



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

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OHCHR REGISTRY

Ms. Victoria Tauli-Corpuz
 Special Rapporteur on the rights of indigenous peoples
 UN Office of the High Commissioner for Human Rights
 CH-1201 Geneva, Switzerland

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Recipients :*SPD*.....

 Enclosure

Dear Ms. Tauli-Corpuz:

The United States is grateful for former Special Rapporteur Anaya’s 2012 visit to the United States, his report on that visit, and his subsequent letter dated February 20, 2014. The United States fully supports the mandate of the Special Rapporteur on the rights of indigenous peoples, and we appreciate the opportunity to respond to the issues raised in Mr. Anaya’s February 2014 letter.

Lands and sacred places

1. *What measures of reconciliation and redress has the Government taken to address outstanding claims of treaty violations or non-consensual takings of traditional lands to which indigenous peoples retain cultural or economic attachment, as exemplified by the taking of the Black Hills?*

The principal case addressing claims relating to the Black Hills is the U.S. Supreme Court decision in *United States v. Sioux Nation of Indians*. Importantly, the tribes involved in this case brought the claim under jurisdictional statutes where the court could only provide monetary relief for such claims. In 1979, the U.S. Court of Claims determined, *inter alia*, that the 1977 seizure of the Black Hills from the Sioux was a violation of the Fifth Amendment. On June 30, 1980, the Supreme Court ruled in a 8-1 decision to uphold the U.S. Court of Claims’ award of \$106 million – the largest sum ever paid to an Indian tribe for illegally seized territory. The tribal governments involved in the suit have thus far declined to accept the money as a matter of principle, desiring that the lands be returned. The money remains in a federal trust account accruing compound interest.

The United States continues to prioritize placing tribal homelands in trust for tribes, and has placed over 282,094 acres of land into trust since 2009. The Secretary of the Interior aims to place at least 500,000 acres of land into trust by the end of the Obama Administration.

In May 2014, the Department of the Interior (DOI) issued a proposed rule that would allow DOI to consider applications from Alaskan Native tribes to have land taken into trust.

Under its Land Buy-Back Program for Tribal Nations, set up as part of the settlement of the *Cobell v. Salazar* litigation, DOI is paying fair market value to individuals who choose to sell fractional interests in trust or restricted land. Purchased interests are immediately transferred to tribal trust ownership, ensuring that lands stay in trust. This will have the added benefit of diminishing land fractioning which will, in turn, establish better management of trust lands. In addition, a portion of the purchase money is placed in a scholarship fund which now totals more than \$5 million. The fund is administered by the American Indian College Fund, which is a non-profit organization.

Indigenous languages

2. What measures have been taken by the Government to support indigenous-led programmes and initiatives to revitalize and support education of indigenous languages? What strategies are in place to ensure reliable funding for these programmes and initiatives?

Incorporating Native languages and culture into academic settings can improve educational engagement and outcomes. Such practices increase the self-worth of Native youth by respecting the cultures of their families and communities. Moreover, the local community – including elders – engages more in the learning process when it includes key elements of Native languages and culture.

The United States has taken affirmative steps to promote Native language revitalization. For example, the U.S. government sponsored the first multi-agency federal summit on Native languages, entitled “Native American Language Summit: Working Together for Native American Language Success.” This summit took place in June 2014 with 300 participants. The National Endowment for the Humanities, the National Science Foundation, and the Association of Tribal Archives, Libraries, and Museums will work with the Department of Education (ED), Department of the Interior (DOI), and the Department of Health and Human Services (HHS) to convene a second Native Languages Summit in the fall of 2015. The Summit will consider best practices in preserving and revitalizing Native languages.

Preceding the 2014 Summit, HHS’s Administration for Native Americans, DOI’s Bureau of Indian Education, and the White House Initiative for American Indian and Alaskan Native Education signed a Memorandum of Agreement (MOA) to establish a Native Language Workgroup (NLW) in November 2012. The group identified barriers and promising practices to help communities carry out programs and projects on language revitalization. To build upon the June 2014 language summit, it will prepare a guide on accessing U.S. government resources concerning Native languages.

