

United Nations Human Rights Committee, 139th Session

*Review of the United States of America*

October 2023, Geneva

Lipan Apache Women Defence (LAWD)

*and* International Organization for Self-Determination & Equality (IOSDE)

(Indigenous Peoples & Persons Report)

*Submitted by:*

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<sup>2</sup> Ndé Peoples share numerous archaeological, geographical, cultural, and linguistic ties to and are part of the Dene Nation whose whose traditional and customary territories pre-date Canada, the U.S. and Mexico; Ndé have often been referred to as “Apaches Lipanes” and “Lipan Apaches” in European colonial archives as well as settler anthropology and history texts).

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*The United States of America (USA) is long overdue for a comprehensive Truth Commission and formal Decolonization Process.*

The assimilative and eradication policies of the USA and its related structural and systemic barriers impact over 400 independent Tribal groups, i.e. Indigenous Peoples, that are discriminatively and with prejudice identified by the USA and its Bureau of Indian Affairs (BIA) as “federally non-recognized.” The U.S. federal non-acknowledgement system stems from a complex history of U.S. administrative and bureaucratic erasures which dominantly privileged settlers and their descendants, capitalism, and corporations which are the primary beneficiaries of Indigenous dispossession by the U.S. and U.S. states. Indeed, some of the 400+ Tribal groups still enduring the U.S. non-acknowledgement procedures, like the Lipan Apaches, hold Aboriginal Title to their customary lands however much of these were made “public lands” whose mineral, gas, oil, and water rights were sold to powerful interest groups. In some states, like Texas, matters concerning Indigenous peoples were dominated by the state’s Indian Affairs, and the U.S. never intervened in violent, destructive and genocidal processes in the state. Unlike the U.S., the Lipan Apaches and the 400+ Tribal groups problematically identified by the U.S. as “federally non-recognized” have energetically archived and documented their multi-decades’ struggles—since the early 20th c. to maintain their connection and belongingness to their customary lands, identities, cultures, languages, kinship relations, economies, food systems, and political personhood rights. .

The terminology “federally non-recognized”, and its multi-generational legacy of state-sanctioned and enforced cultural, social, and economic exclusion and destructive outcomes upon Indigenous peoples it directly impacts, has persisted under the radar of international human rights principles and covenants.. However, the U.N. archive and databases contain significant evidence from Indigenous peoples that this active U.S. elimination process persistently structures and legitimizes U.S. anti-Indigenous racism, discrimination, exclusion, destruction, and oppression against a significant Indigenous population with deep connections to place, kinship and belonging. The system and structure of the U.S. “federally non-recognized” system maintains colonial, racist, and a-historically biased “recognition” metrics founded upon legalized settler colonial ideologies and epistemic violence, yet, beneath the fragile veneer of civil and political rights advancement for all Indigenous peoples, close scrutiny exposes the racist ideological conditions undermining Indigenous self-determination, such as “blood quantum”, and the significant roles that political and media influence, financial resources, and the low success rate of the 400+ Tribal groups over decades to build and sustain these unrealistic and unattainable methods in past and present U.S. administrations..

In brief, the U.S. “federally non-recognized” system is in violation fundamentally, against the crucial and critical International Covenant of Civil and Political Rights’ (ICCPR) Article 1(1). This grave issue, of “federally non-recognized” Indigenous Peoples of and from the USA’s territorial claim, has been identified and analyzed by, for example, by UN Special Rapporteur on poverty, Philip Alston in his 2018 report on the USA; UN CERD’s decision letter (1 March 2013) which addressed, among many concerns, the serious concern of Lipan Apache federal “non-recognition” to the USA State Department re: Early Warning-Urgent Action Special Procedure; UN CERD in its 2022 review of the USA; and concerns, discussions and decisions raised by and/or occurring in other UN bodies, processes and procedures, developments, mandates, and experts.

Informing the UN Human Rights Council on this issue, the report of the Special Rapporteur on extreme poverty and human rights, Mr. Alston, following his mission to the United States of America from 1-15 December 2017 (of which the purpose was to “evaluate, and report to the Human Rights Council on, the extent to which the Government’s

policies and programmes aimed at addressing extreme poverty are consistent with its human rights obligations and to offer constructive recommendations to the Government and other stakeholders”<sup>4</sup>), wrote the following:

"The situation of non-federally recognized tribes is even more desperate, for they are not eligible to benefit from federally funded programmes. While 567 tribes are federally recognized, some 400 are not. The latter exist in a context in which their way of life is not legally sanctioned, they are disempowered and their culture is threatened. Failure to collect disaggregated data for those tribes also hinders the development of evidence-based policies to address their situation."<sup>5</sup>

In 2012, when, in partnership with Ariel Dulitzky and the University of Texas (UT) Law Human Rights Clinic, LAWD and the Lipan Apache Band of Texas co-submitted an Early Action/Early Warning procedure to the UN CERD Committee,<sup>6</sup> UN CERD Committee Chair at the time and during CERD’s 82nd Session, Alexei Avtonomov, based on that submission, on 1 March 2013, sent a diplomatic letter to Ms. Betty E. King, then Ambassador and Permanent Representative of the United States to the United Nations, on the matter. In his letter, Mr. Avtonomov, as UN CERD Chair, iterated the following:

