

**Report and Statement from
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**Firsthand observations of conditions surrounding the Dakota Access Pipeline
(North Dakota, USA)
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In response to an October 28, 2016 letter of invitation (attached) to me as an Expert Member of the UNPFII from Standing Rock Sioux Tribal Chairman, David Archambault, I traveled from my community to North Dakota to see, firsthand, the conditions that he, his peoples and those from other communities have been facing in relation to the clearing of the right of way and subsequent construction of the Dakota Access Pipeline.

The deep sense of urgency in Chairman Archambault's letter is clear:

The oil pipeline is proposed to cross the Missouri River or Lake Oahe, which is the Tribe's primary source of water, without our consent and without consultation with the Tribe... Currently, we are experiencing violence and intimidation from state law enforcement, private security as well as the North Dakota National guard which are moving to forcibly remove us from our encampment located on unceded Treaty lands. Over 120 arrests have been made in the last two days, and tear gas, mace, compression grenades and other forms of violence have been used against tribal members and our supporters representing over 300 US Native Nations who are peacefully protecting our human, environmental, cultural and Treaty rights.

I have spent the last three days (Oct. 29-31, 2016) in the Oceti Sakowin Camp and surrounding area in dialogue with many who are willing to share their experiences and views with me. However, I was not able to speak with all those who wished to talk. Their stories are important and must be heard. There are at least 3 separate camps in the area. I also met for several hours with senior commanding law enforcement officers from various parts of the state, who are now stationed in Morton County sheriff's office. They shared their perspectives about the October 27th arrests at the "north camp" on Highway 1806.

Mr. Baskut Tuncak, UN Special Rapporteur on Human Rights and Hazardous Substances and Wastes (informally "Toxics") was also present in his personal capacity and he too listened and met with those in the camp and in the surrounding area. Amnesty International has also sent several representatives to monitor and observe developments at Standing Rock. Mr. Roberto Borrero [Taino], from the International Indian Treaty Council (IITC), an NGO in general consultative status with the UN, traveled with me to observe and listen. I was advised that Victoria Tauli-Corpuz, UN Special Rapporteur on the Rights of Indigenous Peoples, who has a comprehensive, direct mandate from the Human Rights Council concerning these specific rights and issues, has been officially invited by the US Department of State to visit the United States, including Standing Rock Sioux territory and peoples.

The following information is based upon eyewitness accounts and my direct dialogue with numerous individuals presently in North Dakota at the site near the DAPL, many of whom are members of the Great Sioux Nation and the Standing Rock Sioux, in particular.

Threats to water source

Given the fact I was in the area for only three days this report necessarily reflects my observations from this perspective. I trust that the Special Rapporteur on the Rights of Indigenous Peoples will visit the area soon. Regardless, it is clear to me that the project has and will adversely impact the Standing Rock Sioux and their waters specifically, as well as cultural, spiritual, sacred and ancient village sites on their lands in their territory.

After much public protest the initial pipeline route because of the possible contamination of water sources due to potential pipeline failures, it was re-routed to an area now in question: in and through un-ceded Sioux Treaty lands and directly adjacent to and upstream from the Standing Rock reservation and their communities. The proposed pipeline construction route will cross the Missouri River/Lake Oahe immediately above the communities on the Standing Rock Sioux reservation. There are serious over-riding concerns about contamination of their primary water source in the event of a pipeline failure. I was shown a map by Tribal leaders of the areas adjacent to the reservation that reflect a significant number of confirmed pipeline breaches and oil spills. In fact, the only area where there are no oil spills is on the reservation itself.

Land rights and construction on Sioux territory

The Chairman of Standing Rock Sioux, the Chairman of the Cheyenne River Sioux and Sioux Elders and spiritual Leaders explained that the rights of the Sioux are recognized and affirmed in their treaties, agreements and other constructive arrangements with the United States, in various court decisions, in the US Constitution and in international human rights instruments. Despite such recognition, their rights are being violated by decisions made with respect to the pipeline project traversing un-ceded Sioux territory.