The Department of Education, through its Native American and Alaska Native Children in School Grants Program, which is authorized by Title III of the Elementary and Secondary Education Act, is supporting the efforts of 21 grantees to provide instruction in Native American languages to Native American children.

As part of the December 2014 Generation Indigenous (GEN I) initiative, the President has requested a \$50 million increase in funding for the Native Youth Community Projects. These projects, administered by the Department of Education, provide funding to selected Native American communities to support culturally relevant coordinated strategies designed to improve the college and career readiness of Native American children and youth.

3. What outcomes can be reported as a result of Executive Order 13592 regarding opportunities for indigenous students to learn their Native languages?

In addition to the 2014 Native Languages Summit and the planned Native Languages Summit in 2015 (both noted above), the Department of Education took steps in its Indian education formula grants program to help increase the focus on culturally-relevant activities in schools, which can include language service. These grants are provided to public school districts that educate American Indian / Alaska native students, as well as to schools funded by the Bureau of Indian Education.

Cultural artifacts

4. What specific measures exist to prevent the exportation, transfer, and sale of Native American sacred items and other cultural patrimony that have been obtained without consent and authorization of the indigenous group concerned?

The United States recognizes that there are remaining challenges on the international level to repatriating ceremonial objects and human remains. We support the commitment made in the Outcome Document of the World Conference on Indigenous Peoples to the development – in conjunction with indigenous peoples concerned – of fair, transparent, and effective mechanisms for access to and repatriation of ceremonial objects and human remains at the national and international levels.

The United States has strong domestic laws in place to protect the human remains and cultural property of Native Americans, including the 1990 Native American Graves Protection and Repatriation Act (NAGPRA) and 1979 Archaeological Resource Protection Act (ARPA). We are dedicated to enforcing these laws, which in some instances includes pursuing the goal of ending the commercialization of cultural property. In light of the recent foreign auctions, consideration is being given to whether these laws adequately protect against commercialization outside the United States.

The State Department is actively working with the Department of the Interior and several tribes to recover sacred objects offered for sale at auctions in Paris, and to raise awareness abroad of the importance of objects of cultural patrimony to U.S. indigenous peoples.

5. What measures have been taken by your Government, or in collaboration with the Governments of other countries, to investigate and sanction the recent exportation, transfer, and sale of indigenous sacred items and cultural patrimony that may violate domestic or international laws and regulations regarding cultural property?

In 2013 and December 2014, sales at Paris auction houses included items of U.S. Native American cultural origin. Another auction is scheduled for June 2015, with the list of items to be made public in March 2015. These sales led the U.S. government, including the State Department's Cultural Heritage Center, the U.S. Congress, U.S. tribal leaders, and nongovernmental organizations to focus more intently on the repatriation issue.

Prior to the December 2014 sale, the U.S. Ambassador to France requested that the Paris auction house remove certain items from the sale, so that tribal leaders and representatives could consider whether they had recourse to seek the items' return. The Ambassador also asked the auction house to facilitate communication between tribal leaders and representatives and those who currently possessed the items offered for sale. Although these efforts were not successful in postponing the auction, they were widely publicized in the French and U.S. media. The U.S. Embassy conducted an extensive social media campaign to educate the French public about the importance of protecting this cultural heritage. The State Department worked in consultation with the Navajo Nation on these efforts. Subsequently the Navajo Nation purchased some items during the auction for return to the United States.

As an area for possible improvement, some countries have domestic legislation that inhibits the recovery and repatriation of protected Native American cultural property. In this regard, the full documentation of cultural property before its illicit removal can greatly facilitate the recovery and repatriation of the property.

