



LAW Defense
El Calaboz – Lower Rio Grande River
Ndé Unceded Territory
Texas-Mexico region

April 27, 2017

Committee on the Elimination of Racial Discrimination (CERD)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)
Tel.: +41 22 917 97 57
Fax: +41 22 917 90 08
cerd@ohchr.org

RE: Follow up | Urgent Action/Early Warning | U.S.A. Executive Order to Further Construct US-Mexico Border Wall

ATTN: Ms. Anastasia Crickley, Chairperson, Committee on the Elimination of Racial Discrimination (CERD)

Honorable United Nations CERD Committee,

As a representative organization of Ndé (Lipan Apache) Peoples' of and from the Lower Rio Grande River valley, located in the Ndé traditional and customary homelands bifurcated by the States of Mexico and the U.S.A. (Texas), the Lipan Apache Women Defense (LAW Defense) firmly endorses and urges the Committee to take action on the **Follow Up to the Urgent Action/Early Warning** submitted by Ariel Dulitzky to the UN CERD Committee on February 21, 2017.

Context:

In 2008, in partnership with Denise Gilman and the University of Texas School of Law, LAW-Defense participated in a hearing on the Texas-Mexico Border Wall, at the Inter-American Commission/Organization of American States, 133rd Period, held in Washington, D.C. The Commission's public press release and annex stated:

“the Commission received troubling information about the impact that the construction of a wall in Texas, along the U.S.-Mexico border, has on the human rights of area residents, in particular its discriminatory effects. The information received indicates that its **construction would disproportionately affect** people who are poor, with a low level of education, and generally of Mexican descent, **as well as indigenous communities on both sides of the border.**” [My emphasis added.]

In 2012, in partnership, with Mr. Dulitzky and the University of Texas (UT) Law Human Rights Clinic, the LAW Defense, in partnership with the Lipan Apache Band of Texas, co-submitted an Early Action/Early Warning (EA/EW) procedure to the UN CERD Committee. Based on that submission, on March 1, 2013, during the 82nd Session, Alexei Avtonomov, then UN CERD Committee Chair, sent a diplomatic letter to Ms. Betty E. King, then Ambassador and Permanent Representative of the United States to the United Nations.

In his letter, Mr. Avtonomov iterated the following:

- After the adoption of the REAL ID Act and the Secure Fence Act (2005 and 2006), the U.S.A. constructed the border wall along the Rio Grande River in Texas. The wall was “built on sensitive environmental areas and lands inhabited by indigenous communities, without sufficient and effective prior consultation with the affected population, and apparently continues to damage the land, the ecosystem, and the cultural and traditional ways of life of indigenous communities.”
- “It has also been reported that while the wall has been built on the lands of indigenous peoples, it has skipped border areas with lucrative properties owned by business, such as the River Bend Golf Resort.”
- The “situation of the Kickapoo Traditional Tribe of Texas, the Ysleta del Sur Pueblo (Tigua) and the Lipan Apache (Ndé) indigenous communities in relation to the construction of the Texas-Mexico border wall.”
- Expressed “concern” regarding “discriminatory impact that the construction of the border wall” has on “indigenous communities, including their access to tribal lands located north and south of the border and to resources required for traditional ceremonies.”
- **“In particular, the Committee is concerned by the situation of the Lipan Apache, a tribe which reportedly remains Federally unrecognized”** [my emphasis] [and] “the construction of the wall through its land has [...] damaged ancestral burial sites, reduced the tribe’s access to elders and other knowledge keepers, led to severe decline in biodiversity, and may lead to disappearance of the tribal identity altogether as the community may be forced to leave the land.”
- “the Committee is concerned that [...] the border wall has been constructed without the free, prior and informed consent of the affected communities, and that no effective judicial remedies or compensation have been provided to date.”
- “the Government’s use of eminent domain powers cannot be effectively challenged in court”
- “courts have not allowed claims to be brought regarding the potentially discriminatory impact of the wall”

