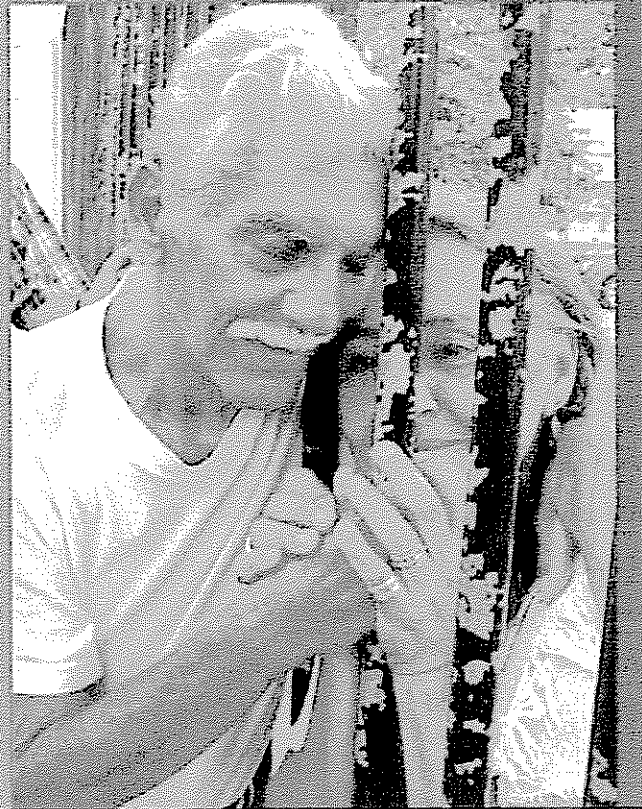


JOINT SHADOW REPORT
SUBMITTED BY
THE UNITED CONFEDERATION OF TAINO PEOPLE
CANY 510 MUNDO
CONSEJO GENERAL DE TAINOS BORICANOS
TO THE
COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION



The United Confederation of Taíno People
Office of International Relations and Regional Coordination
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January 23, 2008

The United Nations Committee on the Elimination of All Forms of Racial Discrimination
Office of the Commissioner for Human Rights
8-14 Avenue de la Paix
1211 Geneva Switzerland 10

Re: Submission of Shadow Report

Tai Kaji - Greetings Chair of CERD:

In anticipation of the CERD Committee deliberation on the latest period report by the United States, the United Confederation of Taíno People (UCTP), the Consejo General de Taínos Boricanos (CGTB) and Caney 5to Mundo (CQM) submit this report to the CERD Chair to call attention to issues facing the Taíno peoples of Boriken (Puerto Rico). The UCTP, CGTB, and CQM call particular attention to the CERD Committee for the need to reform laws, regulations, guidelines, policies and practices at the federal, state and local levels which currently serve to tolerate, support, and promote the discriminatory denial of Taíno Peoples' rights.

We thank you for your attention to our concerns.

Oma'bahari (with respect),

The Constituents of the Following Groups:

- The United Confederation of Taíno People
- Caney 5to Mundo
- Consejo General de Taínos Boricanos

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EXECUTIVE SUMMARY

1. The Taíno People are the Native Peoples of the island of *Boriken*¹ (Puerto Rico) and other Caribbean island nations. They have been subjected to the degradation of the transitions of power between two foreign sovereigns: first as a Spanish colony in the late 15th century and now as a colony or Free Associated State of the United States. The Taíno People have undergone many changes in the exercise of their own sovereignty. They are a distinct people who, despite their inalienable right to self-determination, have been denied the collective rights to exercise their sovereignty as indigenous people on their homeland.

2. After years of grassroots political efforts to demonstrate their historical ties as the indigenous Peoples of the island, the Taíno have never received formal recognition as the Native Peoples of Puerto Rico by the Free Associated State of Puerto Rico or by the United States federal government.² The consistent and ongoing refusal to formally recognize the Taíno as indigenous people is a violation of the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the United Nations Declaration on the Rights of Indigenous Peoples, and other human rights instruments. This violation has resulted in gross

discrimination and denial of Taíno human, social, cultural, and political rights.

3. In anticipation of the CERD Committee deliberation on the period report by the United States, the United Confederation of Taíno People (UCTP), the Consejo General de Taínos Borincanos (CGTB) and Caney 5to Mundo (CQM) submit this report to the CERD Chair and Committee to call attention to the continued colonization of the Taíno peoples, resulting in the violation of their inalienable right to self-determination as indigenous people of *Boriken*. They also call attention to the discriminatory practice of “federal recognition” on the part of the United States, which determines at a federal rather than community level who is and who is not a tribal community. This policy is often used as a pretext to violate and deny the rights of indigenous peoples, including the Taíno, to exercise their self-determination. The UCTP, CGTB, and CQM call attention to the CERD Committee for the need to reform laws, regulations, guidelines, policies and practices at the federal, state and local levels which currently serve to tolerate, support, and promote the disparagement and denial of Taíno Peoples’ rights.

4. The UCTP, CGTB, and CQM work together diligently to engage the both the United States and Puerto Rican governments in a dialogue to resolve these issues and to develop policy at the local, national, and federal level that recognize and respect the rights of the Taíno as the indigenous peoples’ of *Boriken*.

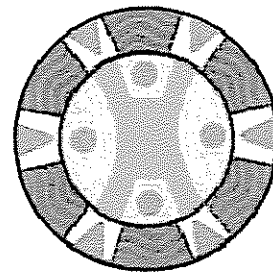
5. The UCTP, CGTB, and CQM urge the readers of this report to call attention to the unique situation of the Taíno, as well as promote and support the recommendations found herein.

¹ What is now known as Puerto Rico, the Taíno call *Boriken*. To refer to Puerto Rico’s agencies, officials and people who do not identify as being indigenous, the organizations submitting this report will use “Puerto Rico” or “Puerto Rican.” The words *Boriken* and *Taino* will be used when referring to the island and the island’s ancient, pre-Columbian indigenous inhabitants and those who identify as Taíno.

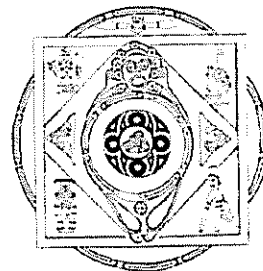
² Grassroots political efforts of the UCTP, CGTB, and CQM to demonstrate their historical ties as the indigenous Peoples of the island have resulted in a series of non-formal recognition via proclamations, citations, etc. by the U.S. Congress, the Governor of Puerto Rico, the Puerto Rican House of Representatives, the Puerto Rican Senate, the U.S. Census Bureau, the New York State Assembly, the City of New York, and the Mayor of Utuado, Puerto Rico, etc.

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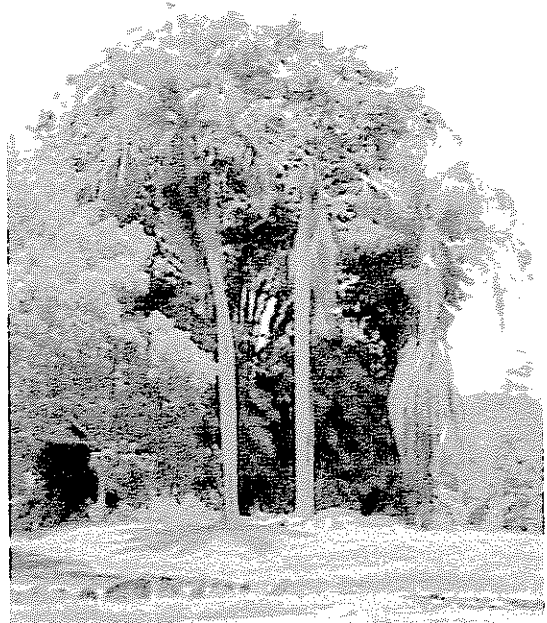
I. Introduction

A. Background on the Taino Peoples

6. The Taino People are Native Peoples of the island of *Boriken* and other Caribbean island nations. The Taino are historically documented to have lived in *Boriken* and throughout the region long before the arrival of any colonial governments. The name Taino translates to the "Good People," a distinction which traditionally bears a great amount of responsibility. A principle obligation for the Taino is to ensure that their culture, spirituality, stories, customs, dances, and songs continue even after over five hundred years of colonial rule - first under Spain and now under the United States. To fulfill their responsibilities and obligations the Taino people need to remember. To remember, they need to maintain their spiritual reciprocal relationship with *Atabey*,³ the Ancestors, and sacred sites. To continue those relationships, they must maintain, respect and protect, the sanctity of ancestral remains, funerary objects, burial sites, sacred and ceremonial sites, and sacred objects from the desecration and destruction by tourists, archaeologists, government agencies, institutions and museums, throughout the Island.

7. As a people, the Taino have inhabited the island of *Boriken* for thousands of years. They have been subjected to the

degradation of the transitions of power between foreign sovereigns: first as a Spanish colony in the late 15th century and now as a Free Associated State or colony of the United States. The Taino have undergone many changes in the exercise of their own sovereignty, but remain a distinct people who, despite their inalienable right to self-determination, have been denied their collective rights as a people to exercise that sovereignty in their homeland, *Boriken*. Such denial has caused intergenerational obstacles, challenges, and threats to the preservation, and transmission of their culture, spirituality, language, traditional knowledge and their very existence as indigenous peoples.



