

United Nations Committee on the Elimination of Racial Discrimination (CERD) 107th Session

Follow-up and Alternative Report (Indigenous)

***Apache Nde Nnee Isdzánízhááhi Didiigo Truthing Directive (IDTD)*¹**

re:

List of themes in relation to the combined 10th-12th reports of the United States of America

July-August 2022

¹ *Isdzánízhááhi Didiigo Truthing Directive (IDTD)* is a collaborative collective, founded in March 2020 by *Margo Tamez* (MFA PhD, Lipan [Apache] Ndé), *Lorraine Garcia* (Chiende, i.e. Red Painted People, and Chokenende, ie Chiricahua, [Apache] Nde Nneé), and *India Reed Bowers* (BA LLM). IDTD was formed following our collective work as three of the primary co-founding members of the Apache Ndé Nneé Working Group (ANNWG) and in the wake of our collectively-achieved goals to forging ways to overturning centuries of forced settler, colonial, patriarchal, misogynist, ableist, and heteronormative dominance in both the material and spiritual world.

Follow-up and Alternative Report (Indigenous)
Apache Nde Nnee: *Isdzánízhááhi Didiigo Truthing Directive (IDTD)*²

Primary Themes, Questions and Recommendations

written by India Reed Bowers, BA LLM³
in coordination and consultation with
Dr. Margo Tamez, MFA PhD, and Lorraine Garcia

In reference to the following text of CERD *List of themes in relation to the combined 10th-12th reports of the United States of America, 2022*:

“Situation of indigenous peoples (arts. 5 and 6)

22. Measures to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policymaking and decisions that affect them. Updated information on the implementation of presidential memorandum on tribal consultation and strengthening nation-to-nation relationships of 26 January 2021 and on other efforts to fulfil treaty responsibilities to Tribal Nations.”⁴

² *Isdzánízhááhi Didiigo Truthing Directive (IDTD)*, founded by Margo Tamez (MFA PhD, Lipan [Apache] Ndé), Lorraine Garcia (Chiende, ie Red Painted People, and Chokenende, ie Chiricahua, [Apache] Ndé Nnee), and India Reed Bowers (BA LLM). *Please note*: Margo Tamez has been unable to fully participate in this submission and session due to health reasons, and has approved these materials and given permission for the submission to be made also on her behalf.

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⁴ List of themes in relation to the combined tenth to twelfth reports of the United States of America, United Nations Committee on the Elimination of Racial Discrimination (CERD), 107th session, 8–30 August 2022, CERD/C/USA/Q/10-12; footnote referencing (previously, CERD to USA):

“Rights of indigenous peoples 24. While acknowledging the steps taken by the State party to recognize the culture and traditions of indigenous peoples, including the support for the United Nations Declaration on the Rights of Indigenous Peoples announced by President Obama on 16 December 2010, the issuance of Executive Orders 13007 and 13175 and the high-level conferences organized by President Obama with tribal leaders, the Committee remains concerned at: (a) Lack of concrete progress to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policy-making and decisions that affect them; (b) The ongoing obstacles to recognition of tribes, including high costs and lengthy and burdensome procedural requirements; [...] Recalling its general recommendation No. 23 (1997) on indigenous peoples, the Committee calls upon the State party to: (a) Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them, based on their free, prior and informed consent; (b) Take effective measures to eliminate undue obstacles to the recognition of tribes; (c) Adopt concrete measures to effectively protect the sacred sites of indigenous peoples in the context of the State party’s development or national security projects and exploitation of natural resources, and ensure that those responsible for any damages caused are held accountable;” USA to CERD, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/172/16/PDF/G1417216.pdf>

and “23. Measures to protect the rights of indigenous peoples, their lands, territories, sacred sites and way of life from the adverse effects of extractive industries, infrastructure projects and the construction of border fences and walls, including preventive measures and effective redress and accountability mechanisms.”⁵

Noting:

A. United States’ Border Wall: Violation, Non-Resolution

1. CERD has previously under its Urgent Action and Early Warning communicated to the United States (US) directly to resolve this matter. Overall, the US has not done so as it pertains to the violations of the Wall’s existence. The Tamez family and others⁶ have reported in and to many

⁵ List of themes in relation to the combined tenth to twelfth reports of the United States of America, United Nations Committee on the Elimination of Racial Discrimination (CERD), 107th session, 8–30 August 2022, CERD/C/USA/Q/10-12; footnote referencing (previously, USA to CERD):

“129. With respect to recognition of tribes, in July 2015, DOI reformed the tribal recognition process based on over 330 written comment submissions and input at public meetings and tribal consultation sessions from tribal leaders, states, local governments, and the public. <https://www.bia.gov/cs/groups/xofa/documents/text/idc1-031255.pdf>. The updated rule promotes a more transparent, timely, and consistent process that is flexible enough to account for the unique histories of tribal communities, while maintaining the integrity of the criteria that had been in place for nearly 40 years. Although the new process carries forward the standard of proof and the seven mandatory criteria that petitioners must meet to substantiate claims to tribal identification, community, and political authority, it promotes consistent application by establishing a uniform evaluation period of more than a century (from 1900 to the present), increases public access to petition documentation, expands distribution of notices to include local governments, and increases due process by providing for an administrative judge to conduct a comprehensive hearing and issue a recommended decision for proposed negative findings. <https://www.doi.gov/pressreleases/department-interiorannounces-final-federal-recognition-process-acknowledge-indian-tribes>.

130. Regarding protection of sacred sites, in 2012 and again in 2016, five entities (Department of Defense, DOI, Department of Energy, Department of Agriculture, and the Advisory Council on Historic Preservation) entered into an MOU to improve protection of and Indian access to sacred sites.

<https://www.fs.fed.us/spf/tribalrelations/sacredsitesmou.shtml>. Since 2013, the MOU participants have created materials and a training to assist federal agencies in fulfilling their trust responsibility to tribes and preserving sacred sites of critical importance to Native peoples. These materials and trainings include a comprehensive review of applicable laws and policies that affect sacred sites; detailed information for state and local governments, industry, academia, and the general public on complex sacred site topics; and a Statement on Confidentiality concerning how federal agencies can protect culturally sensitive information regarding sacred sites when affected tribes deem such information private. The MOU participants have also held periodic listening sessions with tribes on sacred sites

131. DHS recognizes the importance of consultation with tribal nations affected by deployment of border security infrastructure and ongoing border security operations. CBP regularly engages leaders from tribes in the border region and tribal members impacted by border security operations. Accordingly, to the extent that additional border barriers will be constructed near tribal lands, DHS and CBP intend to work closely with DOI and BIA and consult with affected tribal authorities as specific projects are designated and funded.” USA to CERD, CERD/C/USA/10-12, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/381/09/PDF/G2138109.pdf>

⁶ <https://law.utexas.edu/humanrights/news/un-cerd-concerned-about-border-wall/>, see also Denise Gilman's many FoIA (US Freedom of Information Act) requests, the length of time of the responses, and the outcome, <https://repositories.lib.utexas.edu/handle/2152/6852> and more at <https://lipancommunitydefense.wordpress.com/> and footnotes below

judicial forums⁷ and formats and we have even undertaken public platform signature campaign on this issue,⁸ still to no avail.

