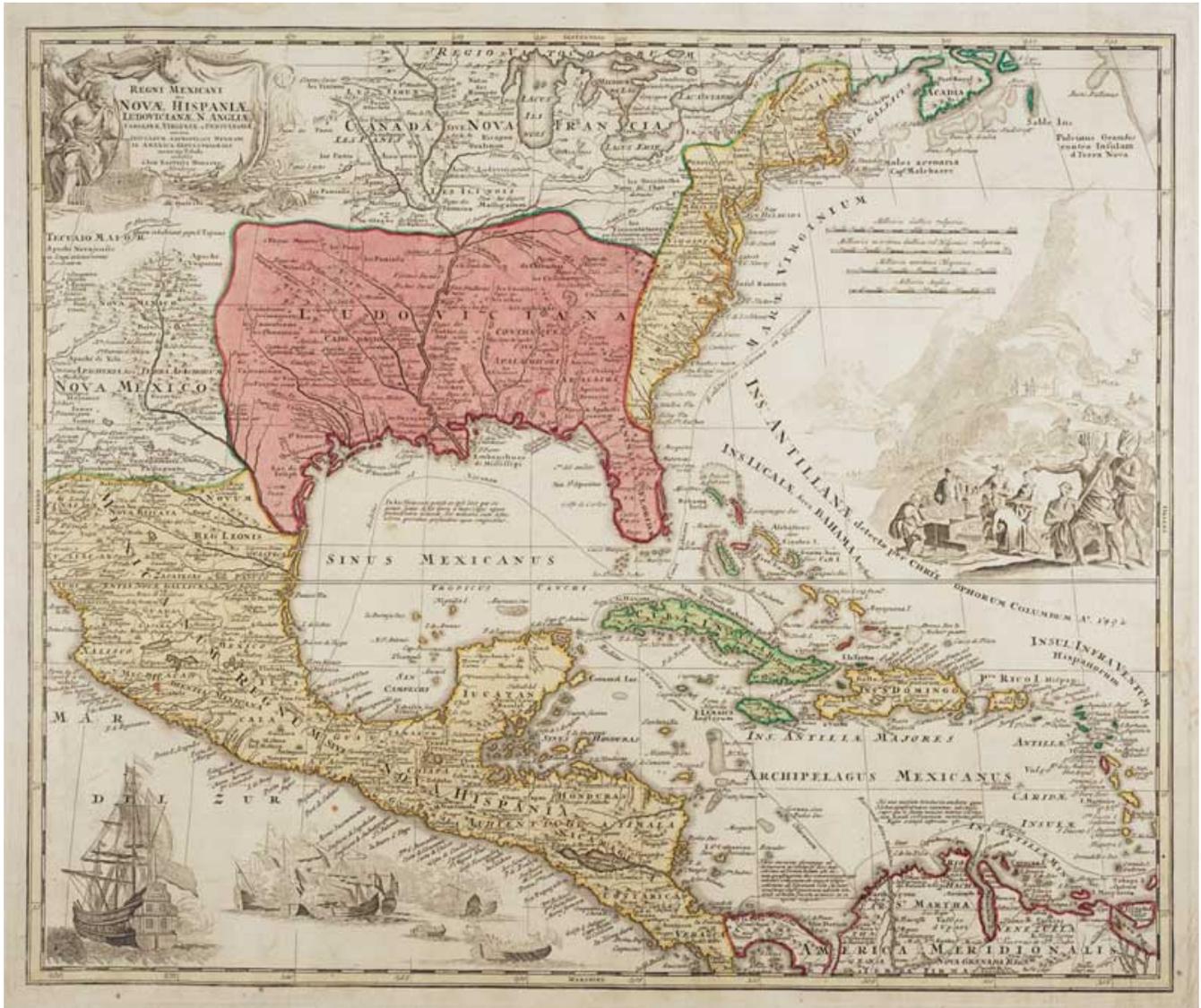


## The Holy See and European Dispossession of Apache-Ndé-Nnee Peoples: A call for truth, disclosure, justice and redress

Apache-Ndé-Nneeé Working Group Shadow Report / UN CERD 88<sup>th</sup> Session: Review of the Holy See



*Colonization, dispossession, obstruction, erasure, and domination: a historic map of the currently-named 'North America' and more: a vignette of the Spaniards taking gold from Indigenous Peoples. A sea-battle in the Pacific. The British, French and Spanish colonies are all marked, along with the Great Lakes and 'Terra Apachorum'<sup>1</sup> - from 1540-1749, the Ndé fought fiercely against the Spanish overthrow of *Konitsaii gokiya*, known to the Spanish Crown as *Terra Apachorum*, translated as "La Gran Apachería," and considered by the Spanish monarchy to be the **Apache sovereign territory to the north of Tenochtitlán.**<sup>2</sup>*

<sup>1</sup> Map: Johann Baptist Homann, German geographer and cartographer, c. 1730; [http://alteagallery.com/stock\\_detail.php?ref=7929](http://alteagallery.com/stock_detail.php?ref=7929)

<sup>2</sup> From *The Situation at the Texas-Mexico Border and the Racially Discriminatory Impact of the Border Wall on the Lipan Apache (Cüelcahén Ndé) Peoples in Texas: A Shadow Report to the U.N. Committee on the Elimination of Racial Discrimination* re Review of the United States of America, submitted by the Human Rights Clinic at the University of Texas at Austin School of Law, the Lipan Apache Band of Texas & the Lipan Apache Women Defense, Dr. Margo Tamez, University of British Columbia, February 2014, footnote 36.

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**Apache-Ndé-Nneé Working Group**

**Shadow Report**  
*Brief*

*for the* United Nations  
Convention on the Elimination of all forms of Racial Discrimination  
**(CERD) Committee, 88th Session: November 2015**

**Review of the Holy See**

## Apache-Ndé-Nneé Working Group Shadow Report Overview<sup>1</sup>

UN CERD Committee 88<sup>th</sup> Session  
November-December 2015: Review of the Holy See

India Reed Bowers, B.A. LL.M.<sup>2</sup>

### A. Introduction

1. Presented in the *Apache-Ndé-Nneé Working Group Shadow Report*, including its Annex, is a collective demand to no longer be forced to live the lies and the spiritual, moral, juridical, territorial, political and social discrimination of the Church, the Holy See, and its primary influences on colonialism, land-grabbing, genocide, State- and Kingdom-building, slavery, and theft and torture that has been brutalized on the backs of the Indigenous Peoples of the world and the ‘Americas’, including the Apache-Ndé-Nneé, and their traditional lives, lifeways, worldviews and territories. Current situations of suffering of the Apache-Ndé-Nneé are tied to the lack of full and just recognition of the identity, sovereignty, and the territorial and cultural integrity of Apache-Ndé-Nneé Peoples, a direct result of the legacy of discrimination against Indigenous Peoples contained within the *Inter Caetera* (Annex 1) and lack of access to justice therein.<sup>3</sup> As the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) states, “The pre-emptory norm of non-discrimination, a fundamental pillar of international human rights law, requires that indigenous peoples have access to justice on an equal basis to the general population.”<sup>4</sup> As exhibited by the individual papers, testimonials and materials in the *Apache-Ndé-Nneé Working Group Shadow Report*, situations and realities of extreme discrimination, including but not limited to legal, political, territorial and social discrimination persist due to the lack of redress and remedy regarding the legacy of the Holy See’s *Inter Caetera*.<sup>5</sup>

2. Also evidenced in the adjoining papers and testimonials of the *Apache-Ndé-Nneé Working Group Shadow Report* are ways in which the Apache-Ndé-Nneé to this day are blocked from decision-making concerning Apache-Ndé-Nneé ancestral territories and the sacred, including but not limited to access to sacred sites, health, collective well-being, inter-generational dignity and peace without discrimination. This can be learned, for example, through the testimony of Chihene Nde Elder and Apache Genizaro descendant

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<sup>1</sup> Culled from the paper: *Application of the UN CERD Treaty for the Apache-Ndé-Nneé Working Group Shadow Report* (Shadow Report, chapter V; see full paper for jurisdiction, intersectionality, and per-Treaty-Article analyses)

<sup>2</sup> India Reed Bowers, B.A. Cultural Anthropology, Brown University (United States), LL.M. International Law of Human Rights & Criminal Justice, Utrecht University (Netherlands); Founder & Director, International Organization for Self-Determination and Equality (IOSDE); Independent Freelance Consultant.

<sup>3</sup> For more discussion on Access to Justice in the context of Indigenous Peoples, see *Access to justice in the promotion and protection of the rights of indigenous peoples*, Study by the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), 6<sup>th</sup> Session, “A particular dimension of access to justice relates to overcoming long-standing historical injustices and discrimination, including in relation to colonization and dispossession of indigenous peoples’ lands, territories and resources. Injustices of the past that remain unremedied constitute a continuing affront to the dignity of the group [...] Harm associated with historical injustices continues today and thus must be taken into account. Many of the contemporary challenges faced by indigenous peoples are rooted in past wrongs.”, 2013, paras. 6 & 7, *hereafter* A/HRC/EMRIP/2013/2. The EMRIP Access to Justice Report was mandated by the Human Rights Council (HRD), para. 7 of resolution A/HRC/21/24 ‘Human rights and indigenous peoples’, with requests to States for submission of related information by the Office of the United Nations High Commissioner of Human Rights (UNHCR), AK/ST/cc.

<sup>4</sup> UN EMRIP, *Access to Justice*, para. 24, A/HRC/EMRIP/2013/2

<sup>5</sup> “The right to a remedy and related procedural and substantive rights essential to securing a remedy are protected in a wide range of international instruments. The United Nations treaty bodies have found that, when providing for remedies, they should be adapted so as to take account of the special vulnerability of certain categories of persons (Human Rights Committee, general comment No. 31 (2004), para. 15). Moreover, without the provision of reparations, the duty to provide remedies has not been discharged (Human Rights Committee, general comment No. 31 (2004), para. 16; Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010), para. 32). [...] in providing redress to indigenous peoples for the negative impacts of State laws and policies, States should prioritize the views of indigenous peoples on appropriate forms of redress (A/HRC/21/53 para 23)” Ibid para 13.

*Eddy Montoya* of the non-federally recognized Chihene Nde Apache Tribe, who fights for protection of sacred sites, including Kegotoi, the Place of Creation of the Chihene Nde Apache (from Kegotoi belonged Sanaba, the first Chihene Gila Apache leader that met the first friar, Alonso Benavides), to which access is now blocked for the Chihene Nde Apache by a rich Texan landowner. Elder Eddy Montoya endures ongoing intergenerational discrimination and threats as a Human Rights Defender and protector of the sacred. The paper by *Margo Tamez* discusses, amongst other violations and atrocities of historic, ongoing and current violence against the Ndé-Nneé Peoples as a whole as well as against Ndé-Nneé women and girls, specifically, regarding extended kinship governance structures and institutions and the legacy of hierarchical, patriarchal, paternalistic, and domineering rule of the Catholic Church. Tamez discusses the Ndé-Nneé who must fight the division of own lands and people by the US-Mexico border, and UNESCO-Catholic collaboration in the establishing of a World Heritage Site (San Antonio Missions) without due FPIC process or respect to Lipan Apache self-determination, a Tribe not federally recognized by the United States. The historic accounts of violence, conversion, enslavement, discrimination and subjugation of Apache Genizaro, as documented by *Lorraine Garcia* in “The Apache Genizaro and Their Two Hundred Fifty Year Enslavement” along with *Matthew Babcock*’s paper “Surviving Three Cycles of Colonialism: A Brief History of the Ndé People, 1700-1850”, detail, amongst other facts and situations, military aggression and contract killing against the Ndé, the captivity, violence, wrongful imprisonment, slavery, land exploitation and death of the Ndé, and the Spanish and Mexican military’s system of reservation-like Apache *establecimientos*. The testimonial “Indigenous Worldview” by *Michael Paul Hill*, discusses Ndé spiritual and religious beliefs and that the ‘origins and sources of dehumanizing theology and ideology stem from the Papal Bull Inter Caetera of 1493’, reclaiming Indigenous space in truth and understanding. The article by *Charles Vargas*, “Background to the Sacred Nature of the Blue Stones: Chiricahua Apache Cultural & Spiritual Significance of Gemstones,” discusses ceremonial stones and minerals and Chiricahua Apache Nation sovereign trade pre-dating European colonialism, as well as the Blue Stone Society 2013 and the Apache Nation Cultural and Historical Organization, both affiliated with the Chiricahua Apache Ndé Nation (CANN). An Appendix with additional documents- the *Inter Caetera* itself along with selected Apache-Ndé-Nneé UN submissions concerning ongoing situations the Apache-Ndé-Nneé face under the oppression of historical-to-present-day colonialism imposed on Ndé lives, families and territories, provides more documentation for insight. As well as the paper by the author of this Overview, *India Reed Bowers*, entitled “Application of the UN CERD Treaty for the Apache-Ndé-Nneé Working Group Shadow Report”, with its introductory Shadow Report overview followed by a per-CERD-article discussion with questions and recommendations,<sup>6</sup> ending overall with concluding remarks.

## B. Background

3. Mass populations of murdered Indigenous Peoples around the world have been lost from our international human collective due to the historical atrocities initiated, condoned and promoted by the Holy See via the *Inter Caetera* and its related discriminatory Papal Bulls and Doctrines and the legacies therein that continue today. Riches of the Catholic Church, i.e. the Holy See and the Vatican, have their origins in raped, pillaged and plundered lands and societies of Indigenous Peoples who were and continue to fight to be sovereign, autonomous and self-sustaining Peoples, including the Apache-Ndé-Nneé Indigenous People/s (throughout this paper from here on referred to as the Apache-Ndé-Nneé).

4. The Holy See’s *Inter Caetera* not only blessed policies and practices of colonialism that caused what is expressed by Indigenous Peoples themselves as genocide, cultural genocide, and generations of suffering, slavery and loss, but it also put policies and practices into action, such as, but not limited to, through its own missionaries and missions, churches and subsequent schools, that operated and continue to

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<sup>6</sup> See p. 33 of the *Apache-Ndé-Nneé Working Group Shadow Report* (p. 10 of the paper *Application of the UN CERD Treaty for the Apache-Ndé-Nneé Working Group Shadow Report*)

operate in alliance with Kingdoms and subsequently States for own mutually-collective world dominance<sup>7</sup> and at the cost of Indigenous Peoples and their lands, lives, self-determination<sup>8</sup> and cultures.

5. Language such as “*that barbarous nations be overthrown and brought to the faith itself*”<sup>9</sup> of the *Inter Caetera* served not only as instruction and endorsement of the brutal subjugation of Indigenous Peoples, but continues to deeply and directly influence politics and policies, land rights, external identity-determination, and judicial processes and decisions therein<sup>10</sup> regarding Indigenous Peoples,<sup>11</sup> not least for the Apache-Ndé-Nneé, by States.

### C. Today

6. The *Apache-Ndé-Nneé Working Group Shadow Report* in its entirety makes the case for, amongst other things, the need for a Truth Commission regarding the Holy See and the *Inter Caetera* and the Apache-Ndé-Nneé and Indigenous Peoples, reparations and changes in related and resulting laws and policies regarding Indigenous territories and sovereignty therein, and a legally-formal and public rescinding by the Holy See of the *Inter Caetera* and its legal, political, spiritual and territorial legacies. The past and ongoing effects, as exhibited in the *Apache-Ndé-Nneé Working Group Shadow Report*, of crimes against humanity and genocide, including cultural genocide, ethnocide, ecocide, and environmental racism<sup>12</sup> *as-experienced* by the Apache-Ndé-Nneé and that result from the legacy of the *Inter Caetera* must be addressed legally and formally, and with proper and Indigenous FPIC-based redress and remedy, including but not limited to in the context of the option of a full and formal Truth Commission. Formal and direct legal codification must be made that denounces and rescinds all subsequent and related regional, national and international legal decisions, treaties and codifications based on and developed from the inherent racism against Indigenous Peoples of the *Inter Caetera*.

7. For the Holy See to not, as an international *collective* moral obligation, formally and officially rescind the *Inter Caetera* and, in addition, formally and officially work for and alongside Indigenous Peoples, including the Apache-Ndé-Nneé, to remedy, redress and repair damage done by the *Inter Caetera* and the resulting legacies<sup>13</sup> of ongoing genocide of living traditional culture and original spiritual land relationships of Indigenous Peoples is yet another act of racial discrimination, not least in the context of

<sup>7</sup> World dominance such as in the codification of local, national, regional and international laws, positions of influence in politics such as at the UN, determination over policies and practices of trade and business, policing of dissent, and self-granted territorial integrity over colonized Indigenous lands, peoples and cultures.

<sup>8</sup> “The right to self-determination is a central right for indigenous peoples from which all other rights flow. In relation to access to justice, self-determination affirms their right to maintain and strengthen indigenous legal institutions, and to apply their own customs and laws.” UN EMRIP, para. 19, A/HRC/EMRIP/2013/2

<sup>9</sup> <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>

<sup>10</sup> See May-Lisbeth Brew, “‘Unspoken Conspiracy’ - Living within the Resonance of the Doctrine of Discovery”, University of Oslo, Norway, <https://www.duo.uio.no/handle/10852/41910>

<sup>11</sup> As Tonya Gonnella Frichner pointed to in 2010 in her report to the UNPFII as Special Rapporteur, direct linkages and references to the *Inter Caetera* as well the Doctrine of Discovery are contained in United State law and policy, as confirmed by numerous studies and official United Nations documents. See Tonya Gonnella Frichner, Special Rapporteur, Permanent Forum on Indigenous Issues 9th session, 19 - 30 April 2010, Item 4 and 7 of the provisional agenda: Impact on Indigenous Peoples of the International Legal construct known as the Doctrine of Discovery, which has served as the Foundation of the Violation of their Human Rights, 3 February 2010, *hereafter* E/C.19/2010/13

<sup>12</sup> Including but not limited to the horrors and effects of Agent Orange (Dioxin) testing on Apache-Ndé-Nneé territories, see, for example, *Geochemical Assessment of Metals and Dioxin in Sediment from the San Carlos Reservoir and the Gila, San Carlos, and San Francisco Rivers, Arizona*, Scientific Investigations Report 2005-5086, U.S. Department of the Interior, U.S. Geological Survey, By Stanley E. Church, LaDonna M. Choate, Marci E. Marot, David L. Fey, Monique Adams, Paul H. Briggs, and Zoe Ann Brown

<sup>13</sup> For example, see the adjoining papers in the *Apache-Ndé-Nneé Working Group Shadow Report* and India Reed Bowers, *Indigenous Decolonization and United Nations Membership: Indigenous Peoples and the Fundamental Right to Self-Determination*, LLM Thesis, International Law of Human Rights and Criminal Justice, School of Law, Utrecht University, Netherlands: 2012, published in *Indigenous Nations & Peoples Law eJournal*. Center for Indigenous Law, Governance & Citizenship at Syracuse University College of Law. Vol. 9, nr 10: 29 March 2013, <http://www.scribd.com/doc/129340589/Indigenous-Decolonization-and-United-Nations-Membership-Indigenous-Peoples-and-the-Fundamental-Right-to-Self-Determination>

neglected diplomacy, and most frighteningly in the context of violation of rights of Indigenous Peoples specifically to (amongst other rights) life, peace, health and dignity as Indigenous Peoples and as per International Human Rights Law<sup>14</sup>.

8. In the context of commentary made by the Holy See regarding Indigenous Peoples and the *Inter Caetera*, notably the Holy See did *not*, for example, deny the racism and domination intent of the *Inter Caetera* when the issue was raised by Ms. Tonya Gonnella Frichner in her related 2010 report<sup>15</sup> as Special Rapporteur to the United Nations Permanent Forum on Indigenous Issues (UNPFII). Nor, at the same time, did the Holy See raise issue with the fact of the *Inter Caetera*'s effects on subsequent State laws and policies regarding Indigenous Peoples and State powers, territories, and other related situations of Indigenous Rights violations today; the Holy See merely debated whether or not the *Inter Caetera* is still in force in the indirect context of other subsequent Papal Bulls, while simultaneously arguing for its (the Holy See's) own non-responsibility for the *Inter Caetera*'s legacies due to, amongst other notions, notions of jurisdiction.<sup>16</sup>

#### D. Overview Summary

9. The *Apache-Ndé-Nneé Working Group Shadow Report*, as a whole and through its experts, both in testimony and in analyses, submits that speeches alone by a Pope are not due remedy; history must be correctly investigated, re-written and spoken, and the full truth must be told, remedied and documented-truth that the Holy See enabled, encouraged and mandated brutal colonialism around the world on Indigenous and tribal lands, enslaving, decimating, and brutally stealing from and raping peoples, and that the Apache-Ndé-Nneé are due full and proper redress from all responsible actors, contributors and sovereigns therein.

10. As the Holy See states itself in its submission to CERD,

“pardon has its own demands, which are truth, justice, reparation and reconciliation, and which include: overcoming the weight of history by a correct re-reading of each other's history in order to acquire a better knowledge and acceptance of the other; opting for ‘a culture of peace’ by religions, governments and the international community [...] the Catholic Church's path towards national and international reconciliation...”<sup>17</sup>

It is expected that the Holy See will formally apply these concepts it has put forward to the CERD Committee to its own relationship with Indigenous Peoples, including the Apache-Ndé-Nneé, so as to be in compliance with not only CERD but with its own claims.

11. As can be seen in the quotation above, the Holy See expresses an understanding that a re-reading and understanding of ‘the other's’ history is necessary to for the Church to come to a place of reconciliation<sup>18</sup>. In the *Apache-Ndé-Nneé Working Group Shadow Report* are included papers containing documentation of atrocities both past and present resulting from the Holy See's discrimination against

<sup>14</sup> For example, see the UNDHR, UN Charter, UN ICCPR and ICESCR, UNDRIP and UN WCIP and Alta Outcome Documents.

<sup>15</sup> Tonya Gonnella Frichner E/C.19/2010/13

<sup>16</sup> The Holy See stated at the UNPFII in 2010: “for International Law and for the Catholic Church Law, the bull *Inter Coetera* is a historic remnant with no juridical, moral or doctrinal value. [...] The fact that juridical systems may employ the ‘Doctrine of Discovery’ as a juridical precedent is therefore now a characteristic of the laws of those states and is independent of the fact that for the Church the document has had no value whatsoever for centuries. The refutation of this doctrine is therefore now under the competence of national authorities, legislators, lawyers and legal historians.” (Thus the Holy See has rejected the notion of its own role in current and ongoing historical injustices that are a result of the actions of the Holy See itself), from *Statement by Permanent Observer Mission of the Holy See*, 9th session of the United Nations Permanent Forum on Indigenous Issues (UNPFII), Agenda Item 7: Discussion on the reports “Impact on Indigenous Peoples of the International Legal construct known as the Doctrine of Discovery, which has served as the Foundation of the Violation of their Human Rights” and “Indigenous Peoples and boarding Schools: A Comparative Study” 27 April 2010

<sup>17</sup> Holy See CERD/C/V A T/16-23, para. 56

<sup>18</sup> See para. 41, Holy See CERD/C/V A T/16-23

Indigenous Peoples, including the Apache-Ndé-Nneé, addressing resulting and continued (at times verbatim) legacy in resulting State laws and policies as well as local, regional and international discrimination, both direct and indirect, and decision-making procedures therein. The Report engages in a truth-telling accountability process regarding the Apache-Ndé-Nneé and the Holy See.

12. By failing and even refusing to fulfill, protect and promote the rights of Indigenous Peoples and the Apache-Ndé-Nneé in a substantive way, in this case regarding formal, specific and full rescinding of the *Inter Caetera* and condemning and redressing its legacy, the Holy See is in direct violation of its obligations under the CERD Treaty.

13. In light of global actions both past and present, it is necessary that the Holy See's review by CERD directly addresses the Holy See's commitment to Indigenous Peoples in newly-constructed, intentional and formal manners and matters of both justice and remedy, such as through recommendation of a Truth Commission(s) and the canonizing of new Holy See State laws and policies specifically related to Indigenous Rights and Peoples,<sup>19</sup> so as to assure that the Holy See not only does its due part in healing the wounds of its own violations, but that it is also in compliance with the current, evolved, international law as well as nation-to-nation diplomacy that includes Indigenous Peoples, Tribes and Nations- a due justice that the Apache-Ndé-Nneé have yet to experience.

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<sup>19</sup> Holy See CERD/C/V A T/16-23, para. 59, "Each country should set in place appropriate national structures to address the questions of racism, racial discrimination [...] Special attention should be given to situations where, despite best efforts, racist sentiments may still prevent the vulnerable from fully exercising their human rights."

**Apache-Ndé-Nneé Working Group Shadow Report: Questions<sup>1</sup>  
for the CERD Review of the Holy See**

**I. Questions to the Holy See by CERD Treaty Article**

**Articles 2 and 3**

**2(1), 2(1)(a), 2(1)(b)**

1. In what ways does *and will* the Holy See uphold, protect and promote, both internally amongst its peoples, congregations and own State, as well as in its role in the international fora and its diplomatic relationships, the non-discriminatory truth that inherently self-identifying sovereign Indigenous Tribes, Peoples and Nations are equal in self-governance to self-identifying sovereign Kingdoms, States, as well as the Holy See itself?

2. In what ways does *and will* the Holy See revoke, formally and informally, both internally amongst its peoples, congregations and own State, as well as in its role in the international fora and its diplomatic relationships, discrimination resulting from ongoing influence of the language, bindings and intentions of *Inter Caetera* against inherently self-identifying sovereign Indigenous Tribes, Peoples and Nations, who are inherently equal in self-governance to self-identifying sovereign Kingdoms, States, as well as the Holy See itself?

**2(1)(c), 2(1)(d)**

3. How and when does the Holy See plan to specifically and legally rescind the *Inter Caetera* and its related discriminatory Bulls and Doctrines that have and do still create discriminatory effects and circumstances for Indigenous Peoples including the Ndé-Nneé?

4. What will be the final outcome of the necessary rescinding of the *Inter Caetera* and its related discriminatory Bulls and Doctrines, as envisioned by the Holy See?

**2(1)(e), 3**

5. In what ways is the Holy See formally participating in international diplomacy with Ndé-Nneé and Indigenous Peoples and at the same time recognizing Indigenous cultural and spiritual wealth and traditional leadership therein as equal to all Nations and inherently sovereign and territory-based?

**2(2)**

6. What steps is the Holy See taking to formally recognize traditional sovereign Ndé-Nneé Indigenous trade and wealth, territorial integrity (mineral and ecological, spiritual, cultural, familial and otherwise) of Indigenous Peoples, Tribes and Nations including the Ndé-Nneé, for the purpose of guaranteeing full and equal enjoyment of human rights and fundamental freedoms?

7. What steps is the Holy See taking to provide reparations for damage incurred by the *Inter Caetera*, including in the form of full recognition and restoration of original sovereignty and territories as well as for losses of life, dignity, family culture and otherwise, for the purpose of restoration of equal enjoyment of human rights and fundamental freedoms for the Ndé-Nneé and Indigenous Peoples, Tribes and Nations?

**Article 4**

**4(a), 4(c)**

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<sup>1</sup> Culled from the Shadow Report papers

8. In what ways is the Holy See formally and actively upholding, protecting, promoting that Indigenous Peoples, including the Ndé-Nneé, are equal *moral authorities* of their own peoples, lifeways and territories, with own inherent sovereignty, and condemning any positions otherwise?

9. What is the Holy See's interpretation of the components of the *moral authority* and integrity of Indigenous Peoples, and how will the Holy See identify violations therein?

10. In what ways will the Holy See formally participate in the restoring in the world society of the inherent sovereignty and self-determining status of the *moral authority of Indigenous Worldview*, was stolen through the discrimination of, and created, endorsed and fostered by, the *Inter Caetera* and its legacy, so as to prevent permitting public authorities or public institutions to promote or incite racial discrimination against Indigenous Peoples, Tribes and Nations, including the Ndé-Nneé?

11. So as to prevent permitting public authorities or public institutions to promote or incite racial discrimination against Indigenous women, in what ways will the Holy See formally participate in the restoring of the status, security and inherent roles of Ndé-Nneé and all Indigenous women, and in the context of their own Indigenous Worldviews and values that were stolen from them and their families and peoples through the discrimination of, and created, endorsed and fostered by, the *Inter Caetera* and its legacy, the Catholic Church and Holy See therein?

12. In what ways is the Holy See working to combat violence against women and, in particular, violence against Indigenous Women, including but not limited to in the context of its own colonial and *Inter Caetera* legacies?

#### **Articles 5 and 6**

#### **5(a), 5(b), 5(c), 5(d), 6**

13. What steps will the Holy See take to participate in a full and genuine Truth Commission regarding the past and present effects of the *Inter Caetera* and its related discriminatory Bulls and Doctrines on the Ndé-Nneé as well as Indigenous Peoples in general?

14. What steps will the Holy See take to participate in full and genuine reparations for past and present effects of the *Inter Caetera* and its related discriminatory Bulls and Doctrines, and actions of the Holy See re the Ndé-Nneé as well as Indigenous Peoples in general?

15. How will the Holy See work to recognized, as well as to assist to actualize, true and inherent Ndé-Nneé and Indigenous Peoples', Tribes' and Nations' restored sovereignty and full and equal participation in political affairs therein at the international, regional and local levels, including as own traditional leaderships, territories, cultures and religions?

16. How will the Holy See remedy Catholic Church involvement in the establishing of UNESCO World Heritage Sites in violation of Indigenous and Ndé-Nneé FPIC, sacred and living culture sites and rights to self-determination?

17. What steps will the Holy See take to protect and assure the security and success of Indigenous Human Rights Defenders in the very lands the *Inter Caetera* and Catholic Church has participated in their subjugation in, including Chihene Nde Elder and Apache Genizaro descendant Eddy Montoya, whose testimonial is included in this Shadow Report?

#### **Article 7**

18. What concrete actions is the Holy See going to undertake to educate its own peoples and congregations regarding the truth of the *Inter Caetera* and its legacy, including with regard and reference to Apache-Ndé-Nneé historians, elders, experts, oral testimonies and documentarians such as those who have contributed to this Shadow Report, as an act of friendly relations with the Apache-Ndé-Nneé and Indigenous Peoples, Tribes and Nations?



and Indigenous rights to meaningful participation, FPIC, and access to justice with regard to the San Antonio Missions World Heritage Site. <http://whc.unesco.org/en/list/1466>. Disrespected, avoided, negated, and ignored by both UNESCO and the San Antonio organizers and committee leaders, Ndé-Nneé have been violently excluded from providing a more balanced, inclusive, decolonial and more rigorous interpretation of historical facts related to the Spanish Missions in south Texas. Instead, the re-telling of the Euro-centric view of ‘Apaches’ is being reproduced and sold as ‘fact’ to tourists, which is re-indoctrinating the spatiality of conquest and normalized oppression of dangerously marginalized Ndé-Nneé in Texas. This imposes a nefarious cognitive imperialism and domination effect which has negative social-economic-spiritual-mental-and physical persistence. In effect, this *re-performs* the Conquest in current and real-time, and significantly imposes burdens and barriers upon the Ndé-Nneé effective transition to self-determination in Kónitsaqáíígokiyaa with lands and territory. Rather, the San Antonio Spanish Mission World Heritage Site reinscribes colonial power relations into the past and into the present; it perpetuates cognitive, social and economic violence against marginalized Ndé; it paints a sinister picture of ‘Apaches’ as primitives who were doomed to be (the usual tropes) slaves, outlaws, thieves, murderers, extinguished, and exterminated; it obscures the Church’s historical role and deep involvement in structuring the very society which enabled and legalized the settler colonial genocidal killings of Ndé-Nneé; and the Church’s role as a less than benevolent institution through centuries of economic enslavement; nor does this World Heritage Site provide rigorous social understanding of the role of UNESCO in repositioning colonial narratives and its role in re-educating the public through the implementation of the UNDRIP and related UN conventions. This World Heritage Sites blocks the public from hearing directly from Indigenous Peoples regarding the current-day struggles for freedom from the Catholic Church’s colonial narratives, especially as Ndé-Nneé have regularly provided testimony in UN fora related to neoliberal, war-mongering agenda in militarized, walled, and droned-up homelands over-ruled by corporate raiders and their stock holders.

26. The social, economic, intellectual, cultural and political excision of Apache-Ndé-Nneé from Kónitsaqáíígokiyaa as self-determined peoples has involved, generation after generation, the prominence of the Catholic Church’s physical presence through which its hierarchy of elite decision-makers exercise Canon Law and jurisdictional control over resources. What is the extent of the benefit the Holy See derives from the underpinning of its daily benefit—the history of bloody killing fields and destructive wars waged by the Catholic Church’s oligarchy against the Ndé-Nneé? What is the extent of the Holy See’s material and legal benefit from the continual repression of Ndé-Nneé collective self-determination with lands and territory? What is the force of Ndé-Nneé dispossession in the present-day? The Holy See should calculate and disclose, by square footage and square cubic yard, what exactly is the real estate and assets foot-print of the Holy See and Catholic Church in Kónitsaqáíígokiyaa? This should include, but is not limited to churches, schools, halls, municipal buildings, warehouses, distribution centers, manufacturing plants, charities and foundations, universities and colleges, hospitals, research centers and institutes, retreat centers, ranches, farms, urban physical plant. In addition, what is the investment portfolio upon which the Catholic Church and Holy See derive benefits from annually currently derived directly from collective Ndé-Nneé marginalization? In addition, what specifically are the material-economic benefits derived from mineral, chemical, oil, agriculture, and other capital ventures? the military industrial complex? space exploration? nanotechnology? pharmaceuticals? social media? print and digital publication and presses? digital domains?

27. What is the full force and comprehensive responsibility of the Holy See toward Ndé-Nneé self-determination and decolonization in Kónitsaqáíígokiyaa today?

***Apache-Ndé-Nneé Working Group Shadow Report: Recommendations<sup>1</sup>  
for the CERD Review of the Holy See***

**I. Urgent Recommendation to the Holy See**

1. That the Honorable Pope Francis meet immediately, in the Vatican or otherwise, with representatives of the *Apache-Ndé-Nneé Working Group* while they are in Europe for the CERD Holy See review, so as to discuss urgent matters including those presented in this Shadow Report.

**II. Recommendations to the Holy See by CERD Treaty Article**

**Articles 2 and 3**

**2(1), 2(1)(a), 2(1)(b)**

1. Oppose, both internally amongst its peoples and State, as well as international fora, the notion that self-identifying sovereign Indigenous Nations are not equal to self-identifying sovereign Kingdoms, States and the Holy See.

2. The Holy See must create a formal law and policy within its own legal code and canon regarding the Holy See's legal position on Indigenous Rights,<sup>2</sup> in consultation and collaboration with Indigenous Peoples and experts of Indigenous Rights and with respect to Indigenous Worldview the full rights that apply to Indigenous Peoples within International Human Rights Law, 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.<sup>3</sup>

3. Hold the appropriate persons accountable for such violations of the Holy See's own anti-discrimination laws for determining Junipero Serra a saint against the will and self-determination of the descendants of those Indigenous Peoples most affected by Serra's harms to Indigenous Peoples and the atrocities of the era against Indigenous Peoples, today crimes against humanity, ethnocide and genocide, in which Serra participated, directly and indirectly.

4. Consult with the Ndé-Nneé on the issues affecting them that are a result of the *Inter Caetera* and its legacy, including all matters raised in the adjoining papers and testimonials of this Shadow Report-continued disrespect and degradation of the Ndé-Nneé sacred and traditional worldview, sacred sites, self-determination regarding territories, leadership, law and governance, wealth, health and family and the healing processes required, both spiritual and legal, due to intergeneration trauma stemming back to Holy See direct and promoted discrimination, domination and subjugation codified within the *Inter Caetera*.

5. Hold accountable those Catholic Church representatives responsible for participating in the establishment of UNESCO World Heritage Sites against the self-determination of the affected Ndé-Nneé. Hold accountable all violators of Indigenous Rights related to or a part of the Holy See's spiritual and/or

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<sup>1</sup> Culled from the Shadow Report papers

<sup>2</sup> The Holy See itself states: "all States to ensure that 'their legislation expressly and specifically prohibit racial discrimination and provide effective judicial remedies and redress' (Programme of Action, n.163). Such legislation [...] must address the situation of indigenous peoples." from *Pontifical Council for Justice and Peace, Contribution to World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 31 August - 7 September 2001)*

<sup>3</sup> See Holy See CERD/C/V A T/16-23, para. 59, "Each country should set in place appropriate national structures to address the questions of racism, racial discrimination [...] Special attention should be given to situations where, despite best efforts, racist sentiments may still prevent the vulnerable from fully exercising their human rights.""

political domain and scriptural influence as an act against racial discrimination. (*See also* CERD Articles 2(1)(c) and 2(1)(d))

**2(1)(c), 2(1)(d)**

6. Officially, legally and specifically rescind the *Inter Caetera* and its related discriminatory Bulls and Doctrines that have created and/or do create a discriminatory effect and/or circumstances on Indigenous Peoples including the Ndé-Nneé.

7. Following such rescinding, formally make a public and official statement that all State laws and policies in the world resulting from the *Inter Caetera* and its related bulls and doctrines disproportionately negatively affecting Indigenous Peoples as a part of the legacy of the *Inter Caetera* should be reviewed, changed and/or revoked so to represent current Indigenous Rights standards, remedies, redress and the reversal of genocidal and ethnocide-inducing law, policy and inter-national relations.

**2(1)(e), 3**

8. Engage actively in supporting Indigenous Peoples, including the Ndé-Nneé, to be on footing equal to States in their (Indigenous Peoples') collective and diverse actions and initiatives as both self-governing and traditional peoples to participate equally to States locally, regionally and internationally (such as at the UN and in other international forums) in situations of decision-making processes, legal codification and interpretation, and otherwise influential and/or defining legal-political-cultural-structural actions and collaborations. (*See also* Article 5(c))

9. Vow to engage with respect to the rights of the Ndé-Nneé in the situation of the UNESCO World Heritage Site, the affected Indigenous Peoples regarding the canonization of Junipero Serra, and the affected Indigenous Peoples regarding the past and ongoing damage done by the era of conquest and domination of the Catholic Church and the Holy See, including but not limited to the indoctrination of slavery, spiritual violence, land-grabbing, wealth-looting, family destruction and other discriminatory practices.

10. Establish diplomatic relations equal to those with States with the Ndé-Nneé and Indigenous Peoples, , and in particular those peoples still practicing and following own traditional religions, cultures, leaderships, systems and lifeways, so as to end the apartheid of Indigenous Peoples that exists in local, regional, State-national and international decision-making and representative realms.

11. Condemn all apartheid-like treatment towards the Ndé-Nneé and Indigenous Peoples.

**2(2)**

12. Formally recognize traditional sovereign Ndé-Nneé Indigenous trade and wealth, territorial integrity (mineral and ecological, spiritual, cultural, familial and otherwise) of Indigenous Peoples, Tribes and Nations including the Ndé-Nneé, for the purpose of guaranteeing full and equal enjoyment of human rights and fundamental freedoms.

13. With the full and equal FPIC participation of the Indigenous Peoples, Tribes and Nations affected, create pro-active measures, local interventions, and support local initiatives of said Indigenous Peoples to gain back their territories, cultures, social networks and families and traditions where the Holy See and/or its people and followers are deemed by the Indigenous Peoples affected to be violating their rights, as per the Indigenous Rights contained with the UNDRIP, UNCERD, GA WCIP and Alta Outcome Documents and other UN treaties and/or Indigenous Law.

14. Provide reparations for damage incurred by the *Inter Caetera*, including in the form of full recognition and restoration of original sovereignty and territories as well as for losses of life, dignity, family culture and otherwise, for the purpose of restoration of equal enjoyment of human rights and fundamental freedoms for the Ndé-Nneé and Indigenous Peoples, Tribes and Nations.

**Article 4****4(a), 4(c)**

15. Abstain from language and positioning relating to claims of the moral authority of the Holy See in the international context, and instead recognize and uplift that all religious peoples of the world have own autonomous moral authorities, integrities and principles therein.

16. A verbal, written and advertised change of heart of the Holy See in the form of a formal apology and condemning of the history of domination of Indigenous Peoples, Tribes and Nations worldwide by the Holy See and the *Inter Caetera* and its continued legacy that enables the domination of States over Indigenous Peoples, Tribes and Nations.

17. Recognition that the inherent equality and spiritual richness of Indigenous Rights and cultures, including matrilineal and matriarchy-based traditions and Peoples, is needed for diplomacy and a better world of International Human Rights, historical justice and healing, and an acknowledgement and respect as such on the part of the Holy See towards the Ndé-Nneé, specifically, as one component of a truth and reparations process; for the Holy See to condemn anything less.

18. Actively support and undertake work that directly combats violence against women and, in particular, violence against Indigenous Women, including but not limited to in the context colonial and *Inter Caetera* legacies.

19. That the Holy See treat Indigenous Peoples, Tribes and Nations as equal to States, Kingdoms and even its own authority<sup>4</sup>, as well as to other religions as part of the family of world religions, including in the contexts of sovereignty and territorial and spiritual integrity; That the Holy See educates its peoples, staff and congregations as such with formal measures including laws and policies regarding Indigenous Rights and full recognition of the discrimination of not only the past of the Holy See but also the present legacy that Indigenous Peoples, as own Nations, endure having survived genocide; Undergo such processes as part of a multi-pronged initiative to repair damage done to Indigenous Peoples, Tribes and Nations by the Church in its allegiance with States and Kingdoms; That the Holy See requests UN Member States to do the same, and includes and encourages Member States in such initiatives, especially the States that have subsequently claimed their own sovereignty and territorial integrity to be over Indigenous peoples and lands, and holds UN Member States accountable that do not adhere or participate in due diligence and process.

