From: cidhdenuncias@oas.org [mailto:cidhdenuncias@oas.org]
Sent: Monday, October 31, 2016 2:30 PM
Subject: Request for Hearing - 160 PS

Dear Applicant,

Your request was received today. The Inter-American Commission on Human Rights will evaluate this request and will notify you at the email address provided if the request is granted. To requeset a hearing on a case or precautionary measure, you must be registered in the matter before the IACHR or be a representative of the State concerned.

The deadline to request hearings and working meetings for this period of sessions is October 31, 2016.

After November 9, 2016 you will receive a notification with a decision on your request, and subsequently the hearings schedule will be available at www.iachr.org.

Below is a copy of your submitted request:

SURVEY RESPONSES

1. Type of hearing requested:
Thematic

2. Thematic topic:

Economic, Social and Cultural Rights
Freedom of Expression
Rights of Indigenous Peoples

3. OAS Member State(s) involved:

UNITED STATES OF AMERICA

4. Upload a detailed document supporting your request for a hearing.
REQUIRED
http://www.oas.org/forms/UploadedImageDisplayFS.aspx?path=D:\WebSites\vdForms\UploadedImages\SurveyID580\ResponseID49084ItemID12016UnitedStatesStandingRockSiouxTribeHumanRights.pdf

5. In the space below please copy and paste the text of your support

document which was uploaded in the previous question, in order to verify the information necessary for your request. If this information is not provided, your request for a hearing will not be considered.
Dear Ms. Abi-Mershed,

On behalf of and with authorization from the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe and the Yankton Sioux Tribe, we formally request a thematic hearing before this Commission during the "Extraordinary Period of Sessions" in Washington D.C. on December 9 and 10, 2016. The purpose of the thematic hearing would be to bring to the attention of this Commission the ongoing human rights issues faced by tribes and indigenous peoples in the United States in the context of extractive industry infrastructure projects. The human rights issues described below are of utmost concern to the Inter-American Commission in carrying out its mandate to promote respect for human rights in the Inter-American region.

It is clear that the planning, assessment, construction, and operation of extractive industry and infrastructure projects trigger the duties and obligations of the Organization of American States ("OAS"), including the United States, to promote, protect and guarantee human rights contained in the Charter of the OAS, the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man. The human rights most at issue in these projects include the right to life, personal integrity and health, property, access to information, public participation in decision making, and access to justice. All of these rights are protected by the Inter-American human rights instruments, with underlying state obligations extensively developed by the organs of the Inter-American system. Furthermore, when extractive infrastructure projects impact the rights and resources of indigenous people, failure to abide by domestic and international obligations violate human rights recognized in the United Nations Declaration on the Rights of Indigenous Peoples, including the right to health, right to water and subsistence, threats against sacred sites and burial grounds, free prior and informed consent, productive capacity of environment, and self-determination.

The Inter-American Commission has noted that under these and other applicable international human rights standards, States are obligated to act with due diligence to prevent and respond to human rights violations committed in the context of extractive and development activities. The State obligations in this context have six dimensions: (1) the duty to adopt an appropriate and effective regulatory framework, (2) the duty to prevent human rights violations, (3) the obligation to supervise and monitor the activities of companies and other non-state parties, (4) the duty to ensure mechanisms for effective participation and access to information, (5) the

duty to prevent illegal activities and forms of violence, and (6) the duty to guarantee access to justice through the investigation, punishment, and adequate reparation of human rights violations in these contexts.

Additionally, the organs of the Inter-American System have repeatedly found that States have specific obligations to safeguard the rights of indigenous peoples in relation to development plans and projects affecting their territories and resources. Importantly, the Inter-American organs have found these obligations include the (1) guarantee of effective participation of indigenous peoples when development affects their territories and (2) the duty to ensure that the restrictions on the use and enjoyment by indigenous and tribal peoples of their natural resources do not result in a denial of their physical and cultural survival.

