



## INTERNATIONAL INDIAN TREATY COUNCIL

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### **Re: Urgent Human Rights Communication, Standing Rock Sioux Tribe, North Dakota, United States of America**

Esteemed Sirs and Madame,

Please receive our respectful greetings. The **International Indian Treaty Council (IITC)**, an Indigenous non-governmental organization with General ECOSOC Consultative Status, submits this urgent action communication in conjunction with the **Standing Rock Sioux Tribe** (“the Tribe”) located in Ft. Yates, North Dakota, United States.

We bring to your attention, as a matter of extreme urgency, ongoing threats and violations to the human rights of the Tribe, its members and its future generations resulting from the construction of an oil pipeline by the **United States of America Army Corps of Engineers** and **Dakota Access LLC, a subsidiary of Energy Transfer Crude Oil Company based in Dallas Texas**. Its proposed route is in close proximity to the Standing Rock Sioux Reservation and the Missouri River, main source of water for the Tribe. The proposed path of the 3.8 billion dollar 4-state pipeline, is intended to carry nearly half a million barrels of crude oil a day from North Dakota oil fields, crosses territory legally belonging to the Lakota and Dakota Peoples under the Ft. Laramie Treaty concluded with the United States of America (USA) in 1868. President Obama has himself referred to Treaties as “the supreme law of the land” in accordance with the United States Constitution. This pipeline’s construction is being carried out without the Tribe’s free, prior and informed consent in direct contradiction to their clearly expressed wishes.

The Standing Rock Sioux Tribe, in the enclosed attachments, has expressed its opposition and highlighted the detrimental effects of actions as well as failures to act by the U.S. Federal government and its representative agents.

Peaceful protests carried out by the Tribe and their supporters have resulted in over a dozen arrests, as well as threats, restraining orders and intimidation including a law suit issued against Tribal Chairman David Archambault II yesterday morning.

### **A. The Standing Rock Sioux Tribe**

The Standing Rock Sioux Tribe is a federally-recognized US Tribe whose status as part of the Sovereign Sioux Nation was affirmed with the signing of the 1868 Treaty. The United States has binding obligations to the Tribe based on Treaties, Trust responsibilities and more recently United Nations Human Rights Standards.

The Standing Rock Sioux Reservation was established by the federal government through the Act of March 2, 1889. The people of Standing Rock, often called Sioux, are members of the Dakota and Lakota Nations. The Standing Rock Sioux Reservation has a land base of 2.3 million acres and is located on the borders of south central North Dakota and north central South Dakota. The reservation is primarily made up of two counties — Sioux County, North Dakota and Corson County, South Dakota — and includes eight districts— Fort Yates, Cannon Ball, and Porcupine in North Dakota, and Bear Soldier, Wakpala, Running Antelope, Bullhead (Rock Creek), and Kenel in South Dakota. Each district has its own governance structure and is represented on the tribal council. The local economy is based in agriculture, gaming, and the government. Over 8000 Tribal members live on the Reservation.

### **B. The International Indian Treaty Council**

The International Indian Treaty Council (IITC) is an organization of Indigenous Peoples from North, Central, South America, the Caribbean and the Pacific working for the sovereignty and self-determination of Indigenous Peoples and the recognition and protection of Indigenous Rights, treaties, traditional cultures and sacred lands.

In 1977 IITC became the first Indigenous organization to receive Consultative Status with the United Nations Economic and Social Council (ECOSOC). In 2011, IITC was the first Indigenous organization to be upgraded to “General Consultative Status” in recognition of its long-standing participation in many areas of the United Nations system representing the rights, concerns and struggles of Indigenous Peoples.

The IITC was founded in June 1974 at a gathering on the Standing Rock Reservation attended by more than 5000 representatives of 98 Indigenous Nations. These delegates affirmed, in *the Declaration of Continuing Independence*, the IITC’s founding document “*Treaties between sovereign nations explicitly entail agreements which represent “the supreme law of the land” binding each party to an*

*inviolate international relationship...".* The IITC continues to base its work in the international arena on this sacred principle.

### **C. Violations of the United Nation Declaration on the Rights of Indigenous Peoples and other International Human Rights Standards**

Human Rights recognized in the United Nations Declaration on the Rights of Indigenous Peoples which are threatened or violated by the pipeline construction include the right to health, right to water and subsistence, threats against sacred sites including burial grounds, Treaty Rights, cultural and ceremonial practices, free prior and informed consent, traditional lands and resources including water, productive capacity of the environment, and self-determination.