20. Prohibit evangelizing propaganda and conversions in traditional Indigenous religious areas by persons professing to represent the Catholic church; educate Catholic followers rights of Indigenous Peoples to traditional religions, beliefs, land, sovereignty, cultural and territorial integrities, leadership, decision-making, and medicine (healers, religion).

21. All issues raised in this report should be examined and held accountable in the light of the Holy See's anti-discrimination laws in conjunction with UN CERD Committee's General Recommendation 23 re Indigenous Peoples and a newly-developed Holy See legislation/policy regarding Indigenous Rights, the legal body of recommendations, comments and agreements within the UN regarding Indigenous Rights, especially in regards to UNDRIP Articles 7 and 8: "the collective right to live in freedom, peace and

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<sup>4</sup> Holy See CERD/C/VAT/16-23, paras. 6, 8-9: "The Holy See is a sovereign subject of international law having an original, non- derived legal personality independent of any authority or jurisdiction. The Holy See has diplomatic relations with 180 States and participates as a Member and/or non-Member Permanent Observer to the United Nations and several United Nations specialized agencies, as well as in various universal or regional intergovernmental organizations."; "The Holy See also exercises its sovereignty over the territory of Vatican City State (VCS), established in 1929 to ensure the Holy See's absolute and evident independence and sovereignty for the accomplishment of its worldwide moral, spiritual and religious mission, including all actions related to international relations (cf. Lateran Treaty, preamble, arts. 2 and 3)."; "...the Holy See continued to act as a subject of international law by concluding concordats and international treaties of States, participating in international conferences, conducting mediation and arbitration missions, and maintaining both active and passive diplomatic relations."

security and shall not be subjected to any act of genocide or violence, forcible removal of children, forced assimilation or destruction of their culture; The State has the obligation to provide mechanisms for prevention of, and redress for any action which deprives them of their integrity as distinct peoples, or of their cultural values or ethnic identities; or of dispossessing them of their lands, territories or resources.”

## Articles 5 and 6

### 5(a), 5(b), 5(c), 5(d), 6

22. A full and genuine Truth Commission<sup>5</sup> and Restorative Justice actions and reparations, with respect to FPIC and self-determination of Apache-Ndé-Nneé and Indigenous Peoples, Tribes and Nations in construction and process, regarding the historical atrocities of the *Inter Caetera* and its related Bulls, policies, laws and Doctrines of the Holy See and its partnering States and Kingdoms, including but not limited to with regard to the related violations, losses and suffering documented, presented and discussed in this Shadow Report, i.e. slavery, theft of gold and other riches, land loss, intergenerational trauma and damages to families, youth, traditional healers, sacred sites, elders, women and traditional legacy, language, culture, health, peace and dignity, and equality.

23. Recognized and assist to actualize true and inherent Apache-Ndé-Nneé and Indigenous Peoples’, Tribes’ and Nations’ sovereignty and full and equal participation in political affairs therein at the international, regional and local levels, including as own traditional leaderships and religions, via endorsing Indigenous rights to full and equal access to participation at the United Nations as Members or Permanent Observers by choice, as well as to equal participation in codification, review and processes of international, regional and local law and policy-making.

24. Right to current remedy, redress and reparations for violations such as those occurring and occurred in the UNESCO World Heritage Sites, including ongoing land grabbing and violation of sacred sites by States utilizing doctrines of the Holy See and its *Inter Caetera* and related Bulls and Doctrines as foundations and elements of legal reasoning.

25. Protect and assure the security and success of Indigenous Human Rights Defenders in the very lands the *Inter Caetera* and Catholic Church has participated in their subjugation in, including Chihene Nde

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<sup>5</sup> It is recognized by the United Nations system that Truth Commissions and Restorative Justice, and therefore remedy and redress, in the context of historical injustices and Indigenous Peoples are applicable beyond the current State-jurisdiction model, so as to achieve truth and due, fair and equal justice, and that such procedures must be done in respect to FPIC and all Indigenous Rights with respect to customs, language, and culturally appropriate methods for victims. The legal value of such a situation is addressed in paras. 21-23 and 74 of UNPFII ‘Study on the rights of indigenous peoples and truth commissions and other truth-seeking mechanisms on the American continent’: “D. Rethinking the establishment of truth commissions and other truth-seeking mechanisms to protect the rights of indigenous peoples: [...] 20. Truth commissions have typically been established as instruments to reaffirm goals of reconciliation and unity within a nation-State. This model may not be the most inadequate to set the goals of a truth commission dealing with indigenous peoples, many of who consider themselves members of “first nations” and should be recognized as such; 21. Truth commissions have usually focused on instances of recent violence; cases that can be remembered by witnesses providing first-person accounts. Indigenous peoples have suffered historical violence, the history of which is often transmitted through an oral tradition, and as such may find the existing methods of truth commissions insufficient; 22. Thus, truth-seeking instruments involving indigenous issues should go beyond a form of analysis focusing on individual violations, or on the State or on recent violations, and should consider other sources beyond archival and written documents; 23. Truth-seeking mechanisms that address these design challenges in a creative manner have the potential to develop useful tools for redressing historical abuse and violations of the collective rights of indigenous peoples, including the loss of identity, culture, language, traditional indigenous institutions, community and family ties.” And from “*Consulting in good faith to obtain free, prior and informed consent*: 74. Broad and ongoing consultation with indigenous peoples is crucial to the success of a truth commission focusing on abuses suffered by those peoples. Governments have a duty to consult in good faith and to obtain free, prior, and informed consent for any measure affecting indigenous peoples. This is premised on transparent objectives and an openness to continue the process of consultation until consent is obtained or not. This process requires time and commitment from the highest levels of political leadership in the country.” ...From UNPFII, 12<sup>th</sup> Session, 20-31 May 2013, Discussion on the World Conference on Indigenous Peoples, ‘Study on the rights of indigenous peoples and truth commissions and other truth-seeking mechanisms on the American continent’, 14 February 2013, E/C.19/2013/13

Elder and Apache Genizaro descendant Eddy Montoya, whose testimonial is included in this Shadow Report.

### Article 7

26. The Holy See must take educational measures regarding Indigenous Peoples in its own law and policy *accompanied by* systematic and pro-active education measures for its followers and practitioners to understand Indigenous realities past and present as those realities relate to the actions of the Church and current and struggling Indigenous Rights and Rights Defenders. Such measures have purpose in both legal accountability and responsibility of the Holy See, as well as reparations, justice and healing for Indigenous Peoples, Tribes and Nations, including the Apache-Ndé-Nneé.

27. The Holy See must work to educate in a way so as to hold States accountable to overturn laws, policies and decisions founded on the *Inter Caetera* and its discriminatory Bull and Doctrinal predecessors.

28. A formal and thorough reparations process, including the educating of the Holy See itself and its peoples and congregations therein regarding the truth of the atrocities and resulting suffering tied to the *Inter Caetera*, so as to heal and move forward in continuance of self-determined Indigenous and Apache-Ndé-Nneé reviving and uplifting of own sovereign cultures, languages, inter-generational bonds and teachings within families and communities, trade, and the sharing of the truth of history locally, regionally and internationally.

29. A process of reparations regarding Apache-Ndé-Nneé and Indigenous traditional and living knowledge lost during times of and as a result of the legacy of the *Inter Caetera*, including but not limited to knowledge coming from and regarding sacred sites, traditional territories, intergenerational transmission, historical truth, traditional laws and self-governance, traditional religion, and own original identity and value therein, and with the full participation of Apache-Ndé-Nneé historians, elders, experts, oral testimonies and documentarians such as those who have contributed to this Shadow Report, as an act of friendly relations with the Apache-Ndé-Nneé and Indigenous Peoples, Tribes and Nations.

### III. General Recommendations

2. Areas requiring in-depth examination:

a. *Terra Apachorum* and *La Gran Apachería* as the Catholic Church's historical and the continuing construct of Ndé-Nneé peoples' dispossession and domination.

b. Papal Bulls and the Doctrine of Discovery as root legal principles of Christian settler-colonialism in Kónitsaqáíngokíyaa (Big Water Country), Ndé-Nneé peoples' inherent and customary homeland.

c. The Holy See and its accountability, as a U.N. member state, as successor and beneficiary to the historical legacy produced by the Catholic Church's prominent role in the violent overthrow of Ndé-Nneé peoples' collective freedoms, and through its on-going social, economic, and political reproduction of oppression and theft, *vis-à-vis* its denial of accountability to living Ndé-Nneé peoples' seeking freedom from all forms of oppression.

d. Redressing the legacy of discrimination, racism, oppression, and repression; of normalized discrimination instilled through the Catholic Church's disavowal of responsibility and accountability for Ndé-Nneé peoples' current impoverished, vulnerable condition.

e. Advancing Ndé-Nneé peoples' inalienable rights to recovery of lands and resources as compensation for the extensive benefits which the Catholic Church utilized/es (on-going) to expand its jurisdictions in Ndé-Nneé peoples' unceded territory and homeland.

- f. Re-configuring the Holy See's physical, material, and spatial jurisdictions within the settler-colonial states of the U.S. and Mexico, in the unceded territory and homeland of Ndé-Nneé peoples; and, re-directing lands, property, resources, and ownership to Ndé-Nneé peoples.
- g. Social, economic, and civil support by the Holy See to Ndé-Nneé peoples' self-determination in: recuperating, recovering, revitalizing and strengthening Ndé-Nneé peoples' language and dialects; cosmologies; Native sciences; intellectual traditions; artistic practices; intellectual property; cultural property; cultural landscapes; governance structures; matrilineal and patrilineal institutions; education; trade; exchange; economy; investment; protection; security; sovereignty.
- h. Historical Clarification: the role and extent of the consequences of Catholic Missions in Texas, New Mexico, Arizona, and northeastern Mexico and long-term benefits of missionizing to Catholic Church successors, i.e. Oblate Mary Immaculate Church, et al.
- i. Historical Clarification: the role of the Catholic Church and its partnerships, collaborations and collusion with settler-ranching, settler-farming, settler-mining, settler-industrial societies in Kónitsaáíngokiyaa.
- j. Historical Clarification: the role of the Catholic Church corporations in economic and resource profit vis-à-vis investment in activities without free, prior and informed consent (FPIC) of collective Ndé-Nneé peoples.
- k. Historical Clarification: the role of the Catholic Church and research institutions, private and public, in excluding and/or marginalization Ndé-Nneé peoples in the production of knowledge utilizing tangible and intangible cultural property of Ndé-Nneé peoples without FPIC.
- l. Historical Clarification: the role of the Catholic Church and civil society in excluding Ndé-Nneé peoples from meaningful participation and decision-making in the current-day religious-tourism-for profit project, known as the San Antonio Missions World Heritage site (approved 2015), undertaken with UNESCO, <http://whc.unesco.org/en/list/1466>. For instance, over its process, the Spanish-Catholic adherents of this project obstructed the numerous attempts by Ndé-Nneé peoples seeking participation in the social, economic, historical, and archaeological re-construction of Ndé-Nneé de-colonial history, knowledge, and representation in many of the San Antonio Missions. The World Heritage Site misrepresents Ndé-Nneé history and academics and hobbyists posing as 'experts' largely portrayed Ndé-Nneé as inferior, beneath Spanish European peoples, and as destined for disappearance in a traditional linear historical view of western colonialism. The Lipan Apache lineal descendants of Lipan Apaches who died in the Missions have been being denied access to justice, and rather, are being re-positioned as irrelevant by the Catholic elites who commandeered the project, and deemed as deterrents in the way of Christendom, Civilization, and Progress. Spanish-Catholic settler colonialism is deeply entrenched and very much alive in Texas. See <http://www.missionsofsanantonio.org/>.
- m. Accountability, Responsibility, Redress and Reparation sought by Ndé-Nneé for collective harms experienced. The Holy See, the central government of the Catholic sub-jurisdictions historically and currently operating the United States and Mexico, is required by the CERD to undertake a detailed, precise, analysis of its on-going responsibility for the legacy of historical and continuing destructive processes in the Ndé-Nneé territory stolen and used continually for expansion, civilizational convergences, subjugation, and destruction of Ndé-Nneé knowledge, relationships, spiritual consciousness, institutions, and connection to the source of these-- Ndé-Nneé connections to homelands which did not belong to the Catholic Church, and are inalienable and inextinguishable to Ndé-Nneé.
- n. Collective Ndé-Nneé decolonization demands the Holy See take immediate steps in acknowledging Ndé-Nneé oral tradition, oral history, and historical perspectives on the damage to individual and collective bodies, minds, spirits, beingness and belonging of all Ndé-Nneé

peoples—past to present. Ndé-Nneé decolonization necessitates the Holy See be held accountable by the CERD, and that the Holy See must take responsibility for the damages inflicted by the Catholic Church’s historical excessiveness and persistence in utilization of the racialization, ‘Apache bárbaro’ to justify destructive acts, and processes, and policies which imposed gross disparity, marginalization, impoverishment, and suffering of Ndé-Nneé peoples—past and present.

o. Collective Ndé-Nneé peoples with a continuing will for freedom and self-determination (many who are baptised and converted Catholics) acknowledge the diversity of Ndé-Nneé juridical personality and political status within the U.S. along the U.S.-Mexico border, and in Mexico; as well as members of the collective Ndé-Nneé who are displaced and residing in other states, such as Canada as a result of intergenerational and on-going racism, discrimination, and aggressive policies (such as the U.S. border wall in Kónitsaáíígokíyaa) which effectively separate Ndé-Nneé from home and place.

p. 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.

**Apache-Ndé-Nneé Working Group**

**Shadow Report**

*for the* United Nations  
Convention on the Elimination of all forms of Racial Discrimination  
**(CERD) Committee, 88th Session: November 2015**

**Review of the Holy See**

by

Michael Paul Hill, San Carlos Apache  
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Lorraine F. Garcia, Chihene Nde  
Charles Vargas, Chiricahua Apache  
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*with additional testimony from*  
Chihene Nde Elder Eddie Montoya

*Introduction: A Testimony***Indigenous Worldview**by Michael Paul Hill,<sup>1</sup> San Carlos ApacheConvention on the Elimination of all forms of Racial Discrimination (CERD)  
88th Committee Session re: The Holy See

My name is Michael Paul Hill. I am an Nde person and resident of The San Carlos Apache Nation in Arizona of The United States, a military reservation that is in fact a concentration camp that inspired Hitler's Germany to undertake a holocaust upon the Jews. Origins and sources of dehumanizing theology and ideology stem from the Papal Bull *Inter Caetera* of 1493 and its one of many edicts, specifically the legacy of The Doctrine of Discovery and its implementation of conquest in the name and power of The One and True Creator: God. Or as we Ndee call creator in our language—Bik'ehgo'ihí'Nan. I am here to record these statements in time as corrections of historical accounts of my people from our indigenous worldview. First and foremost, in Nde spiritual and religious beliefs the CERD and Holy See will find similar ideologies but a vast difference in infrastructure, philosophy, and, clearly, intent. Secondly, the continual dehumanization of Nde people- currently segregated and confined by race in United States federal camps, labeled by blood quantum with numbered identifications, as the first Konzentrationslager; our Auschwitz remains open to this day. Nde people of Mexico remain uncounted and unrestrained, yet oppressed without representations, furthering the continued and ongoing genocidal policies against indigenous peoples worldwide of our own cultures, traditions, spirituality, and religious thought. Thirdly, the ongoing destructive rape of indigenous sacred lands by the industrial removal of natural resources without consideration to sacred sites, environmental impacts, reclamation of land to sustainability, or respectful consultation and involvement with us, as caretakers, and recognition that Aboriginal title and rights pre-exist and are inalienable. Destruction below and upon lands both traditional and holy upsets the balance and harmony of Nde and all indigenous cosmology, affecting all people and all of creation. Lastly, is a presentation of what devices have hindered and prevented Nde and other indigenous peoples from participating as member nations at the United Nations, as well as other multinational and business forums, as free independent states. We hold accountable the Holy See for the continual disruption to our balanced way in life- for 7 generations of eroding of cultures, misappropriations of people, lands and resources, resulting from the legacy of categorizing human beings as savage and animal-like. How can we rectify these historical and current grievances, by presenting here to the CERD Committee, within our right as free Indigenous Nde people? To present facts to a candid world and question the unauthorized authority of The Holy See, whom we hold accountable for the constraints that bind us in our daily lives, in a state of constant occupation. We remain free in our minds this present day, so that our voices and truth may be heard.

Never in Indigenous History or Worldview do aboriginal peoples evoke self-empowered authorities, but rather those of Bik'ehgo'ihí'Nan or Creator of The Universe. Indigenous peoples hold reverence for the sacred and holy that are called the Almighty or Creator through balance, harmony, love and above all Equality of all living - plant, stone, animal, and human - through ancient instructions passed down generation to generation, recorded for thousands of years kept sacred through the oral tradition in which indigenous peoples were taught, guided only by Creator's voice through timeless instructions. Teachings that were not limited to religious instruction, ceremonial and ritual beliefs, but included also how we communicated and maintained a relationship and harmony with the natural world.

From the beginning of time, Nde peoples have practiced what these same Bik'ehgo'ihí'Nan (God) fearing peoples—known as Christian conformists and colonizers—have understood. However Ndee peoples, in a more practical and natural way, have understood harmonizing the natural world with the spiritual world in which they were made stewards of. Knowledge, wisdom, and comprehension - with love - is what was taught to the peoples worldwide; but a certain few, now known as indigenous peoples, have maintained that

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<sup>1</sup> Project Leader of the *Apache-Ndé-Nneé Working Group*

affinity from time immemorial, affinity also granted to them by Bik'ehgo'ihí'Nan, or Life-Giver / Creator / God, or Yeshua HaMashiach, the Alpha and Omega of all things. We also have the same purpose to continue life in those natural, spiritual and powerful ways, ways which were—GRANTED and DECREED—to not only Nde peoples, but all indigenous peoples, from the beginning of time. Since these colonial powers that stem from the Holy See's Doctrine of Discovery justify their own powers and sovereignty are granted by Bik'ehgo'ihí'Nan ('God'); then Indigenous Peoples whose lineage is traced back to the Creator should be given the same equal powers, inherent to the Peoples, to govern their own, and without being molested by colonial regimes. If these variables have no equality, then one must conclude that domination through racism, legalism, legislation, jurisprudence, and even militarism, promote genocide of a nation that the colonial forces deem to be inferior; these mechanisms are in direct violation to the very fundamental freedoms that these colonial systems purport to uphold - for their own, that is. In order to obtain the fundamental freedoms and rights that are inherently bestowed upon our indigenous peoples worldwide, we must reserve the rights and jurisdiction granted to us- not from colonial powers, but from our *de facto* powers as autonomous peoples prior colonialism, autonomy that comes from our Creator, Bik'ehgo'ihí'Nan, The Life Giver or The Beginner of All things.

But where in the discourse of the 21st century should these concepts apply? Why is it that colonial forces think it is acceptable to annihilate and destroy indigenous Peoples, based on ignorant, superior and racist ideologies? We have seen in the past 30 years in which crimes against humanity have been practiced by socio-paths who rule in tyranny, via death and destruction of ethnic peoples, with their self-appointed plenary power. So, as we can see, these types of colonial regimes continue to exist in modern times; times in which all peoples have now become victims of these masters of death, destruction and deception-masters known as colonial governments and their institutions. Again, these forces are in defiance to their own God and, in turn, instead take on the characteristics of Bik'ehgo'ihí'Nan through the use of judgment and militarism to employ their own powers of death, destruction, and deception to Bik'ehgo'ihí'Nan-believing peoples.

It is important to note that we Nde know that the reasoning behind the use of Bik'ehgo'ihí'Nan ('God') in their own sovereignty and colonial mechanisms has its beginnings in what is termed and known as *Corporation Sole*, in which the Roman Catholic Church and the imperialist kingdoms of the earth, such as the Queen of England, use these same mechanisms to gain control and power over peoples and their territories, which they believe they are blessed and granted to do by Almighty Bik'ehgo'ihí'Nan and over all dominions. Somewhere in the midst of these institutions, sovereigns, and governments they believe that the whole earth belongs to them in the name of Bik'ehgo'ihí'Nan, and that Bik'ehgo'ihí'Nan touched no other peoples who colonized the earth in the name of mankind's institutions. Hence, these people (colonizers) were self-appointed sovereigns who merely mimic the Supreme Creator of Life for their own personal intentions - intentions called genocide - who used their *Corporation Sole* status to colonize peoples worldwide, so as to spread the gospel of peace to others whom they called ungodly and uncivilized, aboriginal peoples. These acts were committed through violence, greed, and perpetual warfare, which are an antithesis of who Yeshua HaMashiach was, is and will be- Yeshua HaMashiach whom the colonizers based their so-called moral and legal authority upon. Remember, the *In Dios* was used to describe who we are, rather, 'In God', not in In Man.

Furthermore, due to colonizing nations' goals to maintain current civilization and upward-mobility-based progress, they have leaned on and learned to navigate in this world in ways that have adversely affected not only the indigenous peoples, but the whole of mankind. They have extracted, mixed, and combined knowledge, minerals, peoples, cultures, and belief systems to homogenize and change the way people are motivated, to produce and consume in completely unnatural, ungodly, and unhealthful proportions. This is a constant problem on the San Carlos Apache Reservation, as well as other Nde (Apache) reservations. Rather than just take what is needed to maintain continuity on earth, many other forms of corporations, sovereigns, governments and peoples who use these the natural elements to make and produce goods and services for peoples to use have, in turn, created violent and sickening generations- generations that have become numb and normalized to these horrible conditions we now all face together. Progress only befits a few people for the sake of profit. Nde reservations and indigenous peoples are not the ones who benefit from progress.

The real prophets, the indigenous peoples, scream and cry to the multitudes, unheard and ignored, to cease and desist in the continued environmental and human degradation that expands and continues to degrade the health and welfare of all peoples living here on earth. The conformists, the witches and wizards of alchemy, science, and progress, are adverse mixtures of potion and witches brew that destabilize the continuum for life as we know it. On the other hand, as a result we have the technology that is needed at these times to share the message of hope, to embark upon the new beginnings of mankind, but at the expense of not only natural resources but human resources, as well. How, then, can we maintain equilibrium in a society that is dedicated to the self-consuming proprietorship in which we are made to believe, taught to revere, and embark upon?

The human race has a responsibility to maintain harmony and balance in this now unnatural world by returning it to the neutral and natural proportions in which it was first created. As we see into the future of the world we see many environmental, ecological and unsustainable occurrences that are adverse to sustaining human life. We are, then, mandated by Bik'ehgo'ihí'Nan to assume the inherent and aboriginal jurisdiction in which the self-appointed forces neglected to abide by. When we encumber into the realities of life and the existence of life's continuity, we have a greater responsibility to those who remain here on earth as human beings. It is thus important that the peoples justify their actions in such a way that we continue with affinity with this world we live in.

For these reasons stated, there is no way possible for The Peoples to engage in a system that is adversely affecting the indigenous peoples right to self-determination, autonomy, freedom, and populations without the free, prior and informed consent of the indigenous peoples whose territories have been colonized through conquest and invasion by European derelict religious groups rejected by their own nations, governments, and peoples. In reality, the rejected masses assumed plenary power over the aboriginal peoples' lands, territories, and natural resources within their own reservations. They consulted not with the peoples whom lands they stole. Even today, the title and deeds to the lands of the original and true owners of the lands have never been returned; the title and deeds of Indigenous Peoples, specifically the Apache, are *recorded in our homelands*.

The continued and ongoing resistance that all Nde and other indigenous peoples and colonial nations must face together in these times is critical, and we must analyze all of it through our Indigenous Worldview-from The Peoples level of comprehension, not one that is formatted, structured, and expressed in a colonial point of view. For these processes have created the very state of existence in which The Peoples have struggled against these forces since the foundation of colonialism was laid. Whether it be in the territories and lands in which colonialism was first instituted from afar, or in the lands that are now controlled by any forces other than the inherent and aboriginal peoples whose beginnings are recorded in the lands and territories themselves, lands and territories now being occupied by such known forces as governments and sovereign invaders, foreign to the now-colonized lands.

The Holy See in past sessions has stated to the CERD Committee that they have abrogated the Papal Bull's Inter Caetera of 1493; they have yet to publish such rescinding or put such direct changes into world-wide and nation-states-wide print. We, the Nde, want that evidence produced worldwide, and not just abrogated in words the CERD Committee. The Holy See is going to accept accountability and culpability to all wrongs, to set the stage to renounce the colonial nations that rule and have established laws under the guise of the Doctrine of Discovery. The Holy See will face the chaos it has created, and humanize the indigenous peoples and their communities that have been dehumanized, to set them free in their inherent and inherited lands. In judgment, we do stand against you, Holy See, by yesteryears', today's and tomorrow's ethical, moral, and retributive principles.

Michael Paul Hill, 3/21/2013

Revised: 10/10/2015

Edited by Lorraine Garcia (Chihene Nde Historical Recorder)

**Application of the UN CERD Treaty<sup>1</sup>  
for the Apache-Ndé-Nneé Working Group Shadow Report**

by India Reed Bowers, B.A. LL.M.<sup>2</sup>

*on occasion of the UN CERD Committee 88<sup>th</sup> Session  
November-December 2015: Review of the Holy See*

***Recalling***

“*The CERD Committee* calls in particular upon States parties to ‘Ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs’”<sup>3</sup>

“*The [CERD] Committee* especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.”<sup>4</sup>

**I. Overview<sup>5</sup>**

**A. Introduction**

1. Presented in the *Apache-Ndé-Nneé Working Group Shadow Report*, including its Annex, is a collective demand to no longer be forced to live the lies and the spiritual, moral, juridical, territorial, political and social discrimination of the Church, the Holy See, and its primary influences on colonialism, land-grabbing, genocide, State- and Kingdom-building, slavery, and theft and torture that has been brutalized on the backs of the Indigenous Peoples of the world and the ‘Americas’, including the Apache-Ndé-Nneé, and their traditional lives, lifeways, worldviews and territories. Current situations of suffering of the Apache-Ndé-Nneé are tied to the lack of full and just recognition of the identity, sovereignty, and the territorial and cultural integrity of Apache-Ndé-Nneé Peoples, a direct result of the legacy of discrimination against Indigenous Peoples contained within the *Inter Caetera* (Annex 1) and lack of access to justice therein.<sup>6</sup> As the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) states,

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<sup>1</sup> United Nations Convention on the Elimination of all forms of Racial Discrimination (UN CERD).

<sup>2</sup> India Reed Bowers, B.A. Cultural Anthropology, Brown University (United States), LL.M. International Law of Human Rights & Criminal Justice, Utrecht University (Netherlands); Independent Freelance Consultant; Founder & Director, International Organization for Self-Determination and Equality (IOSDE).

<sup>3</sup> CERD Committee General Recommendation No. 23: Indigenous Peoples, para. 4(e).

<sup>4</sup> *Ibid.*, para. 5.

<sup>5</sup> Section II. Application of the UN CERD Treaty, including Issues, Recommendations and Questions, begins on page 10 of this paper (p. 33 of the *Apache-Ndé-Nneé Working Group Shadow Report*), following the Overview.

<sup>6</sup> For more discussion on Access to Justice in the context of Indigenous Peoples, see *Access to justice in the promotion and protection of the rights of indigenous peoples*, Study by the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), 6<sup>th</sup> Session, “A particular dimension of access to justice relates to overcoming long-standing historical injustices and discrimination, including in relation to colonization and dispossession of indigenous peoples’ lands, territories and resources. Injustices of the past that remain unremedied constitute a continuing affront to the dignity of the group [...] Harm associated with historical injustices continues today and thus must be taken into account. Many of the contemporary challenges faced by indigenous peoples are rooted in past wrongs.”, 2013, paras. 6 & 7, *hereafter* A/HRC/EMRIP/2013/2. The EMRIP Access to Justice Report was mandated by the Human Rights Council (HRD), para. 7 of resolution A/HRC/21/24 ‘Human rights and indigenous peoples’, with requests to States for

“The pre-emptory norm of non-discrimination, a fundamental pillar of international human rights law, requires that indigenous peoples have access to justice on an equal basis to the general population.”<sup>7</sup> As exhibited by the individual papers, testimonials and materials in the *Apache-Ndé-Nneé Working Group Shadow Report*, situations and realities of extreme discrimination, including but not limited to legal, political, territorial and social discrimination persist due to the lack of redress and remedy regarding the legacy of the Holy See’s *Inter Caetera*.<sup>8</sup>

2. Also evidenced in the adjoining papers and testimonials of the *Apache-Ndé-Nneé Working Group Shadow Report* are ways in which the Apache-Ndé-Nneé to this day are blocked from decision-making concerning Apache-Ndé-Nneé ancestral territories and the sacred, including but not limited to access to sacred sites, health, collective well-being, inter-generational dignity and peace without discrimination. This can be learned, for example, through the testimony of Chihene Nde Elder and Apache Genizaro descendant *Eddy Montoya* of the non-federally recognized Chihene Nde Apache Tribe, who fights for protection of sacred sites, including Kegotoi, the Place of Creation of the Chihene Nde Apache (from Kegotoi belonged Sanaba, the first Chihene Gila Apache leader that met the first friar, Alonso Benavides), to which access is now blocked for the Chihene Nde Apache by a rich Texan landowner. Elder Eddy Montoya endures ongoing intergenerational discrimination and threats as a Human Rights Defender and protector of the sacred. The paper by *Margo Tamez* discusses, amongst other violations and atrocities of historic, ongoing and current violence against the Ndé-Nneé Peoples as a whole as well as against Ndé-Nneé women and girls, specifically, regarding extended kinship governance structures and institutions and the legacy of hierarchical, patriarchal, paternalistic, and domineering rule of the Catholic Church. Tamez discusses the Ndé-Nneé who must fight the division of own lands and people by the US-Mexico border, and UNESCO-Catholic collaboration in the establishing of a World Heritage Site (San Antonio Missions) without due FPIC process or respect to Lipan Apache self-determination, a Tribe not federally recognized by the United States. The historic accounts of violence, conversion, enslavement, discrimination and subjugation of Apache Genizaro, as documented by *Lorraine Garcia* in “The Apache Genizaro and Their Two Hundred Fifty Year Enslavement” along with *Matthew Babcock*’s paper “Surviving Three Cycles of Colonialism: A Brief History of the Ndé People, 1700-1850”, detail, amongst other facts and situations, military aggression and contract killing against the Ndé, the captivity, violence, wrongful imprisonment, slavery, land exploitation and death of the Ndé, and the Spanish and Mexican military’s system of reservation-like Apache *establecimientos*. The testimonial “Indigenous Worldview” by *Michael Paul Hill*, discusses Ndé spiritual and religious beliefs and that the ‘origins and sources of dehumanizing theology and ideology stem from the Papal Bull *Inter Caetera* of 1493’, reclaiming Indigenous space in truth and understanding. The article by *Charles Vargas*, “Background to the Sacred Nature of the Blue Stones: Chiricahua Apache Cultural & Spiritual Significance of Gemstones,” discusses ceremonial stones and minerals and Chiricahua Apache Nation sovereign trade pre-dating European colonialism, as well as the Blue Stone Society 2013 and the Apache Nation Cultural and Historical Organization, both affiliated with the Chiricahua Apache Ndé Nation (CANN). An Appendix with additional documents- the *Inter Caetera* itself along with selected Apache-Ndé-Nneé UN submissions concerning ongoing situations the Apache-Ndé-Nneé face under the oppression of historical-to-present-day colonialism imposed on Ndé lives, families and territories, provides more documentation for insight. As well as this paper, by the author *India Reed Bowers*, “Application of the UN CERD Treaty for the Apache-Ndé-Nneé Working Group Shadow Report”, with its introductory

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submission of related information by the Office of the United Nations High Commissioner of Human Rights (UNHCR), AK/ST/cc.

<sup>7</sup> UN EMRIP, *Access to Justice*, para. 24, A/HRC/EMRIP/2013/2

<sup>8</sup> “The right to a remedy and related procedural and substantive rights essential to securing a remedy are protected in a wide range of international instruments. The United Nations treaty bodies have found that, when providing for remedies, they should be adapted so as to take account of the special vulnerability of certain categories of persons (Human Rights Committee, general comment No. 31 (2004), para. 15). Moreover, without the provision of reparations, the duty to provide remedies has not been discharged (Human Rights Committee, general comment No. 31 (2004), para. 16; Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010), para. 32). [...] in providing redress to indigenous peoples for the negative impacts of State laws and policies, States should prioritize the views of indigenous peoples on appropriate forms of redress (A/HRC/21/53 para 23)” Ibid para 13.

Shadow Report overview followed by a per-CERD-article discussion with questions and recommendations,<sup>9</sup> ending overall with concluding remarks.

## B. Background

3. Mass populations of murdered Indigenous Peoples around the world have been lost from our international human collective due to the historical atrocities initiated, condoned and promoted by the Holy See via the *Inter Caetera* and its related discriminatory Papal Bulls and Doctrines and the legacies therein that continue today. Riches of the Catholic Church, i.e. the Holy See and the Vatican, have their origins in raped, pillaged and plundered lands and societies of Indigenous Peoples who were and continue to fight to be sovereign, autonomous and self-sustaining Peoples, including the Apache-Ndé-Nneé Indigenous People/s (throughout this paper from here on referred to as the Apache-Ndé-Nneé).

4. The Holy See's *Inter Caetera* not only blessed policies and practices of colonialism that caused what is expressed by Indigenous Peoples themselves as genocide, cultural genocide, and generations of suffering, slavery and loss, but it also put policies and practices into action, such as, but not limited to, through its own missionaries and missions, churches and subsequent schools, that operated and continue to operate in alliance with Kingdoms and subsequently States for own mutually-collective world dominance<sup>10</sup> and at the cost of Indigenous Peoples and their lands, lives, self-determination<sup>11</sup> and cultures.

5. Language such as “*that barbarous nations be overthrown and brought to the faith itself*”<sup>12</sup> of the *Inter Caetera* served not only as instruction and endorsement of the brutal subjugation of Indigenous Peoples, but continues to deeply and directly influence politics and policies, land rights, external identity-determination, and judicial processes and decisions therein<sup>13</sup> regarding Indigenous Peoples,<sup>14</sup> not least for the Apache-Ndé-Nneé, by States.

## C. Today

6. The *Apache-Ndé-Nneé Working Group Shadow Report* in its entirety makes the case for, amongst other things, the need for a Truth Commission regarding the Holy See and the *Inter Caetera* and the Apache-Ndé-Nneé and Indigenous Peoples, reparations and changes in related and resulting laws and policies regarding Indigenous territories and sovereignty therein, and a legally-formal and public rescinding by the Holy See of the *Inter Caetera* and its legal, political, spiritual and territorial legacies. The past and ongoing effects, as exhibited in the *Apache-Ndé-Nneé Working Group Shadow Report*, of crimes against humanity and genocide, including cultural genocide, ethnocide, ecocide, and environmental racism<sup>15</sup> as-

<sup>9</sup> See p. 10 of this paper: Section II. Application of the UN CERD Treaty (p. 33 of the *Shadow Report*)

<sup>10</sup> World dominance such as in the codification of local, national, regional and international laws, positions of influence in politics such as at the UN, determination over policies and practices of trade and business, policing of dissent, and self-granted territorial integrity over colonized Indigenous lands, peoples and cultures.

<sup>11</sup> “The right to self-determination is a central right for indigenous peoples from which all other rights flow. In relation to access to justice, self-determination affirms their right to maintain and strengthen indigenous legal institutions, and to apply their own customs and laws.” UN EMRIP, para. 19, A/HRC/EMRIP/2013/2

<sup>12</sup> <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>

<sup>13</sup> See May-Lisbeth Brew, “‘Unspoken Conspiracy’ - Living within the Resonance of the Doctrine of Discovery”, University of Oslo, Norway, <https://www.duo.uio.no/handle/10852/41910>

<sup>14</sup> As Tonya Gonnella Frichner pointed to in 2010 in her report to the UNPFII as Special Rapporteur, direct linkages and references to the *Inter Caetera* as well the Doctrine of Discovery are contained in United State law and policy, as confirmed by numerous studies and official United Nations documents. See Tonya Gonnella Frichner, Special Rapporteur, Permanent Forum on Indigenous Issues 9th session, 19 - 30 April 2010, Item 4 and 7 of the provisional agenda: Impact on Indigenous Peoples of the International Legal construct known as the Doctrine of Discovery, which has served as the Foundation of the Violation of their Human Rights, 3 February 2010, *hereafter* E/C.19/2010/13

<sup>15</sup> Including but not limited to the horrors and effects of Agent Orange (Dioxin) testing on Apache-Ndé-Nneé territories, see, for example, *Geochemical Assessment of Metals and Dioxin in Sediment from the San Carlos Reservoir and the Gila, San Carlos, and San Francisco Rivers, Arizona*, Scientific Investigations Report 2005-5086, U.S.

experienced by the Apache-Ndé-Nneé and that result from the legacy of the *Inter Caetera* must be addressed legally and formally, and with proper and Indigenous FPIC-based redress and remedy, including but not limited to in the context of the option of a full and formal Truth Commission. Formal and direct legal codification must be made that denounces and rescinds all subsequent and related regional, national and international legal decisions, treaties and codifications based on and developed from the inherent racism against Indigenous Peoples of the *Inter Caetera*.

7. For the Holy See to not, as an international *collective* moral obligation, formally and officially rescind the *Inter Caetera* and, in addition, formally and officially work for and alongside Indigenous Peoples, including the Apache-Ndé-Nneé, to remedy, redress and repair damage done by the *Inter Caetera* and the resulting legacies<sup>16</sup> of ongoing genocide of living traditional culture and original spiritual land relationships of Indigenous Peoples is yet another act of racial discrimination, not least in the context of neglected diplomacy, and most frighteningly in the context of violation of rights of Indigenous Peoples specifically to (amongst other rights) life, peace, health and dignity as Indigenous Peoples and as per International Human Rights Law<sup>17</sup>.

8. In the context of commentary made by the Holy See regarding Indigenous Peoples and the *Inter Caetera*, notably the Holy See did *not*, for example, deny the racism and domination intent of the *Inter Caetera* when the issue was raised by Ms. Tonya Gonnella Frichner in her related 2010 report<sup>18</sup> as Special Rapporteur to the United Nations Permanent Forum on Indigenous Issues (UNPFII). Nor, at the same time, did the Holy See raise issue with the fact of the *Inter Caetera*'s effects on subsequent State laws and policies regarding Indigenous Peoples and State powers, territories, and other related situations of Indigenous Rights violations today; the Holy See merely debated whether or not the *Inter Caetera* is still in force in the indirect context of other subsequent Papal Bulls, while simultaneously arguing for its (the Holy See's) own non-responsibility for the *Inter Caetera*'s legacies due to, amongst other notions, notions of jurisdiction.<sup>19</sup>

### i. Jurisdiction

9. Amongst the Holy See's many international jurisdiction-defying and -defining actions, such as its canonizing of Junipero Serra<sup>20</sup> on Indigenous lands in the United States (California) and against Indigenous

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Department of the Interior, U.S. Geological Survey, By Stanley E. Church, LaDonna M. Choate, Marci E. Marot, David L. Fey, Monique Adams, Paul H. Briggs, and Zoe Ann Brown

<sup>16</sup> For example, see the adjoining papers in the *Apache-Ndé-Nneé Working Group Shadow Report* and India Reed Bowers, *Indigenous Decolonization and United Nations Membership: Indigenous Peoples and the Fundamental Right to Self-Determination*, LLM Thesis, International Law of Human Rights and Criminal Justice, School of Law, Utrecht University, Netherlands: 2012, published in *Indigenous Nations & Peoples Law eJournal*. Center for Indigenous Law, Governance & Citizenship at Syracuse University College of Law. Vol. 9, nr 10: 29 March 2013, <http://www.scribd.com/doc/129340589/Indigenous-Decolonization-and-United-Nations-Membership-Indigenous-Peoples-and-the-Fundamental-Right-to-Self-Determination>

<sup>17</sup> For example, see the UNDHR, UN Charter, UN ICCPR and ICESCR, UNDRIP and UN WCIP and Alta Outcome Documents.