2. Previous submissions (Tamez et al)⁹ have communicated and exhibited to UN CERD the serious violations committed by the United States against the Indigenous Lipan Apache (Ndé) People and Indigenous Tamez Lipan Apache Family in the erecting and continuation of the US(-Mexico) border wall across their traditional homeland, territory and even home and sacred land itself.
3. Current situation: No resolution, ongoing violation. As the youth continue to grow up and become the next generations of adults and elders, the US Border Wall continues to violate the Indigenous Lipan Apache.

⁷ See attached document of corresponding background and materials, including the Tamez matter at the Inter-American level and additional works and efforts including by the Lipan Women Defense (LAWD), available at http://iosde.org/uploads/3/5/1/9/35199981/more_info_lipan_border_wall_action.pdf; See also the LAWD website and archives at <https://lipancommunitydefense.wordpress.com/>

⁸ See:

- “US Border Wall Violates International Law, US Law Violates Lipan Apache Indigenous Rights” at <https://www.change.org/p/sign-the-petition-u-s-border-wall-violates-international-law-u-s-law-violates-lipan-apache-indigenous-rights> and also
- Bowers, I.R. and Tamez, M., Apache-Ndé-Nneé Working Group, “US Border Wall Violates International Law, US Law Violates Lipan Apache Indigenous Rights”, Petition to Tear Down the US-Mexico Border Wall and Written Submissions to UN CERD in conjunction to the Follow up to Urgent Action/Early Warning re United States Executive Order to Further Construct US-Mexico, submitted to the United Nations CERD (International Convention on the Elimination of All Forms of Racial Discrimination) Committee February-May 2017, <http://iosde.org/news/sign-the-petition-us-border-wall-violates-international-law-us-law-violates-lipan-apache-indigenous-rights-also-a-new-related-intervention-to-un-cerd>

⁹ Previous submissions and responses from CERD and others re the Tamez/Lipan Apache matter re the US Border Wall including but not limited to:

- UN CERD Letter concerning the impact of the US Border Wall on Indigenous Peoples including (specifically) the Lipan Apache, *sent by CERD under the CERD Early Warning and Urgent Action Procedure to Mr. Theodore Allegra, Deputy Permanent Representative of the United States of America to the United Nations Office Geneva*, 17 May 2017, reference: CERD/92nd/EWUAP/GH/SK/ks (also attached to this submission) and at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_8210_E.pdf
- Tamez, E.L., Lipan Apache Women Defense (LAWD); Bowers, I.R. and Tamez, M., Apache-Ndé-Nneé Working Group (ANNWG); and Romero, D.C. Jr., Lipan Apache Band of Texas, Joint submission, “Follow up, Urgent Action/Early Warning: U.S.A. Executive Order to Further Construct US-Mexico Border Wall”, submitted to the United Nations Committee on the Elimination of Racial Discrimination (CERD), supplementary to Dulitzky, A., University Texas, to the UN CERD Committee on 21 February 2017, 30 February 2017, see (also provided as attachment to this submission): Corresponding background and materials document at http://iosde.org/uploads/3/5/1/9/35199981/more_info_lipan_border_wall_action.pdf and Letters from LAWD, ANNWG, and Lipan Apache Band of Texas at http://iosde.org/uploads/3/5/1/9/35199981/lawd_et_al_supporting_letters_re_urgent_action_early_warning_usa_border_wall_2017.pdf, and see also the LAWD website and its archives at <https://lipancommunitydefense.wordpress.com/>, and the Lipan Apache Band of Texas website at <http://www.lipanapachebandoftexas.com/>
- Ariel Dulitzky, University of Texas Human Rights Clinic, Follow-up to CERD under CERD Early Warning Procedure re the US Border Wall, 21 February 2017, https://law.utexas.edu/wp-content/uploads/sites/11/2015/04/2017-HRC-USA-BorderWall-Request-for-Follow-Up_letter-to-CERD.pdf

4. These violations include but are not limited to those re access to subsistence food and herding (buffalo and goats), Ndé heirloom (intergenerational) maiz (corn) cultivation, Ndé berries, mescal, and medicinal plants and foods lifeways, traditional hunting and harvesting to maintain community unity via feast gatherings and celebrations, traditional and technical land improvement practices (such as install fencing to establish clear and visible boundaries of Ndé lands that the US Customs Border Patrol consistently misinterpret as ‘open lands’). Additionally, simply put, for example in the Tamez case,¹⁰ the US Border Wall is a violation of the right to live with and also reclaim a sense of belonging, and a safe home, without the colossal US-militarized, surveilled, and aggressive (truly violent-by-nature by its mere existence) border wall that is bifurcating the middle of the family- and women-held traditional lands within the village ranchería of El Calaboz, Texas.
5. The wall and extensive dispossession severely impacts on Ndé beliefs, knowledge, cultural practices, arts, and knowledge transmission to younger generations are extensive and violent. The existence of US border wall essentially serves to treat the Apache Nde Nnee as not being a whole Indigenous People or whole Indigenous Peoples, as it prevents those who live on either side of the wall to be and live together and freely, self-determining as one, either in culture, traditions, or with their traditional territories and spiritual practices and ways/relationships, as well as teachers and practitioners of said lifeways and knowledge. The resulting violations against the Apache Ndé by the US via its border wall are numerous, serious, and aggressively eroding Apache Ndé as an Indigenous People/Peoples—specifically via the numerous violations against Indigenous women land protectors and title holders who are central to Ndé land-based knowledge transmission to new generations and living culture to this day (ongoing genocide and discrimination). These violations are well-documented by and through, collectively (including but not limited to), UN CERD, University of Texas School of Law, the ANNWG, and International Organization for Self-Determination and Equality (IOSDE), Lipan Women Defense (LAWD), and the Inter-American Commission/Organization of American States.¹¹
6. Compounded issue: the Lipan Apache Ndé filed for US federal acknowledgement (“Recognition”) in 1996 -in fact ‘re-recognition’, as the survivor-Ndé are the genealogical descendants of ancestral Ndé signatories on historical treaties with Spain, Mexico, the Texas Republic, and the US- and regularly face extreme challenges against the aggressive and hostile systemic and structural barriers of the US “federal-recognition” systems. There are significant gaps between the decolonial Ndé oral history, collective memory, research-based traditional, historical and contemporary revitalization of Ndé matriarchal leadership structures, place-based organization and strategic governance planning for spiritual, social, intellectual, and economic revitalization of equitable re-distribution of vital resources that do no adhere to or match the discriminatory colonial, settler State “recognition” regime (see next section). The said US Border

¹⁰ See following paragraphs and footnotes of this section

¹¹ See for example other footnotes to this paper, the Attachments to this paper including 6-9 and 15, the University of Texas Law Department website at <https://law.utexas.edu/humanrights/news/un-cerd-concerned-about-border-wall>, <https://law.utexas.edu/humanrights/borderwall/analysis/inter-american-commission.html>, <https://law.utexas.edu/humanrights/borderwall/analysis/iac-Grant-of-Hearing.pdf>, and also 2008 (US); UN CERD: 2012 (US), 2013 (US), 2015 (Holy See); 2016 (Spain); 2017 (US).

