



# International Indian Treaty Council



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## Hearing No. 26, 161st Period of Sessions Inter-American Commission on Human Rights

**“Impact of Executive Orders ‘Border Security and Immigration Enforcements Improvements;’ ‘Protecting the Nation from Foreign Terrorist entry into the United States;’ ‘Expediting Environmental Reviews and Approval for High Priority Infrastructure Projects’ on Human Rights in the United States,” March 21, 2017, presented by Roberto Múkaró Borrero (Taíno)**

*“...indigenous peoples have suffered from historic injustices because of, inter alia, their colonization and the dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.” – Preamble, American Declaration on the Rights of Indigenous Peoples, adopted 16 June 2016*

On January 24, 2017, United States President Donald Trump issued an Executive Order “Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects”. It had the expressed intent to “streamline and expedite, in a manner consistent with law, environmental reviews and approvals for all infrastructure projects, especially projects that are a high priority for the Nation, such as improving the U.S. electric grid and telecommunications systems and repairing and upgrading critical port facilities, airports, pipelines, bridges, and highways.”<sup>i</sup>

The President also issued two Executive Memorandums specifically paving the way to expedite the permitting of the Dakota Access and Keystone XL Pipelines, which are strongly opposed by Indigenous Peoples and Tribal Nations.<sup>ii</sup> The Order and Memorandums failed to acknowledge or recognize, and in fact directly violate, the rights of the impacted Indigenous Peoples including free prior and informed consent regarding development projects that affect their lands and waters as affirmed in Article 24 paragraph 4 of the American Declaration on the Rights of Indigenous Peoples.

As a direct result of the President’s actions, the U.S. Army announced on February 7<sup>th</sup>, 2017 that the U.S. Army Corps of Engineers would grant the final easement needed to finish the Dakota Access Pipeline (DAPL), dismissing an intended environmental impact assessment and cutting short an already underway public comment period associated with it.<sup>iii</sup> The Army had also previously stated its intention to consider an alternative route that would not threaten the Tribes’ sacred sites, water supply and Treaty rights.<sup>iv</sup>

American Indian Tribal Nations who will be directly affected immediately denounced the lack of consultation and the impacts on their rights. Leaders of the Standing Rock Sioux Tribe called

these Executive actions “an attack on tribal sovereignty.”<sup>v</sup> Leaders of the Yankton Sioux Tribe of South Dakota stated the administration’s actions are “clearly arbitrary and capricious” and “in violation of the Administrative Procedures Act.”<sup>vi</sup> On March 14, in D.C. District Court, the Cheyenne River Sioux Tribe was denied an emergency injunction they requested due to the “ultimate harm to Tribal members’ free exercise of religion” which would result from the introduction of oil into the DAPL.<sup>vii</sup> The U.S. Court of Appeals for the District of Columbia Circuit denied their appeal, filed jointly with the Standing Rock Sioux Tribe, on March 18th.<sup>viii</sup> U.S. Rep. Raul Ruiz (D-CA) and others on the U.S. House of Representatives Committee on Natural Resources also challenged the order, stating “Tribes have a right to have a say in any decisions that may impact their health, land, and cultural survival.”<sup>ix</sup>

It is the view of the International Indian Treaty Council (IITC) that the January 24<sup>th</sup> Executive Order and the Presidential Memoranda deny Indigenous Peoples’ right to due process, violate federal law, federal trust responsibility, and disregard international human rights norms, principles and standards and to which the U.S. is obligated.<sup>x</sup> They also display a flagrant disregard for federal legal process.

Of particular importance to this Commission are the provisions in the United Nations and the American Declaration on the Rights of Indigenous Peoples affirming self-determination; free, prior, and informed consent; the preservation of sacred sites and religious practices; and Treaties between Indigenous Peoples and States.<sup>xi</sup>

The IITC further asserts that the President does not have the legal or moral authority to violate the U.S. Constitution, which states “treaties are the supreme law of the land.” In fact, the U.S. Supreme Court, in 1980, recognized the duplicity of the US government in breaching its treaty obligations under the 1861 Ft. Laramie Treaties concluded with the “Great Sioux Nation”.<sup>xii</sup>

These actions also ignore recent recommendations of UN Treaty Bodies to the United States. The UN Committee on the Elimination of Racial Discrimination in its concluding observations on the combined seventh to ninth periodic reports of United States of America in 2014 recalled its general recommendation No. 23 (1997) on Indigenous Peoples,<sup>xiii</sup> and called upon the U.S. to:

*a. Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them based on their free, prior and informed consent; and*

