



UNITED NATIONS HUMAN RIGHTS TREATY BODIES

HAUT-COMMISSARIAT DES NATIONS UNIES AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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12 May 2025

Excellency,

I write to you in relation to the Committee's [letter of 23 August 2024](#) regarding the information received under its early warning and urgent action procedure related to the situation of Indigenous San Carlos Apache Tribe in the State of Arizona of the United States of America.

The Committee thanks the State party for its response to the letter and for the information provided. The Committee notes the information that, according to the Southeast Arizona Land Exchange and Conservation Act, federal lands, including the Oak Flat, will be transferred to a mining company, Resolution Copper Mining, LLC, in exchange for conservation lands. It notes that these lands include a site known as Apache Leap, which will be preserved for traditional use by Indigenous Peoples. It also notes the information that the Act provides for public access to Oak Flat until mining operations made such access unsafe.

The Committee takes note of the information that the Act requests the U.S. Forest Service to engage in consultation with the affected Indigenous communities and the mining company in order to find mutually acceptable measures and to minimize adverse effects on Indigenous communities. It further notes that the U.S. Forest Service conducted consultations, which led to the issuance of a first environmental impact assessment on the land exchange on 15 January 2021. The Committee takes note of the information that the U.S. Department of Agriculture decided to rescind the environmental impact assessment due to the limited time allocated for the consultation process and thus reinstate consultation on 10 September 2021, including with listening sessions for 15 Indigenous Tribes and formal consultation meetings. It takes note of the information that the consultation process is still ongoing.

The Committee notes the information that the land transfer has been challenged before courts, including for allegations of violation of the right to freedom of thought, conscience and religion of the Western Apache Tribes. It also notes the information that the U.S. Supreme Court received a petition concerning the land transfer and its impact on the rights of the Indigenous Apache Tribes, which is still pending.

H.E. Mrs. Tressa Rae Finerty
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Lastly, the Committee takes note of the information on the federal policy of accommodating access to and ceremonial use of sacred sites by Indigenous Peoples, to the extent practicable, as long as it is permitted by law and is not inconsistent with important federal functions, namely the Executive Order no. 13007 of 24 May 1996. It also notes the information on the federal policies in place regarding the consultation process with Indigenous Peoples, particularly concerning sacred sites, such as Executive Order 13175 of 6 November 2000 and the Presidential Memorandum of Uniform Standards for Consultation of 30 November 2022.

Notwithstanding the information provided, the Committee notes with concerns the restrictive interpretation and implementation of the principle of free, prior and informed consent on projects or legislative or administrative measures that may affect the land, territories and resources of the Indigenous San Carlos Apache Tribe, including the land transfer in light of the Southeast Arizona Land Exchange and Conservation Act and §3003 of the National Defense Authorization Act for 2015. It is also concerned about the adverse impacts of the land transfer and the limitations imposed by the legislative and policy frameworks on the rights of the Indigenous San Carlos Apache Tribe to practice and revitalize their religion, cultural traditions and customs as well as their right to own, develop, control and use their communal lands, territories and resources. The Committee also regrets the lack of detailed information on mining technique the mining company is planning to employ, including the “block cave mining”.

In this regard and in accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party provide updated and detailed information on the situation of Indigenous San Carlos Apache Tribe, the land transfer and the mining project on the sacred site of Oak Flat, as part of its combined thirteenth to fifteenth periodic reports, due by 20 November 2025. In particular, information on (a) measures to protect, promote and respect the respect the distinct culture, religion, history, and way of life of the Indigenous San Carlos Apache Tribe; (b) measures to ensure that Indigenous San Carlos Apache Tribe can exercise their rights to practice and revitalize their cultural traditions, religion and customs related to Oak Flat; (c) measures to recognize and protect the rights of Indigenous San Carlos Apache to own, develop, control and use their communal lands, territories and resources; and (d) measures to ensure effective and meaningful consultation with Indigenous San Carlos Apache Tribe on any projects or legislative or administrative measures that may affect their land, territories and resources, with a view to obtaining their free, prior and informed consent.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of the United States of America with a view to ensuring the effective implementation of the Convention.

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

Yours sincerely,

Michal Balcerzak
Chair

Committee on the Elimination of Racial Discrimination