The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007 and formally endorsed by the United States in 2010, now provides an internationally-recognized framework and minimum standard for upholding and implementing the rights of Indigenous Peoples in the United States and around the world. The Declaration recognizes, affirms and calls upon all States (countries) to uphold the rights of Indigenous Peoples to self-determination, traditional lands and resources, sacred sites and cultural practices, subsistence, health, free prior and informed consent, traditionally used lands and resources and the rights affirmed in Treaties concluded with Indigenous Nations, among others.

For example, Article 29 paragraph 2 affirms that *"States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent."*

Article 32 of the UN Declaration on the Rights of Indigenous Peoples further affirms the responsibility of states to uphold Indigenous Peoples' and Nations' right to free prior and informed consent regarding development projects as follows: *"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."*

The Standing Rock Sioux Tribe affirms no such good faith consultations took place and their consent was never obtained since they first learned of the project in 2014 and the U.S. Army Corps of Engineers approved the permits for construction in spite of their expressed opposition. On the contrary, the U.S. Army Corps of Engineers, which granted its approval for the Dakota Access Pipeline to run within a half-mile of the reservation and cross under the Missouri River without proper consultation or consent. In addition, they failed to provide timely and adequate information to the Standing Rock Sioux Tribal leaders, family members, food producers and cultural practitioners to enable them to understand the immediate and long term dangers and risks, including risks to child, maternal, intergenerational and, environmental health associated with this project. In addition, they were not informed that construction of the Dakota Access Pipeline would jeopardize and potentially desecrate and destroy sites of religious and cultural significance to the Standing Rock Sioux including traditional burial sites.

#### **D. Violations of the International Convention on the Elimination of All Forms of Racial Discrimination**

Additionally, in this urgent situation constituting discrimination through environmental racism, we highlight the violation of specific rights affirmed in the International Convention on the Elimination of all Forms of Racial Discrimination Convention (ICERD) Article 5 and 6 which specifically obligate State parties to ensure economic, social and cultural rights, *effective protection and remedies, and protection against any acts of racial discrimination which violate...human rights and fundamental freedoms.*

Further, CERD General Recommendation 23 (1995) calls upon the State Parties, to, inter alia:

*(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;*

*(e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.*

The CERD's 2008 Concluding Observations on the report of the United States including the following very significant recommendation: "*While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the [UNCERD] Committee finally recommends that the declaration be used as a guide to interpret the State party's obligations under the Convention relating to indigenous peoples.*" -- Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, 72<sup>nd</sup> Session, CERD/C/USA/CO/6 (2008) para. 29.*

Based on the violations of the ICERD, which is legally-binding for the United States as a State Party to the Convention, and the above recommendations of the CERD regarding the United Nations Declaration on the Rights of Indigenous Peoples, the United States has permitted **Energy Transfer**, the developer of the Dakota Access Pipeline, to violate the rights Indigenous Peoples based on race. It diverted the proposed route of the pipeline from the proximity of a non-indigenous population in Bismarck, ND to instead disproportionately impact the indigenous Standing Rock Sioux Tribe and their natural resources including water. The U.S. government via its agency the U.S. Army Corps of Engineers is party to this violation of the ICERD as the construction permits via this route were approved for the pipeline without consultation and consent of the Standing Rock Sioux Tribe.

#### **E. Treaty Violations**

Article 37 of the UN Declaration explicitly recognizes the right of Indigenous Peoples to the "*recognition, observance and enforcement*" of their Treaties and to have States "*honour and respect*" such Treaties.

The United States initially recognized American Indian Nations as preconstitutional and extraconstitutional international sovereigns. The over 400 treaties ratified between the United States

and American Indian Nations serve as the moral and legal guide for interactions between the United States and American Indian Nations. The United States Constitution calls Treaties “the supreme law of the land.” The provisions of the Fort Laramie Treaty of 1868, which includes the members of the Standing Rock Sioux Tribe, for instance, specifically notes that violations of said Treaty are punishable according to the laws of the United States.

