



**The Navajo Nation Report on Indigenous Peoples
Religious Freedoms in the United States of America
to
the United Nations Special Rapporteur on
Freedom of Religion or Belief**

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Dear Special Rapporteur Shaheed:

The Navajo Nation (or “Nation”) respectfully submits this information in response to your call for input regarding Indigenous Peoples and the right to freedom of religion or belief in preparation for your report to the 77th session of the United Nations (UN) General Assembly.

Introduction

The Nation is the largest land-based Native American tribe in the United States (U.S.) with a Reservation encompassing over 27,000 square miles across the states of Arizona, New Mexico and Utah.¹ Since time immemorial, Navajos have referred to themselves as *Diné* and still have its own language, which many Navajo citizens speak today. Navajos have their own Way of Life (*Diné bee o’o’iil*) which consists of traditional practices such as healing ceremonies, songs, and stories. Non-Navajos may refer to Navajo traditional practices as religious belief even though Navajo traditionalists will say it is real, which is why Navajos refer to it as a Way of Life, and not as a religion. However, with the lack of translation for an English word equivalent, Navajos recognize that its Way of Life has to be protected within the context of religious freedoms. Navajo Way of Life is based on many teachings from traditional and non-traditional ceremonies, songs, and stories. There are many stories, such as our origin story (*Hajíinéí baa hane’*) and Navajos have many deities (*diyín*) that have helped guide Navajos to who they are today. Navajo traditional practitioners and elders are valuable resources who maintain this library of information to help conserve it.

The Nation has over 405,000 citizens, who primarily live in and around its Reservation. The Nation and its citizens have sacred relationships with its Reservation lands as well as off-Reservation sacred sites located outside the boundaries of the lands the U.S. currently recognizes as the Nation’s lands. The Nation is governed according to its treaties with the U.S., the Navajo Nation Code, and *Diné* Fundamental Law.² Undoubtedly, the Nation’s longevity and success is premised on its continued ability to practice its Way of Life.

Navajo Way of Life informs that *Naahadzaan*, the Earth, is the mother, and all beings that live on it play an essential part in the language, ceremonies, and traditions. The plants, animals, birds, and even the insects gave Navajos its Way of Life; they taught Navajos how to live, what to

¹ This is equal to about 70,000 square kilometers.

² The *Diné bi beenahaz’áanii*, Navajo fundamental law, embodies Navajo traditional, customary, natural, and common law, which together provide “sanctuary for the *Diné* life and culture, our relationship with the world beyond the sacred mountains, and the balance we maintain with the natural world.” Additionally, these “laws provide the foundation of *Diné bi nahat’á* (providing leadership through developing and administering policies and plans utilizing these laws as guiding principles and *Diné* sovereignty.” *Diné nahat’á* is, in turn, the foundation of the *Diné* government, so that “the respect for, honor, belief and trust in the *Diné bi beenahaz’áanii* preserves, protects, and enhances . . . rights, beliefs, practices and freedoms” including those of each individual *Diné*, the collective rights of the *Diné* as a distinct people, self-governance, future development and growth of a thriving Navajo Nation, and the right and freedom of the *Diné* to be educated as to the *Diné bi beenahaz’áanii*. 1 N.N.C. 202.

eat, where to live, etc. The Navajo Way of Life instructs that all living things contribute to it. Places throughout Navajoland also provide a physical reminder of Navajo migrations and cultural traditions. Archaeological sites, burials, and sacred places, i.e., places in which Navajo people have made offerings and collect resources such as plants, water, and minerals, are essential to continuing Navajo traditions that have been passed down since time immemorial by our deities, *Diyin Diné*.

The endurance and longevity of the Navajo Way of Life has not been without hardship and triumph. A traditional Navajo story describes *Naayee'* (monsters) which brought hardship. Navajos believe there are monsters among us today such as substance abuse, domestic violence, Missing and Murdered Indigenous People (MMIP), and many others. In 2021, the Nation revived the *Diné Action Plan*, originally created to improve the quality of life and advance economic opportunities for Navajo people, and which incorporates Navajo Way of Life principles so that the Navajo people can realign themselves into a state of *hozhó* (balance, beauty, and prosperity),³ as well as to demonstrate to the rest of the world that Navajos are still practicing their traditions.

