

July 10, 2020

To: United Nations Special Rapporteur on the Rights of Indigenous Peoples Mr. Francisco Cali Tzay

Via email to indigenous@ohchr.org

Re: Request for urgent response to Treaty Violations by the United States government and its current President Donald Trump

Respectful Greetings,

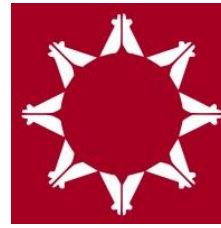
The Sicangu Treaty Council, the Black Hills Sioux Nation Council and the International Indian Treaty Council are writing to you urgently to express our concern regarding the violations of human rights to the Lakota, Dakota and Nakota of the Oceti Sakowin (aka the "Great Sioux Nation") caused by the failure of the United States to honor, uphold and implement the rights affirmed in the Nation to Nation Treaties it concluded and legally ratified with the original Indigenous Nations of what is now the United States.

Of particular concern to us at this time is the political rally held on July 3, 2020 at Mt. Rushmore South Dakota by the current President of United State Donald Trump against the express wishes of the leaders of the Lakota, Dakota and Nakota Tribal Nations of the Oceti Sakowin, otherwise known as the Great Sioux Nation.

We are informing the Special Rapporteur on the Rights of Indigenous Peoples that 20 peaceful demonstrators, blocking access to the Mt. Rushmore rally site on their Treaty territory, primarily members of the Lakota Nation, were arrested and taken into custody on July 3, 2020. Mr. Nick Tilsen, Oglala Lakota Nation citizen and Executive Director of the community-based organization NDN Collective, one of the principle organizers of the protest, was among those arrested by South Dakota State police. His statement is attached.

We request that the Special Rapporteur call for all charges against them to be immediately rescinded since their actions were peaceful and based on the provisions of their legally-ratified Treaty with the United States. Since the Constitution of the United States affirms that "Treaties are the supreme law of the land", the actions of the Indigenous Peoples in this regard is also consistent with upholding the US Constitution.

Mt. Rushmore is now a National monument displaying the carved heads of 4 US Presidents. It is located in the sacred Black Hills (Hé Sapa) which was recognized as belonging to the Oceti



Sakowin under the terms of the 1851 and 1868 Ft. Laramie Treaties concluded with the United States. 10 years after the ratification of this Treaty by the US Senate, settlers discovered gold in the Black Hills. The land was then confiscated in 1877 by a unilateral act of the US Congress [February 28, 1877, 19 Stat. 254; *Sioux Nation*, 448 U.S. at 381-84, 424]. The Indigenous Peoples whose land rights had been affirmed by the Treaty were forcibly removed to reservations.

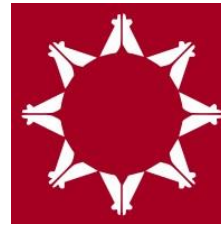
According to the Draft Charter of the Sicangu Treaty Council (entire document attached):

“Following the discovery of gold in the sacred Pahá Sápa (referred to by the wašiču as “the Black Hills”), in 1874 by a large Mílahąska Tšamakšóčhe military expedition led by General George Custer which entered Očhéthi Šakówin Oyáte territory under false pretext, the Mílahąska Tšamakšóčhe government abandoned its treaty obligation to preserve the integrity of Oyáte territory from trespassing prospectors and settlers. *United States v. Sioux Nation of Indians*, 448 U.S. 371, 376-79 (1980).”

Treaty Councils and Tribal Leaders of the Oceti Sakowin Treaty Territory, in affirming their opposition to President Trump’s July 3rd rally, cited the 1868 Ft. Laramie Treaty’s provision in Article 16 stipulating that the Indigenous Nations give their consent before non-native persons can enter their legally-recognized Treaty territory. They confirmed that no such consent was sought by the US President regarding his plans to hold a political rally at Mt. Rushmore, and that no consent had been given.

In 1980, the United States Supreme Court agreed that the United States had illegally annexed the Black Hills in violation of its Treaty with the Sioux Nation. However, they only agreed to monetary compensation which has never been accepted by the Tribal Nations in question, who have maintained the position to this day that “the Black Hills are not for sale.”