- After the adoption of the REAL ID Act and the Secure Fence Act (2005 and 2006), the U.S.A. constructed the border wall along the Rio Grande River in Texas. The wall was “built on sensitive environmental areas and lands inhabited by indigenous communities, without sufficient and effective prior consultation with the affected population, and apparently continues to damage the land, the ecosystem, and the cultural and traditional ways of life of indigenous communities.”
- “It has also been reported that while the wall has been built on the lands of indigenous peoples, it has skipped border areas with lucrative properties owned by business, such as the River Bend Golf Resort.”
- The “situation of the Kickapoo Traditional Tribe of Texas, the Ysleta del Sur Pueblo (Tigua) and the Lipan Apache (Ndé) indigenous communities in relation to the construction of the Texas-Mexico border wall.”
- “concern” regarding “discriminatory impact that the construction of the border wall” has on “indigenous communities, including their access to tribal lands located north and south of the border and to resources required for traditional ceremonies.”
- **“In particular, the Committee is concerned by the situation of the Lipan Apache, a tribe which reportedly remains Federally unrecognized” [and] “the construction of the wall through its land has [...] damaged ancestral burial sites, reduced the tribe’s access to elders and other knowledge keepers, led to severe decline in biodiversity, and may lead to disappearance of the tribal identity altogether as the community may be forced to leave the land.”** [emphasis added]
- “the Committee is concerned that [...] the border wall has been constructed without the free, prior and informed consent of the affected communities, and that no effective judicial remedies or compensation have been provided to date.”

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<sup>4</sup> “Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America”, Human Rights Council Thirty-eighth session 18 June–6 July 2018 Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America, 4 May 2018, Cover Page, A/HRC/38/33/Add.1

<sup>5</sup> “Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America”, Human Rights Council Thirty-eighth session 18 June–6 July 2018 Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America, 4 May 2018, Paragraph 64, A/HRC/38/33/Add.1

<sup>6</sup> See more here <https://law.utexas.edu/clinics/2015/04/24/borderwall/>.

- “the Government’s use of eminent domain powers cannot be effectively challenged in court” (See: Eloisa Garcia Tamez, Benito J. Garcia, Plaintiffs vs. Michael Chertoff, Secretary, U.S. Department of Homeland Security, et al., Defendants 2008)
- “courts have not allowed claims to be brought regarding the potentially discriminatory impact of the wall”

In 2022, contributing to the UN CERD’s review of the USA, Bowers and Tamez submitted a report with Loraine Garcia, all three co-founders of the Apache Nde Nee Isdzánízhááhí Didiigo Truthing Directive (IDTD), on the matter of self-determination of Indigenous Peoples and, within that, the issue of USA “Recognition”; that report is attached to this one. CERD stated in its Concluding observations, in September 2022, for that review of the USA:

“Indigenous peoples

49. The Committee notes the steps taken by the State party with regard to the rights of indigenous peoples, including the adoption of Executive Order 13647 on “Establishing the White House Council on Native American Affairs”, of 26 June 2013, in which it was recognized that restoring tribal lands through appropriate means helped foster tribal self-determination, and the President’s Memorandum on “Tribal consultation and strengthening nation-to-nation relationships”, of 26 January 2021, which highlighted as priorities respect for tribal sovereignty and self-governance, commitment to fulfilling treaty responsibilities to tribal nations, and consultation with tribal nations. However, the Committee is concerned at:

[...] (b) The obstacles to the recognition of indigenous peoples, including the high costs and burdensome procedures;”<sup>7</sup>

The International Organization for Self-Determination and Equality (IOSDE) and India Reed Bowers have both worked alongside Dr. Tamez for years and as a result on several occasions also supported LAWD’s initiatives jointly, along with collaborative expert undertakings together, Tamez and Bowers and with Garcia, for example as Isdzánízhááhí Didiigo Truthing Directive (IDTD)<sup>8</sup>, as well as the Apache Nde Nnee Working Group (ANNWG)<sup>9</sup>, to initiate formal and meaningful Indigenous-centered Historical Justice regarding colonialism in its legacies and current forms, genocide, and the USA. In the submission by LAWD to the Special Rapporteur on truth, justice and reparation called for inputs from the public on “Transitional justice measures and the legacy of human rights violations in colonial contexts”, our collective joint work submitted to UN CERD by Eloisa García Tamez and regarding the USA-Mexico Border Wall (which directly cuts through Tamez’s Lipan Apache Nde territorial home). That collaborate joint effort, that was further referenced to the UN Special Rapporteur on truth, justice and reparation and reviewed (and supported by CERD as part of an Urgent Action process it was originally created for), can be see at

<sup>7</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the combined tenth to twelfth reports of the United States of America, 21 September 2022, CERD/C/USA/CO/10-12

<sup>8</sup> See, for example, Isdzánízhááhí Didiigo Truthing Directive (IDTD) reporting to CERD re the USA, available for downloading via the UN CERD corresponding session website at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FNGO%2FUSA%2F49288](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FNGO%2FUSA%2F49288)

<sup>9</sup> See, for example, the Apache Nde Nnee Working Group submitted the following Shadow and Alternative Reports to the UN CERD Committee for the Committee’s review of the Holy See: *The Holy See and European Dispossession of Apache-Nde-Nnee Peoples: A call for truth, disclosure, justice and redress*, Apache-Nde-Nnee Working Group Shadow Report, available for downloading via the UN CERD corresponding session website at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FNGO%2FVAT%2F22151](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FNGO%2FVAT%2F22151), UN CERD 88th Session, November 2015: Review of the Holy See, and Spain: *Alternative Report for the CERD Review of Spain*, submitted by the Apache-Nde-Nnee Working Group, UN CERD 89th Session, April-May 2016: Review of Spain, available for downloading via the UN CERD corresponding session website at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FNGO%2FESP%2F23617](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FNGO%2FESP%2F23617).