<sup>18</sup> Tonya Gonnella Frichner E/C.19/2010/13

<sup>19</sup> The Holy See stated at the UNPFII in 2010: "for International Law and for the Catholic Church Law, the bull *Inter Coetera* is a historic remnant with no juridical, moral or doctrinal value. [...] The fact that juridical systems may employ the 'Doctrine of Discovery' as a juridical precedent is therefore now a characteristic of the laws of those states and is independent of the fact that for the Church the document has had no value whatsoever for centuries. The refutation of this doctrine is therefore now under the competence of national authorities, legislators, lawyers and legal historians." (Thus the Holy See has rejected the notion of its own role in current and ongoing historical injustices that are a result of the actions of the Holy See itself), from *Statement by Permanent Observer Mission of the Holy See*, 9th session of the United Nations Permanent Forum on Indigenous Issues (UNPFII), Agenda Item 7: Discussion on the reports "Impact on Indigenous Peoples of the International Legal construct known as the Doctrine of Discovery, which has served as the Foundation of the Violation of their Human Rights" and "Indigenous Peoples and boarding Schools: A Comparative Study" 27 April 2010

<sup>20</sup> Baptized Miguel Jose Serra prior to Serra's self-renaming

will (rights to self-determination, redress, truth in history, FPIC, etc) and peace and justice,<sup>21</sup> in its current submission to the UN CERD Committee the Holy See has, in addition and essentially, claimed worldwide jurisdiction in the context of its ‘moral mission’. This alongside the Holy See’s own self-determined and inherent international sovereignty and ‘absolute freedom and independence’,<sup>22</sup> components of the treaty that determined its Statehood, are all highly reminiscent and reflective of the *Inter Caetera*.<sup>23</sup>

10. The Holy See enjoys extravagant, participatory, international political and territorial ‘touring’ jurisdiction through its own claim of rights to a worldwide moral mission<sup>24</sup>, while Indigenous Peoples, including the Apache-Ndé-Nneé, experience not only extreme marginalization and discrimination in the struggle to be treated, consulted, included and respected as the self-governing and sovereign, territory-based Nations and Peoples that they are- struggling for both true and applied recognition as own religious tradition-holding, equal Peoples to States, Churches, dominant religions and otherwise.

11. In fact, due to the nature of the Holy See as a religious and territorial State, and one whose leadership tours the world over as a world leader of its followers - arguably its *people* - who obey the word of the Catholic Church, This occurs all States of the world where Catholic churches and/or devout peoples might be; the Holy See does simultaneously reside in States where the Holy See has a legacy and/or population of followers and/or missionaries. For example, as stated above, to have assumed the jurisdictional authority (“worldwide moral mission”)<sup>25</sup> to canonize/make a saint of Junipero Serra in the United States, and even over the local Indigenous Peoples’ protesting such a decision for decades, implies that the Holy See has, at present, access to jurisdictional effect via own religious self-determination and influence the world over,<sup>26</sup> including regarding not only the history-writing of territories, but also regarding local and regional politics, decision-making, law (such as State law overriding or not implementing Indigenous Rights), culture, education, children and more. Such presumptuous jurisdiction<sup>27</sup> is the direct result of the legacy of the Holy See’s Papal Bull *Inter Caetera* and related Bulls and Doctrines of Discovery and Domination.<sup>28</sup> In such a sovereign jurisdictional light of the Holy See’s *worldwide mission*, it is to be expected the Holy See also carries the responsibility of being held accountable for its actions and legacies left unaddressed/redressed, ie not remedied, within and regarding the delineated borders and territories of its past conquests.

12. The Holy See puts forward to the CERD Committee and the international community that it is a sovereign of diplomatic relations, however to either deny or abstain from acknowledging the horrors that

<sup>21</sup> “Serra—who founded California’s mission system—lured native Americans into baptism, after which they were forced into captivity at the missions. Under Serra’s mission system, natives were often whipped and beaten, which he even admitted, and once wrote: “I am willing to admit that in the infliction of [flogging], there may have been inequalities and excesses committed on the part of the some of the priests, and that we are all exposed to err in that regard.” [http://www.montereycountyweekly.com/blogs/news\\_blog/junipero-serra-statue-at-presidio-of-monterey-is-decapitated/article\\_b3742f3a-7378-11e5-979a-3388cabc6213.html](http://www.montereycountyweekly.com/blogs/news_blog/junipero-serra-statue-at-presidio-of-monterey-is-decapitated/article_b3742f3a-7378-11e5-979a-3388cabc6213.html)

<sup>22</sup> Holy See CERD/C/V A T/16-23, para 11: “VCS was constituted a State with the Lateran Treaty of 1929 to ensure the Holy See’s absolute and evident independence and to guarantee its indisputable inherent sovereignty in the international realm for the accomplishment of its worldwide moral mission, including all actions related to international relations (cf. Lateran Treaty, preamble and arts. 2-3). In other words, the primary function of VCS is to ensure the absolute freedom and independence of the Holy See.”; and para 12: “The Holy See is a sovereign and unique subject of international law having an original, non-derived legal personality independent of any authority or jurisdiction, which exercises its sovereignty over the territory of VCS”

<sup>23</sup> See *Inter Caetera*, “we command you in virtue of holy obedience that, employing all due diligence in the premises, as you also promise -- nor do we doubt your compliance therein in accordance with your loyalty and royal greatness of spirit -- you should appoint to the aforesaid mainlands and islands worthy, God-fearing, learned, skilled, and experienced men, in order to instruct the aforesaid inhabitants and residents in the Catholic faith and train them in good morals.” accessed at <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>

<sup>24</sup> Holy See 2014 Report to the CERD Committee, *hereafter* CERD/C/V A T/16-23, paras. 11 and 12

<sup>25</sup> Holy See CERD/C/V A T/16-23, paras. 11 and 12

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> See Tonya Gonnella Frichner E/C.19/2010/13 and May-Lisbeth Brew

continue today as a result of the *Inter Caetera*, and to not offer redress and remedy therein, is in fact *not* diplomatic behavior towards the Apache-Ndé-Nneé, or Indigenous Peoples on the whole, who continue to suffer from Church-Kingdom-State claimed domination via the legacy of the *Inter Caetera* and its related Bulls and Doctrines. That the Holy See ‘determines’ such legal conditions of interpretation of real life situations involving Indigenous Peoples and without the participation of the Indigenous Peoples themselves is additional violation.

## ii. Intersectionality

### aa. Indigenous Peoples

13. The CERD Committee has consistently affirmed that discrimination against Indigenous Peoples falls under the scope of the CERD Treaty.<sup>29</sup> In addition, the CERD Committee itself shows a continuation from colonialism to present day regarding the effects of discrimination against Indigenous Peoples:

“...indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized.”<sup>30</sup>

14. Since the last reporting of the Holy See to the CERD Committee, significant strides have been made in International Law regarding the rights of Indigenous Peoples, such as in the Indigenous Rights within the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and numerous Treaty Body Comments and Recommendations re Indigenous Peoples in treaty application, including CERD’s own *General Recommendation 23: Indigenous Peoples*, as well as in recognition of the special nature of the issues such as rights and violations therein of Indigenous Women, redress procedures for historical injustices against Indigenous Peoples, including but not limited to Truth Commissions, recognition of Indigenous Restorative Justice traditions and their pivotal role in both historical justice and current adaptations and evolutions of State/colonial judicial systems, and the UN General Assembly Resolution known as the World Conference on Indigenous Peoples (WCIP), related Alta Outcome Document and other binding GA Resolutions concerning Indigenous Peoples.

15. However, despite this progress in International Law and a continued global shift towards restoring equality therein, the Holy See’s current core report to CERD contains no mention of Indigenous Peoples. It is imperative that the Holy See be questioned by the CERD Committee in detail regarding the Holy See’s concrete measures taken and to be taken regarding Indigenous Peoples and Indigenous Rights and in accordance with its application of the CERD treaty, both in the context of the Holy See’s own committed historical injustices toward Indigenous Peoples as well as the legacies<sup>31</sup> of such injustices that continue today and perpetuate racial discrimination against Indigenous Peoples, including the Apache-Ndé-Nneé, in both collective and individual realities and experiences.

16. Abysmal to note and related to the paragraph above, given the legal context thusly, is that not only is there not one mention of “Indigenous” throughout the entire current report of the Holy See to the CERD

<sup>29</sup> CERD Committee General Recommendation No. 23, para. 1

<sup>30</sup> *Ibid.*, para. 3

<sup>31</sup> For example, see *Johnson v. M’Intosh*, 1823 US Supreme Court, a case instrumental in the development of American Indian Law in the United States that has been cited in subsequent cases: “A central aspect of this opinion rests on the ‘character and religion’ of the Indians ‘who were heathens’ and that ‘The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity in exchange for unlimited independence.’” (*May-Lisbeth Brew*); *for a subsequent example*, see *City of Sherrill v. Oneida Indian Nation*, 2005 US Supreme Court, opinion written by Supreme Justice Ginsberg: “Under the ‘doctrine of discovery,’ [...] fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign - first the discovering European nation and later the original states and the United States.”

Committee, but that the only remotely-related mention of pre-colonial peoples, tribes or societies is a reference to (the neo-colonial political concept of) ‘tribalism’<sup>32</sup> - a current, status-quo negative, discriminatory stereotype that spins Tribes as, in essence, ‘uncivilized’ (as described in the *Inter Caetera* as ‘barbarous’ in contrast to being converted to and/or assimilated into Church-Kingdom-State-ism) in the context of political and/or territorial self-determination. Such use of racially discriminatory terminology propagates colonial (internal and/or external) subjugation and discrimination against traditional Indigenous leadership and politics as Tribes with own cultures and traditions of laws and governance, something even the Holy See itself has.

17. For example in a real application regarding non-discrimination against Indigenous Peoples: it is not enough that the Pope merely makes a guest appearance in one State (such as Bolivia) with an apology speech concerning Indigenous Peoples and past ‘sins’ of the Church,<sup>33</sup> whilst then continuing on, literally, to canonize the Church’s own abusers towards Indigenous Peoples in another State (the United States), and against Indigenous consent, decision-making rights, and truth of historical context,<sup>34</sup> and all whilst at the same time claiming no legal responsibility for the Holy See’s own legacy the subjugation of the same Indigenous Peoples, Tribes and Nations that is still thickly laden today throughout local, regional and worldwide societal, social and legal concepts and codification regarding territory, religion, boundaries, sovereignty, governance, rights, the sacred and politics.

18. One only needs to read, for example, the protection of State ‘rights’ embedded within the UNDRIP itself, an international declaration on Indigenous Rights, contained within Article 46(1), protecting “the territorial integrity or political unity of sovereign and independent States”,<sup>35</sup> coupled with knowledge regarding the active blocking of Indigenous Peoples, Tribes and Nations taccess to the UN Decolonization processes,<sup>36</sup> along with and in contrast to Indigenous declarations of sovereignty, autonomy and independence, such as the *Unanimous Declaration of Independence of The Chiricahua Apache Ndeh Nation*, May 14, 2007,<sup>37</sup> to see the continued of the legacy of racial discrimination and domination stemming from the *Inter Caetera* and its concepts of Indigenous lands and pre-existing collective

<sup>32</sup> Holy See CERD/C/V A T/16-23, para. 70

<sup>33</sup> See “In Bolivia, Pope Francis Apologizes for Church’s ‘Grave Sins’”, New York Times, 9 July 2015, <http://www.nytimes.com/2015/07/10/world/americas/pope-francis-bolivia-catholic-church-apology.html>

<sup>34</sup> See “Native Groups Protest Pope Francis’ Canonization of Junípero Serra over Role in California Genocide”, Democracy Now, 23 September 2015, [http://www.democracynow.org/2015/9/23/native\\_groups\\_protest\\_pope\\_francis\\_canonization](http://www.democracynow.org/2015/9/23/native_groups_protest_pope_francis_canonization); see also Native Americans Protest Canonization Of Junípero Serra”, National Public Radio (NPR), 16 September 2015, <http://www.npr.org/2015/09/16/440914077/native-americans-protest-canonization-of-junipero-serra>

<sup>35</sup> The protection of States’ territorial integrity or States rights in general were not contained in the Draft UNDRIP (available at <http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.SUB.2.RES.1994.45.En>); for documentation of the suggestion of the State territorial integrity text during UNDRIP negotiations and drafting see column ‘Chairman’s Summary of Suggested Proposals’, A45 bis, 11<sup>th</sup> Session, 2006, E/CN.4/2006/79 – suggestion submitted by United States, Australia and New Zealand with similar text submitted by Russia: Commission on Human Rights, 62<sup>nd</sup> Session, Item 15 of the provisional agenda: *Indigenous Issues, Human rights and indigenous issues; Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*; Annex I: Revised Chairman’s Summary and Proposal: Draft Declaration on the Rights of Indigenous Peoples, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/119/46/PDF/G0611946.pdf>

<sup>36</sup> See India Reed Bowers, *Indigenous Decolonization and United Nations Membership: Indigenous Peoples and the Fundamental Right to Self-Determination*

<sup>37</sup> “(9) Should the United States refuse to voluntarily renounce its unilateral claims to govern Indian Country without the consent of the governed, secession and the declaration of formal legal and political independence is a lawful option for those Indian nations that will elect it; (10) Internationally should the Vatican and United Nations refuse to voluntarily renounce its unilateral claims to govern Indian Country without the consent of the governed, secession and the declaration of formal legal and political independence is a lawful option for those Indian nations that will erect it.” <http://www.chiricahuaapache.org/declaration.html>

Indigenous self-governance as ongoing interpreted *terra nullius* for States and collaborations of Kingdoms and the Holy See therein, as-granted by the Holy See's *Inter Caetera*.<sup>38</sup>

### bb. Indigenous Women

19. The *Apache-Ndé-Nneé Working Group Shadow Report* holds firm the same reasoning and reading of the CERD Committee<sup>39</sup> regarding the intersectionality and rights and issues of women, including Indigenous women, in CERD treaty interpretation and application, despite the Holy See's reporting of its refusal to recognize gender and intersectionality as applicable to CERD review<sup>40</sup>. In this case, it is the rights of Apache-Ndé-Nneé Indigenous women and Indigenous Peoples in their own sacred reverence that is fundamentally different from the culture, status and visions of the Holy See and Catholic Church as well as the Bible and its teachings - a difference that should not be discriminated against by the Holy See but rather respected, protected and promoted as whole, different, self-determining and sacred.

20. To be clear- regarding paragraph 3 of the Holy See's 2014 report to CERD concerning the Vienna Convention on the Law of Treaties (VCLT) and other treaties and aspects of International Human Rights Law and applicability to CERD therein as well as 'new' (to the CERD Treaty) terminologies, such as of Indigenous and Indigenous Rights, are not fundamental changes of the spirit and intentions of the CERD Treaty first committed to. If fact, due to historical context, it would be further discrimination to not examine CERD obligations in a light of both Indigenous and Women's Rights and such intersectionalities, as groups more often than not disproportionately and negatively affected by racism and racial discrimination. As an act of vigilance, it is necessary for international law to evolve and mature with proper measures to be relevant- measures which mechanisms such as the CERD Committee and other UN treaty bodies, reviews and reporting procedures themselves are functions of.

21. Moreover, the CERD Treaty was created and ratified by the Holy See approximately ten years prior to the VCLT, a fact which does not nullify the full validity of, or responsibility to, either treaty for their signatories, nor does or would it negate the natural maturation of all treaties in the context of formally-adopted measures by a Treaty Body as, essentially, a quality-control mechanisms of legal authority. As the Holy See itself says in paragraph 10 of its report to CERD, "As the development of human rights demonstrates, international life cannot dispense with common moral values of an objective nature." Natural development and progression of International Human Rights Law means the responsibility to objectively acknowledge and adapt to the growing and changing requirements regarding international and ethical due diligence alongside a positively-changing multidimensional nature of diplomacy and common *universal* moral values therein- changes that now (as opposed to the time of the *Inter Caetera* and its directly enforced colonialism) for the world's collective consciousness *include* Indigenous Peoples, women, and recognition of rights' and rights violations in the context of intersectionality and elimination of discrimination therein.

22. In fact, in accordance with VCLT Articles 31 and 32, it is the Holy See that should follow suit and make such formal measures regarding Indigenous Peoples and Rights, which do include, specifically, Indigenous women's rights, so as to update its own canon as well as its application of CERD and its Treaty Body reporting therein. Due to its inherent and direct connection under the umbrella of the United Nations itself and International Human Rights Law, CERD *General Recommendation 23* is a branch of the same tree of ever-developing legal codes of both binding and customary law regarding Indigenous Rights and women, in accordance with the GA WCIP Outcome Document and Indigenous Rights within the UNDRIP.

<sup>38</sup> See UN EMRIP, *Access to Justice*, section 'Barriers': "Challenges also include discriminatory laws and practices [...] and biases against indigenous peoples and individuals involved in legal proceedings." para. 26, A/HRC/EMRIP/2013/2

<sup>39</sup> CERD General Recommendation 25: gender-related dimensions of racial discrimination, CERD/C/GC/25

<sup>40</sup> Holy See CERD/C/V A T/16-23, para. 3

23. Due to the Holy See's historic subjugation and endorsing of the subjugation of Indigenous Peoples, including the Apache-Ndé-Nneé, via the *Inter Caetera* and its related Bulls and Doctrines and the legacy of which remains as an oppression of Indigenous Peoples today, it is the obligation of the Holy See to report on not only its upholding of CERD in the context of Indigenous Peoples and the Apache-Ndé-Nneé and also, specifically, *Indigenous Women* and in particular *Indigenous Women of Indigenous traditions including of the Apache-Ndé-Nneé*, in which the cultures are matriarchal and matrilineal unlike the Holy See's culture and traditions of both religion and leadership. If not concerned with the disproportionate discrimination faced, in particular, by Indigenous and Apache-Ndé-Nneé women and nature-based traditional religions by a religious entity, and now State, such as the Holy See, a State that has historically treated and still to this day codifies/canonizes women as 'whores', 'brides' and 'virgins' whilst men are determined as 'God' and 'messiah' themselves,<sup>41</sup> then, in effect, extreme discrimination and even violence against Indigenous women, and women in general, are being condoned and permitted by mere omission and harsh negligence by the Holy See and the international community looking the other way.<sup>42</sup>

#### D. Overview Summary

24. The *Apache-Ndé-Nneé Working Group Shadow Report*, as a whole and through its experts, both in testimony and in analyses, submits that speeches alone by a Pope are not due remedy; history must be correctly investigated, re-written and spoken, and the full truth must be told, remedied and documented-truth that the Holy See enabled, encouraged and mandated brutal colonialism around the world on Indigenous and tribal lands, enslaving, decimating, and brutally stealing from and raping peoples, and that the Apache-Ndé-Nneé are due full and proper redress from all responsible actors, contributors and sovereigns therein.

25. As the Holy See states itself in its submission to CERD,

“pardon has its own demands, which are truth, justice, reparation and reconciliation, and which include: overcoming the weight of history by a correct re-reading of each other's history in order to acquire a better knowledge and acceptance of the other; opting for ‘a culture of peace’ by religions, governments and the international community [...] the Catholic Church's path towards national and international reconciliation...”<sup>43</sup>

It is expected that the Holy See will formally apply these concepts it has put forward to the CERD Committee to its own relationship with Indigenous Peoples, including the Apache-Ndé-Nneé, so as to be in compliance with not only CERD but with its own claims.

26. As can be seen in the quotation above, the Holy See expresses an understanding that a re-reading and understanding of ‘the other's’ history is necessary to for the Church to come to a place of reconciliation<sup>44</sup>. In the *Apache-Ndé-Nneé Working Group Shadow Report* are included papers containing documentation of atrocities both past and present resulting from the Holy See's discrimination against Indigenous Peoples, including the Apache-Ndé-Nneé, addressing resulting and continued (at times verbatim) legacy in resulting State laws and policies as well as local, regional and international discrimination, both direct and indirect, and decision-making procedures therein. The Report engages in a truth-telling accountability process regarding the Apache-Ndé-Nneé and the Holy See.

<sup>41</sup> See The Bible, Revelation 17

<sup>42</sup> In fact, the Holy See itself should not find reason to disagree, as itself states, “The Durban Declaration (n.8) recalls that religion, spirituality and belief play a central role in the lives of men and women and in the way they live and treat other persons. It stresses how religion contributes ‘to the promotion of the inherent dignity and worth of the human person and to the elimination of racism, racial discrimination, xenophobia and related intolerance’” in Holy See CERD/C/V A T/16-23, Annex 3, ‘Intervention by the Head of the Holy See Delegation at the United Nations Organization on Racism, Racial Discrimination, Xenophobia And Related Intolerance’, 28 January 2002

<sup>43</sup> Holy See CERD/C/V A T/16-23, para. 56

<sup>44</sup> See para. 41, Holy See CERD/C/V A T/16-23

27. By failing and even refusing to fulfill, protect and promote the rights of Indigenous Peoples and the Apache-Ndé-Nneé in a substantive way, in this case regarding formal, specific and full rescinding of the *Inter Caetera* and condemning and redressing its legacy, the Holy See is in direct violation of its obligations under the CERD Treaty.

28. In light of global actions both past and present, it is necessary that the Holy See's review by CERD directly addresses the Holy See's commitment to Indigenous Peoples in newly-constructed, intentional and formal manners and matters of both justice and remedy, such as through recommendation of a Truth Commission(s) and the canonizing of new Holy See State laws and policies specifically related to Indigenous Rights and Peoples,<sup>45</sup> so as to assure that the Holy See not only does its due part in healing the wounds of its own violations, but that it is also in compliance with the current, evolved, international law as well as nation-to-nation diplomacy that includes Indigenous Peoples, Tribes and Nations- a due justice that the Apache-Ndé-Nneé have yet to experience.

## II. Application of the UN CERD Treaty<sup>46</sup>

### A. Article 2 and Article 3

#### i.

**Article 2(1)** Condemn racial discrimination; undertake policy of eliminating racial discrimination; promoting understanding among all races; **Article 2(1)(a)** Engage in no act or practice of racial discrimination; ensure that all public authorities and public institutions shall act in conformity with this obligation; **Article 2(1)(b)** Do not sponsor, defend or support racial discrimination by any persons or organizations

#### a. Issues

29. The Holy See has not fulfilled its obligation under the CERD treaty Article 2 in respect of the Apache-Ndé-Nneé and Indigenous Peoples regarding condemning racial discrimination; due to the historical and ongoing discrimination against the Apache-Ndé-Nneé and Indigenous Peoples both locally, regionally, State-nationally, and globally as well as by followers, proselytizers and practitioners of the Catholic faith itself, the Holy See has not taken extra and formal legal measures in its own canon to meet the international standards now in place regarding Indigenous Peoples and law.

30. The *Inter Caetera* is inherently and pointedly, intentionally discriminatory against Indigenous Peoples. As stated above, language, actions and notions such as “barbarous nations be overthrown and brought to the faith itself”<sup>47</sup> found in the *Inter Caetera* are in violation of Indigenous Rights and obligations under the CERD Treaty due to their very assumption of non-Christian nations as barbarous and thus to be revoked of their inherent sovereignty and displaced from their own religions and territorial integrities.

31. As a result of such discriminatory language and concepts therein of the *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’

<sup>45</sup> Holy See CERD/C/V A T/16-23, para. 59, “Each country should set in place appropriate national structures to address the questions of racism, racial discrimination [...] Special attention should be given to situations where, despite best efforts, racist sentiments may still prevent the vulnerable from fully exercising their human rights.”

<sup>46</sup> All paragraphs in section II. of this paper, “Application of the UN CERD Treaty”, and, in particular, the informational ‘Issues’ paragraphs therein, are to be read as inclusive of, in conjunction with and referring to the expertise, information, facts, concepts, testimonials, worldviews and evidence contained in the *Apache-Ndé-Nneé Working Group Shadow Report* in its entirety, deferring and referring to the *Shadow Report’s* papers, and this paper, in their entireties.

<sup>47</sup> Accessed at <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>

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 international law, ‘territorial integrity’ per-Peoples/Nation (i.e. States and not Indigenous Peoples/Tribes/Nations), resulting divisions and losses of territorial and thus cultural integrities<sup>48</sup> and full and equal participation in local, national and international decision-making process (including but not limited to legal codification and procedural analyses of international laws and procedures, such as definitions of authority, peace, aggression, international criminal law, negotiation, and even membership requirements at the UN itself).

32. As expressed by Margo Tamez in her adjoining paper in the *Apache-Ndé-Nneé Working Group Shadow Report*, UNESCO World Heritage Sites established without the consent of Indigenous Peoples, including the Apache-Ndé-Nneé (in this case the San Antonio Missions World Heritage Site), on own Indigenous sites and territories and in collaboration with members and/or officials of the Catholic Church is a direct discrimination of the spiritual-territorial self-determination of Indigenous Peoples and is directly linked to the *Inter Caetera*, especially when occurring on original Church-Kingdom-State ‘conquest’ lands.

33. Moreover, recently canonizing Junipero Serra a Saint in the United States in the state of California despite protests, meetings, papers, documents and otherwise enacted and submitted by the affected Indigenous Peoples<sup>49</sup> is a direct violation of many treaties<sup>50</sup> that apply to the rights of Indigenous Peoples for the same reasons in the paragraph above re establishment of World Heritage Sites sans due FPIC process. The canonizing of Serra is a duping of historical fact and documentation and exhibits continued discrimination against Indigenous Peoples by the Holy See and the encompassing State alike.

34. By engaging in, either directly or through negligence regarding the actions of own congregations and/or leadership/staff and discriminatory historical legacies remaining today, the Holy See is creating, promoting, and sponsoring, defending and supporting, racial discrimination through lack of respect to rights of self-determination, FPIC and decision-making of the Indigenous Peoples concerned and affected. The Holy See is promoting through both direct action (dominance) and inaction (negligence) that public authorities and public institutions, national, international and local, can override, i.e. discriminate against, Indigenous Peoples, including in their own territories and regions, regarding their own historical accounts, healing, international relations and decision-making.

## b. Questions

35. In what ways does *and will* the Holy See uphold, protect and promote, both internally amongst its peoples, congregations and own State, as well as in its role in the international fora and its diplomatic relationships, the non-discriminatory truth that inherently self-identifying sovereign Indigenous Tribes, Peoples and Nations are equal in self-governance to self-identifying sovereign Kingdoms, States, as well as the Holy See itself?

<sup>48</sup> See adjoining papers within this Shadow Report; “Indigenous or aboriginal peoples are so-called because they were living on their lands before settlers came from elsewhere.” Fact Sheet No. 9 also refers to the “settlers” as “the new arrivals” who became “dominant” through “conquest, occupation, settlement, or other means.” from Fact Sheet No. 9. (Rev. 1), “The Rights of Indigenous Peoples,” Programme of Activities for the International Decade of the World’s Indigenous People (1995-2004), General Assembly Resolution 50/157 of 21 December 1995, annex

<sup>49</sup> See “Native Groups Protest Pope Francis’ Canonization of Junipero Serra over Role in California Genocide”, Democracy Now, 23 September 2015, [http://www.democracynow.org/2015/9/23/native\\_groups\\_protest\\_pope\\_francois\\_canonization](http://www.democracynow.org/2015/9/23/native_groups_protest_pope_francois_canonization); see also Native Americans Protest Canonization Of Junipero Serra”, National Public Radio (NPR), 16 September 2015, <http://www.npr.org/2015/09/16/440914077/native-americans-protest-canonization-of-junipero-serra>

<sup>50</sup> Not least CERD, UNDRIP and the GA WCIP Outcome Document

36. In what ways does *and will* the Holy See revoke, formally and informally, both internally amongst its peoples, congregations and own State, as well as in its role in the international fora and its diplomatic relationships, discrimination resulting from ongoing influence of the language, bindings and intentions of *Inter Caetera* against inherently self-identifying sovereign Indigenous Tribes, Peoples and Nations, who are inherently equal in self-governance to self-identifying sovereign Kingdoms, States, as well as the Holy See itself?

### c. Recommendations

37. Oppose, both internally amongst its peoples and State, as well as international fora, the notion that self-identifying sovereign Indigenous Nations are not equal to self-identifying sovereign Kingdoms, States and the Holy See.

38. The Holy See must create a formal law and policy within its own legal code and canon regarding the Holy See's legal position on Indigenous Rights,<sup>51</sup> in consultation and collaboration with Indigenous Peoples and experts of Indigenous Rights and with respect to Indigenous Worldview the full rights that apply to Indigenous Peoples within International Human Rights Law, 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.<sup>52</sup>

39. Hold the appropriate persons accountable for such violations of the Holy See's own anti-discrimination laws for determining Junipero Serra a saint against the will and self-determination of the descendants of those Indigenous Peoples most affected by Serra's harms to Indigenous Peoples and the atrocities of the era against Indigenous Peoples, today crimes against humanity, ethnocide and genocide, in which Serra participated, directly and indirectly.

40. Consult with the Apache-Ndé-Nneé on the issues affecting them that are a result of the *Inter Caetera* and its legacy, including all matters raised in the adjoining papers and testimonials of the *Apache-Ndé-Nneé Working Group Shadow Report* - continued disrespect and degradation of the Apache-Ndé-Nneé sacred and traditional worldview, sacred sites, self-determination regarding territories, leadership, law and governance, wealth, health and family and the healing processes required, both spiritual and legal, due to intergeneration trauma stemming back to Holy See direct and promoted discrimination, domination and subjugation codified within the *Inter Caetera*.

41. Hold accountable those Catholic Church representatives responsible for participating in the establishment of UNESCO World Heritage Sites against the self-determination of the affected Apache-Ndé-Nneé. Hold accountable all violators of Indigenous Rights related to or a part of the Holy See's spiritual and/or political domain and scriptural influence as an act against racial discrimination. (*See also* CERD Articles 2(1)(c) and 2(1)(d)).

#### ii.

**Article 2(1)(c)** review policies; amend, rescind or nullify any laws and regulations *which have the effect of* creating or perpetuating racial discrimination; **Article 2(1)(d)** prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination

<sup>51</sup> The Holy See itself states: "all States to ensure that 'their legislation expressly and specifically prohibit racial discrimination and provide effective judicial remedies and redress' (Programme of Action, n.163). Such legislation [...] must address the situation of indigenous peoples." from *Pontifical Council for Justice and Peace, Contribution to World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 31 August - 7 September 2001)*

<sup>52</sup> See Holy See CERD/C/V A T/16-23, para. 59, "Each country should set in place appropriate national structures to address the questions of racism, racial discrimination [...] Special attention should be given to situations where, despite best efforts, racist sentiments may still prevent the vulnerable from fully exercising their human rights.""

### a. Issues

42. In a letter from the Holy See Archbishop Celestino Migliore to Onondaga Chief Oren Lyons in 2007, the Holy See puts forward that the Papal Bull *Inter Caetera* has been abrogated as a result of subsequent other Papal Bulls that have not contained direct reference to the Bull *Inter Caetera*. In the same letter, the Holy See claimed no responsibility for the influence of the *Inter Caetera* on International or subsequent State law or otherwise. The Archbishop in turn argued that there is no reason for publically repudiating the *Inter Caetera*.<sup>53</sup> However, the *Inter Caetera*, and its related Bulls and Doctrines committing racial discrimination and endorsing atrocities against and domination and superiority over Indigenous Peoples and Nations, has/have not been formally and specifically rescinded. As a result, the Holy See is perpetuating ignorance both of Indigenous Rights as well as the history of discrimination and horrors committed against Indigenous Peoples and the Apache-Ndé-Nneé; thus, the legacy of the *Inter Caetera* and its related Papal Bulls and Doctrines persists today, as does the suffering and damage caused by its implications and concepts, not least being in the form of the notion-turned-law of Indigenous minds, bodies, lands, and political and identity statuses, as *terra nullius*- as grounds for conversion into the ways of the dominant, i.e. to “instruct the aforesaid [indigenous] inhabitants and residents [...] and train them.”<sup>54</sup> Such discrimination led to not only slavery, land-grabbing, enforced dependencies and torture, but also the horrors of Indian boarding schools and abuse therein, forced relocations, and the ‘management’ of Indigenous Peoples, Tribes and Nations by State authorities and systems to this day, converting peoples out of their own legal-political-spiritual-cultural-land-based traditions.

### b. Questions

43. How and when does the Holy See plan to specifically and legally rescind the *Inter Caetera* and its related discriminatory Bulls and Doctrines that have and do still create discriminatory effects and circumstances for Indigenous Peoples including the Apache-Ndé-Nneé?

44. What will be the final outcome of the necessary revoking of the *Inter Caetera* and its related discriminatory Bulls and Doctrines, as envisioned by the Holy See?

### c. Recommendations

45. Officially, legally and specifically rescind the *Inter Caetera* and its related discriminatory Bulls and Doctrines that have created and/or do create a discriminatory effect and/or circumstances on Indigenous Peoples including the Apache-Ndé-Nneé.

46. Following such rescinding, formally make a public and official statement that all State laws and policies in the world resulting from the *Inter Caetera* and its related bulls and doctrines disproportionately negatively affecting Indigenous Peoples as a part of the legacy of the *Inter Caetera* should be reviewed, changed and/or revoked so to represent current Indigenous Rights standards, remedies, redress and the reversal of genocidal and ethnocide-inducing law, policy and inter-national relations.

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<sup>53</sup> Letter from the Permanent Observer Mission of the Holy See to the United Nations to Onondaga Nation Faithkeeper Oren Lyons, 16 July 2007

<sup>54</sup> Its complete form: “we command you in virtue of holy obedience that, employing all due diligence in the premises, as you also promise -- nor do we doubt your compliance therein in accordance with your loyalty and royal greatness of spirit -- you should appoint to the aforesaid mainlands and islands worthy, God-fearing, learned, skilled, and experienced men, in order to instruct the aforesaid inhabitants and residents in the Catholic faith and train them in good morals.” *Inter Caetera*, accessed at <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html> (also referenced in footnote 28).

**iii.**

**Article 2(1)(e)** Encourage eliminating barriers between races; discourage racial division; **Article 3**  
Particularly condemn racial segregation and apartheid

**a. Issues**

47. The Holy See's 2014 report to CERD quotes Pope John Paul II on the occasion of receiving the Letters of Credence from the New Ambassador of the Republic of [post-apartheid] South Africa "...although it is important that the truth about the past should be known and responsibility laid where it is due, it is even more important that the delicate process of building a just and harmonious multiracial society should go forward..."<sup>55</sup>; the Apache-Ndé-Nneé and Indigenous Peoples affected by the *Inter Caetera* and its legacy had have no such opportunity either for truth regarding the past to be systematically uncovered, regarding the reality of mass atrocities, and experienced crimes against humanity, genocide, ethnocide and destructive, discrimination-based legacies remaining therein due to the *Inter Caetera* and its related Bulls and Doctrines, or for responsibility and accountability to be placed in historical context, much less the opportunity to participate as equal Peoples, Nations, sovereigns, cultures and leadership in the 'democratic' collective international, regional and local post-colonial and neo-colonial societies. This creates an ongoing racial segregation and experienced apartheid for Indigenous Peoples, including the Apache-Ndé-Nneé, on all levels of life, from local, to regional, to international, and even to the United Nations and the fact that Indigenous Peoples, Tribes and Nations must participate in a limited capacity at the United Nations as civil society or 'Indigenous Parliamentarians' but still in the role of civil society, whilst the Holy See and States sit as the UN's 'world leaders' as Members / Permanent Observers in key decision-making processes and positions - political discrimination dating directly back to the *Inter Caetera* and its granted subjugation of Indigenous Peoples, Tribes and Nations. Moreover, the same such structural power dynamic exists in States where the Holy See's *Inter Caetera* directly granted such dominance, not least in the form of States' determination and thus control over the definitions of and requirements for 'government to government' or 'nation to nation' relationships with Indigenous Peoples and land, wealth and identity management by States regarding and concerning Indigenous Peoples.<sup>56</sup>

48. The Holy See continues to commit violations of the CERD and other treaties regarding Indigenous Rights through its own negligence both towards the actions of its own Catholic congregations, leadership and churches working to establish World Heritage Sites, Saints and otherwise in direct violation of the self-determination and decision-making of those Indigenous Peoples most affected, as well as the due historical justice and cultural, spiritual and territorial rights of Indigenous Peoples including the Apache-Ndé-Nneé.

49. The denial of Apache-Ndé-Nneé and Indigenous Peoples' rights to self-determination, culture and remedy and redress regarding the *Inter Caetera* and its legacy and related discriminatory Bulls and Doctrines further promotes others to do the same and thus misleads others in their comprehension of the Apache-Ndé-Nneé and Indigenous Peoples; this discrimination further divides all peoples of the world as a result, through destroying potential bridges of accountability, historical justice and correction, understanding and healing, rather than participating in such bridges.

**b. Question**

50. In what ways is the Holy See formally participating in international diplomacy with Apache-Ndé-Nneé and Indigenous Peoples and at the same time recognizing Indigenous cultural and spiritual wealth and traditional leadership therein as equal to all Nations and inherently sovereign and territory-based?

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<sup>55</sup> Holy See CERD/C/V A T/16-23, para. 52

<sup>56</sup> For a more in-depth discussion of the general legal, political and historical situations and analyses discussed in this and related paragraphs, see India Reed Bowers, *Indigenous Decolonization and United Nations Membership: Indigenous Peoples and the Fundamental Right to Self-Determination*.

### c. Recommendations

51. Engage actively in supporting Indigenous Peoples, including the Apache-Ndé-Nneé, to be on footing equal to States in their (Indigenous Peoples') collective and diverse actions and initiatives as both self-governing and traditional peoples to participate equally to States locally, regionally and internationally (such as at the UN and in other international forums) in situations of decision-making processes, legal codification and interpretation, and otherwise influential and/or defining legal-political-cultural-structural actions and collaborations. (*See also* Article 5(c))

52. Vow to engage with respect to the rights of the Apache-Ndé-Nneé in the situation of the UNESCO World Heritage Site, the affected Indigenous Peoples regarding the canonization of Junipero Serra, and the affected Indigenous Peoples regarding the past and ongoing damage done by the era of conquest and domination of the Catholic Church and the Holy See, including but not limited to the indoctrination of slavery, spiritual violence, land-grabbing, wealth-looting, family destruction and other discriminatory practices.

53. Establish diplomatic relations equal to those with States with the Apache-Ndé-Nneé and Indigenous Peoples, and in particular those peoples still practicing and following own traditional religions, cultures, leaderships, systems and lifeways, so as to end the apartheid of Indigenous Peoples that exists in local, regional, State-national and international decision-making and representative realms.

54. Condemn all apartheid-like treatment towards the Apache-Ndé-Nneé and Indigenous Peoples.

#### iv.

**Article 2(2)** take, in the social, economic, cultural and other fields, special and concrete measures to ensure adequate protection for the purpose of guaranteeing full and equal enjoyment of human rights and fundamental freedoms

### a. Issues

55. The Holy See's history of genocidal stealing, raping, enslaving, pillaging and plundering of the Apache-Ndé-Nneé and Indigenous Peoples and in alliance and allegiance with States and Kingdoms is a source of ongoing trauma that continues to for the Indigenous Peoples discriminated against as sub-human today. This discrimination and violence in regards to self-determination, culture, law, religion, morals and governance leave a long list of human rights and fundamental freedoms not enjoyed for the Apache-Ndé-Nneé, not least often in the form of life itself. Due to the conquering of lands permitted, promoted and endorsed by the Holy See and atrocities committed therein via/justified by racial discrimination of the *Inter Caetera*, the Apache-Ndé-Nneé continue to lose health and life, family, inter-generational knowledge, medicine and own natural wealth of traditional territories and being therein, sacred sites, the passing on of traditions in social health and well-being and without fear or threats, and thus face the continued concern for survival, peace and dignity dating back to the blessing of such conditions by the *Inter Caetera*.

### b. Questions

56. What steps is the Holy See taking to formally recognize traditional sovereign Apache-Ndé-Nneé Indigenous trade and wealth, territorial integrity (mineral and ecological, spiritual, cultural, familial and otherwise) of Indigenous Peoples, Tribes and Nations including the Apache-Ndé-Nneé, for the purpose of guaranteeing full and equal enjoyment of human rights and fundamental freedoms?

57. What steps is the Holy See taking to provide reparations for damage incurred by the *Inter Caetera*, including in the form of full recognition and restoration of original sovereignty and territories as well as for losses of life, dignity, family culture and otherwise, for the purpose of restoration of equal enjoyment of human rights and fundamental freedoms for the Apache-Ndé-Nneé and Indigenous Peoples, Tribes and Nations?

### c. Recommendations

58. Formally recognize traditional sovereign Apache-Ndé-Nneé Indigenous trade and wealth, territorial integrity (mineral and ecological, spiritual, cultural, familial and otherwise) of Indigenous Peoples, Tribes and Nations including the Apache-Ndé-Nneé, for the purpose of guaranteeing full and equal enjoyment of human rights and fundamental freedoms.

59. With the full and equal FPIC participation of the Indigenous Peoples, Tribes and Nations affected, create pro-active measures, local interventions, and support local initiatives of said Indigenous Peoples to gain back their territories, cultures, social networks and families and traditions where the Holy See and/or its people and followers are deemed by the Indigenous Peoples affected to be violating their rights, as per the Indigenous Rights contained with the UNDRIP, UNCERD, GA WCIP and Alta Outcome Documents and other UN treaties and/or Indigenous Law.

60. Provide reparations for damage incurred by the *Inter Caetera*, including in the form of full recognition and restoration of original sovereignty and territories as well as for losses of life, dignity, family culture and otherwise, for the purpose of restoration of equal enjoyment of human rights and fundamental freedoms for the Apache-Ndé-Nneé and Indigenous Peoples, Tribes and Nations.

### B. Article 4

#### i.

Condemn theories of superiority; **Article 4(a)** Declare an offence punishable by law; **Article 4(c)**  
Do not permit public authorities or public institutions to promote or incite racial discrimination

#### a. Issues

61. Indigenous Worldview has been systematically displaced and replaced by Catholic proselytizing and related and allied historical aggression and colonialism,<sup>57</sup> which by today's international legal standards as per Indigenous and Human Rights is not legally valid, and now such situations are acknowledged as involving a host of Human Rights violations as per International Law.

