

International  
Organization for  
Self-Determination  
and Equality (IOSDE)

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*More information*

***Re: Recent Lipan Apache submission(s) to UN CERD re US-Mexico border wall and US executive order to continue building wall and any actions and mandates therein***

***(Current corresponding submissions to UN CERD: February-May 2017)***

Corresponding News / Press Release and links to more information and the related Petition against the US-Mexico border wall: <http://iosde.org/news/sign-the-petition-us-border-wall-violates-international-law-law-violates-lipan-apache-indigenous-rights-also-a-new-related-intervention-to-un-cerd>

The following information consists of excerpts from the **Lipan Apache Women Defense (LAWD)-Apache Nde Nnee Working Group (ANNWG)-Lipan Apache Band joint submission via IOSDE to the United Nations CERD Committee** (the UN Committee on the Elimination of Racial Discrimination, with respect the corresponding UN Convention on the Elimination of All Forms of Racial Discrimination),

[http://iosde.org/uploads/3/5/1/9/35199981/lawd\\_et\\_al\\_supporting\\_letters\\_re\\_urgent\\_action\\_early\\_warning\\_usa\\_border\\_wall\\_2017.pdf](http://iosde.org/uploads/3/5/1/9/35199981/lawd_et_al_supporting_letters_re_urgent_action_early_warning_usa_border_wall_2017.pdf), in support of the Follow Up to the Urgent Action/Early Warning regarding the Border Wall and the United States as-submitted by Ariel Dulitzky and Clinic, [https://law.utexas.edu/wp-content/uploads/sites/11/2015/04/2017-HRC-USA-BorderWall-Request-for-Follow-Up\\_letter-to-CERD.pdf](https://law.utexas.edu/wp-content/uploads/sites/11/2015/04/2017-HRC-USA-BorderWall-Request-for-Follow-Up_letter-to-CERD.pdf).

***Background (as-culled from the LAWD-ANNWG-Lipan Apache Band letters):***

- In 2007, Indigenous women from El Calaboz led a national and international legal challenge to the wall.
- 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, 133<sup>rd</sup> 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**

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**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.**” [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. (See more here <https://law.utexas.edu/clinics/2015/04/24/borderwall/>). Based on that submission, on March 1, 2013, during the 82<sup>nd</sup> 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, as UN CERD Chair, 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”** [emphasis added] [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” (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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- “courts have not allowed claims to be brought regarding the potentially discriminatory impact of the wall”
- The Apache Ndé Nneé Working Group submitted the following Shadow and Alternative Reports 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-Nneeé Working Group Shadow Report, UN CERD 88th Session, November 2015: Review of the Holy See ([http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/VAT/INT\\_CERD\\_NGO\\_VAT\\_22151\\_E.pdf](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-Nneeé Working Group, UN CERD 89th Session, April-May 2016: Review of Spain, ([http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ESP/INT\\_CERD\\_NGO\\_ESP\\_23617\\_E.pdf](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:

- 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-Nneeé Working Group, ‘Recommendations’, in *Apache-NdéNneeé 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**. [emphasis added] (India Reed Bowers, LL.M., ‘Application of the UN CERD Treaty’, in *Apache-Ndé-Nneeé 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-Nneeé 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

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- 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.** [emphasis added] (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.** [emphasis added] (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

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border were spared any disruption of their property and operations in the wall construction. [emphasis added] (*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. [emphasis added] (Dr. Margo Tamez, Co-founder, Lipan Apache Women Defense, Co-Director, Emilio Institute for Indigenous and Human Rights, *Kónitsqáí 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. [emphasis added] (Dr. Margo Tamez, *Kónitsqáí gokiyaa Ndé: 'Big Water People's Homeland' a shadow of Self-Determination in a bifurcated Traditional Territory*)
- *Current requests from Apache Ndé Nneé Working Group to the CERD Committee include:*
  - 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. (Dr. Margo Tamez, Apache-Ndé-Nneé 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;

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- *From the letter of the Lipan Apache Band of Texas:*

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 unseeded and unsurrendered 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, mineral resources and, more importantly, the water.

-Daniel Castro Romero, Jr., MSW, MA, General Council Chairman, Lipan Apache Band of Texas

- Lastly, LAWD has called for 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.

14 May 2017 / India Reed Bowers, LLM, IOSDE

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