³ *Atabey* refers to the place of the Mother or Mother Earth in the Taino language

B. The *Boriken* Taíno Peoples' Relationship to the Commonwealth of Puerto Rico and to the United States Federal Government

8. The Puerto Rican Government has never recognized the Taíno as the Native Peoples of *Boriken* in a legally binding manner. Even if the Free Associated State of Puerto Rico were to legally recognize the Taíno as Native people, laws to provide the necessary protection of their rights as indigenous peoples and self-determination are non-existent. In addition, while the United States, does have laws for the protection of indigenous peoples and their self-determination, only those who are on the list of "federally recognized" tribes are accorded these rights.⁴ Because the Taíno are not federally recognized, they are not accorded the rights and limited protections of "federally recognized" indigenous peoples of the United States.

9. In contradiction to its own policies, the United States has afforded non-federally recognized indigenous peoples some rights typically afforded to tribes only on the list of "federally recognized" tribes. For example, although Native Hawaiians are not federally recognized, they are included as a class of indigenous peoples whose ancestral remains and funerary objects are to be protected under the Native American Graves Protection and Repatriation Act (NAGPRA). The Taíno, on the other hand, are glaringly left out of this and other legislative measures which provide rights and limited protections to "federally recognized" and even some non-federally recognized indigenous peoples of the United States.

10. Such practices by the United States and the Free Associated State of Puerto Rico have resulted in the discriminatory denial of the Taíno Peoples' right to self-determination, collective rights, religious freedoms, access to sacred sites, the repatriation of ancestral remains and funerary objects, protection of ancestral burial sites, and respectful compassionate treatment of ancestral remains. These practices have made the exercise of the right to free prior informed consent and consultation with agencies on these issues impossible.

11. With respect to United States colonial policies of racial subjugation, the organizations submitting this report expect the United States to tell the CERD Committee "that in 1950 to 1952 the people of Puerto Rico including the Taíno, consented wholesale to the present colonial relationship." The present organizations beg to differ: to say as much is tantamount to saying that a slave owner may validly maintain a regime of involuntary servitude so long as he asks his slave whether s/he wants to adopt the rules for his/her household or whether s/he prefers that the master continue to dictate those domestic rules. Colonialism, like slavery, violates inalienable rights, which may not be validly abrogated or renounced. No individual may consent to slavery; no people may consent to colonialism.

12. The time has come for the United States Congress to find it in the best interest of the nation to send a clear signal to the Supreme Court, to the Puerto Rican and

⁴ United States Fed. Reg. v. 67 no. 134 (July 12, 2002); see also Testimony before the United States Senate Committee on Indian Affairs on Federal Recognition (May 11, 2005)

Taino people, and to the world that Justice John Marshall Harlan was right when he stated in his dissent in *Downes v. Bidwell* “the idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces, -the people inhabiting them to enjoy only such rights as Congress chooses to accord to them, - is wholly inconsistent with the spirit and genius, as well as with the words, of the Constitution.”⁵



13. The organizations submitting this report also expect the United States to tell the CERD Committee that the United Nations Declaration on the Rights of Indigenous Peoples does not apply to it because of its vote against its ratification. In spite of this expected indefensible assertion, the CQM, UCTP, and CGBT urge the CERD Committee to use the United Nations Declaration as the standard by which the United States' compliance with the CERD Convention be assessed. The organizations urge this reading particularly, in light of the fact that United States admitted it recognizes many rights contained in the Declaration⁶ only for those indigenous people they decide to recognize and that the Declaration contains many rights that have become customary international law:

“In any event, only a *jus cogens* norm requires virtual unanimity of all members of the world community. The internal practice of the four opposing states, ... [The United States, Canada, Australia, and New Zealand] ..., as well as their consent to accord a special status and rights to indigenous peoples in principle, makes them part of the world consensus on customary international law”⁷

⁵ 182 U.S. 244, 380 (1901).

⁶ International Indian Treaty Council Consolidated Indigenous Shadow Report to the Committee on the Elimination of Racial Discrimination (April 2007), *on file with UCTP*, pp. 3-5.

⁷ *Id.* at p. 4.

C. Description of Joint Submission Organizations

14. The United Confederation of Taíno People (UCTP), the Consejo General de Taínos Boricanos (CGTB), and The Caney 5to Mundo (CQM) submit this report to the CERD Chair and Committee to call attention to the violation of the Taíno community's inalienable right to self-determination, the continued status of *Boriken* as a colony of the United States, and the discriminatory practice of "federal recognition" by the United States as a pretext for the denial of Taíno rights. They also call attention to the need to reform laws, regulations, guidelines, policies and practices at the federal, state and local levels that support, promote and tolerate the disparagement and discrimination against the Taíno.

15. The UCTP, CGTB, and CQM have worked together diligently to engage the government in a dialogue to resolve the issue of these discriminatory practices and the need to develop policy at the local, national, and federal level that respects the rights of Taíno as indigenous people.

16. The UCTP, CGTB, and CQM have worked to end the desecration and destruction of Taíno sacred sites, ancestral burial sites, and the repatriation and return of ancestral remains, sacred and funerary objects. They have worked at the United Nations Permanent Forum on Indigenous Issues, the World Summit on the Information Society, the Organization of American States Draft Declaration on the rights of Indigenous Peoples, the Convention on Biological Diversity, and other international forums for the last seventeen years to ensure that the voice of the Taíno people is heard and to their inalienable right to self determination. Moreover, they have fought to exercise their right to participate and be consulted on international policy that impacts their daily lives, and to inform the international community about the discrimination they face on a daily basis because they unwaveringly affirm their indigenous identity, culture, spirituality and heritage

D. Summary of Obstacles for Taíno People

17. The perpetuation of *Boriken* (Puerto Rico) as a colony from the time of its seizure by the United States (US) in 1898 as war booty in the Spanish American War up to the present day is in direct violation of the inalienable right to self determination and US Constitution.⁸ Further, the underpinning foundation of colonialism is rooted in the separation and the disparagement of peoples based on race and nationality. It is at the

core of the discriminatory United States and Puerto Rico policies to which the Taíno peoples of *Boriken* are subjected on a daily basis.

18. Under this colonial regime, several grave concerns have become salient to the Taíno due to a series of recent and recurring events. Taíno People have experienced a heightened process of denial of ceremonial access to sacred sites as well as repression of

⁸ Downes at note 5.

ceremonial acts. The governments have used force as a mechanism to instill fear within the Taíno community as well as deny the right to self-determination. Efforts to petition the government for redress of freedoms such as the freedom of association, religion and the right to equality under the law have consistently been discouraged.

19. For example, in July 2005, a peaceful protest at a sacred site called Caguana Ceremonial Center was met with the violent arrests of Elders and community members by Puerto Rican law enforcement agencies. This peaceful occupation of Caguana Ceremonial Center is currently known as “El Grito Indígena Taíno de Caguana”. The efforts of the UCTP, CGTB, and CQM to engage the government of Puerto Rico were met by disparagement of Elders and community members, and retaliation. Over two years later, the Taíno are still denied their human, social, cultural, and political rights to practice their ceremonies in the places sacred to them.

20. The UCTP, CGTB, and CQM have pressing and grave concerns about the frequent discoveries and desecration of sacred sites, ancestral burial grounds, and disinterment of ancestral remains around the island due to unfettered construction and development including so-called “flood control and dam projects.” In one recent incident, the United States Army Corps of Engineers hired a U.S.-based archaeology firm to perform work on a major Ceremonial, Burial and Village site unearthed during a flood control and dam project in the town of Ponce, Puerto Rico. These United States entities failed to follow the dictates of the National Historic Preservation Act⁹ with respect to notice and consultation with the Taíno, who are

⁹ Pub. L. No. 89-665, § 1, 80 Stat. 915 (1966) (codified as amended at 16 U.S.C. §§ 470a to 470w-6 (1988)).

arguably “interested parties” as defined by the Act. In addition, the United States acted in contradiction to its own guidelines on the treatment of Burial Sites, Human Remains and Funerary Objects¹⁰ by taking approximately sixty-six Taíno ancestors, along with an untold number of sacred and funerary objects to a laboratory in Atlanta, Georgia to be tested and studied without any consultation with Taíno community members.

21. Continued desecration and disinterment of Taíno ancestors has the spiritual consequence of interrupting their journey, thus interrupting the cycles of birth, life, transformation, and rebirth. There is an old saying that many Taíno grew up with that perhaps will drive this point home to those who can not capture the deeper spiritual consequences of these acts, “Me tienen que desenterrar, para quitarme la vida” (They must disinter me to take my life). Disinterment of so many untold numbers of ancestral remains is tantamount to genocide.

22. Both the United States and Puerto Rican governments through the State Office of Historic Preservation, the Army Corp of Engineers, the Department of Natural Resources, and the Institute of Puerto Rican Culture have denied Taíno People the right to culturally appropriate treatment of ancestral remains and associated sacred funerary objects, burials, sacred objects and requests for the repatriation of ancestral remains for their immediate reburial with the appropriate spiritual protocol.

