



SCHOOL OF LAW  
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Committee on the Elimination of Racial Discrimination (CERD)  
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Dear Members of the Committee,

On behalf the Human Rights Clinic at the University of Texas School of Law, I have the honor to address the Committee on the Elimination of Racial Discrimination (CERD). I respectfully request that CERD follow-up on its previous early warning issued on behalf of communities affected by the U.S. Government's construction of a wall along the border between the United States of America and Mexico. The Human Rights Clinic believes that this follow-up is necessary in light of the recent U.S. Government's executive order for "Border Security and Immigration Enforcement Improvements"<sup>1</sup> because said order will impose the same adverse effects on those and other communities living along the border.

As CERD is already aware, in 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."<sup>2</sup> When construction began, "The Committee expresse[d] 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."<sup>3</sup> "Moreover, the Committee [was] 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

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<sup>1</sup> Office of the Press Secretary, Executive Order: Border Security and Immigration Enforcement Improvements (January 25, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>.

<sup>2</sup> Comm. on the Elimination of Racial Discrimination, Rep. on the Work of Its Eighty-Second Session, U.N. Doc. CERD/82<sup>nd</sup>/GH/CR/MN (March 1, 2013).

<sup>3</sup> *Id.*

compensation has 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.”<sup>4</sup>

The U.S. Government announced on Wednesday, January 25, 2017, an executive order for “Border Security and Immigration Enforcement Improvements.” The purpose of the order is to “secure the southern border of the United States through the immediate construction of a physical wall on the southern border, monitored and supported by adequate personnel so as to prevent illegal immigration, drug and human trafficking, and acts of terrorism.”<sup>5</sup>

The U.S. Government’s planned expansion of the border wall, will have an adverse and unlawful impact on the communities living along the border, especially indigenous communities. That the previously constructed border wall’s racially discriminatory effect has not been remediated supports this contention. The new order is more expansive than previous initiatives, and it was not specifically authorized or funded by Congress, and it was implemented without any type of consultation or consideration of potentially affected communities including indigenous communities. In fact, the executive order was adopted within the context of broader discriminatory immigration policies recently adopted. As CERD is aware the U.S. Government recently imposed a travel ban to citizens from seven predominately Muslim countries and suspended the resettlement of refugees.<sup>6</sup> These actions received strong condemnations from different UN entities.<sup>7</sup> The expansion of the border wall together with the other Executive orders and the rhetoric from U.S. authorities, represent, as the Inter-American Commission on Human Rights said, “a policy designed to stigmatize and criminalize migrants or anyone perceived as a migrant.” The Commission added “these executive orders reflect a high degree of discrimination of migrant communities and minority groups, particularly Latinos and Muslims or those perceived as such. The implementation of these executive orders puts migrants and refugees at grave risk of violation of their rights”.<sup>8</sup>

A follow-up by CERD on the previous early warning is warranted because the situation satisfies five elements of the early warning and urgent action procedure: (1) adoption of new discriminatory legislation; (2) encroachment on traditional lands of indigenous peoples; (3) a

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<sup>4</sup> *Id.*

<sup>5</sup> Office of the Press Secretary, Executive Order: Border Security and Immigration Enforcement Improvements (January 25, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>.

<sup>6</sup> *Id.*

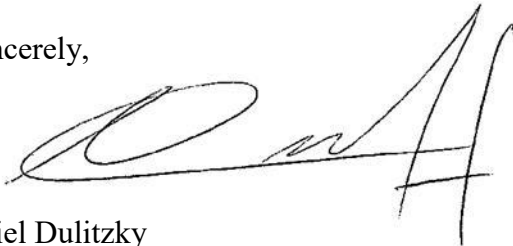
<sup>7</sup> See e.g. Press Release, U.N. High Comm’r for Human Rights, US travel ban: “New policy breaches Washington’s human rights obligations,” (Feb. 1, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21136&LangID=E>; US should lift measure suspending refugee resettlement, says UN chief Gutierrez, <http://www.un.org/apps/news/story.asp?NewsID=56087#.WJPkblMrIqM> ; Joint IOM-UNHCR Statement on President Trump’s Refugee Order, <http://www.unhcr.org/en-us/news/press/2017/1/588bc4e34/joint-iom-unhcr-statement-president-trumps-refugee-order.html>.

<sup>8</sup> IACHR Expresses Concern over Executive Orders on Immigration and Refugees in the United States, [http://www.oas.org/en/iachr/media\\_center/PReleases/2017/008.asp](http://www.oas.org/en/iachr/media_center/PReleases/2017/008.asp).

significant and persistent pattern of racial discrimination evidenced by social and economic factors; (4) lack of an effective recourse procedure; and (5) lack of judicial remedy.<sup>9</sup>

The Human Rights Clinic respectfully requests that the Committee on the Elimination of Racial Discrimination follow-up on the previously issued early warning.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ariel Dulitzky', written in a cursive style.

Ariel Dulitzky  
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<sup>9</sup> Memorandum from the Human Rights Clinic at The University of Texas School of Law to the Secretary Gabriella Habtom, U.N. Comm. On the Elimination of Racial Discrimination, 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 (80th Session) (2012) (on file with the University of Texas School of Law Library).