

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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(Please use this reference in your reply)

11 January 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on freedom of religion or belief and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 46/9, 42/20, 40/10 and 45/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a request for the **repatriation of Ryukyuan indigenous human remains, kept at the Kyoto University**.

According to information received:

From the end of the 19th century until the 1960s, excavations in ancient burial mounds were conducted by researchers in anthropology in newly acquired colonies such as Ryukyu islands (current Okinawa), Hokkaido, the Korean Peninsula and Taiwan.

In this context, human remains from the indigenous peoples of these areas were taken from the graves for research purposes, including research on eugenics. During that period, excavation of graves and damaging and acquirement of human remains were prohibited by criminal law, and not conducted on the mainland of Japan. However, academics from the Kyoto Imperial University excavated the sites in the colonies, and parts of the remains they collected were exposed during the Fifth National Industrial Exposition held in Osaka in 1903.

It is alleged that in 1929, a professor from the Kyoto Imperial University, currently Kyoto University, removed about 80 to 90 Ryukyuan human remains from graves in several locations with no consent from the bereaved families and local residents. Some of these human remains were taken from the Mumujana grave, which belonged to the clan of the feudal king of Ryukyu. In 1991, the grave was designated as cultural property of Nakijn village.

Because the human remains were taken from the grave, the descendants of the deceased whose bones were taken have since not been able to conduct a specific ceremony to worship their ancestors, which is an important feature of the traditional culture of the Ryukyuan.

Since May 2017, a descendant of the Ryukyuan indigenous peoples has been requesting access to the information about, and the repatriation of the Ryukyuan human remains kept at the University. Repeated requests were allegedly refused by the University on the basis that the University did not

consider individual queries.

In February 2018, a member of the National Diet and descendant of the Ryukyuan indigenous peoples, filed a question statement to the former Prime Minister Shinzo Abe, asking the opinion of the government on the descendants' requests for the return of the Ryukyuan human remains and on the conditions of their storage at the University. In response, the chair of the lower house of the National Diet allegedly stated that the government did not recognize that there was a request for the return of the remains, and that the University was the sole responsible for measures taken for the storage.

On 4 December 2018, a group of descendants organised themselves into a civil society organisation called Nirai Kanai nu Kai (Indigenous peoples' organization for the repatriation and aerial reburial of Ryukyuan human remains into original Ryukyuan graves). They filed a lawsuit against Kyoto University, officially requesting the return of 26 Ryukyuan human remains from the Mumujana grave in Nakijin village, and asking for compensation for the damage caused.

In July 2019, in its "Letter of Request" to Kyoto University, the Anthropological Society of Nippon refused the repatriation of the remains and requested the continuation of academic research on them, by recognizing them as "ancient human skeletons" subject to research. At the time of writing this communication, Kyoto University had not agreed to return the remains to the descendants. The outcome of this case is expected for mid-January 2022.

According to reports concerning Ainu people's graves robberies in Hokkaido from 1889 to the 1960s, more than 1600 human remains were excavated and taken without the consent of families or local communities. Following the creation of the Council for Ainu Policy Promotion, it was decided to establish the National Ainu Museum and Park, and that the Ainu people's human remains would be relocated to that Museum. Although the four legal cases filed since 2012 in this matter ruled in favour of the Ainu representatives, the Hokkaido University has allegedly only returned about 100 human remains to the descendants.

In both the case of the Ryukyuan and Ainu indigenous peoples, it is alleged that the excavation and study of human remains were conducted on the basis that they were racially different and inferior. Accordingly, the descendants also expect acknowledgement from the academic institutions of past mistakes and apologies.

While we do not wish to prejudge the accuracy of these allegations, we are taking note of them and are sharing the concerns raised and the requests made by the Ryukyuan and Ainu descendants to have the human remains of their ancestors returned to them. The burial of the dead and respect due to their grave sites is one of the most ancient trace of human civilisation. The fact that, in spite of repeated demands, the returns of the remains have not been resolved appears to violate the cultural rights of these individuals and communities. These include access and enjoyment of cultural heritage, their right to conduct their cultural practices and religious ceremonies, and in these cases to rebury the remains of their ancestors according to traditional open-air burial rituals, as well as their right to take part in

decisions that have an impact on their cultural rights. These families and communities have not exercised their free, prior and informed consent at any point of the process with regard to the removal of remains of their ancestors for scientific research, and their exhibition and storage at Universities.

