

Apache Ndé Nneé Working Group

30 April 2017

Committee on the Elimination of Racial Discrimination (CERD)
Human Rights Treaties Division (HRTD)
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RE: Follow up | Urgent Action/Early Warning | U.S.A. Executive Order to Further Construct US-Mexico Border Wall

Honorable United Nations CERD Committee,

The Apache Ndé Nneé Working Group gives its full endorsement and support to the letter of Dr. Eloisa García Tamez (Ndé. Lipan Apache Band of Texas), submitted via the Lipan Apache Women Defense (LAW Defense/LAWD), regarding requests and recommendations urging the Committee to take action on the Follow Up to the Urgent Action/Early Warning as-submitted by Mr. Ariel Dulitzky and his Clinic to the UN CERD Committee on 21 February 2017.

The Apache Ndé Nneé Peoples are currently divided by what is presently known as the United States-Mexico State border, a border that crosses through the historic ancestral lands of the Apache-Ndé-Nneé Peoples. These historic, ancestral lands are the currently-colonized areas known as Texas, New Mexico, Arizona and Northern Mexico.

The Apache Ndé Nneé Working Group would like to bring to light, in support of Dr. Eloisa García Tamez's letter to the CERD Committee, the Shadow and Alternative Reports submitted by the Apache Ndé Nneé Working Group to the UN CERD Committee for the Committee's review of the Holy See (*The Holy See and European Dispossession of Apache-Ndé-Nnee Peoples: A call for truth, disclosure, justice and redress*, Apache-Ndé-Nneé Working Group Shadow Report, UN CERD 88th Session, November 2015: Review of the Holy See, available at http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/VAT/INT_CERD_NGO_VAT_22151_E.pdf) and Spain (*Alternative Report for the CERD Review of Spain*, submitted by the Apache-Ndé-Nneé Working Group, UN CERD 89th Session, April-May 2016: Review of Spain, available at http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ESP/INT_CERD_NGO_ESP_23617_E.pdf).

These Reports address, outline, and explain in detail the historical, legal and political contexts and legacies of the ongoing colonization of the Ndé territories, including regarding the violently militarized colonial line of legal-political-territorial alien domination itself, known as the United States-Mexico border and accompanying border wall. The United States-Mexico border, and the border wall therein, divides Ndé traditional territories, families, and lives and harming Ndé ceremonies, lands, waters, self-determination as well as Ndé Peoples' rightful independence from colonial and alien domination and rule. Excerpts from the Reports culled below.

The Apache Ndé Nneé Working Group reminds the United Nations CERD Committee of the following:

- Indigenous Peoples, within International Human Rights Law, maintain rights including but not limited to rights to living culture, self-determination, traditional territories, family, freedom to move across borders in traditional territories, to teach own culture to own children, health and traditional medicines, sacred sites, peace and dignity, non-aggression, traditional religion and the ending of colonialism (Apache-Ndé-Nneé Working Group, ‘Recommendations’, in *Apache-Ndé-Nneé Shadow Report*, CERD 88th Session: Holy See, p. 13);
- States both past- and currently colonizing Indigenous territories, and especially in such instances where there has been no proper historical remedy, redress, or re-establishing of Indigenous Rights locally/regionally so as to update real life situations to be in accordance with International Law since the development of Indigenous Rights, must be held accountable for their actions and legacies left unaddressed/redressed, ie not remedied, within and regarding the delineated borders and territories of past and current colonialism. (India Reed Bowers, LL.M., ‘Application of the UN CERD Treaty’, in *Apache-Ndé-Nneé Shadow Report*, CERD 88th Session: Holy See, p. 28);
- As a result of violently discriminatory language and concepts therein of the Holy See’s *Inter Caetera*, non-remedied continuation of the legacy of the *Inter Caetera* and its related Bulls and Doctrines, in turn, deeply violates the Human and Indigenous Rights of the Apache-Ndé-Nneé and Indigenous Peoples via discrimination itself, including but not limited to in the forms of violations of right to self-determination in the context of State-federal controlled identification processes and procedures (such as the United States’ federal tribal recognition system), State borders dividing Indigenous Peoples, Tribes and Nations by and with State law, legal-political discrimination by States against traditional Indigenous Leadership and religion therein, concepts of who and who does not have, in accordance with currently-codified State and even international legal interpretations, ‘territorial integrity’ per-Peoples/Nation (i.e. States and not Indigenous Peoples/Tribes/Nations). This results in, among other violations and sufferings, divisions and losses of territorial, political, familial and thus cultural integrities, as can be seen, for example, in the case of the current ongoing expansion proposed for the US-Mexico border wall by the US administration, and lack of full and equal participation in local, national and international decision-making processes. (Bowers, in *Apache-Ndé-Nneé Shadow Report*, CERD 88th Session: Holy See, p. 33).
- Even lack of full equal political status for Indigenous Peoples at the United Nations itself, a State-membership-based institution, can be traced back to and addressed currently as a result of the co-conspiring colonial ‘diplomatic’ racism-based *Inter Caetera* and the resulting relationship between the Holy See, Kingdoms (Spain, etc) and subsequent States (including the United States) therein as self-professed controllers of the political, territorial, legal and moral/spiritual world domain. As a result, Indigenous Peoples, Tribes and Nations, in general, do not have equal access to even the very political-legal institutions that claim to be taking action in the promotion and protection of Indigenous Rights. Such power imbalances further enable State discrimination against Indigenous Peoples, Tribes and Nations both directly and structurally, resulting also in direct and indirect violence. It can be assumed that such a situation is, first and foremost, to protect settler-State territorial integrity and political rights as superior to Indigenous traditional territorial integrity and political rights (witnessed by UNDRIP Article 46(1), in which a Declaration of Indigenous Rights is, in fact, then encompassed by non-Indigenous State rights), despite language and commitment otherwise, as codified in the *Declaration on the Granting of Independence to Colonial Countries and Peoples*, adopted by United Nations General Assembly resolution 1514 (XV) of 14 December