23. Moreover, no US or PR government agencies or institutions have ever formally

¹⁰ National Historic Advisory Council Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects, *available at* www.achp.gov/docs/hrpolicy0207.pdf

consulted or obtained the free prior informed consent from the Taíno leadership of the UCTP, CGTB, and CQM or any other community members when working in areas relating to Taíno cultural resources or spaces.

24. In fact, in response to a recent letter sent by the UCTP to the archeological excavation company New South Associates, a company representative stated by e-mail, "...Please be aware that I personally was recommending outreach to the Taíno organizations from the beginning. Unfortunately, my opinion as a consultant was over-ridden by the Puerto Rican State Historic Preservation Office and the US Army Corps of Engineers. The public outreach compliance with Section 106 [of the National Historic Preservation Act] was not the responsibility of New South Associates; it was all handled by the Corps of Engineers."¹¹ The representative from New South Associates went on to say,

Under all federal work, the site information is proprietary information of the federal agency. They can only disseminate and discuss their findings with permission from the Corps. Likewise, any participation in a meeting with you and your organization would have to be at the instruction of the Corp of Engineers. ... I recognize the importance of this site to the Taíno and all people of the Caribbean. I apologize that I have had to turn away two local Taíno groups, but that decision was not mine to make. ... the Corps implemented a strict visitation policy. All visits must be pre-approved by the Corps....

25. In sum, the Taíno communities of Boriken have several obstacles before them as they work to gain access to their sacred sites, to protect their ancestors' remains, and to earn consultative status as indigenous peoples when government entities are handling items and areas of interest to the Taíno peoples.



¹¹ Email correspondence between United Confederation of Taíno People and New South Associates: New South Associates Response (11/02/07)

II. Issue One: Access to Sacred and Ceremonial Sites

A. Description of the Lack of Access to Sacred and Ceremonial Sites

26. The Caguana Ceremonial Center¹² in Utuado, Puerto Rico is one of many sacred sites to the Taíno people. It is documented as the largest and most complex Ceremonial Sites in the West Indies. Caguana consists of a large central Batey (“plaza”), ceremonial dance area, and ten rectangular earth-and-stone-lined Batey (“ball courts” and “plazas”) and one circular Batey (“plaza”).

27. According to Taíno tradition, competitions held on these ancient Batey (“courts”) have many social, recreational, and, spiritual functions. They were used to settle conflicts, and, prevent warfare between autonomous Taíno communities. The recent revival of the ceremonial Batu, (“ball games”) is an opportunity for young Taíno warriors, both male and female, to demonstrate their skill and valor, and gain the respect and esteem of the community.

28. Caguana is not merely a place or a place-name in the Taíno language. “Caguana” is one of the words for the spirit of all that brings life. Caguana Ceremonial Center is the embodiment of a divine energy/being who brings forth, renews, and sustains life. To the Taíno, the *Cemi* and petroglyphs carved in the stones that border the *Batey* awaken stories. The *Cemi* are living beings and spirits who convey

creation, voyage, hero, and cosmological stories, and, ceremonial, agricultural, fishing and life cycles. The arrangements and alignments of the *Batey* convey knowledge about the phases of the moon, sun, stars, and constellations that are vital to the traditional social, economic, ceremonial, recreational, and spiritual life of the people. The mountain regions of the Island, where the two main *bateys* are located, are the sacred places of birth and re-birth after the Taíno emerged from hiding following the end of the Spanish slavery system. Consequently, Caguana Ceremonial Center and all sacred sites, burial grounds, and village sites must be safeguarded for future generations to preserve and promulgate their people’s existence.

29. However, while the Boriken Taíno know Caguana as the embodiment of a divine energy/being who brings forth, renews, and sustains life, the Puerto Rican government, agencies, and archaeologists view Caguana Ceremonial Center from only the scientific and economic development perspectives. Taíno understandings of the importance of the site are not only ignored but also openly mocked with disdain.

30. The Institute of Puerto Rican Culture (IPRC) runs Caguana Ceremonial Center as an archaeological tourist park and it is registered as a Historic Landmark under the authority of the United States National Park Service (NPS). However, being classified a Historic Landmark has not protected this Taíno Sacred Site. Maintenance practices and neglect threaten the integrity of the

¹² Some of the information on Caguana Ceremonial Center is taken from a report submitted to the Sacred Land Film Project co-authored by DeAnna M. Sarobei Rivera, R. Mucaro Borrero, and Grandmother, Naniki Reyes Ocasio with additional editing by Ashley Tindall, available at http://www.sacredland.org/world_sites_pages/Caguana.htm 1.

stones. Weed trimmers and tractors hurl pebbles and debris at the fragile, ancient stones. Guards, tour guides, and tourists freely jump between the stones threatening to topple them to the ground.

31. The culturally inappropriate treatment of Caguana as an archaeological recreation park, instead of a sacred, living, vibrant, and vital Ceremonial Center, continue to degrade the physical, spiritual, and ceremonial integrity of this sacred site. It comes as no surprise to the Taíno that, according to the NPS, “stones bearing petroglyphs have been worn down and decayed to the point that these prehistoric works of art may be irretrievably lost.”¹³ To the Taíno People, petroglyphs are not works of art, but are living beings and spirits that are dying slowly under the gross neglect and inappropriate treatment.

32. Culturally inappropriate “improvements” like concrete buildings intrude upon Sacred Spaces. A concrete and wood walkway obstructs the natural earth path that guides culture-bearers to the spiritually appropriate direction from which to enter this Sacred Site. Moreover, iron fencing disconnects and imprisons the Batey and Tree of Life, spiritually and physically, from the bordering river, surrounding sacred spaces, and Cemi Mountain. This separation has had a devastating effect on the living beings, ancestors, and spirits which dwell in these Sacred Spaces and the Sacred Energies within that flow to the four directions, above and below. For the Taíno, *Cemi* Mountain, the surrounding Sacred Spaces, the Natural World, and river are all the Sacred Ceremonial Grounds of Caguana and are not delineable.

¹³ United States National Historic Landmark Program, Caguana Site, available at <http://tps.cr.nps.gov/nhl/detail.cfm?ResourceId=2134&ResourceType=Site>),

33. Yet, part of the NPS mission is “Citizen Involvement: Providing opportunities for citizens to participate in the decisions and actions of the National Park Service.”¹⁴ The NPS, and thereby the Institute of Puerto Rican culture, has failed dramatically to meet this aspect of the mission because they refuse to formally recognize or even work with the Taíno as indigenous people and to note their unique abilities to caretake, preserve, and protect sacred sites.

34. In response to each of the challenges mentioned throughout this document, the organizations submitting this report made efforts to engage the U.S. and P.R. governments in a dialogue to resolve the persistent violations of Taíno rights. Governor Anibal Acevedo Vila of Puerto Rico, local courts, local and federal agencies and institutions ignored their efforts.¹⁵ Having no other recourse to call attention to this situation, the Elders Council in consultation with local leaders decided it was time to take action.

35. On July 25, 2005, an annual holiday marking the adoption of the Puerto Rican Constitution, several Taíno Elders and community members peacefully entered the Caguana Ceremonial Center, publicly declared a *Reclamo Sagrado* (Sacred Reclamation), with the intent of conducting multi-day, overnight ceremonies. The *Reclamo Sagrado* called attention to the following issues: the violation of Taíno constitutional, civil, human, treaty, and international rights, the ongoing desecration and destruction of Sacred Sites, the desecration of Ancestral Burial Sites and Ancestral Remains, and the need for

¹⁴ United States National Park Service, Mission and Legacy, available at <http://www.nps.gov/legacy/mission.html>

¹⁵ Appendix I: Letters of Taíno efforts to engage the government and agencies in a dialogue about their rights.

repatriation and return of ancestral remains, funerary objects, and, the return of sacred objects.¹⁶

36. Although the *Reclamo Sagrado* at Caguana generated substantial local and international media attention and support, the U.S. and P.R. governments were not held accountable for the repressive actions they took under the guise of administrative and legal processes. For example, after 17-days in the ceremonial park the government executed a special operative law enforcement unit used only in cases of violent, criminal, escaped and dangerous fugitives. A unit of twenty-seven heavily armed members of four Puerto Rican Special Arrest Units, including Special Weapons and Tactics (SWAT) forces, were dispatched to arrest three community members peacefully performing ceremony at Caguana Ceremonial Center.

37. Around twelve agents stood guard at the entrance of the Ceremonial Center with long-range rifles and fifteen armed agents in full protective gear. It is important to note that the special agents were not wearing identification badges and they did not show arrest warrants when asked to produce them. The agents refused to let the protestors call attorneys. Although the community members did not resist arrest, the officers violently handcuffed one elder and searched and shackled two other community members. Later, two of the Taíno community members were subjected to a strip search at the courthouse. The agents recklessly endangered the security and life of the three community members. One elder, who was on the seventeenth day of a hunger strike, was made to walk against the courts

recommendation that she be provided with a stretcher or wheel chair.

38. Although the charges were eventually dropped, the government requested a permanent injunction barring the protestors, members of their organizations, their attorneys, agents, and supporters from entering the Caguana Ceremonial grounds after official visiting hours. The defense argued such an injunction was unconstitutional, but the Court granted the injunction never considering or reaching the constitutional issues.