Indian child and community welfare

6. What strategies are in place to educate judges and state child welfare workers regarding the purpose, objectives, and requirements of the Indian Child Welfare Act and enhance tribal-state cooperation in implementing the Act?

On the topic of Indian child welfare, under the Indian Child Welfare Act (ICWA), the Secretary of the Interior provides grants for Indian child and family service programs. This bedrock statute continues to provide important protections for Indian children, families, and tribes. The U.S. government – including the Department of the Interior, Department of Justice, and Department of Health and Human Services – works in collaboration with tribal governments to oversee the implementation of ICWA at the state level.

Ongoing grievances within special regimes

7. Maine. *What efforts has the federal Government made to work with the State of Maine and Wabanaki tribes to develop policies to promote the goals of the Declaration and to ensure that the decisions of state authorities are consistent with it, including efforts to amend or modify provisions of the MIA and/or MICSA that indigenous people have considered as problematic?*

Since Congress enacted the Maine Indian Claims Settlement Act in 1980, the United States has worked with the Maine tribes to ensure that it is implemented fairly. We are still researching the full scope of the Maine/Wabanaki question. However, the United States has not engaged the State of Maine directly on this subject matter to date. We would note, however, that the United States has intervened on the side of the Penobscot Indian Nation in a lawsuit against the State of Maine seeking to clarify the scope of the Penobscot Indian Reservation in the Penobscot River, including the Nation's sustenance fishing right under MIA and MICSA. The motion to intervene and complaint are available at: <https://turtletalk.wordpress.com/2013/08/19/united-states-intervenes-in-penobscot-nations-fight-with-maine/>. The U.S. motion to intervene was granted on February 4, 2014. Additionally, the St. Croix watershed continues to be of great importance to the Passamaquoddy Tribe on both the U.S. and Canadian side of the river, and the United States is keenly aware of the importance of the continued operation of fishways in the St. Croix River watershed for the health of the river's fisheries and ecosystem. Through the Bureau of Indian Affairs and the U.S. Fish and Wildlife Service, the United States is monitoring proposed legislation in the legislature of the State of Maine, which if enacted could severely harm the St. Croix River watershed.

8. Alaska. *What steps have been taken at the federal or state levels to address the concerns over the alleged burdensome effects on the subsistence activities of Alaska Natives created by ANCSA and ANILCA?*

The Federal Subsistence Management Program is a multi-agency effort to provide the opportunity for a subsistence way of life by rural Alaskans on federal public lands and waters while maintaining healthy populations of fish and wildlife. Subsistence fishing and hunting provide a large share of the food consumed in rural Alaska. The state's rural residents harvest about 22,000 tons of wild foods each year – an average of 375 pounds per person. Fish makes up about 60 percent of this harvest statewide. Nowhere else in the United States is there such a heavy reliance upon wild foods.

This dependence on wild resources is cultural, social, and economic. Alaska's indigenous inhabitants have relied upon the traditional harvest of wild foods for thousands of years and have passed this way of life, its culture, and values down through generations.

The Alaska National Interest Lands Conservation Act (ANILCA), passed by Congress in 1980, mandates that rural residents of Alaska be given a priority for subsistence uses of fish and wildlife.

The program provides for public participation through the Federal Subsistence Board and ten Regional Advisory Councils. The Board is the decision-making body that oversees the program. It is made up of the regional directors of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs and U.S. Forest Service. Two public members are appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture. The Regional Advisory Councils provide recommendations and information to the Board; review proposed regulations, policies and management plans; and provide a public forum for subsistence issues. Each Council consists of residents who are knowledgeable about subsistence and other uses of fish and wildlife resources in their region.

Regulations implementing the Federal Subsistence Management Program on Federal public lands within the State of Alaska can be found jointly in the Code of Federal Regulations, 36 C.F.R. 242 and 50 C.F.R. 100, Sections 1-28.

