

# INDIAN LAW RESOURCE CENTER

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## Opportunities for Tribal Nations to Engage in International Bodies: Addressing the Actions of the Federal Administration

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The actions and statements of the federal Administration have already done serious harm to the rights, interests, and sacred sites of many Indian nations, and they have raised serious concerns that the Administration may abandon or change some of the most important legal principles supporting the United States' trust responsibility. The Administration has also called into question some of the most important elements of this country's long commitment to the Rule of Law, to equality before the law, respect for treaties, and respect for human rights. We need hardly mention the many statements that disparage and encourage discrimination and hatred against almost all marginalized groups, women, and minorities.

The direct actions that seriously affect tribes include the huge reduction of the Bears Ears National Monument (endangering sacred sites and cultural rights), the executive order to accelerate construction of the Dakota Access Pipeline, and adverse decisions concerning the Cobell Land Consolidation Program. Another grave concern is the signing statement issued when the President signed the 2017 Consolidated Appropriations Act on May 5, 2017. The signing statement says that the Administration views federal programs and grants for tribal governments as being constitutionally suspect, because, in the President's view, such programs and grants allocate benefits on the basis of race, ethnicity, or gender. Under federal law, statutes allocating benefits on the basis of race, ethnicity, or gender would be subject to "strict scrutiny" by the federal courts, and few such statutes are ever found to be constitutionally valid. See, *Adarand Constructors, Inc. v. Peña*, 515 U. S. 200 (1995). A copy of the Signing Statement is attached below. Never before has an Administration characterized programs and statutes benefiting Native American governments as a racial preference or as allocating benefits on the basis of race or ethnicity. The Supreme Court held in *Morton v. Mancari*, 417 U. S. 535 (1974), that such legislation does not constitute a racial preference nor racial discrimination, but is rather based on the political relationship between the federal government and Indian tribes. A helpful discussion of this issue is provided in Gregory Smith and Caroline Mayhew, *Apocalypse Now: The Unrelenting Assault on Morton v. Mancari*, *The Federal Lawyer*, April, 2013.

There are many more examples of this Administration's apparent intention to undermine, diminish, or fundamentally change the federal government's trust relationship with tribes. This must be addressed with action and with words. It is both a political and a legal issue, so we lawyers have a crucial role to play. Naturally, we must defend the fundamental legal principles

supporting the sovereignty of Native nations and the trust relationship. And we also have an obligation, probably an ethical obligation, to speak out in defense of the Rule of Law and for equality before the law for all, but especially for Native nations, and for respect for treaties and for all human rights.

With the courts increasingly unfriendly, not all judges but many, and with Congress under the control of the President's party, we need to find other ways and other places to take action and to speak about what is wrong and what is needed.

One such possibility is the international arena, the international bodies, particularly the United Nations and the Organization of American States. In these places, Indian and Alaska Native nations can speak about issues, can expose and bring attention to the violations of their rights, and can reach a very broad audience of people from around the world.

One reason these places are now open to us is that we have persuaded them to adopt strong and far-reaching Declarations on the Rights of Indigenous Peoples. The UN adopted its Declaration in 2007, and the Organization of American States (OAS) adopted the equally important American Declaration on the Rights of Indigenous People in 2016. We can now use these Declarations in these international bodies as well as elsewhere.

These international bodies are concerned about countries that ignore or violate the rights of indigenous peoples. They will consider and sometimes act on complaints showing that rights are being violated. They will listen to reports and statements about what is occurring and what could be done about it.

There are many bodies or committees within the UN system and the OAS system, and each of them can offer various opportunities to make complaints, or to make recommendations, to call for action to stop some unfair practice of the United States, to make statements to inform countries about some issue, or to gain public attention to some serious issue. Each body or group or mechanism in the UN and the Organization of American States has a different set of tasks that it performs, different rules of procedure, and different powers that it can exercise. Some of these are summarized below. Complete information about all of them is available on the internet at the websites for the United Nations and for the Organization of American States. Particular links for the various bodies are given below.

There are many objectives or goals that a tribe or nation may want to pursue by taking some action in the UN or the OAS. A tribal government may want to simply show that it is a sovereign government that is taking its place in the global community of nations. Or a tribe may wish to bring attention to a particular issue of great concern to the tribe or to the world, such as the effects of climate change and the need for action, or the epidemic of violence against Native women, or the need for greater control over natural resources. Or an Indian government may want to call attention to some serious violation of its rights by the United States and to put some pressure on the federal government about the issue. Or a tribe may have a strategic interest in calling attention to particular laws or policies or practices of the federal government that are unjust toward tribes and that are detrimental to the rights and well-being of tribes in general. There are many such possible reasons for taking part in the international arenas.

