“Strengthening Partnership between States and indigenous peoples: treaties, agreements and other constructive arrangements”

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Kónitsqíí gokíyaa Ndé: ‘Big Water People’s Homeland’

a shadow of Self-Determination

in a bifurcated Traditional Territory

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The views expressed in this paper do not necessarily reflect those of the OHCHR.
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Identification of Ndé Authority, Treaties, Agreements and Constructive Arrangements between the Cúelcahén (‘Tall Grass People’) and Gochish Hada’didla (‘Big Water People’) with Spain, Mexico, Texas and the United States

and

a Call on the UN Human Rights Council to Examine enduring negative social, economic and political impacts of the Treaty of Guadalupe Hidalgo on Cúelcahén (‘Tall Grass People’) and Gochish Hada’didla (‘Big Water People’) Self-Determination
“‘Áshį́ k’adì Kónitsąą ‘agopłch ‘íníí ná’ gojii”
[trans: “And now though Lipan are reduced in number, still, they remain.”]

-Augustina Zuazua
Lipan Apache war survivor and U.S. prisoner of war, 1938 (Mescalero, NM)

“It has become a truism that Athabaskan-speaking peoples name their ethnogeographical environment with "care and precision" (Hoijer 1950: 557). Work on Western Apache (Basso 1996), Navajo (Kelley and Francis 1994), Tolowa (Collins 1998), Tutchone (Cruikshank 1990), and Alaskan Athabaskans (Kari 1989, 1996a, 1996b) clearly reveal the importance of place-naming practices among Athabaskan-speaking peoples. They often reveal culturally salient geographical features and they suggest something about aboriginal Lipan Apache homelands. [...this] is drawn primarily from a narrative told by Augustina Zuazua to the anthropological linguist Harry Hoijer (Hoijer 1975).”

Anthony K. Webster (2007)
Introduction

_Danzho ha’shi?_ Warm greetings to distinguished Indigenous Nations’ representatives, Indigenous Peoples, the members of the UN Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of Indigenous Peoples, EMRIP members, and observers who are gathered together for the 3rd United Nations Seminar on Treaties, Agreements and Other Constructive Arrangements, entitled, “**Strengthening Partnership between Indigenous Peoples and States: treaties, agreements and other constructive arrangements.**”

I regret that I cannot be physically present with all of you during this important Seminar. I have submitted this statement to the Secretariat, Ms. Samia Slimane and to the members of the North American region on behalf of the Cúelcahén (‘Tall Grass People’) and Gochish Hada’didla (‘Big Water People’) Ndé, and the Lipan Apache Band of Texas.

We deeply appreciate the papers submitted by the International Indian Treaty Council, the Owe Aku and Black Hills Sioux Nation Treaty Council, among others which clarify Indigenous perspectives and stand-points related to millennial and historical knowledge, contexts, texts and documents relevant to the United States, Mexico, and Spain in Latin America as these have impacted Indigenous Nation treaty partners over time and place.

With equal esteem, we are grateful for the detailed presentations of the three Indigenous Mechanisms: the UN Permanent Forum on Indigenous Issues, the UN Special Rapporteur on the rights of indigenous peoples, and the UN Expert Mechanism on the Rights of Indigenous Peoples who made significant contributions to the magnitude of future actions needed on Treaties, Agreements and other Constructive Arrangements in order to make this central to the work of redressing Indigenous Nations’ rights to self-determination and the recognition of this fact by States.

We look forward to participating in productive future work emerging from this seminar, and have a strong desire to participate in decision-making with respect to constructive dialogues with Indigenous Nations and States. Based on the pillars of respect, reciprocity, responsibility and relevance, we seek to strengthen the necessary partnerships required to realize self-determination of the Ndé in the international arena.
Overview:

The two epigraphs on page two illustrate two critically important components of Ndé (‘Lipan Apache’) Peoples, Clans, Bands, and Relations’ inherent self-determination in Ndé traditional territory. In one instance, Augustina Zuazua, an Ndé Elder woman taken prisoner by the U.S. army, and later interviewed by a U.S. anthropologist informs us of an Ndé woman’s critical view of settler societies and settler nations which violently occupied and overthrew Ndé governance systems, yet, in spite of this Ndé peoples “still remained” in the traditional territory—along and on both sides of the arbitrary U.S.-Mexico border. In the second epigraph, a contemporary linguist recognizes that Ndé of Texas-Mexico have emplaced our inherent belonging in our traditional territory in similar ways that all Athabascan peoples have historically, and continue to do so—in spite of extreme barriers.

This presentation on the Ndé (‘Lipan Apaches’) of Texas-Mexico will provide use for the dialogue on Treaties, Agreements and other Constructive Arrangements and will raise challenging issues and provoke important questions on the issues of Indigenous Nations which experienced genocidal occupation, military invasion, settler state-sponsored persecution, massive dispossession, imprisonment, massacres, and forced assimilation in the Texas-Mexico border region between 1821-present.

