

REFERENCE: CERD/EWUAP/113thsession/2024/CS/BJ/ks

23 August 2024

Excellency,

I write to inform you that the Committee on the Elimination of Racial Discrimination (“the Committee”) received updated information under its early warning and urgent action procedure related to the situation of Indigenous San Carlos Apache Tribe in the State of Arizona.

According to the information received:

- The Indigenous Western Apache Tribes, including the San Carlos Tribe, inhabited the Oak Flat for centuries and have religious and cultural ties with it, particularly it is considered as the central location of the Apache creation and is a physical manifestation of the spirit world. The Indigenous Apache Tribes hold ceremonies integral to their Apache identity at the Oak Flat. The Oak Flat is also a place to gather medicines and ceremonial items, as well as to seek and obtain peace and personal cleansing, according to the Apache religion, beliefs and traditions;
- An attempt to authorize land exchange for the benefit of a mining project failed due to the objection of the representatives of the Indigenous San Carlos Apache Tribe before the House and Senate committees;
- In December 2014, the U.S. Congress approved the land transfer under the adoption of §3003 of the National Defense Authorization Act for 2015 (“NDAA”) without carrying out consultations with the Indigenous San Carlos Apache Tribe. §3003 of the NDAA authorizes the United States Department of Agriculture (“USDA”) to convey 2,422 acres of Tonto National Forest, which includes Oak Flat, to Resolution Copper Mining, LLC, in exchange for territories owned by the mining company. The legislation requires the USDA to engage in consultations with the Indigenous San Carlos Apache Tribe to find mutually acceptable measures to address their concerns and to minimize the adverse effects on them resulting from mining and related activities;

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- §3003 of the National Defense Authorization Act stipulates that the land transfer shall occur within 60 days following the publication of the environmental impact assessment study by the United States Department of Agriculture ;
- the United States Department of Agriculture published the environmental impact assessment study on 15 January 2021, which was withdrawn on 1 March 2021, and the consultation was reinitiated and is still ongoing;
- 19 of the 22 American Indian tribes in Arizona are opposing the mining project, with the backing of the Inter-Tribal Council of Arizona and the National Congress of American Indians;
- The planned mining project would apply the “block cave mining” technique that will irreparably damage Oak Flat, causing irreversible harm to the territory and will prevent the full and free exercise of Apache traditional religion, prevent the harvesting of cultural foods and medicines, and prevent their access to sites.

The Committee is concerned that the allegations regarding the mining project, if verified, would infringe indigenous peoples’ rights protected under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Specifically, the Committee is concerned about the reported adverse impact of the mining project on the Indigenous San Carlos Apache Tribe way of life and their rights to practise and revitalize their religion, cultural traditions and customs as well as their right to own, develop, control and use their communal lands, territories and resources. The Committee is also concerned about the reported lack of consultations with the Indigenous San Carlos Apache Tribe to obtain their free, prior and informed consent regarding their ancestral lands in light of the adoption of §3003 of the National Defense Authorization Act for 2015 (“NDAA”).

The Committee recalls its General Recommendation No. 23 (1997) on the rights of indigenous peoples and its previous concluding observations concerning the United States of America ([CERD/C/USA/CO/10-12](#), paras. 45, 46, 49 and 50).

Accordingly, the Committee would like to request the State party to provide information on the above allegations as well as on the measures taken to:

- (a) Protect, promote and respect the respect the distinct culture, religion, history, and way of life of the Indigenous San Carlos Apache Tribe;
- (b) Ensure that Indigenous San Carlos Apache Tribe can exercise their rights to practise and revitalize their cultural traditions, religion and customs related to Oak Flat;
- (c) Recognize and protect the rights of Indigenous San Carlos Apache to own, develop, control and use their communal lands, territories and resources;
- (d) Ensure effective and meaningful consultation with Indigenous San Carlos Apache Tribe on any projects or legislative or administrative measures that may

affect their land, territories and resources, with a view to obtaining their free, prior and informed consent.

In accordance with Article 9 (1) of the Convention and Article 65 of its Rules of procedure, the Committee requests the State party to provide information on the above-mentioned allegations and the situation of Indigenous San Carlos Apache Tribe by 11 November 2024.

Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,



Michal Balcerzak
Chair

Committee on the Elimination of Racial Discrimination