

Mortuary Services and Funeral Planning: Advocating for the return of Navajo Traditional Burial



Star constellation is Hastiin Sik'ał'ii
translates to "Man with solid stance".



LETTER OF TRANSMITTAL

August 21, 2020

Hon. Jonathan Nez, *President*
Hon. Myron Lizer, *Vice-President*
The Navajo Nation
Window Rock, Navajo Nation (AZ)

Hon. Seth Damon, *Speaker*
Hon. *Members*
The Navajo Nation Council
Window Rock, Navajo Nation (AZ)

Hon. JoAnn Jayne, *Chief Justice*
The Navajo Nation Supreme Court
Window Rock, Navajo Nation (AZ)

Nihi naat'áanii,

The Navajo Nation Human Rights Commission hereby submits to the Diné bi naat'á, our Navajo government and to the Diné the public seminars report entitled "*Mortuary Services and Funeral Planning: Advocating for the return of Navajo Traditional Burial*"

The report is a compilation of four public seminars, research and qualitative discussions with Navajo traditional practitioners, anthropologist experts, Navajo historical scholars and local law enforcement personnel. The Commission recognizes the topic of this report will be met with some apprehension and trepidation from the reader. However, as found in the report, the topic of death and the fear of the dead was never to have been feared. Navajo tradition allowed for specific protocols to be carried out during the period of bereavement and during the season of early winter up to early spring. Through time, these traditional protocols have been lost.

With great esteem, we have the honor to advocate for the Protection and recognition of Diné human rights.

DocuSigned by:

Jennifer Deneetdale

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Dr. Jennifer Deneetdale, Chairperson



Henrietta S Soland, Commissioner



Michelle Cook, Commissioner



Steven A. Darden, Vice-Chairperson



Cora Maxx-Phillips, Commissioner

**RESOLUTION OF THE
NAVAJO NATION HUMAN RIGHTS COMMISSION**

**Adopting the Public Seminar Report on Mortuary Services and Funeral Planning;
Advocating for the return of Navajo Traditional Burial Practices**

WHEREAS:

1. Pursuant to 2 N.N.C. §§ 920 and 921, the Navajo Nation Human Rights Commission (herein referred to as "Commission") is established in the Legislative Branch as an entity of the Navajo Nation government and organized to operate as a clearinghouse entity to administratively address discriminatory actions against citizens of the Navajo Nation; and to interface with the local, state, federal governments, and with national and international human rights organizations in accordance with the Commission's plan of operation (Navajo Nation Council Resolution CJN-15-08) and applicable laws and regulations of the Navajo Nation; and
2. One of the purposes of the Commission is to conduct public hearings on and off the Navajo Nation to determine the state of race relations between Navajos and non-Navajos. During the period covering November 2017 to May 2018, the Commission conducted four public seminars to receive input and information from Navajo and non-Navajos on services provided by mortuaries and funeral service planning; and
3. The Commission received reports from Navajo families who purchased mortuary services in nearby border towns where Navajo families alleged that they were victims of consumer frauds. Navajo families spoke of purchasing mortuary services that were not performed or provided, charged additional expenses that were not purchased, and faced complicated authorized release of a body to a family for burial; and
4. Mortuary services near and on the Navajo Nation are vital services that every Navajo family will need to procure eventually. The cost for mortuary goods and services can be exorbitant and one of the most expensive purchases a family will make. In many instances Navajo families are not able to cover the cost of funeral expenses and rely upon contributions from Navajo government programs, family and friends to defray the costs of burying a loved one; and
5. The Commission consulted with several Navajo medicine practitioners, State Medical Examiners, State Mortuary Boards, Funeral directors, Navajo law enforcement, Navajo Division of Family Services, Navajo Office of Historical Preservation and the Navajo Land Administration to assess the use and business practices of mortuary services near and on the Navajo Nation; and

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6. The Commission found Navajo families who purchase funeral goods and services are not fully informed of Navajo traditional burial packages that cost substantially less and allow for proper traditional burial protocols that respects the living and honor the deceased; and
7. The Commission advocates for the rejuvenation of Navajo traditional burial practices that conveys dignity, respect, protection and discussion of death.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Human Rights Commission hereby adopts the public seminar report entitled, "Mortuary Services and Funeral Planning: Advocating for the return of Navajo Traditional Burial," attached hereto as Exhibit "A".
2. The Navajo Nation Human Rights Commission further hereby directs the Office of the Navajo Nation Human Rights Commission to transmit this resolution to the Navajo Nation Council, and Navajo Nation President and Vice President and make available to citizens of the Navajo Nation through appropriate, including but not limited to positing it on the Commission website www.nnhrc.navajo-nsn.gov, a copy of the Exhibit "A" public hearing report.

C E R T I F I C A T I O N

I hereby certify that the following resolution was duly considered by the Navajo Nation Human Rights Commission at a duly called meeting via teleconference at which a quorum was present and that same was passed by a vote of 3 in favor and 0 opposed this 21st, day of August, 2020.

DocuSigned by:
Jennifer Denetdale

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Dr. Jennifer R. Denetdale, PhD., *Chairperson*
Navajo Nation Human Rights Commission

Navajo Nation Human Rights Commission

**Mortuary Services and Funeral Planning:
Advocating for the return of Navajo Traditional Burial**

August 21, 2020

Submitted by

**Commissioner Jennifer Rose Denetdale, Ph.D., Chairperson
Commissioner Steven A. Darden, Vice-Chairperson
Commissioner Henrietta Sandoval-Soland
Commissioner Michelle Cook
Commissioner Cora Maxx-Phillips**

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STATEMENT FROM COMMISSIONER CHAIR JENNIFER R. DENETDALE, PH.D.

It is with a great deal of satisfaction and pride that I offer this study on behalf of the Navajo Nation Human Rights Commission. When Vice Chair Steve Darden brought this matter to the table, we realized that we needed to address an important part of the Diné life cycle in ways that will bring us to an appreciation for our former practices of taking care of relatives when the end of life ends and the next journey begins. On March 29th, 2020, my mother, Rose Nez, passed away in my home after a battle with cancer. My siblings, their spouses, our children and grandchildren cared for our matriarch at home and we prayed for her recovery. It was not to be. The two years prior to my mom's passing, the Commission had launched this study to determine if border town funeral homes were treating Navajo consumers fairly. The study included a component on the state of traditional Diné thought and practices around death as part of the natural cycle of life and returning a body to the earth as "replanting." My part on working with the Commission on this issue was inspirational and affirming for me on a personal level for I have an abiding respect for the knowledge of our medicine people.

The time spent working on implementing this study, researching the topic and then writing the report with the Commissioners and staff was valuable and I shared my knowledge with my family as we made plans to take our mother home when her spirit left her body. The information and research gained from this study served me well as I was able to encourage our family to care for our mom in a way that demonstrated our love for her, meaning that we took care of as much of the funeral and burial needs within our family and with a modest amount of financial support that was provided by friends and relatives. Mom passed away at the onset of restrictions related to COVID 19, so we did not have a gathering of relatives and the burial side service was conducted by her children, in-laws, and grandchildren. My knowledge attained from our study was applied to my family's care to return our matriarch to Mother Earth as an act of love and responsibility proved to me that this study will hold great value for our Navajo Nation. Four years prior to my mother's death, my father, Frank Nez, also died at home. On the morning of his last breath, on July 15, 2016, I was the one in attendance and had sat with him all night. When he left this life, our relatives waited with us for the Navajo Nation police officer to arrive. One of my elders, John D. Begay, shared his story of what happens when an elder leaves this life and how we think of the afterlife. My family and I have been told that when an elder dies at home, it is a blessing. One incident that happened when we made the final funeral plans for our patriarch happened at the Mormon church in Gallup, New Mexico, which my sisters had reserved for dad's funeral. My dad had very few last wishes. He asked that we dress his body in the manner that he had lived—humble, that we not spend a lot of money on his funeral, and that the Tohatchi Veterans honor him with their presence at the funeral. Sadly, the bilagáana Mormon Bishop refused to allow the veterans into his church, for reasons we still don't know. He also refused us any programming that did not fit his Church standards, even though some of my family are Mormons. To this day, I see the necessity for this investigation, the research and work the Commission put into this study, for as Diné, we continue to feel the pressure from Christians to conform to their ways, even during the most precious time, when our elder travels to the next life, and we must make plans for a final resting place. As Diné, we should be free to practice our own way of caring for our relatives at the end of life and make funeral and burial preparations without imposition from Western and Christian practices. We should have the space to remember and practice how we once took care of our relatives once they have left this physical world. We

should seek out our knowledge keepers and be reminded of how we take care of our relatives as the natural cycle of life.

I am truly grateful to the Commission who were diligent in planning and organizing this study. We relied on Vice Chair Steve Darden's knowledge to guide us and Mr. Leonard Gorman's diligence to bring this report to fruition. Thank you to the Commission staff for their dedication and to the Commissioners for all their work and care on this project. I also thank Lauren Bernally for the hours she spent reading this document over and over until we got it as right as we could. I thank my colleagues Klara Kelley, Lloyd Lee, Dennis Gilpin, Kelley Hays-Gilpin, and Andrew Curley for their careful review of this study. I thank Mary June-el Piper for applying her copyediting skills to this report. I am a more knowledgeable person as a result of this study.

Jennifer R. Denetdale, *Chair*
Navajo Nation Human Rights Commissioner, Education

STATEMENT FROM COMMISSIONER VICE-CHAIR STEVEN A. DARDEN

Traditional Diné births entailed that a fire (Hajiinei ko') was made, and other sacred elements Water (T'o asdzaan), Air (Nilchi), and Earth Mother (Nahasdzaan), and Gravity were acknowledged/invoked to assist in the birthing process. Women attended the natural birthing process. When the water bag broke, the woman with child was prepared with her sash belt as a seat for her to be supported, with her feet on the ground. As the sacred child is delivered, the person receiving the infant would then present/place the infant with it's (Fontanel (baby's crown /soft spot(tsii tahgi) directly over the Grandmother Fire, and then express to the sacred Grandmother Fire, to acknowledge the birth of this baby, your grandchild, your relative. Then she would request that in future times that the Grandmother Fire should protect this child/ relative, and should the child ever become ill, the Grandmother Fire should bring healing and well-being to the child.

So as the sacred element of Grandmother Fire is present at the traditional births of Diné babies, and since Grandmother Fire is considered a sacred healing element of LIFE, there were very strict protocols about this sacred element. Traditional Diné teaching is that when an infant/child became ill, one was to build a fire, and to ask the inner form of the Grandmother Fire to bring healing to the child, and to protect the child from further illness, harm, dangers, evil, and injury. Fire is a life force and a sacred element of life. Ashes from a fire was used by traditional Diné people for protection against evil energies, thus the Diné Blackening ceremony.

It was believed by traditional Diné that death caused by fire or lightning was the worst.

Thus, the cremation of human remains was NOT an accepted practice. Note, there are more specific details associated with this matter, but I choose not to share them due to my personal beliefs and for my protection.

Interestingly, of particular note to me was this: on-reservation Diné persons stated that the two largest expenses for them were "Transportation and Burials". For off-reservation Diné, their two largest expenses were "Cost of housing and Education".

During the public hearings the NN Human Rights Commission hosted, there were many stories shared by the presenters, entailing the various forms of burial practices offered by the bordertown funeral homes. There were allegations that the bordertown funeral homes charged them for items or services they did not agree to; However, there were no formal written complaints submitted to the NNHRC so that further investigations into the allegations could be pursued; Moreover, the public hearing testimonies by the public were not transcribed. Per the NNHRC staff, this was due to the difficult nature of the matter, and the personal beliefs of the transcribers (Bahast'i', Bahadzid).

Another vital part of the hearings for me personally, was the lack of knowledge by Diné participants at the public hearings of traditional Diné burial practices. I want to personally acknowledge the generous contributions of two individuals in this whole process, the late Lloyd Thompson who gave invaluable teachings of traditional Diné Lifeway protocols and end of life

burial practices and beliefs. The other person is Mr, Tobie Benaly, Owner Summit Ridge Wood, builder of culturally sensitive and respectful wood caskets.

Respectfully,

Steven A. Darden, *Vice-Chair*
Navajo Nation Human Rights Commissioner, Business

STATEMENT FROM COMMISSIONER HENRIETTA S. SOLAND

The loss of life is a difficult subject to discuss due to effect factors such as shock, denial, pain, confusion, anger and other symptoms triggered by a depressive disorder. Our continued work as Commissioners of the Navajo Nation Human Rights Commission is to help families find a path toward acceptance and begin the healing process. Through research and community forums the Commission has provided valuable education to our Diné people so families are aware of options available for a peaceful resolution. The forums brought to light the major concern voiced by participants, Cost. Participants also conveyed the importance of learning and teaching the cultural traditions rooted by ancestral practices. As we honor the Diné grounding principles of yinidilyinee and alilee k'ehgo guided by the Diné principles of Sa'a Naaghai Bik'e Hozhoo, Hashkeeki, Hozhooji and K'e the Commission will continue to work wholeheartedly providing information and education so our Diné people can be empowered.

Henrietta S. Soland,
Navajo Nation Human Rights Commissioner, Law Enforcement

STATEMENT FROM COMMISSIONER MICHELLE COOK

This study emerges as COVID-19 crisis sweeps through the Navajo Nation, ravaging the health, safety, and welfare of the Navajo Nation and people. “The Navajo reservation, about the size of West Virginia, has had one of the highest per-capita rates of COVID infection in the U.S. As of July 19, Navajo Nation tallied 8,593 cases and 422 deaths — that's more confirmed cases than 10 states and more deaths than 16. About 30 to 40% of residents in the reservation don't have running water, which makes following basic CDC guidelines, such as hand-washing, almost impossible. On top of that, there are only 12 healthcare centers and 13 grocery stores for the 173,000 people who live on the reservation” (Vice News, Corona Virus is Devastating Navajo Nation, July 20, 2020).

The rapid passing of tribal members demonstrates and highlights in stark contrast, the deadly reality of layered pre-existing deficiencies born of centuries of colonization, federal neglect, and imposed broken systems that seem like they were never intended or created to really work towards Navajo prosperity and wellness. COVID exposes and compounds the socio-economic conditions of Navajo Nation; a lack of infrastructure, water and sanitation, healthcare, housing, making Navajo people acute targets of the pandemic. Now more than ever our people and community must not only have resources to process and manage the fatal material consequences of the virus but also a collective guidance, language, and knowledge that will enable us to rebuild our nation, to mourn, and grieve in a healthy way the loss of our precious relatives and the collective trauma and pain of this moment of our history.

This study simultaneously emerges from pervasive and urgent problems experienced and voiced by concerned Navajo community members relating to border town funerary business practices and adverse impacts on their dignity and the enjoyment of their human rights. As a result of these important hearings and discussions, patterns emerged where Navajo peoples human rights are targeted and threatened in moments of crisis and vulnerability including bereavement. The border town funeral industry and businesses involved in the burial and engagement of Navajo people and tribal members in mourning must respect their human rights, including their economic rights by transparent conveyance of information of all burial packages and services offered.

This study hopes to pinpoint and identify some of the complex set of problems experienced by Navajo people with respect to preserving their dignity, traditional knowledge relating to burial practices, cultural identity, and cultural rights relating to burials.

The report attempts to highlight the cultural context of Navajo customary funerary practices as well as modern western practices and adaptations that have developed on Navajo Nation. The report contains discussions to provide practical information to the Navajo individuals and families regarding their human rights relating to the transitional period of death and bereavement. The report provides basic information on what services are available to Navajo people which may help families plan and cope with the passing of a loved one. The report also provides basic consumer rights regarding funeral services.

Methodologically, the report has also been challenging and required the employment of indigenous research methodologies to inform and begin the study. Customary prayers were performed prior to the engagement of the subject matter by the Commission. This prayer establishes the foundational values and sets in place the proper ceremonial protocol needed to approach the Navajo human rights in relation to processes of funerary practices. The study is not exhaustive and community members are encouraged to gain more understanding and knowledge regarding this subject matter.

Indigenous peoples have the right to be free from discrimination, to maintain and strengthen their culture, including their spiritual and religious traditions this includes the internment of the deceased and the traditional and practices relating to the passing of family and loved ones. Navajo people as individuals and as a collective must at a minimum have factual, clear, and accurate information to make informed choices in order to exercise their right to determine how they or their loved ones will be laid to rest, be that a traditional approach, a modern approach, or combination thereof. The right to culture includes rites and beliefs surrounding death and dying. These are cultural rights and manifestations of cultural knowledge that are human rights that should be respected for Navajo and indigenous peoples in the United States. The obligations and responsibilities of k'é do not end with a person's physical aspiration but extend and are carried out and performed for that relative post-mortem.

Navajo people even in the period of death and bereavement have a right to be Diné, to grieve in dignity in the sacred time of mourning, to cross over as a Diné adhering to our ancient traditions and law should they choose to do so. Irrespective of methods all Navajo people have human rights and must be treated with dignity. At the core, the study provokes and invites Navajo Nation and Navajo individuals to critically examine how the funerary industry impacts their lives and how Navajo people can work to regain and maintain control over these sacred, intimate, and indispensable aspects of their being and society.

Michelle Cook
Navajo Nation Human Rights Commissioner, At-Large (2016-2020)

STATEMENT FROM COMMISSIONER CORA MAXX-PHILLIPS

As a newly appointed Commissioner in 2019, I've been very impressed with the diligent advocacy for "Human Rights." This is a purposeful, virtuous and moral effort in defending the entitlements and the civil liberties of the Diné. As we greet the sun each morning, we engage in the prospects of the year 2020 and we see cultural practices and values transitioning everyday. Sometimes this presents conflicts, struggles and changes in life.

