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Preserving Maunakea Under International Law: A Draft Petition to the Inter-American Commission on Human Rights on Behalf of Kealoha Pisciotta and Hawai'i's Kānaka Maoli Community

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NOTES

PRESERVING MAUNAKEA UNDER INTERNATIONAL LAW: A DRAFT PETITION TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON BEHALF OF KEALOHA PISCIOTTA AND HAWAI‘I’S KĀNAKA MAOLI COMMUNITY

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SUMMARY OF PETITION

Kānaka Maoli, the Native Hawaiian people, historically have found themselves pressured to assimilate and conform to the majority society in the United States.¹ Like many indigenous communities, Kānaka Maoli have struggled to maintain their connection to their culture, native lands, and independence as a sovereign nation. This societal conflict has existed since the illegal overthrow of the independent Kingdom of Hawai‘i and the annexation of Hawai‘i by the United States as a territory.² Acknowledging this history and pressure is imperative to understanding the dispute over the construction of a thirty-meter telescope on Maunakea³—a dormant volcano on Hawai‘i’s big island that is considered sacred to Hawai‘i’s Kānaka Maoli community.⁴

1. See MELODY KAPILIALOHA MACKENZIE, SUSAN K. SERRANO & D. KAPUA‘ALA SPROAT, *NATIVE HAWAIIAN LAW: A TREATISE* 19 (2015) [hereinafter *NATIVE HAWAIIAN LAW*].

2. See *id.*; see generally Donna S. Salcedo, *Hawaiian Land Disputes: How the Uncertainty of the Native Hawaiian Indigenous Tribal Status Exacerbates the Need for Mediation*, 14 *CARDOZO J. CONFLICT RESOL.* 557 (2013).

3. As recommended by the University of Hawai‘i at Hilo’s Ka Haka ‘Ula O Ke‘elikōlani College of Hawaiian Language, this Note uses the single-word spelling, “Maunakea,” instead of the commonly used two-word spelling, “Mauna Kea.” Maunakea as one word is a proper noun that specifically refers to the name of the mountain on the Big Island of Hawai‘i (the subject of this Note), while the two-word spelling is a common noun that essentially refers to “any white mountain.” See *Important Things to Know*, OFFICE OF MAUNAKEA MANAGEMENT, <http://www.malamamaunakea.org/articles/9/Maunakea> (last visited Mar. 30, 2020).

4. See Christine Hitt, *The Sacred History of Maunakea*, *HONOLULU MAG.* (Aug. 5, 2019, 3:09 PM), <http://www.honolulumagazine.com/Honolulu-Magazine/August-2019/The-Sacred-History-of-Mauna-Kea/>.

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Indigenous peoples' have begun to utilize international law to assert their rights to land and natural resources.⁵ The ongoing protests on Maunakea by Kānaka Maoli of all ages are significant because they demonstrate how their ancestral ties to their lands are much stronger as an indigenous community than those who have roots in society's majority population.⁶ Thus, the protection of Maunakea is near to the hearts of not only the Kānaka Maoli community, but to other indigenous populations as well.

Throughout history, States have typically been the only actors under international law, leaving "individual victims of human rights abuses" with few potential remedies.⁷ This is because "they are usually only available pursuant to specific human rights treaties that create tribunals optimized for individual complaints,"⁸ like the Human Rights Committee created by the International Covenant on Civil and Political Rights.⁹ Unfortunately for U.S. citizens, the United States is not subject to the jurisdiction of most of these tribunals.¹⁰

However, the United States is a Member of the Organization of American States ("OAS"), and therefore, is subject to investigation through the Inter-American Commission on Human Rights ("IACHR").¹¹ The IACHR "applies the rights contained in the 1948 [American Declaration on the Rights and Duties of Man ("American Declaration")] to all OAS Member States"¹² and hears complaints

5. Enzamaría Tramontana, *The Contribution of the Inter-American Human Rights Bodies to Evolving International Law on Indigenous Rights over Lands and Natural Resources*, 17 INT'L J. ON MINORITY & GROUP RTS. 241, 242 (2010).

6. See JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 3 (2d ed. 2004).

7. Laura Goolsby, *Why International Law Should Matter to Black Lives Matter: A Draft Petition to the Inter-American Commission on Human Rights on Behalf of the Family of Eric Garner*, 21 U. PA. J.L. & SOC. CHANGE 29, 30 (2018).

8. *Id.* at 31.

9. *Id.* at n.7; see International Covenant on Civil and Political Rights art. 28, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 999 U.N.T.S. 171, (entered into force Mar. 23, 1967) [hereinafter 1966 ICCPR].

10. See Goolsby, *supra* note 7, at 31; see also 1966 ICCPR, *supra* note 9.

11. See Goolsby, *supra* note 7, at 41.

12. Dinah Shelton, *The Inter-American Human Rights Law of Indigenous Peoples*, 35 U. HAW. L. REV. 937, 943 (2013).

allegedly committed by a Member “after the exhaustion of effective and available local remedies.”¹³

Created in 1959 as one of the principal organs of the OAS,¹⁴ the IACHR is “the only international arbiter that has jurisdiction over complaints by individuals and groups of individuals against the United States.”¹⁵ The other principal entity of the Inter-American System on Human Rights is the Inter-American Court of Human Rights, which issues advisory opinions on issues pertaining to the interpretation of the Inter-American instruments at the request of an OAS organ or Member State.¹⁶ The IACHR complaint procedure has been a significant tool in helping “alter the course of state action or inaction when needed to bring about the implementation of international law.”¹⁷ As such, the IACHR’s complaint mechanism will be helpful in compelling the United States to publicly recognize and respond to an ongoing dispute over land use between the Kānaka Maoli people of Hawai‘i and the TMT International Observatory LLC (“TIO,” formerly known as “TMT”), an international corporation.

This Note is drafted as a petition to the IACHR and alleges violations of the American Declaration by the United States, on behalf of Kealoha Pisciotta, a Kānaka Maoli activist and leader in the protest movement, and the Kānaka Maoli community in Hawai‘i and the United States at large. Additionally, this Note will explain why petitioning the IACHR on behalf of activists and the indigenous community of Hawai‘i is important in maintaining the integrity and values of Kānaka Maoli as a distinct and independent native people.

The following is an example of the process of petitioning the OAS and IACHR. This Note provides a model of a petition that will demonstrate why constructing a thirty-meter telescope on Maunakea violates the rights of Hawai‘i’s indigenous people under international

13. *Id.*

14. *Id.* at 942.