The 1999 United Nations Study on Treaties, Agreements and other Constructive Arrangements between States and Indigenous [People] also concluded that this land had been illegally taken. In this study, Special Rapporteur Miguel Alfonso Martinez cited the opinion of the US Supreme Court in this regard, that “... a more ripe and rank case of dishonorable dealing will never, in all probability, be found in the history of our nation” and considered that “...President Ulysses S. Grant was guilty of duplicity in breaching the Government’s treaty obligations with the Sioux relative to ... the Nation’s 1868 Fort Laramie Treaty commitments to the Sioux”.



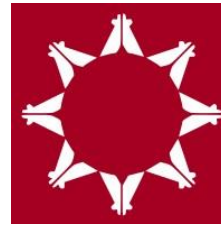
In addition, according to Tribal leaders and members, they were also very concerned regarding the introduction of new COVID-19 exposures into their traditional territories, as South Dakota's governor had announced that social distancing and masks were not going to be required at this political rally which was attended by the US President and over 7000 persons. This demonstrated a blatant disregard for the rights to health and life of the Indigenous Peoples of these lands. It is well document that Indigenous Peoples in the United States and elsewhere are particularly vulnerable to the impacts of the current pandemic and the COVID-19 illness.

In order to avoid further disputes and miscarriages of justice, the undersigned representative bodies, the Black Hills Sioux Nation Council (Oglala Lakota Nation), the Sicangu Treaty Council (Rosebud Sioux Tribe) and the International Indian Treaty Council (IITC) respectfully call upon the Special Rapporteur on the Rights of Indigenous Peoples to address this urgent and ongoing situation in accordance with his mandate, beginning with a public statement on the current urgent situation.

Since 1977, the International Indian Treaty Council and the Treaty Nations of the Oceti Sakowin have called on the United States Department of State to establish a process for dialogue with the Oceti Sakowin Tribal Nations for the establishment of a bilateral Treaty Commission or another similar formal process to resolve and redress past and current Treaty violations. This Commission, focused on violations of the 1851 and 1868 Treaties with the "Great Sioux Nation" could provide a model for the resolution and redress of Treaty violations of the 370 Nation to Nation Treaties concluded by Indigenous Nations and the United States of America. As called for in the 1999 United Nations Treaty Study, and affirmed in the UN Declaration on the Rights of Indigenous Peoples and General Recommendation XXIII of the UN Committee on the Elimination of Racial Discriminant, the work of this Commission must be bilateral with equal decision making authority by the US and Indigenous Nation Treaty partners. It must be transparent, fair and fully participatory, and must include the option for restitution of lands and resources that were taken without the free prior and informed of the Indigenous Peoples concerned.

Unfortunately such a Commission or other bilateral participatory process has never been established by the United States and Tribal Nations are forced to seek redress in the court system of the United States, requiring long years of expensive legal wrangling and producing decidedly mixed results.

Please see the attached document, presented by the IITC to the 3rd Seminar to the United Nation Study on Treaties in Geneva Switzerland in July 2012, for additional background information on this matter.



Mr. Special Rapporteur, we further respectfully request that, in addition to making a public statement expressing your urgent concern about this situation, you continue to closely monitor the situation including any progress in initiating dialogue for resolution of these Treaty violations. We commit to inform you of any additional human rights violations that may occur as a result of the recent US actions, including the status of pending legal actions against the protesters as well as health impacts due to the resulting spread of COVID-19.

We finally request that you offer your assistance to resolve this urgent matter in accordance with your mandate.

We thank you for your kind attention to this submission.

Respectfully submitted,

A handwritten signature in blue ink that reads "William A Means".

Mr. William A Means, Black Hills Sioux Nation Council (Oglala Lakota Nation)

A handwritten signature in blue ink that reads "Philomen Two Eagle".

Mr. Philomen Two Eagle, Executive Director, Sicangu Treaty Council (Rosebud Sioux Tribe)

A handwritten signature in black ink that reads "Andrea Carmen".

Andrea Carmen, Executive Director, International Indian Treaty Council (IITC)