

Mandate of the Special Rapporteur on the rights of indigenous peoples

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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 33/12.

In this capacity, I would like to draw the attention of your Excellency's government to information I have received regarding **the Presidential Proclamation Modifying the Bears Ears National Monument (hereinafter, the "Presidential Proclamation")**, which revokes the designation of national monument attributed to areas containing several sites and artifacts of importance to Native American peoples pursuant to Proclamation no. 9558, issued on 26 December 2016. **The allegations raise serious concerns over the threats of significant and irreparable damage to Indian sacred places and over the apparent lack of free, prior and informed consent of indigenous peoples before the issuing of the Presidential Proclamation.**

Following my country visit to the United States in March 2017, I observed that the designation of Bears Ears National Monument as sacred lands provided indigenous peoples from the Colorado Plateau a place of subsistence, spirituality, healing and contemplation and noted that its co-management was a model for protection¹. In the country visit report, presented to the Human Rights Council in September 2017, I expressed serious concerns over the recommendation made by the Secretary of the Department of the Interior to President Trump to "revise the existing boundaries" of the monument.²

According to the information received:

"Bears Ears", an area of approximately 2 million acres in south-eastern Utah, has been the homeland of Native American peoples for hundreds of generations. Since time immemorial, the pristine landscape has been the setting of indigenous peoples' heritage and sacred places. To this day, the land constitutes an essential part of native peoples' identities and cultures. More than thirteen indigenous peoples trace their lineage in the area. Their ancestral lands constitute a vital link for Native American peoples to their ancestors, and is where they collect resources for medicinal purposes and celebrate religious and cultural ceremonies.

In July of 2015, a coalition of five tribes came together to protect and preserve the lands encompassed by the Bears Ears National Monument. The Inter-Tribal

¹ A/HRC/36/46/Add.1, par. 38.

² Idem.

Coalition consists of the Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, Pueblo of Zuni, and the Ute Indian Tribe. The Inter-Tribal Coalition proposed National Monument designation to protect the Bears Ears region because of its rich cultural, spiritual, and historical value for Native peoples in the region.

On 26 December 2016, former President issued the Proclamation no. 9558, creating the Bears Ears National Monument. The act enhanced the protection of a multitude of geologic formations, biodiversity, and culturally important sites for the benefit of current and future generations. Indeed, the Bears Ears National Monument encompasses the protection of around 100,000 archaeological sites and artefacts that are central to the preservation of regional Native culture. These include sacred places for Native American peoples, such as ceremonial grounds, graves, petroglyphs, and ancestral Pueblo dwellings.

Recognizing the importance of tribal participation to the care and management of the objects within the Bears Ears National Monument, and in order to ensure that management decisions affecting the monument reflect tribal expertise and traditional and historical knowledge, Proclamation no. 9558 established the Bears Ears Commission. This Commission, constituted by representatives of the Hopi Nation, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah Ouray, and Zuni Tribe, would provide guidance and recommendations on the development and implementation of management plans and on management of the monument.

On 4 December 2017, President Donald J. Trump issued a Presidential Proclamation, modifying the boundaries of the monument to exclude from its designation and reservation approximately 1,150,860 acres of land.³ With this act, your Excellency's government reduced the area within the national monument by 85%, restricting it to an area of approximately 200,000 acres, divided into two disconnected units – the Indian Creek and Shash Jaa.

The revocation of the protection of 85% of the Bears Ears National Monument threatens to cause irreparable damage to sites and artefacts that are central not only to history and science, but also to the cultural integrity of Native American peoples. Following 60 days after the date of the Presidential Proclamation, the lands excluded from the monument reservation may become exposed to oil and gas drilling, uranium and potash mining, mineral exploration, uncontrolled off-road vehicle use, vandalism and looting of archaeological and paleontological sites, and grave robbing.

This revocation seems to have been issued without your Excellency's government's engagement in meaningful consultation with the indigenous peoples concerned. Accordingly, the Presidential Proclamation was issued despite the

³ <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-modifying-bears-ears-national-monument/>

urging of indigenous peoples for the preservation of their ancestral lands and sacred sites through the framework established via Proclamation no. 9558.

The Presidential Proclamation also altered the management of the areas designated and reserved by Proclamation 9558 that remain part of the monument. The Bears Ears Commission had its denomination changed to Shash Jáa Commission, and should apply only to the area of the Shash Jáa unit (an area of approximately 100.000 acres).

While I do not wish to prejudge the accuracy of these allegations, the assertions as described above raise serious concerns over the issuing of Presidential Proclamation and its potential impact on Indian sacred sites and the rights of indigenous peoples. The information received, if accurate, indicates a *prima facie* violation of the rights of indigenous peoples who have profound historic, cultural, and spiritual ties to the lands excluded from protection with the revision of the boundaries of the Bears Ears National Monument.