15. Goolsby, *supra* note 7, at 29; *see also* Charter of the Organization of American States, Apr. 30, 1948, 119 U.N.T.S. 3 [hereinafter OAS Charter].

16. *See Inter-American Human Rights System*, INT’L JUST. RESOURCE CTR. (Mar. 17, 2020, 3:52 PM), <https://ijrcenter.org/regional/inter-american-system/>.

17. Verónica de la Rosa Jaimes, *The Arctic Athabaskan Petition: Where Accelerated Arctic Warming Meets Human Rights*, 45 CAL. W. INT’L L.J. 213, 222 (2015).

law. It will also supply a procedural guide for Kānaka Maoli activists to utilize in the future.¹⁸

DRAFT PETITION TO THE INTER-AMERICAN COMMISSION ON HUMAN
RIGHTS ON BEHALF OF KEALOHA PISCIOTTA AND HAWAI‘I’S KĀNAKA
MAOLI COMMUNITY

INTRODUCTION

This Petition is brought against the United States by the indigenous people of Hawai‘i (Kānaka Maoli), for violating the rights guaranteed to them under Articles III, XIII, and XXIII of the American Declaration.

Kānaka Maoli, or Native Hawaiians,¹⁹ like many indigenous peoples around the world, seek greater self-determination and control of their lands.²⁰ Although Kānaka Maoli have acted to express their cultural and political sovereignty in many ways, their protests over the construction of a thirty-meter telescope (“TMT Project”) on Maunakea have begun to define the struggle between Hawai‘i’s balancing of indigenous land rights and other private and public interests.²¹

Maunakea (also known as Mauna a Wākea, or Wākea’s Mountain) is a dormant volcano on the island of Hawai‘i—the largest and southernmost of the Hawaiian islands.²² Maunakea’s summit is

18. This Note’s appearance reflects a similar format that has been utilized in other academic articles and in petitions filed on behalf of indigenous groups. See Goolsby, *supra* note 7, at 29; see also Arctic Athabaskan Council, *Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting Caused by Emissions of Black Carbon by Canada*, EARTHJUSTICE (Apr. 23, 2013), <https://perma.cc/P456-75E3>.

19. “Native Hawaiian” is a person with native ancestors of the Hawaiian Islands prior to 1778, disregarding blood quantum, while “native Hawaiian” refers to a person with at least fifty percent Hawaiian ancestry. See Melody Kapilialoha MacKenzie & D. Kapua‘ala Sproat, *A Collective Memory of Injustice: Reclaiming Hawai‘i’s Crown Lands Trust in Response to Judge James S. Burns*, 39 U. HAW. L. REV. 481, 517, 527, 530 (2017).

20. See NATIVE HAWAIIAN LAW, *supra* note 1, at 81.

21. See Zachary Browning, *A Comparative Analysis: Legal and Historical Analysis of Protecting Indigenous Cultural Rights Involving Land Disputes in Japan, New Zealand, and Hawai‘i*, 28 WASH. INT’L L.J. 207, 213 (2019).

22. See Kristin Lam, *Why Are Jason Momoa and Other Native Hawaiians Protesting a Telescope on Mauna Kea? What’s at Stake?*, USA TODAY (Aug. 21,

considered sacred in traditional Hawaiian culture—the place where the sky god, Wākea, partnered with Papahānaumoku, the earth goddess, to create the islands.²³ In essence, Maunakea is the birth place of life to Kānaka Maoli. There are also other cultural sites on the mountain, including a sacred lake, historic burial sites, and altars where Hawaiian cultural practitioners continue to honor Maunakea’s spiritual importance.²⁴

From seafloor to summit, Maunakea is the highest mountain in the world at over 33,000 feet.²⁵ Due to its summit’s pristine environment and distance from light pollution,²⁶ Maunakea is already home to the world’s largest astronomical observatory, with thirteen working telescopes operated by astronomers from eleven different countries.²⁷ In 2009, Maunakea became the proposed site of the TMT Project, a product of collaboration between “universities and research institutes in the United States, Canada, China, India, and Japan.”²⁸ For over a decade since then, Kānaka Maoli and allies have opposed the construction of the TMT Project—an enormous \$1.4 billion observatory—as a continued desecration of Maunakea.²⁹

The cultural clash over the TMT Project began dominating media headlines in 2015 after a large protest by Maunakea kia’i

2019), <https://www.usatoday.com/story/news/nation/2019/08/21/mauna-kea-tmt-protests-hawaii-native-rights-telescope/1993037001/>.

23. See Michelle Broder Van Dyke, ‘A New Hawaiian Renaissance’: How a Telescope Protest Became a Movement, *THE GUARDIAN* (Aug. 17, 2019), <https://www.theguardian.com/us-news/2019/aug/16/hawaii-telescope-protest-mauna-kea>.

24. See Meghan Miner Murray, *Why Are Native Hawaiians Protesting Against a Telescope?*, *N.Y. TIMES* (July 22, 2019), <https://www.nytimes.com/2019/07/22/us/hawaii-telescope-protest.html>.

25. See Browning, *supra* note 21, at 213.

26. See *id.* at 233.

27. See Chloe Fox, *Everything You Need to Know About the Viral Protests Against a Hawaii Telescope*, *HUFFPOST* (Apr. 13, 2016, 4:36 PM), https://www.huffpost.com/entry/hawaii-telescope-protests-tmt-mauna-kea_n_7044164.

