



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)
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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

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**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.