

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

26 April 2024

Excellency,

I write to inform you that the Committee considered information received under its early warning and urgent action procedure, related to actions by Canadian state institutions, Canadian astronomical bodies and Canadian corporations involved in supporting the Thirty Meter Telescope (TMT) project in Hawaii, affecting the rights of indigenous peoples, the Native Hawaiians.

According to the information received:

- The TMT, a major development project, is planned to be constructed on Mauna Kea Mountain, a sacred site of immense religious, spiritual, and cultural importance for Native Hawaiians, without their free, prior and informed consent;
- Environmental impact assessments have acknowledged the substantial and adverse impact of previous astronomical projects on cultural resources and practices as well as on archaeological sites and human burials in Mauna Kea, among other harms, including the destruction of ahu (shrines) in preparation for the building of the TMT, occurred in 2015 and 2019;
- The Canadian federal government plays an essential role in the TMT project through direct funding, in-kind contributions and through Canadian state agencies, such as the National Research Council (NRC) and the Canada Foundation for Innovation;
- The NRC is directly involved in the development and construction of the TMT through its NRC Herzberg Astronomy and Astrophysics Research Centre;
- Canadian astronomical associations have an important role in the TMT project, in particular the Association of Canadian Universities for Research in Astronomy (ACURA) and the Canadian Astronomical Society (CASCA), which have created a joint committee (CASCA/ACURA TMT Advisory Committee or CATAC) to coordinate Canadian governance of the project;

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- Private Canadian for-profit corporations are also directly involved in key aspects of the TMT project, such as Dynamic Structures, which was reportedly granted the bulk of the funding issued by the Canadian government for the TMT's massive domed enclosure, and ABB Canada, whose Space and Defense Systems section is the main industrial sub-contractor for the optical systems associated with the TMT project;
- In November 2021, CATAAC released a statement indicating that unless the TMT project has consent from the Native Hawaiians, Canada's astronomical community cannot support its construction on Mauna Kea, but to date it has not withdrawn its support for the project, despite lack of free, prior and informed consent by Native Hawaiians;
- Although construction of the TMT on Mauna Kea has been temporarily adjourned due to mass opposition, this construction may potentially restart at any time.

The Committee is concerned about the adverse impact and irreparable harm that the financing and support provided by the State party, Canadian astronomical societies and Canadian corporations for the construction of the TMT could have on the human rights of Native Hawaiians, particularly to their way of life and to the right to their lands, resources and culture. It is also concerned that, by supporting the TMT project, the State party enables discriminatory practices and poses foreseeable risks to the rights of Native Hawaiians, particularly in light of the lack of their free, prior and informed consent regarding their ancestral lands and the Mauna Kea Mountain. In this regard, 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).

The Committee recalls its previous concluding observations in which it recommended the State party "to take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada, and hold them accountable" and "to ensure access to justice through judicial and non-judicial remedies for violations of rights of persons by transnational corporations registered in Canada, operating abroad" ([CERD/C/CAN/CO/19-20](#), para. 14; [CERD/C/CAN/CO/21-23](#), para. 22).

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 Committee requests the State party to provide information on the abovementioned allegations and to submit its response by 26 June 2024. The Committee wishes to bring to the attention of the State party that it has also sent a letter to the United States of America on this matter.

The Committee further 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.

The Committee would like to request the State party to submit its overdue combined twenty-fourth and twenty-fifth periodic reports.

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

Yours sincerely,



Michal Balcerzak
Chair

Committee on the Elimination of Racial Discrimination