In the 2013 letter to Ambassador King, the CERD Committee requested that the United States. “provide updated and detailed information in its periodic report, overdue since 20 November 2011, on the following”:

- “The impact of the Texas-Mexico border wall on the rights of indigenous communities to have access to their land and resources that their own, or traditionally use, and to holy places, in community with people belonging in the same tribe; any recent or future measures envisaged to consult with and consider the requests of the affected communities; information on any compensation provided to affected communities to date; and any measures envisaged **to reverse the negative impact of the construction of the border wall**” [my emphasis added].

To date, the United States has failed to comply with its duties and obligations to the CERD Committee, and thus the CERD Treaty, to be accountable to and reverse the destructive impacts against Ndé peoples affected by a US-Mexico border wall. Specifically:

- Violations against Ndé peoples’ rights to self-determination, recognition, free prior and informed consent (FPIC), customary lands and territory, culture, language, property, religion, being, and belonging.

Call to Action:

The Lipan Apache Women Defense calls upon the CERD Committee to take action and to hold the United States fully accountable for its destructive policies, legislation, coercive and violent use of force to dispossess en masse Indigenous families, individuals and communities from their Indigenous lands.

We call upon the CERD Committee to perform due diligence regarding State responsibilities to the CERD treaty in these matters, so as to protect and to uphold the rights of Ndé Peoples, as the current United States President, Donald J. Trump, has unleashed new and expanding lethal and ill-conceived policies of additional border wall building along the US-Mexico, State-based, non-Indigenous border line.

We call upon the CERD Committee to affirm the legal rights of the Ndé Peoples, whose homelands and territories are currently bifurcated by the United States-Mexico border, and who are the legal Third Parties to the Treaty of Guadalupe Hidalgo and preceding and successor treaties with the Spanish Crown, Mexico, and Texas, and the holders of unceded and unsurrendered Native Lands and Title within the current State-bordered and walled and wall-building regions under examination.

Lastly, we call upon the CERD Committee to affirm the ***Declaration from the El Calaboz 2011 Gathering on Indigenous Knowledge, Lands, Territory and Rights***, in which affected Indigenous Peoples called for the United States to:

- Immediately dismantle the current wall.
- Desist from further dispossession without the free, prior, and informed consent of affected Indigenous Peoples.
- Recognize all Ndé territorial Treaties and Agreements of Peace.
- Return seized lands to all Ndé Native title holders.
- Apologize to the Ndé elders, families, clans, and tribal authorities for a decade of destructive acts in the Ndé house.
- Support a Commission on Truth and Historical Clarification on and Recognition of Indigenous Peoples’ being and belonging in the current Texas-Mexico bordered and walled region.
- Cooperate in an Indigenous truth and justice process on borders, walls, and Indigenous memory.

- Commit to the decolonization of U.S.A. and Texas Indigenous curriculum in K-12 [i.e. youth] and Adult Education.
- Commit to the de-militarization of the Texas-Mexico region.
- Commit to relevant and appropriate resources to empower, strengthen, and revitalize Indigenous Peoples' communities with lands and territory in the Texas-Mexico traditional and customary places.

Sincerely,

Dr. Eloisa García Tamez

Dr. Eloisa García Tamez (Lipan Apache Ndé. Lipan Apache Band of Texas)
 P.O. Box 1737
 San Benito, Texas 78586

See: Eloisa Garcia Tamez, Benito J. Garcia, Plaintiffs vs. Michael Chertoff, Secretary, U.S. Department of Homeland Security, et al., Defendants 2008

<<<<O>>>>

**Respectfully acknowledging the Ndé unceded territory
 of Kónitsaąíigokiyaa (Big Water Peoples' country)**

Support for:

We the following hereby support Dr. Eloisa G. Tamez, the Lipan Apache directly impacted along the Lower Rio Grande River, and the Lipan Apache Peoples in the on-going struggle for justice, respect, responsibility, recognition, and self-determination.