The pipeline right of way is now on lands, described by local enforcement officials as "private lands", adjacent to the Standing Rock Sioux reservation but which the Sioux leaders describe as un-ceded Sioux lands. Tribal Chairman Archambault advises me that he has been in dialogue with the State Governor who insists that the protestors must leave the area. His firm response has been that the company must stop construction. State interests are clearly aligned with the pipeline project and its construction.

With a noticeable federal government *absence*, the Standing Rock Sioux have been left to address and fight this matter all on their own, without the voice and aid of the United States government. Fortunately, they are not alone. The matter has gained the attention and public consciousness and attracted significant national and international support. One comment made to me was that when "Black Lives Matter" escalates to a serious public and security issue the US government is quick to act, but when the message is that "Indigenous Lives" matter, the message is not heard and little to nothing is done by the US government.

Construction on the right of way is now proceeding on a 24-hour work day basis, seven days a week. The construction is visible from the "south camp" as equipment is literally bulldozing their way to the

Missouri River/Lake Oahe. I was informed that the pipeline company has not received approval to drill on the shores of and under the Missouri River/Lake Oahe. Given that there are no approvals or authorizations in place, it is a significant expense and exposure for the company to proceed with the work. Critical legal issues have yet to be addressed and resolved as the Standing Rock Sioux have stated consistently and unequivocally that they own the river bed under which the proposed pipeline is to be built. Although the federal government has called on the company to voluntarily halt construction, the company's decision to proceed with right of way clearing and construction has put the Standing Rock Sioux in a difficult and untenable situation. They are not prepared to stand down from protection of their primary water source or the continued violations of the Treaties and human rights as articulated in various international human rights instruments.

Sacred sites

I am advised by a Sioux elder and cultural leader that so far some 380 cultural and sacred sites along the pipeline route have been destroyed by work associated with the right of way clearing for the pipeline. She confirmed that on October 31 an ancient village site near the "north camp" will be destroyed. She unequivocally exclaimed that "they want to take our footprints off the land, so they could take us off the land". She advises that the Sioux have done extensive research and have documentation of these sites. The estimated Standing Rock Sioux tribal members are 10,000 strong and that the Tribe holds some 2.3 million acres of land. They have managed to protect their lands from oil development even though for the last 6 years there have been extensive interests expressed by numerous oil and gas companies.

"War zone" conditions

Far beyond the original demands of the Standing Rock Sioux concerning lack of consultation or consent, on October 27, 2016 conditions have dramatically escalated. These matters are now potentially even more significant when compounded by the tumultuous events surrounding the arrests of over 141 individuals. The Sacred Stone Spirit camp and all those gathered advised me of the fact that they have acted based on peaceful protest and prayer with the objective of protecting the water and opposing the pipeline construction under the Missouri River. They have taken the name "water protectors". I was repeatedly told that no one is armed and "protectors" have not initiated any violence or violent protest.

I was repeatedly told of constant aerial surveillance by drones, airplanes and helicopters and on-the-ground surveillance by officers in vehicles stationed on high points of land adjacent to the south camp. While on site some Standing Rock, members pointed out several law enforcement vehicles parked on a nearby hill that is known by tribal members as a burial site. This together with the presence of significant levels of "security" forces from local police, neighboring state police forces, DAPL private company security contractors, and the national guard of North Dakota have all contributed to heightened insecurity and intensity.

Tribal authorities and those at the south camp indicated that there have been provocateurs present. They stated that one such incident involved an individual carrying a "semi-automatic rifle" with a clip for bullets, threatening to fire. He was quickly surrounded by many of those from the south camp and disarmed. He was subsequently arrested by the BIA police -- significantly not by the Morton County sheriff's officers who were nearby. This incident occurred off the Tribal reservation boundaries. The individual held pipeline company identification documents and the vehicle he was driving indicated that

it was signed out that morning from the company's compound. This individual has apparently been turned over to the Bureau of Criminal Investigations. I am uncertain as to whether any criminal charges have been laid. Details on this issue will certainly be revealed, including criminal proceedings, in due time. The result of this incident triggered a procedure for all those entering the south camp being required to sign in, be cleared and authorized to enter.