As this submission summarizes, the U.S. has repeatedly violated the religious freedom rights of the Nation and its citizens. This has occurred through many means, and this paper will discuss forced removal, the taking of the Nation's lands, and failure to protect the Nation's lands and sacred sites under domestic law. Additionally, the ability of the Nation to preserve and protect its spiritual and religious traditions and pass them on to future generations of Navajos has been threatened by the U.S.' failure to protect the Navajo people—from forced removal of children from their homes during the Boarding School Era⁴, to the current failure to protect Missing and Murdered Indigenous People (MMIP), and failure to prevent the Nation from suffering severely disproportionate and devastating effects from the COVID-19 pandemic.⁵

³ The 24th Navajo Nation Council Office of the Speaker, *Diné Action Plan approved by Navajo Nation Council, Advisory group created* (October 2021), https://www.navajonationcouncil.org/wp-content/uploads/2021/10/Dine_Action_Plan_2021.10.05.pdf.

⁴ The U.S.' federal boarding school policy began "in 1816 as the first Superintendent of Indian Trade [Thomas Lorraine McKenney . . . advocated for the federal policy of education and civilization through a network of schools to be run by the missionary societies under the supervision of the Superintendent of Indian Trade;" "[b]y the 1930s, the heyday of government-sponsored, coercive off-reservation Indian boarding schools was fading away, but the threat they represented to Native cultures did not disappear." Native American Rights Fund, *Trigger Points: Current State of Research History, Impacts, and Healing Related to the United States' Indian Industrial/Boarding School Policy*, Pg. 5, Pg. 15, (2019), <https://www.narf.org/nill/documents/trigger-points.pdf>.

The "passing of [The Civilization Fund Act] eventually led to the creation of the federally funded Native American Boarding Schools and initiated the beginning of the Indian Boarding School era. The duration of this era ran from 1860 until 1978." Melissa Mejia, *The U.S. history of Native American Boarding Schools*, <https://www.theindigenousfoundation.org/articles/us-residential-schools>.

⁵ See generally Navajo Nation Office of the Attorney General, *The Navajo Nation Report on the Impact of COVID-19 on Indigenous People to the United Nations Special Rapporteur on the Rights of Indigenous People* (June 19, 2020), attached as Annex 1; and Navajo Nation Office of the Attorney General, *The Navajo Nation Report on the Impact of State COVID-19 Recovery Laws and Policies on Indigenous People to the United Nations Special Rapporteur on the Rights of Indigenous People* (Feb. 28, 2021), attached as Annex 2 and available at https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/SR/CallforInputCovidRecovery_submissions/Indigenous_Organisations_Civil_Society/navajo-nation.pdf.

I. Forced Relocation of Navajo People

The U.S. has long implemented policies of forced relocation, separating the Nation's citizens from its native, sacred lands.

In 1864, after a bloody war campaign, the U.S. military began forcibly removing Navajo people from their homelands. Known as the "Long Walk," over 8,500 Navajo citizens were marched between 250 and 450 miles to a military fort where they were held captive. Hundreds of Navajos died on the Long Walk, and thousands died in captivity. In 1868, after incurring great expense imprisoning the Navajo people they could imprison and continuing to wage war against those they could not imprison, the U.S. entered into a treaty with the Nation that allowed the Nation to return to a portion of its homelands. The history of the Long Walk has had lasting, devastating intergenerational effects on the Nation's citizens and their sacred connections to the land.