Let me give you a summary or overview of the various international bodies you can use and what kinds of things you might be able to do on behalf of an Indian or Alaska Native nation.

## **United Nations Bodies and Procedures**

There are two UN bodies and one procedure devoted to the rights of indigenous peoples. In addition there are a number of bodies and procedures that can be utilized or participated in by indigenous peoples. I will provide summary information about the more important of these and mention some of the many others.

### The Permanent Forum on Indigenous Issues

The Permanent Forum meets annually for two weeks at the UN Headquarters in New York City, usually in April. It is the first UN body to include indigenous members. It is composed of sixteen independent experts, eight nominated by indigenous peoples and eight nominated by states. The Permanent Forum deals with indigenous issues in the areas of human rights, economic and social development, culture, the environment, education, and health.

The Permanent Forum is an advisory body to the UN Economic and Social Council, and its mandate is limited to making recommendations to the Council concerning the programs, agencies, and activities of the United Nations. Despite its very limited mandate, the Permanent Forum session each year is a large gathering of indigenous representatives from all over the world who come to speak and provide information about their issues.

Many member countries of the UN attend the Permanent Forum sessions, which makes the sessions an excellent opportunity to make statements that call attention to human rights violations or other serious situations affecting indigenous peoples. Because so many people attend, it is sometimes difficult to accommodate all those who wish to speak. Be prepared to sign up for a speaking slot early.

The annual session is also an opportunity to conduct a side event to provide information and educate participants about important issues. The opportunity to meet with and gather information from indigenous peoples from around the globe is valuable, and it is relatively simple for any indigenous representative or individual to register for and participate in the Forum session. This means the Permanent Forum session is an easy entry point for anyone wanting to become more familiar with participating in international meetings to advance indigenous interests.

The website of the Permanent Forum is one of the best places to get information about almost all UN activities relating to indigenous peoples. That website is:  
<https://www.un.org/development/desa/indigenouspeoples/>.

## The Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) is the newest body dealing with indigenous rights, and it received a new mandate in 2016 that gives it great potential to be an effective body for monitoring compliance with the Declaration and for fostering implementation of the Declaration. The EMRIP is a subsidiary body of the Human Rights Council made up of seven independent experts. One of its purposes is to provide expertise and advice to the Council concerning the rights of indigenous peoples. But its mandate is far broader, and it gives the Mechanism the authority to seek and receive information from any relevant source concerning indigenous rights and violations of those rights. The Mechanism is mandated to report the Council about the rights of indigenous peoples as often as necessary and at least once a year. This means that the Mechanism can receive complaints and reports of human rights violations, can seek information about these situations, and can then report to and provide its advice to the Human Rights Council. The Mechanism has the authority, like other human rights bodies and special procedures, to issue press releases about its reports and about situations on which it is reporting. Such press releases can be significant factors in casting public light on human rights violations and pressuring states to change their policies or stop the violations. The Mechanism is also authorized to collaborate with the Special Rapporteur on the Rights of Indigenous Peoples, also in Geneva, and this is important, because the Special Rapporteur has the authority to make visits to states and to make specific recommendations for responding to violations of indigenous rights. This can bring further attention to the need for corrective action.

Information or complaints of violations of indigenous rights can be made directly to the Expert Mechanism by anyone at any time. This can be done in writing or at the five-day annual meeting that is held in Geneva, Switzerland, usually in July. These meetings are open to indigenous peoples.

The Expert Mechanism can also provide technical advice to indigenous peoples on dealing with domestic legislation and policies affecting indigenous rights. It can help initiate and facilitate dialogue at the request of indigenous peoples or states. The details of the EMRIP mandate are contained in Human Rights Council Resolution 33/25 of September 30, 2016, A/HRC/RES/33/25.

Further information about the Expert Mechanism can be found at:  
<http://ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx>.

## The Human Rights Council

The Human Rights Council is the highest body in the UN system devoted to human rights. It is made up of 47 states and it meets several times per year in Geneva Switzerland. It deals with the full range of human rights issues in all parts of the world. Information about the Human Rights Council may be found at:

<http://ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>.

