



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

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REFERENCE: CERD/EWUAP/
98th session/USA (Pu'uone Sand
Dunes Complex)/JP/ks

10 May 2019

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 procedures regarding the desecration of a burial site of the Kanaka Maoli indigenous peoples in the State of Hawai'i of the United States of America.

The information received indicates that the Pu'uone Sand Dunes Complex in Central Maui is a traditional burial site of the Kanaka Maoli indigenous peoples. The site has been used for extractive activities without the free, prior and informed consent of Kanaka Maoli for at least a period of thirty years, resulting in the removing of innumerable burials in the area and traumatic and psychological distress for many Kanaka Maoli descendants.

Accordingly, the Committee is concerned about the lack of protection of the burial sites of Kanaka Maoli indigenous peoples and the lack of recognition of and measures to address related psychological harm. Furthermore, the legal framework over burials in Hawaii appears to be discriminatory towards the Kanaka Maoli, by establishing more complicated requirements for Native Hawaiians than the rest of the population in order to claim cultural descendency to a burial. Moreover, the legal framework seems to be focusing on mitigating desecration rather than ensuring full protection of all burial sites.

Such situation would amount to the failure of ensuring that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs as well as 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.

Chief, Mr. Mark J. Cassayre
Chargé d'affaires a.i.
Permanent Representative of United States of America
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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:

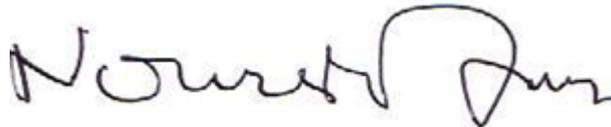
1. Ensure the right to consultation and free, prior and informed consent to Kanaka Maoli indigenous peoples regarding current and future projects on their traditional lands and territories, including their burial sites, in particular the Pu'uone Sand Dunes Complex in Central Maui.
2. Consider adopting comprehensive reparations measures towards the Kanaka Maoli descendants regarding burial desecration of their relatives.
3. Consider reviewing the existing legislation regarding burial in order to ensure non-discrimination and the protection of the burial sites of indigenous peoples, including the Kanaka Maoli.

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 in a single document the overdue reports 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