62. The Holy See's 2014 Report to CERD details the Holy See's claim to CERD regarding the Holy See's self-proclaimed *moral authority*<sup>58</sup> in the sphere of international relations and all that encompasses in general, which automatically creates a situation and perpetuation of discrimination against many Peoples and persons, including but not limited to the Apache-Ndé-Nneé and Indigenous Peoples. Indigenous Peoples in general and the Apache-Ndé-Nneé independently have their own worldviews, moral authority, traditional religious offerings to the world and autonomy and inherent sovereignty. Moreover, given the inherent nature of the fact that traditional Indigenous religions are not Catholic or of the Holy See, for the

<sup>57</sup> See *Inter Caetera*, "these very peoples living in the said islands and countries believe in one God, the Creator in heaven, and seem sufficiently disposed to embrace the Catholic faith and be trained in good morals. And it is hoped that, were they instructed, the name of the Savior, our Lord Jesus Christ, would easily be introduced into the said countries and islands. [...] whereby you are bound to our apostolic commands, [...] enjoin strictly, that inasmuch as with eager zeal for the true faith you design to equip and dispatch this expedition, you purpose also, as is your duty, to lead the peoples dwelling in those islands and countries to embrace the Christian religion" accessed at <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>

<sup>58</sup> Holy See CERD/C/V A T/16-23, "When the Holy See ratifies or accedes to an international agreement following international law and practice, it also manifests its *moral authority* and thereby encourages States to ratify the treaty and to accomplish their respective obligations. Indeed, *within the international community the Holy See disseminates teachings about moral principles founded upon right reason which are addressed to the whole of mankind and not to Catholic believers alone.* [...] The Holy See, for its part, is doing all it can towards the advancement of moral principles and of the conditions for ensuring peace, justice and social progress in a context of ever more effective respect and promotion of human rights." (author's emphasis)

Holy See to claim moral authority<sup>59</sup> in the international context is a form of racism and aggressive discrimination. Indigenous Peoples, including the Apache-Ndé-Nneé, have own moral authority and have so since time immemorial. The humanistic and care-taking values that the Holy See puts forward in its submission to the CERD Committee, including “moral authority”<sup>60</sup>, are not values unique to the Catholic Church or religion. As stated, the Apache-Ndé-Nneé have own *moral authority* within the context of own sovereignty and traditions. Assumptions of international moral authority on the part of the Holy See is a continuation of the same global mentality created, instigated and endorsed by the *Inter Caetera* and its related Bulls and Doctrines, namely that Indigenous Peoples and their inherent sovereignty as *terra nullius*.

#### aa. Regarding Indigenous Women

63. To deny the need to address women’s situations of discrimination, intersectionality and agreements therein as per CERD and reporting to the CERD Committee, and whilst claiming moral authority, in addition, as a traditionally male-led and man-god/messiah-based religious institution, further compounds discrimination against Indigenous women, including by the Holy See and its legacy in cases such as the Apache-Ndé-Nneé and matriarchal, matrilineal religious, familial, social and socio-cultural-structural traditions. Such disregard, discrimination and assumed authority on the part of the Holy See, as a result, enables and even indirectly promotes violence against women and specifically Indigenous, matriarchal and matrilineal women, Peoples, Nations and societies through their subjugation and assumed (moral and otherwise) inferiority to the Holy See and its followers/peoples, leaders and mission. (See also ‘Intersectionality’ in the ‘Overview’ section of this paper).

64. Along the same lines, in the heading of ‘conversion of hearts and the healing of memories’ (within ‘truth, justice and reparation’) in its 2014 submission to CERD, the Holy See states that in 2003 it “noted that penalties were not enough since they constituted a measure of last resort. In addition to effective penalties, the Holy See in its submission called for a change of hearts ‘in order that there will prevail neither fear nor the spirit of domination but openness to others and sentiments of brotherhood.’”<sup>61</sup> The omission by the Holy See, and of States in general, of ‘sisterhood’, even in the most formative legal documents establishing legal, social, political, and territorial institutions, and in the case of the Holy See in the context of denial women’s rights and issues as a component of CERD review and thus Indigenous Women, specifically, combined with the legacy of the Holy See’s *Inter Caetera* therein, is an act of extreme violence against Apache-Ndé-Nneé and Indigenous women and against all peoples who value and honor the moral authorities of sisterhoods, sacredness of women as leaders, women visionaries and healers both new and traditional, and matriarchy and matrilineal cultures as an essential to own or their P/peoples’ collective, ecological, governing and spiritual survival and lives. Implied superiority of brotherhood and omission of sisterhood is a form of direct racial discrimination for many.

#### b. Questions

65. In what ways is the Holy See formally and actively upholding, protecting, promoting that Indigenous Peoples, including the Apache-Ndé-Nneé, are equal *moral authorities* of their own worldviews, lifeways and territories, with own inherent sovereignty, and condemning any positions otherwise?

66. What is the Holy See’s interpretation of the components of the *moral authority* and integrity of Indigenous Peoples, and how will the Holy See identify violations therein?

67. In what ways will the Holy See formally participate in the restoring in the world society of the inherent sovereignty and self-determining status of the *moral authority of Indigenous Worldview*, was stolen through the discrimination of, and created, endorsed and fostered by, the *Inter Caetera* and its

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<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Holy See CERD/C/V A T/16-23, para. 57; see also para. 44

legacy, so as to prevent permitting public authorities or public institutions to promote or incite racial discrimination against Indigenous Peoples, Tribes and Nations, including the Apache-Ndé-Nneé?

68. So as to prevent permitting public authorities or public institutions to promote or incite racial discrimination against Indigenous women, in what ways will the Holy See formally participate in the restoring of the status, security and inherent roles of Apache-Ndé-Nneé and all Indigenous women, and in the context of their own Indigenous Worldviews and values that were stolen from them and their families and peoples through the discrimination of, and created, endorsed and fostered by, the *Inter Caetera* and its legacy, the Catholic Church and Holy See therein?

69. In what ways is the Holy See working to combat violence against women and, in particular, violence against Indigenous Women, including but not limited to in the context of its own colonial and *Inter Caetera* legacies?

### c. Recommendations

70. Abstain from language and positioning relating to claims of the moral authority of the Holy See in the international context, and instead recognize and uplift that all religious peoples of the world have own autonomous moral authorities, integrities and principles therein.

71. A verbal, written and advertised change of heart of the Holy See in the form of a formal apology and condemning of the history of domination of Indigenous Peoples, Tribes and Nations worldwide by the Holy See and the *Inter Caetera* and its continued legacy that enables the domination of States over Indigenous Peoples, Tribes and Nations.

72. Recognition that the inherent equality and spiritual richness of Indigenous Rights and cultures, including matrilineal and matriarchy-based traditions and Peoples, is needed for diplomacy and a better world of International Human Rights, historical justice and healing, and an acknowledgement and respect as such on the part of the Holy See towards the Apache-Ndé-Nneé, specifically, as one component of a truth and reparations process; for the Holy See to condemn anything less.

73. Actively support and undertake work that directly combats violence against women and, in particular, violence against Indigenous Women, including but not limited to in the context colonial and *Inter Caetera* legacies.

74. That the Holy See treat Indigenous Peoples, Tribes and Nations as equal to States, Kingdoms and even its own authority<sup>62</sup>, as well as to other religions as part of the family of world religions, including in the contexts of sovereignty and territorial and spiritual integrity; That the Holy See educates its peoples, staff and congregations as such with formal measures including laws and policies regarding Indigenous Rights and full recognition of the discrimination of not only the past of the Holy See but also the present legacy that Indigenous Peoples, as own Nations, endure having survived genocide; Undergo such processes as part of a multi-pronged initiative to repair damage done to Indigenous Peoples, Tribes and Nations by the Church in its allegiance with States and Kingdoms; That the Holy See requests UN Member States to

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<sup>62</sup> Holy See CERD/C/VAT/16-23, paras. 6, 8-9: “The Holy See is a sovereign subject of international law having an original, non- derived legal personality independent of any authority or jurisdiction. The Holy See has diplomatic relations with 180 States and participates as a Member and/or non-Member Permanent Observer to the United Nations and several United Nations specialized agencies, as well as in various universal or regional intergovernmental organizations.”; “The Holy See also exercises its sovereignty over the territory of Vatican City State (VCS), established in 1929 to ensure the Holy See’s absolute and evident independence and sovereignty for the accomplishment of its worldwide moral, spiritual and religious mission, including all actions related to international relations (cf. Lateran Treaty, preamble, arts. 2 and 3).”; “...the Holy See continued to act as a subject of international law by concluding concordats and international treaties of States, participating in international conferences, conducting mediation and arbitration missions, and maintaining both active and passive diplomatic relations.”

do the same, and includes and encourages Member States in such initiatives, especially the States that have subsequently claimed their own sovereignty and territorial integrity to be over Indigenous peoples and lands, and holds UN Member States accountable that do not adhere or participate in due diligence and process.

75. Prohibit evangelizing propaganda and conversions in traditional Indigenous religious areas by persons professing to represent the Catholic church; educate Catholic followers rights of Indigenous Peoples to traditional religions, beliefs, land, sovereignty, cultural and territorial integrities, leadership, decision-making, and medicine (healers, religion).

76. All issues raised in this report should be examined and held accountable in the light of the Holy See's anti-discrimination laws in conjunction with UN CERD Committee's *General Recommendation 23* re Indigenous Peoples and a newly-developed Holy See legislation/policy regarding Indigenous Rights, the legal body of recommendations, comments and agreements within the UN regarding Indigenous Rights, especially in regards to UNDRIP Articles 7 and 8:

“the collective right to live in freedom, peace and security and shall not be subjected to any act of genocide or violence, forcible removal of children, forced assimilation or destruction of their culture; The State has the obligation to provide mechanisms for prevention of, and redress for any action which deprives them of their integrity as distinct peoples, or of their cultural values or ethnic identities; or of dispossessing them of their lands, territories or resources.”<sup>63</sup>

### C. Articles 5 and 6

#### i.

Prohibit and eliminate racial discrimination in all its forms; guarantee the right to equality before the law, including but not limited to **Article 5(a)** The right to equal treatment before the tribunals and all other organs administering justice; **Article 5(b)** The right to security of person and protection; **Article 5(c)** Political rights: to take part in the conduct of public affairs at any level; **Article 5(d)** Other civil rights: movement, residence and nationality, property, to inherit, freedom of thought, conscience and religion, freedom of opinion and expression, economic, social and cultural rights; and **Article 6** assure effective protection and remedies re any acts of racial discrimination contrary to this Convention, assure just and adequate reparation or satisfaction for any damage suffered

#### a. Issues

77. In its submitted paragraph 57, the Holy See states,

“the importance about the ‘healing of memories [...] involves an honest appraisal of our person, community and national history and a frank admission of those less noble aspects which have contributed to the marginalization of today, but in such a way as to reinforce our desire to make the era of globalization an era of encounter, inclusion and solidarity’”<sup>64</sup>

and in its submitted paragraph 58, “in order to move forward, our ‘deliberation must be about truth.’” and “Solidarity with victims of racial discrimination ... The Church offers her solidarity to all who, for racial, ethnic reasons, are victims of discrimination. Spiritual and religious values, with their potential for renewal, contribute in an effective way to improving society.”<sup>65</sup> Yet, the materials submitted in the *Apache-Ndé-Nneé Working Group Shadow Report* contain truthful historical as well as current data and evidence of the active blocking of the Apache-Ndé-Nneé to a healing of memories as well as a lack of true remedy and

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<sup>64</sup> Statement of the Holy See at OSCE/SHDM “Prevention of Racism, Xenophobia and Hate Crimes Through Educational and Awareness-Raising Initiatives”, 11 November 2011

<sup>65</sup> Holy See CERD/C/VAT/16-23, para. 63

redress regarding the *Inter Caetera* and its effects on present day land access, culture and identity of Apache-Ndé-Nneé therein.

78. To not undergo a process of redress, reparations and full accountability regarding the Apache-Ndé-Nneé and the era of Holy See, Catholic Church and *Inter Caetera*-manifested slavery, pillaging, and colonial jurisdictional and spiritual control and domination<sup>66</sup> that was promoted and ensued as a result, including ongoing experienced ethnocide and cultural genocide of the Apache-Ndé-Nneé and Indigenous Peoples, Tribes and Nations,<sup>67</sup> *promotes and incites* racial discrimination through exemplifying the very notion that Indigenous Peoples, as Indigenous Peoples, do not require, want or need such formal remedy, redress or reparations, or respect towards their voice, leadership and demands/negotiations/nationhood, as other peoples have and have had access to internationally. This has a severe effect on how the Apache-Ndé-Nneé and Indigenous Peoples, Tribes and Nations are thus treated by the Nation-States that have, literally, surrounded, divided and engulfed and dominated them as a result of the Holy See-endorsed conquest of Indigenous and Apache-Ndé-Nneé lands, peoples and spirits. Such a situation results in a continuous and shocking lack of human security and protection amidst which Indigenous, ally and Apache-Ndé-Nneé Peoples and Human Rights Defenders are murdered, bullied, shamed, belittled, dominated and harassed whilst their families are also discriminated against, enduring both internalized and external oppression so as to survive.

79. Lack of 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<sup>68</sup>-based *Inter Caetera* and the resulting relationship between the Holy See, Kingdoms and 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 institution that claims to be taking action itself in regards to 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), as mentioned earlier, in which a Declaration of Indigenous Rights is, in fact, then encompassed by non-Indigenous State rights). These discriminations can be traced back to the Holy See’s *Inter Caetera* directly, and deeply harm Indigenous and Apache-Ndé-Nneé life and participation as traditional sovereigns in political and territorial affairs, not least as evidenced by the very US-Mexico State border dividing Ndé-Nneé lands and peoples that the CERD Committee itself has taken Urgent Action on and the Inter-American Commission holds under review for violation<sup>69</sup>. However, the

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<sup>66</sup> See *Inter Caetera*, “...we [the Holy See], of our own accord, not at your instance nor the request of anyone else in your regard, but of our own sole largess and certain knowledge and out of the fullness of our apostolic power, by the authority of Almighty God conferred upon us in blessed Peter and of the vicarship of Jesus Christ, which we hold on earth, do by tenor of these presents, should any of said islands have been found by your envoys and captains, *give, grant, and assign to you* and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and *all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered* towards the west and south, by drawing and establishing a line from the Arctic pole, namely the north, to the Antarctic pole, namely the south [mapping-related details continue] [...] And we make, appoint, and depute you and your said heirs and successors lords of them with full and free power, authority, and jurisdiction of every kind; this clause exhibits the responsibility of the Holy See in the ‘granting’ of ‘rights’ of ‘jurisdiction’ of the Kingdoms and States over the ‘discovered’ lands already inhabited (“islands and even mainlands that hitherto had not been discovered by others; *wherein dwell very many peoples living in peace...*”). (author’s emphasis), accessed at <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>

<sup>67</sup> See India Reed Bowers, *Indigenous Decolonization and United Nations Membership: Indigenous Peoples and the Fundamental Right to Self-Determination*

<sup>68</sup> “Racism is a lie and Creates a Division in Humanity”, Holy See CERD/C/VAT/16-23, para. 46

<sup>69</sup> CERD, see CERD/82nd/GH/CR/MN, 1 March 2013; Inter-American Commission, see “In October 2008, the Inter-American Commission on Human Rights called a hearing on the Texas/Mexico border wall. Members of the [University of Texas Working Group on Human Rights and the Border Wall] provided testimony regarding their

discrimination remains; the root of oppression, the *Inter Caetera* and the relationship between the Holy See, Kingdoms and States in world colonial domination that continues today have not undergone redress or formal review.

80. Chihene Nde Elder and Apache Genizaro descendant Eddy Montoya, sacred places and human rights defender, details discrimination of violations of CERD Articles 5(b) and 5(d), amongst others, in his testimony for the *Apache-Ndé-Nneé Working Group Shadow Report*,

“As I got older I realized I had to fight the battle to get back the respect that was taken away from so many people. I’m not just doing this for myself and my family but for all that was mistreated, disrespected, tortured and abused. We (my wife and I) have been fighting the battle to protect the rights and sacred sites and sacred grounds and water of my people for the last 25 to 30 years. I feel my mom and dad pushing me to do this for my people that couldn’t do this. The tears that falls when we go back into the memories only make me stronger.

There have been many battles; from keeping corporations from mining beryllium in our sacred Place of Creation we call Kegotoi; to fighting against the State of New Mexico from allowing them to lease water to Texas from our sacred underground waters of the Plains of San Augustin that replenishes our sacred hot and warm springs; to protecting our indigenous rights to access and continue our traditional gathering and hunting in our traditional homelands in the Gila National Forest.

[...] Kegotoi is the Place of Creation of the Chihene Nde Apache. Here the whole area sits on an underground water area from our Ice Age Era which creates the underground waters of The San Augustin plains named after a leader that took the name Augustin during the Spanish Era to say this is *Chihene* land. There are ancient stone pit houses from the Stone Age Era of our Ancestors throughout this region. From Kegotoi belonged Sanaba, the first Chihene Gila Apache leader that met the first friar Alonso Benavides when he and The Spanish crossed paths while visiting the Piro peoples at their pueblo. The old Montoya Rancheria that the rich Texan bought is in Kegotoi and a large 51 room pueblo of our Pueblan Era and stone pit houses are there.

[...] Now we have a rich land grabber buying up land (from other landowners) and buying the people also and trying to keep us away from our Holy Land. Gates have been put up on both sides closing us out. The rich Texas landowner does not care what a Sacred and Holy Place this is to us.

[...] The doors to my church have been closed and locked.

[...] My family—my mother and father, my people were all blessed to be able to go the Ojo Caliente, the warm springs at Monticello Box Canyon to Kegotoi where our Creation began. This is a teaching and ceremony place to teach our children and grandchildren the Creation Story and show them all the Creation sites. Our sacred Holy Ground Ceremonies took place here, our Coming of Age ceremonies for our children and our baby ceremonies and women and men ceremonies. Now they say none of this can happen no more. The Catholic Religion was forced upon us, but our most precious place was the warm springs where the very first Chihene child was born and many ancestors after. Going up the box canyon is like going in a cathedral; the spirits and Holy Creator leading us through this place is as important to us as the Vatican is to the Catholics.”<sup>70</sup> (excerpt)

81. See also the related paragraph in section ‘Article 2’ of this paper, regarding UNESCO World Heritage Sites established without the consent of Indigenous Peoples, including the Apache-Ndé-Nneé, on

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detailed findings. Margo Tamez also provided testimony relating to her experience as an affected property owner of indigenous Lipan Apache heritage whose land along the Texas/Mexico border has been held in the family for several hundred years as a result of a land grant by the Spanish crown. The Commission asked United States government representatives from the Department of State, Department of Homeland Security and Department of the Interior to explain aspects of the wall construction project that the Commission found troubling.” From <https://law.utexas.edu/humanrights/borderwall/analysis/>

<sup>70</sup> See “A Testimonial of Racial Discrimination as an Apache Genizaro Descendant By Chihene Nde Nation of New Mexico Elder Eddy Montoya”, 11 October 2015, *Apache-Ndé-Nneé Working Group Shadow Report*

their own sites and territories and in conjunction with members and/or officials of the Catholic Church is a direct discrimination of the spiritual-territorial self-determination of Indigenous Peoples.

### **b. Questions**

82. What steps will the Holy See take to participate in a full and genuine Truth Commission regarding the past and present effects of the *Inter Caetera* and its related discriminatory Bulls and Doctrines on the Apache-Ndé-Nneé as well as Indigenous Peoples in general?

83. What steps will the Holy See take to participate in full and genuine reparations for past and present effects of the *Inter Caetera* and its related discriminatory Bulls and Doctrines, and actions of the Holy See re the Apache-Ndé-Nneé as well as Indigenous Peoples in general?

84. How will the Holy See work to recognized, as well as to assist to actualize, true and inherent Apache-Ndé-Nneé and Indigenous Peoples', Tribes' and Nations' restored sovereignty and full and equal participation in political affairs therein at the international, regional and local levels, including as own traditional leaderships, territories, cultures and religions?

85. How will the Holy See remedy Catholic Church involvement in the establishing of UNESCO World Heritage Sites in violation of Indigenous and Apache-Ndé-Nneé FPIC, sacred and living culture sites and rights to self-determination?

86. What steps will the Holy See take to protect and assure the security and success of Indigenous Human Rights Defenders in the very lands the *Inter Caetera* and Catholic Church has participated in their subjugation in, including Chihene Nde Elder and Apache Genizaro descendant Eddy Montoya, whose testimonial is included in the *Apache-Ndé-Nneé Working Group Shadow Report*?

### **c. Recommendations**

87. A full and genuine Truth Commission<sup>71</sup> and Restorative Justice actions and reparations, with respect to FPIC and self-determination of Apache-Ndé-Nneé and Indigenous Peoples, Tribes and Nations

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<sup>71</sup> It is recognized by the United Nations system that Truth Commissions and Restorative Justice, and therefore remedy and redress, in the context of historical injustices and Indigenous Peoples are applicable beyond the current State-jurisdiction model, so as to achieve truth and due, fair and equal justice, and that such procedures must be done in respect to FPIC and all Indigenous Rights with respect to customs, language, and culturally appropriate methods for victims. The legal value of such a situation is addressed in paras. 21-23 and 74 of UNPFII 'Study on the rights of indigenous peoples and truth commissions and other truth-seeking mechanisms on the American continent': "D. Rethinking the establishment of truth commissions and other truth-seeking mechanisms to protect the rights of indigenous peoples: [...] 20. Truth commissions have typically been established as instruments to reaffirm goals of reconciliation and unity within a nation-State. This model may not be the most inadequate to set the goals of a truth commission dealing with indigenous peoples, many of who consider themselves members of "first nations" and should be recognized as such; 21. Truth commissions have usually focused on instances of recent violence; cases that can be remembered by witnesses providing first-person accounts. Indigenous peoples have suffered historical violence, the history of which is often transmitted through an oral tradition, and as such may find the existing methods of truth commissions insufficient; 22. Thus, truth-seeking instruments involving indigenous issues should go beyond a form of analysis focusing on individual violations, or on the State or on recent violations, and should consider other sources beyond archival and written documents; 23. Truth-seeking mechanisms that address these design challenges in a creative manner have the potential to develop useful tools for redressing historical abuse and violations of the collective rights of indigenous peoples, including the loss of identity, culture, language, traditional indigenous institutions, community and family ties." And from "Consulting in good faith to obtain free, prior and informed consent: 74. Broad and ongoing consultation with indigenous peoples is crucial to the success of a truth commission focusing on abuses suffered by those peoples. Governments have a duty to consult in good faith and to obtain free, prior, and informed consent for any measure affecting indigenous peoples. This is premised on transparent objectives and an openness to continue the process of consultation until consent is obtained or not. This process requires time and commitment from the highest levels of political leadership in the country." ...From UNPFII, 12<sup>th</sup> Session, 20-31 May 2013, Discussion on

in construction and process, regarding the historical atrocities of the *Inter Caetera* and its related Bulls, policies, laws and Doctrines of the Holy See and its partnering States and Kingdoms, including but not limited to with regard to the related violations, losses and suffering documented, presented and discussed in the *Apache-Ndé-Nneé Working Group Shadow Report*, i.e. slavery, theft of gold and other riches, land loss, intergenerational trauma and damages to families, youth, traditional healers, sacred sites, elders, women and traditional legacy, language, culture, health, peace and dignity, and equality.

88. Recognized and assist to actualize true and inherent Apache-Ndé-Nneé and Indigenous Peoples', Tribes' and Nations' sovereignty and full and equal participation in political affairs therein at the international, regional and local levels, including as own traditional leaderships and religions, via endorsing Indigenous rights to full and equal access to participation at the United Nations as Members or Permanent Observers by choice, as well as to equal participation in codification, review and processes of international, regional and local law and policy-making.

89. Right to current remedy, redress and reparations for violations such as those occurring and occurred in the UNESCO World Heritage Sites, including ongoing land grabbing and violation of sacred sites by States utilizing doctrines of the Holy See and its *Inter Caetera* and related Bulls and Doctrines as foundations and elements of legal reasoning.

90. Protect and assure the security and success of Indigenous Human Rights Defenders in the very lands the *Inter Caetera* and Catholic Church has participated in their subjugation in, including Chihene Nde Elder and Apache Genizaro descendant Eddy Montoya, whose testimonial is included in the *Apache-Ndé-Nneé Working Group Shadow Report*.

#### D. Article 7

##### i.

Education, culture and information: adopt immediate and effective measures; friendship among nations; propagating the purposes and principles of the *Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention*.

##### a. Issues

91. The Apache-Ndé-Nneé have own traditional teachings and education, as well as own relationships between the generations including traditional knowledge and lifeways and worldview; however, today many Apache-Ndé-Nneé and Indigenous youth are suffering intergenerational trauma and elders at too traumatized to talk about the past, a continuous situation of numerous violations of human rights resulting from the *Intera Caetera*'s intentions and execution, and intergenerational teachings are being lost and threatened. At the same time, the Holy See has previously claimed to support, in theory, the inclusion of Indigenous elders and education of younger generations in the education of cultural values,<sup>72</sup> in addition to mentioning "the right of the indigenous peoples for education, for development and their traditional beliefs."<sup>73</sup>

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the World Conference on Indigenous Peoples, 'Study on the rights of indigenous peoples and truth commissions and other truth-seeking mechanisms on the American continent', 14 February 2013, E/C.19/2013/13

<sup>72</sup> Statement by H.E. Archbishop Celestino Migliore Apostolic Nuncio Permanent Observer of the Holy See, 9<sup>th</sup> session of the UNPFII, Item 3: Discussion on the special theme for the year: Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples, 20 April 2010, p. 3

<sup>73</sup> Statement by Permanent Observer Mission of the Holy See, 9<sup>th</sup> session of the United Nations Permanent Forum on Indigenous Issues (UNPFII), Agenda Item 7: Discussion on the reports "Impact on Indigenous Peoples of the International Legal construct known as the Doctrine of Discovery, which has served as the Foundation of the Violation of their Human Rights" and "Indigenous Peoples and boarding Schools: A Comparative Study" 27 April 2010

92. Reparations to the Apache-Ndé-Nneé for the re-education of Apache-Ndé-Nneé youth by and within the self-determining Apache-Ndé-Nneé, and inter-generationally so, in own culture, traditional, health and healing and historical justice, coupled with campaigns by the Holy See and its *Inter-Caetera*-partnering/utilizing States and Kingdoms to educate their own peoples re Apache-Ndé-Nneé and Indigenous Peoples', Tribes' and Nations' truths and expert knowledge and knowledge holders therein, will assisting in healing damage done to the Apache-Ndé-Nneé by the Holy See's *Inter-Caetera* and its related discriminatory Bulls and Doctrines.

#### **b. Questions**

93. What concrete actions is the Holy See going to undertake to educate its own peoples and congregations regarding the truth of the *Inter Caetera* and its legacy, including with regard and reference to Apache-Ndé-Nneé historians, elders, experts, oral testimonies and documentarians such as those who have contributed to the *Apache-Ndé-Nneé Working Group Shadow Report*, as an act of friendly relations with the Apache-Ndé-Nneé and Indigenous Peoples, Tribes and Nations?

94. How will the Holy See provide reparations to the Apache-Ndé-Nneé for the re-education of Apache-Ndé-Nneé youth by and within the self-determining Apache-Ndé-Nneé, and inter-generationally so, in own culture, traditional, health and healing and historical justice?

#### **c. Recommendations**

95. The Holy See must take educational measures regarding Indigenous Peoples in its own law and policy *accompanied by* systematic and pro-active education measures for its followers and practitioners to understand Indigenous realities past and present as those realities relate to the actions of the Church and current and struggling Indigenous Rights and Rights Defenders. Such measures have purpose in both legal accountability and responsibility of the Holy See, as well as reparations, justice and healing for Indigenous Peoples, Tribes and Nations, including the Apache-Ndé-Nneé.

96. The Holy See must work to educate in a way so as to hold States accountable to overturn laws, policies and decisions founded on the *Inter Caetera* and its discriminatory Bull and Doctrinal predecessors.

97. A formal and thorough reparations process, including the educating of the Holy See itself and its peoples and congregations therein regarding the truth of the atrocities and resulting suffering tied to the *Inter Caetera*, so as to heal and move forward in continuance of self-determined Indigenous and Apache-Ndé-Nneé reviving and uplifting of own sovereign cultures, languages, inter-generational bonds and teachings within families and communities, trade, and the sharing of the truth of history locally, regionally and internationally.

98. A process of reparations regarding Apache-Ndé-Nneé and Indigenous traditional and living knowledge lost during times of and as a result of the legacy of the *Inter Caetera*, including but not limited to knowledge coming from and regarding sacred sites, traditional territories, intergenerational transmission, historical truth, traditional laws and self-governance, traditional religion, and own original identity and value therein, and with the full participation of Apache-Ndé-Nneé historians, elders, experts, oral testimonies and documentarians such as those who have contributed to the *Apache-Ndé-Nneé Working Group Shadow Report*, as an act of friendly relations with the Apache-Ndé-Nneé and Indigenous Peoples, Tribes and Nations.

### **III. Concluding Remarks**

99. As the Huffington Post has published in a recent article in response to the recent Sainthood of Junipero Serra in the United States by the Holy See, "The history of the Catholic Church with indigenous peoples is a long and brutal one. Forced eradication of culture, religion, and language resulted in the

destruction of first nations throughout the world. The introduction of disease wiped out entire populations; spreading the word of God was often tied to violent methods of conversion.”<sup>74</sup>

100. The people and Peoples of the world represented by UN Member States and Permanent Observers have been told that the United Nations was formed at the end of WWII so that never again will horrors such as the those of the Holocaust of the Jewish People that were survived in Europe occur to any Peoples in the world at the minds, actions, policies or hands of their fellow humans. However, at the same time and throughout the world, Indigenous Peoples have been facing genocide for centuries and continue to fight to overcome the underlying discrimination<sup>75</sup> that has caused and continues to cause it all. If UN Member and Permanent Observer States are truly committed to the spirit of the UN and all of its Human Rights treaties, resolutions and mechanisms, then an agreement will be made that the *Inter Caetera* and its legacies must once and for all be met with redress, remedy and reparations, so that Indigenous Peoples, including the Apache-Ndé-Nneé, can participate as inherent sovereign equals and experts in a “dialogue of cultures for the building of a civilization of love and peace”<sup>76</sup>, amongst other happenings, decisions and activities.

101. Due to the history of colonialism for wealth and domination in the context of land expansion as-directed, endorsed and permitted by the Holy See to Kingdoms and thus and subsequently States,<sup>77</sup> the Apache-Ndé-Nneé do not sit as technical equals at the UN today, negotiating, voting, debating, contributing and more, as the Holy See and Member State enjoy such rights. Such a situation is, in and of itself, discrimination against the Apache-Ndé-Nneé as political and legal, and even territorial, sovereigns. It cannot be overlooked that the Apache-Ndé-Nneé are here today reporting peacefully and socio-structural-technically in accordance with the current dominant world legal-political UN System as “civil society” even to the CERD Committee for the review of the Holy See (and to the Holy See’s fellow UN Member States therein), despite the fact the Apache-Ndé-Nneé are an inherently sovereign and self-determining Peoples since time immemorial, and are, in fact, *equals*- spiritually, politically, morally, legally and otherwise, in the context of the Indigenous and Peoples’ Rights that States are to adhere to in this day and age, including in the context of the UN CERD Treaty.

102. With the heavy reality stated above, the *Apache-Ndé-Nneé Working Group Shadow Report* puts forward both proposal and demand for remedy, redress and reversal of such historic and ongoing discrimination and resulting devastation and destruction that the Apache-Ndé-Nneé and Indigenous Peoples suffer and are left to endure as a result of the Holy See’s *Inter Caetera* and its political-territorial-legal-spiritual-cultural-invasive legacies. To remedy the inherent discrimination in this situation, we provide collectively, in the form of the *Apache-Ndé-Nneé Working Group Shadow Report*, and as persons and peoples of the world, historical accounts, testimonials, interpretations, worldview, demands and needs of and for Apache-Ndé-Nneé experts, Humans Rights Defenders, spiritual practitioners, knowledge keepers,

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<sup>74</sup> “Silenced Again: Native Americans Insulted after Pope Francis Makes Junipero Serra a Saint”, Tara Houska, Huffington Post, 02 October 2015, [http://www.huffingtonpost.com/tara-houska/native-americans-insulted-after-pope-francis-makes-junipero-serra-a-saint\\_b\\_8229796.html](http://www.huffingtonpost.com/tara-houska/native-americans-insulted-after-pope-francis-makes-junipero-serra-a-saint_b_8229796.html)

<sup>75</sup> See *Inter Caetera*, “We trust in Him [God] from whom empires and governments and all good things proceed...” a direct reference to empires and governments as they are known in the forms of Kingdoms and State to be the product of the Christian ‘God’. accessed at <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>

<sup>76</sup> Holy See CERD/C/VAT/16-23, re CERD Article 7, “culture” (section para. 71-82); para 72, “It is dialogue which protects the distinctiveness of cultures as historical and creative expressions of the underlying unity of the human family, and which sustains understanding and communion between them.”; See also India Reed Bowers, *Indigenous Decolonization and United Nations Membership: Indigenous Peoples and the Fundamental Right to Self-Determination*.

<sup>77</sup> See *Inter Caetera*, “In the islands and countries already discovered are found gold, spices, and very many other precious things of divers kinds and qualities. Wherefore, as becomes Catholic kings and princes, after earnest consideration of all matters, especially of the rise and spread of the Catholic faith, as was the fashion of your ancestors, kings of renowned memory, you have purposed with the favor of divine clemency to bring under your sway the said mainlands and islands with their residents and inhabitants and to bring them to the Catholic faith.” accessed at <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>

women and elders, to name a few. Knowledge of the Apache-Ndé-Nneé Peoples far and wide must be held in due authority and reverence.

103. The following was put forward by the Holy See at the UNPFII in 2010:

“..respect for human life and dignity, representative decision-making processes, the practice of justice mechanisms and ceremonies are important. In the face of modernization, industrialization and urbanization, these values must not be overlooked. This necessitates promoting understanding and respect for indigenous culture. Indigenous peoples must be able to choose their language, practice their religion and actively participate in shaping their culture. Cultural liberty as a human right of the indigenous peoples and respect for their ethnicity, religion, and language must be ensured.”<sup>78</sup>

The Holy See must to put such statements into tangible measures and actions regarding the *Inter Caetera* and its legal, political, societal, territorial, and discriminatory legacies that have brought and continue to bring genocide and mass loss and suffering to Indigenous Peoples, including the Apache-Ndé-Nneé.

104. In accordance with the United Nations Charter, Universal Declaration of Human Rights (UN DHR), CERD and other applicable agreements and treaties the Holy See is accountable to, as well as with equal and due regard to Apache-Ndé-Nneé traditions, laws, self-governance and healing, it is imperative that the Holy See upholds, honors and respects the rights, in all their forms, to self-determination and integrity of Indigenous Peoples in real-time and real ways and as per the recommendations in, and in addition any and all resulting from, the *Apache-Ndé-Nneé Working Group Shadow Report* in its entirety, as both an educational document itself and as supporting evidence, demand and argument for the need for true access to justice, a specific, legal and formal rescinding of the *Inter Caetera* by the Holy See, access to a related, full and thorough Truth Commission(s) and reparations therein, and Indigenous Rights legislation within the Holy See legal cannon, as some of many vital steps towards and contributions to the healing of Apache-Ndé-Nneé and Indigenous Peoples, elders, communities, families, leaderships, ecosystems, for the for the health, spirit and well-being of generations to come.

19 October 2015



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<sup>78</sup> Statement by H.E. Archbishop Celestino Migliore Apostolic Nuncio Permanent Observer of the Holy See, 9<sup>th</sup> session of the UNPFII, Item 3: Discussion on the special theme for the year: Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples, 20 April 2010, p. 2

**Situational Analysis**  
**for the Apache-Ndé-Nneé Working Group Shadow Report**

by Margo Tamez, MFA, PhD<sup>1</sup>

*U.N. CERD Committee review of the Holy See*  
*88<sup>th</sup> Session, Geneva, Switzerland, 2015*

- I. Subject:** The Apache-Ndé-Nneé<sup>2</sup> peoples and the Holy See: Seeking Truth, Accountability, and Justice for penetrating wounds which never heal.

Ndé-Nneé peoples, regarded historically to be ‘Apaches’ in the Holy See’s colonial and modern history in Kónitsaaígokíyaa (Big Water Peoples’ Country), enact collective self-determination and the inherent rights to know, to truth, and to justice.

Ndé-Nneé peoples seek accountability and recognition by the Holy See for the Catholic Church’s historical and on-going racism, discrimination, and multiple forms of violence which have penetrated into the Ndé-Nneé peoples’ collective spirit, mind, body, and being and left behind a wound which has never healed.

- II. Introduction:** This condensed work product draws from oral testimonies, interviews, secondary scholarly sources (peer-reviewed), primary sources, and archival materials formerly presented and discussed in U.N. interventions and papers by Ndé-Nneé peoples.<sup>3</sup>

The author seeks to enact respectful research with, for, and alongside Indigenous Peoples seeking to know, to truth, and to justice. It is an attempt to lay down foundations for collaborative research which is necessary for interrogating the centuries-long legacy of Ndé-Nneé refusals to colonization and mere existence as subjugated, minoritized and dominated ‘populations’ beneath the shadows of settler colonial rule which has created and structured innumerable benefits, profit, and power for the Catholic Church, Catholic elites, and the Holy See in northern Mexico and across the U.S. southwest.

This paper establishes an outline for studying the magnitude and depth of the Holy See’s responsibility in the historical and on-going violations against Ndé-Nneé, with regard to physical, material, economic, psycho-social, political and spiritual dispossession. The nature of the effects of the Catholic Church’s diverse forms, methods, strategies, policy-making and indoctrination with regard to the enforced spiritual, physical, and spatial evictions and excisions of Ndé-Nneé thought, culture, intellectual traditions, philosophy, identity, kinship institutions, traditional knowledge, ethics, justice principles, laws, and spirituality over centuries is a colossal undertaking. The Holy See’s non-recognition of its specific role in a centuries-long campaign in Mexico and the U.S. to repress and manage the Ndé-Nneé in a manner which harms Ndé-Nneé capacity and futurity contributes to inter-generational and on-going trauma which Ndé-Nneé peoples experience in unceded Kónitsaaígokíyaa

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<sup>1</sup> University of British Columbia, Okanagan Territory; Lipan Apache Band of Texas, Konitsaaigokiyaa Nde' (Big Water Peoples' Country)

<sup>2</sup> A note on terminology: throughout this section, the terms Apache, Lipan, Ndé, and Originarios (First Peoples) are used interchangeably and reference extensive kinship groups and a nation of peoples who share a root language systems, religious and spiritual traditions, intellectual traditions, knowledge systems, and homelands.