This Commission has repeatedly indicated that when undertaking activities that have an impact on the right to property of indigenous peoples, it is necessary that the State guarantee for indigenous peoples: the possibility of participation in the decision-making processes; information of the activities that would affect them; and access to protection and judicial guarantees in case rights are not respected. Further, the Inter-American Court has specified that assessments should be of a "social and environmental" character and "must go further than the strictly environmental impact studies normally required in order to evaluate and mitigate the possible negative impacts upon the natural environment" and allow the indigenous peoples to participate in the realization of prior environmental and social impact assessments.

In the United States, engagement with indigenous communities in the context of resource extraction and infrastructure projects is governed by a litany of domestic statutes, orders, regulations, policies, and protocols that specify procedures as to how Federal departments and agencies are to carry out "government to government" consultations. These directives have proven to establish a disjointed domestic framework that suffers from loopholes, ambiguity, and a general lack of accountability. This has resulted in a regulatory regime that has failed to ensure effective and informed consultations with tribal governments. The breakdown of communication and lack of good faith involvement in the review of these projects has left tribal governments functionally unable to participate in consequential dialogue with the United States on projects affecting their lands and resources. By failing to meaningfully engage and ensure the effective participation of tribal governments in assessing and reviewing extractive infrastructure projects, the United States may fail to meet their human rights obligations as a member State of the OAS.

For example, on July 25, 2016 the United States Army Corps of Engineers, a United States domestic agency, gave multiple domestic authorizations to bring construction of the Dakota Access Pipeline ("DAPL") underneath the Missouri River at Lake Oahe, less than a mile north of the Standing Rock Sioux Reservation and directly upstream from the water supply of the Standing Rock Sioux, Cheyenne River Sioux and Yankton Sioux Tribes. In the permitting process the affected Tribes allege the United States government through the Army Corps of Engineers violated multiple domestic statutes and prevailing international norms by failing to meaningfully engage or coordinate with the tribal governments while carrying out the cultural and environmental impact studies leading to the authorization and continued construction of DAPL.
In this instance, three separate United States domestic agencies, the Environmental Protection Agency, the Department of the Interior, and the Advisory Council on Historic Preservation, expressed grave concern about the approval of DAPL in the absence of legitimate consultation and engagement with tribal governments. The Advisory Council on Historic Preservation described concern with the Corps' lack of consultation regarding cultural resources as mandated in domestic law, citing letters from the Tribal government expressing objections to the project which were met with silence from the United States for over seven months. The United States Environmental Protection Agency and Department of the Interior also wrote letters that question that the United States' failure to meet the environmental review requirements for projects affecting indigenous natural resources, and calling for a full environmental impact statement, which has yet to be completed. In this situation, despite knowledge of the Tribes' treaty claims and the immediate proximity of the project to the Standing Rock Sioux, Cheyenne River Sioux, and Yankton Sioux reservations the Army Corps of Engineers failed to include impact analysis on any tribal lands or resources. The proposed procedure to determine the risk of DAPL by the Army Corps of Engineers brings forth challenges that arise for domestic governments in carrying out their obligation to fully inform and meaningfully consult with tribal governments in considering the impacts on tribal cultural and natural resources.

As a result of growing public outcry at the inadequacy of the current framework, multiple federal agencies, including the Department of Justice and the Department of the Interior, have issued an official communication acknowledging the United States must "better account for, and integrate tribal views, on future infrastructure decisions throughout the country." It also established various "consultation sessions" where tribal leaders can dialogue with United States representatives about how domestic agencies can better ensure meaningful tribal input into infrastructure-related reviews and decisions, to protect tribal lands, resources, and treaty rights. While the

acknowledgment of the current framework's inadequacies is welcome, it fails to provide tangible relief for past, ongoing, and future violations of human rights. Further, U.S. domestic courts have failed to provide any redress to the affected tribes, instead allowing the ongoing construction that continually threatens, and in some cases, purposefully destroys the tribes' cultural and natural resources. As former United Nations Special Rapporteur on the rights of indigenous peoples S. James Anaya has noted, "increasing resource extraction and its mounting effects on indigenous peoples make it all the more imperative to reverse historical trends and secure indigenous peoples' rights in this context."