However, the Long Walk would not be the last forced removal of Navajo people. In 1974, the U.S. Congress passed legislation that divided certain land on the Navajo Reservation between the Nation and the Hopi Tribe—a "solution" designed to remedy land title questions after the U.S. unilaterally imposed artificial reservation borders that led to title disputes between the Navajo and Hopi. Known as the Navajo–Hopi Land Settlement Act,⁶ this 1974 law did not just divide title or jurisdiction between the Navajo and the Hopi, it required that all persons living on land now determined to belong to the other, to relocate, resulting in the forced relocation of between 10,000 and 15,000 Navajos whom the U.S. prohibited from remaining on their lands under Hopi jurisdiction. A Navajo elder described forced relocation as akin to "being buried alive."⁷

In return for being relocated from now-Hopi lands, those Navajos were to be provided housing and cash assistance. The removal from their ancestral lands, however, left them in poverty; many Navajos lost their homes, were provided faulty homes, and others were never provided the homes or services promised, because the U.S. changed eligibility requirements and otherwise mismanaged relocation services.⁸ In one 1.5-million-acre area, known as the "Bennett Freeze," a construction moratorium was implemented by the U.S. as it sought to clarify title to lands. From 1966 to 2009, no development was allowed on the Bennett Freeze, leaving Navajos in increasingly dilapidated homes without running water, gas, and other basic services for over two generations.

The effects of forced relocation have been devastating to Navajo ways of life—not only separating them from their ancestral and sacred lands, but also decimating their livelihoods, families, and communities. The U.S.' ongoing failure to remedy this situation constitutes a human

⁶ Public Law No. 93-531.

⁷ Orit Tamir, *Relocation of Navajo from Hopi Partitioned Land in Pinon*, 50 HUM. ORG. 173, 175 (1991).

⁸ See generally Navajo Nation Human Rights Commission, *Impact of the Navajo-Hopi Land Settlement Act of 1974* (July 2012), https://www.nnhrc.navajo-nsn.gov/docs/NewsRptResolution/070612_The_Impact_of_the_Navajo-Hopi_Land_Settlement_Act_of_1974.pdf; U.S. Government Accountability Office, *Office of Navajo and Hopi Indian Relocation: Executive Branch and Legislative Action Needed for Closure and Transfer of Activities* (April 2018), <https://www.gao.gov/assets/gao-18-266.pdf>.

rights violation that continues to have significant adverse effects on Navajo citizens' abilities to practice their Way of Life and to pass it onto subsequent generations.⁹

II. Environmental Contamination of Navajo Lands

In addition to separating Navajo people from the sacred lands upon which their Way of Life depends, the U.S. has allowed severe contamination of these lands. During the Cold War, approximately 30 million tons of uranium ore were extracted from Navajo lands.¹⁰ Following the end of the Cold War, when uranium was no longer needed for nuclear weapons, 524 mines were abandoned, rather than being covered, sealed or remediated.¹¹ Four tailings disposal sites and one processing site were also left behind.¹² Uranium exposure has caused horrendous and disproportionate health impacts, from birth defects to high rates of cancer and organ failure on the Nation.¹³ Through contamination of sacred sites, uranium has also adversely impacted Navajo spiritual practices, causing Navajos, their livestock and land to suffer from the imbalance in the Nation's ecosystem.¹⁴

Other mining activity has also damaged the Nation's sacred lands. In 2015, U.S. Environmental Protection Agency, its contractors and several mining companies were responsible for a breach in the Gold King Mine, an abandoned gold and silver mine, which resulted in the release of 3 million gallons (11 million liters) of toxic wastewater that flowed into the San Juan River, which flows through approximately 200 miles (322 kilometers) of Navajo land. During the travel of this toxic wastewater toward the Nation, the U.S. failed to notify the Nation of the magnitude of the impending disaster. It has taken several years for the Nation to negotiate settlements with the responsible parties, and nearly 300 Navajo citizens are still seeking relief through the courts.¹⁵ Meanwhile, the Nation and its sacred sites remain at risk from other closed or unremediated mines due to the U.S.' legal framework that prioritizes mining over all other uses of federal lands and which lacks environmental protection provisions.¹⁶

⁹ See generally Navajo Nation Human Rights Commission, *Impact of the Navajo-Hopi Land Settlement Act of 1974* (July 2012), https://www.nnhrc.navajo-nsn.gov/docs/NewsRptResolution/070612_The_Impact_of_the_Navajo-Hopi_Land_Settlement_Act_of_1974.pdf.