Wall, in light of this, takes on even deeper aggression of eradication of affected Indigenous Peoples and their territories bifurcated by the wall (installed in 2009 in the Tamez family-held lands), while furthering a militarized psychology of intentional disavowal, on the part of the US, during the past thirteen years and still-ongoing of militarized genocide and untenable oppressiveness by the US Government via the Border Wall's mere existence.

7. Militarization of Indigenous Lands (the illegality of which particularly affects Indigenous Peoples' and their territories and lands and is worsened by the impacts of militarization on women, Indigenous women, and also minority groups who are land holders), is a key theme that is alive and recognized by the UN. For example and to this end, the militarization of Indigenous Lands has taken the form of a most recent UN EMRIP (Expert Mechanism on the Rights of Indigenous Peoples)¹² report-theme *Call for Input* and was also noted as a key and pressing issue via a Press Release following the most recent UNPFII (United Nations Permanent Forum on Indigenous Peoples).¹³ Justice/redress and reparations on these matters are pressing and urgent needs.

B. Discriminatory nature of the US Federal Recognition system pertaining to Tribes (ie status as Indigenous Peoples) and violations therein

1. The US enacts systemic and structural anti-Indigenous racism and discrimination by historically and persistently excluding leaders, representatives, traditional matriarch decision-makers, negotiators (i.e. "non-recognized tribes") to the US administration's official meetings, gatherings, and procedures related to the "Nation-to-Nation" relationships.

¹² As can be seen at the Call for Input for the EMRIP Report on "The militarization of indigenous land: a human rights focus",

<https://www.ohchr.org/en/calls-for-input/2022/report-militarization-indigenous-land-human-rights-focus>

¹³ "MILITARIZATION OF INDIGENOUS AREAS A GROWING THREAT, PERMANENT FORUM TOLD", United Nations Press Release, 23 May 2002,

<https://www.ohchr.org/en/press-releases/2009/10/militarization-indigenous-areas-growing-threat-permanent-forum-told>

2. Via forced colonial systems, rules and procedures,¹⁴ the US Federal Recognition system, imposed onto Indigenous Peoples whose traditional territories are considered to be ‘contained’ by the United States, is a long-standing primary act of forced assimilation, conquest and genocide in and of itself. The US federal acknowledgement system is colonial in its originary logics, is outdated, and should be overhauled entirely due to its complete and utter discriminatory and genocidal effects on both federally acknowledged and non-federally acknowledged Indigenous Peoples with cultural, social, historical, traditional and customary bonds to their respective homelands.
3. Margo Tamez, of the non-acknowledged ie non-Federally-recognized Lipan Apache and co-founding member of IDTD, states,

“The United States’ Non-Federal Acknowledgement of Indian People was deliberately done by the US Federal Government to displace families by forced removal from their lands; thus, evermore from their unceded territories, to become homeless and countyless. To be a non-federally acknowledged Indian was meant to be and is meant to be the temporal, destruction and disappearance of Indian people. However, in the 20th and 21st centuries, federally acknowledged Indigenous Peoples have vehemently resisted, organized, and rejected US settler colonial logics of annihilation, as evidenced in substantial socially organized strategic legal and collective embodied movements that include and also exceed US federal, state and local government tribunals and governmental bodies.”¹⁵

¹⁴ See for example:

- usa.gov official government website, “Federally Recognized Indian Tribes and Resources for Native Americans” at <https://www.usa.gov/tribes>
- US Department of the Interior, “Office of Indian Services (main page) at <https://www.bia.gov/bia/ois>, and also “Search Federally Recognized Tribes” at <https://www.bia.gov/service/tribal-leaders-directory/federally-recognized-tribes>
- US Department of Health and Human Services website, [ADMINISTRATION FOR NATIVE AMERICANS](#), An Office of the Administration for Children & Families, page “American Indians and Alaska Natives - What are State Recognized Tribes?” at <https://www.acf.hhs.gov/ana/fact-sheet/american-indians-and-alaska-natives-what-are-state-recognized-tribes>
- National Conference of State Legislatures, “Federal and State Recognized Tribes”, <https://www.ncsl.org/legislators-staff/legislators/quad-caucus/list-of-federal-and-state-recognized-tribes.aspx>

See also:

- Bowers, I.R., Tamez, M., Garcia, L., Babcock, M., Hill, M.P., et al (2015). Apache-Ndé-Nneé Working Group Shadow Report, “The Holy See and European Dispossession of Apache-Ndé-Nnee Peoples: A call for truth, disclosure, justice and redress”, submitted to the United Nations Convention on the Elimination of all forms of Racial Discrimination (CERD) Committee, 88th Session, Nov. 2015: Review of the Holy See, , https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/VAT/INT_CERD_NG_O_V_A_T_22151_E.pdf
- Bowers, I.R., Tamez, M., Garcia, L., Babcock, M. (2016). Apache-Ndé-Nneé Working Group Alternative Report, “Alternative Report for the CERD Review of Spain”, submitted to the United Nations Convention on the Elimination of all forms of Racial Discrimination (CERD) Committee, 89th Session, April 2016: Review of Spain, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ESP/INT_CERD_NG_O_ESP_23617_E.pdf

