



September 25, 2020

To: United Nations Special Rapporteur on the Rights of Indigenous Peoples Mr. Francisco Cali Tzay, via email to [indigenous@ohchr.org](mailto:indigenous@ohchr.org)

cc: United Nations Special Rapporteur on Human Rights Defenders Mrs. Mary Lawlor via email to [defenders@ohchr.org](mailto:defenders@ohchr.org)

cc: United Nations Special Rapporteur of the Rights to Freedom of Peaceful Assembly and of Association Mr. Clement Nyelatsossi via email to [freeassembly@ohchr.org](mailto:freeassembly@ohchr.org)

cc: United Nations Special Rapporteur in the field of Cultural Rights Ms. Karina Bennoune via email to [srculturalrights@ohchr.org](mailto:srculturalrights@ohchr.org)

cc: United Nations Committee on the Elimination of Racial Discrimination Urgent Action/Early Warning Procedure, via email to [cerd@ohchr.org](mailto:cerd@ohchr.org)

**Re: Urgent submission addresses the persecution of Indigenous Human Rights Defender Mr. Nicholas Tilsen by the United States of America and its subsidiary government the state of South Dakota, United States**

Respectful Greetings,

The International Indian Treaty Council (IITC) and the Black Hills Sioux Nation Council (Ogala Lakota Nation) submit this urgent communication expressing our profound concern regarding a current case of repression against Indigenous Human Rights Defender Mr. Nicholas “Nick” Tilsen, member of the Ogala Lakota Nation located in South Dakota, United States of America.

On July 10, 2020, IITC, the Black Hills Sioux Nation Council and the Sicangu Treaty Council (Rosebud Tribe) jointly submitted an urgent complaint to the UN Special Rapporteur on the Rights of Indigenous Peoples. That submission documented the ongoing and recent violations of the human, Treaty and cultural rights of the Oceti Sakowin (aka the Great Sioux Nation, made up of the Lakota, Dakota and Nakota Indigenous Nations) by the United States.

The specific current violation addressed in this submission took place on July 3<sup>rd</sup>, 2020 when 20 peaceful, non-violent, unarmed human, cultural and Treaty rights defenders, primarily members of the Lakota Nation, were forcibly removed and then arrested and taken into custody while blockading a road providing access to Mt. Rushmore, the site of a political and campaign rally organized to support the re-election campaign of US President Donald Trump. Mt. Rushmore is a traditional sacred site located on legally recognized Treaty territory recognized by the 1868 Ft. Laramie Treaty concluded between the “Great Sioux Nation” and the



United States. This Treaty was legally ratified by the Senate of the United States and continues to be in force to this day.

Mr. Nick Tilsen, President and CEO of the Indigenous community-based philanthropic organization, the NDN Collective, was one of the principle organizers of the protest and was among those arrested on July 3<sup>rd</sup>.

This has now become a matter of urgency under the United Nation's process for protecting human rights defenders due to the targeted repression of Mr. Tilsen who has been singled out for prosecution as a highly visible Indigenous leader with national and international recognition due the pivotal role of the NDN Collective. This well-respected organization, which Mr. Tilsen co-founded, provides financial and advocacy support to Indigenous Peoples in both the United States and México, including for support of Indigenous COVID-19 relief and resiliency efforts during this year of pandemic in which Indigenous Peoples have been disproportionately impacted.

In the view of the submitters, this action is intended to intimidate and persecute Mr. Tilsen and to discourage other Indigenous human rights defenders from acting lawfully and peacefully to prevent incursions into their legally-recognized Treaty territories and to defend urgent threats to the physical safety, health and cultural rights of their Peoples.

The primary entity participating in the removal of the human and Treaty defenders who were peacefully blockading the road to Mt. Rushmore on the day of the Trump rally was the South Dakota National Guard, a military force that operates under both state and federal jurisdiction. The National Guard was called to the site by South Dakota governor Kristi Noem, an action which was viewed as an act of aggression and intimidation against the defenders. Numerous videos of the incident filmed on site by news media of the incident demonstrate that the Mr. Tilsen carried out no acts of aggression or violence, was unarmed and responded with only actions undertaken to defend himself and the other defenders.