<sup>3</sup> Tamez, M. and Ariel Dulitzky. The Situation at the Texas-Mexico Border and the Racially Discriminatory Impact of the Border Wall on the Lipan Apache Peoples in Texas: A Shadow Report to the U.N. Committee on Elimination of Racial Discrimination, February 2014, [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/lipan\\_apache\\_cerd\\_report2014.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/lipan_apache_cerd_report2014.pdf) >; Tamez, M. HR/GENEVA/SEM/NGOs/2012BP.7, “Kónitsaaíí gokíyaa Ndé: ‘Big Water People’s Homeland’ a shadow of Self-Determination in a bifurcated Traditional Territory.” <http://www.ohchr.org/Documents/Issues/IPeoples/Seminars/Treaties/BP7.pdf>

### **III. Key questions:**

- What is the legal rationale and basis of the Holy See's claim to ownership of lands; natural resources; cultural and intellectual property; physical, material, social and economic property in Kónitsqáíigokiyaa?
- Why has the Holy See not taken into formal consideration, contemplation, and reflection the impact of its role in the legacy of suffering that colonization has had upon Ndé-Nneé peoples, especially given the propensity of critical scholarship on the role of the Catholic Church's in the violent colonization, subjugation, theft and acts of spiritual, psycho-social, and physical domination, in sum, a war, against the continued existence of free, autonomous, Apaches?
- Given the propensity of critical scholarship on the matter of the Catholic Church's and the Papacy's role in the destruction of Apaches, and the last two decades of Ndé-Nneé inter-generational protests and demands for recognition of collective Ndé-Nneé outrage, and sense of spiritual, social, and spatial loss and grief, why has the Holy See not held itself accountable for resolving and repairing collective Ndé-Nneé concerns?
- To what extent has the Holy See engaged in or undertaken a serious, meaningful analysis of the spiritual, cultural, social, economic, material, and political benefits it enjoys on a daily, weekly, monthly, annual basis, in direct relation to the violent and forced division, separation, categorization, and domination of Ndé-Nneé peoples as minority subjects underneath the settler states of the United States and Mexico?
- With regard to Indigenous Peoples' rights to self-determination, including the right to know, to name, to truth, to clarification, to justice, and to peaceful and a relevant resolution—how does the CERD committee currently interpret, or expand our current knowledge and understanding of the U.N. Charter's purposes and principles, and how it applies these to the Holy See and the violent history of the Catholic Church in Apache-Ndé-Nneé unceded homelands, specifically,
  - *Article 1, "to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;"* in terms of bearing upon the Holy See in its fundamental duty to respect the principle of,
  - *Article 2, "equal rights and self-determination of peoples",* and
  - *Article 3, "solving international problems of economic, social, cultural, or humanitarian character ..."* and for *Article 4, "harmonizing the actions of nations in the attainment of these common ends. ?*
- What principles and ethics guide the CERD committee's examination of the continuing will of Apache-Ndé-Nneé peoples to collective freedom and self-determination in Kónitsqáíigokiyaa? Especially, taking into account the propensity of Apache-Ndé-Nneé extensive history of international diplomacy in historical and documented Convenios (Treaties) with Spain, Mexico, Texas, and the United States in homeland defense, as well as in negotiations of Crown Land Grants (dominantly avoided by the Catholic Church and Church elites) in Kónitsqáíigokiyaa? What is the essence of international law's perspective of the Ndé-Nneé peoples' historically overarching refusal to conquest, colonization, and domination, time and time again? What is the CERD's precedence in confronting the Holy See's colonialism and on-going Re-Conquistas on-going today in, for example, San Antonio, Texas and environ. In 2015, UNESCO and Catholic Church elites colluded in obstructing the attempts of Ndé-Nneé peoples to enact inherent rights and Indigenous rights to meaningful participation, FPIC, and access to justice with regard to the San Antonio Missions World Heritage Site. <http://whc.unesco.org/en/list/1466>. Disrespected, avoided, negated, and ignored by both UNESCO and the San Antonio organizers and committee leaders, Ndé-Nneé have been violently excluded from providing a more balanced, inclusive, decolonial and more rigorous interpretation of historical facts related to the Spanish Missions in south Texas. Instead, the re-telling of the Euro-centric view of 'Apaches' is being reproduced and sold as 'fact' to tourists, which is re-indoctrinating the spatiality of conquest and normalized oppression of dangerously marginalized Ndé-Nneé

in Texas. This imposes a nefarious cognitive imperialism and domination effect which has negative social-economic-spiritual-mental-and physical persistence. In effect, this *re-performs* the Conquest in current and real-time, and significantly imposes burdens and barriers upon the Ndé-Nneé effective transition to self-determination in Kónitsaqáíngokíyaa with lands and territory. Rather, the San Antonio Spanish Mission World Heritage Site reinscribes colonial power relations into the past and into the present; it perpetuates cognitive, social and economic violence against marginalized Ndé; it paints a sinister picture of ‘Apaches’ as primitives who were doomed to be (the usual tropes) slaves, outlaws, thieves, murderers, extinguished, and exterminated; it obscures the Church’s historical role and deep involvement in structuring the very society which enabled and legalized the settler colonial genocidal killings of Ndé-Nneé; and the Church’s role as a less than benevolent institution through centuries of economic enslavement; nor does this World Heritage Site provide rigorous social understanding of the role of UNESCO in repositioning colonial narratives and its role in re-educating the public through the implementation of the UNDRIP and related UN conventions. This World Heritage Sites blocks the public from hearing directly from Indigenous Peoples regarding the current-day struggles for freedom from the Catholic Church’s colonial narratives, especially as Ndé-Nneé have regularly provided testimony in UN fora related to neoliberal, war-mongering agenda in militarized, walled, and droned-up homelands over-ruled by corporate raiders and their stock holders.

- The social, economic, intellectual, cultural and political excision of Apache-Ndé-Nneé from Kónitsaqáíngokíyaa as self-determined peoples has involved, generation after generation, the prominence of the Catholic Church’s physical presence through which its hierarchy of elite decision-makers exercise Canon Law and jurisdictional control over resources. What is the extent of the benefit the Holy See derives from the underpinning of its daily benefit—the history of bloody killing fields and destructive wars waged by the Catholic Church’s oligarchy against the Ndé-Nneé? What is the extent of the Holy See’s material and legal benefit from the continual repression of Ndé-Nneé collective self-determination with lands and territory? What is the force of Ndé-Nneé dispossession in the present-day? The Holy See should calculate and disclose, by square footage and square cubic yard, what exactly is the real estate and assets foot-print of the Holy See and Catholic Church in Kónitsaqáíngokíyaa? This should include, but is not limited to churches, schools, halls, municipal buildings, warehouses, distribution centers, manufacturing plants, charities and foundations, universities and colleges, hospitals, research centers and institutes, retreat centers, ranches, farms, urban physical plant. In addition, what is the investment portfolio upon which the Catholic Church and Holy See derive benefits from annually currently derived directly from collective Ndé-Nneé marginalization? In addition, what specifically are the material-economic benefits derived from mineral, chemical, oil, agriculture, and other capital ventures? the military industrial complex? space exploration? nanotechnology? pharmaceuticals? social media? print and digital publication and presses? digital domains?
- What is the full force and comprehensive responsibility of the Holy See toward Ndé-Nneé self-determination and decolonization in Kónitsaqáíngokíyaa today?

**IV. Position:** Since earliest contact with the European Catholic monarchs and Church elites, Ndé-Nneé peoples have collectively maintained a continuing will of, and for, peoplehood, freedom, and self-determination in unceded territory, Kónitsaqáíngokíyaa. Ndé-Nneé never voluntarily ceded Kónitsaqáíngokíyaa throughout the numerous international diplomacy and colonization, modernization, and industrialization processes endured since the 16<sup>th</sup> century.

Today, Ndé-Nneé of diverse extended kinship and bands, collectively stand in unity and declare a crucial Ndé-Nneé truth: Ndé-Nneé have inherent, inalienable, and inextinguishable rights pre-dating the European colonization of Kónitsaqáíngokíyaa, the unceded and traditional territories and homeland of Ndé-Nneé.

Kónitsaqáíngokíyaa, encircled in four cardinal directions by mountains known to Ndé-Nneé through Creation Stories, Oral Tradition, and extended matrilineal kinship systems, is emplaced into Ndé-Nneé cosmologies, languages, ethics, and principles comprising a major epistemology and ontology.

Today, the unceded Ndé-Nneé territory is divided not only by the successor states of settler colonial regimes, Mexico and U.S.; it is also undergoing continuing forms of the Holy See’s occupation, colonization, and

domination, in jurisdictions within the U.S. and Mexico claimed by the Holy See as part of its global dominion in which it exercises canon law.

Through the Holy See's continuing physical, social, educational, and economic presence in the Ndé-Nneé unceded territory, the Holy See maintains a prominent and continuing position of power and authority in and across society which sublimates and overshadows Ndé-Nneé inherent sovereignty. Yet, the disparity between the Holy See and Ndé-Nneé, in terms of power relationship in the Ndé-Nneé unceded territory, remains unacknowledged and hidden in plain sight.

The impacts of the Holy See's non-recognition of the collective Ndé-Nneé continuing will of self-determination in Kónitsqáíígokíyaa are myriad and complex, and deserve in-depth and sustained attention by the Holy See and Catholic Church in Kónitsqáíígokíyaa. It is a dangerous fiction that the 'Apaches' are a minority, population, ethnic group, or otherwise conquered people under the standing of the cognitive imperialisms perpetuated by the Holy See, U.S., and Mexico.

While it is beyond the scope of this position paper to deconstruct and to analyze all impacts of the Holy See's non-recognition of Ndé-Nneé collective will of and for self-determination—this paper undertakes the establishment of key concepts, frames, and positions which interrogate the legacy of the Catholic Church's colonialism, racism, discrimination, injustices, and on-going intergenerational impacts on Ndé-Nneé.

At the root, it asks, *what is the responsibility of the Holy See toward Ndé-Nneé self-determination in Kónitsqáíígokíyaa today?*

## **V. Foundations of a persistent root oppression**

At the root of the Holy See's violations against the Ndé-Nneé are:

- ***Lack of recognition*** by the Holy See for the Catholic Church's centuries-long obfuscation, avoidance, negation, disavowal, and masking of violent and destructive actions, policies and strategies against 'Apaches'; and, the lack thereof of effective remedy for the intergenerational impacts of racist, discriminatory, and violent ideology constructed by the Catholic Church and Church elites to rationalize and justify violence, dispossession, and domination: namely, '*el Apache Bárbaro/enemigo*'. This is a system, not merely a string of words, which has underpinned western Christendom's excessive accumulation by way of manipulation, coercion, theft and appropriation of Ndé-Nneé inherent belonging.
- ***Lack of accountability*** for its erasure and masking of property and resource theft by the Catholic Church, which is visually legitimated via the maps of conquest, "*La Gran Apachería*" and *Terra Apachorum*, two Euro-centric cartographic imaginaries of the Ndé-Nneé sovereign territory still utilized throughout the 20<sup>th</sup> and 21<sup>st</sup> centuries by state parties to obstruct and to diminish Ndé-Nneé self-determination and will for freedom. These pervasive, cognitive, visual systems have been central to the Catholic Church's normalization of its continuing conquest and subjugation of Ndé-Nneé and Kónitsqáíígokíyaa. These concepts have 'soaked' the consciousness of law and society in and within the U.S. and Mexico in a manner which benefits the Catholic Church socially, economically and politically. These two interlocking concepts have been used repeatedly to reproduce the uncritical mass consciousness which has nimbly and passively accepted the doctrine of domination which allows the colonizer-colonized power relationship to continue unimpeded. *Lack of accountability* for the Catholic Church's pronounced role in producing and reproducing the *en masse* transfer of Ndé-Nneé unceded Indigenous proprietary title has manifested on-going methods of cognitive imperialism over Ndé-Nneé distinct and unique spiritual-religious concepts, philosophies and genesis; oral and linguistic transmission of Ndé-Nneé cosmologies and religious spiritual knowledge to the generations; Ndé-Nneé creation stories relating the centrality of Ussn, Bi'kego'idnán/Nanas Ganesh, Isanaklesh, and the Hactci as the pillars of spiritual being and belonging in Kónitsqáíígokíyaa; which form the nexus and foundation of the spiritual-religious reality that Ndé-Nneé seek to protect and to revitalize in order to (re)establish sustainable relationships with Niguusdzani (Earth is Woman) in addition to the star nurturing ecology (inter-planetary space) in which she dwells. Most crucially, the Catholic Church's role in the intellectual architecture and social construction of these root concepts which re-configure Ndé-Nneé as 'Apache Enemigo/Bárbaro' through a militaristic lens, have significantly discriminated and imposed barriers

to Ndé-Nneé women and girls as central figures with key roles in the social, economic, cultural, and physical protection and defense of Kónitsaqáíigokíyaa and the inextinguishable relationships between place and Ndé-Nneé being, belonging and futurity.

- ***Dispossession and destructive acts and policies against Ndé-Nneé is a serious violation against Ndé-Nneé women and girls.*** The Ndé-Nneé matrilineal and matriarchal ethics, principles, and philosophies of inherent place and peoplehood is renowned in Kónitsaqáíigokíyaa. Conquest, colonization, extraction, dispossession, and excessive accumulation has had severe consequences for the Ndé-Nneé women and girls who have continuing, indisputable and inextinguishable title to Kónitsaqáíigokíyaa as equals to all human beings, and who within the natural laws of Kónitsaqáíigokíyaa are principals and party to all Convenios/Treaties, Crown grants, agreements made with the predecessor entities of the Holy See and the U.S. and Mexico. Further, Ndé-Nneé women and girls are inherently the rightful possessors and inheritors of agreements made between Indigenous peoples prior to European and Catholic colonizations and expropriations which erroneously imposed the legal construct of Corporation Sole and Canon Law jurisdictions in Kónitsaqáíigokíyaa. The originating Indigenous proprietary title of Ndé-Nneé women and girls is rooted in the broader Na-Dene matrilineal / matriarchal belonging in Niigusdzání since time immemorial. Ndé-Nneé women and girls express their continuing and inherent rights to decision-making, FPIC, lands, territory, language, spiritual-religious worldviews, history, cultural and intellectual property, and rights to economic and physical property redress and reparations through their continuing practice of the Isanaklesh Naííees Gotal – a knowledge system or oral history, conveyed through songs transmitted through millennia, re-telling the journey of knowledge acquisition and survivance of Isanaklesh; and, further, recounts the continuing existence of Ndé-Nneé knowledge and documentation of time-space-gravity-pluriverse dimensional knowledge of the Big Bang. Ndé-Nneé women and girls and their continuity through the survival of the Isanaklesh Naííees Gotal have been central to the establishment of International Indigenous Law between inextinguishably free Indigenous women in Kónitsaqáíigokíyaa, predating the violent and destructive voyages of Christopher Columbus and Hernan Cortes.
- ***Lack of meaningful and reflexive disclosure on its violence against Ndé-Nneé peoples*** since the 16<sup>th</sup> century and through the present neoliberal phase. The rigorous analysis of the contradictory nature of the Catholic Church and Church elites words, deeds, actions, and effects in comparison and contrast to the fundamental principles of international law is necessary. For instance, underlying land and resource property theft is the ‘how’, i.e. strategies and methodologies of coercion, manipulation, exploitation, and armed force. Enslavement; detention; death marches; torture; mutilation; dismemberment; sexual abuse; sexual torture; physical separation and removal of members of a the Ndé-Nneé peoples from each other; manipulation of Ndé-Nneé peoples’ into coerced factionalism and division; forced conversion and *en masse* identity theft—a two-fold violence, as this is a violation against the right to personhood, to free will, to choice and a method to separate the individual from her matrilineal kinship core group—the intergenerational family; coerced and forced destruction of language; distortion of Ndé-Nneé peoples’ actual history understood on Ndé-Nneé peoples’ terms; destruction of cultural landscapes as property; destruction and degradation/humiliation of human remains and their theft for inappropriate and disrespectful purposes; permanent soul-wounding; psycho-social trauma; intergenerational trauma; intergenerational illnesses related to identity and personhood alienation from root social-cultural-political group; sense of involuntary spiritual and spatial exile; perpetual impoverishment and debt in our own homelands; failure to protect and offer aid to fellow human beings over time-place-space.

## **VI. Areas requiring in-depth examination:**

- a. *Terra Apachorum* and *La Gran Apachería* as the Catholic Church’s historical and the continuing construct of Ndé-Nneé peoples’ dispossession and domination.
- b. Papal Bulls and the Doctrine of Discovery as root legal principles of Christian settler-colonialism in Kónitsaqáíigokíyaa (Big Water Country), Ndé-Nneé peoples’ inherent and customary homeland.
- c. The Holy See and its accountability, as a U.N. member state, as successor and beneficiary to the historical legacy produced by the Catholic Church’s prominent role in the violent overthrow of Ndé-Nneé peoples’ collective freedoms, and through its on-going social, economic, and political reproduction of oppression and theft, vis-à-vis its denial of accountability to living Ndé-Nneé peoples’ seeking freedom from all forms of oppression.

- d. Redressing the legacy of discrimination, racism, oppression, and repression; of normalized discrimination instilled through the Catholic Church's disavowal of responsibility and accountability for Ndé-Nneé peoples' current impoverished, vulnerable condition.
- e. Advancing Ndé-Nneé peoples' inalienable rights to recovery of lands and resources as compensation for the extensive benefits which the Catholic Church utilized/es (on-going) to expand its jurisdictions in Ndé-Nneé peoples' unceded territory and homeland.
- f. Re-configuring the Holy See's physical, material, and spatial jurisdictions within the settler-colonial states of the U.S. and Mexico, in the unceded territory and homeland of Ndé-Nneé peoples; and, re-directing lands, property, resources, and ownership to Ndé-Nneé peoples.
- g. Social, economic, and civil support by the Holy See to Ndé-Nneé peoples' self-determination in: recuperating, recovering, revitalizing and strengthening Ndé-Nneé peoples' language and dialects; cosmologies; Native sciences; intellectual traditions; artistic practices; intellectual property; cultural property; cultural landscapes; governance structures; matrilineal and patrilineal institutions; education; trade; exchange; economy; investment; protection; security; sovereignty.
- h. Historical Clarification: the role and extent of the consequences of Catholic Missions in Texas, New Mexico, Arizona, and northeastern Mexico and long-term benefits of missionizing to Catholic Church successors, i.e. Oblate Mary Immaculate Church, et al.
- i. Historical Clarification: the role of the Catholic Church and its partnerships, collaborations and collusion with settler-ranching, settler-farming, settler-mining, settler-industrial societies in Kónitsaaígokiyaa.
- j. Historical Clarification: the role of the Catholic Church corporations in economic and resource profit vis-à-vis investment in activities without free, prior and informed consent (FPIC) of collective Ndé-Nneé peoples.
- k. Historical Clarification: the role of the Catholic Church and research institutions, private and public, in excluding and/or marginalization Ndé-Nneé peoples in the production of knowledge utilizing tangible and intangible cultural property of Ndé-Nneé peoples without FPIC.
- l. Historical Clarification: the role of the Catholic Church and civil society in excluding Ndé-Nneé peoples from meaningful participation and decision-making in the current-day religious-tourism-for profit project, known as the **San Antonio Missions World Heritage site (approved 2015), undertaken with UNESCO, <http://whc.unesco.org/en/list/1466>**. For instance, over its process, the Spanish-Catholic adherents of this project obstructed the numerous attempts by Ndé-Nneé peoples seeking participation in the social, economic, historical, and archaeological re-construction of Ndé-Nneé de-colonial history, knowledge, and representation in many of the San Antonio Missions. The World Heritage Site misrepresents Ndé-Nneé history and academics and hobbyists posing as 'experts' largely portrayed Ndé-Nneé as inferior, beneath Spanish European peoples, and as destined for disappearance in a traditional linear historical view of western colonialism. The Lipan Apache lineal descendants of Lipan Apaches who died in the Missions have been being denied access to justice, and rather, are being re-positioned as irrelevant by the Catholic elites who commandeered the project, and deemed as deterrents in the way of Christendom, Civilization, and Progress. Spanish-Catholic settler colonialism is deeply entrenched and very much alive in Texas. See <http://www.missionsofsanantonio.org/>.
- m. Accountability, Responsibility, Redress and Reparation sought by Ndé-Nneé for collective harms experienced. The Holy See, the central government of the Catholic sub-jurisdictions historically and currently operating the United States and Mexico, is required by the CERD to undertake a detailed, precise, analysis of its on-going responsibility for the legacy of historical and continuing destructive processes in the Ndé-Nneé territory stolen and used continually for expansion, civilizational convergences, subjugation, and destruction of Ndé-Nneé knowledge, relationships, spiritual consciousness, institutions, and connection to the source of these-- Ndé-Nneé connections to homelands which did not belong to the Catholic Church, and are inalienable and inextinguishable to Ndé-Nneé.
- n. Collective Ndé-Nneé decolonization demands the Holy See take immediate steps in acknowledging Ndé-Nneé oral tradition, oral history, and historical perspectives on the damage to individual and collective bodies, minds, spirits, beingness and belonging of all Ndé-Nneé peoples—past to present. Ndé-Nneé decolonization necessitates the Holy See be held accountable by the CERD, and that the Holy See must take responsibility for the damages inflicted by the Catholic Church's historical excessiveness and persistence in utilization of the racialization, 'Apache bárbaro' to justify destructive acts, and processes, and policies which imposed gross disparity, marginalization, impoverishment, and suffering of Ndé-Nneé peoples—past and present.

- o. Collective Ndé-Nneé peoples with a continuing will for freedom and self-determination (many who are baptised and converted Catholics) acknowledge the diversity of Ndé-Nneé juridical personality and political status within the U.S. along the U.S.-Mexico border, and in Mexico; as well as members of the collective Ndé-Nneé who are displaced and residing in other states, such as Canada as a result of intergenerational and on-going racism, discrimination, and aggressive policies (such as the U.S. border wall in Kónitsaqáíigokiyaa) which effectively separate Ndé-Nneé from home and place.
- p. 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.

## VII. Conclusion

1. The author was tasked with examining larger questions of the legacy of Ndé historical diplomacy in international law, dispossession, inter-generational violence and trauma experienced by Ndé-Nneé peoples in their customary homelands, broadly encompassed in Kónitsaqáíigokiyaa. The Ndé-Nneé unceded, inherent and inextinguishable relationship as Indigenous proprietary title holders to Kónitsaqáíigokiyaa 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 Kónitsaqáíigokiyaa by the United States and Mexico, and the Holy See's crucial and on-going role in exercising Canon Law jurisdiction on and within Kónitsaqáíigokiyaa is a matter of critical concern. Further, the author set out a guide for disclosure, the right to know, the right to truth, and the right to justice. She examines Indigenous peoples' right to know, the right to truth, and the right to redress through Ndé-Nneé cultural, spiritual, historical, and intellectual perspectives.
2. According to the oral tradition, elders, and crucial knowledge keepers, Kónitsaqáíigokiyaa is the spiritual-spatial-physical homeland of the Ndé-Nneé First Peoples.
3. Since 1546, during the earliest colonization-subjugation processes recorded in oral tradition by the Ndé-Nneé in the traditional homeland, the Catholic state's predecessor jurisdictions in Kónitsaqáíigokiyaa, **Catholic Church elites** include: deacons, priests, bishops, diaconate, presbyterate, episcopate, metropolitans, archbishops, patriarchs, cardinals, and the Pope; as well as clerics and lay persons authorized by Canon Law; and actors, groups, and organizations with intricate and intimate social, economic and/or political ties to the Catholic Church and nuncios of the Holy See.
4. It is a well-established fact that the Code of Canon Law is a system which prescribes the physical-spatial-material domains of the Catholic 'physical plant'—its understructure, substructures, superstructures and virtual structures. For example, the myriad churches, church-run schools, colleges and universities; church social 'halls' and auditoriums; and the multitude of apostolic vicariates, territorial abbeys, personal prelatures, religious institutes, societies of apostolic life, or secular institutes all exist upon physical place and space.
5. The Holy See identifies as "the smallest independent state in the world", however the Holy See is, in fact, the ultimate responsible party with regard to domination, oppression, and extreme disparity currently experienced by Ndé in regions (such as Texas, Tamaulipas, Coahuila, Nuevo León, Chihuahua), the Holy See, Kingdoms and States and business alike having since benefitted economically, socially, culturally, and politically as a direct result of the *non*-recognition of Ndé rights to self-determination, Free Prior and Informed Consent, historical clarification, economic reparation, access to justice, and redress.
6. The Working Group contends that historical clarification, truth seeking and justice are appropriate and necessary for a current-day analysis of the Holy See's physical, material, social, spiritual, and economic harms against Ndé-Nneé peoples.
7. Sustained pressure by the international community is necessary to require the Holy See to address the full force of international law in order to reduce the spiral of colonial violence and continuing risk and threat that the Holy See's denial has caused to Ndé-Nneé futurity. This is of crucial concern.



Apachería, two cartographic constructions devised to dispossess and subjugate Ndé-Nneé through the lenses of domination, just war, and extraction.

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Lorraine F. Garcia

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## The Apache Genizaro and Their Two Hundred Fifty Year Enslavement

by Lorraine Garcia, Chihene Nde

I am a historical researcher and descendant of the great Apache Nation of New Mexico in the United States of America. Our indigenous name is *Chihene Nde*; in English, it means The People of The Red Paint People. At Spanish contact we were documented by our geographical Gila (*Xila*) Region as *Apachi di Xila: Apacheria Sive Terra Apachorum* (Map 1, 2). This regional name remains today as Gila National Forest and Wilderness. I am writing to the honorable Human Rights Committee of the United Nations to share the long lasting racial ramifications the Papal Bull Inter Caetera of 1493 and its Doctrine of Discovery has left not only on *Chihene Nde* but all Southwestern Apache peoples in The United States of America.

In 1630, the custodian of conversions of New Mexico's missions, Fray Alonso de Benavides wrote of meeting with our ancestral Gila leader Sanaba numerous times, and that Sanaba had converted to Christianity and had also converted some Gila Apache rancherias (Ayer, 68). We state that upon meeting Fray Benavides that we were monotheistic, peaceful and had already possessed the symbol of the cross and blessed ourselves in religiosity and ceremoniously ritualistic ways. Apache ancestors had a spiritual belief of a one God concept that was their sovereign: Sovereignty is an ancient belief system to Apaches and to put one leader *higher* than the other or even *higher than* God was not idealistic then or even now to Apaches. Humans did *not* have the power over day or night is an Apache belief and could not; for instance, create water. Those were considered creations of a divine power from an Almighty One Being, a One Creator of all living things. Fray Benavides would also state in his 1630 Memorial, "And although these Apaches are very warlike, they are more to be trusted...and we pass by them with less anxiety" (Ayer 16). The peace in the New Mexico region between Apache ancestors and their neighbors at that time merits Fray Benavides' written statement. Apache people were well aware of Fray Benavides and the other friars on conversion missions of Christianity.

Fifty five years later, in 1685, then custodian Fray Alonso de Posada wrote in a report that the Apache in New Mexico were boastful, fearless and constantly warred with The Spanish and other *indios* east of the Rio Grande and that "They have made many attacks from prepared ambushes on Indian pueblos, killing atrociously the warriors, carrying off the women and children alive, considering them as legitimate captives" (Posada, year 1685). Why are Apaches ancestors fifty five years later suddenly at war with The Spanish and their pueblan neighbors? It is because of the over 90 Decrees created by 1670 New Mexico Governor Bernardo Lopez de Mendizabal that justified the taking of captives as war reprisals; that resulted in the establishment of the legitimization of slavery that had begun in the 1650's (Carlisle 95, 96). Peaceful Gila Apaches ancestors were the threatened ones now and the trust they had shown Fray Benavides and their accompanying Spanish protectors; their successors would throw away that Apache trust to murderous ways and slave raids.

Within Gila Apache traditional homelands are mountain forests and ranges and fertile low lying valleys of agricultural lands. There was also the suspicion of copper, gold and silver that was always on the mines of early Spanish people. Fray Benavides had also reported in 1630 "...for the many mercies which God our Lord doth there to Your Majesty in giving you so many riches as we have discovered" (Ayer, 68). So began the relentless search for *riches* in Apache areas, but Apaches had been deemed peaceful and to breakdown a peaceful people is to enact and force them to go to war. This the Spanish military did as the Catholic Church turned blindly away and the first to be found was surface copper in New Mexico. The Mendizabal decrees of the 1670's heightened the slave raids that would ravage Apache people and lands. These slave raids forever decimated and changed family structure by the kidnapping, capturing, trading and selling of Apache people and, Apaches whose families were obliterated in massacres, would forever be enslaved and their offspring and every generation thereafter, in servitude, until their death or until the end of slavery (Magdaleno Extractions 1, 2).

Apache conversion to Catholicism didn't happen the way Fray Alonso Benavides reported it: It happened to *some* Apaches during their enslaved and in servitude for over two hundred years and not at the beginning of first contact with The Gila Apache. The assumption that they were easily converted should not be taken as absolute truth. There is no documented evidence that Fray Benavides ever step foot into the centralized Gila Apache Territory to document *his* claims of Gila Apache conversion but only as a passerby on outlying lands. The great Apache leader Sanaba was quip of mind to see to the protection of his people from the friars that did not respect the right of all indigenous peoples to worship by their own free will. If Apache ancestors had been converted, there would have been no need to capture, kidnap, imprison and then enslave them. It was a very somber ordeal; the most feared by an Apache to be taken as a slave, that many deaths is such as the very last listed in Extraction 2: The Apache girl's death by hanging, by suicide, was the only resolve for the many *countless* and *unlisted* Apaches from church, hacienda and rancho records.

Historically, we will never know how many Apaches were taken or sold into slavery. The mission of *Nuestra Señora de Guadalupe Del Norte* in Chihuahua, Mexico just bordering El Paso, Texas in the United States is just one of numerous Catholic missions that recorded Apaches as slaves and servants as well did The Spanish in military documents. Distrust of the Spanish and the Roman Catholic Church would forever be ingrained in the minds and hearts of free Apaches because Apache tribes would eventually do all that could be done at such a horrific cost for the enslaved and in servitude Apaches from raids onto missions to rescue enslaved tribal people in the very beginnings and to even bartering and trading them from proprietors of ranchos and haciendas; most often times to no avail. In the very end they resolved to treaties in the hopes of the return of Apache peoples.

The following two sections are Extractions of forty-four Apache deaths at the mission of *Nuestra Señora de Guadalupe Del Norte* in El Paso Del Norte, Chihuahua, Mexico. Presently, it is the border town of The City of El Paso in Texas, United States. It should be noted that many Apache from New Mexico were sold into slavery at the mission and surrounding ranchos and haciendas. These deaths of Apaches are listed as servants, spouses of, some as children by parentage, and others by who owned them at time of death.

### **(EXTRACTION 1 DEATHS)**

*Nuestra Señora de Guadalupe del Norte*  
*El Paso Del Norte-Chihuahua*

*Death Records LDS FHL# 115609*  
*Extracted by Aaron Magdaleno*

6 Abr. 1729 Antonia, Apachi, sirvienta de Diego Trujillo

20 Abr. 1729 Antonia, Apachi, sirvienta de Cristobal Varela

27 Feb. 1733 Joseph de Lara, Apache, 25 años

16 Jul 1736 Maria, Apachi criada de Manuel Montoya

3 Oct. 1736 Margarita, Apachi criada de Diego del Rio

4 Oct. 1736 Isabel, Apachi criada de Don Pedro Beanes

Nicolas Martinez, Apachi sirviente de Don Manuel Martinez

20 Nov. 1736 Juan Antonio, Apachi criado de Juan Antonio Velarde

18 Ene. 1737 Isabel, Apachi sirvienta de Don Bernardino de Olivares

14 Abr. 1741 Maria Antonia, india, Apache de Pueblo de los Piro, casada con Juan Joseph Tagle

30 May 1742 Maria Luisa, india, Apache sirvienta de Agustin de Espindola

10 Dic. 1742 Teresa, india, Apachi soltera, sirvienta de Juan Maese

21 Jul. 1743 Maria Antonia, india, Apachi sirvienta de Mateo Varela

26 Nov. 1743 Franisca, Apachi sirvienta de Diego Trujillo

7 Ene. 1744 Casilor, Apachi parbula, de la casa de Antonio Sanchez

3 Mar. 1744 Maria, Apachi, parbula, hija de Rosa , Apachi sirvienta de Isabel Romero

21 Abr. 1744 Juana Maria, parbula, hija de Otero Naranjo (mestizo, sirviente de Don Manuel Valiran) y Francisca Telles, Apache india

21 Sep. 1744 Juana, Apachi sirvienta de Gregoria Varela

### **(EXTRACTION 2 DEATHS)**

*Extracted by Aaron Magdaleno*

24 Feb. 1745 Maria Francisca, Apachi criado de Juan Marquez

3 Mar. 1745 Ana Maria, Apache, criada de Franco Javier Bernal

12 Jul. 1746 Tomasa, india, soltera, Apachi sirvienta de Miguel Garcia de Carvajal, HL Nicolas Garcia Carvajal y Maria Serna, (Source 16)

27 Jul. 1746 Maria, india, Apachi sirvienta de Josefa de los Angeles

14 Sep. 1747 Josefa, Apachi india, sirvienta de Francisco Gonzalez

17 May 1748 Ventura, Apachi sirvienta de Don Nicolas de la Sierra

Maria, Apachi soltera,

Maria Isabel, india, Apachi sirvienta casada con Mateo de la Merced Pantoja, mulato esclavo de Don Joseph Sierra

22 May 1748 Maria Encarnacion, india, soltera, Apachi sirvienta de Maria de Torres

3 Jun. 1748 Barbara, Apachi parbula, sirvienta de Agustin Brusuelas

7 June 1748 Juan Antonio, indio, Apachi soltero, sirvienta de Francisco Gonzalez Bartholome, mancebo, Apachi sirvienta de Juan de Rojas

18 Jul. 1748 Juan, parbulo, Apachi sirvienta de Manuel Lujan

4 Oct. 1748 Maria Apachi sirvienta de Manuel de Ortega

27 Mar. 1750 Juana, india, Apache, de la casa de Franco Lucero

8 Abr. 1750 Pablo, parbulo, Apachi sirvienta de Franco Lucero

- 16 Abr. 1750 Maria Apachi sirvienta de Maria Rosa Fernandez
- 22 Abr. 1750 Quiterio, Apachi sirviente de Salvador Madrid
- 26 May 1750 Salvador, Apachi sirviente de Joaquin Sanchez de Tagle
- 28 Sep. 1750 Josefa Antonia, parbula, Hija de Rosa, Apacha sirvienta de Petrona Gomez
- 21 Abr. 1751 Maria Antonia, Apachi sirvienta de Don Joseph Horcasitas
- 5 May 1751 Juan Manuel, parbulo, HN Maria Antonia, Apachi sirvienta de Joseph de Horcasitas
- 2 Ene. 1752 Maria de la Concepcion, india, Apachi sirvienta de Javier Bernal
- 6 Sep. 1752 Rita, Apachi sirvienta de Juan Telles
- 3 Jul. 1757 Maria, parbula, Apache huerfana de Joseph Apodaca
- 17 Jul. 1757 Ursula, india, mujer de Benito de Acuña, negro esclavo
- 9 Oct. 1758 Maria, india, Apachi amanecio ahorcada en la casa de Domingo Apodaca

The first established treaty was with Gileno ancestors as the *1790 Treaty with Gila Apaches July 13, 1790* (Deloria, DeMallie 136). This 1790 treaty was established for the barter and trade of Spanish captive per Apache captive and to allow the Spanish to have *access* to Gila Apache traditional homelands. Unfortunately, Apache captives who were not of leadership families could not be bartered back and The Economy of The Slave Trade proved too prosperous for The Spanish Economy to be readily given up. Unfortunately, for Apaches born from slavery into servitude; the *supposedly* saving of their *souls* was more important to the Roman Catholic Church, so they stayed in servitude and enslaved on haciendas and ranchos. By the 1700's, the first generations born of Apache slaves were systematically forced into arranged marriages to other Apaches and non-Apaches (Magdaleno Extraction 3). This further decimated Apache families religiously and spiritually because they could not practice their Apache culture and traditions without reprisals of torture and or death.

There are many other recorded Apache marriages other than the eighteen exemplified throughout The United States' Southwestern states, but the absent of recorded baptisms of Apaches, depicts that the Roman Catholic Church readily married and buried them, but actual Catholic Conversion is unlikely for *most* due to Apache slave and servant status. The last marriage listed of Telles is of Chihene Elder Larry Jurado's ancestral family that was recorded and documented during historical research of present-day Chihene Apaches (Magdaleno Extraction 3). The Apache Telles family was not of Apache leadership and this family along with many others endured one to two centuries of enslavement and servitude. After Mexico would gain its Independence from Spain, President Vicente Guerrero would abolish slavery in his Decree of 1829 (Vincent). And upon freedom during the short Mexican Era, Apache ancestors would face and endure a new form of racism in the *colonias* of The Southwest as Apache *genizaros*.

Since 1790 there were continuous ratifications of various Apache treaties throughout The Southwest; and fifty years later when The Mexican Republic was established, treaties were still based on the 1790 treaty but new inclusions of trade per Mexican captive and the settling of new *colonias* were implemented. During The Spanish Era sparse *colonias* had survived in Apache territories in The Southwest and in New Mexico only the *colonias* of Mesilla Civil Colony, San Antonio de Senecu and Socorro had survived in The Gila Apache Territory. While generations of Apaches were enslaved, for two and a half centuries the *non-enslaved* Apaches lived chaotically under the Holy See of Roman Catholic Church Dominion and its Spiritual War and within the Spanish Rule of Occupation and Domination in their own indigenous lands of the Papal Bulls' Doctrine of Discovery. It is documented within Spanish Military records that the trading of Apache per Mexican captives was still going on into the end of Mexican slavery in 1829 and when the *colonias* and ratified Apache treaties were being settled and established 1843 to 1850

(Bowden). Indians of mixed-blood were the results of The Southwestern Slave Era and were called by the racial idiom *genizaros*. This included Apaches from mission of *Nuestra Se ora de Guadalupe Del Norte*, and other southwestern missions, ranchos and haciendas: Many returned to the *colonias* of *Do a Ana Bend* and *Refugio Civil [de Amoles]* in Gila Apache Territory where centuries before their ancestors had been taken among Spanish slave raids.

### (EXTRACTION 3 MARRIAGES)

*Nuestra Se ora de Guadalupe del Norte*  
Extracted by Aaron Magdaleno

Ene. 23, 1734 Nicolas de la Cruz, indio Apachi sirviente, de Capit n Don Joseph Valent n de Aganza con Luisa Ana Chavez, HL Joseph Chavez y Maria Antonia, sirvienta de Capitan Don Joseph Valent n de Aganza (Source 1D)

Ago. 11, 1734 Marcial Abiles, coyote con Gertrudis Velarde, india Apache

Ago.. 30, 1734 Francisco de Osu a, de Guadalajara, HL Salvador de la Vega y Maria Rojas (Nicolas de Osu a, padrastro) con Isabel Olivares, Apache sirvienta de Don Bernardino de Olivares (Source 4)

May 1, 1736 Nicolas Joseph Antonio Morales, mulatto esclavo, natural de Ciudad del Guadalar, Padres no conocidos con Maria Ysidra, india Apache, sirvienta (Source 1A)

Jul. 20, 1736 Bartolo Lobato, Apache con Maria Antonia, Apache

Oct. 11, 1736 Domingo de la Cruz, de Apachi con Angela Rosa, de Suma (Source 1A)

Dic. \_\_, 1736 Juan Andr s Velarde, indio Apache del servicio de Juan Antonio P rez Velarde con Antonia Velarde, india Apache del servicio de Juan Antonio P rez Velarde

Feb. 3, 1737 Salvador Maria Subiate, Apachi sirviente con Maria Isidora, Apachi, criada, viuda de Jose Antonio Nicolas, mulatto eslavo de Antonia Valverde (Source 4)

Ago. 29, 1737 Ventura Cortes, indio Apache sirviente de Don Nicolas de la Sierra, viudo de Rosa Maria con Barbara, india Apache esclava de Don Antonio Tiburcio (Source 4)

Nov. 26, 1737 Antonio de la Cruz, Apachi sirviente con Asuncion, Suma, HL Leonicio Guarachi (dfto) y Angela (Source 4)

Oct. 13, 1738 Juan Pedro Benagas, mulato libre, HL Juan Castellano (dfto) y Francisca Naranjo con Antonia Rosa, Apache (Source 1A)

Jul. 31, 1739 Pedro de la Cruz, Apachi sirviente de Joseph de la Sierra con Ana Borrego, Apachi sirviente de a misma casa (Source 1A)

May 6, 1742 Benito de Acu a, negro esclavo de Capitan Alonso Victorio Rubin de Zelis con Ursela, Apache

Abr. 21, 1755 Joseph Telles, Apache sirviente de Don Nicolas Telles Xiron con Catarina, Apache sirvienta de Don Nicolas Telles Xiron

The Apache leaders that were signers of the Apache and Mexican treaties knew of the possibility of some of their people returning to their lands of origins. What the treaties also implemented were the exchange and trade of goods and services from both sides so actual access to *colonias* ushered in a new interaction with the new Mexican populace that were in Gila Apache territory. The actual trading and exchange of goods and services that transpired

between the *Doña Ana colonia* and local Gila Apache people eventually led to the interactions of Apache and Apache *genizaros* which proved connections to several Apache *genizaros*. Numerous raids and massacres of *Doña Ana's genizaros* and residents by Mesilla Colony residents during Mexico's and The United States' Territorial Occupation proved an established fear had grown of these interactions by Mesilla residents and was documented by Indian Agent Michael Steck.

By 1848 New Mexico was taken over by The United States and The Gila Apaches established Peace Treaties with The United States Military Department in 1852, 1853 and 1857 (Deloria, DeMallie 136, 173). With the United States Bureau of Indian Service from 1852 to 1860, and within Articles of Peace, Gila Apaches' *rancherias* received monetary assistance for cattle, food, seed and contracted by Indian agents were oxen and White and Mexican settlers as workers upon Apache *rancherias*; then deemed farms and reservations (Steck 1-4). Also established as had been with The Mexican Government, were New Mexico Territorial Governmental Compacts which allowed Apaches to trade goods and services not only in the *colonias*, but also, within the Mexican and White towns that had settled in and around Gila Apache Territory. Gila Apaches and Apache *genizaros* traded wood, baskets, animal hides, and hired themselves out as laborers during harvest and planting seasons and Apache *genizaros* worked as servants in households. Also at this time, in Mexican church records, are records of Apache *genizaros*' baptisms and marriages listed as local residents and not Apache *genizaros*. The evidence that they are *genizaros* are the recorded church records when they were enslaved and in servitude. So we, their descendants recognize these conversions by baptism of *free will* that is an Apache tradition.

Just like at first contact with Fray Alonso Benavides, The Gila Apache were again deemed the *Peaceful Apache* and no threat were felt while in their lands. They were found to be Apache farmers by the Bureau of Indian Service's and Arizona's and New Mexico's Indian Agent and Superintendent Michael Steck. Indian Agent Steck was the first to enter Gila Apache Territory and their farms without malicious intent. When The United States waged war against The Gila Apaches in 1865, it was Indian Agent Michael Steck, other military officials, New Mexico state officials, Doña Ana and Mesilla valley residents that came to their aid to petition against the waged war. This is a success not commonly known in United States' history (Steck 1-6). Since Gila Apaches did not go to war with The United States, legally they could not be removed from their lands and as a result no Gila Apache treaties were ratified. Furthermore, the [Indian] *Appropriations Act of 1871* terminated the treaty process with Indians, and seized the lands of Indians whose treaties were not ratified prior to 1871, which legally took away their identity as being an Indian of The United States of America (Deloria, DeMallie 233, 234). This happened not only to Gila Apaches but many indigenous nations in The United States.