1960. These discriminations deeply harm Indigenous and Apache-Ndé-Nneé life and participation as traditional sovereigns in political and territorial affairs, not least as-evidenced by the United States-Mexico State border and border wall dividing Ndé-Nneé lands and peoples. (Bowers, in *Apache-Ndé-Nneé Shadow Report*, CERD 88th Session: Holy See, p. 43).

Additionally (from 'Appendix' in Apache-Ndé-Nneé Shadow Report, CERD 88th Session: Holy See):

- The militarization of the United States-Mexico border inhibits the culture, health, and autonomy of Indigenous Peoples. [...] The construction of a vast security wall on the Texas-Mexico border based on the purported aim of preventing entry of alleged terrorists, undocumented migrants, and drug traffickers into the United States that involved the Department of Homeland Security disregarding 36 Federal and State Laws in the wall construction, including the National Environmental Policy Act, the American Indian Religious Freedom Act, and the Administrative Act and where the lands on which the Kikapoo Traditional Nation of Texas, the Ysleta del Sur Pueblo (Tigua) nation, and the Lipan Ndé (Apaché) have lived for time immemorial are being victimized by wall construction that occurred with consultation of these respective Indigenous peoples and have uprooted ecological systems and lands while violating sacred cultural sites integral to these communities and preventing such peoples from gaining access to materials needed for traditional ceremonies. The rights of the Lipan Endé (Apaché) in particular warrant serious attention considering that the nation is unrecognized by the U.S. government and has no access to the courts as avenues for redress. It is also worth noting that commercial non-Indigenous enterprises such as the River Bend Golf Resort on the Texas-Mexico border were spared any disruption of their property and operations in the wall construction. (*Ndee-Nnee Alliance Intervention Statement*, United Nations Permanent Forum on Indigenous Issues (UNPFII), 12th Session, 20-31 May 2013, New York)
- When the U.S. used armed and tribunal force to construct the border wall across Ndé family lands on the Texas-Mexico border, and increased the militarization of the Texas border using surveillance technology, drones, military troops, and criminalization of human rights defenders, we took action to protect our people, lands and inherent rights. However, the U.S. obstructed the path to access justice, and Ndé brought the issues to the Inter-American Commission/OAS in 2009. Since 2007, Lipan Apache Women Defense, sanctioned by Elders and hereditary Chief and clan leaders, has raised concerns at the UN PFII, the North Region, the Special Rapporteur on the rights of indigenous peoples, the EMRIP, and other arenas [...] [raising] important questions on the issues of Indigenous Nations which experienced genocidal occupation, military invasion, settler state-sponsored persecution, massive dispossession, imprisonment, massacres, and forced assimilation in the Texas-Mexico border region between 1821-present. (Dr. Margo Tamez, Co-founder, Lipan Apache Women Defense, Co-Director, Emilio Institute for Indigenous and Human Rights, *Kónitsqáíi gokiyaa Ndé: 'Big Water People's Homeland' a shadow of Self-Determination in a bifurcated Traditional Territory*; from 'Strengthening Partnership between States and indigenous peoples: treaties, agreements and other constructive arrangements', Geneva 16-17 July 2012, Organized by the Office of the United Nations High Commissioner for Human Rights, HR/GENEVA/ /SEM/NGOs/2012/BP.7)
- [...] Colonization, nation building, industrialization, repressive and discriminatory tribunals and transnational (across borders) development by European and Euro-American settler societies and settler nations in the Ndé traditional territory have undermined, overthrown, and nearly destroyed the Ndé Peoples' most fundamental institution: the family. Resilience and resistance without recognition, partnership, and access to justice in settler nations' tribunals cannot be sustained. Indigenous Nations are continually threatened by structural violence, marginalization, and the daily threats of poverty, urbanization, and assimilation. (Dr. Margo Tamez, *Kónitsqáíi gokiyaa Ndé:*