Historically, our ancestors paid the price of racial injustice and ethnic cleansing, as we put 150 years+ behind us after the mass incarceration at Ft. Sumner. Our ancestors' notable human dignity during times of extreme injustice were exemplary and are a link to the past. They will never be forgotten for their stamina to withstand the "backbone of fear" in extreme adversities. They walked thousands of miles for the moral and spiritual imperative, peace, justice and life. And it is this "transitioning of life" of hope that we must meet with fortitude but must be attentive to the changes that are happening around us.

Martin Luther King, Jr. said, "If you've got nothing worth dying for, you've got nothing worth living for." I shed light on this axiom because our ancestors' effort showed us what's worth living for: the inalienable right to be human. One of these rights is the processing and putting closure to the "end of life cycle" and the looming challenges on adopting westernized ways of "replanting and giving back to the Earth," which differs culturally. It's important to revisit the practices of yesterday, today and tomorrow to assure that we're doing justice to humanity and what we're responsible for when life ends.

As generations come and go, it's important to place immutable value and honor on our cultural wisdom and practices that's generationally tested. This is important as we continue to deal with the westernized way of life where there are no cultural safeguards or boundaries. Cultural safeguards and boundaries are what makes cultural roots and identity priceless.

The diligent work of the Navajo Nation Human Rights Commission (NNHRC) introduced an educational study to examine the "end of life" burial practices when it comes to a final resting place for our people's loved ones. Unfortunately, this also has meant dealing with bordertown funerary homes. Capitalistic greed and shady business practices were prevalent even through pain and sorrow of grieving people. Preying on people and many forms of criminality have become so normalized and complacent these days that it borders an immoral American culture. The Diné are no exception to becoming victims to deceitful consumer practices. This illustrates the need to revisit the ancient burial practices.

When one observes the ancient cultural practices of our grandfathers/mothers, our funeral practices for returning a loved one's body to the earth meant respect, responsibility, veneration and prayers to assure a safe journey to the other side. Returning a body to the earth is respecting Mother Earth's wishes of returning her child and practicing time-honored protocols to assure peace for the surviving relatives. Bringing out the fundamental mutual respect and honoring the human spirit is important. Traditional burial practices were not corrupt business transactions to

be concerned with back then. We have come along ways and, unfortunately, we have ended up engaging in westernized ways, which can bring deceit with intentions to corrupt even during emotionally challenging times.

Sometimes we have to check in with reality and come to terms with what's at stake. We learned from ethnic cleansing and ongoing forms of colonization that tried to destroy us and our ancestors' knowledge system. American history depicts major violence from the past and we become the prisoners of hope, looking for a better tomorrow that's without racism, ethnic cleansing and the many other forms of disrespect looming on the horizon.

When I look at a tree, the stems grow in different directions. If the roots are nurtured, the stems have the freedom to grow in whichever way they please, but remain true to their roots. Taking this context to human growth, a human's roots are its cultural wisdom and traditions based on ancestral wisdom that provides lifelong stability, happiness and most of all, remaining true to who you really are and not a false presumed self. By re-engaging in cultural practices bears relief, resiliency and healing and that we sustain the right to be who we are. If we dare to make a commitment to the truths of life in the face of many adversities, then we become the warriors and warriorettes for truth and justice, bringing fortitude.

I would like to thank my fellow NNHR Commissioners, the NNHRC staff and others who did an outstanding job to shed light on this plight to do what's right and honorable about the cycle of life and specifically, the end of life. I appreciate the section on traditional Diné thought and practices on the natural cycle of life and returning a body to the earth as "replanting." Such a sensitive project took months of meetings with the wisdom keepers, research and months of writing and editing. You are all heroes of our time and I appreciate your work. Thank you

Cora Maxx-Phillips

Navajo Nation Human Rights Commissioner, Social Service

INTRODUCTION

In December of 2016, Vice Chair Steven Darden of the Navajo Nation Human Rights Commission (NNHRC) shared stories of Diné families' experiences with funeral services and burial preparations, describing situations in which they had few options but to utilize funeral homes and mortuaries in border towns. Their stories indicated issues and problems with the end-of-life preparations that Navajo families must make, so the NNHRC, an entity of the Navajo Nation that addresses Navajo citizens' complaints regarding human and civil rights violations, decided to investigate the matter. Navajo citizens rely on border town businesses for even the most basic of necessities, and the Commission finds that this dependency extends to funeral homes and mortuaries. Therefore, in accordance with the NNHRC's directive to address Navajo citizens' complaints of racism and discrimination they experience in border towns, the NNHRC embarked upon a study to investigate Diné funerary practices and services as outlined in its Fiscal Year 2017 Strategic Plan.

This study draws upon conceptual frameworks of Diné Fundamental Laws and international human rights standards, including the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), to address the funerary issues that Navajos face, with the intent of exploring the present state of Navajo funerary practices that have shifted from traditionally based to those that now predominate within Western and Christian thought and practices. The Commission agreed to conduct this study in order to assess what Navajo citizens face when a relative has died and preparations begin for a funeral and a burial. The Commission also was interested in the possibility of returning to traditional thought and practices when it comes time to prepare for the death of a loved one. Questions that guided this study include: What is the present state of Diné funeral practices and the use of mortuaries? To what extent have Diné

become dependent on border town funeral services? What are the concerns and issues regarding border town mortuaries and funeral services? Do Diné consider returning to Diné traditional practices, including the knowledge regarding the natural cycle of life, Diné thoughts on the afterlife, and funeral and burial practices? What Navajo Nation laws and regulations address funerary practices? What services and support do chapters offer its citizens for funeral and burial services? How does conceptualizing Diné life and death within Diné Fundamental Laws and international human rights and UNDRIP offer generative and creative ways to embrace Diné ways of life? This report includes the following sections: Scope, Methodology, Diné Fundamental Law and International Human Rights Mechanisms, The Study, Conclusions, Epilogue, Findings and Recommendations, and Appendices.

SCOPE

This study investigates Navajo people's experiences with present-day funerary practices with the intent of assessing if practices of deception and fraud exist within the businesses that Navajos utilize when they must make decisions for their relatives who have reached the end of life. The study also considers the possibility of returning to traditional philosophy regarding the cycle of life and death and the practices that accompany the preparation of bodies for the return to the earth. The study began with advice and prayers offered by the Commission's Vice Chair, Steve Darden. Because of his expertise as a traditional practitioner, Darden's sharing of his ceremonial knowledge on this subject was invaluable and is an example of the invoking of Diné Fundamental Law and Indigenous human rights law, including UNDRIP. As such, this study invokes "free, prior and informed consent" (FPIC) as a standard that Diné may draw upon to assert our rights to self-determination, to consultation, and to participation in decision-making as it pertains to how we conceptualize the life cycle; how we will prepare for the end of life, including preparations for remembering our deceased relatives; and how we will care for and dispose of their bodies. We also intend this report to serve as a guide for Navajo Nation and community leaders who have an interest in ensuring the health and well-being of our people.

METHODOLOGY

This study began with the Commission's protocol of consulting with traditionalists, many of whom are medicine people, to establish the parameters to address funerary issues in a respectful manner. Initial consultations with traditionalists guided the Commission staff and commissioners to chart a direction to investigate the current conditions of Navajo thought and practices around the natural life cycle that includes death; to assess present-day understanding and practices of traditional preparations upon death; to assess the need to address border town practices on funeral and mortuary practices; to gather information from Navajo Nation, national, and state entities that have a stake in this topic; to research Navajo Nation laws, regulations, and policies regarding death, funeral practices and needs, and burial; and to offer Navajo citizens the results of the knowledge the Commission gathered in four public education seminars. At the seminars, various stakeholders provided presentations and answered questions from the largely Navajo audience, who were encouraged to interact with the presenters and ask questions and share their own experiences on the topic. The questions and comments offered by the audience are synthesized and included in this report. The seminars covered three major areas. First, the organizations and people who presented provided information that would educate Navajo consumers about funeral and mortuary services; second, the presenters offered information on the status of knowledge about Navajo traditional thought and practice; and third, the Commission staff gave information about the Commission's work and, in particular, the complaint process. At every seminar, Navajo consumers were encouraged to become educated on the Commission's complaint process and to file a complaint on this topic if they felt they had been mistreated or had experienced racism or discrimination at border town funeral homes or mortuaries.

Presentations included Diné traditional knowledge about the natural cycle of life that includes death and the afterlife; preparations for death and disposal of the body; Navajo Nation and state laws, regulations, and policies pertinent to deaths, and funerals, mortuaries, and burials; informed education by a Diné woodcraft business owner who makes caskets for Navajo consumers; the role of the Navajo Nation Division of Social Services in providing financial aid for families who cannot afford funeral and burial services; information on unnatural causes of death, such as homicides, where law enforcement and other authorities are required; and the role of the Federal Trade Commission to ensure compliance with consumer laws against fraud, deception, and predatory practices. The Commission consulted with these entities, and some of their representatives presented at the four seminars: Lloyd Thompson of the Diné Haat' alii Association; Tobi Benali, owner of Summit Ridge Wood Designs in Mancos, Colorado; Navajo Nation Heritage and Historic Preservation Department Manager Richard Begay and Traditional Cultural Specialist Timothy Begay; Navajo Nation Division of Social Services' Family Services Director Gladys Ambrose; and Dale West from the Navajo Nation Division of Public Safety.

Each seminar had the same program agenda at each location on the Navajo Nation and allowed the audience to offer comments or ask questions. At each seminar, the Commission staff explained to the audience that they could file a complaint related to our subject matter and that staff were ready to take their complaint. Once the four public education seminars were completed, staff and Commissioners gathered the collected information and conducted research to inform this study. The study is the basis for the findings and recommendations listed at the end of this report. Finally, the Commission chair sought out experts in the fields of archaeology, history, Indigenous human rights, and Diné Studies to ensure the accuracy of this report.

Scholars and experts who reviewed this report include Klara Kelley, Lloyd Lee, Andrew Curley, Dennis Gilpin, and Kelley Hays-Gilpin.

DINÉ FUNDAMENTAL LAW & INTERNATIONAL HUMAN RIGHTS MECHANISMS

The Commission was guided by the standards set by Diné Fundamental Laws and universal human rights mechanisms, including the Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of Racial Discrimination (CERD). Although the international mechanisms do not directly address Indigenous or Diné/Navajo funerary issues, they are applicable, and we endorse them as the mechanisms for addressing Navajo funerary needs. Further, the Navajo Nation Council has endorsed UDRIP as a mechanism that complements Diné Fundamental Laws in the pursuit of Navajo human rights. This resolution positions the Navajo Nation as a sovereign entity that raises the standard for quality of life and expectations for justice above those of the U.S., which initially refused to sign on to UNDRIP and routinely ignores Indigenous human rights.

The Diné are placed by the Diyin Diné'í among the sacred mountains in the southwestern region of what is now the United States. The Diyin Diné'í prescribed laws, policies, and regulations that have guided the Diné since time immemorial. In 2002, the Navajo Nation Council amended the Navajo Nation Code by adding provisions that identify four distinct sets of Diné laws: traditional, customary, natural, and common laws.¹ These laws are commonly referred to as Fundamental Laws. The recognition of Diné Fundamental laws by the modern Navajo government provides “[t]hat the practice of Diné bi nahat’á through the values and life way embodied in the Diné bi beenahaz’áanii provides the foundation of all laws proclaimed by the Navajo Nation government and the faithful adherence to Diné bi nahat’á will ensure the

¹ 1 N.N.C. § 202. Diné Bi Beenahaz’áanii. “These laws provide sanctuary for the Diné life and culture, our relationship with the world beyond the sacred mountains, and the balance we maintain with the natural world.” (Preambular paragraph in Section 202).

survival of the Navajo Nation.”² The Diné bi beenahaz’áanii are the foundation of modern Diné human rights; these rights are recognized and enshrined in the traditional, customary, natural, and common laws put in place for the Diné.

To protect Diné culture, language, values, and traditions, beginning in 1995 the Navajo Nation sent delegations to Geneva, Switzerland, to advocate for the protection of and respect for Diné fundamental laws and, where necessary, to provide appropriate remedies.³ During a period covering several years, the Navajo delegation sat at the table and negotiated the draft United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Since its adoption in September 2007, the signatory governments are to be guided by the articles in the Declaration. In February 2009, the Navajo Nation Human Rights Commission adopted the Declaration as its standard of achievement.⁴

Indigenous peoples have the right to be distinct in their cultures, languages, traditions, customs, and values. They are bound by their inextricable relationship with their lands, environments, and atmosphere. The Diné have the right to their territories demarcated by the four sacred mountains, as well as to their resources, lands, and to self-determination. Through the practice of their culture, the Diné are self-determined; “by virtue of this right they freely determine their political status and freely pursue their economic, social and cultural development.”⁵ The Diné have the human right to revitalize their traditional funerary rules and practices and have the right to preserve these traditions for future generations. The Commission

² 1 N.N.C. § 202 (F).

³ “Adopting and Recommending Position Statements Regarding the United Nations Recognition for the Navajo Nation.” Report by the Navajo Nation Human Rights Commission to the Navajo Nation Council; NNHRC/Report/03/2009. Adopted by Navajo Nation Human Rights Commission Resolution NNHRCJULY-09-09.

⁴ Navajo Nation Human Rights Commission Resolution NNHRCFEB-02-09.

⁵ United Nations Declaration on the Rights of Indigenous Peoples, Article 3.

believes that Diné lived in harmony with their environment since time immemorial. Diné traditional burials are defined as a “replanting” into the earth, which reflects values about humans returning to Mother Earth.

At the request of Commissioner Michelle Cooke, Brianna Farmer, a law student at the University of Arizona School of Law, reviewed major international human rights instruments and standards that affirm Indigenous peoples’ rights to practice and preserve traditional protocols for death and burial as a crucial aspect of self-determination. The report, appended hereto, articulates the responsibilities that government agencies have to protect the human rights of bereaved family members who must make plans upon the death of a relative. This responsibility is not merely fulfilled by an administrative process dictated by government regulations and policies, it also entails the right of families to be treated with dignity, fairness, and equality during a time of grief and loss. Further, articles 12 and 24 of UNDRIP specify that Indigenous peoples have the right to “manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies.”

The right of Indigenous peoples to conduct funerals and burials according to their traditional practices has been articulated by James S. Anaya, former Special Rapporteur to the United Nations on the Rights of Indigenous Peoples. He states that cultural integrity and statements of cultural rights are clearly noted within numerous international human rights frameworks that emphasize the preservation of, use of, and access to cultural heritage.⁶ These human rights extend to the Navajo Nation when it requires states and border towns to respect and apply Navajo traditional knowledge, practices, and beliefs surrounding death and dying. The

⁶ James S. Anaya, *International Human Rights and Indigenous Peoples: The Move toward the Multicultural State*, Arizona Journal of International & Comparative Law 1 (2004), 4.

Commission invokes international human rights standards as mechanisms to guide this study and as encouragement to the Navajo Nation to draw upon international human rights standards as they are relevant to our nation.

THE STUDY

Diné teachings and knowledge of Sá'ah naaghái bik'eh hózhóón represent long-lasting, indestructible life and creation of good and nurturing qualities in one's lifetime. Respecting the traditional protocols when addressing the Diné cycle of life with attention to the end of life and preparation of the body for its final resting place, the Commission observed the seasonal calendar and began this study with a Hochxó'íjí (Evilway) ceremony, the protection prayer that ensures that we proceed with respect for our subject matter. When death occurs, or even when we are speaking or thinking of this matter, the spirit of the dead can be malevolent and return to the world of the living, termed in the English language as "ghost sickness," which may affect a person.

The Commission asks that this traditional knowledge be shared during the appropriate season by consulting Diné astronomy; when the stellar formation Hastiin Sik'aí'íí (Man with a Firm Stance with Legs Ajar) appears in the galaxy at dusk, it is then the proper time to dialogue about the end of life, the afterlife, and proper preparations to return the body to the earth. Timed with the appearance of the constellation Hastiin Sik'aí'íí (Corvus) in the northern hemisphere in late December and into the second week of May, the Commission planned the four seminars to educate and inform Diné citizens about end-of-life preparations.⁷ Hastiin Sik'aí'íí depicts a

⁷ With the proper prayers and guided by the astronomical calendar, which indicates appropriate times to discuss death, the afterlife, and proper preparation of the body and its burial, the Commission scheduled four public education seminars: in Crownpoint, New Mexico, on May 16, 2017; at To'Nanees'dizi Chapter on May 18, 2017; in Chinle, Arizona, on January 31, 2018; and in Shiprock, New Mexico, on February 1, 2018. Prior to each seminar, cedar smudging served as a protection against negative energy or spirits. Diné beliefs and practices around death are a part of life, and the rituals are practiced to show respect for death as a part of life and for the protection of the living.

human form representing the stages of life and represents solidarity, strength, and the continuity of cycles.⁸

Lloyd Thompson, Steve Darden, and Nancy C. Maryboy explain that Hastiin Sik'aí'í's appearance in the galaxy is the time for winter ceremonies to commence. Lloyd Thompson reminds us that Navajo traditional teachings view death as part of the natural life cycle, similar to the aphorism that with birth comes life, with old age comes death. The cycle of life and the period of rest and reflection are manifested in Navajo understandings of the celestial bodies and are part of the teachings and values associated with our Holy People.