[https://iosde.org/uploads/3/5/1/9/35199981/lawd\\_et\\_al\\_supporting\\_letters\\_re\\_urgent\\_action\\_early\\_warning\\_usa\\_border\\_wall\\_2017.pdf](https://iosde.org/uploads/3/5/1/9/35199981/lawd_et_al_supporting_letters_re_urgent_action_early_warning_usa_border_wall_2017.pdf) and is also attached to this current report (in the form of attachments in the IDTD submission to CERD for its review of the USA), for further example of ongoing colonialism dividing and harming Indigenous persons and Peoples and especially women and traditional Indigenous women-led-and-centered culture, home place, territory, ceremony, identity, legacy, relationship with environment, knowledge, cultural practices, and continuation.

In recent years, when the UN Special Rapporteur on truth, justice and reparation called for inputs from the public on “Transitional justice measures and the legacy of human rights violations in colonial contexts”, in preparation to make and present a report by the same name to the UN General Assembly,<sup>10</sup> Lipan Apache Women Defence (LAWD) and Dr. Margo Tamez made submissions to this call for inputs and were referenced. Those submissions, by LAWD and Dr. Tamez that were made to that call, are also a part of this current report to the Human Rights Committee and in the form of attachments. There, LAWD details:

“ Our input here is an expression of key dimensions of the right to self-determination and autonomy of the Ndé people, whose ancestral identity and presence transcends and historically precedes the limits of the international border between the United States of America (US) and Mexico marked by the Big Water, which is also known as the Rio Grande/Rio Bravo rivers.

This border and its militarization, enforcement and ongoing externalization throughout Mexican and Guatemalan territory and that of the Mesoamerican region, is deeply embedded in the racist, xenophobic practices of the settler colonialist states known as the United States of America and Mexico, and their equivalents throughout the Western Hemisphere. ....

Since the mid-to late eighteenth century, the Ndé have interrelated in kinship, marriage, reciprocity, ceremony, governance, cosmology, justice, and land-based knowledge systems with Tlaxcaltecas, Nahuas, Coahuilas, Kickapoo, Jumano Apaches, and Mescalero Apaches, on both sides of the US/Mexico border. Inter-exchange and alliance building through inclusive kinship relations - rural to urban - are persistent features of Ndé forms of cultural resilience and adaptation, which constitute responses to ongoing threats to our indigenous worldviews and rights. ...

Drawing from the taproots of this history, Ndé have galvanized a pluriversal indigenous reality, which challenges the bounds of the identities imposed by state and oligarchic wardens upon indigenous peoples: "Mexicans," "Latinos," "illegals," "foreigners." Privileging the testimonies of elders, women, and chiefly peoples, we seek to underline the importance of Ndé's inherent relationship to a homeland which is neither bounded by borders, nor based in biological "Native" authenticity, ethnicity, or race. Instead, our worldview is inter-woven through a complex web of kinship, remembrance, and the recovery of mother tongues, first foods and water governance, and gender complementarity in self-governance. ...

We borrow here Patrick Wolfe's statement on settler colonialism, which is useful for understanding the European American occupation of indigenous time, place, and space. Thus, decolonizing the construct of European American history is understanding the indigenous viewpoint: "invasion is structure not an event." For generations, indigenous decolonial challenges and defenses were enacted through ritualized remembering, memorializing, and returning. Reclaiming indigeneity as a positive - as a struggle to protect indigenous self-governance in a multi-gender value system and within a constellation of gendered worldviews of Kónitsaahii dá'ááši gokiyaa - is central to rethinking indigenous peoples' genocidal trauma, and its reoccurrences. ...”<sup>11</sup>

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<sup>10</sup> See *Call for inputs – Transitional justice measures and the legacy of human rights violations in colonial contexts*, Issued by the Special Rapporteur on truth, justice and reparation, [Resulting report presented to the General Assembly], <https://www.ohchr.org/en/calls-for-input/2021/call-inputs-transitional-justice-measures-and-legacy-human-rights-violations>

<sup>11</sup> LAWD submission to *Call for inputs – Transitional justice measures and the legacy of human rights violations in colonial contexts*, Issued by the Special Rapporteur on truth, justice and reparation, [Resulting report presented to the General Assembly], <https://www.ohchr.org/en/calls-for-input/2021/call-inputs-transitional-justice-measures-and-legacy-human-rights-violations>

Margo Tamez states in her submission:

“In the United States and in Texas, no mechanisms have been established in the concerned county to hold accountable persons who committed and who bear responsibility for gross violations of human rights and serious violations of international humanitarian law in colonial contexts of the U.S. and Texas.

Mechanisms have not been adopted which is consistent with the U.S. history of settler colonialism, denial, and resistance to accountability and responsibility for its long history of genocide and dispossession against Indigenous peoples.

While the U.S. formally adopted the United Nations Declaration on the Rights of Indigenous Peoples, during the former President Barack Obama’s administration, the U.S. position has always been that the only Indigenous peoples to whom it will enter into formal dialogue and discussion regarding Indigenous rights are the 574 U.S. Federally Recognized Tribes.