This case must be considered in the context of the ongoing violations 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.

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”.

As highlighted in our July 16 submission, the Oceti Sakowin Treaty Territory leaders publicly and emphatically expressed their opposition to President Trump’s July 3<sup>rd</sup> rally, citing the 1868 Ft. Laramie Treaty’s provision in Article 16 stipulating that the Indigenous Nations must 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 addition, both these leaders and community members expressed their urgent concern regarding the increased exposure to COVID-19 in their traditional territories as a result of the Trump campaign rally. South Dakota’s governor had announced in advance that social distancing and masks were not going to be required at this rally which was attended by the US President and over 7000 of his supporters. This demonstrated a blatant disregard for the rights to health and life of the Indigenous Peoples of these lands. It is well documented that Indigenous Peoples in the United States and elsewhere are particularly vulnerable to the impacts of the current pandemic and the COVID-19 illness.

Inherent rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples were also violated by the United States in carrying out this presidential campaign rally at the Mr. Rushmore site against the stated wishes of the Indigenous Treaty Nations. These include, *inter alia*, the right to the “recognition, observance and enforcement” of their Treaties concluded with States under Article 37, and the rights to the protection of their sacred sites as affirmed in Articles 11 and 12. In addition the UN Declaration affirms the obligation of States to “take the necessary steps to ensure the full realization” of Indigenous Peoples’ right to health, which was also not upheld in this case.

The actions undertaken by the United States and the state of South Dakota in this matter also violate the UN Committee on the Elimination of Racial Discrimination’s General



Recommendation 23 on the Rights of Indigenous Peoples and General Recommendation 31 addressing Racial Discrimination in the administration and functioning of the Criminal Justice System. We note that the United States is a state party to the International Convention on the

Elimination of all forms of Racial Discrimination. The United States is a state party to the ICERD and is therefore legally binding on the US as well as its subsidiary governments such as the state of South Dakota.

A recent United States Supreme Court decision, *McGirt V. Oklahoma*, issued on July 9, 2020 also has direct relevance to the legal issues involved in this case. In its decision, the Supreme Court upheld the ongoing legal viability of Indigenous Peoples' Treaty rights, land rights and jurisdiction although the state of Oklahoma had over time illegally encroached on lands within the original Treaty boundaries of the Muscogee (Creek) Nation.

These facts call into doubt any claim by the United States that the road blockade on July 3<sup>rd</sup> was an unlawful assembly. The actions of Mr. Tilsen for which he has been criminalized were in fact peaceful and carried out to defend rights affirmed in a 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 the US Constitution.

In order to avoid further egregious human rights violations in this matter, the undersigned representative bodies respectfully call upon the above listed UN mandate holders including the Special Rapporteurs on the Rights of Indigenous Peoples and on Human Rights Defenders, as well as the CERD Early Warning/Urgent Action Procedure, to address this urgent situation in accordance with their mandates. We urgently request that the UN Special Rapporteurs on Rights of Indigenous Peoples, Human Rights Defenders and other mandate holders to which this submission is addressed issue a call for all charges against Mr. Tilsen to be immediately dismissed, and to issue a public statement in this regard.

We also request that the Special Rapporteur on the Rights of Indigenous Peoples call on the United States to initiate meaningful, transparent and participatory discussions with the Oceti Sakowin in order prevent further violations of their Treaty, human and cultural rights as described in this submission.

For further information please contact Mr. Nick Tilsen, President and CEO of the NDN Collective, [nick@ndncollective.org](mailto:nick@ndncollective.org), +(605) 441-7486; or Andrea Carmen, IITC Executive



Director, [andrea@treatycouncil.org](mailto:andrea@treatycouncil.org), +(520) 273-6003. We have also enclosed Mr. Tilsen's original affidavit after his arrest, and the most recent charges filed against him.

We thank you for your immediate attention to this urgent submission and look forward to providing additional information as requested.

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 black ink that reads "Andrea Carmen".

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