Navajo tradition calls for a strict protocol of respect and roles of maternal relatives that begins at the onset of an impending death of a relative and extends for four days after death. Women (usually two or four persons) who are maternal relatives of the individual will attend to the relative until death occurs. Upon death, preparations for the final disposition of the body begin. The relatives wash and dress the body and then two men, related by matrilineal clan to the deceased, cover themselves in ash, loosen their hair, and do not speak as they take the body to its final resting place. The decedent may be disposed of in several ways: a grave burial, placement of the body in a crevice and covered with stones, or left in a hogan whereupon the hogan is abandoned. Newborns were placed atop trees, never placed in the ground. Upon placing the body in its final resting place, the men secluded themselves for four days. During this time the name of the deceased is not mentioned. At the end of the fourth day, the community members and relatives gather to give moral and emotional strength to the surviving family members. That same night the family sits together quietly to listen for the sound of the relative's spirit passing

⁸ Nancy C. Maryboy, "A Collection of Curricula for the STARLAB Navajo Skies Cylinder: A Guide of Navajo Astronomy" (Buffalo, NY: Science First/STARLAB, 2008).

into the “House of Dawn” (named by Darden and Thompson as a place where the spirits of the decedents go). Early in the morning of the fifth day, the men and close relatives wash their hair and cleanse themselves with cedar smoke. The cleansing marks the start of new journey in life based on the teachings of Sá’ah naaghái bik’eh hózhóón.

From the Diné cultural perspective, death is part of the cycle of life, and placing a body in its final resting place is considered “replanting” into the earth. Replanting a body is to return the body to Mother Earth, who embraces the return of her child. Hastiin Sik’aí’íi reminds us of our strength to persist in the Diné lifeway. Some Diné teachings about when the end of life occurs include the following: (1) excessive emotions of crying and other markers of grief and distress are discouraged; (2) a person who has died of old age is considered to have reached the goal of Diné life, so one should not grieve excessively; (3) deaths that occur at a young age are mourned, and it is acceptable to mourn for a certain amount of time; (4) elders who have died of old age are spoken of with reverence, for they have fulfilled the Diné philosophy of Sá’ah naaghái bik’eh hózhóón. They have walked the path of Old Age. Finally, (5) there should be no disagreement when family members are planning and carrying out funeral plans. Conflict will ignite a negative force or energy that will cause sickness, or over time, family members may become ill. In Lloyd Thompson’s words, “There cannot be any negative interference or negative energy to give reason for the ghost or bad energy to arise.”

Following the presentations on Diné understandings of the natural cycle of life and the protocols for “planting a body” or returning a body to the earth, the Commission invited Tobi Benali to offer his twenty-five years of experience with Western and Christian conventions for funerals and burials. Although Benali considers himself primarily as the owner of a woodcraft business in Mancos, Colorado, he does offer guidance and advice on funeral and burial

preparations to Navajo families who seek them. His business offers crafted wood items, with caskets constituting a significant product line. Upon learning that the Commission was interested in his history of casket making and offering advice to Navajo consumers, Benali said, “I have been waiting for more than twenty-five years for people to listen to me.” Benali presented at all four seminars and shared his story of how he began making caskets for Navajos when an elder relative asked him to make casket for a relative who had died. He felt that the respectful response to his relative’s request was to make his first casket. Soon, news of his craftsmanship reached the community and he found himself filling orders for caskets. Acknowledging that he felt the fear and trepidation that Diné often feel when confronted with death, Benali sought guidance from a traditional practitioner who shared Diné teachings on the natural cycle of life and death as an extension of the spiritual life. The practitioner perceived Benali’s craft as guidance for people who must take care of deceased relatives. The traditional teachings he received guide him in his business today, and his responsibilities include offering advice and counsel to his Diné people.

Benali’s compassion for the Diné is demonstrated in his sharing of knowledge and experiences of how funeral homes and mortuaries in and around the Navajo Nation operate, on various state and Navajo Nation laws and regulations relating to death, and how the deceased is prepared for a funeral service and burial. Benali was candid about border town funeral businesses and the possibilities for deception and fraud. He asked that Navajo consumers educate themselves about one of the costliest purchases they would make, and that they be aware of schemes that could lead to spending more than they had anticipated. Family members will often spend more than they can afford on funeral services and burials because they are making choices during a highly emotional time. He explained that retail costs for caskets and funeral services can be marked up as high as 100 to 300 percent, thus making significant profits for the funeral home.

When he began his business, families informed him that some funeral homes refused to allow Benali's caskets onto their premises, simply because they expected the consumer to buy their products. Some funeral homes falsely informed Navajo families that state laws required caskets to be purchased from their own stock; others claimed that caskets had to be certified by state funeral boards or recommended by the national associations that govern the professional funeral service practice—all false claims. Benali noted that some border town funeral homes refuse to display prices for goods and services. Navajo families also told Benali that mortuaries informed them that embalming of bodies was required by state law, a claim that is also false. Families were unaware of services, such as transportation of the body, that they could perform themselves. Overall, Benali emphasized that families should be informed about the choices they make when they require funeral and burial services. He asked the audience to educate themselves about a process that is a part of the natural cycle of life.

Tobi Benali's presentations were followed by presentations on federal, state, and Navajo Nation regulations and policies on deaths. For example, representatives of the Arizona and New Mexico state boards for funerals provided education on regulations and policies that might help families make decisions about deaths that occurred in hospitals or at home, what they could expect in terms of how to transport bodies, and the paperwork needed to transport bodies across state lines. Much of the advice shared was largely unknown by the audience. The Federal Trade Commission offered information on the types of services their agency provided to consumers and emphasized that Navajo citizens could contact them if they suspected fraud, deception, and/or predatory practices. For example, the Commission and audience learned that mortuaries are required to disclose and provide an itemized list of the cost of goods and services, referred to

as the General Price List (GPL).⁹ The list allows the consumer to make decisions about purchasing goods and services. When consumers are presented with a price list that includes individual items and bundle deals, they have the right to refuse any or all parts of a package or bundle deal. Benali heard repeatedly from his customers and others that funerary costs were often beyond a family's financial means. Burial expenses range between \$6,000 and \$15,000, excessive costs that a significant number of Navajo families struggle to meet. He also heard that a funeral home would not release a body if the family had not paid in full for the service.

Many Navajo families struggle with the daily cost of living expenses, and a funeral can bring about additional stress and anxiety over finances. Unemployment rates on the Navajo Nation exceed 50%, with a median income for a family of four at only \$20,000.¹⁰ The Navajo Nation Family Services Department provides financial support for funeral costs to indigent families. Their funeral package offers a set \$2,500 to contracted funeral homes who agree to provide a minimal package for the price. For \$2,500, the family receives a casket, memorial cards, 30 miles of transportation services, and professional staff services and support. Given that most funeral homes are in border towns, the charge for transportation to the funeral service and burial site often exceeds \$500. Families also make payments to the pastor, choir, and pianist and facility if they have a funeral service, and they are expected to pay facility fees and reception costs following the burial. Most families find that funeral and burial costs exceed the amount the Navajo Nation offers so they must seek other resources. Adding to the frustration of working with the bureaucracy to apply for support for funeral services is the fact that those who receive

⁹ Federal Trade Commission/Consumer.ftc.gov., "Paying Final Respects: Your Rights When Buying Funeral Goods & Services," July 2013. Accessed Aug. 5, 2020 at <https://www.consumer.ftc.gov/articles/pdf-0072-funeral-goods-and-services.pdf>.

¹⁰ Demographic Analysis of the Navajo Nation Using 2010 Census and 2010 American Community Survey Estimates, Arizona Rural Policy Institute, Center for Business Outreach, W.A. Franke College of Business, Northern Arizona University.

Navajo Nation financial support must report private donations, which are then deducted from the cost of the funeral package offered by Navajo Nation Family Services.

The Navajo Nation Division of Public Safety sent criminal investigators to make presentations on cases of what are known as “unnatural” deaths, such as an unattended death, suicide, or homicide. Bodies that may have been contaminated may be a public safety hazard and also require investigation. Currently, the Navajo Nation has only one coroner, and police officers have the authority to certify unattended deaths. Former President Joe Shirley, Jr. authorized the Criminal Investigation unit to act as a coroner.¹¹ The Navajo Nation currently does not have a medical examiner. Dale West, the former Acting Criminal Investigator for Navajo Law Enforcement, offered various scenarios of deaths that add to Navajo dependence on border town mortuary services. Because the Navajo Nation does not have its own mortuary facilities, it must conduct medical examinations at IHS facilities or border town mortuaries, which entails costs to the Navajo Nation that are often exorbitant.

At each seminar, the audience was invited to offer comments and ask questions about the presentations and share their own concerns and experiences. The number of attendees varied at each of the locations, but overall, Diné expressed satisfaction that the Commission was providing much-needed information and knowledge. As revealed by our investigation and through shared stories, a funeral service is one of the most expensive purchases a family residing on the Navajo Nation will make, next to vehicle and transportation costs, as compared with an urban family whose most expensive costs center around housing and education. Almost across the board, individuals and their families have failed to make plans for funerals. Rather, the burden has

¹¹ Joe Shirley, Jr., Executive Order of the President of the Navajo Nation, June 28, 2004.

fallen on surviving family and relatives to raise the money for funeral and burial costs. In addition to these immediate concerns, upon a death, families can become embroiled in disputes over the deceased's personal possessions, debts, and notably, livestock permits that are tied to land use.

The Commission offered the public education forums as a medium to educate the Navajo people about their rights when it comes to making decisions about funerals and burials. We also were interested in gauging people's interest in how much was known about traditional knowledge regarding the cycles of life and practices for disposing of bodies. However, Navajo citizens who spoke at the public education forums were primarily concerned with their experiences with present-day funeral homes, the majority of which are in border towns. Their stories included their experiences with the deaths of relatives; their concerns that the Navajo Nation should provide more, and more widespread, monetary relief for funeral services, and that Navajo Nation laws and regulations frustrate family efforts to return their loved ones' bodies to burial plots on their traditional land-use areas. Several Navajos reported that chapter cemeteries have exceeded burial capacities and chapter members are told to take bodies to border towns for burial. Chapters attempting to address the need for burial plots have met with Navajo Nation bureaucracy and red tape as they work to withdraw land for community burials. Navajo families residing or holding grazing permits near a proposed cemetery site refuse to give permission. Rather than dealing with chapter politics or refusing to bury in border town graveyards, some families continue to bury on designated family lands, which is against Navajo law.¹² Families host a community gathering at which relatives and others are asked to donate toward the cost of

¹² Resolution of the Resources Committee of the Navajo Nation, "Recommending and Requesting That Each Community Designate Trust Land for Community Cemeteries," RCD-216-99, December 9, 1999.

the funeral service. Solicitations for funerals costs are also found on websites such as Go Fund Me.

History of the Changes in Diné Funerary Thought & Practices

Navajo conceptualizations of the natural life cycle and how bodies are to be prepared for a return to the earth have been destabilized as a result of foreign invasions in which Navajo men, women, and children were attacked, killed, and taken captive. Death and the treatment of bodies across three cycles of colonialism, from the Spanish, Mexican, and American periods, shaped the beginnings of the desecration of the body, which continues with the introduction of Christianity and Western funeral practices. Like their modern American counterparts, many Navajos follow funerary practices in which bodies are taken to a funeral home, mostly located off the Navajo Nation, where bodies are prepared for a funeral service and burial, although cremation is now a choice that many Navajos make. Because Navajos have become entrenched in the American capitalist system in which funerals and burials are profit-making and now follow Western and Christian practices, the Commission also researched the historical shift away from traditional Diné thought and practices around death and bodies.

Western and Christian thought on death and the afterlife and disposal of bodies was introduced to Diné at the Bosque Redondo concentration camp between 1863 and 1868, setting the framework for Navajo acceptance of Western and Christian funerary practices so thoroughly that many Diné are not even aware of traditional forms of caring for a body upon death and planting the body as a reconnection to Mother Earth. Admittedly, however, Diné often incorporate aspects of traditional practices within the adopted Western and Christian funerary practices.

Western and Christian forms of funeral preparation and the burial itself are desecrations of the body from a traditional Diné point of view, for as Jessica Mitford points out in her classic study of American funeral practices, the preparation of bodies for funeral and burial became a profit-making industry that shaped how Americans would grieve.¹³ Beginning in 1846, American military incursions into Navajo country intensified Navajo deaths as slave raiders—Mexicans, Utes, and Apaches—followed the military to attack and kill Navajos. In the periods of foreign invasions, Navajo bodies were not properly cared for and put away in the customary fashion.¹⁴ During the all-out war on the Diné, ordered by James Carleton and carried out by Kit Carson beginning in the summer of 1863, Diné were killed without any regard and women and children stolen for the slave trade. Carleton intended to starve the Diné into submission and then remove the survivors as prisoners of war to the Bosque Redondo reservation at Ft. Sumner, New Mexico territory. Between 1863 and 1866, Navajo refugees were forcibly removed to Hweéldi, where between ten and twelve thousand Navajos endured starvation, freezing cold weather, inadequate shelters, loneliness and homesickness, sicknesses, harsh labor conditions, punishment in an American penal system, and all manners of violence, including rape, starvation, impoverishment, and mental and physical assaults.¹⁵ More than 2,500 Diné died from the conditions at Hweéldi. Diné at Hweéldi did attempt to abide by their own mortuary practices, for as Carleton reported, the prisoners refused to live in the makeshift huts once a relative had died. They were so adamant that their prison guards allowed them to move out and set up another hut at the end of the row of

¹³ Jessica Mitford, *The American Way of Death Revisted* (Vintage; reprint 2000).

¹⁴ Albert E. Ward, an archaeologist, offers an ethnography of Navajo graves. He classifies types of graves discovered as part of the Navajo Tribe's preparations for economic development projects. He also offers a few narratives of Navajos killed by enemies such as the Utes and how their bodies were regarded by other Navajos. See Albert E. Ward, *Navajo Graves: An Archaeological Reflection of Ethnographic Reality*, Ethnohistorical Report Series No. 2, Center for Anthropological Studies (New Mexico: Albuquerque, 1980).

¹⁵ Lawrence C. Kelly, *Navajo Roundup: Selected Correspondence of Kit Carson's Expedition against the Navajo, 1863–1865* (Boulder, CO: Pruett Publishing Company, 1970).

huts.¹⁶ Today at the Bosque Redondo, which was established as a memorial in 2005, there are no gravestones to mark the places where the Diné died. It is understood that, in fact, this memorial sits upon a mass gravesite of Diné bodies. It is no wonder that our hataaʼi have disapproved of Diné returning to a site of *jishchaa'*, a term “that refers to things that are associated with death as well as the burial itself.”¹⁷ Thus, the U.S. invasion and occupation of Diné bekéyah, and the forced removal and then incarceration of Diné at Hweéldi marks a turn in how Diné regarded the body and how bodies should be disposed of upon death.

In the period between the end of the nineteenth century and the early twentieth century, from 1876 to 1906, non-Navajo attention to *jishchaa'* included the collection of “antiquities,” such as pottery and skeletal remains, as museums and private collectors encouraged traders and amateur archaeologists to plunder Indigenous sites. There was also an interest in collecting Navajo skeletal remains and material culture for scientific purposes. For example, a medical doctor, R. W. Shufeldt, reported a visit to Navajo land in the late nineteenth century during which he attempted to harvest Navajo skeletal remains. Shufeldt relays his adventures in attempting to acquire skeletal remains: “A few years ago I remembered very well the danger that attended my efforts to secure a few Navajo skulls for Professor Sir William Turner, of the University of Edinburgh.”¹⁸ Shufeldt goes on to relate Navajo resistance when he snuck into an area known for Navajo deposition of bodies outside Fort Defiance. Unsuccessful because Navajos stood guard, the doctor reported that he eventually procured some skulls: “Skulls of these Indians were, nevertheless, secured by me at a later date, and are now in the anatomical

¹⁶ Gerald Thompson, *The Army and the Navajo* (Tucson: University of Arizona Press, 1976), 32, 33.

¹⁷ The Navajo Nation - Historic Preservation Department Permit Package 2016. Policies & Procedures Concerning the Protection of Cemeteries, Gravesites & Human Remains, Section Six, Navajo Nation Policy for the Protection of *Jishchaa'*: Gravesites, Human Remains, and Funerary Items, 2.

¹⁸ R.W. Shufeldt, M.D., “Mortuary Customs of the Navajo Indians,” *The American Naturalist*, vol. XXV (April, 1891), 304.

museum at the Edinburgh University.”¹⁹ Thomas Keam at Keams Canyon hosted expeditions and supplied artifacts to the Smithsonian Institution and the Peabody Museum of American Archaeology and Ethnology, Harvard University. Charles Day stripped Massacre Cave at Canyon de Chelly of artifacts, which he sold to Stewart Culin at the Brooklyn Museum in 1903.²⁰ According to Dennis Gilpin, Day’s collection is a rare example of recognizably Navajo human remains being collected during this era.²¹ The Wetherill brothers, of whom John is the best known among the Diné, arrived in Mancos, Colorado, in 1879, looted cliff dwellings in the Four Corners region, and sold “antiquities” (including human remains) mostly to museums. Richard Wetherill established a trading post at Pueblo Bonito, which provided logistical support to the Hyde Exploring Expedition of the American Museum of Natural History in their 1897–1899 excavation of Pueblo Bonito. Wetherill used Navajo labor in his looting of Mesa Verde and Chaco Canyon.²²

In response to the widespread plundering of archaeological sites, Congress passed the Antiquities Act of 1906, which made it illegal to remove antiquities from federal lands without a scientific permit. Universities and museums were still authorized to excavate archaeological sites, and they began to investigate Navajo sites. The 1930s brought a new interest in Navajo archaeology, including archaeological surveys of Dinétah and Big Bead, but the onset of industrial colonization of the Navajo Nation after World War II led to concentrated efforts to

¹⁹ Ibid.