9. Alaska. *How is the high rate of sexual and physical abuse in indigenous communities currently being addressed? In the event that the proposed Alaska Safe Families and Villages Act does not become law, what strategies or programs are being developed to provide culturally appropriate, adequate, and reliable law enforcement, judicial, and victim services for remote indigenous communities?*

On December 18, 2014, President Obama signed into law the Alaska Safe Families and Villages Act. This law repeals Section 910 of the 2013 Violence Against Women Act, meaning that Alaska tribes are able to arrest, prosecute, and sentence certain non-Native domestic violence offenders.

Although the United States has various efforts underway to address violence in indigenous communities and to promote public safety, we will mention one program specifically targeting Alaska Native children. The Task Force on American Indian/Alaska Native Children Exposed to Violence Advisory Committee was set up in 2013. It has heard from over 120 witnesses in public hearings and listening sessions across the United States. These hearings allowed experts in child welfare, victim services, mental health, and legal services, as well as members of the general public, to discuss how violence affects American Indian and Alaska Native children. The Advisory Committee will prepare a final report to be presented to the Attorney General, which will contain a strategic plan of action to guide practitioners and policymakers.

10. Alaska. *What measures are being taken, if any, to address grievances about alleged irregularities in the process by which Alaska was removed from the list of non-self-governing territories subject UN supervision and to ensure full implementation of the right to self-determination for the indigenous peoples of Alaska?*

No special measures are being taken to address grievances regarding removal of Alaska from the list of non-self-governing territories. We are aware that some individuals routinely assert the illegitimacy of U.S. acquisition of Alaska from Russia and subsequent statehood within the

United States. The United States disagrees with those assertions.

11. Hawaii. *What programmes are in place to support culturally appropriate education, including language, for Native Hawaiian children, particularly those who are educated through the public school system? How are Native Hawaiian representatives or organizations involved in the development and implementation of these programs?*

The Native Hawaiian Education (NHE) program, which is authorized under Title VII, part B of the Elementary and Secondary Education Act, supports innovative educational programs to assist Native Hawaiians. Eligible entities under the program are Native Hawaiian educational organizations; Native Hawaiian community-based organizations; and public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language.

NHE program funds may be used to support a broad range of supplemental educational activities to benefit Native Hawaiians, including:

- (a) the development and maintenance of a statewide Native Hawaiian early education and care system to provide a continuum of services for Native Hawaiian children through age 5;
- (b) the operation of family-based education centers;
- (c) activities that enhance beginning reading and literacy in either the Hawaiian or the English language among Native Hawaiian students in kindergarten through third grade and assistance in addressing the distinct features of combined English and Hawaiian literacy for Hawaiian speakers in fifth and sixth grade;
- (d) activities to meet the special needs of Native Hawaiian students with disabilities;
- (e) activities that address the special needs of Native Hawaiian students who are gifted and talented;
- (f) the development of academic and vocational curricula to address the needs of Native Hawaiian children and adults, including curriculum materials in the Hawaiian language and mathematics and science curricula that incorporate Native Hawaiian tradition and culture;
- (g) professional development activities for educators;
- (h) the operation of community-based learning centers that address the needs of Native Hawaiian families and communities through the coordination of public and private programs and services;

- (i) activities, including program co-location, to enable Native Hawaiians to enter and complete programs of postsecondary education;
- (j) research and data collection activities to determine the educational status and needs of Native Hawaiian children and adults;
- (k) other research and evaluation activities related to NHE programs; and
- (l) other activities, consistent with the purposes of the NHE program, to meet the educational needs of Native Hawaiian children and adults.

In awarding grants or contracts to carry out activities under the NHE program, the Secretary must give priority to entities proposing projects that are designed to address the use of the Hawaiian language in instruction.

