



Oglala Sioux Tribe

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Office of the President
Kevin Killer

July 15, 2022

Honorable Ahmed Shaheed
Special Rapporteur on Freedom of Religion or Belief
United Nations
8-14 Avenue de la Paix
CH 1211 Geneva 10
Switzerland
hrc-sr-freedomofreligion@un.org

Sent via electronic mail

Re: Oglala Sioux Tribe Submission on Violations of Indigenous Peoples' Freedom of Religion in the United States of America

Dear Special Rapporteur Shaheed:

On behalf of the Oglala Sioux Tribe (Tribe), I respectfully submit 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. The United States of America (United States or U.S.) has a long history of taking, desecrating, and otherwise endangering lands sacred to the Tribe in violation of tribal, domestic, and international law.

The Oglala Sioux Tribe is a sovereign Indigenous nation that predates the United States, having lived since time immemorial on its ancestral lands in what is now considered the state of South Dakota. The Tribe is a successor to the Oglala Band of the Teton Sioux Division of the Oceti Sakowin—i.e., the Seven Council Fires or the Great Sioux Nation. As such, the Tribe is party to treaties that the United States has repeatedly violated. These treaty violations include, among many others, the theft of sacred lands known as He Sapa, or the Black Hills, and the construction and operation of the Dakota Access Pipeline (DAPL) through our sacred and ancestral lands in violation of domestic environmental law. As described herein, even though courts have acknowledged that these two actions violated domestic law, they have not provided effective remedies. Failure to remedy the taking of the Black Hills and the construction of DAPL constitutes an ongoing violation of our human rights, including violation of our rights to freedom of religion.

The Tribe thanks the Special Rapporteur for focusing his upcoming thematic report on the religious freedoms of Indigenous Peoples, and it appreciated the opportunity to participate in the in-person consultation in Tucson, Arizona through its attorney. The Tribe respectfully requests that the Special Rapporteur recommend to the General Assembly that: (1) the United States return the Black Hills to the Lakota peoples; (2) immediately halt the operation of the Dakota Access Pipeline; and (3) review its domestic laws and policies to provide effective remedies for violations of Indigenous peoples' rights to religious freedom.

I. Our Lands Are Sacred

Since time immemorial, the Oglala, along with other bands of the Great Sioux Nation, have used and occupied the sacred lands where we were created and to which we have a responsibility to preserve and protect. This includes approximately 60 million acres of land west of the Missouri River, including all of present-day western South Dakota. This territory was recognized as Teton Sioux territory in the Fort Laramie Treaty on September 17, 1851, 11 Stat. 749. We have been illegally pushed out of many of these lands by successive treaty violations on the part of the United States.

Unconsented encroachments on the 1851 Treaty territory by the United States and its citizens resulted in the Powder River War of 1866–1868 between the United States and the Teton bands. Peace was concluded between the United States and the Teton bands by the Fort Laramie Treaty on April 29, 1868, 15 Stat. 635. The 1868 Treaty provided for a mutual demobilization without terms of surrender on either side.

Article 2 of the 1868 Treaty established a designated territory within the 60-million acre 1851 Treaty territory boundaries for the seven Teton bands and other Sioux bands. This territory, approximately 26 million acres, is commonly referred to as the "Great Sioux Reservation." Article 2 of the 1868 Treaty states that the land shall be "set apart for the absolute and undisturbed use and occupation of the Indians herein named," which includes the Oglala Band.

By the Act of February 28, 1877, 44 Cong. Ch. 72, 19 Stat. 254 ("1877 Act"), Congress confiscated seven million acres of the Great Sioux Reservation that included the Black Hills, in violation of Article 12 of the 1868 Treaty. This left a diminished Great Sioux Reservation consisting of approximately 18 million acres. In *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980), the Supreme Court held that the 1877 Act amounted to confiscation by the United States of the western end of the Great Sioux Reservation, and that such confiscation violated both Article 12 of the 1868 Treaty and the Fifth Amendment to the U.S. Constitution.

By the Act of March 2, 1889, 50 Cong. Ch. 405, 25 Stat. 888 ("1889 Act"), Congress conditionally provided for the creation of six smaller reservations within the remaining balance of the Great Sioux Reservation, whose reservations totaled approximately 9 million acres of the previous 18 million acres. The remaining 9 million acres were opened up to non-Indian settlement. The Act also provided for the release of title by Indian persons associated with each smaller reservation to each of the other reservations established by the Act. The Pine Ridge Indian Reservation was established by Article 1 of the 1889 Act.

Today, we remain a sovereign Indigenous Nation, and we retain control over 4,700 square miles and have approximately 47,000 citizens. Despite a long history of treaty violations and the illegal taking of our sacred lands, our people continue to rely on and protect our sacred lands.

II. The Black Hills Are Not For Sale

We are from He Sapa, also known as the Black Hills. These lands are sacred for many reasons, including being the site of our ceremonies, such as the Sun Dance, which were outlawed by the United States in the 1883 Religious Crimes Code. That law also established Courts of Indian Offenses to try our people for violations of federally imposed restrictions, including those banning our ceremonies and the work of our traditional medicinal practitioners. *The Sun Dance and other important ceremonies did not become legal again until 1978* with the passage of the American Indian Religious Freedom Act (AIRFA), 42 U.S.C. § 1996.