28. Murray, *supra* note 24.

29. See *id.*

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(“protectors”)³⁰ “halted construction by preventing access to the site.”³¹ However, tensions over the proper use of Maunakea predate the TMT Project. Indeed, Hawaiian cultural practitioners “have been protesting telescope development on” Maunakea since the 1960s.³² Despite many legal challenges over the years, Hawai‘i’s Supreme Court overruled all legal opposition to the TMT Project in October 2018.³³ In June 2019, Hawai‘i issued the project a “notice to proceed.”³⁴ Thus, U.S. courts have repeatedly failed to respect the rights of Hawai‘i’s indigenous peoples to preserve their religious and cultural connection to Maunakea.³⁵

The United States’ desecration of Maunakea violates the American Declaration. First, the permitted construction of the TMT Project substantially interferes with the ability of Kānaka Maoli to continue to use Maunakea as a place of worship, and places the United States in direct violation of Kānaka Maoli rights under Article III of the American Declaration.³⁶ Second, as a place of substantial cultural significance, the construction of the TMT Project on Maunakea violates Kānaka Maoli rights under Article XIII of the American Declaration.³⁷

30. Protestors of the TMT have preferred to call themselves “protectors,” in reference to the Kū Kia‘i Mauna (“Guardians of the Mountain”) group—which is seen as a rallying point for many Kānaka Maoli in this generation. See Marisa Peryer, *Native Hawaiians on Coverage of Mauna Kea Resistance*, COLUMBIA JOURNALISM REV. (July 29, 2019), <https://www.cjr.org/opinion/mauna-kea-telescope-protest-hawaii.php>; see also Noelani Goodyear-Ka‘opua, *Protectors of the Future, Not Protestors of the Past: Indigenous Pacific Activism and Mauna a Wākea*, 116 SOUTH ATLANTIC Q. 184, 188 (2017).

31. *Exploring the Timeline Leading up to the ‘Conflict on Mauna Kea,’* HAWAII NEWS NOW (July 12, 2019), <https://www.hawaiinewsnow.com/2019/07/13/exploring-timeline-leading-up-conflict-mauna-kea/> [hereinafter *Mauna Kea Conflict Timeline*].

32. *Id.*

33. See *The Timeline of TMT*, THIRTY METER TELESCOPE: THE PROCESS, <http://www.maunakeaandtmt.org/tmt-process/> (last visited Oct. 18, 2019).

34. *Id.*

35. See Dennis Overbye, *In Hawaii, Construction to Begin on Disputed Telescope Project*, N.Y. TIMES (June 20, 2019), <https://www.nytimes.com/2019/06/20/science/telescope-mauna-kea-hawaii.html>.

36. See American Declaration of the Rights and Duties of Man art. 3, 1948, O.A.S. Res. XXX, O.A.S. Doc. OAS/Ser.L/V/1.4 Rev. 9 [hereinafter American Declaration].

37. See *id.* at art. 13.

Finally, because Maunakea is considered “ceded land”³⁸ that once belonged to the Hawaiian Kingdom and is now held in trust for Native Hawaiians, Kānaka Maoli rights are also violated under Article XXIII of the American Declaration.³⁹

I. THE PETITIONERS

“Kānaka Maoli” literally means “‘true people’ and is the term that Native Hawaiians have traditionally used to refer to themselves; in modern times, it is used to refer to all persons of Native Hawaiian ancestry.”⁴⁰ Although there is no federal legislation recognizing Native Hawaiians, Hawai‘i ratified Act 195 “in 2011 to recognize Native Hawaiians as the ‘only indigenous, aboriginal, [M]aoli population’” of the state.⁴¹ Thus, Act 195 recognizes Native Hawaiians as a distinct community,⁴² reaffirming that since its inception, Hawai‘i “has had a special political and legal relationship with the Native Hawaiian people and has continuously enacted legislation for the betterment of their condition.”⁴³ The Act also expresses the state’s “desire to support the continuing development of a reorganized Native Hawaiian governing entity and, ultimately, the federal recognition of Native Hawaiians.”⁴⁴

Kealoha Pisciotta, a Kānaka Maoli and citizen of the Big Island of Hawai‘i (where Maunakea is located), is a recognized activist and leader in the Kānaka Maoli community.⁴⁵ Ms. Pisciotta is the president and founder of Mauna Kea Anaina Hou, which has brought multiple legal challenges against the TMT Project and is one of the main

38. Whether Hawai‘i’s ceded lands ever truly became a part of the United States’ public domain is contested. It is suggested that while legal title rested with the United States, beneficial title of the lands was with Kānaka Maoli. *See* NATIVE HAWAIIAN LAW, *supra* note 1, at 57–58.

39. *See* American Declaration, *supra* note 36, at art. 23.

40. NATIVE HAWAIIAN LAW, *supra* note 1, at 21.

41. *Id.* at 69.

42. *Id.*

43. *Id.* at 70.

44. *Id.*

45. *See* Lauren Muneoka, *Meet the Mauna Kea Hui – Kealoha Pisciotta*, KAHEA: THE HAWAIIAN-ENVIRONMENTAL ALLIANCE (Aug. 14, 2011), <http://kahea.org/blog/mk-vignette-kealoha-pisciotta>.

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organizations opposing it.⁴⁶ Ms. Pisciotta is a current and lifelong practitioner of traditional cultural and religious practices relating to Maunakea.⁴⁷ In submitting this Petition, Ms. Pisciotta acts both individually as a victim and on behalf of the Kānaka Maoli community.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Significance of Maunakea to Kānaka Maoli*

Maunakea rises over 33,000 feet from the seafloor and is “one of the biggest mountains in the solar system,” taller than Mount Everest.⁴⁸ Many Kānaka Maoli see Maunakea as an ancestor, “a living family member and progenitor of Hawaiians, born of Wākea (Sky Father) and Papa (Earth Mother).”⁴⁹ In its latest opinion concerning Maunakea and the TMT Project, Hawai‘i’s Supreme Court acknowledged that Kānaka Maoli consider:

Maunakea[’s] summit area, also known as Kūkahau‘ula (cluster of pu‘u or cinder cones), to be a wahi pana (storied place) and wao akua (the place where gods reside), the realm of ancestral akua (gods, goddesses, deities) believed to take earthly form as the pu‘u, the waters of Lake Waiau, and other significant landscape features. The summit of Maunakea is thought to touch the sky in a unique and important way, as a piko (navel) by which connections to the ancestors are made known to them, or as the piko ho‘okahi (the single navel), which ensures spiritual and genealogical connections, and the rights to the regenerative powers of all that is Hawai‘i . . . Before Western contact, the summit area of Maunakea was considered kapu (taboo) to all but the highest chiefs and priests, and unavailable to the public.⁵⁰

46. *See id.*

47. *Id.*

48. *See* Dennis Overbye, *Under Hawaii’s Starriest Skies, a Fight over Sacred Ground*, N.Y. TIMES (Oct. 3, 2016), <https://www.nytimes.com/2016/10/04/science/hawaii-thirty-meter-telescope-maunakea.html>.

49. *In re* Conservation Dist. Use Application HA-3568, 431 P.3d 752, 758 (Haw. 2018) [hereinafter *Maunakea I*].

50. *Id.* at 757.

