



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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Excellency,

I write to inform you that in the course of its 82nd session, the Committee on the Elimination of Racial Discrimination considered, under its early warning and urgent action procedure, the **situation of the Kikapoo 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.**

According to the information received by the Committee, as of 2005, the United States Congress began enacting legislation allowing the Government to build a wall along the border between the United States of America and Mexico, with the purported aim of preventing the entrance of alleged terrorists, undocumented immigrants, and drug traffickers. Pursuant to the adoption of the REAL ID Act and the Secure Fence Act in 2005 and 2006 respectively, the Department of Homeland Security has reportedly waived 36 Federal and State laws to proceed with the construction of the wall, including the National Environmental Policy Act, the Endangered Species Act, the Native American Graves Protection and Reparation Act, the American Indian Freedom Act, and the Administrative Procedure Act. Subsequently, the border wall has allegedly been 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 way 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 Committee expresses its concern regarding the potentially discriminatory impact that the construction of the border wall might have on the Kikapoo, Ysleta del Sur Pueblo and Lipan Apache indigenous communities, including their access to tribal lands located north and south of the border and to resources required for traditional ceremonies.

Her Excellency
Ms. Betty E. King
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In particular, the Committee is concerned by the situation of the Lipan Apache, a tribe which reportedly remains Federally unrecognized, given the information received that the construction of the wall through its land has allegedly 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 the disappearance of the tribal identity altogether as the community may be forced to leave the land.

Moreover, the Committee is concerned that, based on the information before it, 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. With regard to the latter, it has been reported that the Government's use of eminent domain powers cannot be effectively challenged in court, and that courts have not allowed claims to be brought regarding the potentially discriminatory impact of the wall.

In addition to the aforementioned case, the Committee also considered the reply of the State party to its previous cases examined under the early warning and urgent action procedure concerning the impact of the **Ski Resort Project in San Francisco Peaks** on indigenous peoples' spiritual and cultural beliefs and the **situation of the Western Shoshone**. The Committee would like to thank the State party for its note verbale of 29 August 2012, in which it provided links to its response to the communication sent by the Special Rapporteur on the rights of indigenous peoples, the Annex to the State party report submitted to the Committee in 2007 regarding the Western Shoshone, as well as the 2009 follow-up report to the Committee reiterating the position of the State party in relation to the Western Shoshone. The Committee notes that further information will be included in the periodic report which is currently under preparation.

While welcoming the responses and clarifications provided, the Committee would like to request that the State party provide updated and detailed information in its periodic report, overdue since 20 November 2011, on the following:

- (1) The impact of the Texas-Mexico border wall on the rights of indigenous communities to have access to their land and resources that their own, or traditionally use, and to holy places, in community with people belonging in the same tribe; any recent or future measures envisaged to consult with and consider the requests of the affected communities; information on any compensation provided to affected communities to date; and any measures envisaged to reverse the negative impact of the construction of the border wall;
- (2) Information on any further measures envisaged to engage with the operator of the Arizona Snowball Ski area to encourage the use of sources other than reclaimed waste water to produce artificial snow; and information on the outcomes of the appeal submitted to the Ninth Circuit;
- (3) Substantive responses to the issues raised by the Committee in its Decision 1 (68) of 11 April 2006 concerning the situation of the Western Shoshone, in particular those identified in paragraph 7 of the decision, namely:
 - legislative efforts to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers;



- destructive activities which are conducted and/or planned on areas of spiritual and cultural significance to the Western Shoshone peoples, including federal efforts to open a nuclear waste repository at the Yucca Mountain, the alleged use of explosives and open pit gold mining activities on Mont Tenabo and Horse Canyon, and the alleged issuance of geothermal energy leases at, or near, hot springs;
- resumption of underground nuclear testing on Western Shoshone ancestral lands;
- conduct and / or planning of all such activities without consultation with and despite protests of the Western Shoshone peoples; and
- difficulties encountered by Western Shoshone peoples in appropriately challenging all such actions before national courts and in obtaining adjudication on the merits of their claims, due in particular to domestic technicalities.

The Committee looks forward to receiving the information requested above in the State party's periodic reports.

Allow me, Excellency, to reaffirm the wish of the Committee to continue to engage in a constructive dialogue with the Government of the United States of America, with a view to assist the State Party in the effective implementation of the Convention.

Yours sincerely,

Alexei Avtonomov
Chair

Committee on the Elimination of Racial Discrimination