

Indigenous Peoples Alternative Report for the United Nations Human Rights Committee Review of the United States of America's Fifth Periodic Report
Submission of the United Confederation of Taíno People, 12 September 2023

United Confederation of Taíno People (UCTP) is an Indigenous Representative Institution established in 1998 to promote the self-determination and protection of the human rights, culture, traditions, and sacred lands of Taíno and other Caribbean Indigenous Peoples. The UCTP serves as a forum for educational advocacy (including human rights and cultural education) and policy development to affirm and safeguard indigenous Taíno and other Caribbean cultural heritage and spiritual traditions (including burial issues); and promote spiritual, cultural, educational, health, economic, and social development in the Caribbean and the Diaspora.

In this submission, the UCTP addresses issues to be raised in the review of the Fifth Periodic Report of the United States of America's ("USA") compliance as a State Party to the International Covenant on Civil and Political Rights (ICCPR). The UCTP respectfully calls to the attention of the UN Human Rights Committee critical human rights concerns for Indigenous Taíno Indigenous Peoples whose traditional homelands are now considered U.S. Territories, which are insufficiently addressed or not addressed at all, in the USA's Fifth Periodic Report. This submission documents continuing violations of the state party's obligations under the Covenant.

The UCTP respectfully calls upon the Human Rights Committee to address the urgent issues confronting Indigenous Peoples in the USA and its territories, stemming from the lack of full implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as a minimum standard to guide its compliance with existing human rights treaties.

We present the Committee with the following questions for the United States:

- 1) How has the USA effectively implemented previous CCPR recommendations to protect Indigenous Peoples' sacred areas and landscapes, including those within U.S. territories, which are vital to their cultural and religious practices, against desecration, contamination, and destruction.**
- 2) What measures is the USA taking to ensure that it obtains the free, prior, and informed consent of non-federally recognized Indigenous Peoples within current territories of the USA such as Puerto Rico and the U.S. Virgin Islands, prior to adopting any legislative or administrative measures that may affect them, their lands, or their natural resources? Further, how is the USA obtaining or holding territorial governments accountable to obtain the free, prior, and informed consent of Taíno Peoples prior to development projects that could negatively impact their sacred places, resources, and ecosystems that their traditional subsistence and spiritual systems depend?**
- 3) What measures is the USA taking to implement the ICCPR, the United Nations Declaration on the Rights of Indigenous Peoples, and other international human rights standards within its States and its territories? Further, how is the State Party ensuring dissemination of its obligations under these instruments to its federal agencies as well as state, local, and territorial governments?**

The UCTP submits the following recommendations to the Committee for consideration in their review and Concluding Observations regarding the United States report:

- 1) **That the USA implement the UN Declaration on the Rights of Indigenous Peoples fully and without qualification, and use it as a guideline for interpretation and implementation of the ICCPR regarding Indigenous Peoples, including non-federally recognized Indigenous Peoples in current US Territories such as Puerto Rico and the U.S. Virgin Islands;**
- 2) **That the USA bring its national policies and laws into conformity with the provisions of the ICCPR, ICERD and UNDRIP regarding self-determination, right to lands and resources, subsistence and free prior and informed consent;**
- 3) **That the USA implement laws and policies that fully respect freedom of religious practice, culture and spiritual belief for Indigenous Peoples, including non-federally recognized Indigenous Peoples within current US Territories such as Puerto Rico and the U.S. Virgin Islands, in accordance with its international human rights obligations;**
- 4) **That the USA implement laws that enforce an absolute legal prohibition of the desecration of sacred areas, provide provisions for their protection, and uphold the rights of the Indigenous Peoples concerned to protect, manage, and control them in accordance with their religious beliefs, teachings, and protocols.**

I. USA Failure to Implement Article 1 of the Covenant Regarding Indigenous Peoples' Right to Self-Determination

A) Article 1(1) of the Covenant provides that “All 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.” ICCPR Art. 1(1).

B) Article 1 (3) provides a corresponding duty on state parties to respect that right:

“The States Parties ... including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right....” ICCPR Art. 1(3)

II. Previous CCPR Recommendations

In 2006, the CCPR urged the USA to “take further steps to secure the rights of all Indigenous Peoples, under articles 1 and 27 of the Covenant, so as to give them greater influence in decision-making affecting their natural environment and their means of subsistence as well as their own culture.”