Ndé of Texas-Mexico are a Nation of diverse and distinct families, clans and bands. Our integral and inherent relationship as Peoples and decision-makers (those who have authority affecting our families, communities, life, lands, territories and resources) of Kónitsqáàl gokíyaa, ‘Big Water People’s Home’) is inscribed in our knowledge system disseminated inter-generationally. Due to the severity of colonization in the state of Texas (U.S.A.) and in the U.S., where domestic ‘recognition’ is economically and politically-driven, biased, and discriminatory against Indigenous Nations which never ceded, relinquished, extinguished, or sold lands and resources to the occupying societies and states. Ndé domestic relations with Texas, the U.S. and Mexico are troublesome, as each Euro-American state has a historically documented extermination and assimilation policy record relative to Ndé. Texas should be treated at par with Mexico and the U.S. as a state, because of its distinct and unique history as province and colony of Spain, colony and state of Mexico, independent Republic, Confederate State, and annexed state of the U.S. Each state have obscured and distorted the reality of extensive Ndé treaties and agreements with each as long established practice among all colonizer entities with Ndé since the 17th century. Our relationships, land, agreements, memory, transmission practices, matriarchal systems, values of law principles are transmitted (‘oral tradition’) and historical (‘written’) enactments of territorial protection, defense, and assertion of our known authority in a North American context of Canada, the U.S., Mexico, and the areas of the Caribbean where colonizers deported Ndé in previous centuries as an ongoing policy of destroying Ndé will to defend our inherent relationship to our homeland, families, culture, decision-making authority, history, memory, and identity.

In this article, Ndé concepts and perspectives of self-determination and decision-making with regard to Ndé children, mothers, fathers, families, and communities are highlighted.
Treaties, agreements, and other constructive arrangements between Ndé and Spain, Mexico, Texas and the United States should be given strong consideration in the examination of the North American region. This article is presented in order that the Office of the High Commissioner on Human Rights, (‘OHCHR’) will have a critical and contemporary lens during the 3rd Seminar on Treaties, Agreements, and other Constructive Arrangements, through which to determine what the criteria will be necessary to strengthen partnerships.

The author posits that Ndé Peoples’ claims to lands, territories and resources in Kónitsqą́ gokíyaa will elevate the relevance of Ndé self-determination at the level of the UN OHCHR, and that Ndé claims test the international human rights laws and principles upon which the UN Declaration on the Rights of Indigenous Peoples is founded. The paper argues that the U.S., Mexico, and (former Republic) Texas histories, policies, legislation, and tribunals relating to Ndé colonization should be examined by the UN OHCHR relative to issues of regional and binational state craft by settler nations which discriminated against and severely disadvantaged Ndé Peoples. This paper uses decolonial and Indigenous methods for recovering Ndé principles which help to clarify the situation of Ndé and other Indigenous Nations bifurcated by borders, affected by militarization, and threatened by obscurity, uncertainty, and sovereign immunity relative to how the States interpret the Treaty of Guadalupe Hidalgo and exclude Indigenous Peoples’ participation, consultation, consent, and disacknowledge that the lands in question were never ceded by Ndé, and Ndé were found to have Aboriginal Title by the U.S. Indian Claims Commission in 1971, but were denied access to juridical personality, support or partnership to establish Ndé self-determination with land, territory and resources are pillars.

Key tenets to be presented:
I. Ndé Peoples are Nations.
II. Ndé: Knowledge Inscribed in the Land.
III. Ndé Self-Determination Pillars: Founded in Na’ii’ees principles of land-based decision-making and law systems.
IV. Ndé foundation for inherent sovereignty: Ndé Emergence stories, genealogies, Indigenous regional and continental agreements and laws related to peoples, lands, territories, and resources prior to 1492; Knowledge systems and Indigenous economic structures pre-dating 1492 and ongoing; Ndé governance and decision-making structures; and, Treaties, Land Grants, and arrangements with European peoples’ tribunal systems rooted in the Doctrine of Discovery and frameworks of continued domination.
V. European and Euro-American Settler Colonialisms: Religious Assimilation, Agricultural and Mining Colonizations, Industrial Removals and Displacements, Carceral and Punitive Policies; Denial of Treaties and Land Grants with European-origin colonizers.
VI. Ndé Treaties, Agreements and other Constructive Arrangements: International Diplomacy with Spain, Mexico, Texas and the United States.
VII. Kónitsqą́ gokíyaa: the foundation for Ndé self-determination
VIII. Ndé law and justice structures: Keésda tahalahe béodaaziılı́ (‘Feast gathering together to decide’); Dáléshí bil’ ádaajit’inde’ (‘Matrilineal kinship’/’one’s family came from same people and same place’); shi t’ekende (‘clans of significance’); shi ‘andaji gut’ekende (‘inter-related bands of food exchange and protection’); Nant’a (‘hereditary chief’); Nant’a kedidlii (‘ceremonial leader’); nahk’ée’át’éh (‘families, clans, bands’).
IX. Indigenous Nations and the Martinez Final Report: Constructing a partnership focused on actions and implementation.
I. Ndé Peoples are Nations.

Colonization, nation building, industrialization, repressive and discriminatory tribunals and transnational (across borders) development by European and Euro-American settler societies and settler nations in the Ndé traditional territory have undermined, overthrown, and nearly destroyed the Ndé Peoples’ most fundamental institution: the family. Resilience and resistance without recognition, partnership, and access to justice in settler nations’ tribunals cannot be sustained. Indigenous Nations are continually threatened by structural violence, marginalization, and the daily threats of poverty, urbanization, and assimilation.

The settler nation’s non-recognition of the juridical personality of Ndé is an issue that should be analyzed in more detail in the context of Ndé of North America and colonization by Spain, Mexico, Texas and the U.S. The denial of the juridical personality of Ndé by Texas and the U.S. is problematic. Ndé lands were never extinguished by the U.S. Aboriginal Title of 6.5 million acres of unceded lands exist in southern Texas and along and throughout the Lower Rio Grande River. Mexico evaded its responsibilities to address Ndé Aboriginal Title and land grants affected by the Treaty of Guadalupe Hidalgo (1848).

Indigenous Peoples have inherent collective rights as Nations and are the stewards of our customary territories. The continued denial and negation of the debt owed to Indigenous Nations and lack of accountability by the States is at the root of grief, anger, loss of trust, and overshadows the inability to come to meaningful dialogue between States and Indigenous Peoples.

Self-determination over lands, territories and resources is crucial for Ndé cultural survival. The U.S. and Texas domestic policies towards the Ndé are colonialist and assimilationist; the lack of an international mechanism to enforce Treaties and Constructive Agreements and Arrangements structures Indigenous Peoples as a marginalized ‘minority’ in official state discourse and practice. The constitutions are settler nationalist instruments established during the 19th century to enfranchise white suffrage and settlement and to catalyze the removal, assimilation and incorporation of Indigenous Peoples into the U.S. industrial interests, and to dissuade Ndé from developing our lands, territories and resources.

II. Ndé: Knowledge Inscribed in the Land.

Through the Ndé Oral Tradition, we know our existence on Shimaaisdzán (‘Mother earth’) was created by Ussn (‘Creator’) and the ancestors were given instructions on how to live by: Bildguu’q’i (‘the Universe’), Niigusdzání (‘the Earth World’), ‘l’ii’ane (Cave Opening), Túch’énéngu (‘Flood’), the First Teachers, Hactcí, Naiiees isdzánłesh, Bikegoi’nan, Nanasganesh, and others.

Cuélcahén (‘Tall Grass People’) and Hada’didla Gochish (‘Lightning People’) have an extensive history of treaties, agreements and other constructive arrangements with more than one State. Spain, Texas, Mexico and the United States each had unique and different histories of land dispossession, war, militarization, and extractive development in Ndé lands. While Ndé were
not signatories on the TGH, nevertheless, the TGH has had severe impacts Ndé due to how the establishment of economic, social and political border between the two States excluded Ndé and the many related Indigenous Nations with whom Ndé have intimate ties from participation and decision-making in all matters which affect them in the bifurcated lands. Texas, formerly known as Nuevo Santander, and a former colony of Spain, and a province of Mexico, has a complex land-tenure and water governance history impacting Indigenous Peoples which is still in effect today, side-by-side Texas and U.S. domestic law. In this paper, I will try to summarize these for the record and for future reference.

III. Ndé Self-Determination Pillars: Founded in Na’ii’ees principles of land-based decision-making, instructions, self-governance, and agency.

In the ‘Introduction Statement’ of the Ndé “Historiographical Analysis and Claim as a Sovereign Nation,” hereditary Chief, Daniel Castro Romero, Jr. declared:

“For the purpose of this analysis and study the Lipan Apache Band of Texas General Council asserts its authority as a sovereign nation to be identified by its ancestral and traditional name “Ndé” or “Cuélcachén Ndé, Tú é diné Ndé, Tú sis Ndé, Hada’ didla’ Ndé, Tas stëë be glù Ndé, Buï glùn Ndé, Zuà Zuà Ndé,” rather than its colonial, anthropological, historical, and linguistic imposed label name “Lipan Apache,” subjugated onto our people at First Contact by Spanish Explorer Pánfilo de Narváez in November 1528.”

The Chief went further, to say that

“The Lipan Apache Band of Texas makes its political and sovereign claim that all compacts of agreement established between the Spanish Vice-Royal (Colonial Spanish), Republic of Mexico (Mexican Government), the Republic of Texas (Pre-Annexation), the State of Texas (Modern-Day Texas), and United States of America are valid and binding. Furthermore, the Lipan Apache Band of Texas makes its claim that the U.S. Government and the State of Texas never formally extinguished their Nation-to-Nation obligations with the lineal descendants of the Ndé.”

Ndé self-determination pillars are the family, family group, and inter-related extended family kinship in interdependent coalitions of clans and bands in proximity to each other over large areas traditionally allowed for a balanced relationship with our lands and its gifts. Founded in Na’ii’ees female decision-making and self-governance principles, based upon the Na’ii’ees Isdzánlesh feast and reciprocal exchange rituals, matriarchal leadership in complimentarity with male leadership have always guided stewardship over the land, our territory, and law systems.

IV. Ndé foundation for inherent sovereignty: Ndé Emergence stories, genealogies, Indigenous regional and continental agreements and laws related to peoples, lands,

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Ndé Knowledge systems, oral history, emergence stories, genealogies, Indigenous agreements, with European peoples are the basis of inherent and integral relationship to Kónitsąįį. Our inherent proprietary title to our lands is the foundation for Ndé Peoples’ self-determination rights.

Emergence Stories Place Us in Our Lands (30,000 B.C. to Present)

Ndé are diverse and multiplural Peoples. Our society is based upon matrilineal, matrilocal, and matrifocal clan systems which honour the grandmother, mother, daughter, niece, granddaughter and sister. We are traditionally organized in complex kinship relationships and in complimentarity with fathers, uncles, grandfathers, and sons. This system has been violently degraded and eroded by systems of colonization, industrialization, assimilation, racism and sexism.

We came from the belly of Mother. We emerged more than one time over time immemorial. Each time we emerged we came from within Her to the outside, through the Ice. Below are sacred texts of our ancestors from the Texas-Coahuila cave systems. These are attributed to the ‘Lipan Apache’ deep knowing and long-being culture within the belly of Mother, during the ‘little ice age’. However.
Before the ‘little ice age’, Ndé peoples went on a nkaiyé—a long long walk. They say we walked for a long time, over many generations, after the big flood from another cave, in the current day border lands of British Columbia and Alaska. This is how current-day geographers imagine the flood spread out.

We learned everything we needed to know in order to feed ourselves, to warm ourselves, to protect our families. The First Peoples (Raven, Whirlwind, Beaver...) taught us to live according
to their Beliefs, Values, Rules, and Guidelines. We learned to live with respect, reciprocity, responsibility and relevance according to the teachings we were given.

The First Peoples spoke to us in their languages, and they gave us a language and instructions to being Ndé—the Real People—that was our own. We wrote our knowledge systems into Mother, in order for our future generations to have the documents and the archives they would need to live. Our Mother land gave us all that was needed to speak across time and place with other Peoples. With diverse Peoples we walked into the future generations, to share what the First Peoples shared with us during our emergence and long walk.

The First People taught us how to live together, to be in humility, and exist in cooperation with the natural elements. We emplaced this way of life in Kónitsqáíí —Big Water home, also known in Spanish as ‘rio bravo’ and ‘rio grande’, and in English, ‘big river.’ We belong there.

The Ndé origins and migrations combine with the historical, archaeological, and linguistic data constitute the foundation for reconstructing aspects of the Ndé buffalo hunter past. Present evidence will show that the Ndé
descend from plains buffalo hunters who are believed to have called themselves Ndé for at least 1,000 years before “Discovery” or the arrival of the Spanish.²

Ndé Peoples of southern Texas, the Lower Rio Grande Valley and north-eastern Mexico enjoy a rich and vital history of engaged activity in international law pre-dating the nation, State, and nation-state. Despite this fact, like many Indigenous Nations of North America, Ndé have struggled continually to protect and defend our culture, values, beliefs, families, lives, lands and resources. As evidenced in the above diagrams, this struggle has been fraught with diplomatic relations and many bloody battles in the context of building relationships of mutual respect, limits, boundaries, and trust.³

Sadly, trust and good faith were long ago destroyed between Spain, Mexico, Texas, the U.S. and Ndé hereditary chiefs, matriarchs, and Elders.

From the Indigenous history and archival curating practices kept alive for 19 generations, Ndé have constructed our history of international diplomacy, which begins with the legal disputes between Marian Leonor de Moctezuma (1526) and continues to the present day with Hereditary chief Daniel Castro Romero, Jr. and Elder Eloisa García Tamez.

The current stasis we experience as Indigenous Peoples is tied to what Bruce Miller calls “the politics of nonrecognition.” Interestingly, Lipan v. United States, Docket-22 of the Indian Claims Commission did find that Lipan Apache have Aboriginal Title. Knowing that we are the Real People, Ndé have firmly rejected and resisted being reduced or aggregated into ‘ethnic groups’. We have been critical of the Texas myth of the so-called ‘vanished’ Indian, and the purported ‘disappeared’ Apache, Jumano, Tlaxcalteca, Nahuatl, Purepecha, Otomi, Coahiltica, Tonkawa and Comanche diversity which is the true base of the Texas-Mexico border Indigenous Peoples who confronted and shaped many aspects of the settlers’ experiences in Texas. We are Nations in our homelands.

**Walling and Obstructing Indigenous Matrilineal Governance Rights**

Ndé are multiplural Indigenous Peoples with clan systems and inter-marriage systems with Indigenous Nations which pre-date the nation, State, and nation-state. These are binding though women’s matrilineal governance and decision-making which is a culturally significant factor in Ndé world views, justice systems, governance, language, and spirituality. Texas, Mexico and the U.S. have persistently denied, negated, and obstructed the Ndé as Peoples whose cultural structures, systems, and institutions are deeply inscribed as dual gender, gender complimentary, and gender inclusive on all decision-making. The Ndé have been deeply colonized in the last century to obey and bend to the western Euro-American patriarchal, masculine, and centralized-authoritarian-punitve model of socialized ethnocentrism. However, the Ndé systems and institutions did not die; rather, they were driven underground, and experienced important revitalizations and resurgences directly tied to Indigenous women’s activism to promote Ndé food, medicine, healing, memory, story-work, truth and justice systems, spirituality, and language. Inherently gender complimentary, Ndé self-governance has continued to be practiced in family and clan systems, and decision-making has continued without interruption across the most violent genocidal centuries (19th and 20th) and into the current period. This is a system which has been intrinsically developed intimately connected to our land and resources, over millennia. Ndé are actively recovering the community-based and archival knowledge related to Ndé governance which included males and females, the Elders.

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adults and the young. It is clear that an inclusive decision-making system has been instituted by Indigenous women across the millennia, and that the settler societies of Texas, Mexico and the U.S. worked to excessive degrees and measures to eradicate these wherever possible. Ndé hereditary Chief and Elders believe that Ndé women will continue to be restored to their rightful place in international, binational, regional, national and local institutions, and that it is to the betterment of all societies that Ndé women be restored to full and effective participation in decision-making, and to share their intellectual, social, economic knowledge in order to inform and influence socially peaceful and responsible decision-making in Ndé traditional territory—currently bifurcated.

Ndé women Elders, mothers, daughters, and granddaughters seek to restore their authority with regard to children, reproduction, local-global economies, families, clans, governance, lands and resources, law, justice, and international economic development. Indigenous women and men share responsibilities with regard to selecting chiefs and related leadership, as well as representative diplomats and negotiators for the Ndé on all matters effecting the Ndé Nation. are viewed to be in fundamental disrespect and violation of Indigenous Peoples’ human rights to self-determination. Ndé women have a core interest in and should be involved in all decision-making with regard to land, inheritance, title, and development.