The United States denies that it has obligations to 400+ Federally NonRecognized Tribes (FNRT) of the United States. Officially, the United States government produces no data on the 400+ FNRT, has never provided social, economic, cultural, education, health, or humanitarian support or resources to them. This U.S. persistent racism against the 400+ FNRT as a systemic and structural failure was named and identified by Philip Alston, the Special Rapporteur on extreme poverty and human rights mission to the United States, reported, (section D. Persistent discrimination and poverty, Race), “The United States remains a chronically segregated society.”<sup>12</sup> The Special Rapporteur Alston “heard testimonies from Chiefs and representatives of federally recognized and non-recognized tribes (emphasis mine) on widespread extreme poverty in their communities.”<sup>13</sup> Alston went further to bring into relief the dire situation of poverty, marginalization, and extreme vulnerability of 400+ FNRT, stating: The situation of non-federally recognized tribes is even more desperate, for they are not eligible to benefit from federally funded programs. While 567 tribes are federally recognized, some 400 are not. The latter exist in a context in which their way of life is not legally sanctioned, they are disempowered and their culture is threatened. Failure to collect disaggregated data for those tribes also hinders the development of evidence-based policies to address their situation.<sup>14</sup> <sup>15</sup>

The resulting report<sup>16</sup> by the Special Rapporteur on truth, justice and reparation highlighted that the Lipan Apache have had, essentially, to rely on Civil Society and being Civil society for most important processes and access to just per the Special Rapporteurs Report’s theme:

“77. Beyond the adoption of measures to memorialize rights violations, it is also important to review the way in which colonialism is commemorated, in particular in settler States. In many of these countries, ceremonies offensive to indigenous peoples continue to be celebrated, such as Australia Day, commemorating Captain Cook’s landing; or the “Day of the Race” or “Discovery of America Day” in several Latin American countries.

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<sup>12</sup> [original footnote] A/HRC/38/33/Add.1. Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America, 4 May 2018, page 14.

<sup>13</sup> [original footnote] Ibid., 16.

<sup>14</sup> [original footnote] Ibid., 17.

<sup>15</sup> Tamez submission to *Call for inputs – Transitional justice measures and the legacy of human rights violations in colonial contexts*, Issued by the Special Rapporteur on truth, justice and reparation, [Resulting report presented to the General Assembly], <https://www.ohchr.org/en/calls-for-input/2021/call-inputs-transitional-justice-measures-and-legacy-human-rights-violations>

<sup>16</sup> “Summary: The present report examines the design and application of measures in the area of truth, justice, reparation, memorialization and guarantees of non-recurrence to address gross violations of human rights and international humanitarian law committed in colonial contexts.”, “*Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli: Transitional justice measures and addressing the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts*”, UN General Assembly, Seventy-sixth session Item 75 (b) of the provisional agenda\* Promotion and protection of human rights: human rights issues, including other means of enhancing the effective enjoyment of human rights and fundamental freedoms; Promotion of truth, justice, reparation and guarantees of non-recurrence, 19 July 2021, A/76/180.

State initiatives have been mounted, however, that seek to expiate this wrong. For example, in Australia, National Sorry Day is celebrated every May to remember and commemorate the mistreatment of indigenous peoples.

78. Statues honouring colonial periods and figures are still displayed in many former colonial Powers and settler States, and also in independent countries. In the central square of the village May Jirgui in the Niger, graves are preserved of the French soldiers who led the Central African Mission, in which tens of thousands of people were massacred, but there are no memorials to the victims. All this is indicative of a lack of awareness of the legacy of colonialism and its insufficient inclusion in historical records and educational curricula. Civil society campaigns seeking to remove memorials of colonialism have recently sprung up around the world. In the United Kingdom, Bristol's Colston Hall, named after a slave trader, was renamed after decades of protests and the toppling of a statue of Colston by Black Lives Matter protesters.

79. In memorialization processes, the participation of victims is of critical importance. Furthermore, **while some of these processes may have been undertaken on the initiative of the victims or their families, they should be officially promoted and supported. In the United States, the most important memorialization processes concerning the harm suffered by the Lipan Apache community have emerged from civil society.**

80. In any event, it is important not to close the debate by organizing a meaningless commemoration for the victims. Some burial ceremonies were held in Tunisia for people who had fought for independence, but victims' groups did not feel that the ceremony had any value for them. One of the petitions submitted by these groups to the Truth and Dignity Commission was for them to participate in a ceremony in which the remains of the victims (martyrs) would be duly dignified. Memory must be the expression of the feelings and suffering of the victims, otherwise it loses value."<sup>17</sup> [our emphasis added]

A Indigenous Truth Commission regarding the USA and with the support of the United Nations for formal process, to hold accountability to the USA, will help to begin to document what has really been happening. Given that the UN has a long-standing and in fact foundational commitment to End all Forms of Colonialism and now also Legacies of Colonialism<sup>18</sup>, as well as Genocide, and that it was for this reason that Self-Determination of Peoples has been so enshrined as in the ICCPR, and the likes of the UN Decolonization Committee exists, and that the UN is the center of International Law of Human Rights and many forms of remedy-justice-processes. It would be fair and due diligence that the UN step in and hold the USA accountable to undergoing a remedy formal Truth process (Commission, etc) re its own colonialism, and crimes and histories, therein.

The right to self-determination of Peoples and Indigenous Peoples especially means the right to freely determine political status. For the USA to control what such a status must look like and be formed as so as to parallel its own colonial likeness is nothing short of continued genocide and colonialism, and in ICCPR violation.

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<sup>17</sup> "Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli: Transitional justice measures and addressing the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts", UN General Assembly, Seventy-sixth session, Item 75 (b) of the provisional agenda, Promotion and protection of human rights: human rights issues, including other means of enhancing the effective enjoyment of human rights and fundamental freedoms; Promotion of truth, justice, reparation and guarantees of non-recurrence, 19 July 2021, A/76/180.

<sup>18</sup> See *Negative impact of the legacies of colonialism on the enjoyment of human rights*, Resolution 48/7 adopted by the UN Human Rights Council on 8 October 2021 (48th session), A/HRC/RES/48/7, available at <https://digitallibrary.un.org/record/3945630>; see also the corresponding *Human Rights Council panel discussion on the negative impact of the legacies of colonialism on the enjoyment of human rights* UN Press Release: "Acting High Commissioner: Addressing the Legacies of Colonialism Can Contribute to Overcoming Inequalities Within and Among States and Sustainable Development Challenges of the Twenty-First Century, 28 September 2022, <https://www.ohchr.org/en/press-releases/2022/09/acting-high-commissioner-addressing-legacies-colonialism-can-contribute>

*Suggested Recommendations to the USA:*

- The USA should end its colonial recognition system and undergo Transitional, Transformative, Reparative Justice via a comprehensive Truth Commission and formal Decolonization Process under the equitable and inclusive guidance of International Law.