'Big Water People's Homeland' a shadow of Self-Determination in a bifurcated Traditional Territory)

Also noting:

While, at this time, Ndé Peoples are not formally seeking independence as per current International Law procedure, we, the Apache Ndé Nneé Working Group, recognize the violence and ongoing historical injustices forced upon the Ndé Peoples, not least upon the Lipan Apache in the case of the US-Mexico border and border wall, under colonial alien domination. In this light, we gently remind the CERD Committee of the ***Declaration on the Granting of Independence to Colonial Countries and Peoples***, General Assembly resolution 1514 (XV) of 14 December 1960, which falls under the CERD Committee mandate and review, and Resolution 1514's commitments to the following (excerpts from GA Resolution 1514, <http://www.un.org/en/decolonization/declaration.shtml>):

- the equal rights of men and women and of nations large and small (Preamble)
- the need for “conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, (Preamble)
- Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations, Convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace, (Preamble)
- all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, (Preamble)
- The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation. (Art. 1)
- All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected. (Art. 4)
- Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom. (Art. 5)
- All States shall observe faithfully and strictly ... respect for the sovereign rights of all peoples and their territorial integrity. (Art.7)

The Apache Ndé Nneé Working Group requests that the CERD Committee:

- **Acknowledge the diversity of Ndé-Nneé juridical personality and political-territorial status(es) affected by the United States-Mexico border and border wall [...] as a result of**

intergenerational and on-going racism, discrimination, and aggressive State policies. Collective Ndé-Nnéé peoples recognize there are sub-jurisdictions within states, such as Texas, or in tribal nations, such as the San Carlos Apache Tribe, which have unique and distinct legal contexts. These contexts and the legal regimes which rule them have determined, without the FPIC of collective Ndé-Nnéé peoples, the political status of Ndé-Nnéé peoples, such as with the U.S. border wall in Kónitsaqáígokíyaa, which effectively separates Ndé-Nnéé from home and place. [...] The Ndé-Nnéé unceded, inherent and inextinguishable relationship as Indigenous proprietary title holders to Kónitsaqáígokíyaa is firmly established by extensive research and sources which have already laid down the legal principles and the lineal ancestry of Ndé-Nnéé prior to European colonization. The current-day bifurcation of Kónitsaqáígokíyaa by the United States and Mexico, and the Holy See's crucial and on-going role in exercising Canon Law jurisdiction on and within Kónitsaqáígokíyaa, as well as European States' and Kingdoms' un-remedied historical legacies in the formation of these alien dominations, is a matter of critical concern. The Apache Ndé Nnéé Working Group has set out a guide for disclosure, the right to know, the right to truth, and the right to justice, working to fulfill Indigenous peoples' right to know, the right to truth, and the right to redress through Ndé-Nnéé cultural, spiritual, historical, and intellectual perspectives in a present-day context. (Dr. Margo Tamez, Apache-Ndé-Nnéé Shadow Report, CERD 88th Session: Holy See, p. 56);

- **Acknowledge that a United States Government's policy/mandate-induced expansion of a United States-Mexico border wall, and without the Free, Prior and Informed Consent (FPIC) of the affected Indigenous Peoples, including the Lipan Apache Band (Ndé), is a continued colonial and genocidal territorial alien domination of the traditional Indigenous Peoples and lands and in direct violation of international law as per the *ending of all forms of colonialism* (CERD preamble and Art. 15, and associated and applicable UN GA Resolutions and UN initiatives, departments, mechanisms, procedures and treaties), as well as all relevant CERD Treaty articles and analyses as provided by Mr. Ariel Dulitzky and his Clinic's submission;**
- Consider again, keeping in mind as per our previous submissions to the CERD Committee, that an Ndé Truth Commission regarding the ongoing colonial domination, legacy and realities within Apache Ndé Nneé territories, peoples and lives is a necessary step in the direction of due remedy for the Apache Ndé Nneé Peoples.

With great respect for the work of the CERD Committee, we thank you for your time and consideration of these crucial matters.

Respectfully,

India Reed Bowers, B.A. LL.M., Indigenous and Human Rights Legal Advocate and Expert

with Dr. Margo Tamez (Lipan Apache), Michael Paul Hill (San Carlos Apache), and Lorraine Garcia (Chihene Nde)

for the *Apache Ndé Nneé Working Group* // 30 April 2017