¹⁵ Quoted testimony

4. The US Federal Recognition system has also come to serve, over the centuries and decades and still, as a tool of division between the Indigenous Peoples that the US ‘recognizes’ and those the State refuses to recognize, and considers itself, as the dominator and conqueror, the exclusive right to contain Indigenous Peoples territorially, namely by granted status of recognition to federally-acknowledged Tribes, historically coerced to undergo extensive internal reconfiguring to model after the Settler State governing, judicial, territorial, and social systems, among other things, in order to receive funds, ‘granted’ rights, ‘outside’ protections and privileges, (all under the guise of externally-controlled and State-centric notions of sovereignty).¹⁶
5. Compounded, additionally, by a lack of access to decolonization in accordance with the principles of the UN (decolonization including as per UN CERD and other treaties, including but not limited to the UNDRIP), and additionally not just for ‘status Indians’ (Federally- or State- ‘recognized’), but for Indigenous Peoples and wherever applicable,
6. Federal Recognition comes at the cost both to Tribes ‘in the US’ and non-federally acknowledged “recognized” Indigenous Peoples, persons unwilling to enter or transform into such systems, those who cannot meet the State’s politicized and systemic and structural anti-Indigenous criteria, or who do not desire to undergo the State-forced and State-sponsored aggressive changes to Indigenous culture, traditions and ways of being and doing to, or who choose to instead protect and live their own traditions and Indigenous systems themselves and/or who still have unceded territories within and/or reaching beyond current US borders.¹⁷ Especially affected are Indigenous persons, Peoples, and communities who maintain inner and intra- nation-to-nation relationships to Indigenous matriarchal and matrilineal self-governance, including the Ndé and Chiende.¹⁸
7. Lorraine Garcia, also co-founding member of IDTD, states in her testimonial writing provided as part of this current Report to CERD,

“The extreme systemic racism that exists within the United States, in our urban communities, amongst our families and other Ndé people; are results of the forced Ndee Diaspora as well as the systematic racial status of Non-Federally Acknowledged (recognized) Indian people, a status that made Indian people *homeless* and in a sense *country-less*, but also made The United States Federal Government the decision makers of who is Indian and not Indian in the indigeneity sphere of The North American Continent.”¹⁹

¹⁶ See, for example, “Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs”, by Federal Register, A Daily Journal of the United States Government, 28 January 2022, at <https://www.federalregister.gov/documents/2022/01/28/2022-01789/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of>

¹⁷ See, for example footnotes 6-9, 15, and the Attachments to this Report

¹⁸ See Tamez, Garcia

¹⁹ Lorraine Garcia, “The Ndee Diaspora: *A Family’s Survival from Southern New Mexico to Southern California as United States Non-Federally Acknowledged Indians*”, p. 1, as-included in this Follow-up and Alternative Report (Indigenous), Apache Nde Nnee Isdzánízhááhí Didiigo Truthing Directive (IDTD) re: List of themes in relation to the combined 10th-12th reports of the United States of America, United Nations Committee on the Elimination of Racial Discrimination (CERD) 107th Session, July-August 2022

Garcia goes on to explain,

“Our lands and farms upon them were once designated as reservations in our *acknowledged* historic and traditional lands but our families were displaced and removed from these lands by implemented governmental rules, regulations and Indian law policies and programs over an eighty-year period. Once deemed a United States politically *acknowledged* Indian tribe in New Mexico, we were eventually designated as homeless and reduced to a United States’ non-*acknowledged* federal Indian entity (tribe), in large part due to the fact that we were farming and did not war with the United States as Chihene and their sub-groups.”²⁰

and, “Prior to our Ndee Diaspora to Southern California many families that had traveled back and forth with The Rosales Family after displacement from our reservation lands and farms were placed in agriculture programs with us by the State of New Mexico between 1910 to 1925 within traditional homelands in the Valley of Rincones; specifically, in the Federally ran Military Indian Camp of Salem which is still considered our ancient agriculture lands seized by the federal government by the 1860’s to build Fort Thorn and to section lands for homesteading and towns. These indigenous lands were traditionally home to The Rosales family and other Ndee and is the largest documented and recorded Apache Rancheria; hence, Apacheria by The Spanish and Roman Catholic Church at contact in 1691. Our last Holy Ground Ceremony which our elderly relatives at that time called The Rapture and witnessed and partook of as small children was approximately 1922-1924 before being removed from New Mexico to Colorado and then to Wyoming before being railroaded to Southern California the by 1930’s with their Indian paperwork and designated non-acknowledged Indian numbers from the Department of Interior.”²¹

As well, Garcia explains the USA *Indian Relocation Era* as one origin of non-acknowledged (non-recognized, in US Government terminology) status.²²

8. Thus, the US recognition of certain Indigenous Peoples as “Federally-Recognized Tribes” in accordance to US Federal laws (and/or State laws re state-recognized), and/or ‘Treaty Tribes’ (who have made historically-unique forms of treaties with the US, often times under coercion and impending threats of violence, neglect, and further destruction), and in non-recognition / non-acknowledgement of all original-territory and Indigenous Peoples within and in the lands confiscated or bifurcated by US ‘borders’, is inherently in and of itself, as a result, racist and divisive and still genocidal. In fact, what is really going on is an ongoing complex historical

²⁰ Garcia, p. 4

²¹ Garcia, p. 4

²² Garcia, p. 4

process of colonization, Indigenous resistances unique to specific geographic regions, and periods of Indigenous and US relations.

9. The situation and circumstances described and referenced in the paragraphs above result in deep systemic and societal discriminations re access to Indigenous Rights, traditional rights and ways, identity and identity privileges/rights, access to justice and redress, support, development and protection mechanisms, procedures and needs being met, education and funding inequalities,²³ and lack of recognition of a lived, equal status of traditional Indigenous systems, other needs or rights, reparations, and privileges for all ages and the future, as well as of the right to self-determined development and the self-determination of tribes / Indigenous Peoples within the current borders of the US but not the US Recognition system(s) (for whatever reasons).

10. Lorraine Garcia writes,

“Also shared by my late-aunt, was when my great-grandfather shared to my grandfather, he wanted to move the family back to New Mexico, grandfather was staunch to put his foot down on *no*. With the Civil Rights Movement in full swing, my great-grandfather made strides to gather us great-grandchildren at my grandparents’ home in East Los Angeles, and repeatedly tried to teach us the Nde language but we wanted to play. So instead, he taught us to *play* ceremonies with sticks and hula hoops and dancing holding hands in circles. These interactions many times ended with my grandfather coming out of the house and shooing his father away from the yard. I can still picture great-grandfather walking away, the last of Apache men of that time, wearing his three-piece suit and hat. I believe now, he must have been somewhat against Americanization, because of the Civil Rights Movement and because he at that time understood what the non-federal acknowledgement status truly meant: The total disappearance of Indian people into American society.”²⁴

and, “The non-federal acknowledgement of Indian people was deliberately done by the US Federal Government to purposely displace and separate families by forced removal from their lands and evermore from states; their countries, to

