



Diné Hataalii Association, Inc.

“Diné Be’azee’ íł’ íní Yee da’ hót’á’ ”
Navajo Nation, Window Rock, Arizona 86515

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April 17, 2010

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Navanethem Pillay, *High Commissioner*
Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211
Geneva 10, Switzerland

RE: The Diné Hataali Association, Inc. Statement Submission and Proclamation

Honorable High Commissioner:

The Diné Hataali Association, Inc. (“Hataali”) is qualified to comment on matters of Navajo customs and speak with the authority and authenticity on matters of traditional healing and custom. The Hataali is spiritually empowered by the holy deities and immortal beings to protect, promote, and sustain the cultural dignity and integrity of Navajo (Diné) history, language, philosophy and traditional healing ceremonies.

As a stakeholder of the United Nations’ Universal Periodic Review process the Hataali submits its “*Statement of the Diné Hataali Association Regarding the United States of America’s Fulfillment of International Human Rights Treaties, Covenants, Declarations and other Obligations to the United Nations Office of the High Commissioner for Human Rights and Proclamation of Nationhood and the Right To Self-Determination*” for consideration during the United States’ review in November 2010.

If there are any questions or concerns regarding the Association’s Statement Submission, please contact Mr. Leonard Gorman, *Executive Director*, Office of Navajo Nation Human Rights Commission, at leonardgorman@navajo.org or at (928) 871-7436.

Sincerely,


Dr. Anthony Lee, *President*
Diné Hataali Association, Inc.

Attachment

Xc: Leonard Gorman, *Executive Director*, ONNHRC
Files

**Statement of the Diné Hataali Association
Regarding the United States of America's Fulfillment
of International Human Rights Treaties, Covenants, Declarations
and other Obligations to the United Nations Office of the High
Commissioner for Human Rights and Proclamation of Nationhood
and the Right to Self-Determination**

WE, the Diné Hataali Association, Inc. ("Hataali"), the traditional leaders of the Diné, are duly competent to address matters of Navajo customs and speak with the authority and authenticity on matters of traditional healing and custom and spiritually empowered by the holy deities and immortal beings to protect, promote, and sustain the cultural dignity and integrity of Navajo history, language, philosophy and traditional healing ceremonies hereby recognize and honor the voice of the Diné expressed through the Navajo Nation Human Rights Commission's ("NNHRC") Report 1/2010, February 5, 2010, *Statement of the Navajo Nation Regarding the United States of America's Fulfillment of International Human Rights Treaties, Covenants and Declarations and Other Obligations* as adopted by Intergovernmental Resolution No. IGRF-42-10 as the official voice of the Diné to be presented to the United States Department of State and the Office of the High Commissioner for Human Rights and proclaim the Navajo Nation is and always has been a sovereign nation that possesses the inherent and fundamental right to self-determination.

WHEREAS, the Diné are a unique and distinct people among the world's peoples placed in the midst of the four sacred mountains by the Holy People and identified by our sacred name, our clans, our language, our life way, our shadow, our footprints and therefore called the Holy Earth-Surface-People and.

WHEREAS, lands, territories, minerals, water and resources were bestowed upon the Diné by the Holy People for continued existence and as the very essence of the Diné Life Way therefore it is the inherent and fundamental right of the Diné to exercise full legal and possessory authority over the surface and sub-surface of the lands and territories that were traditionally owned, occupied or otherwise acquired in order to freely exercise the Diné Life Way, *inter alia*, by maintaining and strengthening spiritual relationships with sacred sites.

WHEREAS, self-determination and sovereignty in their truest sense are fundamental and inherent right of the Diné, ordained by the Holy People and exercised since time-immemorial, to freely determine our political status and freely pursue our economic, social and cultural development, to determine our own destiny, to live on and manage our lands free of external interference and incursion, to maintain friendly relations and peace among all peoples of the Earth and to ensure harmony among every living being, as recognized in the *International Covenant on Civil and Political Rights*, the *United Nations Declaration on the Rights of Indigenous Peoples*, the *International Covenant on Economic, Social and Cultural Rights*, the *Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States*, the *Helsinki Final Act*, the *African Charter of Human and Peoples' Rights of 1981*, the *CSCE Charter of Paris for a New Europe*, the *Vienna Declaration and Programme of*

Action of 1993, affirmed by the International Court of Justice in the Namibia case, the Western Sahara case, and the East Timor case and elaborated upon by the UN Human Rights Committee, and the Committee on the Elimination of Racial Discrimination and numerous leading international jurists.