Additionally, there are dozens of shrines on Maunakea that indicate a pattern of pilgrimage, “a walk upward and backward in time to cosmological origins,’ to worship the snow goddess Poli‘ahu and other akua such as Kūkahau, Līlīnoe, and Waiau.”⁵¹ Various traditional and customary practices among Kānaka Maoli originate from these beliefs, which have led to related modern cultural practices.⁵² According to Petitioner Ms. Pisciotta, Maunakea “in every respect represents the zenith of the Native Hawaiian people’s ancestral ties to the process of creation itself.”⁵³

The TMT Project is not the first of its kind on Maunakea because “over the course of 50 years, thirteen telescopes have preceded it, ever since Hawaii and its university foresaw the economic advantages of the astronomy economy.”⁵⁴ This is because Maunakea offers minimal light pollution, low humidity, and clear skies.⁵⁵

Because of its cultural and religious significance to Kānaka Maoli, protestors have been camping out on Maunakea to prevent the construction of the TMT Project.⁵⁶ Protestors and activists range from cultural practitioners like Petitioner Ms. Pisciotta, to notable Pacific Islander figures, such as several winners of the famous Miss Aloha Hula pageant, undefeated professional mixed martial artist Ilima-Lei

51. *Id.*

52. *See id.*

53. *See* Memorandum from Mauna Kea Anaina Hou, et al. c/o Ms. Kealoha Pisciotta on Opposition to the TMT Project Conservation District Use Application to Sam Lemmo, Administrator Department of Land and Natural Resources (Nov. 22, 2010), <http://kahea.org/issues/sacred-summits/sacred-summits-documents/mauna-kea-hui-comments-on-tmt-cdua> [hereinafter Opposition Testimony].

54. Melanie Fine, *Hawaii’s Mauna Kea Protests Strike Common Chord Around the Globe*, FORBES (Aug. 31, 2019, 9:00 AM), <https://www.forbes.com/sites/melaniefine/2019/08/31/hawaiis-mauna-kea-protests-strike-common-chord-around-the-globe/#1ae14f8f601d>.

55. *See* M. Mitchell Waldrop, *Mauna Kea (I): Halfway to Space*, SCIENCE, Nov. 27, 1981, at 1010.

56. *See* Mahealani Richardson, *As Temps Drop at Mauna Kea, Protestors Hunker Down for a Long Winter*, HAWAII NEWS NOW (Nov. 8, 2019, 5:54 PM), <https://www.hawaiinewsnow.com/2019/11/09/how-encampment-base-mauna-kea-has-changed-over-months/>.

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Macfarlane, and actors Dwayne “The Rock” Johnson and Jason Momoa.⁵⁷

B. The TMT Project

The TMT Corporation was formed in 2003 by Caltech and the University of California as a non-profit public benefit corporation aimed at fostering the study of astronomy through constructing the TMT Project.⁵⁸ The TMT Board of Directors selected Maunakea as a preferred site for the telescope in July 2009.⁵⁹ According to Hawai‘i’s Supreme Court:

[Maunakea] was selected for a next generation large telescope (1) due to its significant distance from historical and cultural sites, including Kūkahau‘ula and Lake Waiau, (2) to minimize visibility from significant cultural areas on the summit and from Waimea, Honoka‘a and Hilo, (3) to reduce wind shear forces, (4) because it is not a good wēkiu bug habitat, and (5) to minimize its potential to obscure astronomical observations by existing observatories.⁶⁰

Later, the TMT Corporation was succeeded by the TIO, which was formed on May 6, 2014, as “a nonprofit organization comprised of the Regents of the University of California, Caltech, the National Institutes of Natural Sciences of Japan, the National Astronomical Observatories of the Chinese Academy of Sciences, the Department of Science and Technology of India, and the National Research Council of Canada.”⁶¹

The TMT Project would be “the first optical/infrared observatory of its size to integrate adaptive optics, which corrects for image

57. See, e.g., Mahealani Mika Hirao-Solem (@mahealani_mika), INSTAGRAM (Sept. 13, 2019), <https://www.instagram.com/p/B2XpkkIJ7UJ/?igshid=3heo170oz9ln>; Ilima-Lei Macfarlane (@ilimanator), INSTAGRAM (Dec. 26, 2019), <https://www.instagram.com/p/B6kE3-zh165/?igshid=1j1gk1u5a7uos>; see also Danielle Wallace, *Jason Momoa, Dwayne ‘The Rock’ Johnson Back Hawaii’s Anti-telescope Protestors*, FOX NEWS (Aug. 1, 2019), <https://www.foxnews.com/entertainment/jason-momoa-dawyne-the-rock-johnson-hawaii-mauna-kea-telescope-tmt-protest-sacred-land>.

58. See Maunakea I, *supra* note 49, at 759.

59. See *id.*

60. *Id.* at 759.

61. *Id.*

distortion caused by the atmosphere, into its design.”⁶² The plan for the TMT Project on Maunakea “actually consists of four components[,] [including] the TMT observatory [within Area E (“TMT Observatory”)], an access way from the Maunakea Access Road [(“Access Way”)], upgrades to existing transformers at the electrical substation near Hale Pōhaku in the mid-level of Maunakea, and a headquarters in Hilo, Hawaii.”⁶³ In total, the TMT Project would be over 184 feet tall (about eighteen stories high) with twenty feet below ground, and a construction footprint of over eight acres on Maunakea.⁶⁴ This is the “largest development ever proposed in [the] summit region [of Maunakea, and] would be the second largest telescope in the world[,] if built.”⁶⁵

C. Domestic Legal Proceedings

1. Board of Land and Natural Resources Proceedings

The University of Hawai‘i, the holder of Maunakea’s summit land, subleases tracts to telescope corporations in exchange for access to the telescopes.⁶⁶ The TMT Corporation obtained such a sublease and, in September 2010, applied for a Conservation District Use Permit (“CDUP”), seeking permission from the State Board of Land and Natural Resources (“BLNR”) to develop on Maunakea’s summit.⁶⁷ A group of Kānaka Maoli residents, including Petitioner Ms. Pisciotta, and environmental groups challenged the application before the BLNR.⁶⁸ The BLNR approved the TMT Corporation’s application

62. *Id.*

63. *Id.*

64. See *Fact Sheet: Massive 18-story Telescope Complex Proposed for Mauna Kea*, KAHEA, <http://kahea.org/issues/sacred-summits/sacred-summits-documents/fact-sheet-thirty-meter-telescope-tmt> (last visited Mar. 18, 2020).