It is possible for indigenous representatives to attend and speak in the Council sessions, but only if they are given credentials by an accredited Non-Governmental Organization. This means that one must arrange with an NGO accredited by the UN, such as the Indian Law

Resource Center, to be part of their delegation. There are many such NGOs that would be willing to help. It is possible for such delegates to make an oral statement to the Council. All statements in the Council are very short, just two to five minutes, even statements made by countries. Making an oral statement or “intervention” in the Council is a complex thing to arrange, but it is often very valuable because of the prominence of the Council and the large number of people around the world who give attention to the Council’s work.

NGOs such as the Indian Law Resource Center, the Native American Rights Fund, and the National Congress of American Indians often work together at meetings of the Human Rights Council and other bodies. These and other NGOs can be very helpful to indigenous representatives participating for the first time.

One of the Council’s important functions is to carry out the Universal Periodic Review of each member state of the UN. This is a detailed examination of the human rights performance of each country, including the United States. When the review of the United States approaches, it is possible to submit information about the human rights record of the United States, and often this can be done in collaboration with other human rights groups or organizations. This is done in writing, and it can sometimes be effective in bringing attention to an issue.

The Human Rights Council has a formal procedure for receiving and considering complaints of gross violations of human rights. Such complaints must be submitted in writing after all domestic remedies have been exhausted. The procedure is entirely confidential, so it is not very useful in bringing public attention to a human rights issue. Nevertheless, such complaints can sometimes be helpful.

It is important to remember that written statements can be submitted to the Council through an accredited NGO on any agenda item the Council will be addressing. It is not necessary to go to Geneva. Such statements are available to all members of the Council and to the public on line, that is, on the internet. This is an important and often effective way to participate in most UN bodies without the time and expense of a trip to Geneva or New York. The rules for submitting statements are available on line.

#### The Special Rapporteur on the Rights of Indigenous Peoples

The Special Rapporteur on the Rights of Indigenous Peoples is an individual appointed by the Human Rights Council to promote implementation of the rights of indigenous peoples, to respond to violations of human rights, and to report on the situation of indigenous peoples in particular countries. The Special Rapporteur can make visits to countries (with the permission of the country) and can make specific recommendations for correcting violations of indigenous rights. Contacting the Special Rapporteur can be the speediest way to get international attention to a situation or human rights violation.

A recent example of a press release by the Special Rapporteur shows how the UN Declaration on the Rights of Indigenous Peoples can be used to criticize and call for reversing actions taken by the federal government. The press release condemns the reduction of the Bears Ears National Monument because of its harm to the sacred sites of Indian peoples and the failure to live up to the standards of the UN Declaration on the Rights of Indigenous Peoples. A copy of the press release is attached to this paper. Keep in mind that this press release may well have

been the outcome of a complaint or request made to the Special Rapporteur by an indigenous nation or an indigenous organization.

Further information about the work of the Special Rapporteur is at:  
<http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SRIPeoplesIndex.aspx>.

### The Committee on the Elimination of Racial Discrimination (CERD)

The Committee on the Elimination of Racial Discrimination is the Committee created to monitor states' compliance with the Convention on the Elimination of All Forms of Racial Discrimination. It is composed of 18 independent experts who primarily review the reports of the states that are parties to the Convention about their compliance with the Convention. It is important here because it is one of the more effective UN bodies that can consider and act on complaints of violations of the rights in the Convention – rights to be free from action by countries that discriminate on the basis of race. It is often the case that unjust actions affecting Indian and Alaska Native tribes are discriminatory on the basis of race – where harmful action is taken affecting Indians or Alaska Natives because of their racial identity. Anyone can make such a complaint. Information about doing so is available on line.

CERD will consider complaints made by individuals alleging violations of rights in the Convention. It will also take Early Warning measures or Urgent Action measures by contacting a country about situations that could develop into dangerous or violent crises or by contacting a country and asking for information about a situation that could result in serious human rights violations unless action is taken urgently. CERD has several times invoked these procedures in matters involving the United States. It is possible for Non-Governmental Organizations to attend CERD meeting and to have limited contact with Committee members.

Further information on CERD is available at:  
<http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx>.