In addition to supporting innovative educational programs to assist Native Hawaiians, a major purpose of the NHE program is to encourage the maximum participation of Native Hawaiians in the planning and management of Native Hawaiian education programs. To this end, program funds are used to support a Native Hawaiian Education Council and seven Native Hawaiian Education Island Councils. Responsibilities of the Native Hawaiian Education Council include:

- (1) coordinating the educational and related services and programs available to Native Hawaiians, including programs assisted under the NHE program;
- (2) assessing the extent to which such services and programs meet the needs of Native Hawaiians, and collecting data on the status of Native Hawaiian education; and
- (3) providing direction and guidance, through the issuance of reports and recommendations, to appropriate Federal, State, and local agencies in order to focus and improve the use of resources relating to Native Hawaiian education, and serving, where appropriate, in an advisory capacity.

The Native Hawaiian Education Council consists of 21 members, at least ten of which must be Native Hawaiian education service providers; at least ten of which must be Native Hawaiians or Native Hawaiian education consumers; and one of which must be a representative of the State of Hawaii Office of Hawaiian Affairs. Each island council must consist of parents, students, and other community members who have an interest in the education of Native Hawaiians, and must be representative of individuals concerned with the educational needs of all age groups, from children in preschool through adults. At least three-fourths of the members of each island council must be Native Hawaiian.

12. Hawaii. *What steps, if any, are being taken to protect and rehabilitate places that are sacred to the indigenous people of the Hawaiian Islands? What measures are in place to ensure access to cultural or sacred places that are located on federally or state controlled lands, including military installations?*

The U.S. National Parks Service (NPS) considers mechanisms to allow Native Hawaiians access to these sacred places. The NPS outlines its management of ethnographic resources in its

Cultural Resource Management Guideline. It asserts that “attention to the peoples whose lifeways are traditionally associated with resources under the National Park Service stewardship is mandated in legislation and NPS policies ... Recognizing that its resource protection mandate affects this human use and cultural context of park resources, the National Park Service will plan and execute programs in ways that safeguard cultural and natural resources while reflecting informed concern for the contemporary peoples and cultures traditionally associated with them.”

13. Hawaii. *What measures are being taken by federal or state governments to address the outstanding grievances of indigenous Hawaiians stemming from the overthrow of the Hawaiian monarchy and the annexation of Hawaii by the United States, and to implement the right to self-determination for indigenous Hawaiians?*

The Native Hawaiian community has a unique status as the indigenous people of a once-sovereign nation with whom the United States has a special political and legal relationship. The U.S. Congress has reflected this in a number of statutes.

At the time of the Apology Resolution, a joint resolution of the U.S. Congress adopted in 1993 under President Clinton, Congress determined that it was appropriate to acknowledge the United States’ moral responsibility for past historical injustices, and as the Apology Resolution illustrates, resolve to do better. This resolution is significant politically and historically, but does not confer any judicially enforceable rights or award damages. We are aware that some individuals routinely assert the illegitimacy of Hawaii’s statehood within the United States. The United States disagrees with those assertions.

One significant aspect of the Resolution is that it encourages the President to support reconciliation efforts between the United States and the Native Hawaiian community. To this end, on December 10, 2010, Secretary of the Interior Ken Salazar and U.S. Attorney General Eric Holder sent letters to the U.S. Congress supporting passage of an act that would provide for the reorganization and federal recognition of a Native Hawaiian Tribe.

U.S. federal law governs how the U.S. government interacts with American Indian, Alaska Native, and Native Hawaiian communities and sets forth certain provisions addressing redress of grievances. To assist the Native Hawaiians in engaging the federal government about their concerns, Congress established an Office of Native Hawaiian Relations within the U.S. Department of the Interior.

We view the question of our relationship with the Native Hawaiian community as a domestic one, as we do our relationship with the other tribal communities that exist within our borders.

14. Guam. *What mechanisms are in place to address concerns by indigenous Chamorro residents about the effects of local legislation on traditional fishing practices and personal safety of Chamorro fisherman?*

In 2008 the Guam Legislature passed P.L. 29-127, which added a section on indigenous fishing rights to the Guam Code, directing that “the Chamorro people shall have special rights to off-shore fishing and harvesting of resources in order to redress historical discriminatory policies.” The Guam Department of Agriculture was directed to seek the input of a consult with an Indigenous Native Resources Task Force. While the task force’s composition and role in formulating rules and regulations is described, this task force has not yet been established.