65. *Id.*

66. See *State Agency Wants Mauna Kea Observatories to Pay More Rent*, STAR ADVERTISER (Jan. 26, 2016), <https://www.staradvertiser.com/2016/01/26/breaking-news/state-agency-wants-mauna-kea-observatories-to-pay-more-rent/>.

67. See *Maunakea I*, *supra* note 49, at 757; see also UNIV. OF HAW., CONSERVATION DISTRICT USE PERMIT APPLICATION 2 (2010), http://www.malamamaunakea.org/uploads/management/plans/TMT_CDUA_HA3568_2010-09-02.pdf.

68. See *Opposition Testimony*, *supra* note 53, at 3.

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over petitioners' objections in February 2011 and reaffirmed its initial decision after an administrative appeal in April 2013.⁶⁹

2. Mauna Kea Anaina Hou v. BLNR (Maunakea I)

The petitioners who challenged the TMT Corporation's application to the BLNR later filed an appeal in Hawai'i state court challenging the BLNR's final decision.⁷⁰ On December 2, 2015, the Hawai'i Supreme Court invalidated the CDUP issued by the BLNR to the University of Hawai'i at Hilo to build the TMT Project on Maunakea.⁷¹ At the time the permit was initially granted, a contested case hearing was also approved, as was a stay on construction pending the outcome of the contested case hearing.⁷² The court noted in its decision: "Quite simply, the Board put the cart before the horse when it issued the permit before the request for contested case hearing was resolved and the hearing held. Accordingly, the permit cannot stand."⁷³ The Hawai'i Supreme Court returned the case to the Hawai'i Circuit Court with the following instructions: "We therefore vacate the judgment of the circuit court and the permit issued by the Board, and remand so that a contested case hearing can be conducted before the Board or a new hearing officer, or for other proceedings consistent with this opinion."⁷⁴ The Third Circuit Court transferred the second CDUP contested case hearing to the BLNR.⁷⁵ The TMT International Observatory Board of Governors then announced that while Hawai'i remained their first choice for the location of the TMT Project, a review of alternate sites would be carried out while the second CDUP contested case took its course.⁷⁶

69. See *The Timeline of TMT*, *supra* note 33.

70. *Id.*

71. See *Maunakea I*, *supra* note 49, at 760.

72. See *id.*

73. *The Timeline of TMT*, *supra* note 33.

74. *Id.*

75. See *Governance*, TMT INTERNATIONAL OBSERVATORY: TIMELINE, <https://www.tmt.org/page/timeline> (last visited Mar. 18, 2020).

76. *Id.*

3. Mauna Kea Anaina Hou v. BLNR (Maunakea II)

On October 30, 2018, the Hawai‘i Supreme Court, by majority decision, issued its opinion affirming the BLNR’s decision to issue a CDUP.⁷⁷ The Hawai‘i Department of Land & Natural Resources issued a notice to proceed to the University of Hawai‘i for the TMT Project on Maunakea.⁷⁸ With the notice to proceed, the TMT Project can continue with construction.⁷⁹ Hawai‘i Governor David Ige and the TIO announced that construction of the TMT Project would begin the week of July 15, 2019.⁸⁰ However, construction is currently stalled due to protestors blocking the Maunakea Access Road leading to the mountain.⁸¹

III. JURISDICTION

The United States is a Member State of the OAS and a signatory to the Charter of the OAS.⁸² Therefore, the IACHR has jurisdiction over the United States.⁸³ This Petition alleges human rights violations that occurred in the U.S. territory of Hawai‘i from 2009 to present. By the United States’ membership in the OAS and ratification of the American Declaration, the Commission has the jurisdiction and competence to

77. See *Maunakea I*, *supra* note 49.

78. See Press Release, Governor’s Office – Joint News Release – Thirty Meter Telescope Set to Start Construction (July 10, 2019), <https://governor.hawaii.gov/newsroom/latest-news/governors-office-joint-news-release-thirty-meter-telescope-set-to-start-construction/> (last visited Mar. 18, 2020) [hereinafter Governor Ige’s Press Release]. The notice to proceed is a formal communication indicating that all pre-construction conditions and mitigation measures specifically required as a condition of the CDUP have been met. See *The Timeline of TMT*, *supra* note 33.

79. See *The Timeline of TMT*, *supra* note 33.

80. See Governor Ige’s Press Release, *supra* note 78.

81. See *Activists Block Road in Protests over Hawaii Telescope Location*, CBS NEWS (July 15, 2019, 11:13 PM), <https://www.cbsnews.com/news/mauna-kea-protest-activists-block-road-in-protest-of-hawaii-telescope-location-2019-07-15/>.

82. See OAS Charter, *supra* note 15, at 48 n.1.

83. See Goolsby, *supra* note 7, at 34; see also Inter-Am. Comm’n H.R., Rules of Procedure, art. 23, <http://www.oas.org/en/iachr/mandate/Basics/RulesIACHR2013.pdf> (last visited Mar. 18, 2020) [hereinafter IACHR Rules of Procedure].

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admit the Petitioners' complaint against their State of citizenship, the United States.⁸⁴

IV. ADMISSIBILITY

A. The Petitioners Have Standing to File This Complaint

Victims can be considered individuals or groups for purposes of a petition to the IACHR. Article 23 of the IACHR's regulations states:

Any person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons, concerning alleged violations of a human right recognized in, as the case may be, the American Declaration of the Rights and Duties of Man⁸⁵

The IACHR has held petitions are admissible when filed on behalf of victims who are indigenous groups. For example, in *Maya Indigenous Communities v. Belize*, the petitioners included different indigenous communities in southern Belize, including the Mopan and Ke'kchi Maya people.⁸⁶ There, the IACHR held that the petition was admissible, and that "Belize violated the Maya Indigenous Communities' rights to certain lands and natural resources by logging and oil concessions."⁸⁷

A person may be both the petitioner and the alleged victim in a petition.⁸⁸ Therefore, the Petitioners here have standing to petition the IACHR in accordance with Article 23 of its Rules of Procedure.⁸⁹

84. See Goolsby, *supra* note 7, at 34.

85. IACHR Rules of Procedure, *supra* note 83, at art. 23.

86. See *Maya Indigenous Cmty. v. Belize*, Case 12.053, Inter-Am. Comm'n. H.R., Report No. 78/00, OEA/Ser.L/V/II.111, doc. 20 ¶ 45, rev. (2000).