I would like recall your Excellency's government to its obligations under binding international human rights instruments. The United States has ratified international treaties relevant to the rights of indigenous peoples, including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights. In its 2014 concluding observations to the periodic report presented by your Excellency's government, the Human Rights Committee, referring to article 27 of the ICCPR expressed its concerns "about the insufficient measures being taken to protect the sacred areas of indigenous peoples against desecration, contamination and destruction as a result of urbanization, extractive industries, industrial development, tourism and toxic contamination. It is also concerned about [...] the insufficiency of consultation with indigenous peoples on matters of interest to their communities" (CCPR/C/USA/CO/4, para 25).

Your Excellency's government has also endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). As a universal framework setting out the minimum standards of protection of indigenous peoples' rights, the Declaration establishes, in article 25, the right of indigenous peoples to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard. Article 32(2) of the Declaration establishes the duty of States to consult and cooperate in good faith with indigenous peoples in order to obtain their free, prior and informed consent before approving any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

Furthermore, during the universal periodic review in 2015⁴, the United States accepted the recommendations regarding the full implementation of the United Nations Declaration on the Rights of Indigenous Peoples, the need to respect and consult with

⁴ A/HRC/16/11 and Add.1.

indigenous peoples to support their rights to traditionally owned lands and resources, the adoption of measures to effectively protect sacred areas against environmental exploitation and degradation, and the need for corrective action and compensation relating to historical injustice.

In the report on my mission to the United States in March 2017, I specifically noted that “[p]rior to rendering federal decisions that have the potential to impact tribes, federal agencies must consider treaty rights, federal trust responsibility to tribes and environmental justice, along with all relevant and applicable federal statutes, regulations and policies”⁵. I also highlighted the importance of tribal participation in meaningful dialogue on projects that affect their lands, territories and resources⁶, and formulated recommendations to the government of the United States in order to obtaining indigenous consent on issues that could affect their rights as indigenous peoples⁷.

My report also stressed that, outside of indigenous control, many of the historical territories of indigenous peoples – namely the Chaco Canyon, Mount Taylor and Bears Ears – have come under threat by energy, mining and other infrastructure projects⁸. On this note, I commended the unprecedented model of co-management between the federal government and local and regional tribes that put was adopted in the Bears Ears National Monument. Bears Ears was an example of best practices in the process of meaningful government-to-government consultation between Native peoples and state and federal government agencies, and should have served as a model for land protection and management of resources.⁹

I further noted that such projects have unique impacts on Indian communities, and that any exploration or extraction effort must take into account the links to the health, society, culture and spirituality of local indigenous communities.¹⁰ I also recommended your Excellency’s Government to adopt legislation to amend existing laws governing the protection of sacred and cultural places beyond present-day reservation boundaries so as to further protect the religious freedoms of indigenous peoples¹¹.

The issues addressed above are long-standing concerns of my mandate, and previous communications have been sent to the government of the United States describing alleged violations of the rights of indigenous peoples. For instance, on 21 September 2016, Special Procedures mandate-holders expressed apprehension about your Excellency’ government’s failure to consult the indigenous peoples affected by the Dakota Access Pipeline project and to obtain their free and informed consent (UA USA 7/2016). In this occasion, the mandate-holders also expressed serious concerns in relation to the negative impact this pipeline could have on various aspects, including the right to

⁵ A/HRC/36/46/Add.1, par. 26.

⁶ A/HRC/36/46/Add.1, par. 14.

⁷ A/HRC/36/46/Add.1, par. 87.

⁸ A/HRC/36/46/Add.1, par. 35.

⁹ A/HRC/36/46/Add.1, par. 38.

¹⁰ A/HRC/36/46/Add.1, par. 34.

¹¹ A/HRC/36/46/Add.1, par. 89.

access cultural heritage and to conduct one's own cultural and religious practices. Regrettably, we have not received any response from your Excellency's government.

Similar concerns were expressed, *inter alia*, in the communication sent to your Excellency's government on 17 August 2015 (UA USA 16/2015), concerning the alleged desecration of Mauna Kea, a sacred mountain located on the Big Island of Hawai'i, for the construction of the Thirty Meter Telescope (TMT). I thank your Excellency's government for the response dated 18 November 2015.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on measures taken to ensure participatory and good faith consultations with affected indigenous communities and their free, prior informed consent ahead of the approval of any project affecting their lands or territories.
3. In particular, please provide information on the actions taken by the current administration to engage the Inter-Tribal Coalition and affected Native peoples in meaningful consultation to protect the sacred places and resources in the entire 1.35 million acres of land originally designated as the Bears Ears National Monument.

Given the urgent nature of the concerns expressed, I would appreciate a response from your Excellency's government within 60 days. I undertake to ensure that your Excellency's government's response will be taken into account in my assessment of this situation and in developing any recommendations that I make for your Excellency's Government's consideration pursuant to the terms of my mandate.

I intend to publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question

Your Excellency's government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Victoria Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples