

MARGO TAMEZ, PHD, MFA

RESPONSE TO

Mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Questionnaire

Transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts

Within the framework of Human Rights Council resolution 45/10, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has been mandated to “identify, exchange and promote good practices and lessons learned, and to identify potential additional elements with a view to recommending ways and means to improve and strengthen the promotion of truth, justice, reparation and guarantees of non-recurrence.”

In compliance with this mandate, the Special Rapporteur decided to devote his report to the 76th session of the General Assembly, in October 2021, to examine the question of the adoption of transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts.

In order to obtain a broad representation of views to inform the thematic report, the Special Rapporteur is seeking written contributions by Member States, civil society and other relevant stakeholders through responses to the questionnaire below.

In particular, the Special Rapporteur would appreciate receiving specific examples regarding the design and implementation of measures in the field of truth, justice, reparation, memorialization and guarantees of non-recurrence to address gross human rights violations and serious violations of international humanitarian law committed in colonial contexts, or the considerations that prevented their adoption, and the legal and institutional frameworks underpinning those measures or lack thereof. In this regard, the Special Rapporteur is particularly interested in identifying challenges and lessons learned, good practices and existing or emerging opportunities, as well as relevant national, regional and/or international jurisprudential developments.

Please note that you can choose to answer all or some of the questions below

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INTRODUCTION:

Da'nzho (warm greetings), my name is Margo Tamez, PhD, MFA. I'm enrolled with the Lipan Apache Band, Texas. I am the co-founder of Lipan Apache Women Defense, a direct-action mutual aid organization which serves Lipan Apache community members, as well as related tribal peoples throughout the customary and traditional homelands, known as *Kónitsaqúígokíyaa*, and otherwise known as Texas and northeastern Mexico (Tamaulipas, Coahuila, Nuevo Leon, and Chihuahua). Since 2007, I have been an active participant in the UNPFII, UNEMRIP, UN Special Rapporteur on Indigenous Issues, UN CERD, and UN CCPR. I have also been an active participant in the Inter-American Commission/Organization of States as an Indigenous plaintiff. With the permission and authority of **Dr. Eloisa Garcia Tamez** and the Lipan Apache Band of Texas, I represent the issues of the U.S. Border Wall and the human rights violations against Lipan Apache women land holders, Lipan Apache and Jumano Apache families along the Texas-Mexico border directly impacted by U.S. militarization, dispossession, and hostility against Indigenous land owners along the Texas-Mexico border, the legacy of colonialism and settler colonialism in the region, racism, discrimination, and the significant carceral system in the Texas-Mexico border region.

To many Indigenous peoples in North America, and human rights advocates around the world, the severe and en masse human rights violations enacted against Dr. Eloisa Garcia Tamez (Lipan Apache), not only negatively affected her and her family members and descendants, it also deepened the damage to her community of El Calaboz village, as well as deepened the damage against the Lipan Apache Band of Texas and its citizens and members. Lipan Apache of Texas are the direct descendants of Lipan Apache native title holders from several Treaties, Spanish Crown mechanisms, and still hold original and inherent Indigenous proprietary title – never ceded nor surrendered to the United States or any of its European successor states, republics, confederacies, and monarchies. In this, the Dr. Eloisa Garcia Tamez and the Lipan Apache nation are unique in the 21st century as a community who have continuous title to customary Lipan territory. As a result of non-surrender as a continuum, the Lipan Apaches of Texas have a history of severe persecution, genocidal violence, inter-generational trauma, extreme marginalization in Texas and in the U.S., and are dispossessed of their

homelands in Texas by way of colonial violence and dispossession. **Contact:**
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Questionnaire

1. Please indicate which mechanisms have been established in the concerned country to hold accountable persons accused of committing or bearing responsibility for gross violations of human rights and serious violations of international humanitarian law in colonial contexts. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in investigating, prosecuting and sanctioning such crimes.

