

REFERENCE: CERD/EWUAP/112th session/2024/CS/cs/ks

26 April 2024

Excellency,

I write to inform you that the Committee considered additional information received under its early warning and urgent action procedure regarding the construction of the Thirty Meter Telescope in Hawaii, and its impact on the rights of Indigenous Peoples, the Native Hawaiians. In this regard, the Committee refers to its letter of 10 May 2019 and the reply by the State party of 10 July 2019 relating to the same matter.

According to the information received, although construction of the TMT was temporarily adjourned due to broad opposition to the project by Native Hawaiians and other relevant stakeholders, the construction of the TMT on Indigenous Peoples' sacred site of Mauna Kea Mountain, may potentially restart at any time and still without their free, prior and informed consent.

The Committee remains concerned about continuous allegations of lack of adequate consultation and the failure to seek free, prior and informed consent of Indigenous Peoples in Hawaii regarding their ancestral lands in the Mauna Kea Mountain. The Committee is still concerned about the adverse impact and the irreparable harm that the construction of the TMT could have on the rights of Native Hawaiians, particularly to their way of life and to the right to their lands and resources. In this regards, the Committee is concerned that the allegations received may amount to a breach of the State party's obligations enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and a failure of ensuring that Indigenous Peoples can exercise their rights to practise and revitalize their cultural traditions and customs, and to protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources.

H.E. Ms. Batcheba N. Crooker
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The Committee recalls its previous concluding observations in which it recommended that the State party guarantee, in law and in practice, the principle of free, prior and informed consent in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international standards, and the right of Indigenous Peoples to be consulted on any legislative or administrative measure that may affect their rights; as well as to take measures to effectively protect the rights of Indigenous Peoples from any adverse impact of infrastructure projects, and specifically address the situations that the Committee has considered under its early warning and urgent action procedure ([CERD/C/USA/CO/10-12](#), para. 50).

The Committee further recalls its General Recommendation No. 23 (1997) on the rights of Indigenous Peoples, in which it calls upon States parties to ensure that no decisions directly relating to the rights and interests of Indigenous Peoples are taken without their informed consent, and to ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs.

In light of the above, and in accordance with Article 9 (1) of the Convention and Article 65 of its Rules of Procedure, the State party may provide information on the abovementioned allegations by 26 June 2024, including updated information on the measures taken to ensure the right to consultation and free, prior and informed consent to the Indigenous Peoples affected by the TMT project as well as on the measures adopted to consider suspending such project until free, prior and informed consent is obtained from Native Hawaiian Indigenous Peoples, following the full and adequate discharge of the duty to consult.

Recalling also its previous letter of 10 May 2019, the Committee encourages the State party to consider engaging with the United Nations Expert Mechanism on the Rights of Indigenous Peoples, which is mandated by the Human Rights Council (resolution [A/HRC/RES/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.

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

Yours sincerely,



Michal Balcerzak
Chair

Committee on the Elimination of Racial Discrimination