All these actions have directly contributed to a “war zone” atmosphere and intensified levels of scrutiny. On the bridge near the south camp I witnessed burned out vehicles stationed to prevent passage either way. Large concrete blocks have also been laid across the bridge beyond the destroyed vehicles. Nearby I met officers in body armor, fully armed and in full camouflage gear. Although they tentatively extended a hand of courtesy, I felt as though I was in an armed conflict zone on foreign soil. I felt compelled to show them my Expert Member of the Permanent Forum on Indigenous Issues identification from the UN.

Treatment of Standing Rock Sioux members and other supporters

The treatment of the water protectors and their supporters from across the western hemisphere, beginning on October 27, 2016 has included:

- being surrounded by heavily armed law enforcement officers, armed officers on ATV;
- being forcefully taken down to the ground by officers;
- violent mistreatment during arrest including use of "billy clubs", hands tightly bound with plastic zip ties;
- confiscation of their "chanupas" [sacred pipes and medicine bundles]; and
- confiscation of vehicles and other private property.

In one instance a confiscated sacred medicine bundle has not been returned. A Sioux spiritual leader stated that the significance of the sacred bundles is like sacred church objects: “that the church clergy have their bibles and as spiritual guides we have our chanupas.”

Seven young horse riders, involved in the clash between law enforcement and the “water protectors”, stated that they and their horses had been shot at in very close range with either bean bag guns or rubber bullets. One rider explained he was shot three times with a bean bag and when his horse was shot he was knocked off his horse. They were situated between protestors and police officers to protect those who were praying. All the riders were arrested and their property as well as their horses and riding gear confiscated. Three of the horses, including gear, have not yet been returned. One elder woman stated that she was holding her sacred bundle skyward in prayer and was suddenly forced to the ground, crying out as she watched her sacred bundle fall to the ground.

Those arrested were strip searched, many of them women who described this as humiliating in the extreme. Those arrested and detained were physically marked with numbers on their arms which they describe as being akin to the branding of Jewish persons in Nazi Germany. Many described how they were denied food and proper medical attention, including several who are diabetic. They were placed in detention in what they described to me as “dog kennels” or cages located inside the garage of the Morton County jail on a bare concrete floor. These “temporary holding cells” were said to hold up to 25 persons each. Despite the cold concrete flooring neither cots nor blankets were provided. After being

processed at this site many were then sent to other prisons, some over 4 hours away, for further processing.

Those arrested were not told why they were being arrested nor the charges they would face. They only learned of the charges after they were arraigned and released. All individuals arrested were charged with either misdemeanor and/or felony offences including maintaining a public nuisance; trespass on the private property of the pipeline builder; engaging in a riot; criminal conspiracy; and endangerment by fire. Upon release, with bond payments in the form of cash as high as \$1,500.00, many were left on their own to return to their respective camps. Of course, many do not have such cash on hand. Fortunately, many such costs have been paid through a fund set by the Standing Rock Sioux legal team for this purpose.

There is clearly high tension and palpable anger in the main camp and with the leadership because of the conduct of the arrests and the subsequent jailing. Many, including Indigenous spiritual leaders, described to me the extensive psychological trauma experienced by those who were praying and singing and those in a sweat lodge located at the site. Legal counsel and human rights observers are documenting, through their interviews with the arrested protestors, the type, level and proportionality of response by law enforcement officers. As well as journalists and many on site have been developing extensive photo and video records.

Regarding the many stories of violation of civil and political rights, the arrest and criminalization of the over 141 individuals engaged in the protest of the construction of the Dakota Access Pipeline raise serious human rights issues. I expect the very significant and numerous details surrounding these matters will form a significant component in both the prosecution and defense of those charged. I understand these cases will be before the courts as early as mid-November and early December 2016.

The alarming acts that criminalize Indigenous peoples in their attempts to safeguard their human rights and fundamental freedoms that is unfolding in North Dakota should prompt the United States government into action. Indeed, this is one of the most alarming facts about the situation in North Dakota: the total lack of presence by the United States government.

Insecurity intensifies

As noted above, the senior law enforcement officials that I met with were directly involved in the planning and execution of the arrests of protestors at the north camp on October 27th. The incident commander advised that Americans have the right to protest but overall their role was to "defend the rule of law". They stated that they originally intended to move in on Wednesday, but they delayed until Thursday to give protestors another day to move from the north camp.