²³ Shockingly, even in the past recent months the entire University of California system decided to provide free tuition and fees to all Members (another issue) of Federally-Recognized Tribes of the US, as some form of reparation publicity for the University system (Government-run Higher Education System), but leaving out entirely all Tribes, Bands and otherwise Indigenous to the current USA but who are not party to the US Federal Recognition system - including the families, communities and Peoples of our very own IDTD and report submission, Lorraine Garcia and Margo Tamez. See “UC announces Native American Opportunity Plan”, University of California website, News section, April 28, 2022, <https://admission.universityofcalifornia.edu/tuition-financial-aid/types-of-aid/native-american-opportunity-plan.html>, and also “Native American Opportunity Plan”, University of California website, <https://admission.universityofcalifornia.edu/tuition-financial-aid/types-of-aid/native-american-opportunity-plan.html>, and “University of California to waive tuition for Native students – but not for all” by Hallie Golden, The Guardian International media outlet, 30 April 2022, <https://www.theguardian.com/us-news/2022/apr/30/university-california-waive-tuition-native-students>

²⁴ Garcia, p. 5

become homeless and country-less. Our youth, are struggling in self-identity due to the known and unknown enslaved history of Ndee ancestors that make them look naught like stereotypical Indians in a racist country that historically *is* their indigenous *root*. Many of our elderly and tribal members out of state, comeback as *visitors* and as *strangers* and participate in cultural gatherings and ceremonies and then return to their forced adoptive states. Lost are elders who remembered being railroaded out of traditional lands in cattle railcars and those that witnessed it happening to family and tribal members. Those of us who relocate back to our homelands and are able to buy a fraction of it back, do so, in the indigeneity spiritual sphere of our ancestors while shaking off the non-federal acknowledged label. At times, I think of my Ndé great-grandfather, and conclude, as he may have, that to be non-federally acknowledged *was* meant and *is* meant to be the total disappearance of Indian people into American society. Due to the systemic racism and racial differences in and out of our tribal communities and documenting and recording all that, we will not disappear, for we Ndee families are still alive and kicking, amid The Ndee Diaspora.”²⁵

11. What the US presents to Tribes as mandatory and required for Federal “recognition” and essential (for “Nation-to-Nation” relationships with the US and more) is actually a fallacy as such. The entire Federal Recognition system of the United States held towards Indigenous Peoples within or considered contained by Federal borders is a false, divisive, and controlling, systemic methodology of domination, to the point of ongoing weathering and eradication of actual traditional Indigenous lifeways and systems, displacing traditional systems and imposing colonial ones as mandatory, and includes militarization as a go-to measure when Indigenous Peoples protect and defend their inherent rights to recognition, sovereignty, territory, homelands, and physical, spiritual, emotional, mental, economic, and material restitution. Repairing and restituting this extreme State-sponsored violence and discrimination goes way beyond ‘consultations’ etc. with Tribes/leaderships who have already undergone such re-configurations, or who seek to do so, or who are unwilling to subject themselves and their descendants to participate in a US-controlled and dominated environment, determination, structures, or process.
12. Moreover, the entire said US Recognition system, especially as requirement for “Nation-to-Nation” relationships, due-funds/reparations or restitutions and resources, access to justice, self-determination and right to protections (self- or external), is not only a fallacy, but it is also a poison that, under the noses of many and unknown to most, has been and is still being not only forced onto the original Indigenous Peoples and people considered by the US to be within US territorial Nation-State boundaries (see Border Wall example for said militarized and structural containment²⁶ boundaries) but also exported as model by the US and/or US citizens (even some tribes adhering to the system) around the world in overt and/or covert operations and efforts, to further said colonial (imperial) and even now at times collaborative domination, via

²⁵ Garcia, p. 6

²⁶ See also Denise Gilman (University of Texas, Department of Law) re the US Border Wall's physical "containment" of Lipan Apaches as a violation of numerous treaties, available on the LAWD website and its archives at <https://lipancommunitydefense.wordpress.com/>

extinction of traditional Indigenous governance—including matriarchal and matrilineal Indigenous governance—and justice and other traditional Indigenous lifeways and systems. This is still an ongoing form of extreme discrimination, forced assimilation and genocide.

13. In this day and age of Indigenous Rights, as well as International Human Rights, including the founding (and subsequent) UN Treaties and International Criminal Law (especially but not limited to re genocide), Tribes who signed treaties with the Settler State, or who undergo said reconfiguring, or agree or seek to do so (so as to obtain recognized status with the Nation-State or otherwise), should absolutely not be privileged or prioritized by the US Federal Government as representatives of all Indigenous Peoples—namely the Ndé and Chiende who have labored for decades, and in the last decade specifically with the leadership of Ndé and Chiendé matriarchal authorities. The United States would do well to take lessons from other States²⁷ who have never and still do not impose or demand Indigenous Peoples to undertake reconfiguring or configuring to be assimilated to replicate the oppressors’ modalities, or adapt to become like Settler/Western State systems so as to survive, be recognized, or have already-due powers as Peoples and Indigenous Peoples, or simply put to the heart of the matter how they describe and organize themselves originally and/or as truly self-determining.

Questions for CERD to the USA:

1. What is the USA’s reason for discriminatory practices regarding lack of Decolonization of Indigenous Peoples systemic and structural circumstances, conditions, and personhood?
2. What is the USA reason for discriminatory, top-down colonial practices regarding Tribe status and process, systems and structures re Federal Recognition, specifically the temporal and structural exclusionary practices of the Ndé and Chiende?
3. What is the USA doing to learn from other States that have not imposed, and/or are engaged in other mechanisms constructed by, with, alongside affected Indigenous peoples (such as Truth, Memory, Clarification, Accountability, and Restitution Commissions) to confront and dismantle colonial systems burdening Indigenous Peoples struggling to restore their rightful relationships, identities, and recognition processes?
4. What is the USA doing to ensure that its genocidal Federal Recognition system of having to reconfigure to a colonial structure and leadership is not being coerced/forced onto other Indigenous Peoples in the world via either US State practice or for example in vulnerable and conflict zones by other covert actions by US-based interests?

²⁷ While the examples and diversities therein are many, for the purposes of this paper we will not delve into the specifics of other Indigenous Peoples and States. Suffice to say we recommend such examination and hold this to detail at a later date.

Recommendations:

1. Abolishment (dismantling) of the US Border Wall, at a minimum in places where violating the FPIC of Indigenous People/s and Indigenous homes, Peoples, lifeways, traditions, and communities.
2. Formal Decolonization process of USA Indigenous territories, Peoples, borders and systems, as self-determined by each Indigenous Tribe/People and with respect to traditional roles of leadership, spiritual and religious beliefs and practices (pre- so-called ‘conquest’), and methods and structures, especially for those, like the Ndé and Chiende, who have never otherwise made treaty of cession with, or ceded to, the colonial settler State of the US or other preceding colonizing/invading entities, or who did so but under non-FPIC (ie coercive or otherwise now acknowledged as unacceptable per International Rules and Law) circumstances.