87. de la Rosa Jaimes, *supra* note 17, at 222 n.59.

88. See Inter-Am. Comm'n. H.R., *Petition and Case System Informational Brochure*, ¶ 25 (2010), <https://www.oas.org/en/iachr/docs/pdf/HowTo.pdf> (last visited Mar. 18, 2020).

89. See Goolsby, *supra* note 7, at 34.

B. The Petitioners Have Exhausted Domestic Remedies

The IACHR's requirement that petitioners must pursue and exhaust all available domestic legal remedies according to generally recognized principles of international law is not applicable here.⁹⁰ The exceptions to this requirement include where "domestic law lacks due process, when unnecessary delays prevent a reasonable provision of remedies, or where the petitioner has been denied access to remedies, or [is] otherwise prevented from exhausting them."⁹¹ Additionally, in order for the exhaustion requirement to be applicable to a domestic remedy, the Commission has held the domestic remedy must be an "available, appropriate, and effective [remedy] for solving the presumed violation of human rights."⁹² Moreover, the U.S. court system has been historically "hostile to claims brought by indigenous peoples that would require the United States to make amends for the injustices it has committed, especially those involving the taking of indigenous lands."⁹³

Here, over a span of more than ten years, Kānaka Maoli and Hawaiian cultural practitioners have protested the TMT Project's construction permit through various legal proceedings.⁹⁴ And in October 2018, Hawai'i's Supreme Court gave its final go ahead when it upheld the construction permit for the TMT Project.⁹⁵ Although Kānaka Maoli and activists such as Petitioner Ms. Pisciotta have

90. See IACHR Rules of Procedure, *supra* note 83, at art. 31, ¶ 1.

91. Goolsby, *supra* note 7, at 41; IACHR Rules of Procedure, *supra* note 83, at art. 31, ¶ 2.

92. Sahih v. Ecuador, Case 1/03, Inter-Am. Comm'n H.R., Report No. 9/05, OEA/Ser.L/V/II.124, doc. 5 rev. ¶ 30 (2005); see also Housel v. United States, Pet. 129/02, Inter-Am. Comm'n H.R., Report 16/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 ¶ 31 (2004); accord Graham v. United States, Case 11.193, Inter-Am. Comm'n H.R., Report 51/00, OEA/Ser.L/V/II.111, doc. 20 rev. ¶ 55 (2000); Villareal v. United States, Case 11.753, Inter-Am. Comm'n H.R., Report No. 108/00, OEA/Ser.L/V/II.111, doc. 20 rev. ¶ 60 (2000).

93. Cultural Survival, Request for Early Warning Measures and Urgent Action Procedures to the United Nations Committee on the Elimination of Racial Discrimination, at 6–7 (Mar. 22, 2019), https://www.culturalsurvival.org/sites/default/files/EWUA_Hawai%27i_2019.pdf [hereinafter Cultural Survival Request].

94. See generally *The Timeline of TMT*, *supra* note 33.

95. *Id.*

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received a final judgment through domestic remedies, the Commission's requirement is not applicable here. The domestic legal system has only addressed "the basic due process rights [of Kānaka Maoli] rather than actually adjudicating the issues raised by construction [of the TMT Project] on traditional land."⁹⁶ Thus, the domestic courts that Kānaka Maoli previously sought redress in have essentially ignored Hawai'i's denial of human rights to its native peoples and the obligations it has under international human rights treaties.⁹⁷

Despite the Supreme Court of Hawai'i's most recent ruling allowing the TMT Project's construction, this Petition is admissible because, as referred to above, the domestic remedies exhausted by Kānaka Maoli have not adequately addressed the community's claims. Therefore, the Petitioners have satisfied the exhaustion requirements because there has been a lack of an effective, appropriate remedy, which is a recognized exception under Article 31(2) of the IACHR's Rules of Procedure.⁹⁸

C. Submission of this Petition Is Within a Reasonable Timeframe

Under Article 32 of the IACHR's Rules of Procedure, the Commission generally only considers petitions that are submitted within six months "following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies."⁹⁹ However, because the Petitioners were not provided with an appropriate remedy under Article 31, the IACHR can instead determine whether this Petition has been submitted "within a reasonable period of time."¹⁰⁰ Here, despite a final judgment from Hawai'i's Supreme Court over a year ago, the Petitioners are continuously engaging in efforts to halt the construction of the TMT Project.¹⁰¹ Thus, the filing of this Petition is within a reasonable period of time because it alleges ongoing and threatened future violations.

96. Cultural Survival Request, *supra* note 93.

97. *See id.*

98. IACHR Rules of Procedure, *supra* note 83, at art. 31, ¶ 2.

99. *Id.* at art. 32, ¶ 1.

100. *Id.* at art. 32, ¶ 2.

101. *See Mauna Kea Conflict Timeline*, *supra* note 31.

D. There Are No Pending Duplicate Procedures

There are currently no pending duplicate procedures concerning the Petitioners. Article 33(1) of the IACHR's regulations provides that:

The Commission shall not consider a petition in cases where the subject of the petition is pending in another procedure under an international governmental organization of which the State concerned is a member, or essentially duplicates a petition pending or already examined and settled by the Commission or by another international governmental organization of which the state concerned is a member.¹⁰²

At the time of this Petition's filing, no other complaints have been lodged with any other international organization concerning the Petitioners. There is also no duplicate proceeding currently being examined by the IACHR. Therefore, the IACHR can consider this complaint.

V. LEGAL ARGUMENT

The United States "is internationally responsible for the official acts of government authorities operating within its federal system . . . when those acts infringe applicable international human rights standards."¹⁰³ Therefore, the United States is responsible for allowing¹⁰⁴ the construction of the TMT Project on Maunakea, which violates Article III (right to religion), Article XIII (right to culture), and Article XXIII (right to property) of the American Declaration.

102. IACHR Rules of Procedure, *supra* note 83, at art. 33, ¶ 1.

103. The Navajo Nation, *Petition to the Inter-American Commission on Human Rights Submitted by the Navajo Nation Against the United States of America*, ¶ 42 (Mar. 2, 2015), <https://law.arizona.edu/sites/default/files/Navajo%20Nation%20Petition%20to%20IACHR.pdf> [hereinafter Navajo Petition].