Their narrative about the events of the day is decidedly different from that of many others. They stated that they had been dealing with numerous individuals from the camps for the past 3 months and had a variety of minor and ongoing confrontations with various protestors, including some that they described as "militants who hijacked Tribal authorities" and further stated that no one should "use ideology to hurt people and trash property".

They stated that there has been a total of some 412 arrests, 9% of whom were from Standing Rock, including Standing Rock Sioux Tribal Chairman Dave Archambault. They spoke about their well-developed and executed plans in dealing with those protestors who were blocking a public road and/or trespassing on private property, without any serious incidents or deaths. They stated that their plan included a "restrained approach" and that they had "eased forward" slowly. They indicated that their specific action on October 27th was triggered by purported unauthorized obstruction of a public highway and of criminal trespass onto private property -- that of the pipeline company -- by protestors.

Per these officers, the protestors were told to leave the obstruction on the highway and to end their trespass onto private property. Those who left were not arrested. Those who remained were arrested and transferred to the Morton County jail. As the 42 beds in the jail were in use, the arrested protestors were lodged in "temporary holding cells" recently built by a fencing company. I was further told that those arrested were treated with respect, fed, clothed and their medical needs attended to. Law enforcement officials denied allegations of human rights violations or abuses.

Regardless, this incident caused an immediate and dramatic increase in tension and a new level of state betrayal and rising hostilities towards law enforcement officials. It is my hope that those who have shown restraint and a modicum of respect for others continue to deal fairly and honorably with the Standing Rock Sioux tribal members and their political leadership. It must be understood that merely sending in police and security officials is absolutely no way to address the comprehensive and significant concerns raised by the Standing Rock Sioux.

In summary, this is understandably very complex with numerous legal and political matters, with two primary but very different narratives. However I cannot, nor will I, minimize or disregard in any the very compelling stories of those leaders, elders, cultural and spiritual leaders, supporters from many other Indigenous Nations -the "water protectors" who, many with tears of trauma, came forward freely, spoke with me openly, showed me their injuries, bruises, black ink markings on their arms, court documents as evidence of the criminalization of their protest, the necessity to appear in a criminal court to answer to the charges laid -- all wondering about how and why this would happen in America.

There is the very important and critical role of the spiritual and cultural leaders. As they spoke, it was clear that they were providing guidance and counselling to those at the camps. They addressed the significant foundation of legal rights of the Sioux, including the Sioux Treaties with the US, the numerous court decisions and the many agreements entered with the US over time. They were clear that the camps must espouse peace and non-violence in their protests, that no one should be injured or killed, and that no one should use arms in any form.

Lack of presence by the United States, human rights violations and need for engagement

The total lack of presence and action by the United States government, at the federal level must be addressed. In addition to the Bill of Rights, the United States must be reminded of the ratification of the International Covenant on Civil and Political Rights as well as the 2010 public pronouncement of support for the UN Declaration on the Rights of Indigenous Peoples. If the US chooses not to act in response to the alarming actions being manifested in North Dakota, their rhetoric within the halls of the UN are nothing more than empty, meaningless promises.

In the context of the US re-election to the UN Human Rights Council on Friday, October 28, 2016, US Secretary of State John Kerry pronounced that the US would “work closely with the international community to address urgent and serious human rights concerns worldwide” and that “we look forward to cooperating with other Council members to address human rights concerns, advance human rights around the world” while simultaneously there are ongoing violations of civil and political rights being perpetrated against numerous individuals gathered in North Dakota. Furthermore, the United States is far from alignment with the Indigenous human rights affirmed in the UN Declaration on the Rights of Indigenous Peoples.

Specifically, it appears that the government of the United States and its political subdivisions at the state and local level are in violation of numerous provisions of the ICCPR. Furthermore, numerous provisions of the United Nations Declaration on the Rights of Indigenous Peoples have not been upheld, specifically considering what I witnessed, Article 7 [addressing physical and mental integrity, liberty and security of person as well as safeguards against genocide and any other act of violence] and Article 8 [destruction of culture, cultural values and integrity as distinct peoples] as well as Article 19 of the UN Declaration are of central concern.