When the U.S. used armed and tribunal force to construct the border wall across Ndé family lands on the Texas-Mexico border, and increased the militarization of the Texas border using surveillance technology, drones, military troops, and criminalization of human rights defenders, we took action to protect our people, lands and inherent rights. However, the U.S. obstructed the path to access justice, and Ndé brought the issues to the Inter-American Commission/OAS in 2009. Since 2007, Lipan Apache Women Defense, sanctioned by Elders and hereditary Chief and clan leaders, has raised concerns at the UN PFII, the North Region, the Special Rapporteur on the rights of indigenous peoples, the EMRIP, and other arenas.

Historical recovery of land rights and land dispossession is an on-going effort. As a result of increasing human rights violations by the U.S. against Ndé land title owners and lineal descendents of ancestors with treaties, land grants and other arrangements with non-Indigenous actors, our community submitted a UN CERD Urgent Warning/Early Action petition in May 2012.
Wall in the middle of Ndé Elder’s land, El Calaboz Rancheria, Texas-Mexico border

The above Elder referred to, Eloisa García Tamez, is the direct lineal descendant of Indigenous women who appear in many collections and archival documents relative to Indigenous women’s actions in law, justice and colonial court systems. Debunking the stereotype and myth that Indigenous women were ‘drudges’, the evidence shows that Indigenous women in the Ndé society were active agents of land, territory and resource defense against Spain, Mexico, Texas and the U.S. The above are just a few, of many examples, of Indigenous women’s land-tenure advocacies in the Ndé traditional territory.

Recuperating knowledge about Indigenous women’s extensive land-tenure legal struggles in the genealogical records of Ndé has revealed 19 generations of extensively detailed records. This
revelation contradicts normative rhetoric that Ndé have no relevant or significant history worth documenting, curating and educating about. This is a unique history of Indigenous women’s land-tenure and advocacy using all tools available to protect knowledge, histories, families, culture, traditions, systems, and memory over time and place. Indigenous memory and truth are endangered resources in a militarized zone.

VII.  Kónitsuq gókiyaa: Big Water People, the foundation for Ndé self-determination

A crucial part of the current Ndé decolonization is confronting the violent and genocidal past and ongoing present. Recently, the Ndé have researched archives in Mexico, the U.S., and Spain related to documented histories of carceral systems which were used by Spain, Texas, Mexico and the U.S. as methods to constrain and to repress Ndé devotion and love for our home lands.

Ndé history with colonizers is literally a blood-soaked horror. This is the subject of a new book underway. Confronting the truth is a crucial step to reconciliation.

Ndé people were kept as slave-captives in Catholic missions in the 17th and 18th centuries; were abducted and forced into labour in mines; were deported to Cuba and never returned; were chased down like animals and skinned, mutilated, and scalped for gold coins; were marched hundreds of miles to San Luis Potosí and permanently separated from kin; were massacred when deemed in the way of development; were separated from family and punished and abused at Carlisle Indian Industrial School; were assimilated in Texas public schools and maintained in de facto segregation and menial education; and, the list goes on...

The disacknowledgement of the Ndé treaties, agreements and other arrangements with Spain, Mexico, Texas and the U.S. is a serious obstacle to the implementation of the UN Declaration on the Rights of Indigenous Peoples, and Art. 3, the right to self-determination. Indigenous Peoples’ customary lands and territories are bifurcated by the U.S.-Texas-Mexico border. The Treaty of Guadalupe Hidalgo structured the legalization of extermination policies which specifically sought to repress Ndé resistances to displacement, assimilation, and non-compensation of dispossession of food sources, water, sacred sites, burial grounds, and ceremonial grounds.

A more rigorous analysis of the historical and ongoing impacts of the U.S.-Mexico border is needed. In Miguel Alfonso Martinez’ “Final report,” par. 49, of the “Study on treaties, agreements and other constructive arrangements between States and indigenous populations”, he foreshadowed the need for a critical analysis of the affect on Indigenous Nations as third parties to bilateral treaties.

“49. It follows that the issue of treaties affecting indigenous peoples as third parties may continue to be relevant insofar as they remain in force and insofar as indigenous peoples already participate - or may in the future - in the implementation of their provisions. Among the 10 instruments previously considered for analysis, (18) apart from the Lapp
Codicil, several others would warrant further scrutiny, among them the 1794 Jay Treaty and the 1848 Treaty of Guadalupe-Hidalgo, both of apparent special significance for the indigenous nations along the borders of the United States with Canada and Mexico respectively” [Emphasis and bold added].

This is an especially relevant issue for the Texas-Mexico border Indigenous Nations, as the international boundary is situated in the middle of the Rio Grande River. As the border wall, drones, surveillance systems, military policing, and criminalization constrain movement along the border wall, the water rights of Ndé Peoples are continually threatened by private land owners, private businesses, extractive industries, and the current militarization of the entire border zone.

Ndé Peoples with land grants with Spain established between the parties in 1749, pre-dating Mexico, Texas, and the U.S. constitutional governments—have enacted and practiced defense over their water rights. Though, the tribunal system in Texas and the U.S. is ineffective as neither acknowledge Indigenous peoples’ collective and aboriginal rights to water in Texas. Indigenous women’s customary rights to water, and to farm their titled lands which still exist in customary law, but not in practice on both sides of the river, is an issue of great concern.

We are currently conducting a historical recovery study to document a conflict which occurred in 1935-38, between Indigenous women in El Calaboz and the U.S. Army Corps of Engineers in order to understand the Indigenous knowledge, memory, and governance over water, and the consequences of losing access to the water, land title, and access to justice when the State exercises sovereign immunity and its ‘domestic’ military to develop mega-projects in Indigenous Peoples lands which are both treaty lands and land grant lands overlapping for Indigenous community members. When special interest groups benefit from the government’s use of force to displace Indigenous land owners who are of treaty and land grant ownership to land, this calls for a stronger enforcement mechanism to support Indigenous Peoples in redressing their grievances and achieving resolutions that are in alignment with the UN Declaration and are binding in international and domestic law.