²⁰ Diane Fane, Ira Jacknis, and Lise M. Breen, *Objects of Myth and Mystery: American Indian Art at the Brooklyn Museum* (New York: Brooklyn Museum, 1991).

²¹ Communication with Dennis Gilpin who has an expertise on Navajo archaeology. My thanks to him for reading this report and offering his extensive knowledge.

²² Frank McNitt, *Richard Wetherill: Anasazi, Pioneer Explorer of Southwestern Ruins*, revised edition (Albuquerque: University of New Mexico Press, 1966); George H. Pepper, *Pueblo Bonito*, Anthropological Papers of the American Museum of Natural History No. 27 (New York: American Museum of Natural History, 1920); and Benjamin Alfred Wetherill, *The Wetherills of Mesa Verde: Autobiography of Benjamin Alfred Wetherill*, ed. and annotated by Maurine S. Fletcher (Lincoln: University of Nebraska Press, 1981).

investigate areas where ancient sites, including burials, may obstruct development projects. In the 1950s, the El Paso Natural Gas Company contracted with the Museum of New Mexico's Laboratory of Anthropology and the Museum of Northern Arizona to conduct archaeological studies in the path of oil and gas pipelines.²³ Other major industrial and construction projects initiated on the Navajo Nation included Lake Powell and Navajo Reservoir, Black Mesa and McKinley Mine, and Interstate 40. Most linear projects (roads, pipelines, and electrical transmission lines) impacted few or no Navajo burials. The Peabody mines on Black Mesa and the Pittsburgh & Midway McKinley Mine near Gallup were the first projects to identify large numbers of Navajo burials, all dating to the nineteenth and twentieth centuries. Both mines covered large expanses of land in areas with fairly dense Navajo populations. Around 1990, the federal Office of Surface Mining ruled that Native American gravesites had to be treated like formal cemeteries, and that decision meant a concerted effort had to be made to identify (for the first time) all graves on the mines, Anasazi and Navajo, and relocate them. Today, the removal of the remains from the Black Mesa region remains a source of contention for the Navajo people who live there.

In 1966 Congress passed the National Historic Preservation Act (NHPA), which required federal agencies to consider the effects of their activities on historic places, including archaeological sites. In 1966, virtually all archaeologists worked for universities and museums. The only federal agency that had more than a few archaeologists was the National Park Service. Like many other federal agencies, the Bureau of Indian Affairs, lacking its own archaeological staff, contracted with the National Park Service to carry out its NHPA compliance. Most

²³ Fred Wendorf, Nancy Fox, and Orian L. Lewis, eds., *Pipeline Archaeology: Reports of Salvage Operations in the Southwest on El Paso Natural Gas Projects, 1950–1953* (Santa Fe: Laboratory of Anthropology and Flagstaff: Museum of Northern Arizona, 1956).

archaeological fieldwork on the Navajo Reservation was conducted by the Museum of New Mexico's Laboratory of Anthropology, the University of New Mexico's Office of Contract Archeology, the Museum of Northern Arizona, and Northern Arizona University. These organizations would then submit their reports to the National Park Service for review.

The Navajo Tribe sponsored archaeological studies as part of its Land Claims research, which included documenting and dating Navajo sites, research that was also used in the Navajo-Hopi Land Dispute cases.²⁴ Seeking to control more of the NHPA-mandated archaeological fieldwork on Navajo lands, the Navajo Nation established the Navajo Nation Cultural Resource Management Program (later Navajo Nation Archaeology Department) in 1978.²⁵ The Navajo Nation established the Navajo Nation Historic Preservation Department (now the Navajo Nation Heritage and Historic Preservation Department) in 1986 and took over NHPA compliance from the Bureau of Indian Affairs a few years later under a Public Law 93-638 contract.

In 1990 Congress passed the Native American Graves Protection and Repatriation Act (NAGPRA), which gave Native American tribes control over Native American human remains, associated funerary objects, and items of cultural patrimony. In order to repatriate human remains and artifacts, tribes had to demonstrate cultural affiliation. The Navajo Nation designated the Navajo Nation Heritage and Historic Preservation Department as the tribal agency that would represent the Navajo Nation during NAGPRA consultation with museums and federal agencies and that would coordinate repatriation of human remains, associated funerary items, and objects of cultural patrimony. NNHHPD also developed the "Policies and Procedures

²⁴ David M. Brugge, *The Navajo-Hopi Land Dispute: An American Tragedy* (Albuquerque: University of New Mexico Press, 1994).

²⁵ Russell Hartman and David E. Doyel, "Preserving a Native People's Heritage: A History of the Navajo Tribal Museum," *The Kiva*, 47 (1982): 239–45. Also see Daryl R. Begay, "Navajo Preservation: The Success of the Navajo Nation Historic Preservation Department," *CRM* 14(4), 1, 3–4. National Park Service, 1991.

Concerning the Protection of Jishchaa': Cemeteries, Gravesites, and Human Remains" on how to deal with existing Navajo graves that are threatened by development. The NNHHPD does not regulate ongoing Navajo burial practices, however.

In 1977, anthropologist Charlotte Frisbie hosted a symposium on Navajo mortuary practices at the American Anthropological Association in Los Angeles, California.²⁶ The papers delivered at the symposium were devoted to Navajo cultural persistence and change, which in this case was a shift from traditional funerary practices to Western/Christian practices.

Anthropologist Joyce Griffin interviewed 21 funeral directors, 18 Anglo and 3 Navajo, in the summer of 1977. Griffin notes that her interviews determined that the Diné shifted their attitudes and practices related to funerals as a result of their exposure to regulations promulgated by the Public Health Service, the Bureau of Indian Affairs, and the Navajo Tribe. Further, the end of WW II brought about the establishment of cemeteries within chapter communities.²⁷ The first cemetery, at Fort Defiance, was for veterans of American wars. Jerrold E. Levy reports that by 1978, over a period of 15 years, Navajo use of cemetery burials increased.²⁸ Levy correlates the increase in cemetery burials with the rise of Navajo conversions to Christianity: "The proportion of Navajos claiming adherence to Christianity has grown rapidly during the past 25 years."²⁹

The symposium demonstrated that the shift away from Diné thought and practices about death, the afterlife, and disposal of bodies to current practices that follow American and Christian practices had occurred by the 1970s. Not surprisingly, the scholars failed to address the

²⁶ Charlotte Frisbie, ed., "A Special Symposium Issue on Navajo Mortuary Practices and Beliefs," *American Indian Quarterly* 4 (1978):397–405.

²⁷ Joyce Griffin, "Variations on a Rite of Passage: Some Recent Navajo Funerals," *American Indian Quarterly* 4 (1978), 374.

²⁸ Jerrold E. Levy, "Changing Burial Practices of the Western Navajo: A Consideration of the Relationship between Attitudes and Behavior," *American Indian Quarterly* 4 (1978), 397.

²⁹ Levy, 399.

fact that federal officials and missionaries actively discouraged Navajos from traditional funerary practices and promoted the false perspective that Navajos feared death so much that they welcomed the traders' and missionaries' disposal of bodies for them. Federal Indian laws and policies further compounded the alienation of Diné from their traditional practices. Even though the 1970s was an era in which Navajo activists noted Navajo dependence on border town business and protested their predatory practices, no source addresses the shift in funeral rituals and burial practices to border town businesses. Griffin does quote a border town funeral director saying that "Navajo funerals in his town are so well attended that 'the town is almost closed up; no one's in offices or in stores—everyone's at the funeral.'" And "whereas an average Anglo funeral might have 75 people in attendance, 500 at a Navajo funeral is not uncommon."³⁰ Another observation from a funeral director indicated that Navajos have become part of American conspicuous consumption: "Navajos want the best, regardless of cost."³¹ Since the papers from that symposium were published, no subsequent gatherings or reports that address Navajo mortuary practices have occurred elsewhere or on the Navajo Nation.

Today, observation in any of the Navajo Nation's chapter communities reveals that the shift in funerary practices observed in the 1970s persists. Especially telling is the number of Christian churches in each Navajo chapter community, ranging anywhere from two to seven. If a Navajo family is not a member of a particular church and does not participate in any Christian church activities, they may opt to hold the funeral service in the border town mortuary's chapel. Indeed, in every single chapter community, there is virtually no place or building designated for services other than Christian ones. Further, local radio announcements of deaths in Navajo

³⁰ Griffin, 370.

³¹ Ibid., 373.

communities play Christian music immediately afterward, providing further indication of how entrenched Christian and Western practices have become. However, given that gatherings at funerals and burial sites are an introduction from the capitalist American society, it may well be that Diné, if returning to former practices, do not need designated places for the final preparations for a body.

Laws & Regulations Related to Funerals & Mortuaries

The Navajo Nation has very few laws and regulations related to funerals and burials.³² In the absence of Navajo Nation guidelines, state laws prevail. In other situations, on the Navajo Nation, for example when a death is ruled a homicide, federal laws supersede Navajo laws. The federal government has jurisdiction and will hold the body until all medical and criminal investigations are completed. With deaths that are determined to be natural, a state medical examiner in consultation with a Navajo criminal investigator may authorize the transfer of the decedent to a mortuary. Regardless of the procedures involved with a decedent, the immediate family does have the right to make funeral arrangements.

Navajo Land Use: Funeral & Burial Concerns and Needs

The Commission researched Navajo Nation laws, regulations, and policies regarding burial plots and cemeteries on the nation's lands. Readings of the 1967 "Navajo Reservation Grazing Handbook and Livestock Laws," the Diné Policy Institute's "Land Reform in the Navajo Nation: Possibilities for Renewal for Our People," the Local Governance Act, and historical studies by Klara Kelley and Harris Francis, Garrick and Roberta Glenn Bailey, and

³² See Navajo Nation Laws, Regulations, and Policies: Burials, 13 N.N.C. §1901-§1906. Cemeteries, 13 N.N.C. §1951-§1953; Navajo Nation Council Resources and Development Committee Resolution No. RDCO-74-16; Navajo Nation Council Advisory Council Resolution No. ACMA-39-86.

Aubrey W. Williams, Jr. indicate the significance of land use and its regulation, presently framed by post-livestock-reduction grazing regulations and permittee grazing rights that were established in the late 1930s and 1940s.³³ Navajo land use regulations and policies that date from the livestock reduction era do not address the need for land for burial plots or cemeteries. The first law passed by Navajo Nation Council concerning burial and cemeteries is recorded in Title 13 N.N.C. §1901, Chapter 11. Burials. Although brief, this law established criteria for burials on the Navajo Nation and a funding source to assist families with burial costs. This law set the regulations for establishing cemeteries. Today, funeral and burial practices on the Navajo Nation draw upon state statutes and federal policies when there is no Navajo Nation law or regulation specific to the issue.

³³ The Navajo Tribal Council, “Navajo Reservation Grazing Handbook and Livestock Laws” (January 1967); Diné Policy Institute, “Land Reform in the Navajo Nation: Possibilities of Renewal for Our People (Tsaile, AZ: Diné Policy Institute, 2017); Navajo Nation Local Governance Act, 26 N.N.C. §1 (1998); Klara Kelley and Harris Francis, *A Diné History of Navajoland* (Tucson: University of Arizona Press, 2019) and *Navajo Sacred Places* (Bloomington: Indiana University Press, 1994); Garrick & Roberta Glenn Bailey, *A History of the Navajos: The Reservation Years* (Santa Fe: School of American Research Press, 1986); and Aubrey W. Williams, Jr., *Navajo Political Process* (Washington D.C.: Smithsonian Institution Press, 1970).

CONCLUSION

This report is intended to foster vital conversation around Navajo deaths, handling of bodies of the deceased, funeral services and mortuaries, burials, and to encourage our elected officials, chapter personnel, and community members to investigate our citizens' needs in regard to funerary matters. To date, except for limited studies by non-Indian anthropologists and archaeologists, little else has been published, and the Navajo Nation has not passed many laws and regulations related to these issues. In the moment of the coronavirus pandemic now upon us, it is incumbent that Navajo lawmakers and leaders respond to the needs of Navajo communities and families who must make funeral and burial arrangements during a time of restrictions and who also are experiencing deaths not directly related to COVID-19. As our report indicates, the natural cycle of life includes death, and prior to the American invasion and occupation of Diné békéyah, the Diné had in place the rituals and prayers to care for their relatives who were in the final stage of life. As breath left a body, relatives of the deceased prepared the body, established a final resting place, and upon completion of their tasks, followed protocols to ensure a return to health and well-being. However, since the return from Hweéldi, American institutions were imposed upon the Diné, including the institutionalization of practices relating to death. Our review of Navajo Nation laws and regulations, Diné Fundamental Law, and international human rights mechanisms affirms the rights of the Navajo people to partake in their cultural inheritance, which includes the right to approach and handle death in a culturally appropriate manner. International human rights mechanisms and Diné Fundamental Law support the Navajo Nation and its people's right to conduct funerals and burials according to their traditional practices and to expect culturally sensitive and appropriate funeral and burial services. These mechanisms also call for the Navajo Nation to protect the rights of their people to continue their cultural practices,

which extends to funeral and burial services. The Navajo Nation has the authority to monitor non-Indigenous businesses in border towns to engage in meaningful consultation and partnership with entities of the Navajo Nation and Navajo communities when it comes to funerary practices.

EPILOGUE

On March 17, 2020, the *Navajo Times* reported the first case of COVID-19 on the Navajo Nation of a 46-year-old Diné man who lived in Chįłchinbiitó, Arizona. The person reported a history of recent travel outside the reservation but may also have attended a gathering on March 7 at the Chįłchinbiitó Church of the Nazarene Zone Rally, which a person or persons infected with the virus had attended. Dozens of Diné attended the rally and then returned to their home communities on the western side of the Navajo Nation. One person interviewed noted that a person from LeChee chapter had attended the rally and then the following day attended a chapter meeting.

In March, the border town of Gallup reported its first case of the novel coronavirus when persons who had been at the local Detoxification Center were taken to the Gallup Indian Health Service hospital for treatment. Both sites, completely unprepared, allowed the infected patients to leave their premises. The persons then moved through the town's business district, the impoverished areas, and back and forth to families and communities on the Navajo Nation.

Coronavirus disease (COVID-19), caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), was first identified in December 2019 in Wuhan, the capital city of Hubei province China. By January 30, 2020, the World Health Organization declared the virus an epidemic of worldwide concern. In the four months following the report of the first case of the coronavirus on the Navajo Nation and its movement across the imaginary boundaries between the urban cities, border towns, and the Navajo Nation, health officials reported consistently high numbers of positive cases and deaths of Navajos. As of June 18, more than 9,500 people on the Navajo Nation and in Gallup-McKinley County had been infected, a number that was nearly

double the rate of New York City, with a majority of the reported 470 deaths being Diné.³⁴ On July 24, 2020, the Navajo Nation reported 8,768 positive cases, 62,672 negative cases, and 434 deaths.

The pandemic has revealed the raw underbelly of the Navajo Nation, its unpreparedness for effectiveness in combatting the disease, primarily because the people have been systematically robbed of their land base and resources, leading to generations of substandard living and health conditions and making our people one of the most vulnerable to the novel coronavirus. As the storyteller Sunny Dooley asserts: “We have a lot of cancers in our community, perhaps because of the uranium. And we have many other health issues that I think makes this virus so viable among us. We have a lot of diabetes, because we do not eat well, and a lot of heart disease. We have alcoholism. We have high rates of suicide. We have every social ill you can think of, and COVID has made these vulnerabilities more apparent. I look at it as a monster that is feasting on us—because we have built the perfect human for it to invade.”³⁵

Given that the Navajo people must rely on border town businesses, the Commission notes that during the crisis of COVID-19, the suffering of our people extends to the numbers of deaths and preparations for final resting places. Funeral homes and mortuaries are overwhelmed as they strain to find the resources needed by Navajo families. For example, funeral director Michael Begay of Valley Ridge Mortuary in Tuba City explains, his business has been overwhelmed with the numbers of bodies that must be processed for burial. Begay said his funeral home arranged

³⁴ J Weston Pippen, “Bordering on Desperation,” *Rolling Stone* (June 18, 2020), <https://www.rollingstone.com/culture/culture-features/navajo-covid-racism-homelessness-1016763/>. Accessed July 25, 2020.

³⁵ Sunny Dooley, “Coronavirus Is Attacking the Navajo Because We Have Built the Perfect Human for It to Invade,” *Scientific American* (July 8, 2020), <https://www.scientificamerican.com/article/coronavirus-is-attacking-the-navajo-because-we-have-built-the-perfect-human-for-it-to-invade/>. Accessed July 26, 2020.