WHEREAS, early European countries and eventually the United States claimed title to the lands, resources, minerals and waters belonging to the Navajo Nation and other indigenous nations and intentionally destroyed indigenous economies, social organizations and cultures through antiquated political doctrines, including the “*Doctrine of Discovery*” and “*Manifest Destiny*.”

WHEREAS, the Diné and other indigenous nations, as sovereign nations since time immemorial with independent and supreme authority over our peoples, lands and territories, entered into binding treaties with England, France, Spain, and Holland, firmly recognizing and establishing political nation-to-nation relationships.

WHEREAS, the United States, recognizing that conflict started when individual colonists or colonial governments attempted to take possession of indigenous lands without free, prior and informed consent, embraced the practice of entering nation-to-nation treaties and pursuant to Article VI of the United States Constitution (“Constitution”), declared that all treaties entered by the United States “shall be the supreme Law of the Land.” By 1789 the United States had only entered a few treaties with European countries while it had already entered nine treaties with indigenous nations. Ultimately the United States negotiated, signed and ratified more than 350 formal nation-to-nation treaties with indigenous nations.

WHEREAS, pursuant to Article I of the Constitution and restated in the Fourteenth Amendment, indigenous peoples were not considered citizens of the United States but citizens of other sovereign governments and excluded from federal and state rights and excluded from being counted towards determining congressional representation. It was not until 1924 when Congress passed the Indian Citizenship Act, 8 U.S.C. § 1401(a) (2), without the free, prior and informed consent, making all indigenous peoples United States citizens yet indigenous peoples were still denied the right to participate in the state political processes where they lived.

WHEREAS, the United States, through its Supreme Court and its Congress, deems the Navajo Nation and other indigenous nations as less than a sovereign nation and is intentionally dismantling and destroying the Navajo Nation’s and other indigenous nations’ inherent right to self-determination through legal fictions such as “congressional plenary power” and “implicit divestiture” striking at the heart of true governmental independence, *inter alia*, See *Johnson v. McIntosh*, 21 U.S. (8 Wheat) 543 (1823)(Indians have the right to occupy lands but not own title); Indian Removal Act of May 28, 1830, 4 Stat. 411 (removing indigenous peoples from their eastern homelands without free, prior and informed consent); General Crimes Act, 18 U.S.C. § 1152 (Congress has the authority to grant jurisdictional and legislative authority to the federal courts without free, prior and informed consent of indigenous peoples and nations); Major Crimes Act, 18 U.S.C. § 1153 (Congress has the authority to grant criminal jurisdictional over indigenous peoples and nations without free, prior and informed consent to the federal courts); See General Allotment Act, 25 U.S.C. § 331 (also called the “Dawes Act”) (dividing up