Consent is also a legally-binding Treaty principle to which the United States is bound in this case:

*The United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn Mountains shall be held and considered to be unceded Indian territory, and also stipulates and agrees that no white person or persons shall be permitted to settle upon or occupy any portion of the same; or without the consent of the Indians first had and obtained, to pass through the same...<sup>1</sup>*

## **F. Actions against Human Rights Defenders**

Dakota Access LLC, the developers of the \$3.8 billion, four-state oil pipeline, have waged a concerted campaign to criminalize and intimidate Tribal leaders, Tribal members and their supporters who have turned to peaceful protest to halt the pipeline’s construction as an imminent threat to their human rights as described above. These protests became a necessity as other channels of access to remedy and redress resulted in no response.

Human Rights Defender and Standing Rock Sioux Tribal Chairman David Archambault was arrested Friday, August 12, 2016 at a protest rally where the Dakota Access Pipeline is headed toward the Missouri River just north of the reservation boundary. According to news sources, Archambault was booked into the Morton County Jail and released on bond. He was charged with disorderly conduct. Morton County Sheriff Kyle Kirchmeier stated a total of 18 men and women have been arrested over the two-day protest, most for disorderly conduct, and two for a more serious charge of criminal trespass.

The company sued in federal court Monday, August 15, 2016 to stop protesters from "interfering with the project," alleging the safety of workers and law enforcement are at risk.

In an action that the Standing Rock Tribe views as intimidation, on August 17<sup>th</sup>, 2016 Dakota Access LLC filed a lawsuit against Standing Rock Sioux Tribal Chairman David Archambault II and other protesters, seeking a restraining order and unspecified monetary damages. They claim that the peaceful protesters “have created and will continue to create a risk of bodily injury and harm to Dakota Access employees and contractors, as well as to law enforcement personnel and other individuals at the construction site,” according to the companies charges in the court papers.

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<sup>1</sup> Treaty with The Sioux -- Brulé, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee -- and Arapaho 15 Stat., 635. Ratified, Feb. 16, 1869. Proclaimed, Feb. 24, 1869, Article 16

The consistent and ongoing tactic by States and corporations to criminalize Indigenous human, environmental and Treaty rights defenders has been well documented in United Nations submissions by the IITC and other Indigenous human rights organizations. It has also been addressed at the United Nations Permanent Forum on Indigenous Issues including at its most recent session in May 2016:

53. The Permanent Forum notes that a key message of the 2016 session was the need to combat pervasive violations against indigenous human rights defenders, including criminalization, persecution, violence, imprisonment and killing.<sup>2</sup>

In addition, in 2014 the United Nations Expert Mechanism on the Rights of Indigenous Peoples in its Study on Access to Justice for Indigenous Peoples addressed this matter as follows:

6. States have an obligation to protect and support the work of indigenous human rights defenders in the promotion of access to justice for indigenous peoples, in accordance with Human Rights Council resolution 22/6.<sup>3</sup>

The IITC and the Standing Rock Tribe respectfully request that the UN Rapporteur on Human Rights Defenders request the United States to immediately cease all arrests and other forms of intimidation against the human rights defenders in this case, and take action to ensure that all legal charges against the peaceful protesters seeking to defend their human rights and Treaty Rights be lifted.

## **G. Violations of the Human Right to Water**

On 28 July 2010, through Resolution 64/292, the United Nations General Assembly explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realization of all human rights.

This submission calls attention to the urgent and worsening threats and violations of the human rights and ways of life of Standing Rock Sioux Tribe who depend greatly for their means of subsistence and their physical and cultural health upon the Missouri River. The Dakota Access Pipeline poses an imminent threat to the Missouri River due to potential contamination by oil spills directly impacting the Tribe's drinking water. Based on data from a large number of oil pipelines, spills of toxic oil are a near certainty. Most experts believe it is not a matter of if but when such a spill will contaminate the ground and river water upon which the Tribe depends.

