



THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

December 9, 2016

Ms. Beatriz Balbin
Chief, Special Procedures Branch
Office of the High Commissioner for Human Rights
Geneva, Switzerland

Dear Ms. Balbin:

Below please find the U.S. response to the November 11, 2016 letter from several special procedures mandate holders concerning reports of the use of excessive force against demonstrators opposing the construction of the Dakota Access Pipeline. We appreciate the opportunity to report on how the U.S. government is addressing this situation and would be grateful if you could convey our response to the inquiring special procedures mandate holders.

Sincerely,

Keith M. Harper
Ambassador
U.S. Permanent Representative to
the UN Human Rights Council

OHCHR REGISTRY

14 DEC 2016

Recipients: *SLB*.....
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SUBJECT: US Response Concerning Reports of the Use of Excessive Force Against Demonstrators Opposing the Construction of the Dakota Access Pipeline.

The United States takes seriously reports alleging that excessive force may have been used against persons peacefully demonstrating against construction of the Dakota Access Pipeline in the State of North Dakota near Lake Oahe and the Missouri River. President Obama said on November 2 that “ ... there is an obligation for protesters to be peaceful, and there is an obligation for authorities to show restraint. I want to make sure that ... both sides are refraining from situations that might result in people being hurt.” Attorney General Loretta Lynch expressed similar views on December 2, saying, “Our first concern is the safety of everyone in the area – law enforcement officers, residents, and protestors alike. ... We will remain committed to working with all stakeholders to enforce the laws; to maintain the peace; and to reach a just solution to this challenging situation.”

Following the use of dogs by private security officers hired by the company that is constructing the Dakota Access Pipeline, Dakota Access, LLC, the Morton County (North Dakota) Sheriff’s Office established a task force to investigate the incident. The task force consisted of representatives of the Morton County Sheriff’s Office, the Mercer County (North Dakota) Sheriff’s Office, the North Dakota Bureau of Criminal Investigation, and the federal Bureau of Indian Affairs within the U.S Department of the Interior (DOI). The investigation determined that the private security personnel were not licensed to do security work in the State of North Dakota. The findings from that investigation have been forwarded to the Morton County State’s Attorney’s Office and the North Dakota Private Investigation and Security Board for review. That review remains ongoing.

The U.S. Department of Justice (DOJ) is also following this situation closely and taking appropriate action. Shortly after the protests began, staff from DOJ’s Office of Community Oriented Policing Services (COPS), Office of Tribal Justice, and Community Relations Service were dispatched to the protest areas. They continue to work to promote dialogue between the tribal leaders and law enforcement officials to reduce tensions, promote public safety, and support conduct that is in conformity with the U.S. Constitution’s First Amendment rights of free speech, assembly, and the free exercise of religion. The DOJ’s Civil Rights Division is monitoring the situation and has established a dedicated telephone number and e-mail address to receive complaints.

DOI law enforcement officers from the Bureau of Indian Affairs have not been directly engaged at the site of the protests, because it is outside of their jurisdiction.

In addition, the U.S. Army Corps of Engineers (Army Corps) has been in continuous communication with the Standing Rock Sioux Tribe, Energy Transfer Partners, and Dakota Access, LLC. On November 14, 2016, the Assistant Secretary of the Army for Civil Works Jo Ellen Darcy determined that additional discussion and analysis of the pipeline situation were warranted in light of the history of dispossessions of the Sioux Nation's lands, the importance of Lake Oahe to the Tribe, the government-to-government relationship between federally recognized Indian tribes and the U.S. government, and U.S. law governing easements through government property. Discussions between the Army Corps, Dakota Access, LLC, and the Standing Rock Sioux Tribe occurred on December 2, 2016 regarding additional terms and conditions that could be added to the easement which might further reduce the risk of spill or pipeline rupture. The December 2 meeting did not produce any bilateral agreement between Dakota Access, LLC and the Standing Rock Sioux Tribe. On December 4, the Army decided not to approve an easement necessary to permit the pipeline to cross under Lake Oahe based on the current record because it needs to explore alternate routes for the crossing. The Army Corps will consider any modifications to the pipeline route that may be proposed by the permit applicant. Secretary of the Interior Sally Jewell praised the decision: "The Army's announcement underscores that tribal rights reserved in treaties and federal law, as well as Nation-to-Nation consultation with tribal leaders, are essential components of the analysis to be undertaken in the environmental impact statement going forward."

There is a misconception about whether protestors can remain in their current encampment after December 5. Neither the Army Corps nor any other federal authority has plans to forcibly remove persons from the encampment. Because protestors are using land leased by a local rancher, the Army Corps has not been able to legally issue a permit for this camp. As severe winter conditions set in on December 6, 2016, local, state, and federal authorities supported voluntary evacuation of many of the demonstrators to six shelters in the area to protect them from life-threatening conditions.

More generally, the U.S. Departments of the Army, Interior, and Justice – along with other federal agencies – recently held a series of formal government-to-government consultations with federally recognized tribes on how federal decision-making on infrastructure projects can better allow for timely and meaningful tribal

input. The U.S. government also plans to participate in a December 9 thematic hearing before the Inter-American Commission on Human Rights, requested by the American Indian Law Clinic of the University of Colorado Law School, the Standing Rock Sioux Tribe, and two other tribes to discuss the rights of indigenous persons and extractive industries in the United States.

The United States is aware of allegations of mistreatment of protestors and tensions with law enforcement. We are committed to the right to lawful and peaceful protest activities, and affirm the right of persons engaging in such activities to be free from law enforcement misconduct. Moreover, as a founding member of the Voluntary Principles on Security and Human Rights Initiative, the United States strongly encourages extractive companies – including Dakota Access, LCC – to implement the Voluntary Principles. Doing so would include ensuring that any private security companies hired “have policies regarding appropriate conduct and the local use of force,” as set forth in the Principles. Also of relevance, the Voluntary Principles provide that “[p]rivate security should act in a lawful manner [and] exercise restraint and caution in a manner consistent with applicable international guidelines regarding the local use of force ... as well as with emerging best practices developed by companies, civil society, and governments.” All credible allegations of constitutional violations by law enforcement, including uses of excessive force, are being and will continue to be assessed pursuant to federal civil rights law.

In closing, the United States takes this opportunity to reiterate its support for and commitment to the UN Declaration on the Rights of Indigenous Peoples, as described in its statement of support issued in December 2010.