*b. Adopt concrete measures to effectively protect the sacred sites of indigenous peoples as a result of the State party’s development or national security projects and exploitation of natural resources, and ensure that those responsible for any damages caused are held accountable.*

Likewise, the UN Human Rights Committee’s Concluding Observations on its 2014 review of the US addressed the issue of sacred sites, areas and places and recommended that the US uphold the right of Indigenous Peoples to free prior and informed consent in this regard.<sup>xiv</sup>

The January 24 Executive Order and Memoranda will have far-reaching and detrimental impacts on the rights of Indigenous Peoples, especially those who are opposing energy development projects that target their lands, waters and sacred places without their consent in the U.S. and its insular territories.

We respectfully recommend that the Inter-American Commission on Human Rights monitor the relevant developments closely. We urge the Commission to advise the United States government and the current administration to rescind these Presidential actions and align its practices and policies going forward with its regional and international human rights obligations including its obligations to uphold the Treaties it has concluded with Indigenous Nations including the Great Sioux Nation (the Lakota, Nakota and Dakota).

In closing, we express our support and endorse the recommendations being submitted here today by the American Civil Liberties Union (ACLU), including those pertaining to the rights of Indigenous Peoples.

Thank you.

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<sup>i</sup> See the Executive Order “Expediting Environmental Reviews and Approval for High Priority Infrastructure Projects” at <https://www.whitehouse.gov/the-press-office/2017/01/24/executive-order-expediting-environmental-reviews-and-approvals-high>

<sup>ii</sup> See the Executive Memoranda at <https://www.whitehouse.gov/the-press-office/2017/01/24/presidential-memorandum-regarding-construction-keystone-xl-pipeline> and <https://www.whitehouse.gov/the-press-office/2017/01/24/presidential-memorandum-regarding-construction-dakota-access-pipeline>

<sup>iii</sup> In a Jan. 18 notice published in the *Federal Register* the Army had said it would accept public comments on the project through Feb. 20. See “Army Approves Dakota Access Pipeline Route, Paving Way For The Project’s Completion,” NPR, February 7, 2017 at <http://www.npr.org/sections/thetwo-way/2017/02/07/513951600/army-approves-dakota-access-pipeline-route-paving-way-for-the-projects-completio>

<sup>iv</sup> See “Standing Rock Sioux Tribe’s Statement on U.S. Army Corps of Engineers Decision to Not Grant Easement,” Stand with Standing Rock, December 4, 2016 at <http://standwithstandingrock.net/standing-rock-sioux-tribes-statement-u-s-army-corps-engineers-decision-not-grant-easement/>

<sup>v</sup> See “No Trump Consultation on Dakota Access & Keystone XL Pipelines,” Indian Country Today, January 28, 2017: <https://indiancountrymedianetwork.com/news/politics/no-trump-consultation-dakota-access-keystone-xl-pipelines/>

<sup>vi</sup> *ibid*

<sup>vii</sup> The Cheyenne River Sioux Tribe continues its appeals process in its religious freedom case. See “Cheyenne River Sioux Tribe Requests Stay on Court’s DAPL Religious Freedom Decision”, Indian Country Today, March 14, 2017: <https://indiancountrymedianetwork.com/news/politics/cheyenne-river-sioux-tribe-courts-dapl-religious-freedom/>

<sup>viii</sup> See “Appeals court refuses to stop oil in Dakota Access pipeline,” AP, March 18, 2017 at

<http://www.msn.com/en-us/news/us/appeals-court-refuses-to-stop-oil-in-dakota-access-pipeline/ar-BBylp2P>

<sup>ix</sup> *ibid* at v

<sup>x</sup> Previous denial of due process was addressed by CERD/C/USA/DEC/1 11 April 2006: “The Committee is concerned by the State party’s position that Western Shoshone peoples’ legal rights to ancestral lands have been extinguished through gradual encroachment, notwithstanding the fact that the Western Shoshone peoples have reportedly continued to use and occupy the lands and their natural resources in accordance with their traditional land tenure patterns. The Committee further notes with concern that the State party’s position is made on the basis of processes before the Indian Claims Commission, “which did not comply with contemporary international human rights norms, principles and standards that govern determination of indigenous property interests”, as

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stressed by the Inter-American Commission on Human Rights in the case *Mary and Carrie Dann versus United States* (Case 11.140, 27 December 2002)".

<sup>xi</sup> See the UN Declaration articles 3, 18, 19, 26, 28(1), 29, 32(2), 37(1), 37(2) and OAS Declaration articles 3, 16, 19, 24, 25, 29 and 31.