Slavery and land loss are the most damaging psychological and historical events the Papal Bull and its Doctrine of Discovery has left upon Apache people. To be in a Holy War where you *know* your religious and spiritual beliefs are under attack is horrific. To be in a cultural war where the *heart* of your culture lies in your mothers, sisters *and* children that are taken away *forever* for profit is terrifying. To be in that cultural war for centuries and have the old women and men *murdered* because they are *worthless* is unfathomable. To be confined in a world where *nobody* came to rescue you not even upon *death* is unimaginable. In Apache tradition upon one's death it is important to mourn one's death by heartfelt piercing cries because one is *loved* so much, and many Apache died unloved, because the Papal Bull and its Doctrine of Discovery harbors not *one* word about *love* for indigenous peoples.

Today, Apache *genizaros*' legitimacy of an Apache heritage is in question; not only by the United States Federal Government, but also by federal recognized Apaches. We, Apache *genizaros*' descendants face identity crisis because we do not fit in the normalcy of American societies. We are deemed *white* at birth but are viewed solely by our looks and supposedly racial identities in a land that is solely based upon race. Generations are lost in United States' communities that express one's racial identity on fixed identity cards and applications. In our parents and grandparents we see a Spiritual war within them as they near the end of their lives and they begin to question yours, The Holy See's Heaven and Hell, and become fearful as do our sick and dying: And those, like myself, counsel them to remind them of our Apache ancestors who believed in all that was good and loving and go on to a loving Creator God unlike yours'—Holy See—that conditionally and contradicts love everlasting. Those of us living within our traditional Apache homelands are landless and, in actuality, homeless because The United States has deemed it our reality and the racism of United States' monuments like Mount Rushmore reminds us of it as it was built for United States' Europeans ancestors that came over by ships and conquered the indigenous nations.

The creation of *racism* is The Papal Bulls' *legacy* in America. It continues to harbor hatred and harm to those peoples and their cultures that were and are supposedly indifferent. It just may be supposed that the [many peoples living in peace, and, as reported, going unclothed] written by Alexander VI in the Papal Bull *Inter Caetera* of 1493 was closer to God *and* in his favor in their Gardens of Eden. Their nakedness deemed them as barbarous gentiles, and yet, the nakedness of Adam and Eve were deemed innocent and benevolent. The Papal Bull and its Edicts created and harbored a principle of hate to indifference, and the harmful end result is that the innocent and peaceful Apaches and their descendants of the 21<sup>st</sup> Century, ever since have been devoid all human kindness based on racial context and historical content by those who conquered and now inhabit their country of origin.

Lorraine Garcia  
September 23, 2015



Map 1



Map 2

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Lorraine Garcia  
September 23, 2015  
Revised Date  
October 9, 2015

Eduardo “Eddy” Simon Montoya

October 11, 2015

CERD Convention on the Elimination of Racial Discrimination  
Conference 88<sup>th</sup> Session; Geneva, Switzerland

### **A Testimony of Racial Discrimination as an Apache Genizaro Descendant**

by Chihene Nde Nation of New Mexico Elder Eddy Montoya

My name is Eddy Montoya and I am a descendant of the Apache People of New Mexico. My maternal Costales family was Apache Genizaros from Doña Ana Bend Colony after being enslaved and in servitude in El Paseo Del Norte, Chihuahua. I am an Elder of the Chihene Nde Nation of New Mexico. I want to disclose my hardships as being an Apache. As a child they called me *Kellico*, and it means *Swirling Winds* in our Apache language. My first remembrance as a child is my mother rocking me in her arms. Visiting *Los Ojos* or our healing springs' waters as a child is a fond memory and we went there not because we were dirty but for their healing effects and to bathe. The warm springs are in our traditional homeland areas of Hillsboro, Hot Springs now named Truth or Consequences, Jaralosa and Monticello Box Canyon. Visiting the springs we also went to play our drums (traditional) and listen to the water. Listening to the water gives you messages and sometimes you understand them and sometimes you don't is what I was taught.

When my grandparents got married they went to live in *Cienega* and lived in a cave there. *Cienega* was a section of the Jaralosa. My grandmother became a nursemaid to a family that settled there named Wilson. She nursed their child and had a child of her own and both children shared her breast milk. My grandfather made a living being a shepherd and at some point The Wilsons took over *Cienega*. When I was about three years old, my grandparents and about eight other families had to move from their lands and *jacals* (houses made of wood and mud) from *Cienega*. Clarence Wilson came in and took away the farms, cattle, sheep and goats, and even the dogs and left them with nothing. That's when they moved to a (nearby village) Placitas.

My dad moved us to the Trujillo Canyon to live with my grandpa Miguel Montoya. My mother's people were sheep and goat people, and my dad's people were cattle and horse people. Their lands were also taken away from them or by land grabbers. They went (to the villages) of Hillsboro, Mogollon, Cañada Alamosa, Grants and back to Hillsboro, to the Organ Mountains, San Jacinto but always back to Hillsboro when they lost their lands. They went place to place for work to feed their families, but they never gave up and it made us all stronger. Hillsboro was always home and we always ended up going back there.

We would go to Hot Springs to shop for clothes. My dad had to park behind the store and he would have to go tell them that he needed shoes and pants for the kids; they would bring out things out back for my mom and dad. They never had a choice just the things they brought out for them to look at. My mom could go in the grocery store but had to enter in the backdoor. Being from a small town if we really needed something and couldn't get it anywhere else we would go to this store but we never could use the front door. My mom would always tell us to remember who you are and what you are (an Apache).

We were never labeled as Indian, but we were different and although school was fun most of us were hiding *that* same secret. My uncle told us not to be asking questions about *it* (the secret) and leave it alone. We didn't understand until we got older. My brothers and sister and I went to high school in Hot Springs (our homelands). Things were really different. The kids from Hot Springs didn't have much to do with us (because) they were *pachucos*; meaning they were Spanish and Chicanos and Mexicans and we were not. There was another group of kids that was not accepted because of their religion so we became friends with them and we still are today (about 60 years later). There was a lot of fighting in school for those of us that were different. Sometimes, I would be pushed by boys or caught in a circle by the *pachucos* and was called names like stinking Indian or son of a bitch and I would have to fight my way out the circle. This is how I did not graduate in my senior year of high school; after a fight, I didn't allow the principal to hit me with a wooden paddle. He said I would not graduate if I didn't let him paddle me, I didn't let him, and I never graduated and I never got my high school diploma.

I went to work for ranchers after leaving high school and from one rancher those of us who were Indian, we received as part of wages sheep to eat, these sheep were the old sheep; the sheep ready to die and this is what we were given. Sometimes, food for wages would be thrown at us and not handed to us. We were disrespected by these ranchers, just like the kids at school had done, we were called stinking Indian and were pushed around.

I got married to a girl that is not Indian. Our children were never accepted because they were considered half-breeds. That really didn't bother them because we (raised) them to be proud of *who* you are and stand up for yourself and your rights. They are not afraid to voice their opinions, and if they're right, nobody can change their minds. We are also hunting people for deer and elk. Early in our marriage, when my children were babies, we noticed we would be checked by the game wardens after hunting—our vehicle checked—while every other car was not checked. Then the game wardens began showing up at our house and accused me of illegal hunting. They would take me outside with my wife inside with the babies and go in my house looking for elk or deer and find nothing. This would happen again and again and still they would find nothing. I wondered *who* would do this to me and *why*?

As I got older I realized I had to fight the battle to get back the respect that was taken away from so many people. I'm not just doing this for myself and my family but for all that was mistreated, disrespected, tortured and abused. We (my wife and I) have been fighting the battle to protect the rights and sacred sites and sacred grounds and water of my people for the last 25 to 30 years.

I feel my mom and dad pushing me to do this for my people that couldn't do this. The tears that falls when we go back into the memories only make me stronger.

There have been many battles; from keeping corporations from mining beryllium in our sacred Place of Creation we call Kegotoi (Photo 1); to fighting against the State of New Mexico from allowing them to lease water to Texas from our sacred underground waters of the Plains of San Augustin that replenishes our sacred hot and warm springs; to protecting our indigenous rights to access and continue our traditional gathering and hunting in our traditional homelands in the Gila National Forest (Photo 2).

As a tribe we have been hurled insults during our local parade in Truth or Consequences while on our float, but today we are facing our biggest challenges, now we have a rich (Texas) land owner that has bought up Kegotoi, our Place of Creation that we consider our Holiest Sacred Land. This rich land owner failed to closed the Sierra County canyon road in Kegotoi, but he has through his rich influences convinced landowners and the Socorro County commissioners to close the roads and fence off the sacred spring revered by all Southwestern Apaches: The Ojo Caliente, a pilgrimage site. The county lines of Sierra and Socorro go right through Kegotoi known by non-Apache people as Monticello Box Canyon.

Kegotoi is the Place of Creation of the Chihene Nde Apache. Here the whole area sits on an underground water area from our Ice Age Era which creates the underground waters of The San Augustin plains named after a leader that took the name Augustin during the Spanish Era to say this is *Chihene* land. There are ancient stone pit houses from the Stone Age Era of our Ancestors throughout this region. From Kegotoi belonged Sanaba, the first Chihene Gila Apache leader that met the first friar Alonso Benavides when he and The Spanish crossed paths while visiting the Piro peoples at their pueblo. The old Montoya Rancheria that the rich Texan bought is in Kegotoi and a large 51 room pueblo of our Pueblan Era and stone pit houses are there (Photo 3, 4).

The Montoya Rancheria we call our Large Settlement Area (Era) after our Pueblan Era, leaders such as Monteras and Montoya belonged there and military leader Victorio resided there before he married and moved on. At the rancheria at the other end of the Canyon in Kegotoi was the rancherias of Cide, Manta Negro and his son Cuchillo Negro and many other Apache leaders known in history and some not known but not forgotten by us. Our sacred Red Paint Cave is there where Ussen also called Bik`ehgo`ihi`Nan, The Creator created all Chi`ende (Red Painted People) of the Red Earth Clay (Photo 5). The Ojo Caliente, the warm springs is where our women painted themselves with white clay of the mountains there and birthed their children in the spring (Photo6). This is where our Creation Story of White Painted Woman, Child of Water, and Red Painted People come from.

Now we have a rich land grabber buying up land (from other landowners) and buying the people also and trying to keep us away from our Holy Land. Gates have been put up on both sides closing us out. The rich Texas landowner does not care what a Sacred and Holy Place this is to us. The previous owner was a preservationist that preserved the

51 room pueblos and stone pit houses and allowed us Chihene access with permission. He was a very good man. I was told that I would never be able to go to this place (rancheria) and the springs ever again because I did not vote the way I was *told* to vote. The doors to my church have been closed and locked. People like him don't understand what sacred and holiness is because they are the work of the devil. We have taken the ashes of several Chihene family members to Kegotoi and now won't be able to go and pray for them anymore. Now this rich Texan says he is going to wage a lawsuit against me for not voting the right way, away I *never* said I would. I am very distressed.

My family—my mother and father, my people were all blessed to be able to go the Ojo Caliente, the warm springs at Monticello Box Canyon to Kegotoi where our Creation began. This is a teaching and ceremony place to teach our children and grandchildren the Creation Story and show them all the Creation sites. Our sacred Holy Ground Ceremonies took place here, our Coming of Age ceremonies for our children and our baby ceremonies and women and men ceremonies. Now they say none of this can happen no more. The Catholic Religion was forced upon us, but our most precious place was the warm springs where the very first Chihene child was born and many ancestors after. Going up the box canyon is like going in a cathedral; the spirits and Holy Creator leading us through this place is as important to us as the Vatican is to the Catholics.

Elder Eddy Montoya  
Transcribed by JoAn Montoya  
Edited by Lorraine Garcia

Enclosures as PDF Attachments:

- Photo 1: Elder Montoya's Statement on behalf of Chihene Nde Against Mining
- Photo 2: Elder Eddy Montoya Fighting for the Access Right of Chihene in Traditional Gila Forest Areas
- Photo 3 & 4 (Page 1 of 1) Old Montoya Rancheria I Kegotoi (Place of Creation) of Chihene Nde Preserved Nde (Apache) Ancestral Stone Pit House from Stone Age Era
- Photo 5 & 6 (Non-Paginated Page) Sacred Red Paint Cave Gathering Clay for Ceremonies Sacred Hot (Warm) Springs

Now we have a rich land grabber buying up land (from other landowners) and buying the people also and trying to keep us away from our Holy Land. Gates have been put up on both sides closing us out. The rich Texas landowner does not care what a Sacred and Holy Place this is to us. The previous owner was a preservationist that preserved the 51 room pueblos and stone pit houses and allowed us Chihene access with permission. He was a very good man. I was told that I would never be able to go to this place (rancheria) and the springs ever again because I did not vote the way I was *told* to vote. The doors to my church have been closed and locked. People like him don't understand what sacred and holiness is because they are the work of the devil. We have taken the ashes of several Chihene family members to Kegotoi and now won't be able to go and pray for them anymore. Now this rich Texan says he is going to wage a lawsuit against me for not voting the right way, away I *never* said I would. I am very distressed.

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*Eddy Montoya* 10-14-2015

Elder Eddy Montoya

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Edited by Lorraine Garcia

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Photo 1: Elder Montoya's

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Fighting for the Access Right

Of Chihene in Traditional Gila

Forest Areas

Photo 3 & 4 (Page 1 of 1)

Old Montoya Rancheria I Kegotoi

(Place of Creation) of Chihene Nde

Preserved Nde (Apache) Ancestral

Stone Pit House from Stone Age Era

Photo 5 & 6 (Non-Paginated Page)

Sacred Red Paint Cave Gathering Clay

for Ceremonies

Sacred Hot (Warm) Springs

# MINE---

(Continued From Page 1)

commodities including gold, diamonds, base metals, potash and uranium. The business has a strong track record in the execution of large and complex projects and is a recognized leader in northern and Arctic environments where projects have significant logistical challenges associated with remote location and difficult access."

Vickie Maranville, AMEC's project manager, explained that the site is entirely on private land—the Sullivan Ranch—and that all the activities proposed in the application for an exploration permit will take place on the ranch. "What we are planning to do is five soil borings to a depth of no more than 1,000 feet. Once all the bore holes are drilled they will be reclaimed in accordance with the requirements of the New Mexico office of the state engineer."

She said that all the holes will be immediately filled once the borings are complete. She added that the firm will

post a bond in case difficulties arise during the operation.

Dr. James Embree, as consultant on public health employed by AMEC, spoke on the toxicity of the substance that was being sought, indicating that there was little or no risk in the limited exploratory drilling.

Dr. Greg Miller, also of AMEC, spoke on the hydrology of the site, and said that groundwater contamination was more likely from drilling a domestic water well than from an exploratory boring.

### LOCAL WORRIES

Local concerns shared by many neighbors were summed up in a presentation by Joshua Cravens, an organic farmer in Monticello, who has opposed the exploration permits for years.

"Everything I have and do is dependent on the water flowing out of the ground approximately half a mile from the site where BE Resources would like to explore and eventually mine—what other reason would there be? I am a farmer and a seed grower. The water that irrigates the crops that I

and my family produce flows from the area around the Monticello Box. I am also a father, and the most important things to assure my family's safety and health and well-being are based on simple things like clean water clean air and fertile land—all of which is threatened by this permit."

A second local concern—the proximity of the area being explored to sacred sites for the Native Americans who lived there—was also hammered home by Eddie Montoya, a member of the Chiricauhua Apache band, who told the regulators that his band is interested in the red paint cave, a sacred site to them.

"This is religious," he said. "Have you thought about religion? They are drilling holes in what we would call our church. How would you like it if we came and drilled holes in your church?"

The hearing and the presentations ran late, and the meeting didn't break up until midnight. State regulators closed with the assurance that they would be accepting comments

Photo 1

←  
←

] Elder Montoya's Statement on behalf of Chinene Nde Against Mining



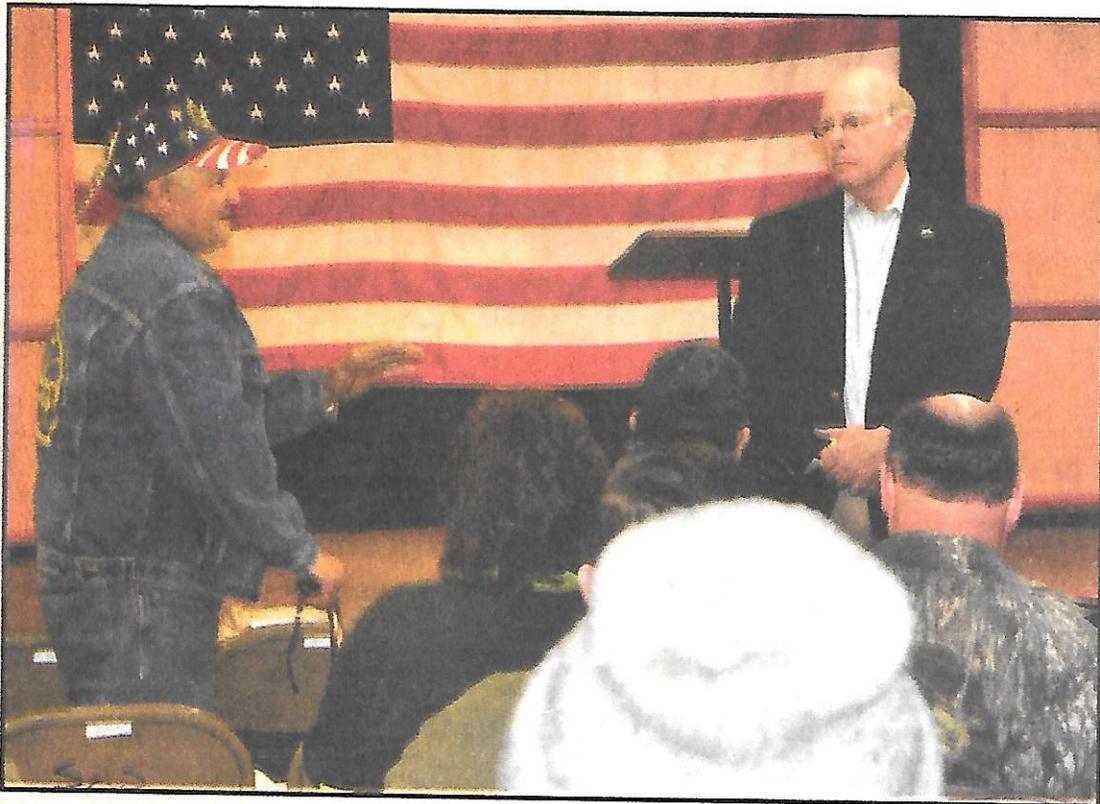
(SENTINEL Photo/J. Hopkins)

**LONG NIGHT** - Hundreds of Sierra County residents crowded the T-or-C Civic Center December 1 to listen to and comment upon the latest attempt to find a bertrandite mine near the Monticello Box. The session started at 6 p.m. and lasted through the evening.

← Elder Montoya SEATED third from Left first Row

# Forest

## Access Rights Hot



(SENTINEL Photo/Angele Majewicz)

**BELONGS TO US** – Eddie Montoya (left) with the Warm Springs Apache tells Congressman Pearce (right) “They are pushing us away... they are punishing us, as well as everyone else, for the mistakes they are making. They gave the permits for the logging, they gave permits to burn land that belongs to us, not to them.”

Photo 3 Old Montoya Rancheria in Kegotoi (Place of Creation) of Chihene Nde of New Mexico

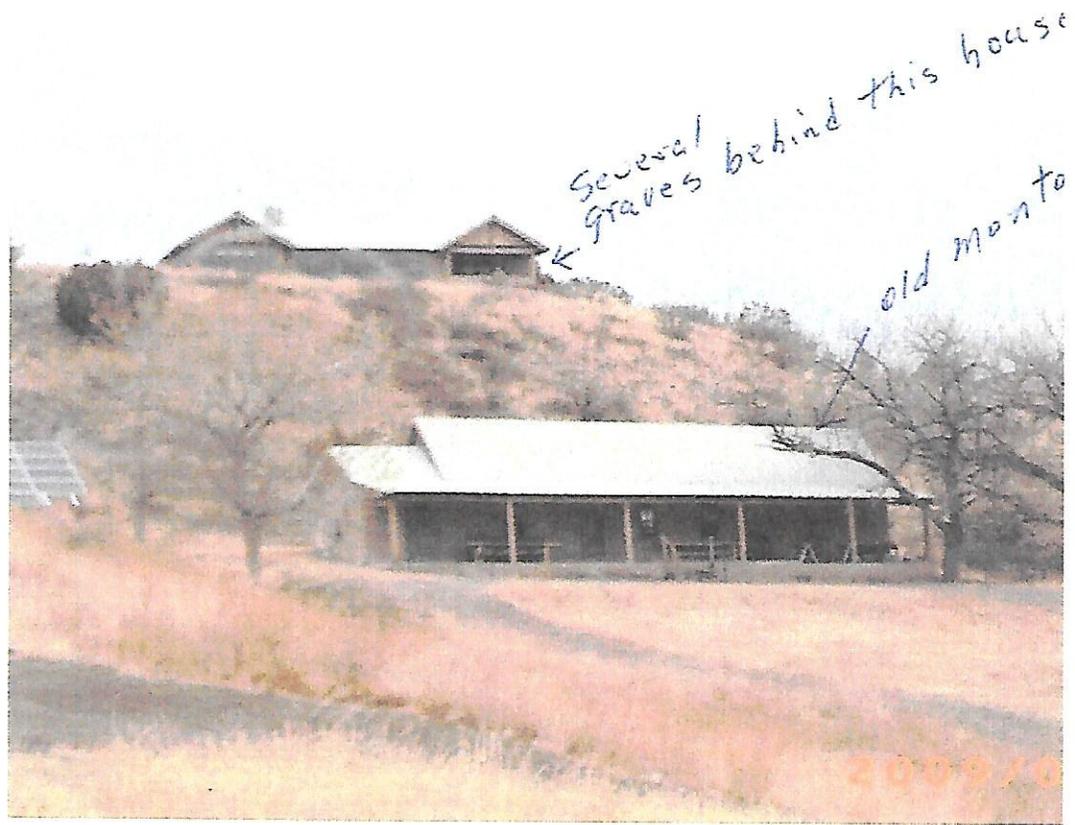


Photo 4 Preserved Nde (Apache) Ancestral Stone Pit House from Stone Age Era



Photo 5 Sacred Red Paint Cave Gathering Red Clay for Ceremonies

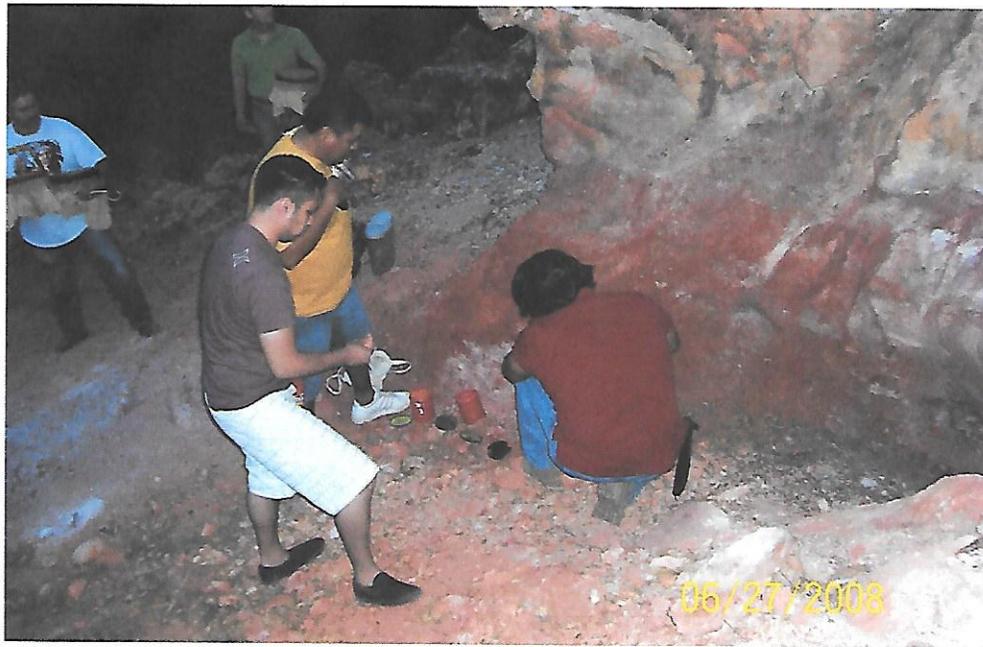


Photo6 Sacred Hot (Warm) Springs



Photos 3, 4, 5, 6 Courtesy of Mrs. JoAn Montoya October 12, 2015

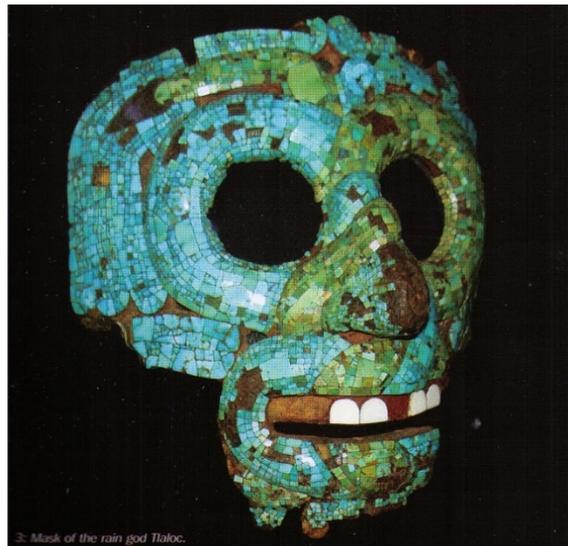
**Background to the Sacred Nature of the Blue Stones:  
Chiricahua Apache Cultural & Spiritual Significance of Gemstones**

by Charles Vargas, Chiricahua Apache

The Chiricahua Apache include the San Carlos Apache, the Western Apache, the White Mountain Apache, and relations with the Navajo.

There is strong archaeological, cultural, spiritual, and anecdotal evidence of the trading of materials including gemstones such as turquoise between the Maya, the Chiricahua Apache Nation, and the early Mesoamerican inhabitants throughout current Mexico and the American southwest. Research from the Florentine Codex that was written by Fray Bernardino de Sahagun in 1575 to 1577 documents the existence of Aztec traders and travelers who were named Pochteca, who would travel far and wide over the Mesoamerican cultures to find and acquire rare and unusual treasures for Aztec royalty. The residues of chocolate in ancient ceremonial drinking vessels and various archaeological artifacts along with the existence of Arizona turquoise in Mayan tombs in the Yucatan peninsula imply well-established long distance trading routes. This would include items such as cacao beans (chocolate) grown in Central American rainforests, rare colorful bird feathers, and other products in exchange for precious gemstones such as Apache mined turquoise between the Mesoamerican and Southwest indigenous cultures. Aztec women bound their heads to create unusual skull shapes and often their teeth were drilled and inlaid with gemstones such as of jade, pyrite, hematite, or turquoise.

Chiricahua Apache hold great spiritual significance and respect to the blessings of, and the sacred elements, provided by mother earth. In these beliefs the gemstones are part of the people and the people are part of the mother earth. In part that respect is demonstrated by the Chiricahua Apache by praying before respectful recovery of any stone, plant, or animal all perceived as medicine care taken over so that the resources will continue be available to future generations. During many traditional ceremonies stones and minerals are an important part of the Chiricahua Apache culture. the Chiricahua Apache Ndeh Nation that included the famous Apache Chief Geronimo (Goyathlay or 'One-Who-Yawns') and Apache Chief Cochise (meaning 'Hard Wood') emerge to restore these ancient trade alliance and networks, thus resorting our status as a full society.



*Turquoise from the USA Southwest mined more than 500 years ago.*

*This turquoise was inlaid in this ceremonial mask recovered from the Mayan Tombs of the Yucatan*

*(Mask in the British Museum in London)*

The Blue Stone Society 2013 and the Apache Nation Cultural and Historical Organization, are affiliated with the Chiricahua Apache Nde Nation (CANN). CANN is a tax-exempt non-profit Organization under Section 501 c 3 of the United States Internal Revenue Code. The purpose of both the Blue Stone Society 2013 and CANN is the foundation of Scholarship Funds and Social Programs for indigenous peoples in North and South America.

The Apache Nation Cultural and Historical Organization is supporting the various social and cultural restoration efforts for the unification of the Apache Nation. Founded upon one peoples of one nation, of the many Nde Nations since time immemorial. It is imperative for the restoration of all our cultural identities as the Ndi or mountain people. To perpetuate and distribute truthfully accurate knowledge of the history, culture, medicine, wisdom and heritage based from the perspective of the Ndi, for the Ndee and to all the world communities

## **Surviving Three Cycles of Colonialism: A Brief History of the Ndé People, 1700-1850**

Matthew Babcock, PhD, Assistant Professor of History, UNT Dallas

In one of the modern world's most profound ironies, the Ndé people, who are native inhabitants of North America and are well-known to most Americans in history, literature, and film as Apaches, are asserting the right of each of their groups to be recognized as sovereign and live in peace under the protection of international law. The Ndé are taking this action as a result of repeated human rights violations experienced during three cycles of colonialism under imperial Spain, Mexico, and the United States. This essay focuses on the period 1700-1850, emphasizing the violations committed by the Spanish, Mexican, and U.S. military, as well as Mexican and American settlers and politicians.

Since at the mid-1680s ancestral Jicarillas, Mescaleros, and Lipans of the southern and central plains, who Spaniards called Palomas, Cuarteojos, Carlanas, Jicarillas, Faraones, Natagés, and Ypandes, were the "owner[s] and possessor[s] of all of the plains" of "*Cibola*." The majority of these groups maintained peaceful commercial relations with Spaniards and Pueblo groups in New Mexico, while defending their central position in the regional political economy against surrounding Jumanos, Caddos, Wichitas, and Pawnees and encroaching Utes and Comanches between the 1680s and 1720s. During the early 1690s, prior to the Ndé committing any violent acts against the Spanish and French in the region of modern Texas, Spanish and French troops conducted joint military campaigns with the Hasinai Caddos (Tejas) against eastern Ndé groups on the southern plains. Thus, twenty-five years before the founding of San Antonio in 1718, ancestral Lipans and Mescaleros already had a perfectly legitimate reason to be hostile towards Europeans entering the Apacheria.<sup>1</sup>

Between 1719 and 1766 eastern Ndé groups used a combination of creative adaptive strategies to try to retain control of the bison and horse trade on the southern and central plains and withstand attacks from their French-armed indigenous neighbors. These included forming an alliance with the Kadohadachos and settling near Spanish missions in order to obtain provisions, protection, and spiritual and healing power. However, frequent disease outbreaks at the missions, Franciscan support of the Spanish military's unjust seizure and capture of potential Ndé converts, and the Spanish military's ongoing imprisonment and enslavement of Ndé people combined to undermine Ndé-Spanish relations and provoke Ndé retaliation.<sup>2</sup>

According to the Jesuit Father Ignaz Pfefferkorn, the treachery of the Spanish military was responsible for the deterioration of Ndé-Spanish relations in Sonora during the 1730s. At the same time that the Catholic conversion of a Chokonen named Pedro had revived Jesuit hopes for converting all Ndé people to Catholicism, a Spanish presidial commander in eastern Sonora had his soldiers seize Pedro's unsuspecting delegation of Chokonen emissaries during peace negotiations for extradition to Mexico City. When the Ndé captives tried to escape, Spanish troops fired on them, mortally wounding Pedro, who requested and received baptism prior to his death.<sup>3</sup>

Three Spanish policy decisions—the expulsion of the Jesuits in 1767, the Marqués de Rubí's inspection of the presidial line from 1766-68, and King Carlos III's regulations of 1772—together demonstrated the military's expanded role in attempting to control the Ndé and other equestrian Native peoples living across New Spain's northern frontier. Most infamously, Rubí advocated that Spaniards, Comanches, and Caddoan Norteños work to achieve "the total extermination" of Lipan Apaches "or at least their complete reduction," through the extradition of those who "seek asylum in our missions and presidios" to interior Mexico. Although the Spanish military never achieved either goal, several officers, including Inspector-in-Chief Hugo O'Connor, Commander-in-Chief Teodoro de Croix, and Coahuila Governor Juan de Ugalde, did their best to accomplish those goals in practice.<sup>4</sup>

The height of Spanish-led military aggression against the Ndé occurred during the 1770s and 1780s, when Spanish troops and their indigenous allies launched coordinated strikes on Ndé camps in the heart of their homeland both east and west of the Rio Grande. Spanish officers timed their offensives so that they would ambush Ndé families when they were most vulnerable, while harvesting mescal near Spanish presidios from December through February, while planting crops in April, and just before the October harvest. Spanish troops attacked Southern Apache groups from the Florida and Chiricahua Mountains in the south to the San Mateo and Mogollon Mountains in the north and Mescaleros, who encompassed groups they called Natagés, Faraones, and Mescaleros, in the Sacramento, Guadalupe, Organ, and Sierra Blanca ranges.<sup>5</sup>

Even more diabolical than the Spanish-led attacks on unsuspecting Ndé families in their homeland was Commander-in-Chief Teodoro de Croix's decision to implement the murderous policy recommendation of his Chihuahua War Council in 1778 calling for him to make peace simultaneously with Mescaleros in Nueva Vizcaya and Lipans in Coahuila in order for them to attack one another. Following that decision, in 1782 Croix received 137 Mescaleros by accepting their request for peace and subsequently having them extradited and imprisoned in interior New Spain.<sup>6</sup>

The attacks after 1786 were part of a reformed Spanish Indian policy under Viceroy Bernardo de Gálvez and Commander-in-Chief of the Interior Provinces Pedro de Nava, which scholars often refer to as "enlightened" but was much more aggressive and violent towards Apaches in practice than most specialists have realized. Presidial commanders conducted a dual strategy of peace and war to pacify Apaches, which most Ndé people found hypocritical and resented. On the one hand, they offered gifts, rations, protection, and plots of "fertile land" to those Apache bands who requested peace in the hope of curbing their livestock raids and turning them into productive sedentary farmers subject to crown authority. At the same time, however, Spanish troops and their Indian allies, including Apache auxiliaries, were to wage incessant offensive campaigns into the *Apacheria* (Apache homeland) to compel the remaining independent Apache bands to "sue for peace" under Spanish terms. Those who refused to submit were either killed in battle or captured and deported southward to interior Mexico and Havana, Cuba, where they were either imprisoned or enslaved. Like Rubí, Galvez recognized that "the extermination of the Apaches" was a possible outcome of his policy, which he thought could be achieved in two different ways. First, as Croix had already attempted with the Lipans and Mescaleros, Spaniards could encourage Apaches to use Spanish arms to fight each other to the point of "their mutual destruction," and, second, Spanish troops could work together with Comanches, their Caddoan allies, and other indigenous groups already warring with Apaches to achieve it.<sup>7</sup>

In addition to captivity, slavery, and death, the Ndé people experienced deep political challenges as groups adapted to this multifaceted policy in distinct ways. Those Ndé who negotiated peace with Spanish officers and resettled near presidios, known as *Apaches de paz*, or "peaceful Apaches," largely shaped the system. Subverting Spanish efforts to make them wholly sedentary, Apaches de paz adapted to reservation life by remaining semi-sedentary and using Spanish rations, gifts, and military protection to sustain and preserve their families. A minority of reservation-dwelling Ndé men, most notably the Chokonon chief El Compá and his sons Juan Diego and Juan José at Janos, worked together with presidial troops and redeemed captive men of Christian parents to reduce violence in the region by serving as scouts, auxiliaries, and political leaders. The majority of Ndé, however, relied on what they always had—movement, economic exchange, and small-scale livestock raiding—to ensure their political and cultural independence. Most independent Ndé had only limited contact with Spaniards, and most Apaches de paz continued to subsist on their own procured fruits, nuts, and game, while receiving weekly rations of Spanish corn, meat, and tobacco simply as dietary supplements. In general, supposedly "peaceful" Apaches exhibited mixed loyalties, sometimes serving Spanish interests and other times subverting them.<sup>8</sup>

The Spanish and Mexican military's system of reservation-like Apache establecimientos (establishments or settlements) experienced an uneven decline. Lipans and Mescaleros in the east deserted their reservations in the 1790s, which was decades before Southern Apache groups in Nueva Vizcaya did. However, Western Apaches at Tucson never left. After initially withstanding the deterioration of peace and order during the Mexican War of Independence between 1810 and 1821, a variety of factors, including ongoing political and economic instability in Mexico City, competition from United States traders, and a regional small pox epidemic, caused most Apaches de paz to desert their reservations by 1832. Ndé raiding increased in frequency and intensity during the 1820s in large part because of the Mexican government's decision to cut costs by eliminating meat rations for reservation-dwelling Apaches in 1822 and rations *in absentia* in 1824.<sup>9</sup>

After the collapse of the establecimientos in Chihuahua and Sonora in 1832, Mexican presidios and towns, which were previously zones for reciprocal diplomacy and exchange, disintegrated into arenas of treacherous violence. Desperate to curtail Ndé raiding and killing, officials in underfunded and undermanned northern Mexican states implemented an Apache scalp bounty, and money-hungry soldiers, citizens, and contract killers gunned down unsuspecting and unarmed Ndé men, women, and children, which simply escalated the reciprocal violence. A minority of Mexican military officers and Ndé leaders, however, still valued peace and trusted one another enough to try to renegotiate, and small groups of Apaches placed their lives at risk by temporarily resettling at presidios in Chihuahua and Sonora.

Following Chihuahua's implementation of an Apache scalp bounty in 1837, James Kirker and his mixed band of Delaware, Shawnee, Mexican, and American mercenaries, with plenty of help from Mexican vecinos, took the scalps of an estimated 487 Apaches. But that does not tell the whole story. Attempting to clarify the law, Chihuahuan presidial commanders implored Kirker and his contract killers not to attack peace-seeking Apache rancherías and reservation-dwelling Apaches de paz. But they repeatedly ignored the warnings, and routinely captured, scalped, imprisoned, and killed peace-abiding Apaches. This began with their imprisoning and killing of 53 peaceful Apaches near Janos in January and March 1840, including the abduction and deportation of Chihene Mimbres leader Pisago Cabezón's son Marcelo to Chihuahua, and culminated in the slaughter of 148 Apaches de paz at Galeana and the San Buenaventura Valley in July 1846.<sup>10</sup> Little wonder, then, that Apaches were distrustful and fearful of coming into presidios and towns to negotiate and trade in this era.

Eager to exploit the mineral and land wealth of the Apachería, the large number of Anglo Americans settling across the American Southwest after 1848 posed the newest and greatest threat to Ndé survival. Protecting the settlers were members of the U.S. Army, who established nine forts across present New Mexico alone between 1846 and 1855, including Fort Webster, which stood in the heart of the Apachería near the Santa Rita copper mines. At the same time, without consulting Ndé people, U.S. and Mexican politicians made three critical decisions that undermined the Indians' legal claim to the Apachería. In 1845 the U.S. Congress voted to annex Texas, and Mexico ceded most of present-day New Mexico and Arizona to the United States in the Treaty of Guadalupe Hidalgo of 1848 and the Gadsden Purchase of 1853. In spite of what these agreements stated on paper, the Ndé people still occupied and controlled the vast majority of their homeland from 1845-1850, and they would intensify their efforts to retain it and their sovereignty in the coming decades.<sup>11</sup>

## NOTES

The vast majority of the information in this essay comes from the author's forthcoming book, *Apaches de Paz: Adaptation to Hispanic Rule in the American Southwest, 1700-1850* (New York: Cambridge University Press, 2016).

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<sup>1</sup> For the quotation, see Alonso de Posada, *Alonso de Posada Report, 1686: A Description of the Area of the Present Southern United States in the Seventeenth Century*, ed. ed. and trans. Alfred B. Thomas, The Spanish Borderlands Series (Pensacola: Perdido Bay Press, 1982), para. 37, 41. On eastern Ndé territorial expansion from 1686-1715, see also Juan Antonio de Trasviña Retis, *The Founding of Missions at La Junta de los Rios*, ed. Reginald C. Reindorp, Supplementary Studies of the Texas Catholic Historical Society (Austin: Texas Catholic Historical Society, 1938), 18-19; Jack D. Forbes, "The Appearance of the Mounted Indian in Northern Mexico and the Southwest, to 1680," *Southwestern Journal of Anthropology* 15 no. 2 (Summer 1959): 205; Jack D. Forbes, *Apache, Navaho, and Spaniard*, 2nd ed. (1960; reprint, Norman: University of Oklahoma Press, 1994), 196; Gary Clayton Anderson, *The Indian Southwest, 1580-1830: Ethnogenesis and Reinvention* (Norman: University of Oklahoma Press, 1999), 95-97, 110-111; David La Vere, *The Texas Indians* (College Station, TX: Texas A&M Press, 2004), 98-102; Enrique Gilbert-Michael Maestas, "Culture and History of Native American Peoples of South Texas" (Ph.D. diss., University of Texas at Austin, 2003), 149; Sherry Robinson, *I Fought a Good Fight: The History of the Lipan Apaches* (Denton: University of North Texas Press, 2013), 28. For Comanche and Ute intrusions, see Pekka Hämäläinen, *The Comanche Empire*, Lamar Series in Western History (New Haven: Yale University Press, 2008), 28; William E. Dunn, "Apache Relations in Texas, 1718-1750," *Southwestern Historical Quarterly* 14 (January 1911): 203-204, 239.