Attachments:

Dr. Margo Tamez submission to the UN Special Rapporteur on truth, justice and reparation called for inputs from the public on “Transitional justice measures and the legacy of human rights violations in colonial contexts”

LAWD submission to the UN Special Rapporteur on truth, justice and reparation called for inputs from the public on “Transitional justice measures and the legacy of human rights violations in colonial contexts”



This response to the HR-SP Questionnaire is being submitted by the Lipan Apache Women Defense. Our input here is an expression of key dimensions of the right to self-determination and autonomy of the Ndé people, whose ancestral identity and presence transcends and historically precedes the limits of the international border between the United States of America (US) and Mexico marked by the Big Water, which is also known as the Rio Grande/Rio Bravo rivers.

This border and its militarization, enforcement and ongoing externalization throughout Mexican and Guatemalan territory and that of the Mesoamerican region, is deeply embedded in the racist, xenophobic practices of the settler colonialist states known as the United States of America and Mexico, and their equivalents throughout the Western Hemisphere. These continuing policies and acts of structural and systemic violence- summarized here and documented in the attachments to our response- rise to the level of crimes against humanity and persecution of indigenous peoples, communities of African descent, migrants, and women and children, in defiance of the applicable standards of international law pursuant to the Rome Statute, and of the minimum requirements of human conscience and decency. ***None of these crimes on both sides of the border have yet been fully addressed by the kind of participatory transitional justice process to which we are committed, and demand, and that we are entitled pursuant to international standards.***

We were born from Gochish (Lightning People), Gonicéindé (Big Water People), Suma Ndé (Red Mud Painted People), Cúelcahén (Tall Grass People), and Cīšiihíndé (Black Rock People). In this text, we use "Ndé Lipan Apache" and "Lipan Apache" interchangeably.

Since the mid-to late eighteenth century, the Ndé have interrelated in kinship, marriage, reciprocity, ceremony, governance, cosmology, justice, and land-based knowledge systems with Tlaxcaltecas, Nahuas, Coahuilas, Kickapoo, Jumano Apaches, and Mescalero Apaches, on both sides of the US/Mexico border. Inter-exchange and alliance building through inclusive kinship relations - rural to urban - are persistent features of Ndé forms of cultural resilience and adaptation, which constitute responses to ongoing threats to our indigenous worldviews and rights.

We situate the Texas-Mexico border wall and all of the trappings and expressions of border militarization within Ndé oral history and narratives of genocide, colonization, carceral containment systems, and have undertaken land-based struggles as an act of reclaiming the Ndé homeland, *Kónitsaahii gokíyaa*. This text challenges the state's normative sovereignty and the uncritical acceptance of zones of impunity. The time has come for a radical rethinking of indigenous anticolonial movements along and traversing U.S. borders as a key nexus where indigenous revolutionary consciousness, resistances to state violence, and reclamations of indigenous rights are reshaping the epistemology and governance of lands, territories, and communities on both sides of the border.

On and across the Texas-Mexico border, Ndé people's memories of genocide point to sites where indigenous knowledge challenges Texas, the United States, and the Texas-Mexico border wall as constructions of the permanent "state of exception" imagined by Walter Benjamin, Giorgio Agamben, and Achille Mbembe within the framework of the "traditions of the oppressed". Situating the border wall within the Ndé genocide and social memory of the prison provides a basis for a counterhistory of indigenous narrative memory locked up in bodies, photographs, earth, and containment. This witnessing shatters the normative conception of European- "American" history as predetermined, compartmentalized

periods where indigenous peoples in the Texas-Mexico border region are merely shadows, dehumanized and dismembered figures.

The border wall is an integral part of this state-sponsored machinery of war and destruction.. Indigenous confrontations with settler colonialism defy the official public memory, which normalizes the Texas deathscape, the killing fields, the prisons, the internment camps, the mega-ranches, monoculture cotton and citrus fields, and oilfields. Ndé views, within enclosed and supervised spaces, continually narrate against forgetting the truth of what was witnessed, that "colonial occupation itself was a matter of seizing, delimiting, and asserting control over a physical geographical area - of writing on the ground a new set of social and spatial relations."

The Ndé extended kin - who ground resistance to the border wall in a community-based, antistate alliance - bear indigenous witness in defense of a worldview connected to responsibilities and accountability. This framework demands from them a confrontation against capitalist and patriarchal normality, atrocity, gender violence, and settlers' ritual coloniality. Ndé are actors in a resurging revolutionary consciousness across the region; Ndé popular constructions (denouncements, posters, artwork, song, poetry, film) demonstrate the resilience and persistence of more than four centuries of forging alliances with Tlaxcaltecas, Nahuas, Coahuilas, Purepechas, Mescaleros, Jumanos, Kickapoos, and urban Xicanos.

**(750 words approx. introductory segment ends here)**

All of these are trans-border indigenous peoples who are collective, transnational collective subjects of the rights at stake within the framework summarized above and described in greater detail below and in the attachments to this response.