39. The Taíno have attempted to work with the governments of the United States and Puerto Rico, even before the *Reclamo Sagrado*, however, they have been unresponsive to the denial of Taíno international human rights and efforts to engage them in a dialogue to resolve these issues. To bring attention to the situation at Caguana, the Mayor of Utuado, the municipality in which Caguana Ceremonial Center is located, has issued two proclamations recognizing the diligent efforts of the Taíno leadership and proclaimed the peaceful protest “El Grito Indígena Taíno de Caguana” (the Taíno Indigenous Uprising of Caguana).¹⁷ After persistent efforts to build on that momentum and gain the ear of the Puerto Rican government, the Taíno continue to be greeted with silence.

40. Although, the UCTP and CQM have obtained resolutions in recognition of the work and contributions of the Taíno from entities such as the state of New York, the United States Census Bureau, the United States Congressional Record, and the Senate, House of Representatives and Governor of Puerto Rico, formal recognition

¹⁶ Presentation: International Indian Treaty Council - Update on Caguana; YACHAY WASI: Update on Caguana and Sacred Sites, 2006 Session of the Permanent Forum on Indigenous Issues on Sacred Sites, available at <http://yachaywasi-ngo.org/SC06report.htm>

¹⁷ Proclamation available at www.uctp.org/Proclama.jpg

has not been forthcoming.¹⁸ Representatives of the UCTP, CGTB, and CQM present their community concerns at various international forums and now come before the CERD Committee trusting that their initiative will serve to realize the support necessary to save and protect what is left of the Taíno community's sacred sites and exercise their rights to self-determination as indigenous people.

41. The UCTP, CGTB, and CQM emphasize and call the attention of the CERD Committee to the continued mass desecration, destruction, and disinterment of ancestral human remains, the pillaging of sacred sites, denial of access to sacred sites and places the significance that cannot be duplicated anywhere else on earth. This state of affairs represents a threat to the health of their people, their environment, the practice of their spirituality and the exercise of their inalienable right to self-determination upon which the mental, spiritual, physical, and social health of their communities is based. These acts and omissions are gross violations of Taíno human, social, cultural, and political rights.



¹⁸ Resolutions from the State of New York , and Certificate of Appreciation from the US Census Bureau are available at uctp.org/index#2; Resolution Senate of Puerto Rico is available at uctp.org/2a.gif

B. Applicable Articles of the ICERD and Other International Instruments

1. CERD Treaty Provisions a. Article 5(b)

42. Under Article 5(b) of the ICERD, everyone has “the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution,” without distinction as to race, color, or national or ethnic origin.

43. In outright violation of this fundamental article to the Convention, Puerto Rican law enforcement agencies brought bodily harm to the Taíno Elders and community members while they peacefully performed religious ceremony. They inflicted bodily harm knowingly and intentionally to disrupt the peaceful civil exercise of their rights to petition the government for redress, equality under the laws, free speech, assembly, and freedom of religion. Law enforcement acted on the Elders specifically because they are the indigenous peoples of the island. Taíno community members were maligned in the press,¹⁹ precisely because of their race and ethnic affiliation. This may be the most egregious and well documented of the violations.

b. Article 5(d)(vii)

44. Under this article, everyone has “[t]he right to freedom of thought, conscience and religion,” without distinction as to race, color, or national or ethnic origin.

45. For the *Boriken* Taíno People, Caguana is a place of ceremony, of spiritual teachings, and religious responsibility. Not only does the U.S. National Park Service and the Institute of Puerto Rican Culture refuse to allow Taíno community members into the Ceremonial Center for purposes of contemporary multi-day ceremonies, but even when they go to conduct ceremony during regular visiting hours they are inhibited in their practice by interruptions and the unwelcome watchful eyes of park officials and security guards. The Puerto Rican and United States government sanctions these acts of discrimination by refusing to recognize Taíno as Native people and therefore feel free to suppress any activities that would implicitly acknowledge their continuance. The Taíno face discrimination based on their identity as indigenous, and they are denied the right to freedom of thought, conscience, religion, and equality under the law.

c. Article 5(d)(ix)

46. Article 5(d)(ix) states that everyone has “[t]he right to freedom of peaceful assembly and association,” without distinction as to race, color, or national or ethnic origin.

47. The violent response by Puerto Rican law enforcement against Taíno Elders during their peaceful ceremonies at the Caguana Ceremonial Park demonstrate an active effort on the part of the Commonwealth to break up any peaceful assembly by the Taíno, expressly because they are Taíno. While tourists freely roam Caguana to take pictures and walk the

¹⁹ Appendix II: Newspaper Articles, Dra. Tio, Director of the Institute of Puerto Rican Culture, Reporter Myra Montero

grounds, the National Park Service personnel and guards steadfastly monitor the actions of the Taíno even during regular hours. They obstruct Taíno ceremonial practices, peaceful assembly and association even under entirely lawful circumstances.

2. CERD General Recommendation XXIII

48. General Recommendation XXIII Article 4(e), “calls in particular upon States parties to: ... (e) Ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs and to preserve and to practice their languages.”

49. Every day, the Taíno are denied access to the spaces vital to practicing and revitalizing their cultural traditions. The Caguana Ceremonial Center in Utuado, just as all sacred sites, holds many of the teachings necessary to continue as a people. The songs, prayers, dances, and peace necessary to maintain, transmit and perform Taíno traditional ceremonies and spiritual practices and to receive teachings were not intended to occur on an 8:00-4:00 pm schedule. Access to sacred spaces ceremonially means access to them at times other than that schedule. Being denied access threatens their way of life and interferes with their ability to continue to fulfill their collective and spiritual responsibilities, revitalize their cultural traditions and customs. It threatens the stability and health of present and future generations of the *Boriken* Taíno people, as well as right to self determination, upon which the mental, spiritual, physical and social health of the community is based.

50. The ICERD Committee’s General Recommendation speaks to the need to address, avoid, and confront these types of

harms. Consequently, the Taíno assert that the Puerto Rican and the U.S. Governments, officials, agencies, and institutions must be urged to follow the ICERD’s General Recommendation XXIII Article 4 provisions.

3. Declaration on the Rights of Indigenous Peoples

51. Article 11 of the Declaration on the Rights of Indigenous Peoples asserts that indigenous peoples “have the right to practice and revitalize their cultural traditions and customs,” which “includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites.” This article highlights the importance of such sites in maintaining the very things that keeps indigenous peoples who they are: their cultural contexts.

52. Basic to the exercise of the fundamental right to practice and revitalize indigenous culture, traditions and customs is access to sacred sites, precisely to maintain and protect past present and future manifestations of indigenous culture. However, because the United States and Puerto Rican governments refuse to recognize the Taíno as indigenous peoples, they use the pretext of non-recognition to turn down and ignore their efforts to establish a dialogue to resolve these issues and deny the community’s right to practice and revitalize their cultural traditions and customs.

53. With slightly more specificity, article 12 asserts that indigenous peoples have the “right to maintain, protect, and have access in privacy to their religious and cultural sites.” As stated above, the fundamental right to access to sacred sites vital to the practice and revitalization of indigenous

culture is denied to the Taíno on an on-going basis. Taíno People are denied ceremonial access to sacred sites and even those who enter to pray after paying an admission fee are hardly left alone in privacy to sing the songs, listen to the stories, or pray. Instead they are monitored by security and law enforcement personnel as if criminals in their own land.

4. Applicable Articles of the 1898 Treaty of Paris

54. Article X of the Treaty of Paris between Spain and the U.S. at the end of the Spanish-American War states, “[t]he Inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.”

55. The United States has not taken any measures to secure the free exercise of Taíno religion and sacred spiritual expression, but instead, the United States has flagrantly violated the Treaty of Paris. As stated throughout this report, the U.S. has denied the Taíno the right to freedom of religion by actively denying Taíno People access to ceremonial and sacred sites. While they do so under the pretext that the Taíno are not a federally recognized indigenous people who fall under the purview of those protections, the U.S. nonetheless has failed to fulfill its obligation to secure the free exercise of their religion under the Treaty of Paris alone, without reference to any outside legislation. The Treaty of Paris is clear, “the inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion,” which includes the Taíno Peoples.

5. Customary International Law as Applied to Indigenous Peoples’ Sacred Sites

56. In light of the growing body of international customary law relating to the treatment of indigenous peoples, the United States has proven itself to be far behind most countries even with more overtly oppressive regimes. The cases of the Awas Tingni of Nicaragua²⁰ and the Maya of Belize²¹ demonstrate the burgeoning norms developing in relation to the respectful treatment of indigenous peoples as distinct because of their interest in remaining distinct as cultures and indeed peoples. In each of these cases, the lands, being harmed with permission of the State, were sacred to the indigenous peoples involved. In each case, the State was reluctant to recognize the indigenous peoples’ rights to practice their customs and traditions because of so-called State-progress and economic development. In both cases, however, the States have been called upon to recognize the unique rights of indigenous peoples to access, practice, and participate in their cultures and to cooperate with the indigenous peoples in coming to a negotiated resolution to the issue at hand.

57. The United States and Puerto Rico are far from this level of accommodation and instead they continue to refuse to acknowledge the Taíno as indigenous people in violation of growing customary law, which urges otherwise.