### Consultation process on enhancing indigenous participation

One of the central goals of indigenous peoples participating in the 2014 UN World Conference on Indigenous Peoples was to make it possible for indigenous governments, or tribal governments, to participate on a permanent basis in the meetings and activities of the United Nations. The Outcome Document of the World Conference included a commitment by the UN General Assembly to consider ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies. A process was carried on by the President of the General Assembly, including many consultations, meetings, and negotiations for about two years, but states, though generally in agreement about the value of enhanced indigenous participation, were not able to come to consensus about how to accredit indigenous governments and representatives for participation.

In early September of 2017, at the end of the previous session of the General Assembly, the General Assembly adopted a resolution, 71/321, calling upon the President of the General Assembly to conduct further hearings annually at the time of the Permanent Forum's annual session this year and in the next two years. The President is to submit a report to the General

Assembly by September of 2020 for consideration by the General Assembly at its session beginning that month.

The resolution also called upon all relevant UN bodies to consider how they can facilitate participation by indigenous peoples' representatives and institutions in their meetings and events. The General Assembly committed itself to continue consideration of this issue at its 75<sup>th</sup> session (beginning September 2020) along with holding further consultations with indigenous peoples.

In accordance with the General Assembly's resolution, there will be an informal hearing conducted by the President of the General Assembly on April 17, 2018, at UN headquarters in New York City on enhanced participation by indigenous peoples' representatives and institutions. It will be open to all indigenous participants registered to attend the Permanent Forum. The Permanent Forum will be conducting its annual session at this time. No further information about the consultation was available at the time of this writing. States will attend this hearing and make their views and concerns known. This is an important opportunity for indigenous leaders to speak and continue building support among states for measures to assure that indigenous governments are enabled to participate in UN meetings on a permanent basis. Information about the time and the room for the consultation will be posted at: <https://www.un.org/development/desa/indigenouspeoples/participation-of-indigenous-peoples-at-the-united-nations.html>.

This website provides access to detailed information about this crucial on-going process. Although it may be difficult to participate directly in this hearing on short notice, it is almost certainly possible to submit written statements directly to the President of the General Assembly or to the President through the Secretariat of the Permanent Forum. Contact the Secretariat through the website above.

#### Other UN bodies and processes

There are many other UN bodies and processes that offer opportunities for Indian and Alaska Native governments and organizations to participate. Some of these are quite important.

The Commission on the Status of Women holds a massive annual meeting in late winter in New York to consider the full range of issues affecting women, including the epidemic of violence against indigenous women. Information is available at: <http://www.unwomen.org/en/csw>.

The Human Rights Committee monitors the United States' (and all parties') compliance with the Covenant on Civil and Political Rights. It can be useful to submit information when the Committee considers the United States' report, nominally every five years. Further information is available at: <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>.

The Convention on Biological Diversity Conference of the Parties, particularly the Working Group on Article 8j, considers the role of indigenous peoples with regard to traditional knowledge, innovations, and practices. More information here: <https://www.cbd.int/traditional/>.

Indigenous peoples have also participated extensively and successfully in meetings under the UN Framework Convention on Climate Change. Further information here:  
<http://unfccc.int/2860.php>.

Finally, there are many Special Rapporteurs that deal with specific issues such as the environment, violence against women, and other human rights matters. Often these Special Rapporteurs collaborate with one another on particular situations. Further information about all of them and how to engage with them is available here:  
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

The World Intellectual Property Organization is a specialized agency of the UN in Geneva. It is doing important work of concern to indigenous peoples. Information concerning the work relating to traditional knowledge and indigenous peoples is available here:  
<http://www.wipo.int/tk/en/indigenous/>.

The UN Voluntary Fund for Indigenous Peoples provides small grants for travel by indigenous representatives to attend various UN meetings and functions. Information about applying and information about the Board of Trustees is available at:  
<http://www.ohchr.org/EN/Issues/IPeoples/IPeoplesFund/Pages/IPeoplesFundIndex.aspx>.

## **Organization of American States, Bodies and Processes**

The Organization of American States (OAS) is an intergovernmental organization that might be described as something like the United Nations, though smaller and limited to the Americas. All the countries of the Americas are members. Its headquarters are in Washington, D.C., making it more accessible to Indian and Alaska Native representatives.

