according to the mandates of the federal agency regulating the region. If the site is on public lands, it cannot legally be set aside

for the sole purpose of Native activities. According to the Supreme Court, no one ethnic group can be allowed greater access to the nation's public space than any other persons residing in the United States.

In response, some federal agencies, particularly some members of the National Park Service, are providing information to visitors requesting them to respect Native uses of the area. As a result, rock climbers are requested not to use pylons on sacred mountains in the Southwest, California, the Northwest Coast area, and the Black Hills in the Northern Plains. In addition, tourists are asked not to take pictures of Native peoples involved in religious activities at sacred sites on public lands. At this time, a person's adherence to these guidelines is totally voluntary.

### **Land Claims**

Numerous Native communities have fought to regain land illegally taken from them in the past. Although, in 1983, the Timbisha Shoshone Tribe was promised a permanent land base in Death Valley, they have yet to be given any acreage. This battle is currently wending its way through the federal court system. Numerous other Native communities are striving to gain federal recognition and also to obtain ownership of land illegally taken from them. This has led to some infighting between federally and non-federally recognized communities. Since Congress tends to limit the amount of money they appropriate to Native peoples, federally-recognized tribes are concerned that an influx of newly-recognized communities will diminish the amount of monetary resources available. This fear is not unfounded. In general, Congress tends to split the pie into smaller pieces rather than adding money to the whole. Presently, over thirty Native communities are attempting to gain federal recognition. This is an arduous journey, as the community needs to meet numerous criteria to gain federal affiliation.

### **Intellectual Property**

Native peoples are continuing to fight for the right to control the use of their symbols, names, and knowledge. Many names used by professional and amateur sports teams have been appropriated from Native peoples. At the professional level, the Atlanta Braves and the Redskins have yet to change their names even though Native leaders have continually asked them to do so. There is a

similar situation with numerous high school sports teams as well. So far, the courts have ruled that tribal names and symbols are in the public domain and consequently are considered to be unprotected by copyright law.

### **Native American Graves Protection and Repatriation Act**

Passed in 1990, the Native American Graves Protection and Repatriation Act [NAGPRA] protects skeletal remains, burial goods, and ceremonial objects associated with federally-recognized tribes. NAGPRA only covers items that are held by institutions receiving public funds, however. Items owned by private collectors, located on private lands, or taken during battles are not covered by the act. In addition, skeletal remains of unknown tribal affiliation are not covered by the act. In an unprecedented decision, the University of Nebraska agreed to return all unaffiliated remains to Native peoples in the Great Plains. Unfortunately, indigenous communities in the region have yet to come to an agreement on a place for the burial of these individuals. Hopefully, they will design a structure to deal with these individuals of unknown ancestry and return them to the earth.