270 funerals in 2019, but in June 2020, he had already processed 275 funerals, a number so high that he was forced to invest in a freezer storage trailer to accommodate the need.³⁶

Navajo families are facing emergencies related to deaths of their relatives in several ways, including high funeral costs and limited burial locations. Their stresses are compounded by the numbers of deaths in one family, in which several members may die from the virus. In his state of the Navajo Nation address to the Council, President Jonathan Nez addressed the need for burial assistance for families who have experienced deaths from COVID-19.³⁷ Notably, citizens have expressed frustration with Navajo Nation regulations regarding burial plots and the bureaucracy and the eligibility requirements to receive financial support from Family Services for funerals and burial services. Another concern is the costs to transport bodies from urban hospitals where patients had been sent for treatment, for which families do not have the financial means. Further, Navajo Nation regulations regarding cemeteries and extended family burial plots of land use add to the stress for families. Because cemeteries at chapters are filled and the process to expand cemeteries has been thwarted by permittees, chapters have not been able to add additional land. Finally, Navajo Nation regulations prohibiting new burial areas on or near homesite leases acts as a deterrent and another hurdle for families who are grieving and often, multiple deaths.³⁸

³⁶ Vice News, “Coronavirus Is Devastating Navajo Nation” video, accessed July 30, 2020, at <https://www.youtube.com/watch?v=mi7pFfpWfyY>.

³⁷ State of the Navajo Nation Address to the Navajo Nation Council, Jonathan Nez, 2020 Summer Session, Navajo Nation Council, July 20, 2020.

³⁸ Arlyssa Becenti, “As Cases Pass 5,000, Burial Issues Come Up,” *Navajo Times*, May 29, 2020. <https://navajotimes.com/reznews/as-cases-pass-5000-burial-issue-comes-up/>. Accessed July 25, 2020.

FINDINGS

- Diné epistemology considers the natural life cycle which includes death and concepts of the afterlife. It incorporates the preparation of a body and depositing it in its final resting place. Concepts include the belief that the body is replanted in the earth and is the source for new growth and abundance of vegetation. The care and replanting of the body were the responsibility of matrilineal relatives, who prepared the body for burial in a dignified manner. Dying from old age is considered an accomplishment because all Diné persons seek the balance between strength, endurance, harmony, and nourishment; a person dying from old age successfully accomplished such balance.
- Because of the onslaught of Western/Christian/American ways of life onto the Diné, many of our people are unaware that we have our own conceptualizations of death and means for caring for a body, which includes burial.
- There are Diné who are knowledgeable about traditional preparations for an imminent death and final preparations for the body.
- Western and Christian practices of preparing the body for a funeral service and burial violate Diné ways of regard for the body, its preparation upon death, and returning it to the earth.
- Diné have become entangled in the capitalistic way of funeral and burial practices, and they often spend more than they can afford for services.
- Diné need to become critically aware of how the funeral industry works, especially in border towns. They need to think about how to prepare for one of the biggest expenses they will incur.
- As a result of this study, patterns have emerged which show that Navajo people's human rights are being targeted and threatened in moments of crisis and vulnerability, including bereavement. While the Commission did not receive citizens' complaints related to border town funeral and burial practices, it remains a key point for the Commission and the Navajo Nation to continue to address the issues presented in this study.
- Diné have the right to be free from discrimination, to maintain and strengthen their culture, including such traditions as the replanting of their deceased. Diné cultural practices related to the cycle of life, which includes death, have been threatened as part of the U.S.'s efforts to enact cultural genocide against Indigenous peoples. The right to cultural integrity extends to the right to exercise beliefs and is supported by Diné Fundamental Law and international human rights law, including UNDRIP.
- Significant numbers of Diné families do not have clear, factual and accurate information about funerary regulations when they make plans upon the death of a family member. The federal and state governments regulate funeral homes. Finding a good funeral home is similar to shopping around for a good product, whether their preparations are based upon Diné traditions or Western and Christian rituals. The Navajo Nation has minimal regulatory capacity to provide guidance to its citizens.
- The Commission began this study with the intent to explore the state of traditional thought and practices, first by invoking beliefs around death as a part of the cycle of life, the goal to live to Old Age and what that means, and the ritual of returning human remains to the earth. We also assessed the current state of Navajo funerary practices. At the four public education seminars, the Diné audience was primarily interested in current

funerary practices and their experiences regarding mostly border town funeral homes, concerns about burial plots off and on the Navajo Nation, and the cost of funerals, including many families' struggle to pay for funeral services.

- There are very few Navajo funeral directors and morticians.
- This study used a qualitative approach by offering Navajo citizens opportunities to share their own experiences regarding death, funerary practices, and burial practices. It was beyond the scope of this study to conduct an investigation that would provide much-needed statistics and data. Although Navajo citizens claimed that border town businesses can be exploitative, in fact, we did not receive factual information regarding this.
- The Navajo Nation continues to struggle to address the need to set aside lands for cemeteries. Regardless of the recent change in Navajo land use regulations that have outlawed the use of family land for burials, Navajos continue to bury on their designated land-use areas and in established cemeteries.
- The Navajo Nation has not offered education forums or facilitated dialogues where its citizens may become reacquainted with traditional Navajo funerary practices. Typically, Navajo citizens do not make plans for their own deaths, leaving their family members and relatives in a quandary. The dilemmas include families' struggles to pay funeral costs, tensions and disharmony over property such as land use, livestock permits, livestock, and material goods.
- Additional issues surfaced that are related to concerns related to impending death, death itself, and arrangements to dispose of bodies. Some of these issues include organ donation, cremation, deaths by suicide, and organ trafficking. It was beyond the scope of this study to address these particular issues.
- The COVID-19 pandemic has revealed the disparities that Diné live with, which are related to conditions of being regarded as wards of the federal government, conditions which are directly responsible for the suffering that Diné are experiencing. The stress includes deaths, sometimes several in one family or extended family.

RECOMMENDATIONS

- Diné Fundamental Law and International Human Rights standards uphold the rights of the Navajo Nation and its citizens to privilege their traditional practices for funerals and burials.
- Meaningful efforts should be undertaken by the Navajo government to rejuvenate Diné traditional-based funerary practices. Millions of dollars are spent on an annual basis to have funeral homes prepare the remains and bury a decedent. While every person has the right to be different and not to follow the Diné cultural teachings, the imposition of Western and Christian funerary practices has resulted in limited knowledge regarding former practices of our ancestors.
- The Navajo Nation Human Rights Commission is encouraged to follow up on this study to obtain quantitative and qualitative data on funeral and burial services. For example, exactly how much profit is made off Navajo consumers in the funeral industry? Do Navajos experience predatory costs on funerals and will they share their experiences with the Commission so that their rights may be protected?
- A hotline service should be established within Family Services to serve as a point of contact for families who need guidance relating to funeral services and/or misconduct by funeral businesses. The types of information that should be shared include the purpose of embalming, the fact that a family's own casket can be used (not just the funeral home's caskets), and funeral homes cannot withhold the decedent until full monetary payment is made by the family.
- Educational seminars related to Navajo culture and traditional knowledge should be held for current funeral directors and staff. The funeral industry refers to burial with casket as "traditional" burial; their term "traditional" has nothing to do with Diné traditions.
- Very little is mentioned in the Navajo Nation Code about funerary activities on the Navajo Nation. The Navajo Nation needs to lessen its reliance on state laws to regulate funeral activities on the Navajo Nation by establishing the much-needed regulatory agency that complements Diné culture. As an example, the Navajo Nation needs to be able to issue death certificates because it is an arduous undertaking to get these certificates from the state health departments, and the funeral homes inject themselves into the process.
- Border town funerary business need to engage with Indigenous peoples and their governments to determine best practices regarding funeral services. Navajo citizens need to be reminded to become educated about a service that they can expect to be expensive and often beyond their financial means.
- Training opportunities should be created for Navajo people to obtain funeral positions and for mortuaries to become certified by the Navajo Nation.
- The Navajo Nation needs to develop the services it provides, including the establishment of a Medical Examiner. As it currently stands, the Navajo Nation solicits off-Navajo Nation expertise. The Navajo Nation also does not have its own mortuary but must utilize IHS facilities and border town mortuaries for autopsies.

**NAVAJO PEOPLES' RIGHT TO SELF-DETERMINATION
AND CULTURE IN FUNERARY BUSINESSES**

BY

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**Submitted to the graduate degree program of
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and the Navajo Nation Human Rights Commission**

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I. Executive Summary

The Navajo Nation Reservation is one of the most populated Indian nations in North America, it covers over 27,000 miles of the four corner regions and holds a population of 300,000 members, with 170,000 members living on the reservation. Despite its size the reservation only has 2 coroners and 1 morgue to provide mortuary services. The lack of resources has led a vast majority of Navajo peoples to depend on border town funerary businesses to conduct mortuary services and in doing so, has impacted their right to be treated with dignity, fairness and equality during the time of bereavement.

The study considers the actions by border town funerary businesses that have led to the suppression of Navajos' fundamental human rights. The objective of this study is to provide the Navajo Nation Human Rights Commission ("NNHRC") an overview of international human rights considerations raised by United Nations declarations, covenants and conventions as they apply to the right of culture and self-determination.

This study will focus on major international human rights instruments such as: The United Nations Declaration on the Rights of Indigenous, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of Racial Discrimination Peoples, amongst other human rights standards, to identify core mechanisms that protect indigenous peoples' rights relating to traditional funerary practices.

Additionally, there will be a review of the case of Adath Yisroel Burial Society v. HM Senior Coroner for Inner North London (2018) and the case of Takamore v.

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Clarke (2012), both demonstrate claims of violations against fundamental human rights relating to customary practices and highlight that, for affected communities, the right to partake in culture, amongst other rights, are not merely administrative processes but are an exercise of the right to self-determination. Further, the decisions have opened the conversation for statutory framework for burial decisions.

II. Introduction

This study was prepared at the request of NNHRC commissioner, Michelle Cook, who requested assistance in the examination of international human rights instruments and the adverse impacts on Navajo peoples' cultural practices relating to death and dying.

In 2016, the NNHRC received complaints by Navajo peoples who voiced concerns on the quality of mortuary practices and exorbitant costs of funeral services conducted by border town funerary businesses. Further, Navajo peoples voiced concerns on their inability to exercise traditional and contemporary beliefs and practices around death and funerals.

After further discussion with Dine traditionalists and the people, the NNHRC identified that the lack of accessibility, cultural competence and transparent information relating to funeral expenses, has led to many Navajos fundamental human rights to be violated. Border town businesses have a history of exploiting Navajos by persuading individuals to purchase unnecessary funerary services and providing false assertions to deny customary practices.

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The protection of Navajo peoples' rights is crucial in ensuring they can fully enjoy their human rights and to grief in dignity during the sacred time of mourning. Drawing on the review of human rights instruments and international court cases, the information within this study can be used by the Navajo peoples to understand their rights and treatment of the issues by border town funerary practices and identify; a) whether the treatments are acceptable under human rights framework; (b) state parties and funerary businesses are complying with human rights; and (c) problem areas that need attention.

III. International Human Rights Instruments

Navajo peoples' cultural practices relating to death and dying have been threatened as a result of cultural assimilation. Within border town funerary businesses, Navajo voices are often ignored, leading to exploitation and fundamental human rights being violated. Core human rights such as the right of self-determination and cultural rights are essential, in order to determine how they or their loved ones will be laid to rest with respect and dignity.

The right of indigenous peoples to maintain the integrity of their cultures is a simple matter of equality and non-discrimination¹. Cultural integrity and statements of cultural rights are clearly noted within numerous international human rights frameworks to emphasize the rights of preservation, use, and access of cultural heritage. When seeking funeral services, state parties should consider and apply Navajo knowledge, practices, and beliefs surrounding death and dying.

¹ Anaya, S. James, *International Human Rights and Indigenous Peoples: The Move Toward the Multicultural State*, Arizona Journal of International & Comparative Law 1, (2004), [hereinafter Anaya, *The Move Toward the Multicultural State*], 4.

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The right of self-determination is another important right for state parties to maintain to uphold cultural integrity and the rights of Navajo peoples. Self-determination is a foundational principle for indigenous peoples' rights, James Anaya identifies self-determination as "a universe of human rights precepts concerned broadly with peoples, including indigenous peoples, and grounded in the idea that all are equally entitled to control their own destinies."²

International human rights standards serve as layers of protection for individual and collective rights. The following sections review international instruments to determine how human rights standards are applicable in protecting Navajo peoples and the obligations state parties hold.

A. The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), is a human rights instrument which constitutes the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the world.³ The declaration consists of many provisions that provide protection and guidance to the components of indigenous peoples' culture, specifically articles 8, 11, 13 and 15.

The declaration is intended to promote equality and nondiscrimination to indigenous peoples. Individually and collectively, indigenous peoples have the right to be free from forced assimilation or destruction of their culture.⁴ Forced assimilation can result from an influx of outside cultures and norms into communities and areas

² Anaya, S. James. *Indigenous Peoples in International Law*. (Cary: Oxford University Press, 1996), 75.

³ United Nations Declaration on the Rights of Indigenous Peoples, Sept. 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (2007), art. 43.

⁴ *Ibid.*, art. 8

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traditionally owned or used by indigenous peoples.⁵ Border town funerary businesses should take actions to ensure they do not contribute or encourage forced assimilation and seek for opportunities to support customary practices.

Indigenous peoples have the right to practice and revitalize their cultural traditions and customs in all their manifestations.⁶ Within UNDRIP's Business Reference Guide, it recommends that if a business finds that their activities impact indigenous peoples' culture, appropriate redress should be determined to prevent future mistreatment.⁷

An important part of preserving the Navajo culture is ensuring their right to maintain their language, in written and spoken form.⁸ This is a principal manifestation of their culture. When a Navajo family is in need to seek funeral services, a translator and/or bi-lingual forms should be available to ensure the families can fully understand the costs and services provided. Article 13 indicates states should take effective measures to ensure indigenous peoples can understand and be understood in all dealings with business entities.⁹

Lastly, Article 15 addresses discrimination and intolerance by affirming indigenous peoples' rights to dignity and diversity of their cultures, traditions, histories, and aspirations.¹⁰ Discrimination and injustices are often based on prejudices and misconceptions of indigenous culture and traditions. In order to

⁵ United Nations Global Compact, *The Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples*, (2013), 46.

⁶ United Nations Declaration on the Rights of Indigenous Peoples, art. 11

⁷ United Nations Global Compact, 47.

⁸ United Nations Declaration on the Rights of Indigenous Peoples, art. 13

⁹ United Nations Declaration on the Rights of Indigenous Peoples, art. 13

¹⁰ United Nations Declaration on the Rights of Indigenous Peoples, art. 15

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promote nondiscrimination, states should respect indigenous peoples' rights and take steps to create positive awareness of indigenous cultures and cultural diversity.¹¹

Along with the right of culture, self-determination is another key concept within UNDRIP as noted in Articles 3, 18 and 19. UNDRIP defines self-determination as the full participation of indigenous peoples in decisions concerning them.

Article 3 has been noted as the pillar upon all indigenous rights, which states:

*"Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development"*¹²

This article is fundamental to the ability of Navajos to preserve their identities, culture, and to be in control of their lives. Self-determination provides Navajos the freedom to choose how they wish to pursue their economic, social, and cultural development. It's important for businesses to recognize and respect their cultural perspectives.¹³

Articles 18 and 19 address indigenous peoples' participation in decision-making. Navajos must be involved in matters that may affect their enjoyment of their human rights. Businesses should consider when implementing new processes, that appropriate decision-making will depend on the traditions and cultures of indigenous peoples.¹⁴

¹¹ United Nations Global Compact, 47.

¹² United Nations Declaration on the Rights of Indigenous Peoples, art. 3

¹³ United Nations Global Compact, 37-38.

¹⁴ United Nations Global Compact, 57.

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Although, UNDRIP it is not legally binding, the United States endorsed the declaration in 2009 which holds both moral and political force.¹⁵ The declaration ultimately provides a dynamic development of international standards and works as a significant tool toward eliminating discrimination and other human rights violations against indigenous peoples.¹⁶

B. The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (“ICCPR”) is a key international human rights treaty, which monitors state’s policies and practices in meeting promises to its people, including the demand for inherent dignity for the participation of cultural expression and full cultural self-determination. ICCPR has been ratified by the United States and is legally binding.

Article 1 specifically provides all people the right of self-determination, which allows individuals to freely pursue their economic, social and cultural development.¹⁷ This ensures indigenous peoples are treated as equals with the ability to advocate for their territories.¹⁸ With the affirmation of self-determination set in Article 1, the ICCPR has led the United Nations Human Rights Committee to examine government reports regarding indigenous policies. Additionally, state parties utilize Article 1 to assess their own policies towards indigenous peoples.¹⁹

¹⁵ US Department of State, *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, (2011), <https://2009-2017.state.gov/s/srgia/154553.htm>.

¹⁶ Frequently Asked Questions: Declaration on The Rights of Indigenous Peoples, <https://www.un.org/esa/socdev/unpfii/documents/FAQsindigenousdeclaration.pdf>

¹⁷ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (1978), art. 1

¹⁸ Cultural Survival Quarterly Magazine, *International Covenant on Civil and Political Rights*, (2016), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/international-covenant-civil-and-political-rights>

¹⁹ Dessanti, Claudia, *Indigenous Peoples’ Right to Self-Determination in International Law*, CAID.CA, (2015), 46.

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Article 27 is important to note due to the protection it provides to members belonging to minority groups to practice their culture, which states:

*"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."*²⁰

With this article, it protects not only collective rights but also individual interests in cultural integrity. It provides a safeguard for all minority groups to live their life to their own standards freely. Furthermore, this article alone can provide a powerful tool to protect and preserve the culture of the Navajo peoples.