III. Indigenous Peoples of Borikén (Puerto Rico) and the Right to Self- Determination

In the late 15th century, Spain colonized and enslaved many Indigenous Taino and Karibe Peoples of Borikén (Puerto Rico), establishing San Juan as a military post.¹ Following the Spanish–American War, Puerto Rico was acquired by the United States in 1898 in the Treaty of Paris. Soon after, the island was established as an unincorporated territory.² The Territory Clause of the US Constitution³ authorizes unequal treatment of US territories compared with US states as long as there is a “rational basis” for such differential treatment by government bodies including Congress.⁴ This “rational” differential treatment contributes to disparities between treatment of USA territories, such as Puerto Rico and the U.S. Virgin Islands, and states.⁵ This unequal treatment negatively impacts Indigenous Taíno Peoples on these islands.

International Human Rights standards affirm that Indigenous Peoples right to self-determination is not contingent upon whether they seek or are granted recognition by the US government. However, in the absence of US federal recognition, the government of the USA and the territorial government of Puerto Rico often fail to acknowledge or respect the human rights of Taíno Peoples.

The continuing failure of the USA to recognize the Taíno and other Indigenous Peoples of its Territories evidences the non-compliance with the ICCPR, especially Article 1 on self-determination, as well other international instruments such as UNDRIP and the Organization of American States Declaration on the Rights of Indigenous Peoples.

Indigenous Peoples of US Territories, like the Taíno, are not only marginalized domestically, but also within the international system as their “home countries” are not full members of the United Nations or the Organization of American States. Their status regarding remedy and redress of rights affirmed by international and regional bodies, as well as under US law (such as the Native American Graves Protection and Repatriation Act, discussed below) remain in limbo, violating ICCPR Article 2. This “limbo status” further enables violation of the right to equal protection of the law and hinders the ability for Indigenous Peoples of US Territories to fully enjoy their own culture in violation of ICCPR Articles 26 and 27.

The ICCPR should be interpreted consistently with UNDRIP and other relevant international law. The USA violates human rights the rights of Indigenous Peoples when it excludes non-federally recognized Indigenous Peoples like the Taíno from consultations or other processes designed to protect the rights of Indigenous Peoples. Taíno Peoples in US territories like Puerto Rico retain rights under UNDRIP Articles 18, 19, and 32 to FPIC prior to the State taking any legislative or administrative measure that may affect them, their lands, or their natural resources.

V. Articles 18 and 27: The Rights to Religion and Culture

A) Previous Recommendations

In its concluding observations in 2014, the CCPR recommended that the US “should adopt measures to effectively protect sacred areas of indigenous peoples against desecration, contamination and destruction and ensure that consultations are held with the indigenous communities that might be adversely affected by the State party’s development projects and exploitation of natural resources with a view to obtaining their free, prior and informed consent for proposed project activities.”⁶

B) Sacred Areas Currently under Threat in the US Territory of Puerto Rico

Despite the CCPR’s 2006 and 2014 recommendations, Indigenous sacred areas in US Territories continue to be desecrated or continue to be under threat of privatization or destruction from development activities. Taíno Peoples continue to fight for access to sacred areas to exercise their cultural rights while the US and territorial governments deny them their right to FPIC. As with other Indigenous Peoples, these actions and inactions constitute on-going violations of Article 18(1) and Article 27, as well as failure to implement previous CCPR recommendations.