The States’ historical positions of refusal and denial—from Indigenous Peoples’ perspectives of needing to heal—is a necessary part of self-determination of Real People, as Elders say. It is time to acknowledge that a strengthened partnership on treaties, agreements and other constructive arrangements must be courageous, brave and fundamentally fearless to confront Indigenous peoples’ suffering, pain, and the need for healing—on our own terms.

Ndé need to be able to process and to be acknowledged for the dark, repressed, and bloody history with Spain, Mexico, Texas and the U.S. A constructive dialogue needs to recognize the historical trauma Indigenous peoples embody and are haunted by. Our kids are enduring the recolonization through militarization and domination, as evidenced in Apache youth art today.

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This reality—how Ndé have deeply internalized our ongoing ‘prisoner of war’ status and history with the U.S., Texas and Mexico should be acknowledged in the process.

Artwork by Douglas Miles.

The dominant culture is having an overwhelmingly negative impact on ‘Apache’ youth identity, saturating them in symbols and icons of a colonial, hyper-violent construction of the colonial ‘enemy’ perpetually frozen and framed by U.S. imposed doctrines of domination. The maintenance of negative stereotypes of ‘Apache’ dissident warriors works to diminish Apache Peoples as anything but restless prisoners, arrested from self-determination and perpetually vanquished by American conquest. This narrative makes it easy for corporate piracy to prey upon Ndé lands and resources, and special interest groups to use the rule of law as a weapon of exploitation.

In Ndé customary lands, the rights of ‘ranchers’ in Texas typically rule over the rights of Indigenous Peoples’ resources. For example, in *Adjudication of Water Rights in Medina River* (1982), the Texas Fourth Court of Appeals decided that riparian rights through Crown land grants still existed in law in southern Texas. In a dispute over riparian rights in the Media River, the state originally found with the United States Lackland Airforce Base waste disposal system which utilized the creek. However, Justice Blair Reeves investigated the legal genealogy of riparian rights decisions and law in southern Texas, and wrote a dissenting opinion.

“Justice Blair Reeves, in a dissenting opinion, traced the riparian rights law to the King of Spain. The Texas Supreme Court reversed the Court’s majority opinion, and adopted Justice Reeves’ analysis.”


This is a good example of the enduring relevance of Crown law in southern Texas as understood, remembered and defended. Though the Spanish Crown made constructive agreements and arrangements with both Indigenous and non-Indigenous, in current-day domestic courts, Indigenous peoples are severely disadvantaged in exercising such decisions, especially in the post 9/11 era, when the federal government uses sovereign immunity in the ‘war on terror’ and eminent domain to ‘protect’ ‘ranchers’ interests (without building walls across their lands) and opts to build walls across Indigenous peoples’ lands under sovereign immunity. To Indigenous peoples the past is the present. Crown titles were originally used to colonize lands where Indigenous economies based on equestrian hunting over large areas, and to coerce settlement and sedentary agricultural lifestyles during the late 18th c. colonial period. This was a strategy to remove millions of acres from Indigenous Peoples which aided the policy of expanding silver mining, cattle ranching, and textile production.

Despite that the Lipan Apache Band of Texas petitioned the U.S. for federal acknowledgement in 1999, the Ndé are, according to Hereditary Chief and Chairman Daniel Castro Romero, Jr., “still in limbo.” While the Ndé do not see U.S. federal acknowledgement as the form of self-determination it truly seeks to redress, nevertheless, in order to just be able to access the justice systems, an inherently adversarial process, and to be able to have a Nation to Nation dialogue with the U.S. government, Indigenous Peoples are forced to petition the U.S. Federal Acknowledgement system. Until the U.S. acknowledges an Indigenous Nation, its peoples are truly left in a state of stasis, a terrible vortex, and as Romero stated, a “limbo.”8

In public statements by U.S. representatives, the State emphasizes that its interpretation of the Declaration is dominantly through a domestic law lens. The U.S. appears to imply that it reserves the right to interpret the meaning of the UN Declaration only in its relations to Federally Recognized Tribes. I have heard the U.S. representative speak in the UNPFII 2009, UNPFII 2010, UNFII 2011, and UNPFII 2012 and in the EMRIP 5th Session, referring frequently to U.S. best practices with “Tribes”, “Federally Recognized Tribes”, “acknowledged Tribes.” In doing so, the U.S. obscures the fact that the federal government dissolved the Indian Claims Commission, the only mechanism the State constructed to hear Indigenous land claims. 200 cases were yet unresolved when the ICC dissolved. This has had tragic and crippling consequences for unacknowledged, yet nonetheless, sovereign Indigenous Peoples whose oral histories locate them in lands overtaken by Euro-American settler occupation.

In their legal paper submitted as part of the Working Group on Human Rights and the Border Wall submission to the Inter-American Commission/Organization of American States (2008), Michelle Guzman and Zachary Hurwitz argue,

“In several cases and reports, the Inter-American Commission on Human Rights (the Commission) and the Inter-American Court of Human Rights (the Court) have held that members of indigenous and tribal communities require special measures that guarantee the full exercise of their rights, particularly with regards to their enjoyment of

8 Ibid., par. 41, “
the land, in order to safeguard their physical and cultural survival. By not recognizing the legal status of indigenous people along the Texas-Mexico border as such, especially as regards the Lipan Apache of the Coastal Bend Region and South Rio Grande Valley, the U.S. government is violating indigenous peoples’ right to recognition of juridical personality and the right to enjoy civil rights as supported by Article XVII of the American Declaration: “Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.” In the case of Saramaka People v. Suriname, the Court held that the acknowledgement of the clan’s communal juridical personality is one of the “special measures” owed to indigenous and tribal groups in order to ensure they can use their land according to their own traditions.”