C. The International Convention on the Elimination of Racial Discrimination

The International Convention on the Elimination of Racial Discrimination ("ICERD") is a major international human rights treaty that addresses comprehensive issues of racial discrimination. For Navajo peoples to receive the same treatment as those who are non-indigenous, elimination and prevention of all forms of racial discrimination is necessary. Article 5 affirms the right of all peoples to live free of all forms of racial discrimination.²¹

The Committee on the Elimination of Racial Discrimination ("CERD"), the supervisory body of ICERD, monitors implementation of the International Convention

²⁰ International Covenant on Civil and Political Rights, art. 27.

²¹ International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 (1969), art. 5.

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of the Elimination of All Form of Racial Discrimination. CERD identifies self-determination as a fundamental principle of international law²² and emphasizes that governments should be sensitive towards the rights of persons of ethnic groups, particularly their right to lives of dignity and to preserve their culture.²³

CERD has expressed concern that indigenous peoples have been and still are being discriminated against and deprived of their fundamental human rights. Non-discrimination is key to ensure indigenous peoples are able to maintain and freely developed their cultural identities.²⁴ CERD affirms that discrimination against indigenous people fall under the scope of the treaty and that all appropriate means must be taken to eliminate such discrimination.²⁵

General recommendation 23, provides measures for state parties to partake in to guarantee the protection of indigenous peoples' rights:

- (a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;
- (b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

²² Committee on the Elimination of Racial Discrimination, General Recommendation 21, The right to self-determination (Forty-eighth session, 1996), U.N. Doc. A/51/18, annex VIII at 125 (1996), para 2.

²³ Ibid., para 5.

²⁴ Anaya, The Move Toward the Multicultural State, 19.

²⁵ Committee on the Elimination of Racial Discrimination, General Recommendation 23, Rights of indigenous peoples (Fifty-first session, 1997), U.N. Doc. A/52/18, annex V at 122 (1997), [hereinafter CERD General Recommendation 23], para 1.

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(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

(e) Ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs and to preserve and to practice their languages.²⁶

In addition, ICERD clearly articulates that the obligations set forth for state parties also apply to the activities of all private actors. Article 2 states, "Each State Party shall prohibit and bring to an end (...) racial discrimination by any persons, group or organization."²⁷ Thus, state parties are responsible to ensure border town funerary business comply with the obligations set forth within ICERD and CERD. State parties should take steps to monitor the human rights situations in all businesses and take special measures to guarantee the rights of indigenous peoples.²⁸

²⁶ CERD General Recommendation 23, para 4.

²⁷ International Convention on the Elimination of All Forms of Racial Discrimination, art. 2.

²⁸ Special Procedures of The United Nations Human Rights Council, *Mapping State obligations for corporate acts: An examination of the UN Human Rights Treaty System Report No. 1: International Convention on the Elimination of All Forms of Racial Discrimination*, The Office of the United Nations High Commissioner for Human Rights, (2006), III.

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ICERD is ratified by the United States, making it legally binding. Therefore, the United States has an obligation to submit reports to inform CERD of measures taken to implement the human rights obligations contained in the treaty.

IV. Other Relevant International Human Rights Standards

The International Covenant on Economic, Social and Cultural Rights, United Nations Guiding Principles on Business and Human Rights, and the United Nations Educational, Scientific and Cultural Organization, all serve as an additional layer of protection to Navajo peoples' fundamental human rights.

A. The International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights ("ICESCR") is one of the most comprehensive international treaties that ensures the enjoyment of economic, social and cultural rights. The treaty requires State parties to respect, protect and promote the right of culture.²⁹

The right of self-determination is clearly articulated in Article 1, "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."³⁰ Navajos have the right to self-determination and autonomy over the ways in which they choose how they or their loved ones will be laid to rest, regardless if they choose a traditional approach, modern approach or a combination thereof.

²⁹ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (1967), art. 1.

³⁰ Ibid.

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Article 15 is a key instrument for the right of culture, it calls for individuals to have the right to freely determine and partake in their cultural identity and further amplifies the obligation to respect, protect and promote the right of culture.³¹ This is an important instrument which allows all peoples, including indigenous peoples, to freely engage and practice their culture within their community.

The Committee on Economic, Social and Cultural Rights (“CESCR”), the supervisory body of ICESCR, has considered indigenous peoples’ cultural rights in its General Comment 21, right of everyone to take part in cultural life. The General Comment essentially is an interpretation of Article 15, that outlines the right to participate in cultural life including the rights of indigenous peoples.³²

General Comment 21 specifically states:

“Indigenous peoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions...”³³

In General Comment 24, (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, CESCR addresses the impacts business activities may have on indigenous peoples’ rights, in particular, the adverse impacts on the rights to land, resources, territories, cultural heritage, traditional knowledge and culture. Businesses should consult and cooperate in good faith with indigenous peoples to obtain their consent. The

³¹ Ibid., art. 15.

³² Ward, Tara, *The Right to Free, Prior, and Informed Consent: Indigenous Peoples’ Participation Rights within International Law*, (10 Nw. J. Int’l Hum. Rts. 54, 2011).

³³ Committee on Economic, Social and Cultural Right, General Comment No. 21 Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights, (Forty-third session, 2009), U.N. Doc. E/C.12/GC/21 (2009), para. 37.

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Committee states that businesses should also respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights.³⁴

Although, the United States has not ratified the ICESCR, economic and social rights are still being implemented in the United States in other ways. By being a part of other international treaties, the United Nation has the ability to investigate the record of the United States on respecting, protecting, and fulfilling the economic and social rights in the Universal Declaration of Human Rights.³⁵

B. United Nations Guiding Principles on Business and Human rights

In order for the Navajo peoples to fully enjoy their rights and to live with dignity, border town businesses need to comply with human rights standards. The United Nations Guiding Principles on Business and Human Rights are a set of guidelines for States and companies to follow to prevent, address and remedy human rights abuses committed in business operations.³⁶

The guiding principles are grounded in recognition of:

- a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;

³⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, para. 12.

³⁵ MacNaughton, G and McGill, M., *Economic and Social Rights in the United States: Implementation Without Ratification*, (Northeastern University Law Journal, Vol. 4 No. 2, 2012) 368-369.

³⁶ The Office of the United Nations High Commissioner for Human Rights, Guiding Principles on Business and Human Rights, (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

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(b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;

(c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.³⁷

These guiding principles are intended to be implemented in a non-discriminatory manner, with a focus on the rights and needs of the individuals. Within section 2, it emphasizes the responsibility businesses hold to respect human rights and avoidance of infringing on human rights of all peoples.³⁸

As stated, the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.³⁹ Border town businesses have an obligation to respect Navajo peoples' human rights, especially during the time of bereavement. Navajo peoples are entitled to practice their culture and self-determination when working with funeral businesses.

C. The United Nations Educational, Scientific and Cultural Organization

The United Nations Educational, Scientific and Cultural Organization ("UNESCO") Declaration on Cultural Diversity, which is non-binding, sets the norm for the protection and promotion of cultural diversity and is essential in guaranteeing Navajo peoples rights to exercise contemporary and traditional beliefs and practices

³⁷ Ibid, 1.

³⁸ Ibid, 13.

³⁹ Ibid, 15.

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relating to death and funerals. The UNESCO declaration indicates that all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.⁴⁰

UNESCO's declaration pays particular attention to the protection of cultural diversity, stating cultural diversity is as necessary for humankind as biodiversity is for nature.⁴¹ Cultural diversity is a key component in humanity and is important to recognize and preserve culture for the benefit of present and future generations.⁴²

The declaration implies a commitment to human rights and fundamental freedoms, the rights of persons belonging to minorities and those of indigenous peoples.⁴³ Further, it recognizes the role of indigenous peoples and emphasizes the protection of their human rights is key to guarantee cultural diversity.

V. Adath Yisroel Burial Society v. HM Senior Coroner for Inner North London

In *Adath Yisroel Burial Society v. HM Senior Coroner for Inner North London* (2018), the Claimants, Adath Yisroel Burial Society, a charitable organization responsible for managing and facilitating burials for the orthodox Jewish population in Inner North London and Mrs. Ita Cymerman, an orthodox Jewish woman, challenged the lawfulness of a policy that was implemented by the Defendant, HM

⁴⁰ United Nations Educational, Scientific and Cultural Organization, UNESCO Universal Declaration on Cultural Diversity, (2001), http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/5_Cultural_Diversity_EN.pdf, art. 5.

⁴¹ Ibid, art. 1.

⁴² Ibid.

⁴³ Ibid, art. 4.

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Senior Coroner for Inner North London, on October 20, 2017. The policy read as follows:

*"No death will be prioritised in any way over any other because of the religion of the deceased or family, either by the coroner's officers or coroners."*⁴⁴

The Defendant described this policy as being a "cab rank rule" and an "equality protocol". This policy amounted to a blanket refusal to any requests for expedition, in particular to those who practice Jewish or Muslim faith. The Defendant had the average processing time of 15 days in between the time of death and the burial or cremation.⁴⁵ However, for the Jewish and Muslim faith, it is important for the funeral to take place ideally on the day the death takes place⁴⁶ and when families requested a prompt burial due to their faith, it was often denied causing a great deal of pain.⁴⁷

The Court had before it a number of issues, including whether the protocol breached the right to manifest religion in Article 9 of the European Convention on Human Rights and whether the protocol was capable of rational justification.

The Defendant suggested it would be unlawful to prioritize cases because it would constitute discrimination contrary to the Equality Act.⁴⁸ Nevertheless, the Court found fundamental difficulty with the policy as it does not strike a fair balance and it did not consider religious beliefs in relation to the early release of bodies of their loved ones.⁴⁹ Additionally, the Court found that complete exclusion of religious

⁴⁴ Adath Yisroel Burial Society v HM Senior Coroner for Inner North London, (2018, EWHC 969 Admin), para 2.

⁴⁵ Ibid., para 57.

⁴⁶ Ibid., para 58.

⁴⁷ Ibid., para 60.

⁴⁸ Ibid., para 108.

⁴⁹ Ibid., para 103.

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reasons to expedite as discriminatory and incapable of rational justification. Ultimately, the Court concluded by granting a declaration that the Defendant's policy was unlawful and issued a quashing order to set aside the policy.

The initial claim demonstrated the general difficulty that individuals of different faiths may have in vindicating their right to practice religion and culture outside mainstream beliefs. This reluctance has restricted the enjoyment of fundamental human rights. Administrative processes do not excuse the actions of discrimination. When policies are set in place businesses need to consult with the individuals who are impacted by such changes. Businesses operating in regions with large populations of ethnic and religious minorities, need to comply with the minimum obligations set forth within applicable international treaties and consult with those individuals in good faith.

Navajos face similar issues when seeking customary burials from border town funeral businesses. The United States have an obligation to respect Navajo rights under the application of international human rights treaties. Exploiting Navajos by persuading individuals to purchase unnecessary funerary services and providing false assertions to deny customary practices, is a violation of their fundamental human rights which causes great pain to those who are impacted. Therefore, it is important for funerary businesses operating near the Navajo reservation to do their due diligence to ensure their current and future policies are complying with human rights standards and are not impacting their enjoyment.

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VI. Takamore v. Clarke

Burial disputes raise fundamental issues of religious and cultural identity. In the case *Takamore v. Clarke* (2012), the New Zealand Supreme Court addressed the intersection of Tikanga Māori burial customs and the Common Law of New Zealand.

In 2007 the Respondent's husband, Mr. Takamore, who was of Tūhoe descent, died in ChristChurch. As the executrix of Mr. Takamore's will, the Respondent planned on burying his body in ChristChurch. However, contrary to Respondent's wishes the Appellant and other Tūhoe members retrieved his body from ChristChurch to bury him at the family *urupā*⁵⁰ in Kutarere.⁵¹

The High Court found this action by the Appellant and other Tūhoe members to be unlawful. The Appellant stated their actions were in accordance with Tūhoe burial customs that allows burial decisions to be made collectively by *whānau*⁵² and *hapū*.⁵³ The custom allows one *whānau* line, if necessary, to take the body without consultation and with force.⁵⁴ As executrix, the Respondent is entitled under common law to make final decisions in regard to Mr. Takamore's burial. The Supreme Court ultimately dismissed the Appellant's appeal and confirmed that the person appointed as an executor has the common law duty to attend to the body's disposal.⁵⁵

The decision by the Supreme Court is significant because of the approach to *Tikanga Māori* customary practices relating to burial customs. The Supreme Court's

⁵⁰ A Māori burial ground.

⁵¹ *Takamore v. Clarke*, (2012, 1 NZLR 573 (CA); [2011] NZCA 587 at [21]-[31]), 6-9.

⁵² Family group.

⁵³ Sub-tribal group.

⁵⁴ Walsh, Rebecca, *Takamore v. Clarke: A Missed Opportunity to Recognize Tikanga Māori*, Auckland University Law Review, (2013), 247.

⁵⁵ *Takamore v. Clarke*, para. 154

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approach essentially adopted a “modern approach”, that the executor is given primacy in body disposal decisions but that Tikanga is a relevant consideration. As stated within the decision:

“The common law is not displaced when the deceased is of Māori descent and the whānau invokes the tikanga concerning customary burial practices ... Rather, the common law of New Zealand requires reference to any tikanga, along with other important cultural, spiritual and religious values, and all other circumstances of the case as matters that must form part of the evaluation. Personal representatives are required to consider these values if they form part of the deceased’s heritage...”

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The decision by the Court requires the executor to facilitate a culturally appropriate process, that allows *whānau* members to fully explain the cultural values they are asserting and the executor to allow those values to be considered.⁵⁷ However, if an agreement between both parties is not made, the executor is entitled to make the final decision. Although a balance has been created between Māori and non-Māori interests, there is still uncertainty as to when and under what circumstances Tikanga Māori customary practices are recognized and enforced within New Zealand.

The case demonstrates the obstacles that occur when a dispute regarding differences in cultural values arises and the struggles of integration of customs into

⁵⁶ Ibid., para 164

⁵⁷ Ibid., para 261

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common law. However, the case highlighted that common law should be developed consistently with international treaties in which the state is a part of and the importance of indigenous people's involvement in decision-making.⁵⁸

This decision has initiated individuals to look further into the framework for burial decisions and how indigenous values and practices can be incorporated into common law, specifically in New Zealand's law on burial. The New Zealand Law Commission ("Commission") has sought to design a framework for burial decisions that, to the greatest extent practicable, enables *whānau*, *hapū* and *iwi* ⁵⁹ to make decisions in accordance with *Tikanga* wherever this is appropriate in the circumstances.⁶⁰

The Commission concluded the new framework should include the following features:

- It must increase legal certainty. People need some certainty about their legal position when navigating these decisions.
- It must provide flexibility. Every death will raise different values and interests. We suggest that the statute should provide a clear process but should not dictate a particular outcome and should allow for different cultural values to be taken into account as appropriate. It should facilitate consensus decision-making by family or *whānau* wherever possible. It has been emphasized to us

⁵⁸ Lincoln, Laura, *Takamore V Clarke: An Appropriate Approach to The Recognition of Māori Custom in New Zealand Law*, Victoria University of Wellington, (2013), 161.

⁵⁹ Tribal group.

⁶⁰ The New Zealand Law Commission, *R134 Death, Burial and Cremation: a new law for contemporary New Zealand*, (2015), 21.25

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throughout that the law must recognize that burial decisions are appropriately treated as personal, family matters.⁶¹

This framework essentially could be implemented into the Navajo Nation to provide legal certainty with flexibility and cultural responsiveness.

VII. Recommendations

Recommendation 1: Establish a hotline service to serve as a point of contact for families who need guidance relating to funeral services and/or reporting misconduct by funerary businesses.

A current problem many Navajos face is the lack of guidance on how to proceed with funeral services. Having a point-of-contact, such as a hotline to assist these families will ensure they are given accurate information on their options as well as direct them to businesses that are available to provide such services. This will help eliminate the confusion these families face and protect them during the vulnerable time of bereavement.

It's important for Navajo voices to be heard. For far too long, Navajo families have been exploited and mistreated by funerary businesses. This is the result of numerous of things, but the lack of guidance and knowledge on funeral services plays a major role. If families are given an opportunity to consult with an individual who is knowledgeable on both Western and Navajo funeral customs, it can provide them the tools they need to move forward in deciding on how they or their loved ones can be laid to rest.

⁶¹ Ibid., 21.19

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Additionally, this hotline will serve as a place to report misconduct by funerary businesses. If a family feels their rights have been violated or if they are unsure if the treatment was lawful, they can contact the hotline to report the instance. The hotline can provide Navajo peoples with guidance if the funeral businesses did in fact violate their rights and what steps to take if a violation did occur. Having a system in place to provide that guidance can serve as an extra layer of protection for families.

Recommendation 2: Educational seminars relating to Navajo culture and traditions for Funeral Directors and staff.

In order for border town funerary businesses to identify and understand how their actions may impact Navajo peoples' rights, they need to be fully informed about human rights standards and Navajo cultural traditions and customs relating to death and dying. Therefore, creating an educational seminar in which Funeral Directors and staff can attend will assist in the protection of Navajo peoples' rights.

Currently, the Arizona Board of Funeral Directors and Embalmers requires 12 hours of continuing education annually, consisting of Mortuary Science 3 hours, Legal Compliance & Ethics 3 hours, and Professional development 6 hours.⁶² For businesses operating near the Navajo reservation should be required to take an educational seminar relating to cultural awareness. This seminar would not have to be in addition to the required hours, but rather fall under the category of professional development.

