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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandate of the Special Rapporteur on the rights of indigenous peoples

REFERENCE: AL Indigenous (2001-8)
USA 2/2014

13 January 2014

Dear Mr. Mulrean,

I have the honour to address you in my capacity as Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 24/9.

In this connection, I would like to bring to your Government's attention information I have received concerning the **efforts of the Jemez Pueblo indigenous people to recover traditional lands located within the Valles Caldera National Preserve in New Mexico**. This was a matter initially brought to my attention during my 2012 visit to the United States.

According to the information received:

The area currently known as the Valles Caldera National Preserve and surrounding areas in the Jemez Mountains of New Mexico is part of the traditional territory of the Jemez Pueblo indigenous people by virtue of the Pueblo's historical use and occupancy. The area encompassing the Valles Caldera National Preserve, which is approximately 94,761 acres, holds great spiritual and cultural significance to the Jemez Pueblo. It is where the most important religious shrine for the Jemez Pueblo is located. The Valles Caldera area has also been used by members of the Jemez Pueblo as a source for natural resources including wildlife, plants for food and medicine, wood for fuel and construction purposes, and obsidian for tools and weapons.

The Jemez Pueblo have continued to access to the area and carry out traditional cultural and religious activities despite it having been granted by the United States to private parties in the latter half of the 19th century and also despite the subsequent acquisition of this area by the United States and the creation of the Valles Caldera National Preserve in 2000. According to the information received the Jemez Pueblo did not agree or consent to the granting of these lands to private parties or their taking by the federal.

The Jemez Pueblo currently seeks the return of the area encompassing the Valles Caldera National Preserve, and to that end requested the assistance of federal agencies, including the Department of the Interior, and also instituted a legal action in federal court. According to the information, in July 2012 the Jemez Pueblo filed a complaint in a federal court against the United States seeking to quiet title to Valles Caldera. On 24 September 2013, the U.S. District Court of New Mexico dismissed this claim on the basis that it was barred by the U.S. Government's sovereign immunity. The District Court considered that the claim should have been brought during a five-year statute of limitations provided by the 1946 Indian Claims Commission Act, which temporarily waived the Government's sovereign immunity to allow claims by Indian tribes against the United States. Notwithstanding the above, the Jemez Pueblo continue seeking the recovery of their traditional lands within the Valles Calderal National Preserve.

According to the information received, on 26 September 2013, the Valles Caldera Board of Trustees, the entity in charge of administering and managing the Valles Caldera National Preserve, approved a new policy permitting open and unrestricted access by members of the public to all areas of the National Preserve. This decision was allegedly made without prior consultation or notice to the Jemez Pueblo. According to Sec. 108(f)(5) of the 2000 Valles Caldera Preservation Act, which established the National Preserve, the "Trust is authorized and directed to cooperate and consult with Indian tribes and Pueblos on management policies and practices for the Preserve which may affect them." The Jemez Pueblo reportedly opposes this policy because of concerns that unrestricted open access will jeopardize the privacy needed to conduct traditional ceremonies and threaten the integrity of numerous religious shrines, sacred and archaeological sites and other culturally significant sites within the Preserve.

On 5 December 2013, the Valles Caldera Board of Trustees reportedly suspended its plans to move forward with the policy for open and unrestricted access until all concerns, including about consultation, are addressed. Despite the suspension of this policy, concerns still exist over the Board's ongoing interest in increasing public access to the Preserve, and the impacts that it might bring to the cultural and traditional practices of the Jemez Pueblo.

While I do not wish to conclusively prejudge the accuracy of this information, I would like to draw the attention of your Government to relevant international standards that are applicable to the issues brought forth by the situation described above.

In particular, I would like to refer to the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly on 13 September 2007 and subsequently endorsed by the United States. Specifically, I would like to highlight the provisions of article 26, which provides that "[i]ndigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired", and article 12, which affirms that "[i]ndigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious

traditions, customs and ceremonies; [and] the right to maintain, protect, and have access in privacy to their religious and cultural sites”.

The Declaration, furthermore, calls for remedial action in circumstances in which enjoyment of these rights have or may be infringed. In accordance with article 8, “States shall provide effective mechanisms for prevention of, and redress for: (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources”, and article 28 recognizes indigenous peoples’ “right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”

In this same connection, I would also like to refer to the recommendation previously made in my report on the situation of indigenous peoples in the United States that “[m]easures of reconciliation and redress should include, inter alia, initiatives to address outstanding claims of treaty violations or non-consensual takings of traditional lands to which indigenous peoples retain cultural or economic attachment, and to restore or secure indigenous peoples’ capacities to maintain connections with places and sites of cultural or religious significance, in accordance with the United States international human rights commitments.”

I would also like to call attention to the United States’ obligations under the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination.

With respect to States’ obligations under the International Covenant on Civil and Political Rights, the Human Rights Committee, in its General Comment No. 23 interpreting State obligations under article 27 on the rights of ethnic minorities to enjoy their own culture and profess their own religions, addresses the particular concerns of indigenous peoples, the Human Rights Committee notes that “culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples” (para. 7). The Committee further states that “positive measures by States may also be necessary to protect the identity of [indigenous peoples] and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group” (para. 6.2). As was noted by the Committee “The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned” (para. 9).

With regards to the United States’ responsibilities under the Convention on the Elimination of Racial Discrimination, the Committee on the Elimination of Racial Discrimination in its General Recommendation No. 23 on indigenous peoples, calls upon State parties to “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”; and similarly calls upon

those States to “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” (paras. 4(d)(e)).

In addition, the Committee “especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories” (para. 5).

As I continue to monitor and clarify the circumstances surrounding the present situation, I would be interested in knowing your Government’s views on the accuracy of the information contained in this letter, and I would be grateful to receive any additional information your Government may deem relevant. In particular, I would like to know further about:

1. The United States’ response to the Jemez Pueblo’s request for the return of the lands encompassing the Valles Calderas National Preserve, in light of the Jemez Pueblo’s claim of historical use and occupancy of the area and the United States’ international human rights obligations;
2. What specific measures have been taken to assist the Jemez Pueblo in retaining the capacity of its members to maintain access to sites of cultural or religious significance within the Valles Calderas National Preserve?; and
3. What specific measures will be taken to address the concerns of the Jemez Pueblo regarding the plans of the Valles Calderas Board of Trustees to increase public access to the Valles Caldera National Preserve and the possible impacts that might bring to the continuation of traditional cultural and spiritual practices and sacred and other culturally significant sites within the Preserve?

I would appreciate a response from your Government in 60 days. I undertake to ensure that your Government’s response will be taken into account in my assessment of this situation and in developing any recommendations that I may make for your Government’s consideration pursuant to the terms of my mandate.

Please accept, Mr. Mulrean, the assurances of my highest consideration.

James Anaya
Special Rapporteur on the rights of indigenous peoples