104. *See id.*

A. The United States Violated the Rights of Kealoha Pisciotta and Kānaka Maoli to Religious Freedom and Worship Under Article III of the American Declaration

Article III of the American Declaration states, “[E]very person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.”¹⁰⁵ The IACHR has acknowledged that indigenous peoples have unique ties to their ancestral lands requiring special protection.¹⁰⁶

Significant to this case is the domestic courts’ neglect in recognizing the importance of religion in contemporary Kānaka Maoli society. Although colonialism has had an influence on Kānaka Maoli religious practices much like other indigenous societies, Kānaka Maoli families still worship and honor “many traditional Hawaiian gods and deities” through religious practices and traditional art forms, such as hula.¹⁰⁷ Included in this framework, Maunakea is considered “the Temple of the Supreme Being and is acknowledged as such in many oral and written histories throughout Polynesia, which pre-date modern science by millennia.”¹⁰⁸ It is regarded as the most sacred and spiritual place in history for Kānaka Maoli and its protection is critical to the Kānaka Maoli community’s ability to exercise their rights “to freely profess, manifest, and practice” their religion afforded to them under the American Declaration.¹⁰⁹ Maunakea’s religious and spiritual traditions are integral and inseparable from the spiritual identity of Hawai‘i’s Kānaka Maoli.¹¹⁰ In addition, Petitioner Ms. Pisciotta has opined that to Kānaka Maoli like herself, Maunakea “is revered in the same way that other religions revere churches, temples, synagogues, and mosques.”¹¹¹

As ancestral land to Kānaka Maoli, the United States is “under the obligation to secure [the freedom of Kānaka Maoli] to preserve their

105. American Declaration, *supra* note 36, at art. III.

106. See Navajo Petition, *supra* note 103, ¶ 44.

107. NATIVE HAWAIIAN LAW, *supra* note 1, at 1,122.

108. ROYAL ORDER OF KAMEHAMEHA I AND MAUNA KEA ANAINA HOU, MAUNA KEA – THE TEMPLE: PROTECTING THE SACRED RESOURCE 4 (2017).

109. Navajo Petition, *supra* note 103, ¶¶ 44–45.

110. See *id.* ¶ 51.

111. Opposition Testimony, *supra* note 53, at 2.

own forms of religiousness or spirituality, including the public expression of this right and access to sacred sites.”¹¹² By allowing for the construction of the TMT Project on Maunakea, the state of Hawai‘i and the United States are in violation of this obligation by denying full access to Maunakea—a sacred site—by Kānaka Maoli.

Maunakea’s land includes burial sites and other areas of religious significance to the Kānaka Maoli community.¹¹³ Thus, construction of the TMT Project on Maunakea will also hinder the ability of Kānaka Maoli to freely practice their religion. Maunakea activists have already seen religious altars and places of worship destroyed by government entities.¹¹⁴ Therefore, the Hawai‘i Supreme Court’s ruling and the government’s actions and omissions threaten the link between the community and their ancestral lands.¹¹⁵ This threat violates the Kānaka Maoli community’s right to freely exercise their religion.¹¹⁶

B. The United States Violated the Rights of Kealoha Pisciotta and Kānaka Maoli to the Benefits of Culture Under Article XIII of the American Declaration

The ability of Kānaka Maoli to practice and pass knowledge down from generation to generation is crucial to the survival of Hawaiian culture. Constructing the TMT Project on Maunakea—a sacred cultural symbol to Kānaka Maoli—would further impede this ability. This compounds the injustices the Kānaka Maoli have already endured over a hundred years of colonial influence. Lawmakers should feel compelled to cure such injustice because it is directly at odds with Article XIII of the American Declaration.

112. *Indigenous and Tribal Peoples’ Rights over Their Ancestral Lands and Natural Resources, and Norms and Jurisprudence of the Inter-American Human Rights System*, Inter-Am. Comm’n H.R., OEA/Ser.L./V/II, doc. 56/09, at 61–62 (2009) [hereinafter *Indigenous and Tribal Peoples’ Rights*].

113. See Murray, *supra* note 24.

114. See Muneoka, *supra* note 45.

115. See Maunakea I, *supra* note 49, at 781.

116. See *The Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua, Pet.*, Inter-Am. Comm’n H.R. (Ser. B) No. 11,577 (1995) available at <https://law.arizona.edu/sites/default/files/Petition%20by%20the%20Mayagna%20Indian%20Community%20of%20Awas%20Tingni%20against%20Nicaragua%2C%20submitted%20to%20IACHR.pdf>.

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Article XIII explicitly guarantees that “[e]very person has the right to take part in the cultural life of the community.”¹¹⁷ Kānaka Maoli, Hawaiian culture, and Maunakea are all interconnected. Despite thirteen other observatories that have already been built on Maunakea, the anticipated size of the TMT Project is unprecedented.¹¹⁸ As such, the construction of the TMT Project on Maunakea would further hinder Hawai‘i’s indigenous people in being able to fully exercise their rights to culture.

The Office of Hawaiian Affairs, a semi-autonomous state agency that once supported the TMT Project, issued a statement in June 2019, saying it was “disappointed by the arrest of [Maunakea protectors] and the dismantling of several symbolic structures on” Maunakea.¹¹⁹ The Agency further stated “[t]hese acts and the manner in which they were conducted with little to no consultation with the Native Hawaiian community” further demonstrate the “blatant disregard” by Hawai‘i’s government to the significance of Maunakea to Kānaka Maoli.¹²⁰

The IACHR has repeatedly recognized that the “use and enjoyment of the land and its resources are integral components of the physical and cultural survival of the indigenous communities and the effective realization of their human rights more broadly.”¹²¹ In its report, *Indigenous and Tribal Peoples’ Rights Over Their Ancestral Lands and Natural Resources*, the IACHR addressed how the failure to secure indigenous peoples’ property rights can impair the enjoyment of other human rights, including the right to culture.¹²²

The TMT Project’s construction on Maunakea would further threaten the cultural survival of Kānaka Maoli—a community that has

117. American Declaration, *supra* note 36, at art. XIII.

118. See *About Mauna Kea Observatories*, INST. FOR ASTRONOMY – UNIV. OF HAWAII, http://www.ifa.hawaii.edu/mko-old/about_maunakea.shtml (last visited Mar. 18, 2020); see generally Adrienne LaFrance, *What Makes a Volcano Sacred?*, ATLANTIC (Oct. 30, 2015), <https://www.theatlantic.com/technology/archive/2015/10/what-makes-a-volcano-sacred/413203/> (acknowledging the TMT Project would become the world’s largest telescope if built on Maunakea).