Attachments at the end of the Report and per the footnotes of this paper:

- UN CERD Letter concerning the impact of the US Border Wall on Indigenous Peoples including (specifically) the Lipan Apache, *sent by CERD under the CERD Early Warning and Urgent Action Procedure to Mr. Theodore Allegra, Deputy Permanent Representative of the United States of America to the United Nations Office Geneva*, 17 May 2017, reference: CERD/92nd/EWUAP/GH/SK/ks (also attached to this submission) and at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_8210_E.pdf
- Tamez, E.L., Lipan Apache Women Defense (LAWD); Bowers, I.R. and Tamez, M., Apache-Ndé-Nneé Working Group (ANNWG); and Romero, D.C. Jr., Lipan Apache Band of Texas, Joint submission, “Follow up, Urgent Action/Early Warning: U.S.A. Executive Order to Further Construct US-Mexico Border Wall”, submitted to the United Nations Committee on the Elimination of Racial Discrimination (CERD), supplementary to Dulitzky, A., University Texas, to the UN CERD Committee on 21 February 2017, 30 February 2017, see (also provided as attachment to this submission): Corresponding background and materials document at http://iosde.org/uploads/3/5/1/9/35199981/more_info_lipan_border_wall_action.pdf and Letters from LAWD, ANNWG, and Lipan Apache Band of Texas at http://iosde.org/uploads/3/5/1/9/35199981/lawd_et_al_supporting_letters_re_urgent_action_early_warning_usa_border_wall_2017.pdf

India Reed Bowers, BA LLM

for IDTD

The Ndee Diaspora:

*A Family's Survival from Southern New Mexico to Southern California
as United States Non-Federally Acknowledged Indians*

By Lorraine Garcia

For some Ndé (Apache people), the Ndé Diaspora began with the empirical contacts of Spain and The Roman Catholic Church and their purposeful seizure of The North American Continent and its Indigenous peoples under the guise of The Doctrine of Discovery and for others as late as the 1950's. I did not know what a diaspora was or that my family was a part of one until I was in college studying World history. The Jewish Diaspora was much like my Ndee's (Apache people's) family history and easily comparable with the exception that we have not become economic powerhouses. The fact that Jewish people were unrecognized in their traditional homelands and, many were sold into slavery and then forced from their homelands, are the most common factors we share in our histories. The extreme systemic racism that exists within the United States, in our urban communities, amongst our families and other Ndé people; are results of the forced Ndee Diaspora as well as the systematic racial status of Non-Federally Acknowledged (recognized) Indian people, a status that made Indian people *homeless* and in a sense *country-less*, but also made The United States Federal Government the decision makers of who is Indian and not Indian in the indigeneity sphere of The North American Continent.

In Santa Fe, New Mexico, in The American Southwest began slavery, and uncommonly known is that many Ndé were amongst the first to be captured and sold off auction blocks to New Mexican Spanish colonist and The Spanish elite in Mexico. My paternal side ended up in Southern Zacatecas Mexico in the *ejido* (Indian village) of Nochistlán, an area once known for selling Apache people to the infamous Zacatecas Silver mines. It is not known exactly how my paternal side ended up in Nochistlán, but it is through my father's eldest sister who died in her nineties of our knowledge of being Chiricahua descent. My family is in possession of the identity and character papers from Nochistlán's Municipal President Antonio Cervantes in 1918, writing that he was a good and honorable hard worker from a neighboring labor ranch, and with papers my paternal grandfather Juan Medrano Garcia entered the United States through Juarez Texas in 1919. In 1942, by use of The United States' Military Selective Service racial identification card, a card that had degrees of written skin-colored tones on it that determined the registered man's race;

my grandfather's dark skin designated him *Indian* and he was labelled a *Native American* (National Archives in St. Louis, Missouri).

American slavery is taught that the African Slave Trade existed before any slave trade in The Americas, but Nde slavery existed shortly after contact, and *like* African slavery, existed nearly three hundred years in The American Southwest. Slavery affected the maternal side of my family that was taken from the Apacheria's Valley of Rincones, New Mexico and sold into the Paseo Del Norte regions of present-day New Mexico, Texas and Chihuahua during the mid-1700's. During genealogical and historical study of my maternal side, the information was found on the various ancestral websites, but in my perspective, the most valuable website was researcher's Aaron Magdaleno. Magdaleno's translation from Spanish to English of marriage church records dating 1666 to 1850's uncovered my family's generational marriage records, and other Ndee families using the general description of *Apache* that had been enslaved in The Southwest Regions mentioned above (Magdaleno).

In addition to Magdaleno's research studied was that of what I call the Janos Documents: Spanish Military records and documents that included The Southwestern Region of the US which The Spanish Military records regarded them as The Northern Region. These records include our earliest Spanish to Mexican and then American histories (1540-1858); including Apache Enslaved Eras. Early elite Spanish landowners and later not so elite Mexican landowners had Nde chattel slaves and their offspring became generational servants of these households and other establishments and victims of institutionalized slavery like their parents but were the first to experience its' liberated aftermath; institutional racism (Presidio de San Felipe y Santiago de Janos Records).

The institutional racism Nde families faced upon their freedom during their diaspora, I believe, were the precursors to the systemic racism today not only in The United States but within the whole Indigenous North American Continent. Many Ndee families returned to New Mexico and lived in or on the outskirts of newly established *colonias* in camps. These families faced many unpredictable circumstances; including poverty at its worst, an uncertain self-identity to a homeland disconnected to and, fear of attacks from neighboring racist Mexican *colonias* such as Mesilla. Most Nde families were without a connection to their distant Nde relatives, due to not being from leadership families and not being able to be bartered back under treaties while enslaved; so, the majority of Nde while enslaved were forced to breed with other Indians and enslaved blacks and lower statuses of Spanish and Mexican men *and* women. Many more were the illegitimate offspring of their owners of which many were sold as babies, toddlers and as adolescents throughout various regions of The Southwest (Presidio de San Felipe y Santiago de Janos Records).

One of these families was Jose Maria Rosales (b.1806) of my maternal side, and with his wife Altigracia Verlarde (b.1810) both born and from the Apacheria's Valley of Rincones (present-day counties

of Dona Ana and Sierra) and had three of their eight children while in servitude in the Paseo Del Norte region. They lived to see three of their generations during their seventy-five plus years of marriage, live free, once returning to the Valley of Rincones by 1840 and upon their deaths before 1910. While in slavery and in servitude in Paseo del Norte, it is not known if The Rosales' knew enslaved Mimbres Ndé leader Juan Jose Galindo and his two sons, all who died while enslaved and whose traditional homelands still bare their name Las Gallinas in The Black Range, NM. What is known is that many of The Rosales children lived in and around Las Gallinas and were sponsors (godparents) of siblings and neighbors' children. The Rosales also made marriage ties to some of the Ndé families that are still connected today in our Chiende (Red-painted Apache People) families in the various Chihene (Red-Paint People) regions in Southern New Mexico.