The OAS has recently adopted its own American Declaration on the Rights of Indigenous Peoples, a declaration of indigenous rights that in some respects goes further than the UN Declaration. The OAS has its own human rights system that has proven to be very helpful for Indian peoples. The principal body that can be useful for Indian and Alaska Native tribes is the Inter-American Commission on Human Rights. The most important opportunities to participate in relevant OAS activities are the meetings that will be organized soon to plan for the promotion and implementation of the American Declaration on the Rights of Indigenous Peoples.

### **The Inter-American Commission on Human Rights**

The Inter-American Commission is a seven-member body that is authorized to receive complaints or petitions concerning human rights violations and to consider and make decisions and recommendations concerning such violations. The Commission is an autonomous body of the OAS, created by the OAS Charter and the American Convention on Human Rights. The Commission has made favorable decisions in a number of cases filed by Indian or other indigenous peoples, and several of these decisions have significantly advanced the law concerning the rights of indigenous peoples. However, the Commission's decisions and recommendations are not legally binding on the accused country. They usually have substantial political and moral force nevertheless.



The Inter-American Human Rights System also includes the Inter-American Court of Human Rights. In cases where the recommendations of the Commission are not accepted or not implemented by the country that has committed the violation or violations, the Commission itself can decide to take the case to the Inter-American Court of Human Rights. The Commission, usually with the help of the petitioner, presents the case to the Court, and the Court has jurisdiction to render a decision that is legally binding on the country. However, the Court can consider only cases against countries that have accepted the jurisdiction of the Court. The United States has not accepted the Court's jurisdiction, and therefore cases against the United States cannot be taken to the Court.

The Commission is a very useful body to turn to, but it can only hear cases where all domestic remedies have been exhausted or where domestic remedies are demonstrably futile. The Commission operates much like a court, and the proceedings are somewhat formal. One must also take into account the heavy load of cases the Commission must deal with. Delays of many months and years are often encountered.

The Commission also conducts what are called Thematic Hearings or hearings on a particular topic of interest or concern. At Thematic Hearings, individuals can present information or evidence about the issue or topic under consideration. This can be an effective way to bring important issues or situations to public attention and to get the attention of an offending government. For example, a Thematic Hearing was held on the issue of violence against indigenous women, and this was very helpful in bringing attention to this issue. Indigenous individuals or lawyers can request the Commission to conduct a Thematic Hearing and such requests are frequently but not always honored.

With rare exceptions, the Commission's work is conducted in Washington, D.C. Most communication with the Commission is by mail or email. General information about the Inter-American Commission and extensive information about filing petitions is available at the Commission's website: <http://www.oas.org/en/iachr/>.

#### Meetings on the Plan of Action and implementation of the ADRIP

Last year, the OAS General Assembly adopted a Plan of Action for implementing the American Declaration on the Rights of Indigenous Peoples. This was done in part because of the active advocacy at the General Assembly session by a coalition of indigenous organizations and leaders. Since then a group of countries calling themselves friends of indigenous peoples and headed by Mexico has begun developing specific ideas for ways the OAS can promote and implement the Declaration. These ideas include the possibility of creating an implementing and monitoring body, among other possibilities.

Soon the group of countries, friends of indigenous peoples, will submit their proposals to the OAS Permanent Council, where they will be placed before the Committee on Juridical and Political Affairs. This committee, we expect, will create a working group to further develop the ideas for promoting and implementing the Declaration, including creating an implementing and monitoring body. This working group will conduct consultations with indigenous peoples to seek information about the proposals. These consultations are the point where indigenous leaders can participate, present ideas and proposals, express views on the proposals, and

generally advocate for a strong set of implementing mechanisms and plans for the OAS. We expect or hope that these consultations will begin this year.

Information about this important opportunity for advocacy and action should be available on the website of the Organization of American States, <http://www.oas.org/en/council/cajp/>. The website of the Indian Law Resource Center will also post this information when it is available: [www.indianlaw.org](http://www.indianlaw.org).

Attachments:

1. Signing Statement, May 5, 2017
2. Press Release of the UN Special Rapporteur on the Rights of Indigenous Peoples

## Statement by President Donald J. Trump on Signing H.R. 244 into Law

### STATEMENT BY THE PRESIDENT

Today I have signed into law H.R. 244, the Consolidated Appropriations Act, 2017, which authorizes appropriations that fund the operation of the Federal Government through September 30, 2017.