¹⁰ See Jonathan Nez, President, Navajo Nation, *Written Statement of the Navajo Nation Prepared for the House Committee on Natural Resources Subcommittee on Energy and Mineral Resources* (Jul. 12, 2019), <https://www.congress.gov/116/meeting/house/109694/documents/HHRG-116-II06-20190625-SD013.pdf>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Susan Montoya Bryan, *Navajo Nation, New Mexico Reach Settlements Over Gold King Mine Spill*, ASSOCIATED PRESS (Jun. 21, 2022), <https://www.nhnews.com/news/2022/jun/21/navajo-nation-finalizes-31m-settlement-over-2015-m/>.

¹⁶ See, e.g., *1872 Mining Law: A Century and a Half of Subsidizing Irresponsible Mining*, EARTHWORKS.ORG, <https://earthworks.org/issues/1872-mining-law/>.

III. Desecration of Navajo Sacred Sites

The Nation currently has a petition pending at the Inter-American Commission on Human Rights regarding the desecration of a sacred mountain area located on its ancestral land known as *Dook'o'oosliid*, or the San Francisco Peaks.¹⁷ *Dook'o'oosliid* marks the western edge of Navajo ancestral land, and Navajos consider *Dook'o'oosliid* to be a female deity who protects Navajo people and land and which provides Navajos guidance on how to live their lives. *Dook'o'oosliid* provides plants, water, soil and other resources so Navajos can practice their ceremonies, build their homes, and otherwise live harmoniously with it. In return, Navajos give prayers and offerings to *Dook'o'oosliid* so that it will continue to bless them. The U.S. government administers this area and has allowed a ski resort to operate on *Dook'o'oosliid*. The ski resort uses reclaimed wastewater for snowmaking, desecrating this sacred place. The use of reclaimed water for artificial snow and the development of recreational facilities on *Dook'o'oosliid* degrades the sanctity of it. Navajos must protect it because it is fundamental to Navajo identity. As the Nation's petition summarizes:

The San Francisco Peaks are one of the four most sacred places to the Navajo people, a traditional boundary marker of their ancestral territory, and a source of soil, plant and other natural resources used for ceremonial and traditional purposes, among other religious and cultural attributes. When one of these mountains and its elements is desecrated, it throws the Navajo Life Way out of balance. The effective exercise and enjoyment of the Navajo people's religion and culture depends on the physical and spiritual purity and integrity of the San Francisco Peaks and the plants, animals, soil and water sources contained therein.¹⁸

The Nation and over a dozen Indigenous Nations hold *Dook'o'oosliid* sacred, but they have been unsuccessful in fighting the ski resort or its use of wastewater in U.S. courts under domestic laws that purport to protect environmental and religious freedom.¹⁹ More recently, the ski resort is planning a massive \$60 million dollar expansion, threatening to intensify its ongoing desecration of this Navajo sacred site.²⁰

IV. Forced Removal of Navajo Children

The 1868 treaty that provided for Navajo citizens' return to a portion of their homelands after the Long Walk included among its terms the compulsory education of Navajo children. This resulted in the forced removal of Navajo children from their families, communities, traditions, and

¹⁷ Petition, Navajo Nation v. United States of America (Mar. 2, 2015), <https://law.arizona.edu/sites/default/files/Navajo%20Nation%20Petition%20to%20IACHR.pdf>.

¹⁸ *Id.* at 3.

¹⁹ See, e.g., Annette McGivney, *Skiing On A Sacred Mountain: Indigenous Americans Stand Against A Resort's Expansion* (Jun. 12, 2022), <https://www.theguardian.com/world/2022/jun/19/indigenous-native-american-ski-resort-sewage-water-arizona>.