58. The International Convention for the Safeguarding of the Intangible Cultural Heritage recognizes “that communities, in particular indigenous communities ... play an important role in the production,

²⁰ The Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of Aug. 31, 2001, Inter-Am. Ct. H.R. (Ser. C) No. 79 (2001)

²¹ The Maya Indigenous Communities of the Toledo District of Belize, Report of Oct. 12, 2004, Inter-Am. Comm. H.R. (Rep. No. 40/04) (2004).

safeguarding, maintenance and recreation of the intangible cultural heritage.” The United States and Puerto Rico have consistently refused to recognize the Taíno Peoples capacity as viable partners in the administration and management of Sacred Sites. They have openly refused to include

the Taíno on the list of organizations or persons to contact, notify or consult with in decisions that impact Taíno tangible and intangible cultural heritage. These two sovereigns have failed to meet this standard of treatment with respect to indigenous Taíno People.

C. Applicable U.S. Federal Laws

1. The Archaeological Resources Protection Act (ARPA)

59. ARPA provides a process for protecting material remains of human life or activities that are at least 100 years of age and of archaeological interest. The items at the Caguana Ceremonial Center and all sacred sites in Boriken are well within the purview of this Act. While the focus of the Act is on a permitting process intended to avoid looting of archaeological resources, there is little evidence that the word or spirit of this law is being applied specifically to Caguana given the deterioration of the condition of the items there, nor is it applied to other existing Sacred Sites, or newly unearthed Sacred Sites.

2. The National Historic Preservation Act (NHPA)

60. The NHPA provides a process for protecting historic and prehistoric sites. One portion of this process includes registering sites as Historic Landmarks to the United States National Historic Register.

61. Caguana Ceremonial Center and four other sacred sites in *Boriken* are currently National Historic Landmark Sites under the NHPA, but the spirit of the law has gone unmet, as evidenced by the deplorable conditions, poor maintenance, neglect and

culturally inappropriate caretaking of Caguana. This failure to protect Taíno Sacred Sites is evidenced by the degradation and, destruction of other sites such as Yacimiento de Cagüitas, CS-2 in the town of Caguas, Ojo de Agua in Arecibo, and the recent Jacanas PO 29 site in the town of Ponce.

62. The deterioration of the Caguana Ceremonial Center points to a patent failure on the part of the United States National Park Service (NPS), which is charged with the implementation of the NHPA. The deteriorated state of the cultural items specifically at Caguana also points to the failure of the Institute of Puerto Rican Culture, to which the Puerto Rican government and NPS have delegated their responsibility for its care. Yet, the Taíno community’s attempts to call attention to the issue and find solutions have been mocked, ignored, and disparaged.

3. Customary Law of the United States toward Indigenous Peoples

63. Over the past forty years, the United States has taken distinct strides to work in conjunction and cooperation with the indigenous peoples it considers “Native American” or “Indian” under the law. One of the most relevant of these is legislative effort known as the American Indian

Religions Freedom Act (ARFA). The ARFA requires federal agencies to evaluate their policies and procedures, in consultation with native traditional religious leaders, in order to determine appropriate changes necessary to protect and preserve native religious cultural rights and practices. Years later, the executive branch made note of the specific importance of Sacred Sites for indigenous peoples of the United States and issued Executive Order 13007, which calls for federal agencies to accommodate access to Sacred Sites on federal lands.

64. While it is well documented historically that the Taíno were the first indigenous peoples of the western hemisphere to be called “Indians,” the Taíno

do not fall within the current United States’ definition of “Indian” and therefore these laws do not apply directly to the Taíno. However, the custom and practice of the United States is to assert its trust responsibility to protect these religious rights for the indigenous peoples living under its authority through laws such as the ones noted above. The U.S. has even extended these protections to indigenous peoples who are not federally recognized such as the Native Hawaiian community. Therefore, the U.S. refusal to extend these customary protections to the Taíno has resulted in the Taíno being treated differently than other indigenous peoples simply because they are Taíno.

D. The Ongoing Reality and Situation of The Taíno Native Peoples of *Boriken*

65. The failure of the US and PR government to recognize the Taíno Native Peoples of Borike (Puerto Rico), results in denial of access to Sacred Sites and traditional spiritual practices. As long as this state of affairs persists, the right to equality under the law, the freedom of religion and civil rights of the Taíno Native Peoples of *Boriken* (Puerto Rico) will continue to be violated by existing US and PR policies and practices that condone and support discriminatory laws, regulations, policies and intolerance by mainstream society.

66. The United States and Puerto Rico government, the State Historic Preservation Office, The Army Corp of Engineers, the Institute of Puerto Rican Culture, the National Parks Service, and other government agencies continue to deny Taíno Peoples ceremonial access to their sacred sites.

67. To the *Boriken* Taíno, Caguana is a place of ceremony, of spiritual teachings, and sacred responsibility. Not only does the U.S. National Park Service refuse to allow Taíno community members into the Ceremonial Center for purposes of contemporary multi-day ceremonies, but also even when they go to Caguana to conduct ceremony during regular visiting hours, they are monitored, watched, and ultimately humiliated in the process of enacting their religious ceremonies.

68. Every day, Taíno People are being denied access to sacred spaces vital to practicing, and promoting ancient spiritual practices and revitalizing cultural traditions. Caguana holds many of the teaching necessary to continue as a people, and the songs, dances, and Natural World necessary to receive those teachings were not intended to occur on a 8:00 – 4:00 pm schedule. Access to these spaces ceremonially means

access to them at times other than that schedule. Without the ability to continue to honor spiritual ceremonial traditions, the Taíno People are not able to revitalize their culture, songs, stories, and ways of life to pass on to present and future generations. The ICERD Committee's General Recommendation speaks to the need to address, avoid, and confront these types of harms.

69. More recently, on July 25, 2007 several community members were told they could not enter the Caguana Ceremonial Grounds without paying a fee. One of the elders from the original peaceful protest refused to pay because she had never paid before. Advising the personnel that she was there to pray, she was told that she had to request permission to have an activity at the Ceremonial Center. Again, she stated that she was there to pray not to conduct an activity, but was ultimately denied entrance. These discriminatory acts are a consequence of the Puerto Rican governments refusal to

recognize the Taíno as the Native Peoples of Borikén.

70. Acting at the behest of the Puerto Rican Institute of Culture and the U.S. National Park Service, Caguana personnel have been instructed to charge, monitor, and limit the ceremonial and spiritual practices of the Taíno by forbidding them to sing, dance or play instruments as part of their ceremonies. They actively disrupt, harass, and break up any peaceful assembly on the part of the Taíno, expressly because they are Taíno. The National Park Service personnel who steadfastly monitor the actions of the Taíno even when they visit during regular visiting hours obstruct and interfere with their right to peaceful assembly, association and spiritual practices at the Caguana, even under entirely lawful circumstances.

71. The Taíno seek equal treatment as indigenous peoples whose origins are rooted in the lands and territories under United States' colonial control.

E. The Governments' Implementation Record

72. Currently, no agency will allow the Taíno ceremonial access to Caguana or other Sacred Sites, which on many occasions would entail overnight stays and community feasts on the grounds. While there are laws in the United States designed to protect Native American, Hawaiian and Alaska Native cultural properties, such as the Native American Graves Protection and Repatriation Act (NAGPRA) and sections of the National Historic Preservation Act (NHPA), the Native Peoples of the Caribbean Region are glaringly omitted from these protections.

73. These protections do not extend to the Taíno Native People of Borikén, as they are not a federally recognized tribal community. Even under the NHPA non-tribal-specific provisions, the authorities refuse to consult with Taíno non-profit organizations on any of the consultation guidelines mandated by the law. Therefore, the governments involved have no implementation record to speak of with regard to upholding the self-determination of the Taíno peoples.

III. Issue Two: Repatriation and Protection of Ancestral Human Remains

A. "PO-29" Archaeological Site in Ponce Puerto Rico and the Removal of Taíno Ancestral Human Remains

74. As noted earlier in this report, in October of 2007 the United States Army Corps of Engineers unearthed an archaeological site in Ponce, Puerto Rico that quickly became known as the largest ancient ball park and burial site in the Caribbean (PO29). Without complying with the consultation provisions of the United States National Historic Preservation Act, and without prior or advanced notice to Taíno or local community members, the US Army Corp of Engineers hired New South Associates, a US archaeology firm to do the excavations at the Ponce Site.

75. The U.S. Army Corp of Engineers authorized New South Associates to desecrate ancestral burial sites, disinter sixty-six ancestral remains with sacred and funerary objects, and send them to laboratories in Atlanta, Georgia to be tested. Representatives of the UCTP and CQM were informed that it would be two years before the firm would be finished testing and studying their Ancestral remains. The three non-profit Taíno organizations submitting this report have written letters to the Army Corps of Engineers, to the Institute of Culture in Puerto Rico, to the Advisory Council on Historic Preservation, and the Puerto Rico Department of Natural Resources to request consultative status and a meeting but not one of the agencies has formally responded.