The case of the Caguana Ceremonial Center is one example illustrating how the US has failed to uphold its obligations under the ICCPR to protect sacred areas, which are vital to the cultures and religious practices of Indigenous Peoples in US territories. The Caguana Ceremonial Center is designated publicly as an archaeological site located in Caguana, Utuado in Puerto Rico. It considered to be one of the most important Pre-Columbian sites in the so-called West Indies. The site is known for its well-preserved ceremonial ball courts and petroglyph-carved monoliths. The Institute of Puerto Rican manages the site as a park under the name **Caguana Indigenous Ceremonial Center** (*Parque Ceremonial Indígena de Caguana*). The US National Park Service placed it on the National Register of Historic Places in 1992⁷, and in 1993, designated it as a US National Historic Landmark (under the name **Caguana Site**).⁸ The site is also included in the UNESCO Astronomy World Heritage List.⁹

In April 2022, the United Confederation of Taíno People, along with other Indigenous entities from Borikén, issued a public statement regarding controversial Puerto Rican Senate Resolution RCS45. This proposed legislation focused on whether the Caguana Indigenous Ceremonial Center in Caguana, Utuado, Puerto

Rico, should remain under the care of the Institute of Puerto Rican Culture (ICP) or transfer its management to the authority of the Municipality of Utuado. The proposed change in management structure opened a path to privatization of the site as it would have allowed the municipality to issue title to third parties. The Caguana Indigenous Ceremonial Center is considered a sacred site to Taíno and other Indigenous Peoples; calls for Taíno co-management of the site have long been ignored. The Puerto Rican government did not consult with Taíno representative institutions during the RCS45 resolution process or consider FPIC during the proceedings.

While the CCPR issued concluding observations regarding the protection of Indigenous sacred sites in 2014, no outreach or consultations have taken place with the Taíno in Puerto Rico to discuss measures that would guarantee the protection of Indigenous sacred areas or ensure that FPIC is obtained regarding matters that directly affect Taíno interests. The US government has an affirmative obligation to obtain the FPIC of Indigenous Taíno Peoples residing in US Territories regardless of whether they have been recognized under the US federal recognition process. Lack of consultation also evidences little or no influence for Taíno Peoples in decision-making affecting their natural environment and their means of subsistence as well as their own culture.

Conclusion

The UCTP thanks the CCPR for the opportunity to submit questions and make recommendations regarding the United States of America's Fifth periodic review. The UCTP welcome the CCPR's efforts to ensure compliance with the ICCPR in the US, and we look forward to working collaboratively with the State Party to ensure that the rights of Indigenous Peoples in US territories are rights are respected and protected in accordance with international law.

The UCTP also thanks the International Indian Treaty Council (IITC) and, staff attorney June Lorenzo, for their guidance toward this submission. The UCTP fully supports the submission of the International Indian Treaty Council to the USA Fifth Periodic Review.

¹ Joseph SR, Voyles C, Williams KD, Smith E, Chilton M. Colonial Neglect and the Right to Health in Puerto Rico After Hurricane Maria. *Am J Public Health*. 2020 Oct;110(10):1512-1518. doi: 10.2105/AJPH.2020.305814. Epub 2020 Aug 20. PMID: 32816540; PMCID: PMC7483100.

² Carrión AM, Babín Cortés MT. *Puerto Rico, a Political and Cultural History*. New York, NY: W. W. Norton & Company; 1983. [[Google Scholar](#)]

³ US Const, Art IV, § 3, Cl 2.

⁴ US Congress. Congressional Task Force on Economic Growth in Puerto Rico. 2016. Available at: <https://www.finance.senate.gov/imo/media/doc/Bipartisan> Congressional Task Force on Economic Growth in Puerto Rico Releases Final Report.pdf. Accessed October 30, 2018.

⁵ Artiga S, Hall C, Lyons B. Health care in Puerto Rico and the US Virgin Islands: a six-month check-up after the storms. Kaiser Family Foundation. 2018. Available at: <https://www.kff.org/medicaid/issue-brief/health-care-in-puerto-rico-and-the-u-s-virgin-islands-a-six-month-check-up-after-the-storms-report>.

⁶ Human Rights Committee, Concluding Observations, para. 25 CCPR/C/USA/CO/4, April 22, 2014.

⁷ National Register Information System <https://npgallery.nps.gov/NRHP/SearchResults?view=list>

⁸ Caguana site - *National Historic Landmark summary listing*. National Park Service: <https://www.nps.gov/subjects/nationalhistoriclandmarks/list-of-nhls-by-state.htm#onthisPage-58>

⁹ Category of Astronomical Heritage: tangible immovable, Caguana, Puerto Rico: <https://www3.astronomicalheritage.net/index.php/show-entity?identity=10&idsubentity=1>