indigenous peoples' collective lands among individual indigenous peoples without free, prior and informed consent and selling what it deemed surplus to non-indigenous peoples); See *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903)(Congress has plenary power over Indians and can dispose of Indian land at will); See 18 U.S.C. § 1151 and *Alaska v. Native Village of Venetie*, 522 U.S. 520 (1998)(Congressional authority to define what indigenous lands are); Public Law 280, 18 U.S.C. 1162)(Congress has the authority to grant criminal jurisdiction over indigenous peoples and nations without free, prior and informed consent to state courts); See Indian Citizenship Act of 1924, 8 U.S.C. § 1401(a) (2) (imposing federal and state citizenship on indigenous peoples without free, prior and informed consent); See *United States v. Antelope*, 430 U.S. 641, 646-647, n.7 (1977) and *United States v. Keys*, 103 F.3d 758, 761 (9th Cir. 1996))(Congress has the authority and power to define who is an Indian) See also *LaPier v. McCormick*, 986 F.2d 303, 305 (9th Cir. 1999); *State v. Sebastian*, 243 Conn. 115, 701 A.2d 13 (1997), cert. denied, 118 S. Ct. 856 (1998)(declaring that a person meets the definition of Indian if he or she is of Indian ancestry and enrolled in or affiliated with a federally recognized Indian Tribe) See also *United States v. Heath*, 509 F.2d 16, 19 (9th Cir. 1974)(declaring a person who is only of Indian descent but not an enrolled member of a federally recognized Indian Tribe is not an "Indian" for purposes of federal benefits and responsibilities); See *Montana v. United States*, 450 U.S. 544 (1981)(declaring that in [increasingly] limited circumstances indigenous nations cannot exercise civil jurisdiction over nonmembers on lands within Indian Country and creating a three-prong test for jurisdiction which has become increasingly impossible to achieve) See also *Plains Commerce Bank v. Long Family Land and Cattle Co.* (No. 07-411) 491 F. 3d 878, reversed ("th[e] elevated threshold for application of the second Montana exception suggests that tribal power must be necessary to avert catastrophic consequences."); See the Indian Civil Rights Act, 25 U.S.C. §§ 1301 *et seq.* (requiring indigenous nation to essentially imitate contemporary United States' courts and procedures); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978)(holding Indian nations do not have jurisdiction over non-Indians and tribal powers could be divested both explicitly and implicitly, if they are in violation of their status of "domestic dependent nations"); *Duro v. Reina*, 495 U.S. 676 (1990)(declare indigenous nations have limited or no civil and criminal jurisdiction over non-member Indians and non-Indians unless Congress delegates such authority); See *United States v. McBratney*, 104 U.S. 621 (1881) and *Draper v. United States*, 164 U.S. 240 (1896)(declaring that state courts have exclusive jurisdiction to punish wholly non-Indian crimes in Indian Country); *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) (the First Amendment's protection of the "free exercise" of religion does not allow a person to use a religious motivation as a reason not to obey such generally applicable laws); See *Strate v. A-1 Contractors*, 520 U.S. 438 (1997)(declaring a highway right-of-way given to the State was the "equivalent" of non-Indian land for "governance purposes" and that indigenous courts have no jurisdiction over a lawsuit resulting from a traffic crash on that particular right-of-way); See *Atkinson Trading Company v. Shirley*, 532 U.S. 645 (2001)(declaring indigenous nations do not have authority to tax non-Indians operating on fee lands owned by indigenous nations); See *Nevada v. Hicks*, 533 U.S. 353 (2001)(declaring indigenous nations do not have jurisdiction over state officials alleged to have committed unlawful acts in Indian Country); *Lyng v Northwest Indian Cemetery Protective Association* (neither AIRFA nor the first amendment of the Bill of Rights legally protect Native American's holiest places); Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") (suppose to protect the free exercise of religion "where State and local governments seek to impose a substantial burden on the religious

exercise of persons residing or confined to certain institutions."); *Cutter v Wilkinson* (local, state, and federal prisons must meet inmates' needs to carry out their spiritual lives and practice their religions however federal and state prisons continue to place constraints on native religious practices prohibiting Native Americans from conducting ceremonies and traditions central to their spiritual belief such as possessing tobacco and prayer pipes, burning cedar and sage, participating in sweat lodges, and growing long hair or allowing the construction of sweat lodges or grant adequate facilities to conduct ceremonies); The Dawes Act of 1887 (prohibited indigenous religious ceremonies and the practices of traditional religious leaders); American Indian Religious Freedom Act 1978 (did not protect two Native Americans fired for using peyote as a sacrament in a Native American Church religious ceremony during their off-hours); Religious Freedom Restoration Act (42 U.S.C. § 2000bb ("RFRA")) (did not protect Navajo sacred site from the National Forest Service's plans to permit upgrades to Snow Bowl Ski Resort using reclaimed waste water); Bald and Golden Eagle Protection Act 1994 (placed the traditional use of eagle feathers and animal remains by indigenous peoples in religious ceremonies under legal scrutiny due to the status of the animals and their remains); the Native American Graves Protection and Repatriation Act of 1990 ("NAGPRA") (enacted to allow Native Americans to request the return of human remains and other culturally-sensitive items in the possession of federal agencies, museums or institutions, but did not protect the Umatilla, Colville, Yakima and Nez Perce clam to the remains of Kennewick Man because the court held that there was insufficient evidence to connect him to modern tribes despite archaeologists determination that the Kennewick man is of native American origin); Archaeological Resources Protection Act ("ARPA") (protects archeological sites on federally owned lands however sites on private lands are at the disposal of the owners)