VIII. Ndé law and justice structures

Keésda īlahálee béodaaził ‘(Feast gathering together to decide’); Dáléší bií’ ádaajít’inde’ (‘Matrilineal kinship’/‘one’s family came from same people and same place’); shi t’ekende (‘clans of significance’); shi ‘andaji gut’ekende (‘inter-related bands of food exchange and protection’); Nant’á (‘hereditary chief’); Nant’á kedidli (‘ceremonial leader’); families, clans, bands; hereditary Chiefs, council, diplomats; popular governance.

Since 2007, Ndé have reclaimed language, oral tradition, emergence stories, clan laws, matriarchal recognition, and transitional justice spaces.

To counter this trend in Indigenous Nations across the U.S.-Mexico border, the Ndé reclaimed part of our lands in South Texas, which has caused a backlash. Nevertheless, we revitalized a core sacred communal ceremony which has a primary purpose of healing all illness and negativity and returning our People and Nation to danzhoo—the way of beauty. Through our

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Na’ii’ees Isdzánałesh (‘White Painted Women’) ceremony, we are returning the Ndé matrilineal governance and decision making systems, reinstating the rightful place of women in Kónitsaǫyi goklyaa Ndé: Lipan Apache sacred mother lands.

Revitalizing the Naiiees ceremony after 160 years of Texas punitive systems

Ndé self-determination is a right which is sacred to our relationship as ‘Nkaiyéndé’, (‘long long walking Peoples’). Our self-determination is integral to our identity, language, spirits, dreams, cosmovision, lands, territories, First Foods, Medicines, Water, sacred Caves of the Ancestors, and the protection of sacred resources for the generations to live in dignity and peace, with instructions to live in peace and respect with the land and Her gifts in order to enact agency over our own future.

We are a Sovereign Nation—in the shadow of self-determination

It is time for the U.N. to mature into fearless implementation of the UNDRIP with regard to Texas-Mexico-U.S. colonization and neo-colonization of the Ndé. The border wall, uranium mining, oil and water extraction, and social engineering of bare existence—are all symptoms and signs of a system that violates Ndé fundamental rights and freedoms to self-determination.

Ndé are in limbo—socially, economically, politically—due to the way in which Texas, Mexico and the U.S. get ‘off the hook’ on being held accountable for their genocide policies directed specifically at Ndé in the Texas-Mexico nexus—and leaving Ndé in limbo, as a stateless People, and Nation, in the shadow of self-determination. Ndé have inherent and inalienable self-
determination over our customary lands, territories and resources. Indigenous self-
determination has been established. The Awas Tingni decision is but one example reaffirming “the original assessment, based on recent state practice, that the lands traditionally held by indigenous peoples are theirs as a matter of right under customary international law.”

It is true, there are crucial examples of good practices which challenge colonial domination as an ongoing settler-nation framework in the Americas. The Awas Tingni case and the Suriname case demonstrate the recognition of the international legal character of Indigenous Peoples’ rights to our lands. Unfortunately, the continuing policy of refusal and claims to sovereign immunity, with specific regard to the international recognition of Ndé treaties, constructive arrangements, and other instruments with Spain, Texas, Mexico and the U.S.— is a major obstacle to achieving peaceful co-existence.

Nevertheless, the obstruction to Ndé access to justice at the country levels, in both the U.S., in the Texas-Mexico bordered region, and in Mexico, has impeded our economic and social progress, development, sustainability, equity, and the protection of our spiritual values, beliefs, and practices. We know that control over our intrinsic relationship and stewardship of our mother land, knowledge systems, history, memories, and rights to our culture will enable us to revitalize and strengthen our institutions and develop peaceful and amicable relations with all Nations.

Bare existence in our current situation where our traditional territory and mother land is bifurcated by the Texas-Mexico border, our potential and our rights are precarious and are


eclipsed by the official policies of the United States, Texas, and Mexico. The States which each have historical and binding obligations to take constructive actions to practice good faith, have a constructive dialogue, and desist from the current policies of negation, denial and non-recognition with regard to Ndé (‘Lipan Apache’) peoples—are essential pieces of a problem that Ndé Peoples are being forced to endure since the U.S.-Mexico war (1846-1848) and the establishment of the border (1848), the cession of Texas and its self-creation into a Republic (1861), theforced annexation of Texas by the U.S. (1867), and Texas’ and the U.S. policies of war and destruction against the Ndé as an Indigenous Nation with Aboriginal Title.

Our community now has a gulag-style wall, made of concrete and solid steel bifurcating us further from our lands to the south of the wall, which is north of the border, inside the U.S. territorial boundaries. We have recognized that history—used as a blindfold-- is a weapon which enables the States to deny the reality that Indigenous Peoples’ perspectives of history should be heeded in the 3rd Seminar on Treaties and Constructive Arrangements.