With this knowledge and awareness, border town funerary businesses can begin to identify what current practices may impact Navajo peoples' ability to fully

⁶² Arizona Board of Funeral Directors and Embalmers, *Required Continuing Education Categories and Hours*, <https://funeralboard.az.gov/required-continuing-education-categories-and-hours>

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exercise their fundamental human rights. In addition, the business can develop new practices to implement Navajo traditions and customs into services they currently offer. Further, the educational seminar will give the businesses tools to ensure they are able to fully inform and provide Navajo citizens adequate options when planning funeral arrangements.

Recommendation 3: Border town funerary businesses to engage with indigenous peoples and tribal governments to determine best practices regarding funeral services.

Funerary businesses working with Navajo peoples must take action to ensure their practices comply with their cultural customs and traditions. In order for change to occur, multiple parties will have to work together to create and implement a plan of action to ensure Navajo peoples rights are considered and respected especially during the time of bereavement.

Funerary businesses need to take steps to consult with the community to address all the matters that may impact their rights, specifically their rights to culture and self-determination. Engaging with the community will help businesses better understand Navajo perspectives and practices relating to death and funerals. This essentially will assist in ensuring fundamental human rights are protected.

Navajo peoples are entitled to be part of the decision making as it pertains to funerary practices, therefore having this conversation may help remediate the impacts and prevent future occurrences of mistreatment from funerary businesses. This can be done by meeting with the Navajo community and tribal governments in

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a public hearing setting, so all parties have an opportunity to voice their concerns and wishes.

Recommendation 4: Create more training opportunities for Navajo peoples to obtain funerary positions and for mortuaries to become certified by the Navajo Nation

It is apparent that there is a shortage of mortuaries within the Navajo Nation. To ensure Navajos rights are protected, it is important for their voice to be present within funerary businesses. One way to do this is by having more Navajos obtain funerary positions. Those who are interested, should have access to training opportunities to obtain funerary positions. Funerary businesses are able to have apprenticeships; thus, the Navajo community and tribal government can work with border town businesses to establish an apprentice program. This will allow individuals who are interested in working in the field to have the opportunity to have hands-on training and experience. This will ultimately provide a Navajo voice into the funeral business.

As of 2019, there are only eleven Navajo Nation certified mortuaries⁶³ with the majority located in New Mexico. The Navajo Nation reservation is over 27,000 square miles situated across the regions of Arizona, Utah and New Mexico. ⁶⁴ In Arizona alone, the reservation covers at least 18,119 square miles.⁶⁵ For all Navajos to have access, there needs to be an increase of Navajo Nation certified mortuaries across

⁶³ Navajo Nation State Certified Mortuaries, Fiscal Calendar Year 2019, <https://www.navajonsn.gov/PDF%20Files/2019/certified%20burial%20listing%205.6.19.pdf>

⁶⁴ The Navajo Nation Division of Economic Development, *Fast Facts*, <http://navajobusiness.com/fastFacts/LocationMap.htm>

⁶⁵ Arizona Edventures, *Top Ten: Indian Reservations*, <http://www.arizonaedventures.com/arizona/blog/things-to-see-do/arizona-top-ten/indian-reservations>

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the entire reservation. For more mortuaries to become certified, there needs to be a set of requirements and an application process that is available online for businesses to apply for certification. Those funeral directors who attend a Navajo culture and traditions continuing education course, can have the opportunity to apply for Navajo Nation certification if deemed appropriate. This can ensure the businesses are given the appropriate training to mindfully work with Navajo peoples.

VIII. Conclusion

This report reviewed major international human rights instruments and standards which identified core mechanisms that protect indigenous peoples' rights to culture and self-determination. Navajo peoples are entitled to partake in their culture and to determine how they want to approach the death of a loved one. Positive enforcement of these instruments is necessary in ensuring a life of respect and dignity.

Furthermore, the discussion on the two international court cases provides insight on the obstacles people, of affected communities, face relating to their cultural beliefs and practices. The outcomes of each case have essentially opened the opportunity for discussion on how religious beliefs and customs should be considered in common law and administrative processes. Additionally, these cases can be used as a foundation to implement new framework for burial decisions.

In conclusion, the protection of Navajo knowledge, cultural heritage, and customary practices is fundamental to ensure the enjoyment of human rights. It is important for state parties and border town funerary businesses to engage in

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meaningful consultation and partnership with the Navajo community in order to find ways to preserve and protect their right to culture and self-determination.

Modern and Navajo Traditional Funeral Practices

End of Life Phase	Modern Funeral Practices On the Navajo Nation	Traditional Navajo Funeral Practice
Prior to person's death	<p>Most families do not plan ahead and thus are confronted with making decisions while under emotional stress. Some family members talk about funeral plans openly, some families have prepaid funeral and burial plans and others do not plan until confronted with this task. The following activities can be performed prior to death.</p> <p>Note:</p> <ul style="list-style-type: none"> • A person may develop a will. • The person talks about planning their funeral/cremation/wake with the person put in charge of making funeral decisions. • This person will determine life insurance needs, asset distribution and other personal property decisions are put in writing and signed before a notary. • Resources for funeral services are assessed which could include; veteran's benefits, or prepaid funeral arrangements with local mortuaries. • If a person is under hospice care, family members may move forward with tentative plans for the funeral. • This person can decide to die at home. 	<p>There was strict adherence to the traditional protocols for dealing with the deceased, which are noted below. There are times when you talk about death that must adhere to the season which is referred to as Hastiin Sik'al'ii - Corvus.</p> <p>Note:</p> <ul style="list-style-type: none"> • The person that is near death is moved to a separate temporary dwelling where maternal family members take care of the person there. • Prior to a person's death, there is no talk of dying or what to do after death with the decedent. • Family members are present with the person until death. The person that is near death is not to be left alone. • No children are to be near the person that is about to die. • Two maternal male family relatives/clan relatives are preselected to also stay with this person.

Death	Note:	Note:
	<ul style="list-style-type: none">• The circumstances of the decedent's death depend on what happens to the body. Some things to consider include where the person dies (Jurisdiction) and the manner in which a person dies.• Families are directed or encouraged to select a funeral home to pick up the decedent. Families are informed that the funeral home will take care of all funeral services for the decedent.• Mortuary selection and funeral decisions are made by family members.• A contract is signed with the mortuary that indicates exactly what items and services are being purchased.• Burial and cemetery selection are coordinated with businesses that are responsible for this part of the bereavement process.• Public notice is made on radio, word of mouth and announced at local chapter meetings about family meetings.• Family members gather at the home of the decedent or the local chapter to seek donations and update the community about the planned services and family needs.• Families solicit for monetary contributions to pay for cost of the funeral and burial.• A close relative is appointed to coordinate meals and refreshment donations for all meetings.• An obituary is placed in area newspapers that provide public information about the decedent, funeral service details and burial location.	<p>Note:</p> <ul style="list-style-type: none">• When a person dies from old age, it is cause to celebrate.• There is laughter and spiritual blessings that are culturally appropriate and followed, when an elder die's.• The decedent is not moved from where he dies.• The women and two men elected to deal with the decent put chií on their face, below their eyes before they handled the decedent.• Upon death maternal women wash and dress the body. Water and Yucca soap are used.• Jewelry and foot attire are put on the body and purposefully cut or slashed. Turquoise stones are smashed. Moccasins are placed on opposite feet.• The decedent is wrapped and ready for the men choosen (no less than 2) to remove the decedent from the temporary dwelling.• Women that prepared the decedent leave the temporary dwelling and do not return ever.• Family members do not talk about the death at night. The name of the decedent is not mentioned.• Maternal family/clan members take care of the decedent. If you are not of the maternal clan, do not inject yourself into the planning.• Family members do not travel alone. Family must travel in pairs and do not talk about the deceased person at night.• You do not let the discussion of burying a loved one go on for days. Community and public meetings are not to be held. Burial is done immediately.

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Burial	<p>Note:</p> <ul style="list-style-type: none"> At the burial site, final rites are provided to the decedent. Pall bears and family members are first to throw dirt upon the casket after being lowered into the ground. Veteran funeral and gravesite services are handled differently. Burial location is determined and coordinated with either the local chapter or cemetery staff. Rules, fees and guidelines for burial are confirmed by family members. Cost and maintenance of grave site rests with family members. Family members will visit the gravesite whenever they want. 	<p>Note:</p> <ul style="list-style-type: none"> Diné bury their loved ones in a different way; an adult is buried in a different way than a child. The same two selected males will then remove the decedent and take the body to the final resting site. Before handling the decedent, the men will put ash on their bodies. The decedent is buried or placed in a crevasse where rocks are piled over the decedent. Wrapped infants are placed in a pinon, pine or cedar tree. They may remain in their cradle board. The men accompanying the decedent for burial will not return to the house until after the full four days of observance is met. Relatives do not exhibit excessive crying. Families do no return to the burial site because doing so interferes with the decedent's passage. Grieving is kept to a minimum. A public gathering is not permitted.
Reception	<p>Note:</p> <ul style="list-style-type: none"> Monetary donations continue to be made by relatives and friends. A large meal is prepared and served to relatives, friends and associates of the decedent after the burial services are completed. Family & friends speak in remembrance of the deceased person at the reception. 	<p>Note:</p> <ul style="list-style-type: none"> There is no reception that follows after the burial. Upon returning the men are greeted by the women who offer a herbal mixture that is referred to as the <i>herbal lightning drink</i>. A fire is built at this location and remains burning for the next four days. The men will smudge themselves off with white smoke from the pine, cedar sage or pinon pine branches that is placed over this fire. A burned fire poker is provided for the men to keep with them and is used for the next 4 days of

		<p>isolation in the temporary dwelling where another fire burns.</p> <ul style="list-style-type: none">• The men will not separate during the next four days as they return to the temporary dwelling.• The men are fed through a small opening in the wall of the dwelling during this period.• The fire poker is placed on the ground next to the 2 males and stays there for the four days of isolation.• On the last night of isolation, the men stay up all night and in the morning they wash their hair. The water used to wash their hair is taken out and poured on the ground.• Táadljin is taken and everyone returns back to their normal daily living.• The fires are allowed to burn out on its own.• Family members are forbidden from ever visiting the gravel sites of the decease.• No one is to ever visit the burial place again.
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APPENDIX C

SECTION SIX

Policies & Procedures Concerning the Protection of Cemeteries, Gravesites & Human Remains

APPENDIX C

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Repealing the Old Navajo Nation Policies and Procedures
Concerning the Protection of Cemeteries, Gravesites and Human
Remains, Approved by Resolution No. ACMA-39-86, and Approving
a New Navajo Nation Burial Policy

WHEREAS:

1. Pursuant to 2 N.N.C. § 691, the Resources Committee of the Navajo Nation Council is established and continued as a standing committee of the Navajo Nation Council; and
2. Pursuant to 2 N.N.C. § 695 (b) (13), the Resources Committee of the Navajo Nation Council is the oversight committee for the Division of Natural Resources, including the Historic Preservation Department; and
3. Pursuant to 2 N.N.C. § 695 (b) (12), the Resources Committee of the Navajo Nation Council is authorized to establish Navajo Nation policy with respect to the optimum utilization of all resources; and
4. The Historic Preservation Department within the Division of Natural Resources is established in accordance with the Plan of Operation approved by the Government Services Committee of the Navajo Nation Council on October 25, 1994, by Resolution No. GSCO-82-94; and
5. Pursuant to section IV (F) of said Plan of Operation, the Director of the Historic Preservation Department is authorized to develop and recommend policies, rules and regulations relating to Navajo land pertaining to the management of cultural, archaeological, historic and scientific resources; and
6. By Resolution No. ACMA-39-86, approved March 13, 1986, the former Advisory Committee of the Navajo Tribal Council approved the Navajo Nation Policies and Procedures Concerning the Protection of Cemeteries, Gravesites and Human Remains; and
7. The Director of the Historic Preservation Department has drafted a new proposed Navajo Nation Burial Policy, a copy of which is attached hereto as Exhibit "A" and incorporated herein, and has recommended to the Resources Committee of the Navajo Nation Council that the old Navajo Nation Policies and Procedures Concerning the Protection of Cemeteries, Gravesites and Human Remains be repealed and the new proposed Navajo Nation Burial Policy be approved in its place; and

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8. The Resources Committee of the Navajo Nation Council finds that repealing the old Navajo Nation Policies and Procedures Concerning the Protection of Cemeteries, Gravesites and Human Remains and adopting a new Navajo Nation Burial Policy is in the best interest of the Navajo Nation and its people.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Resources Committee of the Navajo Nation Council hereby repeals the Navajo Nation Policies and Procedures Concerning the Protection of Cemeteries, Gravesites and Human Remains, approved by the former Advisory Committee of the Navajo Tribal Council on March 31, 1986, by Resolution No. ACMA-39-86.

2. The Resources Committee of the Navajo Nation Council hereby approves the new Navajo Nation Burial Policy, a copy of which is attached hereto as Exhibit "A" and incorporated herein.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed and 0 abstained, this 31st day of October, 1996.


Pro Temp Chairperson
Resources Committee

Motion: Jones Begay
Second: Harold Tunney

NAVAJO NATION POLICY FOR THE PROTECTION OF *JISHCHAA'*: GRAVESITES, HUMAN REMAINS, AND FUNERARY ITEMS

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I. POLICY STATEMENT

Diné (Navajo) society is based on harmony and beauty. Issues related to death are treated with the utmost respect in our culture. In harmony with the Diné way of life, we do not talk about or discuss death. We avoid burial sites and do not handle materials belonging to one who is deceased. The Diné view is that human remains, associated funerary items, and unassociated funerary items all fit under *jishchaa'*, a term that refers to things that are associated with death as well as the burial itself.

Due to the circumstances of modern life, we find it necessary to establish rules and regulations concerning the protection of gravesites, human remains, and funerary items. We do this with complete and full awareness of the wide range of Diné values, beliefs, and practices. We apologize to those who have passed on for the intrusion. We apologize to the living for all the discomfort this subject causes.

This policy outlines procedures based on Diné cultural beliefs. The Navajo Nation is committed to protecting all gravesites, human remains, and funerary items under its jurisdiction. Human remains and funerary items, once interred, should not be disinterred. However, the Navajo Nation recognizes that under certain circumstances disinterment will occur. In these situations the human remains and funerary items must be reinterred as quickly as possible and as near to the original burial location as feasible. Except under extraordinary circumstances, analysis of human remains is restricted to in-field non-destructive visual determinations of age and sex for the purposes of locating lineal descendants. Records about human remains and funerary items or their location shall be maintained and safeguarded in the Cultural Resource Compliance Section (CRCS) at the Navajo Nation Historic Preservation Department for use in project planning and appropriate related activities.

In the absence of identified lineal descendants, all Native American human remains and funerary items identified on Diné lands are the responsibility of the Navajo Nation. The Historic Preservation Officer shall determine the treatment of human remains without identified lineal descendants and/or funerary items in consultation with other tribes, as appropriate. We expect that other tribes will make a reciprocal commitment. The Navajo Nation encourages the development of programmatic agreements with federal agencies and other tribes. The Navajo Nation expects all human remains and funerary items to be treated with the utmost respect from the time they are discovered until their final disposition.

II. AUTHORITY

This policy is implemented pursuant to the Navajo Nation Cultural Resources Protection Act (CRPA, CMY-19-88). It is intended to complement provisions set forth in the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA, P.L. 101-601), the Archaeological Resources Protection Act of 1979 (ARPA, P.L. 96-95), the National Historic Preservation Act of 1966 (NHPA, P.L. 89-665, as amended), and others.

III. DEFINITIONS

For the purpose of this policy, the following definitions apply.

Analysis of human remains - limited to non-destructive, in-field visual determinations of age at death, approximate date of interment (based on context), sex, and cultural affiliation of human remains. No other type of analysis will be allowed.

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Analysis of funerary items - limited to non-destructive, in-field, visual determinations of cultural or temporal affiliation

Anaasázi - the Diné term for all ancient peoples who inhabited Diné customary lands, including all peoples whom archaeologists call "prehistoric."

Cultural Affiliation - a relationship of shared group identity which can be reasonably traced between the deceased and living people.

Cultural Property - any cultural resource deemed sufficiently important to warrant listing on the Navajo Nation Register of Cultural Resources.

Cultural Resource - any product of human activity, or any object or place given significance by human action or belief.

Cultural Resource Professional - any individual who is authorized by the Navajo Nation to conduct cultural resource investigations. Such individuals may include persons who work in archaeology, anthropology, ethnology, Navajo culture, and other related disciplines, including traditional healers

Diné - the Navajo people.

Federal Agency - any department, agency, or instrumentality of the United States

Funerary Items - items that are reasonably believed to have been associated with the deceased either at the time of death or later, whether or not they are found in direct association with human remains. For Navajo burials, such funerary items may include, but are not limited to, shovels, tinware, saddles, clothing, and jewelry.

Historic Preservation Department (HPD) - the Navajo Nation Historic Preservation Department as established by Section 20 of the CRPA.

Historic Preservation Officer - the Director of the Historic Preservation Department.

Human Remains - the physical remains of a human body, including but not limited to bone, teeth, hair, ashes, or mummified or otherwise preserved soft tissues of a person

Inadvertent Discovery - finding; locating; observing; uncovering; unearthing; learning about through conversation, discussion, or interview; or otherwise detecting human remains, funerary items, or site(s) in which human remains or funerary items are believed to exist when such discovery was not the original intent.