Certain provisions of this bill (e.g., Division C, sections 8049, 8058, 8077, 8081, and 8116; Division J, under the heading "Contribution for International Peacekeeping Activities") would, in certain circumstances, unconstitutionally limit my ability to modify the command and control of military personnel and materiel or unconstitutionally vest final decision-making authority in my military advisers. Further, Division B, section 527; Division C, section 8101; and Division F, section 517 each restrict the transfer of Guantanamo detainees to the United States; Division C, section 8103 restricts the transfer of Guantanamo detainees to foreign countries and does not include an exception for when a court might order the release of a detainee to certain countries. I will treat these, and similar provisions, consistently with my constitutional authority as Commander in Chief.

Certain provisions (e.g., Division C, sections 8040, 8075, 8114, 9005, 9011, 9014, and under the headings "Operation and Maintenance, Defense-Wide," "Afghanistan Security Forces Fund," "Counter-ISIL Train and Equip Fund," and "Joint Improvised Threat Defeat Fund") require advance notice to the Congress before the President may direct certain military actions or provide certain forms of military assistance. In approving this bill, I wish to reiterate the longstanding understanding of the executive branch that these types of provisions encompass only military actions for which providing advance notice is feasible and consistent with my constitutional authority and duty as Commander in Chief to protect national security.

Numerous provisions could, in certain circumstances, interfere with the exercise of my constitutional authorities to negotiate international agreements (e.g., Division B,

sections 509, 519, 530; Division J, sections 7010(c), 7013(a), 7025(c), 7029, 7031(e)(2), 7037, 7042, 7043, 7044, 7045, 7048, 7060, 7070, and 7071), to receive ambassadors (e.g., Division J, section 7031(c)), and to recognize foreign governments (e.g., Division J, section 7070(b)(2)(A)). My Administration will treat each of these provisions consistently with my constitutional authorities in the area of foreign relations.

Division E, section 622 prohibits the use of funds to pay the salaries and expenses for several advisory positions in the White House. The President has well-established authority to supervise and oversee the executive branch and to obtain advice in furtherance of this supervisory authority. The President also has the prerogative to obtain advice that will assist him in carrying out his constitutional responsibilities, not only from executive branch officials and employees outside the White House, but also from advisers within it. Legislation that significantly impedes my ability to supervise or obtain the views of appropriate senior advisers violates the separation of powers by undermining my ability to exercise my constitutional responsibilities, including to take care that the laws be faithfully executed. My Administration will, therefore, construe section 622 consistently with these Presidential prerogatives.

Division B, section 537 provides that the Department of Justice may not use any funds to prevent implementation of medical marijuana laws by various States and territories. I will treat this provision consistently with my constitutional responsibility to take care that the laws be faithfully executed.

Several provisions (e.g., Division C, section 10006(b); Division D, section 401; Division J, section 7041(b)(3); Division N, sections 310, 311, 402, 502(d), and 503) mandate or regulate the submission of certain executive branch information to the Congress. I will treat these provisions in a manner consistent with my constitutional authority to withhold information that could impair foreign relations, national security, the deliberative processes of the executive branch, or the performance of my constitutional duties. In particular, Division E, section 713(1) and (2) prohibits the use of appropriations to pay the salary of any Federal officer or employee who interferes with or prohibits certain official communications between Federal employees and Members of Congress or who takes adverse action against an officer or employee because of such communications. I will construe these provisions not to apply to any circumstances that would detract from my authority to supervise, control, and correct employees' communications with the Congress related to their official duties, including

in cases where such communications would be unlawful or could reveal confidential information protected by executive privilege.

Division C, section 8009 prohibits the use of funds to initiate a special access program unless the congressional defense committees receive 30 days' advance notice. The President's authority to classify and control access to information bearing on the national security flows from the Constitution and does not depend upon a legislative grant of authority. Although I expect to be able to provide the advance notice contemplated by section 8009 in most situations as a matter of comity, situations may arise in which I must act promptly while protecting certain extraordinarily sensitive national security information. In these situations, I will treat these sections in a manner consistent with my constitutional authorities, including as Commander in Chief.

Several provisions (e.g., Division C, section 8134; Division J, section 7063; and Division K, section 418) prohibit the use of funds to deny an Inspector General access to agency records or documents. I will construe these, and similar provisions, consistently with my authority to control the dissemination of information protected by executive privilege.