WHEREAS, since 1992 the United States has been a party to the *International Covenant on Civil and Political Rights*, and ratified the *International Convention on the Elimination of All Forms of Racial Discrimination* in 1994, the United States Supreme Court, a single branch of the United States government, continues to galvanize the misguided belief, contrary to Article One of the *Covenant on the Civil and Political Rights* and the constitutional provision on separation of powers

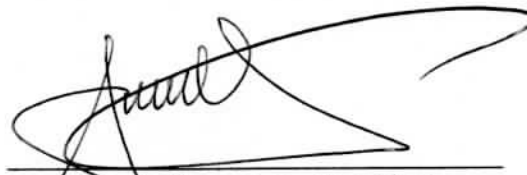
WHEREAS, sons and daughters of the Diné and other indigenous nations within the United States have served in every branch of the United States military and have unselfishly given their lives on foreign soil fighting for the human right of other peoples we should not be required to return to our traditional lands and territories and be denied our inherent and fundamental right of self-determination, to freely determine our destiny and political status; to freely pursue our economic, social and cultural development; to live on and manage our lands free of external interference and incursion; and, to protect, preserve our history, language, philosophy and traditional healing ceremonies.

NOW THEREFORE, WE PROCLAIM THAT that we, the Diné Hataali Association, Inc. ("Hataali"), the traditional leaders of the Diné do hereby reaffirm and proclaim this April 17, 2010 at Bird Springs, Navajo Nation (AZ), that the Navajo Nation, a responsible democratic government that pre-dates the United States, has played a significant role in the social, political, economic and historical development of the United States and has engaged in official, political, diplomatic, governmental treaty relations with the United States and other sovereign nations

since the earliest European contact and continues to possess a unique political nation-to-nation relationship with the United States as a sovereign nation exercising governmental authority over Diné citizens and Diné territories including the responsibility to prudently manage Diné lands, territories, atmosphere, resources, minerals, water and history, language, philosophy and traditional healing ceremonies for future Diné generations and to ensure the continued existence of the Diné as an irreplaceable nation among the world nation states and societies.

WE FURTHER PROCLAIM the Navajo Nation is and always has been a sovereign nation the same as other nation/states whose relations with the United States are firmly establish by treaties and the United States Constitution such that requiring the Navajo Nation to negotiate directly with the political subdivisions of the United States rather than the federal government fabricates a loss of status for the Navajo Nation and the Hataali stands firm in its advocacy for the just and full recognition of the fundamental and inherent human right of the Diné to self-determination as recognized by the United Nations, the Organization of American States and other nations states and honor the voice of the Diné people and proclaim the NNHRC/Report1/2010, February 5, 2010, *Statement of the Navajo Nation Regarding the United States of America's Fulfillment of International Human Rights Treaties, Covenants and Declarations and Other Obligations* as a reflection of the voice of the Diné to be presented to the United States Department of State and the High Commissioner.

WE FURTHER STRONGLY ADVOCATE that the Human Rights Commission respectfully press the United States and its political subdivisions, for the immediate ratification and implementation of the United Nations Declaration on the Rights of Indigenous Peoples, the International Labour Convention 169, and International Covenant on Civil and Political Rights, in particular Article 27; to enact federal and/or state legislation that guarantees the Diné and other indigenous peoples the birthright to implement and practice the fundamental legal rights of the Universal Declaration on Human Rights without the fear of undue burdens or restrictions from the federal, state or local government laws, policies, rules and regulations; to enact federal and/or state legislation placing a permanent moratorium on Mount Taylor, the San Francisco Peaks and other sacred sites from further economic exploitation and desecration, that respects and protects the spiritual relationship of the Diné and other indigenous peoples to the lands; to recognize the inherent right of Diné and other indigenous peoples' to access sacred sites without any undue burdens or restrictions from the federal, state or local government laws, policies, rules and regulations; and to actively engage in true nation-to-nation negotiations with the Diné and other indigenous nations when contemplating, drafting and implementing federal and/or state or local government laws, policies, rules and regulations that impact the Diné and other indigenous peoples' sacred sites.



Dr. Anthony Lee, *President*
Diné Hataali Association, Inc.