²⁰ *Id.*

spiritual practices as the U.S. forced them into boarding schools for over 100 years.²¹ The purpose and goal of the U.S. boarding school policy was, as Captain Richard Henry Pratt famously stated in 1892, to "[k]ill the Indian . . . and save the man."²²

The forced removal of Navajo children was designed to strip those children from their cultures and traditions, including their religious practices, and it did indeed have that effect. Many Navajo children were placed in horrendous and abusive conditions, and many did not survive. The U.S. is in the very early stages of addressing this act of genocide against Navajos and other Indigenous Peoples.²³ The definition of genocide includes, of course, the "forcible transferring of children of the [one] group to another group" with the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such."²⁴ Navajo communities and other Indigenous Peoples in the U.S., however, are many generations into suffering the effects of this policy on their cultural survival, including their ability to practice and pass on their religious and cultural traditions.²⁵

Although the U.S. no longer forcibly removes Navajo and other Indigenous children pursuant to a boarding school policy, it continues to remove Navajo and other Indigenous children from their homes and communities at disproportionate rates under the auspices of state and local child welfare laws. In 1978, the U.S. Congress passed the Indian Child Welfare Act (ICWA),²⁶ in response to a crisis in which 25–35% of Indigenous children were being removed from their parents and, of those, 85% were being placed outside of their families and communities, even when relatives were available for placement.²⁷ Through the enactment of ICWA, Congress recognized the need to keep Navajo and other Indigenous children in their own communities, particularly in light of the atrocities of the boarding school era. ICWA, however, is now under attack, and a case is now pending before the U.S. Supreme Court which could result in the Court using oppressive doctrines to curtail Navajo and other Indigenous rights by restricting ICWA.²⁸ After over two generations of fighting to ensure ICWA is enforced, the Nation and other Indigenous tribes' ability

²¹ See, e.g., Luci Tapahonso, *For more than 100 Years, the U.S. Forced Navajo Students into Western Schools. The Damage Is Still Felt Today*, SMITHSONIAN MAGAZINE (Jul. 2016), <https://www.smithsonianmag.com/history/decades-us-government-forcibly-placed-native-students-western-schools-effects-felt-today-180959502/>; American Bar Association Section of Civil Rights and Social Justice, *Report to the House of Delegates* (Apr. 2021), https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/2021-annual-supplementals/801-annual-2021.pdf.

²² See generally Ward Churchill, *KILL THE INDIAN, SAVE THE MAN: THE GENOCIDAL IMPACT OF AMERICAN INDIAN RESIDENTIAL SCHOOLS* (2004).

²³ See Bryan Newland, Assistant Secretary – Indian Affairs, U.S. Department of the Interior, *Federal Indian Boarding School Initiative Investigative Report* (May 2022), https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf.

²⁴ Convention on the Prevention and Punishment of the Crime of Genocide, art. II(e), Dec. 9, 1948.

²⁵ For more information, see information provided by The National Native American Boarding School Healing Coalition, <https://boardingschoolhealing.org/>.

²⁶ Public Law No. 95-608.

²⁷ See National Indian Child Welfare Association, *About ICWA*, NICWA.ORG, <https://www.nicwa.org/about-icwa/>.

²⁸ The case pending is *Brackeen v. Haaland*. For more information, see <https://www.narf.org/cases/brackeen-v-bernhardt/> and <https://www.narf.org/icwa-brackeen/>.

to protect their children through ICWA may be severely limited or eliminated, in violation of Navajo and Indigenous rights to pass culture and religion onto future generations.

V. Missing and Murdered Indigenous People

The Nation and other Indigenous tribes throughout the U.S. experience disproportionately higher numbers of MMIP. This crisis has direct bearing on the Nation's ability to pass on religious practices and culture to future generations, as it robs its communities of precious relatives as well as disproportionately impacts Indigenous women and girls. In the U.S. in 2019, homicide was the third leading cause of death among Indigenous women and girls ages 15 to 24, and the fourth highest cause for those ages 25 to 34.²⁹ Indigenous women also experience disproportionate rates of sexual violence and intimate partner violence³⁰.

Perpetrators are disproportionately non-Indigenous, a reality fueled by the U.S. Supreme Court depriving Navajo and other Indigenous tribes of criminal jurisdiction over non-Indigenous perpetrators through the decision in the 1978 U.S. Supreme Court case of *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).³¹ The U.S. has taken some steps to address this problem, such as enacting legislation authorizing Indigenous jurisdiction over non-Indigenous persons for a very narrow set of crimes, but only when Indigenous tribes operate their justice systems in accordance with certain U.S. court procedures.³² Yet, the MMIP crisis continues. The U.S. Supreme Court recently has decided another case, *Oklahoma v. Castro Huerta*, which seemingly extends the jurisdiction of individual U.S. states over Indigenous lands, rather than restoring criminal jurisdiction over non-Indigenous persons to Indigenous tribes.³³ It is unclear what this case will mean for the Nation as it continues to address the MMIP crisis.

