

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Independent Expert in the field of cultural rights; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the rights of indigenous peoples.

REFERENCE: UA Cultural rights (2009) G/SO 214 (56-23) Indigenous (2001-8)
USA 5/2011

10 May 2011

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on freedom of religion or belief; and Independent Expert in the field of cultural rights pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/14, 14/11 and 10/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received **concerning the alleged imminent desecration and destruction of the ceremonial and burial site Sogorea Te, located at Glen Cove, in the city of Vallejo, California, in the United States of America.**

According to the information received:

It is reported that Sogorea Te is the name of the Karkin Ohlone village that was the most recent indigenous habitation of this piece of land found at the most narrow part of the Carquinez Strait, a tidal estuary located within the San Francisco Bay. Indigenous village sites in the San Francisco Bay Area are primarily documented by the locations of associated Shellmounds. Shellmounds are ancient monuments and funerary sites that are particular to the indigenous cultures of the California coast, where indigenous peoples even now gather to pray and conduct their spiritual ceremonies.

Sogorea Te, now located within the city of Vallejo, California, had been in existence for 3,500 years and has been used continually by the Northern California indigenous peoples, who consider this site sacred and visit it at least three times a year to conduct ceremonies that ensure their continued cultural survival. From an estimated 600 intact Shellmounds that the site contained in 1800, very few intact Shellmounds remain to this day. The Shellmound and Sogorea Te village site is of particular importance because of its geographic

placement, which was a central location on a primary trade route between the northern and southern Bay Area villages.

Reports indicate that the Sogorea Te Shellmound was first studied in 1907 and has since been studied and surveyed formally at least six times, with attempts to establish a boundary of the village site being a primary goal of each effort. Each time the site has undergone academic or professional investigation, the boundaries have been extended and drawn farther out from the previous instance. In 1986, an archeological firm found human remains beyond the previous established boundary and concluded that the boundary had to be significantly expanded. During subsequent construction of an access road to the condominium complex then under construction, Shellmound material was found as deep as five feet under the surface of the earth, which led to conclude that it was possible that the Shellmound boundary might be beyond the boundaries of the undeveloped land at Glen Cove and well into the developed residential area.

It is alleged that the City of Vallejo, California, is planning to level and pave over the Sogorea Te Sacred Area in order to construct a parking lot and public restrooms. A continuous occupation of the site by local native peoples and organizations has held off the bulldozers that were due to begin the works on 15 April 2011. Members of the Ohlone (not currently recognized by the United States) and Miwok Nations are currently occupying the site in violation of local ordinances in order to prevent the construction works and have successfully delayed the original starting date of construction at the site. Indigenous peoples and their supporters have indicated their intent to remain on their traditional land until the city agrees to only implement development plans that do not involve the destruction of their cultural and spiritual lives or the disturbance of their interred ancestors.

It is finally reported that although there is a promise of mediation by the United States Department of Justice, the City of Vallejo has continued to harass the occupiers and has avoided setting a date for any dialogue.

While we do not wish to prejudge the accuracy of the above allegations, we would like to refer your Excellency's Government to the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, and in particular to the following provisions:

- article 11: Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites ... [and] ceremonies...;

- article 12.1: Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains;

- article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them; and

- article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

We would also like to appeal to your Excellency's Government to ensure the right of freedom of religion or belief, in accordance with article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights. The General Assembly, in its resolution 64/164, urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end "(g) To ensure, in particular, the right of all persons to worship, assemble or teach in connection with a religion or belief and their right to establish and maintain places for these purposes and the right of all persons to write, issue and disseminate relevant publications in these areas; (h) To exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration and destruction."

We would also like to refer to the country report of the Special Rapporteur on freedom of religion or belief on his visit to the United States of America (E/CN.4/1999/58/Add.1, para. 82): "Because of economic and religious conflicts affecting in particular sacred sites, the Special Rapporteur wishes to point out that the freedom of belief, in this case that of the Native Americans, is a fundamental matter and requires still greater protection. The freedom to manifest one's belief is also recognized, but can be subject to limitations insofar as they are strictly necessary and provided for in article 1, paragraph 3, of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief and in article 18 of the International Covenant on Civil and Political Rights. The expression of the belief has to be reconciled with other rights and legitimate concerns, including those of an economic nature, but after the rights and claims of the parties have been duly taken into account, on an equal footing (in accordance with each party's system of values). As far as Native Americans' access to sacred sites is concerned, this is a fundamental right in the sphere of religion, the exercise of which must be guaranteed in accordance with the abovementioned provisions of international law on the matter."

We would also like to refer your Excellency's Government to article 15 of the International Covenant on Economic, Social and Cultural Rights, to which the United States of America is a signatory, relating to the right of everyone to take part in cultural life. Additionally, we would like to refer your Excellency's Government to the most recent report of the Independent Expert in the field of cultural rights, which emphasizes that the right of access to and enjoyment of cultural heritage forms part of international

human rights law, finding its legal basis, in particular, in the right to take part in cultural life, the right of members of minorities to enjoy their own culture, and the right of indigenous peoples to self-determination and to maintain, control, protect and develop cultural heritage. This entails, in particular, that States have the duty not to destroy, damage or alter cultural heritage, at least not without the free, prior and informed consent of concerned communities (A/HRC/17/38, paras. 78 and 80).

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to protect the ceremonial and burial site Sogorea Te in compliance with the above international instruments.

As we continue to monitor and clarify the circumstances surrounding the present situation, we would be interested in knowing your Excellency's Government's views on the accuracy of the information contained in this letter, and we would be grateful to receive any additional information your Excellency's Government may deem relevant. In particular, we would like to know more about:

1. The reasons for the decision to level and pave over the Sogorea Te site in order to construct a parking lot and public restrooms. Was any consideration given to the fact that the Sogorea Te site would be affected when developing construction plans? Were any efforts made to mitigate these effects or consider alternate plans?

2. Any attempts made by your Excellency's Government to dialogue with affected indigenous representatives in order to seek their free, prior and informed consent about the development plans or to address their concerns in this regard. Please provide information on any plans to engage in mediation or other dialogue with affected indigenous groups.

We undertake to ensure that your Excellency's Government's response will be taken into account in our assessment of this situation and in developing any recommendations that we may make for your Excellency's Government's consideration pursuant to the terms of our mandates.

Please accept, Excellency, the assurances of our highest consideration.

James Anaya
Special Rapporteur on the rights of indigenous peoples

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Farida Shaheed
Independent expert in the field of cultural rights