- In the United States and in Texas, no mechanisms have been established in the concerned county to hold accountable persons who committed and who bear responsibility for gross violations of human rights and serious violations of international humanitarian law in colonial contexts of the U.S. and Texas.
 - Please see attached legal cases which provide the detailed information related to *Eloisa Garcia Tamez v. Michael Chertoff, et al. (2007)*
- Mechanisms have not been adopted which is consistent with the U.S. history of settler colonialism, denial, and resistance to accountability and responsibility for its long history of genocide and dispossession against Indigenous peoples.
- While the U.S. formally adopted the United Nations Declaration on the Rights of Indigenous Peoples, during the former President Barack Obama's administration, the U.S. position has always been that the only Indigenous peoples to whom it will enter into formal dialogue and discussion regarding Indigenous rights are the [574 U.S. Federally Recognized Tribes](#).
- The United States denies that it has obligations to [400+ Federally Non-Recognized Tribes](#) (FNRT) of the United States. Officially, the United States government produces no data on the 400+ FNRT, has never provided social, economic, cultural, education, health, or humanitarian support or resources to them. This U.S. persistent racism against the 400+ FNRT is a systemic and structural failure was named and identified by Philip Alston, the Special Rapporteur on extreme poverty and human rights mission to the United States, reported, (section D. Persistent discrimination and poverty, Race), "The United

States remains a chronically segregated society.”¹ The Special Rapporteur Alston “heard testimonies from Chiefs and representatives of federally recognized and *non-recognized tribes* (emphasis mine) on widespread extreme poverty in their communities.”² Alston went further to bring into relief the dire situation of poverty, marginalization, and extreme vulnerability of 400+ FNRT, stating: The situation of non-federally recognized tribes is even more desperate, for they are not eligible to benefit from federally funded programs. While 567 tribes are federally recognized, some 400 are not. The latter exist in a context in which their way of life is not legally sanctioned, they are disempowered and their culture is threatened. Failure to collect disaggregated data for those tribes also hinders the development of evidence-based policies to address their situation.³

- **Eloisa Garcia Tamez** counter-sued the Michael Chertoff – the former Secretary of the U.S. Department of Homeland Security (2005-2009). Tamez’ included in her lawsuit the U.S. Customs Border Patrol, and the U.S. Army Corps of Engineers in the U.S. 5th District Court. Nearly three years of litigation exhausted Tamez’ resources, health, and capacity to appeal the many legal obstructions documented by human rights attorneys **Peter Schey, Denise Gilman, and Ariel Dulitzky**. Tamez exhausted all remedies and pursued the case at the Inter-American Commission/Organization of American States, in which Denise Gilman and the University of Texas School of Law Texas-Mexico Border Wall Working Group represented. Gilman was not able to secure sufficient resources to pursue this ground-breaking and precedent setting case further to the Inter-American Court/OAS. Tamez pursued justice in the U.N. CERD Early Action Urgent Warning Special Procedure, represented by Ariel Dulitzky (University of Texas at Austin, School of Law) and Dr. Margo Tamez (The University of British Columbia, Indigenous Studies).

2. Please indicate which measures have been established in the concerned country to inquire on and establish the truth about gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such mechanisms were established, please indicate how was

¹ A/HRC/38/33/Add.1. *Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America*, 4 May 2018, page 14.

² *Ibid.*, 16.

³ *Ibid.*, 17.

the outcome of the inquiries made public and conveyed to victims and civil society in the affected country as well as to civil society in the former colonizing power. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

Despite the above legal procedures, advocacy and activism, and global media awareness about the Tamez family land protection and land defense struggle, and the campaign for the international and national recognition of Lipan Apache rights to self-determination, including customary territory, and social-economic-cultural-political rights, the United States has failed to address the numerous concerns and recommendations raised by each tribunal mentioned above.

In 2011, the Lipan Apache community held a 2-day gathering, June 21-23, “Lipan Apache (Ndé) Gathering on Self-Determination, Territory, and Human Rights. The Lipan Apache Matriarchs, Eloisa Garcia Tamez and Margo Tamez, hosted the union of Indigenous representatives and witnesses, held listening sessions, heard stories and testimonies of community experiences, memory, and injustices. This gathering manifested a Declaration of Truth, Memory, Historical Clarification and Redress. The Lipan Apache women mandated a list of grievances, demands, actions, and coordinated efforts to expand awareness globally and to call for Indigenous solidarity with the Lipan Apaches to demand justice. The Matriarchs directed that this campaign for Truth, Memory, Redress, and Justice be coordinated through a mutual aid, direct action service organization, The Lipan Apache Women Defense.

A Lipan Apache gender perspective was adopted throughout the above procedures, between 2007 – present.

