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HAUT COMMISSARIAT DES NATIONS UNIES
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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandate of the Special Rapporteur on the rights of indigenous peoples

UNITED NATIONS
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Excellency,

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 15/14.

In this connection, I would like to bring to the urgent attention of your Excellency's Government the information received regarding **the imminent sale of land located within the Black Hills, South Dakota, considered to be a site of great spiritual significance to the Lakota, Dakota and Nakota indigenous peoples**. The information I have received indicates there are serious concerns that the sale of five tracts of privately owned land in the area of Reynolds Prairie in the Black Hills will lead to road construction and other types of development that would severely affect the spiritual integrity of the particular area of land known as Pe' Sla by these indigenous peoples. As your Excellency's Government is aware, the issue of the Black Hills in South Dakota, and the concerns of indigenous peoples in the United States over the protection of their sacred sites, is addressed in my upcoming report on the situation of indigenous peoples in the United States.

Furthermore, because of the serious urgency of this matter, I intend to issue the attached public statement tomorrow expressing my concern about the proposed sale of the area of land known as Pe' Sla, urging the attention of your Government to this matter and for measures to be taken to ensure that the rights of the Lakota, Dakota and Nakota indigenous peoples are not violated.

According to the information received:

The Black Hills, located in South Dakota, hold great spiritual and cultural significance to the Lakota, Dakota and Nakota indigenous peoples, also collectively known as the Great Sioux Nation. The 1868 Treaty of Fort Laramie reserved the Black Hills for the Lakota, Dakota and Nakota peoples. However, the discovery of gold in the area prompted the U.S. Congress to pass an act in 1877 which vested ownership of the Black Hills to the United States. Since then, the Lakota, Dakota and Nakota peoples have sought the return of the Black Hills and have refused compensation ordered by a 1980 Supreme Court decision.

The site known as Pe' Sla, sits within the area known as Reynolds Prairie in the Black Hills, which has been owned by the Reynolds family since the 1870s. Pe' Sla holds particular significance to members of the Lakota, Dakota and Nakota peoples, as it is a central part of their creation story and plays a significant role in their traditional knowledge. Throughout the years, members of the owners of Reynolds Prairie had permitted Sioux peoples to enter the land and conduct their traditional ceremonies at Pe' Sla.

The Reynolds family recently announced its intention to sell five tracts of land adding up to approximately 1,943 acres to the highest bidder during a land sale auction on 25 August 2012. Concern has been expressed that the sale to a new owner may result in restrictions on future access to Pe' Sla by members of the Lakota, Dakota and Nakota peoples. There is also concern over the state of South Dakota's reported intention to pave a gravel road that currently goes through Pe' Sla, in order to facilitate logging and recreational activities in the area. It is feared that this road paving would lead the state of South Dakota to allow further development activities that would undermine the spiritual integrity of Pe' Sla and the ability of the indigenous peoples concerned to continue practicing their traditional ceremonies there.

As a result of the land sale announcement, the Lakota, Dakota and Nakota peoples have reportedly begun a fundraising effort in order to participate in the bidding process and recover this sacred site. According to the information, through the purchase of the land, the indigenous peoples concerned hope to also be able to prevent any type of development that would negatively affect Pe' Sla. The efforts to raise funds reportedly face significant challenges, since the purchase price for the land is estimated to be between \$6 to \$10 million dollars. In addition, the information received indicates that the purchase of the land is viewed as controversial and unjust by tribal members because they considered the Black Hills as a whole to have been illegally taken by the United States in contravention of the 1868 Fort Laramie Treaty.

While I do not wish to prejudge the accuracy of this information, I would like to draw the attention of your Excellency's 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 12 stating that "Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites..." In addition, Article 32 provides for the right of indigenous peoples to be consulted "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 exploration of mineral, water or other resources." The latter article is relevant in the context of lands that although under private ownership, have continually been used for cultural, ceremonial or other purposes by indigenous peoples, as is the case of the continuous use of Pe' Sla by the Lakota, Dakota and Nakota peoples.

Further, as I continue to monitor and clarify the circumstances surrounding the present situation, I would be interested in knowing your Excellency's 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 information about:

1. The measures taken by the federal or state governments to address the concerns that have been raised by members of the Lakota, Dakota and Nakota peoples regarding the sale of the five tracts of land within the Reynolds Prairie where the sacred site of Pe' Sla is located, and the effects it might have on their ability to continue their traditional ceremonial and spiritual practices associated with that site;

2. Whether any process of consultation with the Lakota, Dakota and Nakota peoples has been undertaken regarding the proposed pavement of the road through the area where the site of Pe' Sla is located, as well as whether any type of social or environmental impact study has been undertaken in relation to that project, and the results, if any, of that study. In addition, please inform whether any mitigation measures in relation to the road development project have been or will be devised or if other alternatives have been considered to this proposed project;

3. Whether any Government policy or program exists that would provide assistance to Native American tribes who seek to protect sacred sites located on privately-owned or state-owned lands.

I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

While waiting for your response, I urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. I also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of my highest consideration.

James Anaya
Special Rapporteur on the rights of indigenous peoples