Texas-Mexico border wall and criminalization of human rights defense

In 2009, as the U.S. dispossessed our community through armed enforcement and obstruction of access to justice, many Indigenous women were impacted by the taking of the ancestral lands, and by the violent way in which the U.S. government used military force to gain its objectives. We were left with no protection, and no other choice but to challenge the U.S. in the Inter-American Commission/OAS. Since then, we have made a concerted choice to enact our self-determination on a border where the U.S. froze 35 federal laws thereby creating a no-constitution zone to achieve its end.
Like many Indigenous Peoples in the United States, prior to the early 1970s (when the U.S. terminated the Indian Claims Commission settlement period), Ndé were obscured in international law due to 150 years of extermination, assimilation, and incorporation policies. In Texas and U.S. official public histories, ‘Lipan Apaches’ are rarely ever mentioned, except as an occasional footnote, or perhaps an index note doomed always to the past, always a disfigured ‘savage’ in the shadows of the Heroic Texas Pioneer settler.

Today, Texas textbooks, from kinder to post secondary schools, portray ‘Lipan Apaches’ as archaic ‘nomads’, ‘immigrant and wandering Indians’, ‘foreign’ to our Indigenous places. We are relegated permanently as mere primitive cave peoples, diminished as insignificant fixtures in the background of the glory-filled days of the ‘birth’ of the White Texas ranching and idealized cultivator society.

The Yale University Genocide Institute has an interactive GIS mapping project which identified the entire state of Texas as potential case study in the U.S. for re-thinking impunity and the fiction of sovereign immunity. Texas is the only space on the Yale genocide GIS map in which the entire state is identified as a killing field.13

A very racist and problematic portrayal of ‘Lipan Apaches’—as primitives frozen in the past, or destined to vanish in the face of the purported Euro-American destiny for progress—is an conquest ‘history markers’ situated along Texas highways, roads, and paths as official State narratives of glorified genocide.

Ndé Knowledge and Peoples beyond borders: an International Legal Framework of Inherent Self-determination with Lands and Territories

The Ndé firmly acknowledge it is time to redress, repair and restitute treaties and other constructive arrangements through international legal mechanisms. We are committed to a safe and meaningful process towards the realization of the restitution of our place as the Nation on our respective territory. Violence as a framework of domination, theft, occupation, settlement, and accumulation of our labor, is not the path that would return dignity to our Indigenous Nations.

At the end of the El Calaboz decision-making gathering on June 24-26, 2011, we were reminded of the words of Jose Emilio Garcia, an Ndé traditional farmer, and my grandfather. “That is a political line, never a cultural line.” On June 26, the Elders, hereditary chief, leaders, women, men, families, and youth decided to support the creation of the Emilio Institute for Indigenous and Human Rights, as a transitional justice space for Ndé and related Indigenous Peoples of the Texas-Mexico border region—and beyond—to enact self-determination and to move in the dignified path of peace, justice, and harmonious co-existence with the States.

IX. Indigenous Nations and the Martínez Final Report: Constructing a partnership focused on actions and implementation.

Recognition and responsibility with regard to Ndé Treaties and Constructive Arrangements is the first step. The dismantling of the border wall, return of lands dispossessed from Elders and other relatives, a formal apology, and a Truth Commission are fundamental requirements for the U.S. to lead the way. Spain, Mexico and Texas would most likely not take any affirmative action without a sign that the U.S. is a serious partner.

**Recommending,** that a registry be created of all U.S. treaties with Indigenous Nations. Further, there should also be a list of which Indigenous Nations were left unresolved by the Indian Claims Commission (ICC). Docket—22 contains the records related to *Lipan Apache v. United States.* The Human Rights Council should request from the United States a comprehensive study of the history and outcomes of the ICC, and include an analysis of the 200+ Indigenous Nations whose claims were left unresolved. In many cases, industries, such as railroads, utilities, and others, such as Texas, countered the claims of Indigenous Nations, further diminishing any path to access justice. This has left the situation of Ndé in limbo, in the severe circumstances of being lumped into ‘minority’ groups.

**Recommending,** item 66, SR Martínez’ report:
“An extensive review of the origin of this process is necessary to gain a full understanding of crucial juridical and socio-economic elements of the present-day situation of these peoples, as manifested in former European settler colonies (and the States which succeeded them) when the relationship originated, and also as it now exists in relevant, today multi-national, States in Latin America, Africa, Asia, the Pacific and northern Europe. Consequently, this question will be dealt with in extenso in the conclusions offered in chapter III of this final report.”

**Recommending,** item 62, in SR Martínez’ report:
an exhaustive study of the indigenous viewpoint on a number of important aspects of treaties and treaty-making, still remains to be undertaken.

**Recommending**, the HR Council address SR Martínez’ concern expressed in 61: the need for mandated representatives to engage in negotiation, basic agreement on the subject matter of treaties, and concepts relating to the need for ratification and the binding power of any type of formally negotiated compact.

**Recommending**, that the HR Council establish an international mechanism for “indigenous peoples justly attach considerable importance to the recognition, promotion and securing of their collective rights, that is, their rights as social groups.” Establish “international mechanisms for the resolution of conflicts with State authorities, in particular, in connection with the rights recognized in, or acquired by means, of instruments with acknowledged international status, such as treaties.”

**Recommending**, the HR Council examine the situation of Indigenous Peoples whose lands, territories and resources were dispossessed from them during the period of nation-building and state craft in the 19th century and 20th centuries by the formation of settler societies, states, and nations in Ndé traditional territory, specifically Mexico, Texas and the U.S. This has implications for ongoing work in relation to border conflict areas where militarization is a concern along the Texas-Mexico and U.S.-Mexico militarized borders. We ask the HR Council to pursue Martínez’ aspirations to investigate the impact of the Treaty of Guadalupe Hidalgo and the Jay Treaty, and comparative borders on Indigenous Peoples’ self-determination, human rights, and inherent sovereignty.

Axe’he, thank you,

*Margo Tamez*

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