Drawing from the taproots of this history, Ndé have galvanized a pluriversal indigenous reality, which challenges the bounds of the identities imposed by state and oligarchic wardens upon indigenous peoples: "*Mexicans*," "*Latinos*," "*illegals*," "*foreigners*." Privileging the testimonies of elders, women, and chiefly peoples, we seek to underline the importance of Ndé's inherent relationship to a homeland which is neither bounded by borders, nor based in biological "*Native*" authenticity, ethnicity, or race. Instead, our worldview is inter-woven through a complex web of kinship, remembrance, and the recovery of mother tongues, first foods and water governance, and gender complementarity in self-governance.

Demanding an interrogation of state criminality relative to the border wall has been at the fore-front of indigenous women's call for shared participation in decision making, critical ethics, and revitalizing indigenous protocols and principles based in respect and regard for elders and indigenous knowledge systems. As witnessed in the creation of women-led lawsuits against the government, indigenous women's concepts of self-governance - founded in reclaiming and recovering matrilineal, matrilocal, and matrifocal knowledge systems - critique the patriarchal violence aligned with coloniality.

Ndé elders', women's, extended families' and chiefly peoples' knowledge systems, in conversation with each other, have historically been a resource shaping indigenous peoples' analyses and interrogations of genocide and state crimes. Since 2006, we have been working alongside Ndé people in the recovery of memories, stories, and documents for the express purpose of supporting self-determination and rights recovery. Here, I provide remembered and recovered Ndé clan and kinship knowledges from *Kónitsaahii dá'ááši gokíyaa* - The Ndé customary territory encompassing over 6.5 million acres in the Texas-Mexico binational region. These are fragments from a much larger project by, with, for, and alongside indigenous peoples, involving mapping and digitizing Ndé experiences prior to and after genocide and state criminality.<sup>6</sup> From the Ndé methods approach, the U.S. border wall and its attendant capitalist,

development, and destructive intent are situated within Ndé memory and story. This perspective centers indigenous agency prior to and enduring beyond the wall.

We borrow here Patrick Wolfe's statement on settler colonialism, which is useful for understanding the European American occupation of indigenous time, place, and space. Thus, decolonizing the construct of European American history is understanding the indigenous viewpoint: "invasion is structure not an event." For generations, indigenous decolonial challenges and defenses were enacted through ritualized remembering, memorializing, and returning. Reclaiming indigeneity as a positive - as a struggle to protect indigenous self-governance in a multi-gender value system and within a constellation of gendered worldviews of Kónitsaahii dá'ááši gokíyaa - is central to rethinking indigenous peoples' genocidal trauma, and its reoccurrences. Recovering is inevitably interwoven with remembering and reenvisioning ourselves as the landowners of our customary lands, and with breaking the chains of anthropological objectification. It is within the indigenous conception of temporal, spiritual, psychic, and physical continuums of endurance and adaptation that confrontations, refusal, dissidence, and resistance to replacement and elimination get enacted

Submitted by: Camilo Pérez-Bustillo, J.D, Visiting Professor of Human Rights and Social Justice, College of Law/Psychology Department-National Taiwan University (NTU, Taipei); Affiliate, Global Research Programme on Inequality (GRIP, University of Bergen, Norway); Fellow, Center for Advanced Study in the Behavioral Sciences (CASBS-Stanford University), and Research Fellow, University of Dayton School of Law

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**MARGO TAMEZ, PHD, MFA**

**RESPONSE TO**

Mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

**Questionnaire**

**Transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts**

Within the framework of Human Rights Council resolution 45/10, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has been mandated to “identify, exchange and promote good practices and lessons learned, and to identify potential additional elements with a view to recommending ways and means to improve and strengthen the promotion of truth, justice, reparation and guarantees of non-recurrence.”

In compliance with this mandate, the Special Rapporteur decided to devote his report to the 76th session of the General Assembly, in October 2021, to examine the question of the adoption of transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts.

In order to obtain a broad representation of views to inform the thematic report, the Special Rapporteur is seeking written contributions by Member States, civil society and other relevant stakeholders through responses to the questionnaire below.

In particular, the Special Rapporteur would appreciate receiving specific examples regarding the design and implementation of measures in the field of truth, justice, reparation, memorialization and guarantees of non-recurrence to address gross human rights violations and serious violations of international humanitarian law committed in colonial contexts, or the considerations that prevented their adoption, and the legal and institutional frameworks underpinning those measures or lack thereof. In this regard, the Special Rapporteur is particularly interested in identifying challenges and lessons learned, good practices and existing or emerging opportunities, as well as relevant national, regional and/or international jurisprudential developments.

Please note that you can choose to answer all or some of the questions below

In particular, the Special Rapporteur would appreciate receiving specific examples regarding the design and implementation of measures in the field of truth, justice, reparation, memorialization and guarantees of non-recurrence to address gross human rights violations and serious violations of international humanitarian law committed in colonial contexts, or the considerations that prevented their adoption, and the legal

and institutional frameworks underpinning those measures or lack thereof. In this regard, the Special Rapporteur is particularly interested in identifying challenges and lessons learned, good practices and existing or emerging opportunities, as well as relevant national, regional and/or international jurisprudential developments.

### INTRODUCTION:

Da'nzho (warm greetings), my name is Margo Tamez, PhD, MFA. I'm enrolled with the Lipan Apache Band, Texas. I am the co-founder of Lipan Apache Women Defense, a direct-action mutual aid organization which serves Lipan Apache community members, as well as related tribal peoples throughout the customary and traditional homelands, known as *Kónitsaqúígokíyaa*, and otherwise known as Texas and northeastern Mexico (Tamaulipas, Coahuila, Nuevo Leon, and Chihuahua). Since 2007, I have been an active participant in the UNPFII, UNEMRIP, UN Special Rapporteur on Indigenous Issues, UN CERD, and UN CCPR. I have also been an active participant in the Inter-American Commission/Organization of States as an Indigenous plaintiff. With the permission and authority of **Dr. Eloisa Garcia Tamez** and the Lipan Apache Band of Texas, I represent the issues of the U.S. Border Wall and the human rights violations against Lipan Apache women land holders, Lipan Apache and Jumano Apache families along the Texas-Mexico border directly impacted by U.S. militarization, dispossession, and hostility against Indigenous land owners along the Texas-Mexico border, the legacy of colonialism and settler colonialism in the region, racism, discrimination, and the significant carceral system in the Texas-Mexico border region.