VI. COVID-19 and Health Disparities

As the Nation has reported to the Special Rapporteur on the Rights of Indigenous Peoples,³⁴ the Nation had the highest per capita COVID-19 infection rate in the U.S. in mid-May 2020. This

²⁹ National Congress of American Indians, *State of the Data on Violence Against American Indian and Alaska Native Women and Girls* (October 2021), https://www.ncai.org/policy-research-center/research-data/pre-publications/NCAI_VAWA_Data_Update_2021_FINAL.pdf.

³⁰ See U.S. Department of Justice Office of Justice Programs National Justice Institute *National Institute of Justice Five Things About Violence Against American Indian and Alaska Native Women and Men* (stating that the "lifetime victimization rate is 1.2 times as high for American Indian and Alaska Native women as for White women; for men, it is 1.3 times as high" (<https://www.ojp.gov/pdffiles1/nij/249815.pdf>)).

³¹ See also Amnesty International, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA* (2016), <https://www.amnestyusa.org/pdfs/mazeofinjustice.pdf>.

³² See generally Luhui Whitebear, *VAWA Reauthorization of 2013 and the Continued Legacy of Violence Against Indigenous Women: A Critical Outsider Jurisprudence Perspective*, 9 U. MIAMI RACE & SOC. JUST. L. REV. 75 (2019), <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1094&context=umrsjlr>.

³³ E.g., *Oklahoma v. Castro-Huerta*, No. 21-429, 597 U.S. ____ (June 29, 2022) (extending state jurisdiction over crimes committed by a non-Indian against an Indian on Indian lands), https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf.

³⁴ Navajo Nation, *Report on the Impact of State COVID-19 Recovery Laws and Policies on Indigenous Peoples* (Feb. 28, 2021), provided as an attachment to this submission and also available at

was directly attributable to a breach of U.S. legal responsibilities to the Nation, resulting in long-standing neglect, severe poverty, lack of necessary physical infrastructure such as running water, and failure to fund or otherwise provide health care. The COVID-19 pandemic caused irreparable physical and spiritual damage to Navajo communities, claiming the lives of many elders as well as rendering many Navajos unable to gather for ceremonial and religious purposes due to the increased risk of exposure to COVID-19. Many Navajos were also unable to mourn when they lost loved ones to COVID-19. COVID-19 also exposed the roots of inequality affecting the Nation's social, political, and economic self-determination. The U.S. needs to address this inequality to protect Navajo and all other Indigenous Peoples' human rights, including rights to religious freedom, in the context of ongoing health disparities and a continuing pandemic.

VII. Conclusion and Recommendations

The Navajo Way of Life has existed from time immemorial, but it is and continues to be under threat. Therefore, the Nation respectfully requests that the Special Rapporteur recommend to the General Assembly that States, in consultation with Indigenous Peoples:

- (1) take immediate steps to provide remedies for takings of Indigenous lands and make reparations for forced removals;
- (2) implement remediation measures to address pollution and desecration of Indigenous lands;
- (3) implement appropriate mechanisms by which Indigenous Peoples in the United States and elsewhere must be consulted with a view to obtain their free, prior, and informed consent regarding State actions that affect their sacred places, in accordance with international human rights standards;
- (4) implement appropriate mechanisms to make reparations for past removal of Indigenous children and implement current laws and policies that prioritize keeping Indigenous children with their families and communities;
- (5) restore Indigenous Nations' jurisdiction over their lands and take measures to address the crisis of Missing and Murdered Indigenous Persons; and
- (6) fulfill obligations to provide robust health care for all Indigenous Peoples and address social determinants of health in order to safeguard Indigenous Peoples from the disproportionate health effects that pose a threat to the continuation of their lifeways.

Thank you for considering this submission and for your work to protect the religious freedoms of Navajos and other Indigenous Peoples.