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Honorable Ahmed Shaheed
Special Rapporteur on Freedom of Religion or Belief
United Nations
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Sent via electronic mail

Re: Pueblo of Acoma Submission on Protection and Repatriation of Indigenous Sacred Items and Ancestors in the United States of America

Dear Special Rapporteur Shaheed:

The Pueblo of Acoma (or "Acoma") respectfully submits this information in response to your call for input regarding Indigenous Peoples and the right to freedom of religion or belief in preparation for your report to the 77th session of the United Nations ("UN") General Assembly. We thank you for your focus on this important topic and for the consultations you held in the United States of America (or "United States").

The Pueblo of Acoma is an ancient Indigenous Nation. For at least 1000 years, our people have lived at Acoma, or *Haaku* in our Keres language, our mesa-top home in the current state of New Mexico, making Acoma one of the oldest continuously inhabited communities in the United States¹. Acoma retain the culture, language, and beliefs of our Ancestors from a time long before the establishment of the United States.

For years, Acoma has been on the front lines of efforts to protect Indigenous Peoples' sacred items from being stolen and trafficked abroad by advocating for domestic legal reforms that would help

¹ *Haaku*, also known by outsiders as "Sky City" sits atop a 300-foot mesa rising from the valley floor. Atop Sky City the village stands as it mostly has for the past several hundred years with adobe homes lacking modern amenities of electricity and running water. Also located atop Acoma is the San Estévan del Rey Mission Church, built by 1641 that is listed on the United States' National Register of Historic Places. A photo of *Haaku*, Sky City, is attached as Attachment 1.

facilitate their return. These sacred items are critical to the maintenance of Acoma's ancient culture and way of life. As described herein, the United States is a party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property ("1970 UNESCO Convention"). However, the United States has only ever implemented the import restrictions in that treaty—not the export restrictions. This means that Indigenous sacred items and Ancestors that have been taken from us illegally remain in heightened danger of export from the United States, and it makes it difficult to secure their repatriation if we are able to find them once they surface abroad. Acoma has, and continues to, advocate for passage of the Safeguard Tribal Objects of Patrimony Act (STOP Act), which would implement export restrictions to end this asymmetry in the implementation of the 1970 UNESCO Convention that continues to put our culture and religious practices at risk.

The Pueblo of Acoma respectfully requests that the Special Rapporteur recommend to the General Assembly that all States Parties to the 1970 UNSECO Convention fully implement the treaty in domestic law, including both import and export restrictions, in order to safeguard Indigenous Peoples' sacred items and Ancestors.

I. International Obligations Regarding Indigenous Peoples' Sacred Items and Ancestors

The UN Declaration on the Rights of Indigenous Peoples, which the United States endorsed in December 2010, enshrines certain well-established principles of international human rights law. This includes the following guarantees:

Article 11

1. Indigenous peoples have the right to practise 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, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, 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.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

UNDRIP articles 11 and 12 articulate the right to religious, spiritual, and cultural freedom that all peoples have in the unique context of Indigenous Peoples. This articulation is consistent with the rights to freedom of religion enshrined in article 18 of the Universal Declaration of Human Rights and article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

UNDRIP is also consistent with the rights to religious and cultural freedom articulated in legally binding treaties to which the United States is a party. This includes guarantees of religious freedom in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and in article 18 of the International Covenant on Civil and Political Rights (ICCPR). Article 27 of the ICCPR further addresses "ethnic, religious, and linguistic minorities," including Indigenous persons,² stating that they have "the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

Additionally, the United States is a party to the 1970 UNESCO Convention that is designed to protect "cultural property." For example, articles 6 and 7 of the treaty direct States Parties to issue export certificates for "cultural property" and to take steps to prevent the import of and repatriate cultural property that has been illegally exported from its country of origin. The 1970 UNESCO Convention plays a significant role in establishing a legal regime that, while imperfect, can significantly curb international trafficking of Indigenous sacred items and other cultural property.

II. Asymmetry in Domestic Law: Uneven Implementation of the 1970 Convention

Freedom of religion is enshrined in domestic law as well, with the First Amendment to the U.S. Constitution providing that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...." Although this has been recognized as applying to Indigenous Peoples, particularly in the passage of the American Indian Religious Freedom Act of 1978 (AIRFA),³ such guarantees have not necessarily been made effective. For example, in *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988) the U.S. Supreme Court held that neither the First Amendment nor AIRFA prohibited destruction of an Indigenous sacred site.

Additionally, the United States has laws to protect Indigenous cultural patrimony, sacred items, and Ancestors, such as the Native American Graves Protection and Repatriation Act (NAGPRA),⁴ but these laws are often limited in scope—for example, not applying to items or Ancestors uncovered on private lands, or to items removed from tribal lands prior to the enactment of

² UN Human Rights Committee, General Comment No. 23: Article 27 (Rights of Minorities), CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994).