Intentional Excavations - the unearthing of sites, gravesites, human remains, or funerary items for an undertaking or any purpose authorized by the Historic Preservation Department pursuant to CRPA.

Jishchaa' - a location or item associated with death and burial of an individual.

Lineal Descendant - an individual tracing his or her ancestry directly and without interruption to a particular individual. The Diné traditional kinship system shall be used for Diné burials.

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Navajo Nation lands (Diné lands) - all lands or interests in land owned or held by the Navajo Nation, whether held by original title, held in trust by the United States, held in fee simple or held under lease, easement, permit or otherwise, whether restricted or unrestricted, and whether within or outside the boundaries of the Navajo Nation.

Site - the location of human activity as indicated by physical or ethnographic evidence.

Sponsor - the agency official or the official in a private capacity who has decision-making authority over a particular undertaking.

Treatment - a thoughtfully developed and respectful plan for taking care of human remains or funerary items, accomplished through consultation with appropriate parties.

Unclaimed - human remains or funerary items for which no lineal descendants can be identified or located.

Undertaking - any project, activity, or program that can or does change the character or use of cultural properties or jishchaa'. The project, activity, or program must be under the direct or indirect supervision of a sponsor.

Unidentified - human remains or funerary items for which lineal descent or cultural affiliation cannot be determined through either consultation or analysis.

IV. TRADITIONAL CONCERNS

Diné traditional and spiritual values shall be observed in dealing with human remains, and associated funerary items, burials, and/or the relocation and transfer of gravesites. Diné teachings discourage the direct handling of human remains. Development projects, such as the construction and maintenance of roads, power lines, and water lines, often disturb burials. In such instances, the Navajo Nation must take steps to ensure the protection of human remains. It must also protect its people from association with human remains. The concerns listed below should therefore be taken into consideration in dealing with gravesites, human remains, and funerary items.

- A. All individuals involved in burial issues must be warned that handling human remains or funerary items, direct exposure to gravesites, or discussion of burial issues may affect their overall health in the immediate future or sometime during their lifetime. For example, the soil associated with a burial is considered contaminated by death. Procedures such as brushing bones or funerary items, taking soil samples, and disarticulating bones are therefore considered both offensive and dangerous. Knowledgeable Diné should be consulted regarding appropriate protective measures.
- B. Individuals involved with burial issues will come into contact with the Navajo public after they have been in contact with gravesites, human remains, or funerary items and that contact may affect the health of other individuals. They should take measures to protect the public and themselves when disinterring and/or reintering human remains or when in contact with gravesites. If individuals, sponsors, or their agents need assistance or information regarding protective measures, they should contact the Navajo Nation Historic Preservation Department Traditional Culture Program.

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- C. Pregnant women, or individuals in daily contact with them, should not be directly involved in the handling, removal, or intimate discussion of gravesites, human remains, or funerary items.
- D. Funerary items must be treated with respect. They have been placed with the human remains for essential reasons and should not be handled casually, collected, removed, or separated from the human remains.
- E. Traditional Diné avoid gravesites, human remains, and funerary items. They do not talk about someone who has passed on, and they do not carelessly mention or discuss death. Researchers need to be aware that the Diné may be extremely uncomfortable even talking about the topic, may not be willing to visit the gravesite, and should not be interviewed over and over regarding the same topic.
- F. Sponsors and others should limit the number of individuals who come into contact with gravesites, human remains, or funerary items.

V. ENCOUNTERING GRAVESITES, HUMAN REMAINS, AND FUNERARY ITEMS

- A. The Navajo Nation requires sponsors to make a good faith effort to locate gravesites, human remains, and funerary items within the area of potential effect prior to initiation of an undertaking. Such good faith effort shall include the following:
 - 1. file searches of existing information, including files maintained at HPD (contact CRCS), mission records, and other pertinent materials as appropriate.
 - 2. archaeological inventory and ethnographic interviews with residents of the local community and with other knowledgeable individuals. Navajo Nation permitting procedures require that investigators contact local chapters prior to initiating field activities (Navajo Nation Policy To Protect Traditional Cultural Properties, 1989). Continuing contact may be appropriate to ensure that local concerns are addressed.
 - 3. other approaches, such as traditional diagnostic techniques, as necessary or appropriate. Traditional practitioners may provide such information.
- B. When an inadvertent discovery occurs in the context of an undertaking but outside the context of intentional excavation, the sponsor shall adhere to the following procedures:
 - 1. All ground-disturbing activities shall immediately cease within a 50-foot (15.2-meter) radius, using the discovery as the center point.
 - 2. The sponsor or its agent *must* contact CRCS within one (1) business day to arrange for proper evaluation and consultation.
 - 3. The sponsor or its agent shall identify itself and its project and shall supply the following information:
 - a. a verbal description of what has been found and the context in which remains are located;
 - b. the general location of the gravesite, human remains, and/or funerary items; and
 - c. any other pertinent information.
 - 4. Verbal notification shall immediately be followed by written notification. HPD will attempt to respond promptly so as not to cause project delays.

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5. Human remains and funerary items *must* be protected in place until treatment measures are implemented. Treatment measures shall be consistent with Part VII of this policy.
 6. The sponsor or its agent may resume ground-disturbing activities only after a proposed treatment plan has been agreed upon *and* implemented.
- C. When an inadvertent discovery occurs within the context of intentional excavation, the sponsor shall adhere to the following procedures.
1. All trenching, hand excavation, sampling, photography, etc., shall cease within a 10-foot (3-meter) radius of the discovery after the nature and extent of buried remains have been determined.
 2. The sponsor or its agent *must* contact CRCS within one (1) business day to arrange for proper evaluation and consultation.
 3. The sponsor or its agent shall identify itself and its project and shall supply the following information:
 - a. a verbal description of what has been found and the context in which remains are located;
 - b. the general location of the gravesite, human remains, and/or funerary items;
 - c. a preliminary assessment of the type of burial it is (Diné, Anaasází, other);
 - d. an assessment of the complexity of the burial(s) and the likelihood of disturbance if left in place;
 - e. a proposed location for reburial, if applicable; and
 - f. any other pertinent information.
 4. Verbal notification shall immediately be followed by written notification. HPD will attempt to respond promptly so as not to cause project delays.
 5. Human remains and funerary items *must* be protected in place until treatment measures are implemented. Treatment measures shall be consistent with Part VII of this policy.
 6. The sponsor or its agent may resume ground-disturbing activities only after a proposed treatment plan has been agreed upon *and* implemented.
- D. When CRCS is notified of an inadvertent discovery of human remains outside the context of an undertaking:
1. CRCS shall ask the notifying party to provide
 - a. a verbal description of what was found and the context in which remains are located;
 - b. the general location of the gravesite, human remains, and/or funerary items; and
 - c. any other pertinent information, including the name of a contact person.
 2. CRCS shall determine on a case-by-case basis whether HPD will assume responsibility for treatment.

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VI. IDENTIFICATION OF GRAVESITES, HUMAN REMAINS, AND FUNERARY ITEMS

- A. Once gravesites, human remains, and/or funerary objects are located, a good faith effort shall be made to determine through contextual analysis, interviews, non-destructive visual inspection, and other appropriate means whether the remains represent:
 - 1. a burial with lineal descendants;
 - 2. a Diné burial for which lineal descendants cannot be identified or located;
 - 3. a Native American burial for whom lineal descendants cannot be identified or located (including Anaasází burials, burials of individuals from other tribes, and unidentified burials); or
 - 4. a non-Native American burial for which lineal descendants cannot be identified.
- B. Non-destructive visual inspection of human remains shall be limited to determinations of age (of both the individual and the interment), sex, and cultural affiliation. To the greatest extent possible, such visual inspection shall be performed without handling, brushing off, or disarticulating the remains.
- C. Initial identification efforts may require consultation with Diné elders and other residents and non-residents who may have knowledge about the identity and/or cultural affiliation of the remains. When the remains are clearly Anaasází, such consultation is not necessary. Chapter officials must be notified prior to initiating local consultation. All identification efforts must respect the culturally sensitive nature of discussions regarding human remains.
- D. In cases where no lineal descendants have been identified, the sponsor (in the case of an undertaking) must use all information available, including physical evidence as well as word of mouth, to determine the probable age at death and of interment and the sex of the individual buried at this location. Specialists such as physical anthropologists may be required to collect and analyze this information. One should err in the direction of greater age estimates for the date of interment when no firm data are available. Following the provisions of ARPA and the Resolution of the Parks Commission, Navajo Tribal Council (April 8, 1980), remains shall be considered "archaeological resources" only if they are, or are suspected to be, 100 years of age or older.

VII. PROCEDURES FOR TREATMENT OF HUMAN REMAINS AND FUNERARY ITEMS

The policy of the Navajo Nation is that gravesites, human remains, and funerary items should not be disturbed. In cases where disturbance is unavoidable, treatment procedures will vary depending on the results of consultation with lineal descendants, culturally affiliated tribes, or appropriate entities. In the case of an undertaking, all costs related to treatment shall be borne by the sponsor.

In all cases, only non-destructive, in-field visual analysis to determine age and sex of individuals shall be allowed. At no time shall the remains or funerary items leave the project area. All analysis shall take place on site. No soil samples of any kind shall be taken from within one foot (0.3 m) of human remains. Human remains shall not be brushed unless absolutely necessary to make age and sex determinations. Depictions (sketches, drawings, etc.) of gravesites, human remains, and funerary items shall not appear in the body of any report; however, a map showing the orientation of the remains and associated funerary items shall be provided in a confidential appendix. Site maps in the body of the report should identify all features, including burials, but detailed illustrations are not allowed.

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Photographs of gravesites and human remains are prohibited. In cases where funerary items are to be reinterred and may be susceptible to theft, photographs of the funerary items may be permitted in consultation with HPD. All photographs and negatives shall become the property of HPD; to be kept on file should ARPA investigations be necessary.

If circumstances require that human remains be disinterred, an ARPA permit is required if the burial is at least 100 years old. ARPA permits are issued through the Bureau of Indian Affairs with the consent of the Navajo Nation. A Class "C" Navajo Nation Cultural Resources Investigation Permit also is required. It may take up to 30 days to obtain ARPA and/or Class "C" permits. Navajo Nation employees engaged in Navajo Nation business and Navajo traditional healers are exempt from permit requirements.

A. Burials with Lineal Descendants

If the deceased has known lineal descendants, regardless of cultural affiliation, consultation shall be conducted directly with the lineal descendants. Cultural resource professionals should take traditional Diné kinship into account when they determine lineal descendants. If the deceased was a member of another tribe, consultation with lineal descendants shall proceed only after contacting HPD and only after HPD has initiated government-to-government relations with such other tribes.

In consultation with HPD, the sponsor or its agent shall document the concerns of lineal descendants regarding the burial and shall record their wishes regarding treatment of the human remains and/or funerary items on a Statement of Wishes form (see Attachments). This form *must* be used to record the wishes of lineal descendants regarding treatment of the burial.

Results of consultation with lineal descendants shall be held in confidence among the sponsor, cultural resource professional, HPD, and the lineal descendants. Sponsors and their agents shall not provide any information collected during consultation with lineal descendants to anyone other than HPD (and the lineal descendants, as requested). Upon completion of the project, sponsors and their agents shall turn over all records to HPD.

Documentation shall be provided to HPD that the decision made by the closest lineal descendant was made without any improper influence or pressure and was based upon full knowledge of all options available to them. This documentation must be initiated and performed by the sponsor or its agent, in the presence of or with the participation of a trained cultural resource professional approved by HPD. The cultural resource professional should work closely with any and all appropriate local residents, officials, elders, and traditional healers; should be familiar with policies related to the protection of human remains; should be knowledgeable regarding local history and customs; and must abide by professional standards and ethics. The cultural resource professional shall act as a witness to the documentation. Statement of Wishes forms is available from CRCS.

B. Diné Burials without Lineal Descendants

In cases where Diné burials are identified but where it is not possible to locate lineal descendants, the local chapter may serve as proxy for lineal descendants. In order to determine whether the Chapter wishes to serve as proxy, the sponsor or its agent, in consultation with HPD, shall consult with Chapter officials to determine procedures to be followed regarding presenting information to the Chapter as a whole.

Normally, this determination should be made within five (5) working days. If the Chapter determines that it wishes to serve as proxy, the sponsor shall follow the procedures delineated in Section VII.A. If the Chapter determines that it does not wish to serve as proxy, the sponsor or its agent shall consult with HPD, and HPD shall make decisions regarding treatment in accordance with procedures established in Section VII.C. All costs related to treatment shall be borne by the sponsor. Upon completion of the project, the sponsor and its agent shall turn over all records to HPD.

C. Other Native American Burials without Lineal Descendants

In the absence of lineal descendants, all Native American human remains identified on Diné lands are the responsibility of the Navajo Nation [NAGPRA, 1990: Sec. 3(a)(2)(A)]. Such human remains may include Anaasázi burials, non-Diné burials without lineal descendants but for whom cultural affiliation is known and unidentified Native American burials. In cases where consultation with other tribes is required, consultation shall occur in coordination with HPD and treatment shall remain consistent with this policy. ARPA and Class "C" permits must be in hand before initiating excavation. Navajo Nation employees engaged in Navajo Nation business and Navajo traditional healers are exempt from permit requirements.

Treatment Plan

Human remains and funerary items, once interred, should not be disinterred. If the burial is in no danger of impact, its location shall be documented and remains shall be protected as necessary. Documentation shall be provided to HPD. If the burial is in danger of impact, sponsors must exhaust all reasonable alternatives before disinterring. The following treatment plan shall be used in all cases where disinterment is necessary. The treatment plan shall insure the rapid reburial of human remains.

1. Notification, Consultation, and Excavation:
 - a. Upon discovery of human remains or funerary items, the cultural resource professional shall immediately determine the nature and extent of the burial and/or funerary items, while leaving the remains in place and protected. All other activities must immediately cease within a 10-foot (3-meter) radius unless a previously approved data recovery plan is in place. When human remains or funerary items are encountered in the context of an approved data recovery plan, the cultural resource professional may continue investigations outside the immediate burial area.
 - b. HPD must be notified immediately that human remains have been encountered.
 - c. Remains must be kept in place on site until a determination is made by HPD regarding appropriate treatment. When security is a problem, the sponsor or its agent must consult with HPD regarding protective measures.
 - d. Analysis shall proceed according to Section VI.B, above.
 - e. The location of the remains shall be thoroughly documented. The location shall be described and recorded on the appropriate 7.5-minute USGS topographic map. Locational information shall be provided to HPD in a

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confidential appendix. It shall not be retained by the sponsor, its agent, the cultural resource professional, or anyone else.

2. Human Remains Identified in the Laboratory. If human remains are discovered along with faunal remains or other samples during laboratory analysis, the sponsor or its agent must contact HPD and then shall rebury the remains consistent with the plan noted in Section 3, below.
3. Reburial
 - a. Reinterment should take place immediately following removal of remains, unless there are extenuating circumstances.
 - b. The reburial location shall be situated as close to the site of origin as possible, but far enough away from earth-disturbing and erosion activities so as to eliminate the likelihood of future impact. Selection of a reburial site will depend upon construction design plans, depth of soil, the security of the location, approval of land users (if needed), and other pertinent factors.
 - c. An identification number shall be assigned to the gravesite. To obtain a grave identification number, contact CRCS.
 - d. The new location shall be described and recorded on the appropriate 7.5-minute USGS topographic map. Recordation shall include a 50-foot (15.2-meter) radius buffer zone for the gravesite. Locational information shall be provided to HPD in a confidential appendix. HPD may provide to others on a need-to-know basis. It shall not be retained by the sponsor, its agent, the cultural resource professional, or anyone else.
 - e. The remains and funerary items shall be reburied in the same orientation and position as originally found. For relocation purposes, the location of the reburial and a sketch map depicting the position of the remains shall be prepared. Upon request, a skeletal illustration form is available from HPD to inventory the completeness of the human remains. This information shall immediately be turned over to, and shall become the property of, HPD.
 - f. The sponsor or its agent shall ensure that the reburial location is reclaimed to conform to the natural landscape and that protective measures are implemented, as necessary, to avoid future impacts to the reburial site (protective fencing, stabilization, reseeding, etc.).
4. Reporting. The results of investigations at a burial site shall be incorporated into a report as a detachable, confidential appendix. This report shall be submitted to the CRCS. None of the information regarding the location of burials shall be retained by the sponsor or its agent. Confidential appendices shall only be distributed to appropriate parties, as determined by HPD.

D. Non-Native American Burials without Lineal Descendants

In the rare instance that non-native human remains without lineal descendants are encountered on Diné lands, HPD shall initiate consultation with the appropriate entities.

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VIII. DISPUTE RESOLUTION

HPD shall consider disputes within or between families, within a community, between tribes, or with federal agencies related to the treatment of gravesites, human remains, and funerary items on a case-by-case basis. Disputes among lineal descendants may be referred to the Navajo Peacemaker Courts (*Hózhó'í Naa'táanii*), as appropriate.

IX. ATTACHMENTS/FORMS

- A. Identification of Gravesites, Human Remains, and Funerary Items *and* Statement of Wishes: Burials *with* Lineal Descendants
- B. Identification of Gravesites, Human Remains, and Funerary Items: Burials *without* Lineal Descendants