76. As also mentioned earlier in this report, the U.S. Army Corps of Engineers is not new to excavation work in Puerto Rico. Both New South Associates and the Army Corp have conducted excavation work at another Taíno site in the town of Arecibo, also unearthed during a flood control and dam project. At that site, now referred to as Ojo de Agua, before the public or even the Puerto Rican Institute of Culture became aware that the site had been unearthed, approximately 40 ancestral remains and sacred funerary objects had been wrapped in plastic, packed into a container, and sent to New South labs to be studied.²²

77. To date, as far as the UCTP, CGTB, and CQM are aware, the 40 indigenous human remains disinterred from Arecibo are still in the New South Laboratory in Georgia. In addition, no entity has offered verifiable follow-up information about when or to whom the Taíno ancestral remains will be returned. Taíno ancestral remains with sacred and funerary objects have effectively been stolen from their resting places with no paper trail of what will happen to them or any way to determine whether there has been compliance with several federal laws such as the Archaeological Resources Protection Act, the National Environmental Protection Act, the National Historic

²² Rick Kearns. "Federal Grave Robbing of Taíno Remains," *Indian Country Today* (Nov. 23, 2007), available at <http://www.indiancountry.com/content.cfm?id=109641616>

Preservation Act or Guidelines on the Treatment of Burial Sites and Human Remains.

78. The excavation at the burial sites at PO29 and the Ojo de Agua site in Arecibo, Puerto Rico were carried out without any agreement or memorandum of understanding with local authorities. The UCTP, CGTB, and CQM requested an investigation in the case of Arecibo and will be requesting one in the case of Ponce. However, given the experience with Arecibo, they are not hopeful with respect to outcome, but will continue to request investigations into these situations.

79. Currently there are hundreds of ancestral remains, funerary, and sacred objects being kept in less than adequate conditions. Several decades ago, in a rare

instance, members of CQM were asked by the Ponce Archeological Society to do ceremony at the Tibes Ceremonial Center for ancestral human remains. When the Taíno representatives arrived, they were taken to a janitor's building where the staff people proceeded to open a closet and in it, next to caustic cleaning supplies, mops, brooms, pails, were the Taíno ancestral remains in boxes. The Taíno representatives were all stunned and shocked by this confirmation of the deplorable way in which the ancestors were being treated. The staff members assured the Taíno community members that they were making a more adequate "storage area" to house their ancestral remains. However, for the UCTP, CGTB, and CQM, the only culturally appropriate treatment of ancestral remains and associated funerary objects is reburial with the appropriate spiritual protocols.

B. Applicable Articles of the ICERD and Other International Instruments

1. CERD Treaty Provisions

80. Article 5(a) of the CERD notes that everyone has the right, without discrimination, "to equal treatment before the tribunals and all other organs administering justice."

81. The Taíno have not been afforded the same right to enter into a dialogue in defense of their Ancestors as other similarly situated indigenous peoples across the United States. Despite their efforts to engage in such a dialogue, the United States and Puerto Rican authorities have ignored their requests and letters.

82. As a result, the Taíno are treated differently as indigenous peoples specifically because they lack the title of

'federally recognized tribe.' Their cultural resources are constantly destroyed, desecrated, taken and placed at risk by entities of the Puerto Rican and United States federal government. Both sovereigns, the United States and the Commonwealth of Puerto Rico, have made the implementation of justice – the kind available to other indigenous peoples – unavailable to the Taíno simply because neither sovereign has recognized them as the Native Peoples of Borikén.

2. CERD General Recommendation XXIII

83. In CERD General Recommendation XXIII article 4(b), the Committee notes that States should "[e]nsure that members of indigenous peoples are free and equal in

dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity.”

84. As stated above, the Taíno are ignored and unrecognized by the United States and Puerto Rico. There is no question of historical fact that the Taíno are indigenous peoples of the Caribbean, including Puerto Rico. Despite this undisputed fact, the United States and the Commonwealth of Puerto Rico refuse to formally recognize them as Native Peoples of the island. Consequently, the two sovereigns have denied the Taíno right to be free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity.

85. The United States Congress assumed a plenary authority over the entire island in the late 19th century and early twentieth century in a series of cases called the *Insular Cases*. These cases conclude that the United States holds plenary authority over all of the island inhabitants, which also includes plenary’s counterpart, a trust responsibility. The two doctrines work hand-in-hand to assert authority over a people (ie: plenary authority) and simultaneously to provide protections to a people (ie: the trust responsibility). The United States, however, has failed in its mandated trust responsibility to the Taíno as citizens of both the U.S. and Puerto Rico by failing to apply its own laws and guidelines on the treatment of cultural properties to the Taíno cultural properties.

86. Each sovereign has treated the Taíno differently, with discriminatory effect, precisely because they are Taíno. In doing so, the United States is in violation of the very basic principles of the CERD as embodied in General Recommendation XXIII, article 4(b).

87. Considering the obstacles the Taíno face in exercising basic human rights, the UCTP, CGTB, and the CQM submit that the day has come for the United States to finally solve the contradiction existing for too long between colonial rule and fully democratic government in Puerto Rico, in particular its relationship to the Taíno as the indigenous peoples of the island. Even Justice White, the justice who articulated the doctrine of territorial incorporation, spoke in his opinion in *Downes v. Bidwell* of “obligations of honor and good faith which ... sacredly bind the United States to terminate the dominion and control, when, in its political discretion, the situation is ripe to enable it to do so.”²³ Faced with the prospect that his theory could be used to hold an unincorporated territory indefinitely, he stated:

[T]he presumption necessarily must be that [the legislative] department, which within its lawful sphere is but the expression of the political conscience of the people of the United States, will be faithful to its duty under the Constitution, and, therefore, when the unfitness of a particular territory for incorporation is demonstrated the occupation will terminate....”²⁴

3. Declaration on the Rights of Indigenous Peoples

88. Article 12 of the Declaration on the Rights of Indigenous Peoples affirms the importance of indigenous peoples’ right to the repatriation of their ancestors. The second paragraph of the article asserts, “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

²³ *Downes* at note 5, 343.

²⁴ *Id.* at 344

developed in conjunction with indigenous peoples concerned.”

89. No state, federal or local entity has responded to repeated requests that ancestral remains, sacred, and funerary objects be repatriated and returned to the Taíno People; nor have they allowed unobstructed access to ceremonial objects or ancestral remains in their possession. There is no fair, transparent and effective mechanisms developed in conjunction with the Taíno Peoples

concerned because the US and PR governments have refused to formally recognize them as indigenous people and have ignored repeated requests to engage in a dialogue to resolve these issues. There has been no transparency about the location of ancestral remains or access thereto. Instead, the PR and US government continue to operate in secrecy and avoidance in complete contradiction to the norms expressed in this declaration.

C. U.S. Federal and Commonwealth Laws

1. United States Customary Law Relating to Indigenous Peoples' Burials

90. The Native American Graves Protection and Repatriation Act (NAGPRA) was hailed as human rights legislation when it first passed in the United States Congress. It provides processes for federally recognized tribes under the authority of the United States to protect their ancestral remains, whether housed in museums or found accidentally through construction projects or the like.

91. The Taíno, however, are not included in the protections of this legislation because they are not considered a ‘federally recognized tribe’ by the United States. With great respect due to the Native Hawaiian and Alaskan Native communities who have fought successfully for inclusion in NAGPRA, they are in fact protected by the Act despite their non-status as “federally recognized tribes.”²⁵ This leaves the Taíno

as one of the groups of indigenous peoples being treated differently and in contravention of their rights to these protections as indigenous peoples simply because the U.S. Congress has failed to formally recognize them. The fact that the US has included Native Hawaiians in the NAGPRA despite not being a federally recognized tribe; but has failed to develop a similar process for the inclusion of the Taíno is further indication of US discriminatory policy with respect to the Taíno Native Peoples of Boriken.

2. Commonwealth of Puerto Rico Laws Relating to Archaeological Remains

92. The Puerto Rico National Parks System Act [PRNPS Act]²⁶ creates a cultural preservation oversight board called the Board of Directors of the Puerto Rico National Parks Company. Broadly, the purpose of the PRNPS Act is to assure the “preservation, conservation and maintenance” of “zones of significant

²⁵ Legislation such as the Indian Reorganization Act, the Alaska Native Claims Settlement Act, and the Proposed Akaka Bill and its accompanying Apology Bill are sources for the US recognition of these respective communities. Ultimately, all laws and policies pertaining to indigenous

peoples living within the United States require federal recognition in order to exercise and benefit from them. No such laws or policies have ever been extended to the Taíno.
²⁶ 16 L.P.R.A. §§ 841-851 (2001).

national value,” including “recreational, cultural, scientific, and archaeological resources,” for the “use and enjoyment” of Puerto Rican citizens and all visitors.²⁷

archaeological laws permit, tolerate, and promote the desecration and looting of Taíno cemeteries and burials.

93. The Council for Protection of Archaeological Lands Patrimony, which is a part of the Institute for Puerto Rican Culture,²⁸ is the “government body responsible for protecting and keeping ... archaeological resources.”²⁹ Its powers include, *inter alia*, “to approve, after conducting public hearings, the resolutions and norms that shall be used to designate” archaeological excavations and “supervise compliance with the resolutions and norms adopted.”³⁰ The Act also sets out a permitting process for possessing, conveying, or transferring any property that constitutes Puerto Rican land archaeological heritage as well as for conducting excavations. The law also provides for monetary and penal penalties for violations of the permitting processes.³¹

94. Taíno ancestral remains at Ponce have not benefited from the alleged protection from destruction and looting by these Acts. Moreover, although these laws appear neutral on their face, in practice they serve to discriminate against the Taíno as they are used to deny their right to freedom of religion, access to ceremonial grounds, use of ceremonial grounds outside of the regular schedule, and the repatriation and reburial of Ancestral Remains. They legitimize the excavation, disinterment, experimentation, testing, and study of Ancestral Remains. In fact, while there are laws that protect against the desecration of contemporary cemeteries and burials these

²⁷ *Id.* § 841, Notes, References, and Annotations: Purpose (2001).