³ 42 U.S.C. § 1996.

⁴ 25 U.S.C. Chapter 32.

NAGPRA. Further, even when items or Ancestors are taken from Indigenous Peoples in violation of domestic laws such as NAGPRA, there are not laws that prevent them from being exported abroad.

In 1983, the U.S. Congress passed the Convention on Cultural Property Implementation Act (CPIA),⁵ to implement certain provisions of the 1970 UNESCO Convention. Articles 6 and 7 of the 1970 Convention direct States Parties to issue export certificates for "cultural property" and to take steps to prevent the import of and repatriate cultural property that has been illegally exported from its country of origin. However, the CPIA only implemented the import restrictions of the 1970 Convention, and not the export restrictions. Thus, there is no system for providing export certificates for cultural property that may legitimately be exported and sold abroad and no system for preventing the export of property taken from Indigenous Peoples in violation of NAGPRA or other domestic laws like the Archaeological Resource Protection Act.⁶ Further, without these export restrictions, U.S. laws do not trigger other countries' domestic laws that, consistent with the 1970 Convention, require the return of cultural property that has been illegally exported.

III. The Struggle to Recover the Acoma Shield

In the mid-1970s, someone broke into a home atop Acoma and stole a ceremonial shield in violation of Acoma and federal law.⁷ The shield had a significant place in Acoma ceremony, and its theft incurred a serious rupture for the community's cultural traditions. Decades later, the shield resurfaced at the EVE Auction House in Paris, France with an auction scheduled for May 30, 2016. A year prior the EVE Auction House had attempted to sell the Shield. Acoma becoming aware just days prior and attempted to institute a legal protest but was denied by French *Conseil des Ventes Volontaires* (CVV). By good fortune, the shield was not sold and in 2016 Acoma rushed to coordinate with various U.S. federal agencies, congressional representatives, and national Indigenous organizations to attempt to stop the auction and secure the return of the shield.

In coordinating with French government officials, Acoma became aware that although French laws required the return of sacred items exported in violation of the domestic laws of the country of origin, the U.S. did not have such export restrictions. Acoma, therefore, had to embark on a years-long, arduous process of negotiation and domestic federal court action to eventually secure the return of the shield in 2020 as part of a settlement agreement between the U.S. Department of Justice and the person who provided the shield to the auction house.⁸ Significantly, in that process, the man who provided the shield to EVE Auction House maintained that he had innocently inherited it and merely shipped it abroad for sale, not smuggled the shield illegally. Without an

⁵ 19 U.S.C. §§ 2602, 2606.

⁶ 16 U.S.C. § 470aa et seq. (many times items that qualify as NAGPRA items, may also qualify as archaeological resources under federal law due to their age).

⁷ For a summary of issues regarding the Acoma Shield, see Gregory A. Smith & Ann Berkley Rodgers, *Who Stole the Acoma Shield?*, AM. B. ASS'N (Sep. 1, 2017), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/vol--43/vol--43--no--1/who-stole-the-acoma-shield--/; see also Elena Saavedra Buckley, *Unraveling the Mystery of a Stolen Cermonial Shield*, High Country News, <https://www.hcn.org/issues/52.8/indigenous-affairs-unraveling-the-mystery-of-a-stolen-ceremonial-shield>.

⁸ See, e.g., Acee Agoyo, 'Homecoming': Pueblo of Acoma Set to Reclaim Sacred Item, INDIANZ.COM (Nov. 18, 2019).

export certification process and requirement, as contemplated by the 1970 Convention, similar shipping abroad of sacred items will continue to occur, and it will continue to be difficult, if not impossible, to secure their return.

IV. Conclusion and Recommendations

Based on its experiences in securing the repatriation of its sacred shield, Acoma continues to advocate for the United States to fully implement the 1970 UNESCO Convention. The STOP Act, seeks to remedy the asymmetrical implementation of the 1970 UNESCO Convention, heightening export controls for Indigenous sacred items and ancestors that have been taken in violation of NAGPRA and other U.S. federal law. The STOP Act, however, continues to face opposition from private art dealers, and it has not yet been passed into law. Its passage is urgently needed to provide effective mechanisms to protect Indigenous Peoples' rights to religious and cultural freedom, including repatriation of our sacred items and Ancestors.

The Pueblo of Acoma respectfully requests that the Special Rapporteur recommend to the General Assembly that *all States Parties to the 1970 UNSECO Convention fully implement the treaty in domestic law, including both import and export restrictions*, in order to safeguard Indigenous Peoples' sacred items and Ancestors.

Thank you for your consideration of our request and for the work you are doing to address protection of Indigenous Peoples' religious freedoms.

Sincerely,

PUEBLO OF ACOMA



Randall Vicente
Governor

Attachments as described

Attachment 1