Since 2010, over 3,300 incidents of crude oil and liquefied natural gas leaks or ruptures have occurred on U.S. pipelines. These incidents have killed 80 people, injured 389 more, and cost \$2.8 billion in damages. They also released toxic, polluting chemicals in local soil, waterways, and air. According to

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<sup>2</sup> E/C.19/2016/11, Report on the fifteenth session (9-20 May 2016) Permanent Forum on Indigenous Issues, Online at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=E/2016/43&referer=http://www.un.org/en/documents/index.html&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=E/2016/43&referer=http://www.un.org/en/documents/index.html&Lang=E)

<sup>3</sup> A/HRC/EMRIP/2014/3/Rev.1 Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities – Study by the Expert Mechanism on the Rights of Indigenous Peoples, Online at: [http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session7/A-HRC-EMRIP-2014-3\\_en.pdf](http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session7/A-HRC-EMRIP-2014-3_en.pdf)

the Pipeline and Hazardous Materials Safety Administration, these spills and ruptures released over 7 million gallons of crude oil into the environment.

The Tribe has expressed its firm opposition to the Pipeline construction on many occasions. In a publically circulated statement issued on August 15, 2016. Chairman Archambault stated *“I am here to advise anyone that will listen, that the Dakota Access Pipeline is harmful. It will not be just harmful to my people but its intent and construction will harm the water in the Missouri River, which is the only clean and safe river tributary left in the United States.”*

The cultural impacts of such water contamination, in addition to clear impacts on health and subsistence, would be devastating. Water is the sacred source of life for the Standing Rock Tribe and for all Indigenous Peoples.

Chairman Archambault affirmed this reality from the perspective of his People in the enclosed statement in opposition to the pipeline: *“Our Mother Earth is sacred. All things evolve and work together. To poison the water, is to poison the substance of life. Everything that moves must have water. How can we talk about and knowingly poison water?”*

#### **H. Lack of Redress and Response using “Domestic Remedies”**

The Standing Rock Sioux Tribe has actively opposed the permitting and construction of the Dakota Access Pipeline since the Tribe first learned of the proposal in 2014 exhausting local remedies. The Tribe has voiced its strong opposition to the company, to the federal government, to Congress, and to the State. Yet, the Tribe’s plea was ignored and instead the U.S. sided with the project developer. From the beginning, the Tribe’s Tribal Historic Preservation Office requested Tribal consultation, but their requests were never fulfilled.

The U.S. Army Corps of Engineers, an agency of the US Federal Government, bypassed federal laws and Treaties obligations in the planning process for the Dakota Access Pipeline, which require direct discussion with the Tribe.

The Tribe specifically met with numerous federal agencies to discuss the harm imposed by the pipeline, including: the Environmental Protection Agency, the Department of the Interior, and the Advisory Council on Historic Preservation. All three agencies subsequently wrote letters to the Army Corps expressing environmental and cultural resource concerns related to the pipeline.

A few hours before the filing of this submission, it was announced that a temporary halt to the pipeline construction had been agreed to by the developers until a Federal court hearing addressing the Tribe’s request for a temporary injunction takes place next week in Washington D.C. While this provides a welcomed temporary halt to the construction over the next few days, the outcome of this hearing is by no means assured. Furthermore, the ongoing human and Treaty rights violations addressed in this submission, based on United States obligations under International Human Rights standards, will in all likelihood not be addressed or resolved at that time.

## I. Conclusion

In closing, the IITC and the Standing Rock Sioux Tribe respectfully request that you review the enclosed materials as a matter of utmost urgency and issue an immediate and urgent communication calling on the Government of the United States of America to take immediate action to halt the construction of the Dakota Access Pipeline based on violations of the ICERD, the UN Declaration on the Rights of Indigenous Peoples and the 1868 Ft. Laramie Treaty. We further request that the rights of the human rights defenders in this case be upheld and their safety, security and access to redress and justice be ensured.

We thank you in advance for your assistance in urging the United States of America to uphold its statutory, legal, Treaty and human rights obligations in this case. We specifically request that the United States government impose an immediate moratorium on all pipeline construction until the Treaty Rights and Human Rights of the Standing Rock Tribe can be ensured and their free prior and informed consent is obtained.

Respectfully submitted,



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Attachments:

- 1) August 15, 2016 statement by Chairman David Archambault II
- 2) Background on the Dakota Access Pipeline
- 3) Standing Rock Sioux Tribal Resolutions 2015 - 2016



- 4) Link to News Article by Indian Country Today:  
<http://indiancountrytodaymedianetwork.com/2016/08/15/dakota-access-pipeline-standoff-mni-wiconi-water-life-165470>
- 5) Link to the Ft. Laramie Treaty of 1868: <http://www.aics.org/WK/treaty1868.html>

Cc:

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