3. Please indicate which measures have been established in the concerned country to provide reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such processes were established, please indicate which type of reparation was provided to victims (for example: restitution, compensation, satisfaction, and /or rehabilitation). If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively

consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

- There have been no measures established in the concerned country to provide reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts.
- The utter absence, silence, and disavowal of the U.S. administrations: George W. Bush II, Barack Obama, Donald Trump, and Joseph Biden are each enabling and perpetuating the U.S. historical genocide policy against the Lipan Apaches and 400+ FNRT. While many Indigenous peoples who are FNRT, organizations working on their behalf, academics, and legal advocates have protested, there are absolutely zero funds, zero resources, and zero infrastructure to pursue a systemic and structural shift in this dynamic. Most human rights lawyers, including Denise Gilman and Ariel Dulitzky, who are very familiar with these cases named, are currently under-resourced and over-extended with the massive numbers of human rights violations occurring daily in Texas detention centers which contain thousands of Indigenous migrant children, women, and families. The entire human rights system in the United States is overwhelmed with numerous cases of Black community and families in pursuit of justice for thousands of human rights violations concurrently.
- I am the main support person for the Tamez and Lipan Apache case. I see much potential in pursuing this case in the UN system in mechanisms such as the UN Convention on Civil and Political Rights. The challenges are steep and I would require support from the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.
- In the above named cases and pursuit of justice, I learned that, although all the lawyers had very good intentions and worked incredibly hard, none of them had cultural knowledge, familiarity, or competency in anti-Indigenous racism in Texas and the United States. This hindered the cases considerably. Going forward, I feel that the next step required is to conduct in-depth training of all involved. As a result, the Lipan Apache victims and all related and affected communities *have not been effectively consulted* in the design and implementation of the case preparations, the lack of meaningful and sustained contact between the lawyers and the community, and due to the overall lack of resources to sustain respectful and responsible relations with Indigenous plaintiffs who are Indigenous women. Therefore, though the Indigenous women developed a complex and nuanced gender perspective, the law experts did not have the fulsome approach to engage the Indigenous gender perspective through each of the cases. This was a major challenge to all parties, and especially has had

negative impacts on the Lipan Apache women, girls, and families who continue to be front-line land protectors—in the space of U.S. impunity and immunity.

4. Please indicate which measures have been established in the concerned country to memorialize the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If yes, please indicate whether memorialization processes were established in the affected country and /or in the former colonizing power. If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

- The United States and Texas do the opposite. That is, the normative “memorialization” across Texas are thousands of road-side history markers, which are memory pieces indicating the settler colonial place-making as heroic feats. In fact, each Texas road-side marker provides vivid details of glorified genocide.
- The United States is involved in significant history erasure projects as on-going settler colonialism.
- When Indigenous peoples attempt to change the landscape of memory, by tearing down statues of colonial representation (such as missionizing priests, colonial Indian killers, colonial war heroes), this is met with police brutality, fines, imprisonment, and criminalization.
- The most important memorialization projects have been directed and coordinated informally by Lipan Apache elders, artists, poets, historians, and youth: protest marches which memorialize Lipan Apache history and herstory through Lipan Apache memory and counter-narrative; Lipan Apache reunions and oral history gatherings to recount and retell the oral history of massacres, genocides, and hidden history; Lipan Apache revitalization of the Isanalesh Gotal ceremony which pays homage to Lipan Apache matriarchal women’s memory of Creation Stories, Cosmology, and Sacred Knowledge of Lipan Apache place-making, philosophy, science, law, and governance through matrilineal ways of knowing.

5. Please indicate which measures have been established in the concerned country to guarantee non-recurrence of the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such mechanisms were not adopted, please explain why. Please

indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

- No measures have been established in the concerned country to guarantee non-recurrence of the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts
- The border wall and Indigenous dispossession across the Texas border continues in the present moment. Police brutality and surveillance and denial of access to justice continues.
- The state has never adopted a gender perspective outside of its normative male-centric, Eurocentric, patriarchal, toxic masculinity and cis-gender, straight, heterosexual gender perspective.

Given the timeline for the preparation of the thematic report, we kindly request that written contributions be sent in Word format to srtruthcalls@ohchr.org by 7 May 2021. We would also welcome any other document, report or article providing further information on this topic in the country concerned.

Please limit your contributions to a maximum of 750 words per response and attach annexes, where necessary. Your responses may be published on the website of the Office of the High Commissioner for Human Rights.

Should you not wish to have your response published on the website, please indicate so in your response.

We thank you in advance for your cooperation, and for your responses.