



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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Excellency,

I would like to inform you that in the course of its 98th Session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedure, regarding the construction of the Thirty Meter Telescope, on the Mauna Kea Mountain in the State of Hawai'i of the United States of America, and its impact on the rights of indigenous peoples, the Native Hawaiians.

The information received indicates that the State party is planning a major development project on Mauna Kea Mountain, an indigenous peoples' sacred site, without their free, prior and informed consent. In October 2018, the Hawai'i Supreme Court confirmed the new permit for building the Thirty Meter Telescope at the top of the Mauna Kea Mountain. Accordingly, the construction could begin at any time.

The Committee notes that the already built twenty-two telescopes and other large structures on the Mauna Kea Mountains have not received the support of Native Hawaiians who perceive these developments as a direct threat to their ancestral lands as well as their cultural and religious practices. Since 2010, Native Hawaiians have lodged multiple legal challenges against the Thirty Meter Telescope. The Committee also notes that the Board of Land and Natural Resources undertook hearings that allocated very limited time for testimony per persons interviewed, including Native Hawaiians.

The Committee is concerned about the lack of adequate consultation and the failure to seek free, prior and informed consent of indigenous peoples, regarding their ancestral lands and the Mauna Kea Mountain. Furthermore, the Committee is concerned about the "emergency rules" adopted by the Office of the Mauna Kea Management. According to the information received, the 2018 revision of these rules would restrict the exercise of the right to peaceful assembly, the access to the sacred site of Mauna Kea Mountain and the exercise of religious practice.

Chief, Mr. Mark J. Cassayre
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The allegations submitted to the Committee, if verified, would amount to the failure of ensuring that indigenous peoples can exercise their rights to practise and revitalize their cultural traditions and customs. Moreover, the situation could constitute a breach of the State party duty to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.

With regard to the information received, the Committee would like to recall the State party of the Committee's General Recommendation No. 23 on the rights of indigenous peoples (1997) as well as recommendations on the rights of indigenous peoples made in paragraph 24 of its concluding observations of September 2014 (CERD/C/USA/CO/7-9). Accordingly, the Committee requests the State party to provide information on the steps taken to:

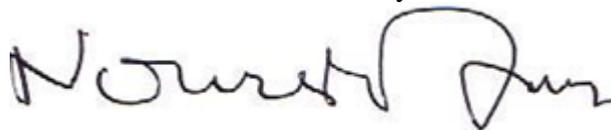
1. Ensure the right to consultation and free, prior and informed consent to Native Hawaiian affected by projects on or near their ancestral lands and territories.
2. Consider the suspension of the Thirty Meter Telescope project until free, prior and informed consent is obtained from Native Hawaiians indigenous peoples, following an adequate discharge of the duty to consult.
3. Consider adopting concrete measures to effectively protect the sacred sites of indigenous peoples, including a land management plan in Hawai'i that allows for unlimited access for cultural practitioners and to review the existing emergency rules in the light of international human rights standards, including the right to freedom of peaceful assembly and the right to freedom of religion.

In this regard, the Committee encourages the State party to consider seeking assistance from the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) that is mandated by the Human Rights Council (resolution 33/25, paragraph 2), to provide States with technical advice on the rights of indigenous peoples and facilitate dialogue between States, indigenous peoples and/or the private sector.

In accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party to submit its response by 8 July 2019. The Committee regrets that the State party has yet to submit its tenth to twelfth periodic reports that are overdue since 20 November 2017. In this regard, the Committee requests the State party to submit the overdue reports in a single document without further delay.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of United States of America, with a view to ensuring the effective implementation of the Convention.

Yours sincerely,



Nouredine Amir
Chair

Committee on the Elimination of Racial Discrimination