Another significant issue surrounds rights to freedom of expression and to participation, firmly established in international human rights law. By virtue of these rights, indigenous individuals and peoples have the right to actively express opposition to extractive infrastructure projects, including by organizing and engaging in peaceful acts of protest. States are bound to respect and protect rights of freedom of expression and participation and should not impose undue limitations on the exercise of those rights.

For example, the controversy surrounding DAPL has resulted in the coming together of thousands of people near Standing Rock Sioux Reservation to express their views that the lands, resources, cultural property, and water supply threatened by DAPL should be protected. Representing indigenous communities from all over the world, this represents the largest gathering of indigenous peoples in the United States in more than 100 years. North Dakota has responded with militarized law enforcement, threatening freedom of association, freedom of political beliefs, freedom of assembly, and freedom of speech. This response has resulted in the arrest of over 400 protestors, as well as the use of attack dogs and chemical agents by private security forces. Throughout the protests individuals, including many tribal elders and leaders, have been subject to constant aerial surveillance, military checkpoints, racial profiling, property seizures, and dehumanizing and inappropriate treatment from law enforcement including strip searches, hooding, lack of adequate food and water, and confining arrestees in dog kennels and marking their bodies with numbers. Despite calls from Standing Rock Sioux Tribal Chairman David Archambault II, Cheyenne River Sioux Tribal Chairman Harold Frazier and others, the United States has yet to address the human rights violations of the state and non-state parties and continues to passively allow these concerted efforts to stifle freedom of speech, political association, and assembly.

In situations such as this one, the current domestic framework in the United States leaves tribal governments unable to engage the United States in an effective or meaningful way as to extractive industry projects and attendant

human rights issues, despite the grave threat these projects pose to the basic human rights of the Tribes and their members. Without actions to remedy the situation, tribal cultural and natural resources are continually at risk of being destroyed, causing injury to the indigenous people of the United States. As this commission has noted:

Infrastructure or development projects...as well as concessions for the exploration or exploitation of natural resources in ancestral territories, may affect indigenous populations with particularly serious consequences, given that they imperil their territories and the ecosystems within, for which reason they represent a mortal danger to their survival as peoples, especially in cases where the ecological fragility of their territories coincides with demographic weakness.

In closing, as this matter is of urgent concern, we respectfully request a formal thematic hearing before this Commission during the "Extraordinary Period of Sessions" in Washington D.C. on December 9 and 10, 2016. Attached documentation in support of this request includes: 1) letters from the Department of the Interior, the Environmental Protection Agency, and the Advisory Council on Historic Preservation urging the Corps to develop more thorough assessments involving the Tribe; 2) statement of Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of Indigenous Peoples; and 3) Department of the Interior, Department of Justice, Department of the Army, "Dear Tribal Leader" Letter. Our hope is that the human rights of Tribal governments and their members be given a fair, independent, impartial, open and transparent consideration and discussion. Thank you for your attention to our request for a thematic hearing on the issues we raise.

Respectfully yours,

Carla Fredericks
Director, American Indian Law Clinic
Director, American Indian Law Program

6. Requesting party:
Petitioner

7. Complete names of all petitioning individuals and/or organizations (including acronym) submitting this request, separated by comma:
Carla Fredericks Director American Indian Law Clinic University of Colorado Law School, Standing Rock Sioux Tribe Chairman David Archambault II and Dean Depountis Legal Counsel,

Cheyenne River Sioux Tribe Chairman Harold Frazier and Conly J. Schulte Legal Counsel
Fredericks Peebles & Morgan LLP, Yankton Sioux Tribe Chairman Robert Flying Hawk Thomas W. Fredericks Legal Counsel Fredericks Peebles & Morgan LLP

8. E-mail address (this e-mail address will receive a copy of the request once completed):
carla.fredericks@colorado.edu

9. Additional contact e-mail address(es), separated by semicolon:
jesse.heibel@colorado.edu; ddepountis@standingrock.org; tfredericks@ndnlaw.com; cschulte@ndnlaw.com

10. Contact telephone number(s):
3034927079; 9175930194

11. If you have any additional comments, indicate them here:
[No Answer Entered]

12. This is the final page. Upon clicking "Done", this form will be submitted and no further changes can be made. If the request is complete, check "Correct" and then click "Done" to submit the form.
Correct