²⁸ 18 L.P.R.A. § 1198 (1985).

²⁹ *Id.* § 1552.

³⁰ *Id.* § 1554(i).

³¹ *Id.* § 1563.

D. Obstacles to Implementation of CERD

95. The finding of ancestral human remains is typically kept from the Taíno community under the guise that the information needs to be kept secret. By default, this means the Taíno always find out after the remains have been removed when it is leaked to the press. Many Taíno community members who live throughout the Island find out about a finding of ancestral remains after the remains have been disinterred, taken from their homelands, and sent to the U.S. to be studied. The US Army Corp of Engineers has been directly involved in many of these situations related to sacred sites and the disinterment of Taíno ancestral human remains. As a result, the UCTP, CGTB, and CQM feel it is precisely because of Puerto Rico's colonial status and the discriminatory United States policy of "federal recognition" as a pretext to deny the Taíno their rights as indigenous peoples, that the US Army Corps is permitted to enter Puerto Rico and commit acts prohibited in the United States, including the desecration, burial sites, disinterment, and removal of Taíno ancestral remains, sacred and funerary objects. The US Army Corps has violated the human, civil, international and treaty rights of the Taíno People and continues to treat the Taíno community as inferior.

96. In an email to the UCTP, a representative of the archaeology firm hired to work at the PO-29 site in Ponce, Puerto Rico stated: "...Please be aware that I personally was recommending outreach to the Taíno organizations from the beginning. Unfortunately, my opinion as a consultant was over-ridden by the Puerto Rican State Historic Preservation Office and

the US Army Corps of Engineers. The public outreach compliance with Section 106 was not the responsibility of New South Associates; it was all handled by the Corps of Engineers."³² This third-party email indicates the government's overt refusal to cooperate, consult, or even meet with Taíno community members about this important site.

97. Ultimately, in an informal meeting with representatives from the New South Associates archaeology firm and the United States Army Corp of Engineers, representatives of the UCTP and CQM were informed that it would be two years before the testing of ancestral remains would be complete. These entities made no invitation to negotiate that timeframe or work cooperatively to make sure the ancestors were treated with dignity. The UCTP, CGTB, and CQM still have no credible indication to whom New South would return the Taíno human remains or when.

98. Colonialism and its racist policies and practices have not changed or ended in Puerto Rico. These policies have been made invisible to the international community by the creation of Puerto Rico's status as a Free Associated State, which effectively allows the U.S. to take actions against the Taíno without being held accountable or bearing any consequences.

³² Email correspondence between United Confederation of Taíno People and New South Associates: New South Associates Response (11/02/07)

IV. Issue Three: Consultation and Informed Consent

A. The Repeated Failure of the United States and the Commonwealth of Puerto Rico to Consult with or Acquire Free Prior Informed Consent from the Taíno Indian Community Members with Regard to Taíno Sacred Sites and Burial Sites

99. As noted above with regard to both the situation at Caguana Ceremonial Center, Cagütas C2 Site in Caguas, the Arecibo Ojo de Agua site and at the PO-29 Site in Ponce, or any Taíno sacred site the authorities make no effort to consult with the representatives of the UCTP, CGTB, and CQM, or even with local community people generally to determine best practices for the treatment of Taíno cultural heritage sites, sacred sites, or burial grounds. This omission is contrary to the fundamental principles of customary international law, including the instruments of the CERD Committee such as the heart of General Recommendation XXIII, which speaks to the need not only for consultation but “informed consent.”

100. As also noted earlier in this report, a representative from the archaeology firm holding the Taíno ancestral remains wrote openly of the situation when he stated that he personally recommended “outreach to the Taíno organizations from the beginning,” but his “opinion as a consultant was overridden by the Puerto Rican State Historic Preservation Office and the US Army Corps of Engineers.” This overt denial of the right to consultation is in flagrant violation of federal and international law.

101. The UCTP, CGTB & CQM recommend that the CERD Committee urge the US Army Corps to comply with various federal laws that mandate federal agencies including the Office of Historic Preservation to follow certain procedures when they find a burial, including consultation with “interested parties” such as the Taíno.³³



³³ ACHP Policy Statement at note 10.

B. Applicable Provisions of the CERD Committee and Other International Instruments

1. CERD General Recommendation XXIII

102. The CERD Committee, in its General Recommendation XXIII, strongly asserted the importance of informed consent for indigenous community members when the State or its entities acted in relations to lands or sites of significance to indigenous peoples. As Stated throughout this report, this provisions the CERD General Recommendation XXIII has been violated repeatedly by both the United States and the Commonwealth of Puerto Rico.

a. Article 4(d)

103. Article 4(b) of the General Recommendation XXIII “calls in particular upon States parties to: ... (d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.”

104. Both sovereigns have flagrantly ignored this important provision of the CERD Committee recommendation. Because both sovereigns have failed to formally recognize the Taíno, and denied them the right to effective participation in the decisions relating to Taíno rights and interests.

b. Article 5

105. General Recommendation XXIII Article 5 calls upon “States Parties to, recognize and protect the rights of indigenous peoples to own, develop, control

and use their communal lands, territories and resources and, where they have been deprived their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories.”

106. Of course, the entire island of Puerto Rico is the traditionally collectively owned and inhabited lands and territory of the Taíno. The US and PR governments, however, refuse to formally recognize the Taíno, and denied them the right to be consulted when their lands and territories are being used in ways contrary to traditional beliefs, customs, practices and/or unsustainable for the island.

107. The authorities’ have denied the Taíno their right to free prior and informed consent on decisions relating to Taíno cultural heritage and continuance.

2. CERD Concluding Observations

108. In CERD Committee jurisprudence, much attention has been given to the importance of consultation with indigenous peoples.³⁴ With regard to the United States,

³⁴ Argentina: CERD/C/65/CO/1, August 2004, par. 16, 19; Sweden: 10/05/2004. CERD/C/64/CO/8, par. 12; Surinam: 12/03/2004. CERD/C/64/CO/9, par. 13, 19; Canada: 01/11/2002. A/57/18, par. 332; Argentina: 27/04/2001 CERD/C/304/Add.112, par. 10; Colombia: 20/08/99; CERD/C/304/Add.76, par. 16; Argentina: 18/09/97. CERD/C/304/Add.39, par.19; Mexico. 22/09/95. A/50/18, par. 360; Nicaragua. 22/09/95. A/50/18, par. 535; Colombia. 26/05/2004. CCPR/CO/80/COL, par. 2; Norway. 01/11/99. CCPR/C/79/Add.112, par. 10 Milkmaq Tribal Society vs. Canada; CCPR/C/39/D/205/1986 (1991), par. 5.5; J. Lansman et al. vs. Finland; CCPR/C/58/D/671/1995 (1996), par. 10.5; Apirana

the Committee has handed down Concluding Observations on treatment of indigenous peoples, specifically the Shoshone people.³⁵ In those Observations, the Committee recommended that the:

State party ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights, as required under article 5 (c) of the Convention, and draws the attention of the State party to general recommendation XXIII on indigenous peoples which stresses the importance of securing the “informed consent” of indigenous communities and calls, *inter alia*, for recognition and compensation for loss.

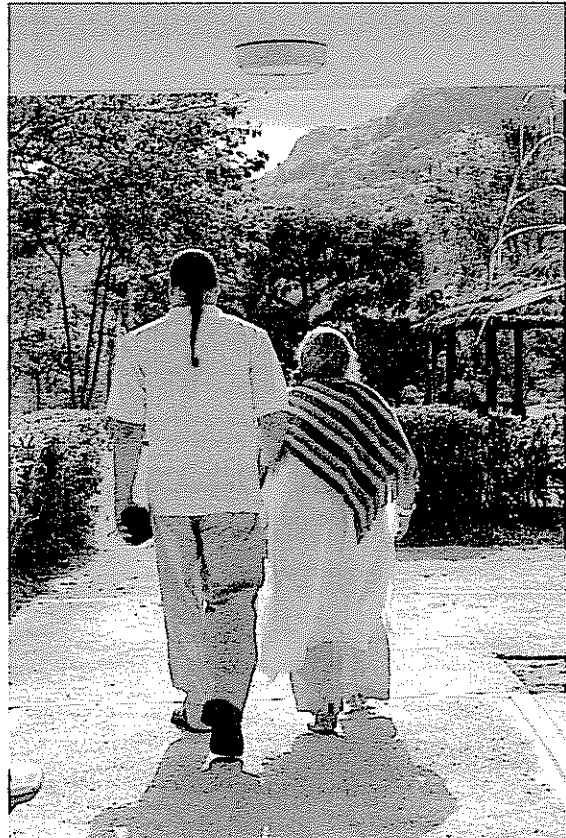
109. United States and Puerto Rican governments have denied the Taíno people their right to free prior and informed consent called for above. They have not only failed to seek, but refuse to consult with the Taíno and act as though they have no obligation to obtain the free prior informed consent of the Taíno with regard to the Caguana Ceremonial Center, Jacanas PO29 in Ponce, and other Taíno sacred sites. Further, the two sovereigns have continued to ignore Taíno communications requesting to meet and engage in a dialogue to resolve these issues.