Clearly, the UN Declaration is equally relevant to the inherent land rights of the Standing Rock Sioux, which derive from among other sources, the Treaty of 1851 and the Treaty of Fort Laramie of April 29, 1868 between the Great Sioux Nation and the United States. The 1868 Treaty originally provided for lands from the 46th parallel of north latitude to the east bank of Missouri River, south along the east bank to the Nebraska line, then west to the 104th parallel of west longitude [15 stat. 635]. I understand that there is substantial concern regarding un-ceded tribal territory. Therefore, the important, outstanding issues concerning the lands, territories and resources of the Standing Rock Sioux require immediate discussion and resolution. Numerous individuals have confirmed that there has been no consultation by the federal government related to the DAPL project.

I was told that an environmental impact statement issued by the company itself confirmed that over 380 sites would potentially be destroyed by the DAPL project despite the numerous federal laws and policies concerning such sacred, historical and archaeological sites ranging from the American Antiquities Act of 1906, the National Historic Preservation Act of 1966, the National Environmental Protection Act as well as the international law, and international human rights instruments, including the UN Declaration. I am advised by Tribal authorities and elders these sites have now been destroyed.

Regardless of both domestic and international law in favor of the Standing Rock Sioux, the pipeline construction has already damaged the security and integrity of the Standing Rock Sioux and the many others that have come to stand in solidarity with people of the Great Sioux Nation. Specifically, the owners and investors have in fact destroyed archaeological, historical and sacred sites of the Sioux.

Conclusion

I understand from Chairman Archambault that the Standing Rock Sioux have transmitted urgent human rights appeals to four Human Rights Mandate Holders, jointly with the International Indian Treaty Council, on August 19th, 2016 and September 4th, 2016. I fully support this action and urge the respective Special Rapporteurs to take this matter up immediately and furthermore, to implore the United States to take concrete action on an urgent basis. I further recommend and respectfully request

that the UN Committee on Elimination of Racial Discrimination consider undertaking an Early Warning and Urgent Action procedure on the basis of information reflected herein.

The United States, as a demonstration of its recent commitments to protect against human rights violations, must live up to its international human rights commitments with respect to Indigenous peoples and swiftly reverse its current approach of criminalizing Indigenous human rights defenders – those standing up for their solemn treaty rights to lands, territories and resources and their inalienable human rights.

More significant, in light of the nation-to-nation relationship that the Standing Rock Sioux and the Great Sioux Nation overall has with the United States government, the US must fulfill its trust responsibility and fiduciary obligations. The United States has a legal obligation and “has charged itself with moral obligations of the highest responsibility and trust” toward Indian tribes in the United States, including the Standing Rock Sioux. There is no question that it is “one of the most important principles in federal Indian law.” And, this federal Indian trust responsibility and fiduciary obligation includes protection of tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to the Standing Rock Sioux, including their “legal duties, moral obligations, and the fulfillment of understandings and expectations” of the Great Sioux Nation, especially when their lives and their cultural integrity is at stake.¹

Furthermore, I strongly encourage the UN Special Rapporteur to visit Standing Rock on an urgent and priority basis to examine this difficult situation where the Sioux are left with protest as their main, perhaps only option, in their struggle to protect their lands, waters, sacred sites and territories. Their Treaties guarantee significant rights. Clearly, US laws and international instruments recognize and must assure their survival as Indigenous peoples and their dignity and well-being. No one should ignore, be indifferent nor run roughshod over these.

The stories of the Tribal leaders and those at the camps that I have heard, including those from the many Indigenous youth, women and men from diverse nations and communities as well as the non-Indigenous activists and journalists who are in support of the rights of Indigenous peoples are compelling and must not be ignored nor treated with indifference. I call upon the United States government to intervene to promote and protect the human rights affirmed in both the ICCPR and the UN Declaration to curb the discriminatory, retaliatory actions against the Indigenous peoples gathered in North Dakota and those being victimized in response to this escalation of violence.

The situation overall is not good. Winter weather is approaching. The protestors vow to stay despite this. There is much at stake.

¹ <http://www.bia.gov/FAQs/>