Several provisions prohibit the use of funds to recommend legislation to the Congress (e.g., Division A, section 716; Division C, sections 8005, 8014, 8070(a)(2), 8076; and Division H, section 210), or require recommendations of legislation to the Congress (e.g., Division C, section 8012(b), 8035(b); Division F, section 532; Division G, sections 101, 102, and a proviso under the heading "Administrative Provisions—Forest Service"; Division N, sections 605(c) and 610). Because the Constitution gives the President the authority to recommend "such Measures as he shall judge necessary and expedient" (Article II, section 3), my Administration will continue to treat these, and similar provisions, as advisory and non-binding.

Numerous provisions authorize congressional committees to veto a particular use of appropriated funds (e.g., Division C, section 8058), or condition the authority of officers to spend or reallocate funds on the approval of congressional committees (e.g., Division A, sections 702, 706, and 717; Division D, sections 101(a) and 201(a); Division G, sections 403 and 409; Division K, sections 188, 222, 405 and 406). These are impermissible forms of congressional aggrandizement in the execution of the laws other than by enactment of statutes. My Administration will notify the relevant committees before taking the specified actions and will accord the recommendations

of such committees all appropriate and serious consideration, but it will not treat spending decisions as dependent on the approval of congressional committees.

My Administration shall treat provisions that allocate benefits on the basis of race, ethnicity, and gender (e.g., Division B, under the heading "Minority Business Development"; Division C, sections 8016, 8021, 8038, and 8042; Division H, under the headings "Departmental Management Salaries and Expenses," "School Improvement Programs," and "Historically Black College and University Capital Financing Program Account"; **Division K, under the heading "Native American Housing Block Grants"**; and Division K, section 213) in a manner consistent with the requirement to afford equal protection of the laws under the Due Process Clause of the Constitution's Fifth Amendment.

DONALD J. TRUMP

THE WHITE HOUSE,

May 5, 2017.

**US must reverse “outrageous” dismantling of Bears Ears National Monument, says UN rights expert**

GENEVA (30 January 2018) – A US presidential order slashing the area of land in the Bears Ears National Monument in Utah and paving the way for the extraction of natural resources is outrageous and should be reversed, a UN human rights expert has said.

Victoria Tauli-Corpuz, UN Special Rapporteur on the rights of indigenous peoples, said the US Government should be stepping up protection of sacred areas, not reducing protection.

“It is outrageous to witness the dismantling of the Bears Ears National Monument, in what constitutes a serious attack on indigenous peoples’ rights in the United States,” said Tauli-Corpuz.

As of 2 February 2018, the land will be open to projects that may cause irreparable damage such as oil and gas drilling, uranium and potash mining and mineral exploration. “Native American sacred lands and artefacts that were once protected may also be subjected to vandalism and looting,” the expert said.

The Bears Ears monument, created by the previous administration, protected around 1.35 million acres of land in south-eastern Utah.

“The designation of the national monument was a laudable government action that protected thousands of sacred sites which are central to the preservation of regional Native culture,” said the Special Rapporteur. “It also set an excellent example and best practice regarding co-management of the protected area, with shared responsibilities between the federal government and local tribes.”

[President Trump’s proclamation](#) cuts the protected area to just over 200,000 acres and divides it into two disconnected sections - the Indian Creek and Shash Jáa.

“The decision to reduce the area included in the national monument by 85 percent is a huge setback for the protection of the rights of indigenous peoples. It exposes thousands of acres of sacred lands and archaeological sites to the threats of desecration, contamination and permanent destruction,” said Tauli-Corpuz.

“The Government of the United States must comply with its obligations to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior

and informed consent before adopting and implementing legislative or administrative measures that affect them.

“No consultations have taken place with indigenous peoples affected regarding to measures taken to change the status of the Bears Ears National Monument.

“I urge President Trump to reverse this decision and ensure the protection of sacred lands and archaeological sites for the benefit of future generations,” Tauli-Corpuz said.

ENDS

**Ms. Victoria Tauli-Corpuz** (Philippines), [\*Special Rapporteur on the rights of indigenous peoples\*](#), is a human rights activist working on indigenous peoples’ rights. Her work for more than three decades has focused on movement-building among indigenous peoples and also among women, and she has worked as an educator-trainer on human rights, development and indigenous peoples in various contexts. She is a member of the Kankana-ey, Igorot indigenous peoples in the Cordillera Region of the Philippines.

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See the [\*UN Declaration on the Rights of Indigenous Peoples\*](#)

UN Human Rights, country page: [\*United States\*](#)

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