3. Declaration on the Rights of Indigenous Peoples

Several articles from the Declaration on the Rights of Indigenous Peoples affirm the right of indigenous peoples to informed

consent in relation to their lands, cultural heritage, sacred spaces, and sacred properties.³⁶

110. Unfortunately, the United States and the Commonwealth of Puerto Rico refuse to apply existing standards to the Taíno, thereby violating the norms expressed in the Declaration with regard to consent or even and consultation. Their tactics have involved secrecy, the failure of diplomacy, avoidance, and lack of political will. Both sovereigns have had ample opportunity to respond to letters from Taíno community members in relation to Caguana, PO29 in Ponce, and other Sacred Sites; but these letters have remained unanswered.



Mahuika et al v. New Zealand; CCPR/C/70/D/547/1993 (2000), par. 9.6, 9.8; Japan. 24/09/2001; E/C.12/1/Add.67, par. 40; Mexico. 08/12/99. E/C.12/1/Add.41, par. 25; Canada. 10/12/98. E/C.12/1/Add.31, par. 47; Panama. 20/06/95. E/C.12/1995/8, 79.ii

³⁵ A/56/18, paras.380-407 (2001)

³⁶ U.N. G.A. A/61/L.67, Dec. on the Rts of Indigenous Peoples, arts. 10, 11, 28,29, and 32 (7 Sept. 2007).

C. Obstacles to Implementation of CERD

111. The primary obstacle to the implementation of the CERD is the general refusal on the part of the United States and the Commonwealth of Puerto Rico to formally recognize the Taíno as indigenous people. As indigenous people, the Taíno do not fit the United States definition of a 'federally recognized Indian tribe,' and fall outside the purview of many protections created for the benefit of similarly situated indigenous peoples of the United States. While the Taíno recognize they are, and wish to remain, distinct from the United States and do not necessarily seek the formal recognition afforded tribes, the Taíno assert their right to exercise their self-determination as indigenous peoples just as all other indigenous peoples in the United States and around the world.

112. However, the organizations submitting this report urge the CERD Committee not to lose sight of the fact that

the US has included Native Hawaiian and Alaska Natives in relevant United States legislation despite not being "federally recognized tribes." That is to say, if the United States has the political will to include other indigenous peoples in its legislation protecting the rights of indigenous peoples living under its jurisdiction, it can include the Taíno as well. Its lack of political will to do so is further indication of US discriminatory policy and disdain with which it treats the Native Taíno Peoples of *Boriken*.

113. Moreover, as cited above, the CERD Committee should not permit the United States to use the status of non-federally-recognized Indian tribe as a basis to refuse to include the Native Taíno Peoples of *Boriken* in the NAGPRA or other legislation that provides some protection for the rights of "federally recognized Indian tribes" in the United States.

V. Recommendations

114. Elder Naniki Reyes Ocasio indicates, “that until the colonial status of their territory is resolved, their right to self determination and equality under the law and freedom of religion are respected, and there is official recognition of their people, classification of their ceremonial sites as Historical Landmarks will not result in the same protection that it may provide for other Native Peoples. Taino rights will continue to be violated. Sacred, ceremonial and burial sites, artifacts, ancestral remains, sacred and funerary objects will continue to be the subject of further desecration, and ‘investigation’ under the legal guise of the Historic Landmarks commission, National Historic Preservation Act, § 106, 110, Puerto Rico National Patrimony and archaeological laws and policies such as recognition.”

115. The UCTP, CGTB, and CQM submit the following recommendations to address the discriminatory practices against the Taino peoples of Boriken:

Recommendation # 1

116. That the CERD Committee urge the Puerto Rican government as well as the U.S. the National Park Service, State Historic Preservation Office, and all government agencies to follow the ICERD’s General Recommendation XXIII Article 4(e) on consultation;

Recommendation # 2

117. That CERD Committee urge the US and Puerto Rico governments to formally recognize the Taíno as the indigenous peoples of Boriken, including the UCTP, CGTB, and CQM and therefore entitled to the rights and protections of indigenous peoples;

Recommendation # 3

118. That the CERD Committee urge the US government to fulfill its obligation under the applicable CERD Articles and the applicable Articles of the Treaty of Paris to secure religious freedom and protection of Taíno collective property rights;

Recommendation # 4

119. That the CERD Committee urge the US and Puerto Rican governments to engage in a dialogue with CQM, CGTB and UCTP and to cooperate with these organizations in coming to a negotiated resolution of these violations and establish a set of protocols to be followed when Ancestral Burials are found;

Recommendation # 5

120. That the CERD Committee urge the US and Puerto Rican governments to provide the resources to build whatever structure is necessary to adequately house the numerous artifacts that currently are in the homes of archeologists, inadequate storage spaces and other undisclosed locations. In relation to this recommendation, the CQM for example, proposes to provide in-kind parity by providing the necessary land to build these structures as a way to work collaboratively

yet without complete reliance on government agencies;

Recommendation # 6

121. That the CERD Committee urge the US and Puerto Rican governments to enter into management agreements or memorandum of agreements, or whatever mechanism is mutually negotiated with the Taíno People including the UCTP, CGTB, and CQM to return the administration, management and caretaking of indigenous sacred sites, ceremonial centers, village Sites and burial grounds in Puerto Rico;

Recommendation # 7

122. That the CERD Committee urge US officials and the Governor of Puerto Rico to pursue a dialogue with the CQM, CGTB and the UCTP with a view to find mutually beneficial solutions to these treaty violations and serious acts of racial discrimination and to issue any Executive Orders necessary to guarantee Taíno People their constitutional, civil, human, treaty and international rights to, *inter alia*: freedom of religion, consultation, free prior informed consent; the Repatriation of Ancestral Remains Sacred and Funerary Objects, to the protection, preservation, conservation, administration, management and access to their sacred ceremonial, village and burial sites;

Recommendation # 8

123. That the CERD Committee urge US officials to review all legislation and policies pertaining to Taíno cultural resources (e.g. the US policy on recognition of Native People as a method for according rights as indigenous peoples; Puerto Rico National Patrimony Laws, the Puerto Rican Archeological Council, Department of Parks

and Recreation; Institute of Puerto Rican Culture and Archeological laws of Puerto Rico) in order to ensure the Taíno have equal rights with respect to effective participation in public life and by taking effective measures to amend, rescind or nullify any policies which have the effect of creating or perpetuating racial discrimination, under articles 5(c) and 2(c) respectively;

Recommendation # 9

124. That the CERD Committee urge the US and Puerto Rican governments, U.S. National Park Service, State Historic Preservation Office, Natural Resources, the Institute of Puerto Rican Culture, Department of Transportation and Public Works, National Parks Service, Environmental Protection Agency, Parks Department, local municipalities and other government agencies to ensure that any local, national, governmental, private or public construction projects, promotion of tourism, eco corridors, deviation of rivers, dam or flood control projects go hand in hand with protecting and safeguarding the integrity of local Taíno culture, sacred sites, ceremonial centers, villages, burial grounds and the natural world environment; and, to comply with Taíno rights to consultation and free prior informed consent;

Recommendation # 10

125. That the CERD Committee urge the governments of Puerto Rico and the United States to engage in a dialogue with the Taíno community including the CGTB, CQM, and UCTP to structure a process to deal with these highly emotional issues. It is important for this dialogue to be held and that there be a framework to guide appropriate action. A process built upon the foundation of reconciliation, based upon

respect, and government to government relationship;

Recommendation # 11

126. That the CERD Committee urge the government of the US and PR to issue a moratorium on any further desecration, destruction, or excavation of any known or unknown until such time a framework for appropriate action can be developed.

VI. Conclusion

127. In addition to the improper and arguably illegal removal of Taíno ancestors from their ancient burial grounds, the sovereigns of the United States and Puerto Rico impose non-sustainable development projects through private companies. These have included such egregious acts as open field experiments, climate experiments, and military experiments such as in Vieques – often with Agent Orange, damming, deforestation, highway construction, and tourism. All of these directly result in contamination, desecration, and destruction of the sacred sites and ceremonial places, and threaten genetic and other natural resources, which are sacred to the Taíno people and are vital for the survival of its culture, traditional ceremonies, food security, and other spiritual manifestations.

128. Moreover, the UCTP, CGTB, and CQM jointly affirm that what must be understood with respect to the continued desecration and disinterment of their Ancestors are the spiritual consequences of the deplorable act of interrupting their journey, thus interrupting the cycles of birth, life, transformation, and rebirth. There is an old saying that many Taíno and Puerto Ricans grew up with that perhaps will drive this point home to those who can not capture the deeper spiritual consequences of these acts, “Me tienen que desenterrar, para quitarme la vida” (they must disinter me to take my life). Disinterment of ancestral human remains is tantamount to genocide.