Our people have worked hard over many generations to preserve our ceremonies and traditions in the face of an occupying settler state that has outright banned our religion and worked against our physical and cultural survival in numerous ways. Central to our ability to preserve and revive our ceremonies over the past decades has been our connection to our sacred lands in the Black Hills. However, even though the United States has acknowledged that it illegally took the Black Hills, it refuses to return them. This remains true even with respect to lands that remain federal public lands of the United States.

In 1980, the U.S. Supreme Court held that Congress' 1877 Act unilaterally confiscating the Black Hills was an illegal violation of the 1868 Fort Laramie Treaty and the Takings Clause of the Fifth Amendment of the U.S. Constitution. *Sioux Nation of Indians*, 448 U.S. at 418–24. The Court stated that "[t]he passage of the 1877 Act legitimized the settlers' invasion of the Black Hills, but throughout the years it has been regarded by the Sioux as a breach of this Nation's solemn obligation to reserve the Hills in perpetuity for occupation by the Indians." *Id.*, 448 U.S. at 383. Even though the Court agreed that the Black Hills had been taken in violation of the 1868 Treaty and the U.S. Constitution, the Court did not order they be returned—it instead ordered payment to legitimate the illegal theft of our lands.

We and our sister tribes have refused, and continue to refuse, payment for our sacred lands. The U.S. Supreme Court, which has called itself among the "Courts of the conqueror," *Johnson v. M'Intosh*, 21 U.S. 543, 588 (1823), has recognized that our lands were taken illegally. The United States has full power to return these sacred lands, but it continues to refuse to do so.

The UN Special Rapporteur on Rights of Indigenous Peoples in his 2012 Country Report on the United States characterized the taking of the Black Hills as an "emblematic case" of U.S. deprivation of Indigenous treaty rights. UN Doc. A/HRC/21/47/Add.1 at p. 11 (Aug. 30, 2012). He stated:

Following the discovery of gold in the area, in 1877 Congress passed an act reversing its promise under the treaty and vesting ownership of the Black Hills to the Government. The Lakota and other Sioux tribes have refused to accept payment required in accordance with a 1980 Supreme Court decision and

continue to request the return of the Black Hills; this is despite the fact that the people of these tribes are now scattered on several reservations and are some of the poorest among any group in the country. Today, the Black Hills are national forest and park lands, although they still hold a central place in the history, culture, and worldviews of surrounding tribes and at the same time serve as a constant visible reminder of their loss.

Id. The report concluded: "Among the pending issues that should be addressed with firm determination, within a programme of reconciliation, are the severed or frayed connections with culturally significant landscapes and sacred sites, such as those resulting from the taking of the Black Hills or from environmental pollution in countless places...."

The Black Hills are not for sale. The United States should live up to its obligations under domestic and international law to return our sacred lands.

III. Water Is Life: DAPL Must Be Shut Down

The Dakota Access Pipeline presents another instance of the United States failing to live up to its legal obligations even when courts have determined the United States has broken its own laws.

The DAPL pipeline is an approximately 1,200-mile-long underground oil pipeline, which "is designed to move more than half a million gallons of crude oil from North Dakota to Illinois each day." *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs (DAPL II)*, 985 F.3d 1032, 1039 (D.C. Cir. 2021). The DAPL, often referred to by our people as the Black Snake, was constructed over the objections of the Oglala Sioux Tribe, the Standing Rock Sioux Tribe, and others. It runs under the sacred waters of Lake Oahe, and its very existence is a serious and irreparable desecration.

Further, DAPL places numerous sacred lands, waters, and species at risk of a catastrophic oil spill. It also threatens the Oglala Sioux Tribe's drinking water supply, which comes from the Missouri River.

Federal courts found that the federal government violated the National Environmental Policy Act when it approved DAPL by not adequately considering its impact on hunting and fishing rights, disproportionate impacts on tribes and other at-risk and low-income communities, or whether the environmental effects would be "highly controversial."

Even though the court ordered the federal government to go back and conduct an environmental impact study that complied with federal law, it refused to halt the operation of the oil pipeline. Not only did this send a message to the federal government and the oil industry that they can violate the law and still reap massive profits, it continues the desecration of oil running under our sacred waters and keeps us in perpetual danger of a catastrophic oil spill. The United States' failure to comply with its own laws threatens not only to take our sacred places from us, but to irreparably damage them while we seek their return.

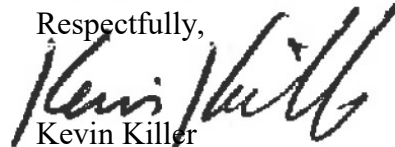
IV. Conclusion

Although there are many, many issues that the Oglala Sioux Tribe could bring to the Special Rapporteur's attention, we focus on the Black Hills and DAPL as these two issues are of critical importance to us and representative of U.S. failure to adhere to its own laws in order to protect our sacred places.

We urgently and respectfully request that the Special Rapporteur recommend to the General Assembly that: (1) the United States return the Black Hills to the Lakota peoples; (2) immediately halt the operation of the Dakota Access Pipeline; and (3) review its domestic laws and policies to provide effective remedies for violations of Indigenous peoples' rights to religious freedom.

Thank you for your attention to these issues of fundamental concern to our peoples' cultural survival.

Respectfully,

A handwritten signature in black ink, appearing to read "Kevin Killer". The signature is stylized and written in a cursive-like font.

Kevin Killer
President