<sup>2</sup> Herbert Eugene Bolton, *Texas in the Middle Eighteenth Century* (Berkeley: University of California Press, 1915), 34-36, 68-69, 79; Albert H. Schroeder, "Shifting for Survival in the Spanish Southwest," *New Mexico Historical Review* 43 (October 1968): 301-302; Elizabeth A. H. John, *Storms Brewed in Other Men's Worlds: The Confrontation of Indians, Spanish, and French in the Southwest, 1540-1795* (College Station: Texas A&M University Press, 1975), 255, 265-266, 312, 317-318, 338-341, 362-363, 381; Anderson, *The Indian Southwest*, 123-126; Hämäläinen, *The Comanche Empire*, 24-37, 39-40, 48, 57-67.

<sup>3</sup> Ignaz Pfefferkorn, *Sonora: A Description of the Province*, ed. George P. Hammond, ed., Coronado Cuarto Centennial Publications, 1540-1940 (Albuquerque: University of New Mexico Press, 1949), 35-36.

<sup>4</sup> Sidney B. Brinckerhoff and Odie B. Faulk, eds. and trans., *Lancers for the King: A Study of the Frontier Military System of Northern New Spain, with a Translation of the Royal Regulations of 1772* (Phoenix: Arizona Historical Foundation, 1965), 7; Max L. Moorhead, *The Apache Frontier: Jacobo Ugarte and Spanish-Indian Relations in Northern New Spain, 1769-1791*, Civilization of the American Indian Series (Norman: University of Oklahoma, 1968), 116-117.; Marqués de Rubí, *Dictamen*, Tacubaya, 10 April 1768, translated in Jack Jackson and William C.

Foster, eds., *Imaginary Kingdom: Texas as Seen by the Rivera and Rubí Military Expeditions, 1727-1767* (Austin: Texas State Historical Association, 1995), Article 16, 181-182. For a published Spanish version of Rubí's *Dictamen*, see María del Carmen Velásquez, ed. *La frontera norte y la experiencia colonial* (Mexico: Secretaría de Relaciones Exteriores, 1982), 29-84. Rubí advocated the extermination of Lipans specifically, not all Apaches, as a majority of Borderlands specialists have mistakenly suggested. See David J. Weber, *The Spanish Frontier in North America* (New Haven: Yale University Press, 1992), 220; John, *Storms Brewed*, 440; Max L. Moorhead, *The Presidio: Bastion of the Spanish Borderlands* (Norman: University of Oklahoma Press, 1975), 60-61; Moorhead, *Apache Frontier*, 16-17; Joseph F. Park, "Spanish Indian Policy in Northern Mexico, 1765-1810," *Arizona and the West* 4 (Winter 1962): 330; Bolton, *Texas in the Middle Eighteenth Century*, 381-382. For a notable exception, which is still not evident in the actual text, see David J. Weber, *Bárbaros: Spaniards and Their Savages in the Age of Enlightenment* (New Haven: Yale University Press, 2005), 325n64.

<sup>5</sup> For Spanish attacks on Ndé groups during the 1770s and 1780s, see Hugo O'Connor, *The Defenses of Northern New Spain: Hugo O'Connor's Report to Teodoro de Croix, July 22, 1777*, ed. and trans. Donald C. Cutter (Dallas: Southern Methodist University Press/DeGolyer Library, 1994), 87-88, paras. 215, 220; Alfred Barnaby Thomas, ed. and trans., *Forgotten Frontiers: A Study of the Spanish Indian Policy of Don Juan Bautista de Anza, Governor of New Mexico, 1777-1787* (Norman: University of Oklahoma Press, 1932), 1, 4-12, 156, 192, 209, 218, 221, 320; Adlai Feather, ed., "Colonel Don Fernando de la Concha Diary, 1788," *New Mexico Historical Review* 34 (October 1959): 297, 300; Morris E. Opler, "Chiricahua Apache," in *Handbook of North American Indians: Southwest*, ed. Alfonso Ortiz (Washington, D.C.: Smithsonian Institution, 1983), 403; Opler, "Mescalero Apache," 420. For Ndé seasonal movements and subsistence, see Harry W. Basehart, "Mescalero Apache Band Organization and Leadership," in *Apachean Culture History and Ethnology*, ed. Keith H. Basso and Morris E. Opler (Tucson: University of Arizona Press, 1971), 39; Grenville Goodwin, *The Social Organization of the Western Apache* (Chicago: University of Chicago Press, 1942), 158; Robert N. Bellah, *Apache Kinship Systems* (Cambridge, MA: Harvard University Press, 1952), 85; Keith H. Basso, "Western Apache," in *Handbook of North American Indians*, ed. Alfonso Ortiz (Washington, D.C.: Smithsonian Institution, 1983), 469.

<sup>6</sup> Croix, et. al., "Council of War," Chihuahua, June 9-15, 1778 in Alfred Barnaby Thomas, ed. and trans., *The Plains Indians and New Mexico, 1751-1778: A Collection of Documents Illustrative of the History of the Eastern Frontier of New Mexico* (Albuquerque: University of New Mexico Press, 1940), 200. See also Alfred Barnaby Thomas, ed. and trans., *Teodoro de Croix and the Northern Frontier of New Spain, 1776-1783: from the Original Document in the Archives of the Indies, Seville* (Norman: University of Oklahoma Press, 1941), 37-38, 62; Moorhead, *Apache Frontier*, 47-48, 120.

<sup>7</sup> For the quotation, see Bernardo de Gálvez, *Instructions for Governing the Interior Provinces of New Spain, 1786*, ed. trans. and ed. Donald E. Worcester (Berkeley: Quivira Society, 1951), para. 42.

<sup>8</sup> Matthew Babcock, "Blurred Borders: North America's Forgotten Apache Reservations," in *Contested Spaces of Early America*, ed. Juliana Barr and Edward Countryman (Philadelphia: University of Pennsylvania Press, 2014), 176.

<sup>9</sup> For the uneven breakdown of the system after 1810, see Weber, *Bárbaros*, 360n60; Ignacio Zúñiga, *Rápida ojeda al estado de Sonora: dirigida y dedicada al supremo gobierno de la nación* (Mexico: Juan Ojeda, 1835), 22-26. For the ending of meat rations and the 1824 policy change, see Janos ration lists 1822-1827, JPR-UTA; William B. Griffen, *Apaches at War and Peace: The Janos Presidio, 1750-1858* (1988; reprint, Norman: University of Oklahoma Press, 1998), 125, 131; William B. Griffen, *Utmost Good Faith: Patterns of Apache-Mexican Hostilities in Northern Chihuahua Border Warfare, 1821-1848* (Albuquerque: University of New Mexico Press, 1988), 21.

<sup>10</sup> Ralph A. Smith, "Indians in American-Mexican Relations Before the War of 1846," *Hispanic American Historical Review* 43 (February 1963): 45-46, 62-63; Ralph Adam Smith, *Borderlander: The Life of James Kirker, 1793-1852* (Norman: University of Oklahoma Press, 1999), 170; Griffen, *Apaches at War and Peace*, 187, 216; Edwin R. Sweeney, *Mangas Coloradas: Chief of the Chiricahua Apaches* (Norman: University of Oklahoma Press, 1998), 83-86, 134-136. The scalp estimate comes from Smith, 170. According to Lorraine García, Pisago Cabezón the younger was a Chihene leader from the middle Gila River Valley region, who succeeded his father as leader, following Pisago Cabezón the elder's passing in the late 1830s (email, 7/14/14). See also Griffen, *Apaches at War and Peace*, 127, 149; Smith, *Borderlander*, 48.

<sup>11</sup> Joseph F. Park, "The Apaches in Mexican-American Relations, 1848-1861: A Footnote to the Gadsden Treaty," *Arizona and the West* 3 (Summer 1961): 145; James L. Haley, *Apaches: A History and Culture Portrait* (Garden City: Doubleday, 1981), 184-187; Opler, "Mescalero Apache," 420-421; Opler, "Chiricahua Apache," 404. (Haley, *Apaches*, 184-187; Park, *Apaches in Mexican-American Relation*, 145; Opler, *Chiricahua Apache*, 404; Opler, *Mescalero Apache*, 420-421).

**Ndee-Nnee Alliance  
Intervention Statement**

Future Work of the Permanent Forum

The NdeeNnee Alliance would like to thank Bik'ehgo'ihí'nan, the Life Giver, and Nigodzan, Earth is Woman, for giving us all life and for allowing all our indigenous brothers and sisters to be present here within the great land of the Lenape, whom, we thank for allowing us to gather in their inherent territory.

The Ndee-Nnee Alliance recommends to the UNPFII for future work the areas of herbicide, pesticide, chemical and toxic contamination, the violations of sacred sites by governments and corporations, and the militarization of the US/MX border that now inhibits the culture, health, and autonomy of IP's, not only in our region, but around the world.

While the United States mouths the empty rhetoric of concern about human rights in places around the world, like Burma, China, Tibet, and Syria, to name some examples, even furnishing an assessment of human rights through its own State Department, virtually nothing is ever said about the continued and incessant violation of human rights of the original people of this land, the Indigenous people. It's bad enough that of the 370 so-called treaties made between the U.S. government and Indigenous nations from the early colonial settlement in Turtle Island, not ONE was kept.

It is thus relevant that the Committee on the Elimination of Racial Discrimination of the United Nations Human Rights Commission in its report of March 1, 2013 has expressed serious concern about the failure of the United States to provide a responsive report to the Committee's raising of human rights violations of Indigenous peoples due on November 20, 2011, specifically regarding the following key issues:

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 Nde (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.

The impact of the Arizona Snowbowl Ski Resort Project in the sacred mountain in Northern Arizona, Dook 'o'osliid (San Francisco Peaks) on the cultural practices and sacred ceremonies of all Indigenous nations of the U.S. southwest, particularly given the Ski Resort Project's plan to pipe sewage water to the mountain with the plan of making snow for skiing. Extractive Industries, mainly large scale mining corporations, since contact was made with Nnee, exploit the natural resources within the community's territorial, cultural and spiritual boundaries causing harm to the health and welfare of Nnee and all peoples. The ongoing fight with Rio Tinto, Zinc and B.H.P. Biliton (whom both create a subsidiary company called Resolution Copper Company) and Nnee over the Southeast Arizona Land Exchange and Conservation Act of 2013. This bill was introduced into the United States House of Representatives in February of 2013 without the Free, Prior and Informed Consent of Nnee. The area Resolution Copper wants to mine copper Ore, is a holy place for Nnee and other indigenous peoples in the southwest United States and Northern Mexico. The site also maintains historical significance in the annals of time through oral history and spirit within the Nnee, but also within the colonized history of Arizona, United States, Mexican, and Spanish histories as well. Not only culture is at stake, Water is as well. In a territory that is known for its desert dry lands and

seasons of drought our sacred and precious water for a thirsty peoples will be depleted for the wealth of kingdoms, nations, governments and corporations, disguised as capitalism and free market societies, that continue to promote and impose adverse health effects, especially the polluted air from the mine smelter, that Nnee breathe in daily, which is known to effect the thyroid in human beings. There are repeated attempts by state and federal legislators to disturb Indigenous people's ancestral lands by opening them for transfer to multinational extractive mining and energy corporations and commercial developers. Particular mention was made of the lethal destructive effects of dumping nuclear waste at Yucca Mountain in Nevada and the resumption of underground nuclear testing on Newe Segobia (Western Shoshone) ancestral lands in fundamental violation of the Treaty of Ruby Valley of 1863. The Newe Segobia have declared their lands a nuclear-free zone, yet the U.S government continues to use these lands for underground nuclear testing, over 1,000 having been detonated over the past 60 years, actions which are foundationally illegal.

It is germane to add that the rights of the Nnee Nation in San Carlos, Arizona, were and are being expressly violated with the introduction and spraying of twelve major herbicides--minopyralid, chlorsulfuron, clopyralid, dicamba, glyphosate, imazapic, imazapyr, metsulfuron methyl, picloram, sethoxydim, sulfometuron methyl, and triclopyr--(containing ingredients used in Agent Orange that was used as a defoliant by the U.S. military in Vietnam) at the rate of 9,000 acres per year on the Coconino, Kaibab, and Prescott forests around federal and state highways. The spraying of these toxic herbicides by the U.S. Forest Service under the pretext of eliminating invasive weed and plant species without prior informed and free consent of the Nnee Nation and its members, has been deployed in every Ranger District and spans vast ecological diversity from the Sonoran Desert to mixed conifer forest, including watersheds covering Salt River, Verde River, Agua Fria, New River, and Cave Creek and contaminating water resources in the process. Some 2,872, 876 acres of forest have been affected. These hazardous conditions have resulted in lethal health conditions of many among the Nnee Nation who are now suffering from cancer and other serious illnesses from poisoned water and vegetation. The Chircahua Apache Alliance is currently engaged in documenting such hazardous health accounts of Indigenous community members.

It is also disturbing to note that members of the Indigenous Tohono O'odham nation whose lands span the Arizona-Mexico border continue to experience harassment, intimidation, and terror by U.S. border authorities as they cross the border to participate in ancestral ceremonies, due to the presence of an electrified wall and the violation of sacred sites by state agencies like the U.S. Border Patrol. The situation of fear has escalated to the point that O'odham community members no longer visit their neighbors and are afraid of leaving their homes at night due to concerns about safety of their children and elders. The sovereignty of the Tohono' O'odham needs to be recognized by the U.S. government in accordance with the legal protections assured by international law and U.S. state security agencies are called upon to immediately desist from further invasion of O'odham lands on the pretext of pursuing drug smugglers.

The genocide of Indigenous people began with the first invasion by European pirates under the leadership of Columbus in the 15<sup>th</sup> century, starting in the Caribbean, followed by South and Central America, and then in the 17<sup>th</sup> century, Turtle Island (North America). While the United States has created a vast capitalist and globalized empire that has made trillions of dollars in wealth over four and a half centuries, few in the world recognize that this lascivious and insatiable greed for land, minerals, and wealth that resulted in the wealthiest economic and military power in the world, actually entailed the enslavement of African people and the systematic genocide of Indigenous peoples on these lands. It is high time for the world bodies of justice like the United Nations Human Rights Commission and the World Court to demand that the U.S. desist from its ongoing genocidal actions in violation of international human rights law and that it restore Indigenous people's lands and sovereignty unconditionally in the interest of global justice, peace, and harmony. The United States can no longer be shielded from scrutiny in its obsessive pursuit of resources for capitalist industrialism through perpetual genocide and war in all continents of the world, making it the leading outlaw nation in the world.

## Conclusion

*Apache-Ndé-Nneé Working Group Shadow Report  
UNCERD review of the Holy See; 88<sup>th</sup> Session (2015)*

Julian Kunnie, Ph.D.<sup>1</sup> and India Reed Bowers, B.A. LL.M.<sup>2</sup>

This Shadow Report documents systematic, systemic discrimination that has resulted, and continues to result, in the subjugation of the Apache-Ndé-Nneé Peoples by the Holy See and its *Inter Caetera* along with the legacy of the *Inter Caetera* and its related Bulls and Doctrines. 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. This Report raises fundamental questions to the Holy See, including those relating to the cultural, social, and economic genocide of Apache-Ndé-Nneé Peoples both past and present. The Report urgently calls for a Truth Commission for Apache-Ndé-Nneé Peoples regarding the Holy See's *Inter Caetera* and its related, resulting, influenced and mandated actions. Reparations including restoration of dispossessed, confiscated, and occupied lands pillaged by the Holy See and its influence in the form of colluding associations, corporations and foreign governments operating in Apache-Ndé-Nneé territories are demanded, as are other forms of due redress and remedy for related dominance and historical and contemporary crimes and violations against Indigenous and Apache-Ndé-Nneé Peoples, the original Peoples and guardians of own historic ancestral lands.

The *Inter Caetera*, the Papal Bull issued by Pope Alexandria VI on 4 May 1493, codified and sanctioned international Catholic-Christian-Kingdom-State territorial-political-spiritual colonization and domination, with the Apache-Ndé-Nneé Peoples being peoples of first contact in its application, resulting in a still-ongoing genocide against Native and Indigenous Peoples, Tribes and Nations world-wide. The *Inter Caetera* proclaimed and endorsed direct and predatory invasion, occupation, subjugation and domination of vast Indigenous territories and waters, deeply violating the sovereignty and security of Native Nations. Spanish 'sovereigns' of the 15<sup>th</sup> century, King Ferdinand and Queen Isabella, were considered "Catholic kings and princes" renowned for "illustrious deeds", while participating in the cultural genocide of those labeled "barbarous nations", such as the Apache-Ndé-Nneé, via the *Inter Caetera*'s mandate, violently discriminating against those of Indigenous heritage, those of non-Catholic-Christian faith, for the purpose of land- and wealth/resource-grabbing and trade control therein. The *Inter Caetera* catalyzed the most lengthy and heinous crimes of human history, reflected in the extermination of over 100 million Indigenous people in the Western Hemisphere alone, systematically working and colluding to destroy sovereign Peoples, Tribes and Nations of the land with its canonical law and policies that were enforced by and involved kidnapping, rape, massacre, enslavement, beheading, disembowelment of pregnant women,<sup>3</sup> the subjugation of plant and animal life, falsified government-to-government relationships, expropriation of resources, and annexation of territories and governance, that have culminated in the ongoing legacy of physical extermination, spiritual desecration, pervasive impoverishment, high rates of suicide and depression among Indigenous youth, familial disintegration, addiction and economic subjugation, ecocide and, in short, a continuous cycle of cultural genocide resulting from discrimination against Indigenous Peoples. Yet, the *Inter Caetera* has not been formally and specifically rescinded by the self-declared sovereign Holy See, nor its resulting damages redressed and compensated for, despite the Bull's endorsing and promoting of theft, invasion, and occupation of the Apache-Ndé-Nneé Peoples' and other Indigenous Peoples' lands by unrelenting European settler-colonialism and resulting aggression, violence, slavery, political-legal-territorial dominance and annihilation and decimation of Indigenous cultures in its wake.

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<sup>3</sup> See Bartholomew de las Casas, *A Short Account of the Destruction of the Indies* (Baltimore, Maryland: John Hopkins University Press, 1992)

The Holy See must take concrete measures to undo the effects of the *Inter Caetera* and its related Bulls and Doctrines so that the peace, holistic and whole existence, true and inalienable sovereignty, and territorial and socio-spiritual integrity and dignity of the Apache-Ndé-Nneé Peoples is restored. Necessary steps the Holy See must undertake include full accountability in the form of engagement in financial and territorial reparations, supporting of Apache-Ndé-Nneé self-determined protection and preservation of sacred Apache-Ndé-Nneé burial, ceremonial and ancestral sites, and educational reparations that, amongst other things, restore Apache-Ndé-Nneé language and the integrity of Apache-Ndé-Nneé culture - in light of the violent kidnapping and indoctrination of Indigenous children, and thus generations, by Catholic boarding schools that stripped Apache-Ndé-Nneé and other Indigenous Peoples of their languages, cultures, families, health and dignity and caused deaths and disappearances of so many Indigenous youth and generations of knowledge keeping. There must be restoration of Apache-Ndé-Nneé and Indigenous lands that are still being raped as a legacy of the dominance and violent land-grabbing of the *Inter Caetera* and its related Bulls and Doctrines that have provided justification for associated Settler-State Laws and policies and third parties, such as mining corporations, the United States government and other colonial authorities. The dumping and testing of toxins such as Agent Orange on Apache-Ndé-Nneé lands, along with violations of Indigenous and Humans Rights of the Apache-Ndé-Nneé by mining companies and businesses such as Freeport McMoran, Resolution Copper, BHP Billiton, and Rio Tinto Zinc- now preparing to mine copper in the sacred ancestral lands of the Apache-Ndé-Nneé *Oak Flat* and thus desecrate *Superstition Mountain*, a place of fundamental spiritual significance, are concrete evidence of the legacy of cultural genocide instigated by religious sanctions of the Holy See - a pillaging of Apache-Ndé-Nneé self-determination and sovereignty and sacred Apache-Ndé-Nneé places, practices and being.

This Report is presented for the CERD Committee's review of the Holy See with extensive documentation, information, analyses and commitment due to the fact that the *racial discrimination* continually suffered by the Apache-Ndé-Nneé Indigenous Peoples, including in the forms of discrimination against Apache-Ndé-Nneé women and women's cultural being, sacredness and matriarchy, is unacceptable and intolerable, and directly accruing from the Holy See's *Inter Caetera* and its historical and ongoing international, national, regional and local legacy. The demands for formal and specific rescinding of the *Inter Caetera* by the Holy See and reparations, correction of historical records and related current laws and policies, as well as redress for historical and current crimes and violations against the Apache-Ndé-Nneé and all Indigenous Peoples subjugated and violated by the Holy See and its laws and policies both past and present, direct and influenced, and actions decisions and practices therein, are demands for real justice and healing.

This Shadow Report by the *Apache-Ndé-Nneé Working Group* and self-determining Apache-Ndé-Nneé calls upon the United Nations CERD Committee to fully exercise its mandate by questioning the past, present and ongoing practices of the Holy See as they relate to the Apache-Ndé-Nneé and other Indigenous Peoples, implementing CERD commitment to Apache-Ndé-Nneé, and all Indigenous Peoples, to eliminate all forms of racial discrimination.

28 October 2015

# Appendix 1

## The Bull *Inter Caetera* (Alexander VI), May 4, 1493<sup>1</sup>

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### English Translation

Alexander, bishop, servant of the servants of God, to the illustrious sovereigns, our very dear son in Christ, Ferdinand, king, and our very dear daughter in Christ, Isabella, queen of Castile, Leon, Aragon, Sicily, and Granada, health and apostolic benediction. Among other works well pleasing to the Divine Majesty and cherished of our heart, this assuredly ranks highest, that in our times especially the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself. Wherefore inasmuch as by the favor of divine clemency, we, though of insufficient merits, have been called to this Holy See of Peter, recognizing that as true Catholic kings and princes, such as we have known you always to be, and as your illustrious deeds already known to almost the whole world declare, you not only eagerly desire but with every effort, zeal, and diligence, without regard to hardships, expenses, dangers, with the shedding even of your blood, are laboring to that end; recognizing also that you have long since dedicated to this purpose your whole soul and all your endeavors -- as witnessed in these times with so much glory to the Divine Name in your recovery of the kingdom of Granada from the yoke of the Saracens -- we therefore are rightly led, and hold it as our duty, to grant you even of our own accord and in your favor those things whereby with effort each day more hearty you may be enabled for the honor of God himself and the spread of the Christian rule to carry forward your holy and praiseworthy purpose so pleasing to immortal God. We have indeed learned that you, who for a long time had intended to seek out and discover certain islands and mainlands remote and unknown and not hitherto discovered by others, to the end that you might bring to the worship of our Redeemer and the profession of the Catholic faith their residents and inhabitants, having been up to the present time greatly engaged in the siege and recovery of the kingdom itself of Granada were unable to accomplish this holy and praiseworthy purpose; but the said kingdom having at length been regained, as was pleasing to the Lord, you, with the wish to fulfill your desire, chose our beloved son, Christopher Columbus, a man assuredly worthy and of the highest recommendations and fitted for so great an undertaking, whom you furnished with ships and men equipped for like designs, not without the greatest hardships, dangers, and expenses, to make diligent quest for these remote and unknown mainlands and islands through the sea, where hitherto no one had sailed; and they at length, with divine aid and with the utmost diligence sailing in the ocean sea, discovered certain very remote islands and even mainlands that hitherto had not been discovered by others; wherein dwell very many peoples living in peace, and, as reported, going unclothed, and not eating flesh. Moreover, as your aforesaid envoys are of opinion, these very peoples living in the said islands and countries believe in one God, the Creator in heaven, and seem sufficiently disposed to embrace the Catholic faith and be trained in good morals. And it is hoped that, were they instructed, the name of the Savior, our Lord Jesus Christ, would easily be introduced into the said countries and islands. Also, on one of the chief of these aforesaid islands the said Christopher has already caused to be put together and built a fortress fairly equipped, wherein he has stationed as garrison certain Christians, companions of his, who are to make search for other remote and unknown islands and mainlands. In the islands and countries already discovered are found gold, spices, and very many other precious things of divers kinds and qualities. Wherefore, as becomes Catholic kings and princes, after earnest consideration of all matters, especially of the rise and spread of the Catholic faith, as was the fashion of your ancestors, kings of renowned memory, you have purposed with the favor of divine clemency to bring under your sway the said mainlands and islands with their residents and inhabitants and to bring them to the Catholic faith. Hence, heartily commending in the Lord this your holy and praiseworthy purpose, and desirous that it be duly accomplished, and that the name of our Savior be carried into those regions, we exhort you very earnestly in the Lord and by your reception of holy baptism, whereby you are bound to our apostolic commands, and by the bowels of the mercy of our Lord Jesus Christ, enjoin strictly, that inasmuch as with eager zeal for the true faith you design to equip and despatch this expedition, you purpose also, as is your duty, to lead the peoples dwelling in those islands and countries to embrace the Christian religion; nor at any time let dangers or hardships deter you therefrom, with the stout hope and trust in your hearts that Almighty God will further your undertakings. And, in order

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<sup>1</sup> From <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>



## Appendix 2

**Joint Statement from representatives of the San Carlos Inneh-Apache Community, the Tohono O'odham Voice against the Wall, the Lipan Inneh-Apache Women's Defense, the Chihene Indeh Nation, and the Save the Peaks Movement on the Doctrine of Discovery at the United Nations Permanent Forum on Indigenous Issues, New York City, May 11-18, 2012**

We want to thank the Indigenous people of the land where we meet here, the Lenape people, who continue to resist genocide and occupation of these lands, in defense of Mother Earth. We want to congratulate the chair, Chief Ed John, on his appointment as chair of the 2012 Permanent Forum on Indigenous Peoples and recognize all of the representatives of the Indigenous peoples from all over the world and organizations at this forum. We come in full and complete support of our Indigenous youth worldwide and the ones whose voices are violently suppressed by banning and restriction through colonial punitive instruments here at the UN. It is not in accordance with Indigenous cultural ways for us as elders and teachers to stifle our youth and their aspirations especially demanding a sense of obedience as was foisted on all Indigenous peoples by colonial powers; instead, we must invite our youth, who represent our extension and projection into the future, to participate at every level so that they can participate in a future world that is meaningful and decolonized, unlike the colonized one in which we live today. I would like to also recognize our Indigenous women around the world who are the backbone of The People for they have suffered tremendous violence, marginalization and a continuation of criminal acts of terror by actions of colonizers, even so, here at the UN. We thank our ancestors, especially freedom fighters such as Goyathle, aka, Geronimo, Lola Cutter, Victorio, Lozen, and even so, my grandfather, who died for real love and freedom of our youth, women, families, earth and way of life. To them I say, Ahi'yii'i.

It is indeed appalling that the Roman Catholic church hierarchy in particular and the Christian churches in general which have benefitted materially and economically from dispossessing Indigenous peoples have not seen fit to abrogate the Doctrine of Discovery, acknowledge its effects of genocide and cultural annihilation on Indigenous peoples, to apologize to Indigenous peoples for the historical role that the Catholic church and its representatives played in this genocide and denial of Indigenous peoples to exist as peoples of the Mother Earth in accordance with their cultures and languages (in the Christian boarding school system in North America and even Australia), and to award reparations to Indigenous peoples for this historical and contemporary genocide whose lands are still being occupied and whose sacred sites are still violated, especially here in Turtle Island (North America) be they the Dine' and Hopi in Northern Arizona whose water resources are currently being threatened by Peabody Coal and other commercial entities; Dook'o'osliid (The San Francisco Peaks), sacred for all Indigenous Southwestern nations now being deforested and obscenely vitiated by water pipelines, including possibilities of sewage water by the Arizona Snowbowl and other commercial entities; the Tohono O'odham people at the so-called U.S.-Mexico border, who are subject to the consistent and repeated violation of their religious and cultural rights by non-Indigenous entities such as the Department of Homeland Security and the Border Patrol that deny unrestrained access to their sacred sites, ceremonies, and practices, and who experience the violent harassment, abuse, and detention of Indigenous elders and people whose history, heritage, and existence pre-date that of the United States by millennia and the killing of migrants by denying water to thirsty people; and the Inneh (Apache) people of San Carlos, Arizona, whose sacred sites in the Superstitious Mountains at Ch'chil'bil'dagoteel are still violated by mining companies like Rio Tinto Zinc and BHP Billiton and the U.S. Congress greedy for minerals and profits and whose health continues to be adversely effected by the after-effect contamination by Agent Orange used in the 1960s.

Discovery (and explorers as we are brainwashed in our history textbooks) meant colonial invasion and occupation for Indigenous peoples. What was described as the Enlightenment for European aristocratic societies meant genocide for Indigenous peoples. One people's enlightenment and discovery is another peoples annihilation—this is the essential meaning of “discovery” with all of its racist and violent cultural practices. It is imperative that the United Nations Permanent Forum on Indigenous Peoples call upon the Roman Catholic church and other Christian churches, and all Member states, to immediately abrogate the Doctrine of Discovery and to redress its genocidal effects by restoration of dispossessed Indigenous lands through enforcement of treaties made between the colonial U.S. government and all Indigenous nations in Turtle Island (North America); to ensure protection of sacred rites and human rights of all Indigenous peoples in Turtle Island (North America); and to award material and financial reparations for acts of genocide perpetrated as a result of the Doctrine of Discovery against Indigenous peoples especially here in the Western hemisphere, and in other parts of the world where the Doctrine of Discovery has had lethal and genocidal land and cultural effects.

THANK YOU, MR. CHAIRMAN.

## Appendix 3



**“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**

***Kónitsaqúí gokíyaa Ndé: ‘Big Water People’s Homeland’  
a shadow of Self-Determination  
in a bifurcated Traditional Territory***

***Dr. Margo Tamez*  
Co-founder, Lipan Apache Women Defense  
Co-Director, Emilio Institute for Indigenous and Human Rights**

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*The views expressed in this paper do not necessarily reflect those of the OHCHR.*

# *Kónitsaqíí gokiyaa Ndé*: ‘Big Water People’s Homeland’ a shadow of Self-Determination in a bifurcated Traditional Territory

Identification of Ndé Authority, Treaties, Agreements and Constructive Arrangements  
between the Cúelcahén (‘Tall Grass People’) and Gochish Hada’didla (‘Big Water People’)  
with Spain, Mexico, Texas and the United States

and

a Call on the UN Human Rights Council to Examine  
enduring negative social, economic and political impacts of  
the Treaty of Guadalupe Hidalgo  
on Cúelcahén (‘Tall Grass People’) and Gochish Hada’didla (‘Big Water People’)  
Self-Determination



“ ‘Áshì k’adi Kónitsaa ‘agoolch ‘íníí ná’ gojii”

[trans: “And now though Lipan are reduced in number, *still, they remain.*”]

-Augustina Zuazua

Lipan Apache war survivor and U.S. prisoner of war, 1938 (Mescalero, NM)

“It has become a truism that Athabaskan-speaking peoples name their ethnogeographical environment with "care and precision" (Hoijer 1950: 557). Work on Western Apache (Basso 1996), Navajo (Kelley and Francis 1994), Tolowa (Collins 1998), Tutchone (Cruikshank 1990), and Alaskan Athabaskans (Kari 1989, 1996a, 1996b) clearly reveal the importance of place-naming practices among Athabaskan-speaking peoples. **They often reveal culturally salient geographical features and they suggest something about aboriginal Lipan Apache homelands.** [...this] is drawn primarily from a narrative told by Augustina Zuazua to the anthropological linguist Harry Hoijer (Hoijer 1975).”  
Anthony K. Webster (2007)

## Introduction

*Danzho ha'shi?* Warm greetings to distinguished Indigenous Nations' representatives, Indigenous Peoples, the members of the UN Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of Indigenous Peoples, EMRIP members, and observers who are gathered together for the 3<sup>rd</sup> United Nations Seminar on Treaties, Agreements and Other Constructive Arrangements, entitled, **“Strengthening Partnership between Indigenous Peoples and States: treaties, agreements and other constructive arrangements.”**

I regret that I cannot be physically present with all of you during this important Seminar. I have submitted this statement to the Secretariat, Ms. Samia Slimane and to the members of the North American region on behalf of the Cúelcahén ('Tall Grass People') and Gochish Hada'didla ('Big Water People') Ndé, and the Lipan Apache Band of Texas.

We deeply appreciate the papers submitted by the International Indian Treaty Council, the Owe Aku and Black Hills Sioux Nation Treaty Council, among others which clarify Indigenous perspectives and stand-points related to millennial and historical knowledge, contexts, texts and documents relevant to the United States, Mexico, and Spain in Latin America as these have impacted Indigenous Nation treaty partners over time and place.

With equal esteem, we are grateful for the detailed presentations of the three Indigenous Mechanisms: the UN Permanent Forum on Indigenous Issues, the UN Special Rapporteur on the rights of indigenous peoples, and the UN Expert Mechanism on the Rights of Indigenous Peoples who made significant contributions to the magnitude of future actions needed on Treaties, Agreements and other Constructive Arrangements in order to make this central to the work of redressing Indigenous Nations' rights to self-determination and the recognition of this fact by States.

We look forward to participating in productive future work emerging from this seminar, and have a strong desire to participate in decision-making with respect to constructive dialogues with Indigenous Nations and States. Based on the pillars of respect, reciprocity, responsibility and relevance, we seek to strengthen the necessary partnerships required to realize self-determination of the Ndé in the international arena.

## Overview:

The two epigraphs on page two illustrate two critically important components of Ndé ('Lipan Apache') Peoples, Clans, Bands, and Relations' inherent self-determination in Ndé traditional territory. In one instance, Augustina Zuazua, an Ndé Elder woman taken prisoner by the U.S. army, and later interviewed by a U.S. anthropologist informs us of an Ndé woman's critical view of settler societies and settler nations which violently occupied and overthrew Ndé governance systems, yet, in spite of this Ndé peoples "still remained" in the traditional territory—along and on both sides of the arbitrary U.S.-Mexico border. In the second epigraph, a contemporary linguist recognizes that Ndé of Texas-Mexico have emplaced our inherent belonging in our traditional territory in similar ways that all Athabascan peoples have historically, and continue to do so—in spite of extreme barriers.

This presentation on the Ndé ('Lipan Apaches') of Texas-Mexico will provide use for the dialogue on Treaties, Agreements and other Constructive Arrangements and will raise challenging issues and provoke 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.

Ndé of Texas-Mexico are a Nation of diverse and distinct families, clans and bands. Our integral and inherent relationship as Peoples and decision-makers (those who have authority affecting our families, communities, life, lands, territories and resources) of *Kónitsqáíí gókíyaa*, 'Big Water People's Home') is inscribed in our knowledge system disseminated inter-generationally. Due to the severity of colonization in the state of Texas (U.S.A.) and in the U.S., where domestic 'recognition' is economically and politically-driven, biased, and discriminatory against Indigenous Nations which never ceded, relinquished, extinguished, or sold lands and resources to the occupying societies and states. Ndé domestic relations with Texas, the U.S. and Mexico are troublesome, as each Euro-American state has a historically documented extermination and assimilation policy record relative to Ndé. Texas should be treated at par with Mexico and the U.S. as a state, because of its distinct and unique history as province and colony of Spain, colony and state of Mexico, independent Republic, Confederate State, and annexed state of the U.S. Each state have obscured and distorted the reality of extensive Ndé treaties and agreements with each as long established practice among all colonizer entities with Ndé since the 17<sup>th</sup> century. Our relationships, land, agreements, memory, transmission practices, matriarchal systems, values of law principles are transmitted ('oral tradition') and historical ('written') *enactments* of territorial protection, defense, and assertion of our known authority in a North American context of Canada, the U.S., Mexico, and the areas of the Caribbean where colonizers deported Ndé in previous centuries as an ongoing policy of destroying Ndé will to defend our inherent relationship to our homeland, families, culture, decision-making authority, history, memory, and identity.

In this article, Ndé concepts and perspectives of self-determination and decision-making with regard to Ndé children, mothers, fathers, families, and communities are highlighted.

Treaties, agreements, and other constructive arrangements between Ndé and Spain, Mexico, Texas and the United States should be given strong consideration in the examination of the North American region. This article is presented in order that the Office of the High Commissioner on Human Rights, ('OHCHR') will have a critical and contemporary lens during the 3<sup>rd</sup> Seminar on Treaties, Agreements, and other Constructive Arrangements, through which to determine what the criteria will be necessary to strengthen partnerships.

The author posits that Ndé Peoples' claims to lands, territories and resources in *Kónitsqáíí gokíyaa* will elevate the relevance of Ndé self-determination at the level of the UN OHCHR, and that Ndé claims test the international human rights laws and principles upon which the UN Declaration on the Rights of Indigenous Peoples is founded. The paper argues that the U.S., Mexico, and (former Republic) Texas histories, policies, legislation, and tribunals relating to Ndé colonization should be examined by the UN OHCHR relative to issues of regional and binational state craft by settler nations which discriminated against and severely disadvantaged Ndé Peoples. This paper uses decolonial and Indigenous methods for recovering Ndé principles which help to clarify the situation of Ndé and other Indigenous Nations bifurcated by borders, affected by militarization, and threatened by obscurity, uncertainty, and sovereign immunity relative to how the States interpret the Treaty of Guadalupe Hidalgo and exclude Indigenous Peoples' participation, consultation, consent, and disacknowledge that the lands in question were never ceded by Ndé, and Ndé were found to have Aboriginal Title by the U.S. Indian Claims Commission in 1971, but were denied access to juridical personality, support or partnership to establish Ndé self-determination with land, territory and resources are pillars.

Key tenets to be presented:

- I. Ndé Peoples are Nations.
- II. Ndé: Knowledge Inscribed in the Land.
- III. Ndé Self-Determination Pillars: Founded in *Na'íí'ees* principles of land-based decision-making and law systems.
- IV. Ndé foundation for inherent sovereignty: Ndé Emergence stories, genealogies, Indigenous regional and continental agreements and laws related to peoples, lands, territories, and resources prior to 1492; Knowledge systems and Indigenous economic structures pre-dating 1492 and ongoing; Ndé governance and decision-making structures; and, Treaties, Land Grants, and arrangements with European peoples' tribunal systems rooted in the Doctrine of Discovery and frameworks of continued domination.
- V. European and Euro-American Settler Colonialisms: Religious Assimilation, Agricultural and Mining Colonizations, Industrial Removals and Displacements, Carceral and Punitive Policies; Denial of Treaties and Land Grants with European-origin colonizers
- VI. Ndé Treaties, Agreements and other Constructive Arrangements: International Diplomacy with Spain, Mexico, Texas and the United States.
- VII. *Kónitsqáíí gokíyaa*: the foundation for Ndé self-determination
- VIII. Ndé law and justice structures: Keésda ílahálee béodaaziik '(Feast gathering together to decide)'; Dáféshí bíł' ádaajit'inde' ('Matrilineal kinship'/'one's family came from same people and same place'); shi t'ekende ('clans of significance'); shi 'andaji gut'ekende ('inter-related bands of food exchange and protection'); Nant'á ('hereditary chief'); Nant'á kedidlii ('ceremonial leader'); nahk'éé'át'éh ('families, clans, bands').

IX. Indigenous Nations and the Martínez Final Report: Constructing a partnership focused on actions and implementation.

## I. Ndé Peoples are Nations.

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.

The settler nation's non-recognition of the juridical personality of Ndé is an issue that should be analyzed in more detail in the context of Ndé of North America and colonization by Spain, Mexico, Texas and the U.S. The denial of the juridical personality of Ndé by Texas and the U.S. is problematic. Ndé lands were never extinguished by the U.S. Aboriginal Title of 6.5 million acres of unceded lands exist in southern Texas and along and throughout the Lower Rio Grande River. Mexico evaded its responsibilities to address Ndé Aboriginal Title and land grants affected by the Treaty of Guadalupe Hidalgo (1848).

Indigenous Peoples have inherent collective rights as Nations and are the stewards of our customary territories. The continued denial and negation of the debt owed to Indigenous Nations and lack of accountability by the States is at the root of grief, anger, loss of trust, and overshadows the inability to come to meaningful dialogue between States and Indigenous Peoples.

Self-determination over lands, territories and resources is crucial for Ndé cultural survival. The U.S. and Texas domestic policies towards the Ndé are colonialist and assimilationist; the lack of an international mechanism to enforce Treaties and Constructive Agreements and Arrangements structures Indigenous Peoples as a marginalized 'minority' in official state discourse and practice. The constitutions are settler nationalist instruments established during the 19<sup>th</sup> century to enfranchise white suffrage and settlement and to catalyze the removal, assimilation and incorporation of Indigenous Peoples into the U.S. industrial interests, and to dissuade Nde from developing our lands, territories and resources.

## II. Ndé: Knowledge Inscribed in the Land.

Through the Ndé Oral Tradition, we know our existence on Shimaaisdzán ('Mother earth') was created by Ussn ('Creator') and the ancestors were given instructions on how to live by: Bıldguu'ą'í ('the Universe'), Niigusdzání ('the Earth World'), 'I'ii'ane (Cave Opening), Túch'énéngu ('Flood'), the First Teachers, Hactci, Naiiees isdzánłesh, Bikegoi'nán, Nanasganesesh, and others.

Cúelcahén ('Tall Grass People') and Hada'didla Gochish ('Lightning People') have an extensive history of treaties, agreements and other constructive arrangements with more than one State. Spain, Texas, Mexico and the United States each had unique and different histories of land dispossession, war, militarization, and extractive development in Ndé lands. While Ndé were

not signatories on the TGH, nevertheless, the TGH has had severe impacts Ndé due to how the establishment of economic, social and political border between the two States excluded Ndé and the many related Indigenous Nations with whom Ndé have intimate ties from participation and decision-making in all matters which affect them in the bifurcated lands. Texas, formerly known as Nuevo Santander, and a former colony of Spain, and a province of Mexico, has a complex land-tenure and water governance history impacting Indigenous Peoples which is still in effect today, side-by-side Texas and U.S. domestic law. In this paper, I will try to summarize these for the record and for future reference.

### **III. Ndé Self-Determination Pillars: Founded in *Na'ii'ees* principles of land-based decision-making, instructions, self-governance, and agency.**

In the 'Introduction Statement' of the Ndé "Historiographical Analysis and Claim as a Sovereign Nation," hereditary Chief, Daniel Castro Romero, Jr. declared:

"For the purpose of this analysis and study the Lipan Apache Band of Texas General Council asserts its authority as a sovereign nation to be identified by its ancestral and traditional name "*Ndé*" or "*Cuélcahén Ndé, Tú é diné Ndé, Tú sis Ndé, Hada 'didla' Ndé, Tas steé be glui Ndé, Buii gl ũn Ndé, Zuá Zuá Ndé,*" rather than its colonial, anthropological, historical, and linguistic imposed label name "*Lipan Apache,*" subjugated onto our people at First Contact by Spanish Explorer Pánfilo de Narváez in November 1528."<sup>1</sup>

The Chief went further, to say that

"The Lipan Apache Band of Texas makes its political and sovereign claim that all compacts of agreement established between the Spanish Vice-Royal (Colonial Spanish), Republic of Mexico (Mexican Government), the Republic of Texas (Pre-Annexation), the State of Texas (Modern-Day Texas), and United States of America are valid and binding. Furthermore, the Lipan Apache Band of Texas makes its claim that the U.S. Government and the State of Texas never formally extinguished their Nation-to-Nation obligations with the lineal descendants of the Ndé."

Ndé self-determination pillars are the family, family group, and inter-related extended family kinship in interdependent coalitions of clans and bands in proximity to each other over large areas traditionally allowed for a balanced relationship with our lands and its gifts. Founded in *Na'ii'ees* female decision-making and self-governance principles, based upon the *Na'ii'ees* Isdzánłesh feast and reciprocal exchange rituals, matriarchal leadership in complementarity with male leadership have always guided stewardship over the land, our territory, and law systems.

### **IV. Ndé foundation for inherent sovereignty: Ndé Emergence stories, genealogies, Indigenous regional and continental agreements and laws related to peoples, lands,**

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<sup>1</sup> Daniel Castro Romero, Jr., " Historiographical Analysis and Claim as a Sovereign Nation," September 15, 2011.

territories, and resources prior to 1492; Knowledge systems and Indigenous economic structures pre-dating 1492 and ongoing; Ndé governance and decision-making structures; and, Treaties, Land Grants, and arrangements with European peoples' tribunal systems rooted in the Doctrine of Discovery and frameworks of continued domination.

Ndé Knowledge systems, oral history, emergence stories, genealogies, Indigenous agreements, with European peoples are the basis of inherent and integral relationship to *Kónitsqáíí*. Our inherent proprietary title to our lands is the foundation for Ndé Peoples' self-determination rights.

### **Emergence Stories Place Us in Our Lands (30,000 B.C. to Present)**

Ndé Elders, chiefly peoples, and women are the Knowledge Experts in our real communities. Although Ndé are literate in Spanish, English, and other languages, to date, there is no published 'book' about Ndé knowledge and history authored by an Ndé person. Our knowledge is dominantly an oral tradition, and our ceremonial and historical knowledge system is mostly disseminated orally, from Knowledge keepers and experts to grandchildren, children, and close relations. Due to the persecutions of our Knowledge and bodies-spirits, we have been reluctant to write our Knowledge in printed books, until very recently.

### **Ndé Treaties and Constructive Arrangements *with* Ndé Oral History**

Ndé are diverse and multiplural Peoples. Our society is based upon matrilineal, matrilocal, and matrifocal clan systems which honour the grandmother, mother, daughter, niece, granddaughter and sister. We are traditionally organized in complex kinship relationships and in complimentarity with fathers, uncles, grandfathers, and sons. This system has been violently degraded and eroded by systems of colonization, industrialization, assimilation, racism and sexism.

We came from the belly of Mother. We emerged more than one time over time immemorial. Each time we emerged we came from within Her to the outside, through the Ice. Below are sacred texts of our ancestors from the Texas-Coahuila cave systems. These are attributed to the 'Lipan Apache' deep knowing and long-being culture within the belly of Mother, during the 'little ice age'. However,



Before the 'little ice age', Ndé peoples went on a nkaiyé—a long long walk. They say we walked for a long time, over many generations, after the big flood from another cave, in the current day border lands of British Columbia and Alaska. This is how current-day geographers imagine the flood spread out.



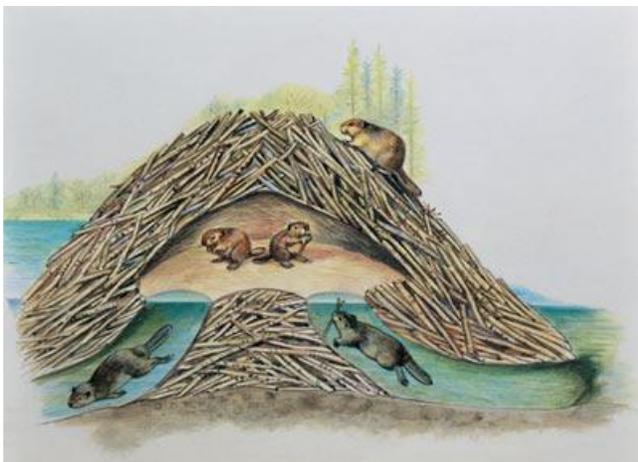
We learned everything we needed to know in order to feed ourselves, to warm ourselves, to protect our families. The First Peoples (Raven, Whirlwind, Beaver...) taught us to live according

to their Beliefs, Values, Rules, and Guidelines. We learned to live with respect, reciprocity, responsibility and relevance according to the teachings we were given.

The First Peoples spoke to us in their languages, and they gave us a language and instructions to being Ndé—the Real People—that was our own. We wrote our knowledge systems into Mother, in order for our future generations to have the documents and the archives they would need to live. Our Mother land gave us all that was needed to speak across time and place with other Peoples. With diverse Peoples we walked into the future generations, to share what the First Peoples shared with us during our emergence and long walk.



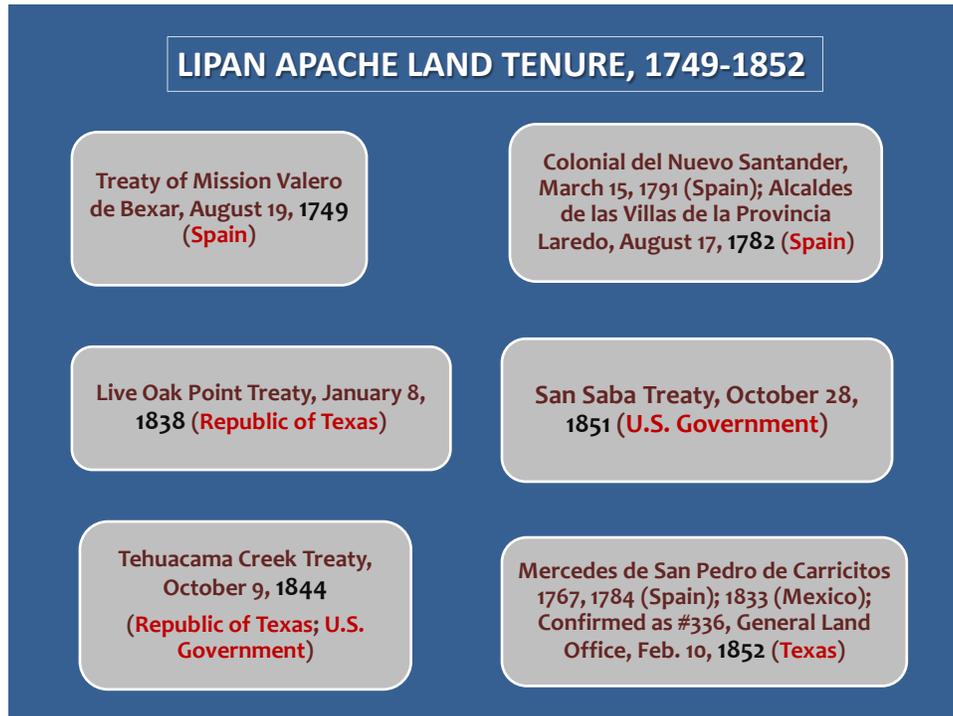
The First People taught us how to live together, to be in humility, and exist in cooperation with the natural elements. We emplaced this way of life in Kónitsaqáí —Big Water home, also known in Spanish as ‘rio bravo’ and ‘rio grande’, and in English, ‘big river.’ We belong there.



The Ndé origins and migrations combine with the historical, archaeological, and linguistic data constitute the foundation for reconstructing aspects of the Ndé buffalo hunter past. Present evidence will show that the Ndé

descend from plains buffalo hunters who are believed to have called themselves Ndé for at least 1,000 years before “Discovery” or the arrival of the Spanish.<sup>2</sup>

### Ndé Treaties, Agreements, and other Constructive Arrangements Spain, Mexico, Texas and the U.S.



Ndé Peoples of southern Texas, the Lower Rio Grande Valley and north-eastern Mexico enjoy a rich and vital history of engaged activity in international law pre-dating the nation, State, and nation-state. Despite this fact, like many Indigenous Nations of North America, Ndé have struggled continually to protect and defend our culture, values, beliefs, families, lives, lands and resources. As evidenced in the above diagrams, this struggle has been fraught with diplomatic relations and many bloody battles in the context of building relationships of mutual respect, limits, boundaries, and trust.<sup>3</sup>

<sup>2</sup> Enrique Gilbert-Michael Maestas, “Culture and History of Native American Peoples of South Texas,” University of Texas at Austin, Ph.D. dissertation, May 2003.

<sup>3</sup> Enrique Gilbert-Michael Maestas, “Culture and History of Native American Peoples of South Texas,” Mission Valero de Bexar (The Alamo) Treaty of Peace August 19, 1749, University of Texas at Austin, May 2003, pp. 236-239; Robert D. Wood, (S. M.), “Archivos de Laredo: Documentos Referentes a los Indios,” Lipan Apache Treaty, El Conde de La Sierra Gorda to Captain Claudio Lacomba March 15, 1791, Laredo Archive Series, No. 2, Document No. F 35, D 3, (1791), Laredo, 1998; Robert D. Wood, (S. M.), “Lipan Apache Peace Treaty with Mexico Alcaldes de las Villas de la Provincia Laredo dated August 17, 1822, Laredo Archive Series, No. 2, Document No. F 68b, D 21, (1822), Laredo, 1998; Dorman H. Winfrey, “Texas Indian Papers 1825-1843” Live Oak Point Treaty, Assisted by James M. Day, George R. Nielsen, J. R. Patterson, Volume 1, Document No. 16, pp. 30-32, Texas State Library, Austin 1959; Dorman H. Winfrey, “Texas Indian Papers 1844-1845,” Tehuacana Creek Treaty, Assisted by George R. Nielsen, J. R. Patterson, Albert D. Pattillo, Volume 2, Document No. 76, pp. 114-119, Texas

Sadly, trust and good faith were long ago destroyed between Spain, Mexico, Texas, the U.S. and Ndé hereditary chiefs, matriarchs, and Elders.

From the Indigenous history and archival curating practices kept alive for 19 generations, Ndé have constructed our history of international diplomacy, which begins with the legal disputes between Marian Leonor de Moctezuma (1526) and continues to the present day with Hereditary chief Daniel Castro Romero, Jr. and Elder Eloisa García Tamez.

The current stasis we experience as Indigenous Peoples is tied to what Bruce Miller calls “the politics of nonrecognition.”<sup>4</sup> Interestingly, *Lipan v. United States*, Docket-22 of the Indian Claims Commission did find that Lipan Apache have Aboriginal Title. Knowing that we are the Real People, Ndé have firmly rejected and resisted being reduced or aggregated into ‘ethnic groups’. We have been critical of the Texas myth of the so-called ‘vanished’ Indian, and the purported ‘disappeared’ Apache, Jumano, Tlaxcalteca, Nahuatl, Purepecha, Otomi, Coahuilteca, Tonkawa and Comanche diversity which is the true base of the Texas-Mexico border Indigenous Peoples who confronted and shaped many aspects of the settlers’ experiences in Texas. We are Nations in our homelands.

### **Walling and Obstructing Indigenous Matrilineal Governance Rights**

Ndé are multiplural Indigenous Peoples with clan systems and inter-marriage systems with Indigenous Nations which pre-date the nation, State, and nation-state. These are binding though women’s matrilineal governance and decision-making which is a culturally significant factor in Ndé world views, justice systems, governance, language, and spirituality. Texas, Mexico and the U.S. have persistently denied, negated, and obstructed the Ndé as Peoples whose cultural structures, systems, and institutions are deeply inscribed as dual gender, gender complimentary, and gender inclusive on all decision-making. The Ndé have been deeply colonized in the last century to obey and bend to the western Euro-American patriarchal, masculine, and centralized-authoritarian-punitive model of socialized ethnocentrism. However, the Ndé systems and institutions did not die; rather, they were driven underground, and experienced important revitalizations and resurgences directly tied to Indigenous women’s activism to promote Ndé food, medicine, healing, memory, story-work, truth and justice systems, spirituality, and language. Inherently gender complimentary, Ndé self-governance has continued to be practiced in family and clan systems, and decision-making has continued without interruption across the most violent genocidal centuries (19<sup>th</sup> and 20<sup>th</sup>) and into the current period. This is a system which has been intrinsically developed intimately connected to our land and resources, over millennia. Ndé are actively recovering the community-based and archival knowledge related to Ndé governance which included males and females, the Elders,

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State Library, Austin 1960; Dorman H. Winfrey, “*Texas Indian Papers 1846-1859*,” San Saba Treaty, Assisted by George David B. Gracy, J. R. Patterson Jr., Paul Willcott, John C. Wilson, Volume 3, Document No. 104, pp. 149-154, Texas State Library, Austin 1960;

<sup>4</sup> Bruce Granville Miller, *Invisible Indigenes: The Politics of Nonrecognition*. Lincoln: University of Nebraska Press, 2003.

adults and the young. It is clear that an inclusive decision-making system has been instituted by Indigenous women across the millennia, and that the settler societies of Texas, Mexico and the U.S. worked to excessive degrees and measures to eradicate these wherever possible. Ndé hereditary Chief and Elders believe that Ndé women will continue to be restored to their rightful place in international, binational, regional, national and local institutions, and that it is to the betterment of all societies that Ndé women be restored to full and effective participation in decision-making, and to share their intellectual, social, economic knowledge in order to inform and influence socially peaceful and responsible decision-making in Ndé traditional territory—currently bifurcated.

Ndé women Elders, mothers, daughters, and granddaughters seek to restore their authority with regard to children, reproduction, local-global economies, families, clans, governance, lands and resources, law, justice, and international economic development. Indigenous women and men share responsibilities with regard to selecting chiefs and related leadership, as well as representative diplomats and negotiators for the Ndé on all matters effecting the Ndé Nation. are viewed to be in fundamental disrespect and violation of Indigenous Peoples' human rights to self-determination. Ndé women have a core interest in and should be involved in all decision-making with regard to land, inheritance, title, and development.

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.

Historical recovery of land rights and land dispossession is an on-going effort. As a result of increasing human rights violations by the U.S. against Ndé land title owners and lineal descendents of ancestors with treaties, land grants and other arrangements with non-Indigenous actors, our community submitted a UN CERD Urgent Warning/Early Action petition in May 2012.



Wall in the middle of Ndé Elder's land, El Calaboz Ranchería, Texas-Mexico border

**Women's Multi-plural  
Indigenous  
Genealogies in Land-Tenure**

Mariana Leonor de  
Moctezuma 1526

Ndé Clan mothers, 1650s-1873

Inocente Cavazos 1890s

Andrea Cavazos 1935

Francisca Esparza 1946

Eloisa Garcia Tamez 2007



The above Elder referred to, Eloisa García Tamez, is the direct lineal descendent of Indigenous women who appear in many collections and archival documents relative to Indigenous women's actions in law, justice and colonial court systems. Debunking the stereotype and myth that Indigenous women were 'drudges', the evidence shows that Indigenous women in the Ndé society were active agents of land, territory and resource defense against Spain, Mexico, Texas and the U.S. The above are just a few, of many examples, of Indigenous women's land-tenure advocacies in the Ndé traditional territory.

Recuperating knowledge about Indigenous women's extensive land-tenure legal struggles in the genealogical records of Ndé has revealed 19 generations of extensively detailed records. This

revelation contradicts normative rhetoric that Ndé have no relevant or significant history worth documenting, curating and educating about. This is a unique history of Indigenous women's land-tenure and advocacy using all tools available to protect knowledge, histories, families, culture, traditions, systems, and memory over time and place. Indigenous memory and truth are endangered resources in a militarized zone.

## VII. *Kónitsiq gokíyaa*: Big Water People, the foundation for Ndé self-determination

A crucial part of the current Ndé decolonization is confronting the violent and genocidal past and ongoing present. Recently, the Ndé have researched archives in Mexico, the U.S., and Spain related to documented histories of carceral systems which were used by Spain, Texas, Mexico and the U.S. as methods to constrain and to repress Ndé devotion and love for our home lands.

Ndé history with colonizers is literally a blood-soaked horror. This is the subject of a new book underway. Confronting the truth is a crucial step to reconciliation.

Ndé people were kept as slave-captives in Catholic missions in the 17<sup>th</sup> and 18<sup>th</sup> centuries; were abducted and forced into labour in mines; were deported to Cuba and never returned; were chased down like animals and skinned, mutilated, and scalped for gold coins; were marched hundreds of miles to San Luis Potosi and permanently separated from kin; were massacred when deemed in the way of development; were separated from family and punished and abused at Carlisle Indian Industrial School; were assimilated in Texas public schools and maintained in *de facto* segregation and menial education; and, the list goes on...

The disacknowledgement of the Ndé treaties, agreements and other arrangements with Spain, Mexico, Texas and the U.S. is a serious obstacle to the implementation of the UN Declaration on the Rights of Indigenous Peoples, and Art. 3, the right to self-determination. Indigenous Peoples' customary lands and territories are bifurcated by the U.S.-Texas-Mexico border. The Treaty of Guadalupe Hidalgo structured the legalization of extermination policies which specifically sought to repress Ndé resistances to displacement, assimilation, and non-compensation of dispossession of food sources, water, sacred sites, burial grounds, and ceremonial grounds.

A more rigorous analysis of the historical and ongoing impacts of the U.S.-Mexico border is needed. In Miguel Alfonso Martinez' "Final report," par. 49, of the "Study on treaties, agreements and other constructive arrangements between States and indigenous populations", he foreshadowed the need for a critical analysis of the affect on Indigenous Nations as third parties to bilateral treaties.

"49. It follows that the issue of treaties affecting indigenous peoples as third parties may continue to be relevant insofar as they remain in force and insofar as indigenous peoples already participate - or may in the future - in the implementation of their provisions. Among the 10 instruments previously considered for analysis, (18) apart from the Lapp

Codicil, several others would warrant further scrutiny, among them the 1794 Jay Treaty and the **1848 Treaty of Guadalupe-Hidalgo**, both of apparent special significance for the indigenous nations along the borders of the United States with Canada and Mexico respectively” [Emphasis and bold added].<sup>5</sup>

This is an especially relevant issue for the Texas-Mexico border Indigenous Nations, as the international boundary is situated in the middle of the Rio Grande River. As the border wall, drones, surveillance systems, military policing, and criminalization constrain movement along the border wall, the water rights of Ndé Peoples are continually threatened by private land owners, private businesses, extractive industries, and the current militarization of the entire border zone.

Ndé Peoples with land grants with Spain established between the parties in 1749, pre-dating Mexico, Texas, and the U.S. constitutional governments—have enacted and practiced defense over their water rights. Though, the tribunal system in Texas and the U.S. is ineffective as neither acknowledge Indigenous peoples’ collective and aboriginal rights to water in Texas. Indigenous women’s customary rights to water, and to farm their titled lands which still exist in customary law, but not in practice on both sides of the river, is an issue of great concern.

We are currently conducting a historical recovery study to document a conflict which occurred in 1935-38, between Indigenous women in El Calaboz and the U.S. Army Corps of Engineers in order to understand the Indigenous knowledge, memory, and governance over water, and the consequences of losing access to the water, land title, and access to justice when the State exercises sovereign immunity and its ‘domestic’ military to develop mega-projects in Indigenous Peoples lands which are both treaty lands and land grant lands overlapping for Indigenous community members. When special interest groups benefit from the government’s use of force to displace Indigenous land owners who are of treaty and land grant ownership to land, this calls for a stronger enforcement mechanism to support Indigenous Peoples in redressing their grievances and achieving resolutions that are in alignment with the UN Declaration and are binding in international and domestic law.

The States’ historical positions of refusal and denial –from Indigenous Peoples’ perspectives of needing to heal—is a necessary part of self-determination of Real People, as Elders say. It is time to acknowledge that a strengthened partnership on treaties, agreements and other constructive arrangements must be courageous, brave and fundamentally fearless to confront Indigenous peoples’ suffering, pain, and the need for healing—on our own terms.

Ndé need to be able to process and to be acknowledged for the dark, repressed, and bloody history with Spain, Mexico, Texas and the U.S. A constructive dialogue needs to recognize the historical trauma Indigenous peoples embody and are haunted by. Our kids are enduring the recolonization through militarization and domination, as evidenced in Apache youth art today.

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<sup>5</sup> Miguel Alfonso Martínez, “Study on treaties, agreements and other constructive arrangements between States and indigenous populations: Final Report,” E/CN.4/Sub.2/1999/20, June 22, 1999, at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/696c51cf6f20b8bc802567c4003793ec?Opendocument>.

This reality—how Ndé have deeply internalized our ongoing ‘prisoner of war’ status and history with the U.S., Texas and Mexico should be acknowledged in the process.



Artwork by Douglas Miles.

The dominant culture is having an overwhelmingly negative impact on ‘Apache’ youth identity, saturating them in symbols and icons of a colonial, hyper-violent construction of the colonial ‘enemy’ perpetually frozen and framed by U.S. imposed doctrines of domination. The maintenance of negative stereotypes of ‘Apache’ dissident warriors works to diminish Apache Peoples as anything but restless prisoners, arrested from self-determination and perpetually vanquished by American conquest. This narrative makes it easy for corporate piracy to prey upon Ndé lands and resources, and special interest groups to use the rule of law as a weapon of exploitation.

In Ndé customary lands, the rights of ‘ranchers’ in Texas typically rule over the rights of Indigenous Peoples’ resources. For example, in *Adjudication of Water Rights in Medina River* (1982), the Texas Fourth Court of Appeals decided that riparian rights through Crown land grants still existed in law in south Texas.<sup>6</sup> In a dispute over riparian rights in the Media River, the state originally found with the United States Lackland Airforce Base waste disposal system which utilized the creek. However, Justice Blair Reeves investigated the legal genealogy of riparian rights decisions and law in southern Texas, and wrote a dissenting opinion.

“Justice Blair Reeves, in a dissenting opinion, traced the riparian rights law to the King of Spain. The Texas Supreme Court reversed the Court’s majority opinion, and adopted Justice Reeves’ analysis.”<sup>7</sup>

<sup>6</sup> See Court History, Fourth Court of Appeals, available at <http://www.4thcoa.courts.state.tx.us/court/history.asp>. *Adjudication of Water Rights in Medina River*, 645 S.W.2d 596 (1982), rev'd, 670 S.W.2d 250 (1984).

<sup>7</sup> Ariel Dulitzky and Margo Tamez, “The Situation of the Texas-Mexico Border Wall: A Request for Consideration under the Early Warning and Urgent Action Procedures of the United Nations Committee on the Elimination of Racial Discrimination (80<sup>th</sup> Session), footnote 76.

This is a good example of the enduring relevance of Crown law in southern Texas as understood, remembered and defended. Though the Spanish Crown made constructive agreements and arrangements with both Indigenous and non-Indigenous, in current-day domestic courts, Indigenous peoples are severely disadvantaged in exercising such decisions, especially in the post 9/11 era, when the federal government uses sovereign immunity in the 'war on terror' and eminent domain to 'protect' 'ranchers' interests (without building walls across their lands) and opts to build walls across Indigenous peoples' lands under sovereign immunity. To Indigenous peoples the past is the present. Crown titles were originally used to colonize lands where Indigenous economies based on equestrian hunting over large areas, and to coerce settlement and sedentary agricultural lifestyles during the late 18<sup>th</sup> c. colonial period. This was a strategy to remove millions of acres from Indigenous Peoples which aided the policy of expanding silver mining, cattle ranching, and textile production.

Despite that the Lipan Apache Band of Texas petitioned the U.S. for federal acknowledgement in 1999, the Ndé are, according to Hereditary Chief and Chairman Daniel Castro Romero, Jr., "still in limbo." While the Ndé do not see U.S. federal acknowledgement as the form of self-determination it truly seeks to redress, nevertheless, in order to just be able to access the justice systems, an inherently adversarial process, and to be able to have a Nation to Nation dialogue with the U.S. government, Indigenous Peoples are forced to petition the U.S. Federal Acknowledgement system. Until the U.S. acknowledges an Indigenous Nation, its peoples are truly left in a state of stasis, a terrible vortex, and as Romero stated, a "limbo."<sup>8</sup>

In public statements by U.S. representatives, the State emphasizes that its interpretation of the Declaration is dominantly through a domestic law lens. The U.S. appears to imply that it reserves the right to interpret the meaning of the UN Declaration only in its relations to Federally Recognized Tribes. I have heard the U.S. representative speak in the UNPFII 2009, UNPFII 2010, UNFII 2011, and UNPFII 2012 and in the EMRIP 5<sup>th</sup> Session, referring frequently to U.S. best practices with "Tribes", "Federally Recognized Tribes", "acknowledged Tribes." In doing so, the U.S. obscures the fact that the federal government dissolved the Indian Claims Commission, the only mechanism the State constructed to hear Indigenous land claims. 200 cases were yet unresolved when the ICC dissolved. This has had tragic and crippling consequences for unacknowledged, yet nonetheless, sovereign Indigenous Peoples whose oral histories locate them in lands overtaken by Euro-American settler occupation.

In their legal paper submitted as part of the Working Group on Human Rights and the Border Wall submission to the Inter-American Commission/Organization of American States (2008), Michelle Guzman and Zachary Hurwitz argue,

"In several cases and reports, the Inter-American Commission on Human Rights (the Commission) and the Inter-American Court of Human Rights (the Court) have held that members of indigenous and tribal communities require special measures that guarantee the full exercise of their rights, particularly with regards to their enjoyment of

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<sup>8</sup> Ibid., par. 41, "

the land, in order to safeguard their physical and cultural survival. By not recognizing the legal status of indigenous people along the Texas-Mexico border as such, especially as regards the Lipan Apache of the Coastal Bend Region and South Rio Grande Valley, the U.S. government is violating indigenous peoples' right to recognition of juridical personality and the right to enjoy civil rights as supported by Article XVII of the American Declaration: "Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights." In the case of Saramaka People v. Suriname, the Court held that the acknowledgement of the clan's communal juridical personality is one of the "special measures" owed to indigenous and tribal groups in order to ensure they can use their land according to their own traditions."<sup>9</sup>

### VIII. Ndé law and justice structures

Keésda íhahátee béodaaziit '(Feast gathering together to decide)'; Dátéshí bił' ádaajit'inde' ('Matrilineal kinship')/'one's family came from same people and same place'); shi t'ekende ('clans of significance'); shi 'andaji gut'ekende ('inter-related bands of food exchange and protection'); Nant'á ('hereditary chief'); Nant'á kedidlii ('ceremonial leader'); families, clans, bands; hereditary Chiefs, council, diplomats; popular governance.

Since 2007, Ndé have reclaimed language, oral tradition, emergence stories, clan laws, matriarchal recognition, and transitional justice spaces.



Collecting traditional foods and medicines for ceremonies related to decision-making and justice in Ndé summer feast gathering in El Calaboz...

To counter this trend in Indigenous Nations across the U.S.-Mexico border, the Ndé reclaimed part of our lands in South Texas, which has caused a back lash. Nevertheless, we revitalized a core sacred communal ceremony which has a primary purpose of healing all illness and negativity and returning our People and Nation to *danzhoo*—the way of beauty. Through our

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<sup>9</sup> Michelle Guzman and Zachary Hurwitz, "Violations on the Part of the United States Government of Indigenous Rights Held by Members of the Lipan Apache, Kickapoo, and Ysleta del Sur Tigua Tribe of the Texas-Mexico Border, June 2008.

Na'ii'ees Isdzánalesh ('White Painted Women') ceremony, we are returning the Ndé matrilineal governance and decision making systems, reinstating the rightful place of women in *Kónitsaqíí gokíyaa Ndé*. Lipan Apache sacred mother lands.



Revitalizing the Naiiees ceremony after 160 years of Texas punitive systems

Ndé self-determination is a right which is sacred to our relationship as 'Nkaiyéndé', ('long long walking Peoples'). Our self-determination is integral to our identity, language, spirits, dreams, cosmivision, lands, territories, First Foods, Medicines, Water, sacred Caves of the Ancestors, and the protection of sacred resources for the generations to live in dignity and peace, with instructions to live in peace and respect with the land and Her gifts in order to enact agency over our own future.

### **We are a Sovereign Nation—in the shadow of self-determination**

It is time for the U.N. to mature into fearless implementation of the UNDRIP with regard to Texas-Mexico-U.S. colonization and neo-colonization of the Ndé. The border wall, uranium mining, oil and water extraction, and social engineering of bare existence—are all symptoms and signs of a system that violates Ndé fundamental rights and freedoms to self-determination.

Ndé are in limbo—socially, economically, politically—due to the way in which Texas, Mexico and the U.S. get 'off the hook' on being held accountable for Treaties, Agreements and other Arrangements with the Ndé. Other U.N. members have decidedly 'looked the other way' when it comes to really holding these states accountable for their genocide policies directed specifically at Ndé in the Texas-Mexico nexus—and leaving Ndé in limbo, as a stateless People, and Nation, *in the shadow of self-determination*. Ndé have inherent and inalienable self-

determination over our customary lands, territories and resources. Indigenous self-determination has been established.<sup>10</sup> The *Awas Tingni* decision is but one example reaffirming “the original assessment, based on recent state practice, that the lands traditionally held by indigenous peoples are theirs as a matter of right under customary international law.”<sup>11</sup>

It is true, there are crucial examples of good practices which challenge colonial domination as an ongoing settler-nation framework in the Americas. The *Awas Tingni* case and the Suriname case demonstrate the recognition of the international legal character of Indigenous Peoples’ rights to our lands.<sup>12</sup> Unfortunately, the continuing policy of refusal and claims to sovereign immunity, with specific regard to the international recognition of Ndé treaties, constructive arrangements, and other instruments *with* Spain, Texas, Mexico and the U.S.— is a major obstacle to achieving peaceful co-existence.

Nevertheless, the obstruction to Ndé access to justice at the country levels, in both the U.S., in the Texas-Mexico bordered region, and in Mexico, has impeded our economic and social progress, development, sustainability, equity, and the protection of our spiritual values, beliefs, and practices. We know that control over our intrinsic relationship and stewardship of our mother land, knowledge systems, history, memories, and rights to our culture will enable us to revitalize and strengthen our institutions and develop peaceful and amicable relations with all Nations.

Bare existence in our current situation where our traditional territory and mother land is bifurcated by the Texas-Mexico border, our potential and our rights are precarious and are

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<sup>10</sup> United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295, Annex, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), available at <http://www2.ohchr.org/english/issues/indigenous/declaration.htm>; UNDRIP, Article 3; Preamble, “Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources; UNDRIP, Art. 3, “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. See, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-Am. C.H.R. (2001), reprinted in *The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 19 ARIZ. J. INT’L & COMP. L. 395, 430-440 (2002); See, *Indigenous and Tribal Peoples’ Rights Over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, 11 A Comm. R.R., available at <http://www.cidh.org/countryrep/Jndigenous-lands09/Chap.I-II.htm>; See Letter from Anwar Kemal, Chairperson, Committee on the Elimination of Racial Discrimination, to H.E. Mr. Minelik Alemu Getahun, Ambassador, Permanent Mission of Ethiopia (Sept. 2, 2011) (urging the state party to consult or seek prior, free, and informed consent of the indigenous community before carrying out projects that would have negative impacts on their community’s livelihood); see also I/A Court. H.R., Judgment, *Xákmok Kásek Indigenous Community v. Paraguay*, merits, Reparations, and Costs, Aug. 24, 2010, Ser. C No. 214 (2010) para. 182.

<sup>11</sup> Siegfried Wiessner, “Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous Peoples,” 41 Vand. J. Transnat’l L. 1141 (2008).

<sup>12</sup> Supreme Court of Belize, *Cal v. Attorney General of Belize*, Claim No. 171 of 2007, Judgment, Oct. 18, 2007, par. 127, available at [http://www.law.arizona.edu/depts/iplp/advocacy/maya\\_belize/documents/ClaimsNos171and172of2007.pdf](http://www.law.arizona.edu/depts/iplp/advocacy/maya_belize/documents/ClaimsNos171and172of2007.pdf) (“[I]t is my considered view that both customary international law and general international law would require that Belize respect the rights of its indigenous people to their lands and resources.”).

eclipsed by the official policies of the United States, Texas, and Mexico. The States which each have historical and binding obligations to take constructive actions to practice good faith, have a constructive dialogue, and desist from the current policies of negation, denial and non-recognition with regard to Ndé ('Lipan Apache') peoples—are essential pieces of a problem that Ndé Peoples are being forced to endure since the U.S.-Mexico war (1846-1848) and the establishment of the border (1848), the cession of Texas and its self-creation into a Republic (1861), the forced annexation of Texas by the U.S. (1867), and Texas' and the U.S. policies of war and destruction against the Ndé as an Indigenous Nation with Aboriginal Title.

Our community now has a gulag-style wall, made of concrete and solid steel bifurcating us further from our lands to the south of the wall, which is north of the border, inside the U.S. territorial boundaries. We have recognized that history—used as a blindfold-- is a weapon which enables the States to deny the reality that Indigenous Peoples' perspectives of history should be heeded in the 3<sup>rd</sup> Seminar on Treaties and Constructive Arrangements.



Texas-Mexico border wall and criminalization of human rights defense

In 2009, as the U.S. dispossessed our community through armed enforcement and obstruction of access to justice, many Indigenous women were impacted by the taking of the ancestral lands, and by the violent way in which the U.S. government used military force to gain its objectives. We were left with no protection, and no other choice but to challenge the U.S. in the Inter-American Commission/OAS. Since then, we have made a concerted choice to enact our self-determination on a border where the U.S. froze 35 federal laws thereby creating a no-constitution zone to achieve its end.



Dr. Margo Tamez (center) and University of Texas colleagues, testimony, Inter-American Commission/OAS, 2009.

Like many Indigenous Peoples in the United States, prior to the early 1970s (when the U.S. terminated the Indian Claims Commission settlement period), Ndé were obscured in international law due to 150 years of extermination, assimilation, and incorporation policies. In Texas and U.S. official public histories, ‘Lipan Apaches’ are rarely ever mentioned, except as an occasional footnote, or perhaps an index note doomed always to the past, always a disfigured ‘savage’ in the shadows of the Heroic Texas Pioneer settler.

Today, Texas textbooks, from kinder to post secondary schools, portray ‘Lipan Apaches’ as archaic ‘nomads’, ‘immigrant and wandering Indians’, ‘foreign’ to our Indigenous places. We are relegated permanently as mere primitive cave peoples, diminished as insignificant fixtures in the background of the glory-filled days of the ‘birth’ of the White Texas ranching and idealized cultivator society.

The Yale University Genocide Institute has an interactive GIS mapping project which identified the entire state of Texas as potential case study in the U.S. for re-thinking impunity and the fiction of sovereign immunity. Texas is the only space on the Yale genocide GIS map in which the entire state is identified as a killing field.<sup>13</sup>

A very racist and problematic portrayal of ‘Lipan Apaches’ –as primitives frozen in the past, or destined to vanish in the face of the purported Euro-American destiny for progress—is an conquest ‘history markers’ situated along Texas highways, roads, and paths as official State narratives of glorified genocide.

### **Ndé Knowledge and Peoples *beyond borders*: an International Legal Framework of Inherent Self-determination with Lands and Territories**

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<sup>13</sup> Yale University. Genocide Studies Program. World Map of Colonial and Indigenous Genocide. [http://www.yale.edu/gsp/colonial/world\\_map\\_indigenous.html](http://www.yale.edu/gsp/colonial/world_map_indigenous.html) (accessed January 7, 2010).

The Ndé firmly acknowledge it is time to redress, repair and restitute treaties and other constructive arrangements through international legal mechanisms. We are committed to a safe and meaningful process towards the realization of the restitution of our place as the Nation on our respective territory. Violence as a framework of domination, theft, occupation, settlement, and accumulation of our labor, is not the path that would return dignity to our Indigenous Nations.

At the end of the El Calaboz decision-making gathering on June 24-26, 2011, we were reminded of the words of Jose Emilio Garcia, an Ndé traditional farmer, and my grandfather. “That is a political line, never a cultural line.” On June 26, the Elders, hereditary chief, leaders, women, men, families, and youth decided to support the creation of the Emilio Institute for Indigenous and Human Rights, as a transitional justice space for Ndé and related Indigenous Peoples of the Texas-Mexico border region—and beyond—to enact self-determination and to move in the dignified path of peace, justice, and harmonious co-existence with the States.

#### **IX. Indigenous Nations and the Martínez Final Report: Constructing a partnership focused on actions and implementation.**

Recognition and responsibility with regard to Ndé Treaties and Constructive Arrangements is the first step. The dismantling of the border wall, return of lands dispossessed from Elders and other relatives, a formal apology, and a Truth Commission are fundamental requirements for the U.S. to lead the way. Spain, Mexico and Texas would most likely not take any affirmative action without a sign that the U.S. is a serious partner.

**Recommending**, that a registry be created of all U.S. treaties with Indigenous Nations. Further, there should also be a list of which Indigenous Nations were left unresolved by the Indian Claims Commission (ICC). Docket—22 contains the records related to *Lipan Apache v. United States*. The Human Rights Council should request from the United States a comprehensive study of the history and outcomes of the ICC, and include an analysis of the 200+ Indigenous Nations whose claims were left unresolved. In many cases, industries, such as railroads, utilities, and others, such as Texas, countered the claims of Indigenous Nations, further diminishing any path to access justice. This has left the situation of Ndé in limbo, in the severe circumstances of being lumped into ‘minority’ groups.

**Recommending**, item 66, SR Martínez’ report:

“An extensive review of the origin of this process is necessary to gain a full understanding of crucial juridical and socio-economic elements of the present-day situation of these peoples, as manifested in former European settler colonies (and the States which succeeded them) when the relationship originated, and also as it now exists in relevant, today multi-national, States in Latin America, Africa, Asia, the Pacific and northern Europe. Consequently, this question will be dealt with in extenso in the conclusions offered in chapter III of this final report.”

**Recommending**, item 62, in SR Martínez’ report:

an exhaustive study of the indigenous viewpoint on a number of important aspects of treaties and treaty-making, still remains to be undertaken.

**Recommending**, the HR Council address SR Martínez' concern expressed in 61: the need for mandated representatives to engage in negotiation, basic agreement on the subject matter of treaties, and concepts relating to the need for ratification and the binding power of any type of formally negotiated compact.

**Recommending**, that the HR Council establish an international mechanism for “indigenous peoples justly attach considerable importance to the recognition, promotion and securing of their collective rights, that is, their rights as social groups.” Establish “international mechanisms for the resolution of conflicts with State authorities, in particular, in connection with the rights recognized in, or acquired by means, of instruments with acknowledged international status, such as treaties.”

**Recommending**, the HR Council examine the situation of Indigenous Peoples whose lands, territories and resources were dispossessed from them during the period of nation-building and state craft in the 19<sup>th</sup> century and 20<sup>th</sup> centuries by the formation of settler societies, states, and nations in Ndé traditional territory, specifically Mexico, Texas and the U.S. This has implications for ongoing work in relation to border conflict areas where militarization is a concern along the Texas-Mexico and U.S.-Mexico militarized borders. We ask the HR Council to pursue Martínez' aspirations to investigate the impact of the Treaty of Guadalupe Hidalgo and the Jay Treaty, and comparative borders on Indigenous Peoples' self-determination, human rights, and inherent sovereignty.

Axe'he, thank you,

*Margo Tamez*

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