<sup>xii</sup> *United States v. Sioux Nation*, 207 Ct. Cl. 234 at 241, 518 F.2d 1298 at 1302 (1975), cited in *United States v. Sioux Nation of Indians*, 448 U.S. 371 at 388 (1980): Referring to the illegal confiscation of the Treaty Lands in the Black Hills of South Dakota that "... a more ripe and rank case of dishonorable dealing will never, in all probability, be found in the history of our nation" and considered that "...President Ulysses S. Grant was guilty of duplicity in breaching the Government's treaty obligations with the Sioux relative to ... the Nation's 1868 Fort Laramie Treaty commitments to the Sioux". The Court also concluded that the US Government was guilty of "... a pattern of duress ... in starving the Sioux to get them to agree to the sale of the Black Hills."

<sup>xiii</sup> The Committee on the Elimination of Racial Discrimination Concluding Observations on the combined seventh to ninth periodic reports of United States of America (Adopted by the Committee at its eighty-fifth session, CERD/C/USA/CO/7-9, 29 August, 2014, para. 24.

<sup>xiv</sup> "The Committee is concerned about the insufficient measures 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 restriction of access of indigenous peoples to sacred areas that are essential for the preservation of their religious, cultural and spiritual practices, and the insufficiency of consultation with indigenous peoples on matters of interest to their communities (art. 27).

The State party should adopt measures to effectively protect sacred areas of indigenous peoples against desecration, contamination and destruction and ensure that consultations are held with the indigenous communities that might be adversely affected by the State party's development projects and exploitation of natural resources with a view to obtaining their free, prior and informed consent for proposed project activities, CCPR/C/USA/CO/4, April 23, 2014, Concluding observations on the fourth periodic report of the United States of America, 23 April, 2014, para. 25.

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*\*See attached for a list of IITC affiliated Tribal Nations, governments, organizations, networks, societies and communities based in the United States*

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**IITC Affiliates in the United States and US Territories (as of March 1, 2017)**

1. National Native American Prisoners' Rights Coalition (National)
2. White Clay Society/Blackfoot Confederacy (Montana)
3. Indigenous Environmental Network (National)
4. Columbia River Peoples (Washington/Oregon)
5. Rural Coalition Native American Task Force (Minnesota)
6. Yoemem Tekia Foundation, Pascua Yaqui Nation (Arizona)
7. Pit River Tribe (California)
8. Wintu Nation of California
9. Redding Rancheria (California)
10. Tule River Nation (California)
11. Muwekma Ohlone Nation (California)
12. Coyote Valley Pomo Nation (California)
13. Round Valley Pomo Nation (California)
14. Oklahoma Region Indigenous Environmental Network (Oklahoma)
15. Wanblee Wakpeh Oyate (South Dakota)
16. IEN Youth Council
17. Independent Seminole Nation of Florida (Florida)
18. Cactus Valley/Red Willow Springs Big Mountain Sovereign Dineh Community (Arizona)
19. Leonard Peltier Defense Committee (National/New Mexico)
20. Eagle and Condor Indigenous Peoples' Alliance (Oklahoma)
21. Seminole Sovereignty Protection Initiative (Oklahoma)
22. Mundo Maya (California)
23. Los Angeles Indigenous Peoples Alliance (California)
24. American Indian Treaty Council Information Center (Minnesota)
25. Vallejo Inter-Tribal Council (California)
26. Three Fires Ojibwe Cultural and Education Society (Minnesota)
27. California Indian Environmental Alliance (CIEA)
28. Wicapi Koyaka Tiospaye (South Dakota)
29. Mvskoke Food Sovereignty Initiative (Oklahoma)
30. Light is Life Youth Food Sovereignty Project
31. Buffalo Council (Colorado)
32. Oce Vpofa/Hickory Grounds Tribal Town (Alabama/Oklahoma)
33. *United Tribes of Michigan (request for affiliation currently pending)*

**HAWAII**

34. Sovereign Nation of Hawaii
35. Aloha First, Hawaii

**ALASKA**

36. Native Village of Venetie Tribal Government/Arctic Village Traditional Council
37. Chickaloon Village Traditional Council, Chickaloon Native Village
38. Stevens Village Traditional Council
39. Native Village of Eklutna

**PUERTO RICO (BORIKEN)**

40. United Confederation of Taino People: Borikén (Puerto Rico), Kiskeia, (Dominican Republic), Barbados, Guyana (Arawaks) and Bimini