We call upon the UN CERD Committee to address the stated concerns above, and to hold the United States accountable for its injustices committed upon the affected Indigenous Peoples.

1. Margo Tamez, (Lipan Apache Ndé. Lipan Apache Band of Texas). Indigenous Studies Program | The University of British Columbia | Okanagan), Canada.
2. India Reed Bowers, B.A. LL.M., Indigenous and Human Rights Advocate and Expert
3. Apache Ndé Nneé Working Group
4. International Organization for Self-Determination and Equality (IOSDE)
5. Mariel Belanger, (Syilx/Okanagan Nation). Sqilxw Apna – The People Now, Vernon, BC, Canada | MFA Candidate, UBC Okanagan, Canada.

Supporting signatures gathered in coming weeks via public campaign re the matter(s) will be made available.

Apache Ndé Nneé Working Group

30 April 2017

Committee on the Elimination of Racial Discrimination (CERD)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)
Tel.: +41 22 917 97 57
Fax: +41 22 917 90 08
cerd@ohchr.org

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, *Kónitsqáii 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, *Kónitsqáii gokiyaa Ndé*:

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

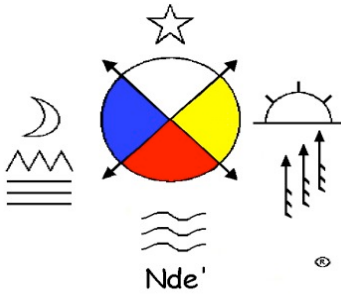
Also noting:

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**



Lipan Apache Band of Texas

515 Freiling Drive, San Antonio, Texas 78213-3908

Website: <http://www.lipanapachebandoftexas.com>

Email: lipanchief@yahoo.com

Phone: (210) 789-7969

General Council

Daniel Castro Romero, Jr. Richard A. Gonzalez
Virginia Castro Romero Domingo Castro Carrillo
Frank A. Gonzalez Ezequiel Cavazos

April 27, 2017

Committee on the Elimination of Racial Discrimination (CERD)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)
Tel.: +41 22 917 97 57
Fax: +41 22 917 90 08
cerd@ohchr.org

RE: Follow up | Urgent Action/Early Warning | U.S.A. Executive Order to Further Construct US-Mexico Border Wall

Honorable United Nations CERD Secretariat,

As the Chairman of the Lipan Apache Band of Texas (Ndé) representative band of Ndé (Lipan Apache) Peoples' of and from the Lower Rio Grande River valley, located in the Ndé traditional and customary homelands bifurcated by the States of Mexico and the U.S.A. (Texas), this letter certifies, endorsees, and supports the Lipan Apache Women Defense (LAW Defense) request and recommendations urges the Committee to take action on the Follow Up to the Urgent Action/Early Warning submitted by Ariel Dulitzky to the UN CERD Committee on February 21, 2017.

We call upon the CERD Committee to affirm the legal rights of the Ndé peoples, whose homelands and territories are currently bifurcated by the United States-Mexico border, and who hold seven legally-binding treaties and are the legal Third Parties to the Treaty of Guadalupe Hidalgo and preceding and successor treaties with the Spanish Crown, Mexico and Texas, and who are the holders of unceded and non-surrendered Native Lands and Title within the current State-bordered and walled and wall-building regions under examination.

We also call upon the CERD Committee stop the systematic destruction of our traditional homelands, minerals, resources and waters.

If you have any questions, please feel free to contact at (210) 789-7969.

Respectfully,

A handwritten signature in black ink, appearing to read 'Daniel Castro Romero, Jr.', with a large, sweeping flourish extending to the right.

Ndé Nanta' án
Daniel Castro Romero, Jr., MSW, MA
General Council Chairman
Lipan Apache Band of Texas
515 Freiling Drive
San Antonio, Texas 78213-3908