Another matter of concern seems to be the alleged reluctance to recognize and a trivialization on the part of the Government of Japan, the Kyoto University, and a number of academics, of the harm inflicted in the past to indigenous peoples of Ryukyu islands, Hokkaido and other territories due to colonial policies, and the opportunity to reach in this ongoing case fair and adequate reparation and redress for these past actions that continue to have a direct and tangible impact on these communities.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide details on the legal provisions considered in the requests of the Ryukyuan descendant organization about the repatriation of the human remains from Kyoto University, and their compatibility with the human rights standards and obligations mentioned therein.
3. Please provide information about the measures that the Government has taken, or is considering to take, to ensure the effective implementation of the court decisions in the cases requesting the return of the human remains of the Ainu indigenous peoples to their descendants. Please include information about any measure taken to redress the robberies of these graves.
4. Please provide information on any policy the Government has enforced to support the full exercise of the rights of Ryukyuan and Ainu descendants to access and enjoy heritage and to take part in decisions that concern their heritage, including any actions to support and promote the creation of their own museums and historical narratives, as well as measures to ensure that they fully enjoy their right to worship and practice their indigenous faiths, beliefs and customs.
5. Please explain any measure taken by the Government to promote tolerance and understanding for cultural diversity and engage in critical thinking about the past.

We would appreciate receiving a response within 60 days. After this date, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also

subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary measures be taken to ensure that the Ryukyu and Ainu peoples are fully consulted in matters regarding their heritage, that the ongoing legal cases are concluded with due care to protect their human rights.

Please be informed that a copy of this letter has also been sent to the Kyoto University for their information.

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

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Fabian Salvioli
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to applicable international human rights norms and standards that are applicable to the issues brought forth by the situation described above, as well as authoritative guidance on their interpretation.

We would like to stress that in accordance with article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Japan on 21 June 1979, everyone has the right to take part in cultural life, without discrimination. As stated in article 5 e of the International Convention on the Elimination of all forms of Racial Discrimination (CERD, ratified by Japan on 15 December 1995, States must take measures for the elimination of any racial discrimination in the field of cultural rights. According to article 27 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Japan on 21 June 1979, the State has to ensure that the right of members of minorities to practice their culture is not denied.

The right for all to take part in cultural life includes "the right of access to and enjoyment of cultural heritage", defined as the rights to "know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage and creations of others, without political, religious, economic or physical encumbrances". Participation of individuals and communities in cultural life is crucial and includes the right to conduct cultural practices, including specific burial practices, develop multiple references and "contribute to the creation of culture, including through the contestation of dominant norms and values within the communities they belong to as well as those of other communities" (A/HRC/14/38, paras. 9-10). "States should [...] acknowledge, respect and protect the possible diverging interpretations that may arise over cultural heritage" and "the choices of individuals and communities to feel associated (or not) with specific elements of cultural heritages" (A/HRC/17/38, para.10 and 80 a).

As cultural heritage represents an important element of the cultural identity of individuals and communities, access to and enjoyment of cultural heritage also implies "contributing to the identification, interpretation and development of cultural heritage, as well as to the design and implementation of preservation/safeguard policies and programmes" and should therefore include consultations with all concerned communities before deciding is made on the use and eventual destruction of sites or objects of cultural or religious significance" (A/HRC/17/38, para.58 and 79).

Cultural and religious heritage resources are also critical for safeguarding, questioning and transmitting historical knowledge and narratives of the past. The Special Rapporteur in the field of cultural rights warns against the fact that "dominant homogenizing narrative blanches out diversity, ignoring the cultural heritage of everyone outside the group in power, simultaneously depriving the majority of the opportunity to understand the complexity of their country" (A/68/296, para. 31) and recommends a multiperspective approach to history.

We would also like to recall the Updated set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity. Principle 2 establishes the inalienable right of all persons to know the truth about past events. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations. In addition, principle 3 establishes the duty of States to preserve memory about those violations and their responsibility in the transmission of such history. It underscores that "people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State's duty to preserve archives and other evidence concerning violations of human rights [...] and to facilitate knowledge of those violations". Such measures shall aim at "preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments". Interpretation of past events that have the effect of denying or misrepresenting violations are incompatible with the aforementioned obligations of the States.

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147, specifies in its principle 22 that the right to reparation should include, inter alia, an official statement or a judicial decision restoring the dignity, reputation and rights of the victim and of persons closely connected with the victim and a public apology, including acknowledgement of the facts and acceptance of responsibility.

Both article 18 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) recognize the right of all persons to freedom of thought, conscience, religion or belief.

The right to freedom of thought, conscience, religion or belief, which also includes spiritual beliefs and practices, does not only entail the right to hold religious beliefs, but also the right to assemble and worship in connection with a religion or belief, and to maintain places of worship and ritual practices, such as burying grounds (Human Rights Committee, General Comment no. 22, para 4; article 6 of the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief). In 2007, the Human Rights Council urged States in its resolution 6/37, article 9(b), "[t]o exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian 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 or destruction".

We would also like to recall the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007, especially article 12 concerning the rights to religious traditions and customs, as well as repatriation of human remains, and article 31 concerning the rights of indigenous peoples to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions. Finally, article 40 establishes that "indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules

and legal systems of the indigenous peoples concerned and international human rights.” The UN Declaration on the Rights of Indigenous Peoples is considered an interpretative tool of article 27 of the ICCPR and article 15 of the ICESCR when it comes to the rights of indigenous peoples.