To many Indigenous peoples in North America, and human rights advocates around the world, the severe and en masse human rights violations enacted against Dr. Eloisa Garcia Tamez (Lipan Apache), not only negatively affected her and her family members and descendants, it also deepened the damage to her community of El Calaboz village, as well as deepened the damage against the Lipan Apache Band of Texas and its citizens and members. Lipan Apache of Texas are the direct descendants of Lipan Apache native title holders from several Treaties, Spanish Crown mechanisms, and still hold original and inherent Indigenous proprietary title – never ceded nor surrendered to the United States or any of its European successor states, republics, confederacies, and monarchies. In this, the Dr. Eloisa Garcia Tamez and the Lipan Apache nation are unique in the 21<sup>st</sup> century as a community who have continuous title to customary Lipan territory. As a result of non-surrender as a continuum, the Lipan Apaches of Texas have a history of severe persecution, genocidal violence, inter-generational trauma, extreme marginalization in Texas and in the U.S., and are dispossessed of their

homelands in Texas by way of colonial violence and dispossession. **Contact:**  
[margo.tamez@gmail.com](mailto:margo.tamez@gmail.com)

### Questionnaire

1. Please indicate which mechanisms have been established in the concerned country to hold accountable persons accused of committing or bearing responsibility for gross violations of human rights and serious violations of international humanitarian law in colonial contexts. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in investigating, prosecuting and sanctioning such crimes.

- In the United States and in Texas, no mechanisms have been established in the concerned county to hold accountable persons who committed and who bear responsibility for gross violations of human rights and serious violations of international humanitarian law in colonial contexts of the U.S. and Texas.
  - Please see attached legal cases which provide the detailed information related to *Eloisa Garcia Tamez v. Michael Chertoff, et al. (2007)*
- Mechanisms have not been adopted which is consistent with the U.S. history of settler colonialism, denial, and resistance to accountability and responsibility for its long history of genocide and dispossession against Indigenous peoples.
- While the U.S. formally adopted the United Nations Declaration on the Rights of Indigenous Peoples, during the former President Barack Obama's administration, the U.S. position has always been that the only Indigenous peoples to whom it will enter into formal dialogue and discussion regarding Indigenous rights are the [574 U.S. Federally Recognized Tribes](#).
- The United States denies that it has obligations to [400+ Federally Non-Recognized Tribes](#) (FNRT) of the United States. Officially, the United States government produces no data on the 400+ FNRT, has never provided social, economic, cultural, education, health, or humanitarian support or resources to them. This U.S. persistent racism against the 400+ FNRT is a systemic and structural failure was named and identified by Philip Alston, the Special Rapporteur on extreme poverty and human rights mission to the United States, reported, (section D. Persistent discrimination and poverty, Race), "The United

States remains a chronically segregated society.”<sup>1</sup> The Special Rapporteur Alston “heard testimonies from Chiefs and representatives of federally recognized and *non-recognized tribes* (emphasis mine) on widespread extreme poverty in their communities.”<sup>2</sup> Alston went further to bring into relief the dire situation of poverty, marginalization, and extreme vulnerability of 400+ FNRT, stating: The situation of non-federally recognized tribes is even more desperate, for they are not eligible to benefit from federally funded programs. While 567 tribes are federally recognized, some 400 are not. The latter exist in a context in which their way of life is not legally sanctioned, they are disempowered and their culture is threatened. Failure to collect disaggregated data for those tribes also hinders the development of evidence-based policies to address their situation.<sup>3</sup>

- **Eloisa Garcia Tamez** counter-sued the Michael Chertoff – the former Secretary of the U.S. Department of Homeland Security (2005-2009). Tamez’ included in her lawsuit the U.S. Customs Border Patrol, and the U.S. Army Corps of Engineers in the U.S. 5<sup>th</sup> District Court. Nearly three years of litigation exhausted Tamez’ resources, health, and capacity to appeal the many legal obstructions documented by human rights attorneys **Peter Schey, Denise Gilman, and Ariel Dulitzky**. Tamez exhausted all remedies and pursued the case at the Inter-American Commission/Organization of American States, in which Denise Gilman and the University of Texas School of Law Texas-Mexico Border Wall Working Group represented. Gilman was not able to secure sufficient resources to pursue this ground-breaking and precedent setting case further to the Inter-American Court/OAS. Tamez pursued justice in the U.N. CERD Early Action Urgent Warning Special Procedure, represented by Ariel Dulitzky (University of Texas at Austin, School of Law) and Dr. Margo Tamez (The University of British Columbia, Indigenous Studies).

**2. Please indicate which measures have been established in the concerned country to inquire on and establish the truth about gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such mechanisms were established, please indicate how was**

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<sup>1</sup> A/HRC/38/33/Add.1. *Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America*, 4 May 2018, page 14.

<sup>2</sup> *Ibid.*, 16.

<sup>3</sup> *Ibid.*, 17.



**the outcome of the inquiries made public and conveyed to victims and civil society in the affected country as well as to civil society in the former colonizing power. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.**

Despite the above legal procedures, advocacy and activism, and global media awareness about the Tamez family land protection and land defense struggle, and the campaign for the international and national recognition of Lipan Apache rights to self-determination, including customary territory, and social-economic-cultural-political rights, the United States has failed to address the numerous concerns and recommendations raised by each tribunal mentioned above.

In 2011, the Lipan Apache community held a 2-day gathering, June 21-23, “Lipan Apache (Ndé) Gathering on Self-Determination, Territory, and Human Rights. The Lipan Apache Matriarchs, Eloisa Garcia Tamez and Margo Tamez, hosted the union of Indigenous representatives and witnesses, held listening sessions, heard stories and testimonies of community experiences, memory, and injustices. This gathering manifested a Declaration of Truth, Memory, Historical Clarification and Redress. The Lipan Apache women mandated a list of grievances, demands, actions, and coordinated efforts to expand awareness globally and to call for Indigenous solidarity with the Lipan Apaches to demand justice. The Matriarchs directed that this campaign for Truth, Memory, Redress, and Justice be coordinated through a mutual aid, direct action service organization, The Lipan Apache Women Defense.

A Lipan Apache gender perspective was adopted throughout the above procedures, between 2007 – present.

**3. Please indicate which measures have been established in the concerned country to provide reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such processes were established, please indicate which type of reparation was provided to victims (for example: restitution, compensation, satisfaction, and /or rehabilitation). If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively**

consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

- There have been no measures established in the concerned country to provide reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts.
- The utter absence, silence, and disavowal of the U.S. administrations: George W. Bush II, Barack Obama, Donald Trump, and Joseph Biden are each enabling and perpetuating the U.S. historical genocide policy against the Lipan Apaches and 400+ FNRT. While many Indigenous peoples who are FNRT, organizations working on their behalf, academics, and legal advocates have protested, there are absolutely zero funds, zero resources, and zero infrastructure to pursue a systemic and structural shift in this dynamic. Most human rights lawyers, including Denise Gilman and Ariel Dulitzky, who are very familiar with these cases named, are currently under-resourced and over-extended with the massive numbers of human rights violations occurring daily in Texas detention centers which contain thousands of Indigenous migrant children, women, and families. The entire human rights system in the United States is overwhelmed with numerous cases of Black community and families in pursuit of justice for thousands of human rights violations concurrently.
- I am the main support person for the Tamez and Lipan Apache case. I see much potential in pursuing this case in the UN system in mechanisms such as the UN Convention on Civil and Political Rights. The challenges are steep and I would require support from the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.
- In the above named cases and pursuit of justice, I learned that, although all the lawyers had very good intentions and worked incredibly hard, none of them had cultural knowledge, familiarity, or competency in anti-Indigenous racism in Texas and the United States. This hindered the cases considerably. Going forward, I feel that the next step required is to conduct in-depth training of all involved. As a result, the Lipan Apache victims and all related and affected communities *have not been effectively consulted* in the design and implementation of the case preparations, the lack of meaningful and sustained contact between the lawyers and the community, and due to the overall lack of resources to sustain respectful and responsible relations with Indigenous plaintiffs who are Indigenous women. Therefore, though the Indigenous women developed a complex and nuanced gender perspective, the law experts did not have the fulsome approach to engage the Indigenous gender perspective through each of the cases. This was a major challenge to all parties, and especially has had

negative impacts on the Lipan Apache women, girls, and families who continue to be front-line land protectors—in the space of U.S. impunity and immunity.

**4. Please indicate which measures have been established in the concerned country to memorialize the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If yes, please indicate whether memorialization processes were established in the affected country and /or in the former colonizing power. If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.**

- The United States and Texas do the opposite. That is, the normative “memorialization” across Texas are thousands of road-side history markers, which are memory pieces indicating the settler colonial place-making as heroic feats. In fact, each Texas road-side marker provides vivid details of glorified genocide.
- The United States is involved in significant history erasure projects as on-going settler colonialism.
- When Indigenous peoples attempt to change the landscape of memory, by tearing down statues of colonial representation (such as missionizing priests, colonial Indian killers, colonial war heroes), this is met with police brutality, fines, imprisonment, and criminalization.
- The most important memorialization projects have been directed and coordinated informally by Lipan Apache elders, artists, poets, historians, and youth: protest marches which memorialize Lipan Apache history and herstory through Lipan Apache memory and counter-narrative; Lipan Apache reunions and oral history gatherings to recount and retell the oral history of massacres, genocides, and hidden history; Lipan Apache revitalization of the Isanalesh Gotal ceremony which pays homage to Lipan Apache matriarchal women’s memory of Creation Stories, Cosmology, and Sacred Knowledge of Lipan Apache place-making, philosophy, science, law, and governance through matrilineal ways of knowing.

**5. Please indicate which measures have been established in the concerned country to guarantee non-recurrence of the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such mechanisms were not adopted, please explain why. Please**

**indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.**

- No measures have been established in the concerned country to guarantee non-recurrence of the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts
- The border wall and Indigenous dispossession across the Texas border continues in the present moment. Police brutality and surveillance and denial of access to justice continues.
- The state has never adopted a gender perspective outside of its normative male-centric, Eurocentric, patriarchal, toxic masculinity and cis-gender, straight, heterosexual gender perspective.

Given the timeline for the preparation of the thematic report, we kindly request that written contributions be sent in Word format to [srtruthcalls@ohchr.org](mailto:srtruthcalls@ohchr.org) by 7 May 2021. We would also welcome any other document, report or article providing further information on this topic in the country concerned.

Please limit your contributions to a maximum of 750 words per response and attach annexes, where necessary. Your responses may be published on the website of the Office of the High Commissioner for Human Rights.

Should you not wish to have your response published on the website, please indicate so in your response.

We thank you in advance for your cooperation, and for your responses.