A connection in marriage always wondered about in my family was that of a Morales woman who was thought to be a servant who had had illegitimate children with a Mexican man in the household she worked in the 1880's. While researching documents, it turned out to be an Enriquez 4th great-grandmother from La Mesa, NM. The Morales woman originally thought to be the servant woman was from Namiquipa, Chihuahua of a Warm Springs Chiricahua family. The Morales family of Chaves had ties to Apache Mescalero leader Augustin Vigil and a Anathansia Garcia also recorded as Mescalero Apache both sponsors (godparents) to a baptized Chaves child in 1891 in The Mimbres Territory of The Chihene in Dona Ana County, New Mexico (Rodey Church Records 41). The Chaves child's parents were sponsors of an earlier baptism of an Enriquez child of Rosales grand-parentage that are also in our family records.

The Rosales and other freed Ndé families, in the early 1840's, made their way back to their Southern New Mexico homelands in the heart of The Apacheria. These traditional homelands were occupied by free Chiende and their sub-groups of El Cobre (Coppermine), Mimbrenos (Willow), Gilenos (Chi'laa/Gila) Ojo Calientes (Hot Springs) and Amoles (Replanting of Seed People) Ndee. Through various documented histories and the political history that the Chiende once had with the State of New Mexico (Territory), US military and federal government is how the designated non-federally acknowledged status of my family came to be. The difference being with our Chiricahua, Mescalero and other federally-acknowledged Apache people is that we came back free from bondage and instead of fighting against the United States Military and Government for our lands, we farmed and worked them using US Congressional and Department of Indian Affairs help from Indian Agent Michael J. Steck before the implementation of the contemporary Bureau of Indian Affairs (Steck 1,2).

Our lands and farms upon them were once designated as reservations in our *acknowledged* historic and traditional lands but our families were displaced and removed from these lands by implemented governmental rules, regulations and Indian law policies and programs over an eighty-year period. Once

deemed a United States politically *acknowledged* Indian tribe in New Mexico, we were eventually designated as homeless and reduced to a United States' non-*acknowledged* federal Indian entity (tribe), in large part due to the fact that we were farming and did not war with the United States as Chihene and their sub-groups.

Prior to our Ndee Diaspora to Southern California many families that had travelled back and forth with The Rosales Family after displacement from our reservation lands and farms were placed in agriculture programs with us by the State of New Mexico between 1910 to 1925 within traditional homelands in the Valley of Rincones; specifically, in the Federally ran Military Indian Camp of Salem which is still considered our ancient agriculture lands seized by the federal government by the 1860's to build Fort Thorn and to section lands for homesteading and towns. These indigenous lands were traditionally home to The Rosales family and other Ndee and is the largest documented and recorded Apache Rancheria; hence, Apacheria by The Spanish and Roman Catholic Church at contact in 1691. Our last Holy Ground Ceremony which our elderly relatives at that time called The Rapture and witnessed and partook of as small children was approximately 1922-1924 before being removed from New Mexico to Colorado and then to Wyoming before being railroaded to Southern California the by 1930's with their Indian paperwork and designated non-acknowledged Indian numbers from the Department of Interior.

My family, once in Southern California, worked under various governmental works programs; including Agricultural and Dam Building programs within the Worker's Administration Project (WPA). Families that had married into non-Indian families were placed in agricultural areas such as Hicks Camp in El Monte California, and from my perspective, I believe the separation of our families that had married into non-Indian families, separated us forever due to the racism between Apaches and Mexicans stemming from our grand-parentage enslavement and then returning to homelands that were riddled with Mexican colonias and the violence and displacement they endured by them and The Americans. The resulting identity problems that would eventually rise while trying to fit in a multi-cultural state would rear its head along with the Civil Rights Protests in the 1960's and 1970's of which the majority of my family seemed to stay clear of—and as I think about it today and understanding what generations before endured—only my great-grandfather strived to make sure his youngest of great-grandchildren would not forget who they were since he had experienced and lived during the Indian Relocation Era (which our non-acknowledged status originated) being born in 1885.

While being in the California state of multi-cultural peoples, the prejudices our great-grandparents and other relatives endured in New Mexico, seemed to spill over as first generations of our families were born in California. When speaking to my late-great-aunt Ninfa Nava from El Paso, Texas back in the mid-1990's, she shared with me that her sister-in-law—my grandmother had been questioned repeatedly about

my grandfather's race by her parents, meaning that he being Indian as they suspected would cause many problems and hardships should they marry. Although my grandmother was Mexican and spoke Spanish, I learned from a late-aunt that my grandfather felt it unnecessary to learn the language and even had become upset when his children came home from catechism reciting prayers in Spanish. Another aunt, my mother's sister Emma had asked their father (my grandfather) why didn't they live on an Apache reservation like other Apaches and he had responded: "Because your mother wouldn't like it and because of the red tape."

Also shared by my late-aunt, was when my great-grandfather shared to my grandfather, he wanted to move the family back to New Mexico, grandfather was staunch to put his foot down on *no*. With the Civil Rights Movement in full swing, my great-grandfather made strides to gather us great-grandchildren at my grandparents' home in East Los Angeles, and repeatedly tried to teach us the Nde language but we wanted to play. So instead, he taught us to *play* ceremonies with sticks and hula hoops and dancing holding hands in circles. These interactions many times ended with my grandfather coming out the house and shooing his father away from the yard. I can still picture great-grandfather walking away, the last of Apache men of that time, wearing his three-piece suit and hat. I believe now, he must have been somewhat against Americanization, because of the Civil Rights Movement and because he at that time understood what the non-federal acknowledgement status truly meant: The total disappearance of Indian people into American society.

Prior to 2006, only federally-acknowledged (recognized) Indians residing in California could access Indian programs and resources, but after California adopted the Non-Acknowledgement State Process, non-acknowledged persons and families with their numerical paperwork (for they are not identifiable Indian *card* carriers) have been able to access various healthcare, social services and state resources (housing, rental, utility, food assistance) from the state's process as their status of *Indian*, but it is on a first come first served basis, with California Indians being the first as it should be. The process also opened the ICWA doors for non-federally acknowledged tribes, groups and families that have a right to participate in Indian and non-Indian courts in California as I did from 2009-2018. While the non-Indian courts are the hardest to uphold Family Indian Law and Policy, it can be successfully done with experienced Indian representatives, and the county ICWA courts do uphold non-federal acknowledged families and tribes. If non-federally acknowledged families and tribes do not have tribal courts and social services in place in their respective states, then children receive the services provided by the states' non-acknowledged processes in place as in California and other states that have a non-federal acknowledged process.

These entitlements to receive aide and social services grow each decade as more and more federally and non-federally acknowledged groups push for these rights and entitlements within the right to change the American status-quo to live happy and maintain a healthy lifestyle afforded to each human being as

depicted in The United States Constitution and Bill of Rights for the American status-quo was not curtailed around any Native American communities. The three United States' federal uses of labels (not, non and federally acknowledged) of Indian people, although racist and demeaning, have been necessary to explain for they depict the historical happenstance towards the non-federal acknowledged *Indian* within the Ndee Diaspora.

In conclusion, the results of systemic racism for non-federally acknowledged people include those that return to their respective traditional homelands in federally-acknowledged states such as New Mexico, do not receive the federal aid or social services or resources as they can in a non-acknowledge state such as California. Homelands once held in perpetuity, lay in state or federal hands, not named, or retain their place specific name immemorial such as The Gila Region—the phonetic name of The Chihene Region originally named by our ancestors as Chi`laa translated by Spanish speakers in Latin as Xila which means The Lands of the Red- Painted People in English.

The non-federal acknowledgement of Indian people was deliberately done by the US Federal Government to purposely displace and separate families by forced removal from their lands and evermore from states; their countries, to become homeless and country-less. Our youth, are struggling in self-identity due to the known and unknown enslaved history of Ndee ancestors that make them look naught like stereotypical Indians in a racist country that historically *is* their indigenous *root*. Many of our elderly and tribal members out of state, comeback as *visitors* and as *strangers* and participate in cultural gatherings and ceremonies and then return to their forced adoptive states. Lost are elders who remembered being railroaded out of traditional lands in cattle railcars and those that witnessed it happening to family and tribal members. Those of us who relocate back to our homelands and are able to buy a fraction of it back, do so, in the indigeneity spiritual sphere of our ancestors while shaking off the non-federal acknowledged label. At times, I think of my Ndé great-grandfather, and conclude, as he may have, that to be non-federally acknowledged *was* meant and *is* meant to be the total disappearance of Indian people into American society. Due to the systemic racism and racial differences in and out of our tribal communities and documenting and recording all that, we will not disappear, for we Ndee families are still alive and kicking, amid The Ndee Diaspora.

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Attachments



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

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REFERENCE: CERD/92nd/EWUAP/GH/SK/ks

17 May 2017

Dear Mr. Allegra,

I write to inform you that in the course of its 92nd session, the Committee on the Elimination of Racial Discrimination has further considered, under its early warning and urgent action procedure, the situation of the indigenous peoples living along the border between the United States of America and Mexico.

The Committee would like to remind the State party that in its previous 82nd session, it had addressed allegations concerning the potentially discriminatory impact that the construction of the border wall might have on the Kikapoo, Ysleta del Sur Pueblo and Lipan Apache indigenous communities, in its letter of 1 March 2013, and requested the State party to include relevant information in its overdue periodic report.

The Committee is informed about allegations of worsening of the situation of indigenous peoples in the same area. It is informed that the discriminatory effect of the previously constructed border wall has not been remediated. Moreover, the Government's planned expansion of the border wall, as announced through the executive order for "Border Security and Immigration Enforcement Improvements" of January 25, 2017, will allegedly have an adverse impact on the communities living along the border, especially indigenous communities.

Reportedly, the new order is more expansive than previous initiatives, and it was implemented without any type of consultation or consideration of potentially affected communities including indigenous communities.

Mr. Theodore Allegra
Deputy Permanent Representative of the United States
of America to the United Nations Office
Geneva
Email: mission.usa@ties.itu.int

The Committee is concerned that these allegations, if verified, could hinder the full enjoyment of rights under the Convention. The Committee recalls the concerns expressed in its letter of 1 March 2013 as well as recommendations made in paragraph 24 of its concluding observations (CERD/C/USA/CO/7-9, para. 24) of August 2014, that requested the State party to “(a) Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them, based on their free, prior and informed consent; (b) Take effective measures to eliminate undue obstacles to the recognition of tribes; (c) Adopt concrete measures to effectively protect the sacred sites of indigenous peoples in the context of the State party’s development or national security projects and exploitation of natural resources, and ensure that those responsible for any damages caused are held accountable”.

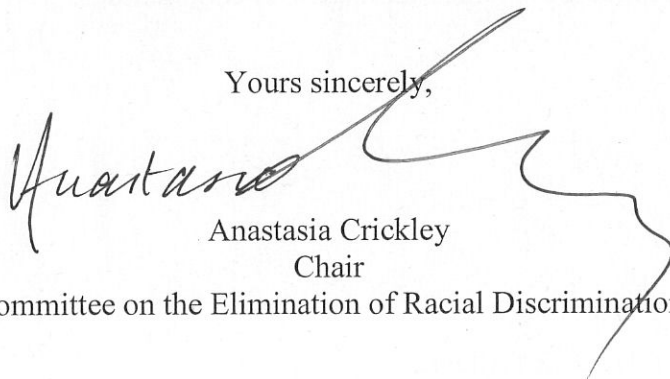
In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party submit information on all of the issues and concerns as outlined above by **17 July 2017**, as well as on any action already taken to address these concerns.

In particular, it requests that the Government of the United States of America provide information on:

- (a) The impact of the executive order of 25 January 2017 on the rights of affected indigenous peoples to have access to their lands and resources that they own or traditionally use;
- (b) Measures envisaged to reverse the negative impact of the expansion of the border wall on the rights of indigenous peoples;
- (c) Measures taken to ensure the free, prior and informed consent of the indigenous peoples, or genuine consultation, in decisions affecting them.

Allow me to express the wish of the Committee to continue to engage in a constructive dialogue with the Government of United States of America, with a view to provide it with assistance in the effective implementation of the Convention.

Yours sincerely,



Anastasia Crickley
Chair

Committee on the Elimination of Racial Discrimination



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)
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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

<<<<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)
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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, *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**

intergenerational and on-going racism, discrimination, and aggressive State policies. Collective Ndé-Nneé 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-Nneé peoples, the political status of Ndé-Nneé peoples, such as with the U.S. border wall in Kónitsaqáígokíyaa, which effectively separates Ndé-Nneé from home and place. [...] The Ndé-Nneé 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-Nneé 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 Nneé 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-Nneé cultural, spiritual, historical, and intellectual perspectives in a present-day context. (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;**
- 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.

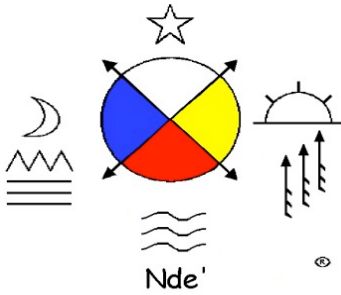
Respectfully,



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



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)
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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 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, endorses, 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

International
Organization for
Self-Determination
and Equality (IOSDE)

www.iosde.org
info@iosde.org

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, 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.

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, 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**

IOSDE: an equal future starts with an equal now

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 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, 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) 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).

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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