15. Guam. *What safeguards are in place to protect Chamorro interests and rights related to their land, resources, and traditional cultural activities in light of the anticipated military buildup beginning in the 2020s?*

For decades the Government of Guam has carried out programs to promote and maintain the Chamorro language and culture, and these efforts continue. In addition, since 1975 the Government of Guam has had in place the Chamorro Land Trust, which provides for the disposition of public lands in order to assist the social, cultural, and economic well-being of the Chamorro people. As of December 2012, the Chamorro Land Trust Commission has awarded deeds to more than 2,500 acres of land to eligible beneficiaries for agriculture, residential, and commercial purposes. On the federal side, the U.S. Congress in 1994 enacted the Guam Excess Lands Act, which directed the Government Services Administration (GSA) to transfer to Guam – but at no cost of the Government of Guam – unused parcels of federal property for public benefit. As of 2011, GSA has delivered 15 deeds to the Government of Guam totaling more than 2,700 acres.

Reconciliation and actions to address indigenous peoples’ concerns

16. *What specific measures have been taken by the Government to make the 2010 resolution of apology by Congress widely known among indigenous peoples and the public more broadly? What strategies have been developed regarding implementation of the reconciliation measures called for in the apology resolution?*

The United States’ main area of focus is on honoring treaties and recognizing tribes’ inherent sovereignty and right to self-government under U.S. law, in order to promote the development of prosperous and resilient tribal communities. As President Obama stated when commenting on the UN Declaration on the Rights of Indigenous Peoples, “[w]hat matters far more than words – what matters far more than any resolution or declaration – are actions to match those words.” In that spirit, the U.S. government works with indigenous peoples to address challenges facing indigenous communities in a pragmatic way. These challenges include issues of self-determination, economic development and job creation, physical and mental health needs, the well-being of indigenous youth, public safety, and protection against climate change. Recent examples of U.S. government efforts to address these concerns are the President’s December 2014 Generation Indigenous (GEN I) initiative focused primarily on Native American youth

education, and over \$650 million of Department of Housing and Urban Development funding for Indian housing block grants.

17. *What specific measures have been taken by Government authorities to promote awareness among federal and state government officials about and to promote Government action at all levels that are consistent with the Declaration on the Rights of Indigenous Peoples?*

Many subjects discussed at the annual White House Tribal Nations Conferences are also addressed in the Declaration. These include tribal self-determination, including self-governance of tribal governments; healthcare; economic and infrastructure development; education; protecting natural and cultural resources; climate change; natural disaster mitigation; and law enforcement and public safety. After each conference, a White House Tribal Nations Conference Progress Report is issued. Progress Reports for the conferences since 2010 are available online at the www.whitehouse.gov website. The reports describe the many tribal-related U.S. government policies and programs in place to improve the situation of U.S. indigenous peoples. The Progress Report for the December 2-3, 2014 meeting is being prepared.

In addition, the United States holds regular consultations with tribal leaders to discuss their engagement in multilateral organizations and the rights of indigenous peoples as set out in these fora.

18. *What other measures, not addressed in the response to the above questions, has the Government taken to implement the recommendations made in my 2012 report on the human rights situation of indigenous peoples in the United States?*

Please see the annual White House Tribal Nations Conference Progress Reports. For details on U.S. government efforts to empower Native American Youth, see the “2014 Native Youth Report,” issued in December 2014 by the Executive Office of the President. Among the topics it covers are youth education, self-harm, and suicide. It is found at:
www.whitehouse.gov/sites/default/files/docs/20141129nativeyouthreport_final.pdf.

Sincerely,



Pamela K. Hamamoto
Ambassador