119. *OHA Statement on Mauna Kea*, OFFICE OF HAWAIIAN AFFAIRS (June 20, 2019), <https://www.oha.org/news/oha-statement-on-mauna-kea/>.

120. *Id.*

121. *Maya Indigenous Cmty. of the Toledo District v. Belize*, Case 12.053, Inter-Am. Comm’n H.R., Report No. 40/04, OEA/Ser.L/V/II.122, doc. 5 rev.1 at 727, ¶ 114 (2004).

122. *Indigenous and Tribal Peoples’ Rights*, *supra* note 112, at 57.

historically been disenfranchised and exploited by the U.S. government—because it would encroach on land that traditionally belongs to Kānaka Maoli. As a Kānaka Maoli cultural practitioner, Petitioner Ms. Pisciotta has stated Maunakea’s conditions facilitate a number of traditional Hawaiian practices “that are conducted nowhere else on earth.”¹²³ Therefore, the state of Hawai‘i and the United States’ failure to protect Maunakea as a significant cultural site “impairs the preservation of the ways of life” and customs in the Kānaka Maoli community.¹²⁴

*C. The United States Violated the Rights of Kealoha Pisciotta and
Kānaka Maoli to Property Under Article XXIII of the American
Declaration*

Article XXIII states “every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.”¹²⁵

The Inter-American Court has heard cases concerning property rights of indigenous people and has consistently held:

the close ties of indigenous peoples with the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.¹²⁶

123. K. Kealoha Pisciotta, Written Direct Testimony, DEP’T OF LAND AND NATURAL RESOURCES 5 (June 28, 2011), <https://dlnr.hawaii.gov/mk/files/2016/10/B.01a-Kealoha-Pisciotta-WDT-2016-C-1-amend.pdf> [hereinafter Pisciotta Testimony].

124. *Indigenous and Tribal Peoples’ Rights*, *supra* note 112, at 67; *see also* Sawhoyamaxa Indigenous Cmty. v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 73–75 (Mar. 29, 2006).

125. American Declaration, *supra* note 36, at art. XXIII.

126. de la Rosa Jaimes, *supra* note 17, at 249; *see generally* Xákmok Kásek Indigenous Cmty. v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 86 (2010); Yakye Axa Indigenous Cmty. v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 131 (2005).

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In the court's landmark case decided on August 31, 2001, *The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, it "held that the international right to enjoy the benefits of property . . . includes the right of indigenous peoples to the protection of their customary land and resource tenure."¹²⁷ There, the Awas Tingni—"one of the numerous indigenous communities in the isolated Atlantic Coast region of Nicaragua"¹²⁸—sought security "in the peaceful possession of traditional lands."¹²⁹ The court found that Nicaragua "violated the property rights of the Awas Tingni Community by granting to a foreign company a concession to log within the Community's traditional lands and by failing to otherwise provide adequate recognition and protection of the Community's customary tenure."¹³⁰ Notably, the court dismissed Nicaragua's approach to the Awas Tingni's complaint, which included operating under a presumption "against the existence of indigenous land or resource rights unless presented with definitive proof within a set of narrow state-defined criteria."¹³¹

Here, Kānaka Maoli have prevailing proof of their claim¹³² to Maunakea. Maunakea is "part of the Crown Lands—lands of the [Hawaiian] Monarchy prior to the 1893 overthrow." Thus, Maunakea "like all Ceded Lands (which include[s] the former Crown Lands)," is supposed to be held in trust by the state of Hawai'i and "managed for the benefit of Native Hawaiian people and the public."¹³³ The OHA, as "the public agency responsible for improving the well-being"¹³⁴ of Kānaka Maoli, has stated that Hawai'i has "prioritized astronomical development at the expense of properly caring for Maunakea's natural

127. James Anaya & Claudio M. Grossman, *The Case of Awas Tingni v. Nicaragua: A New Step in the International Law of Indigenous Peoples*, 19 ARIZ. J. INT'L & COMP. L. 1, 1 (2002).

128. *Id.*

129. *Id.*

130. *Id.* at 2.

131. *Id.* at 10.

132. Abby Starr Herhold, *Hawai'i's Thirty Meter Telescope: Construction of the World's Largest Telescope on a Sacred Temple*, Master Thesis In Culture, Environment and Sustainability, Univ. of Oslo (Oct. 2015) 48.

133. *Id.* at 49.

134. *Id.* at 48.

and cultural resources.”¹³⁵ Therefore, development on Maunakea is a “legal anomaly”¹³⁶ and is an example of how the state of Hawai‘i has mismanaged indigenous land at the expense of its native people.

Similar to how transnational companies infringed on the Awas Tingni’s lands,¹³⁷ the TIO partnership (successor to the international TMT Corporation, which is made up of different research and educational institutes around the world) maneuvered itself into a controlling position over Maunakea. Although the project now has permission from the state and domestic courts to proceed, the many concerns of the indigenous community in Hawai‘i have been ignored. This is evidenced by the fact that, since construction on the TMT Project was set to begin in June 2019, protectors of Maunakea have established an around the clock blockade at the base of the mountain to prevent ground from being broken on the project.¹³⁸

Despite over a decade of court hearings and meetings discussing the future of Maunakea, the United States and Hawai‘i have still failed to properly hear the complaints of Kānaka Maoli, including Petitioner Ms. Pisciotta. As president of the Mauna Kea Anaina Hou organization, Ms. Pisciotta has been at the forefront of the legal battles between Kānaka Maoli and the TIO partnership. In 2011, Ms. Pisciotta authored testimony in opposition to the TMT Corporation’s CDUP application on behalf of her organization and Kānaka Maoli.¹³⁹ There, Ms. Pisciotta argued that the TMT Project will have a significant, adverse, and substantial impact on the cultural and natural resources of Maunakea.¹⁴⁰ Ms. Pisciotta’s testimony evidences how domestic court systems have continually downplayed the interconnection between the spirituality of Kānaka Maoli and Maunakea as ancestral property belonging to Hawai‘i’s indigenous population. Thus, Hawai‘i and the United States have failed to protect and honor Maunakea as land rightfully owned by Kānaka Maoli.

135. *Mauna Kea*, OFFICE OF HAWAIIAN AFFAIRS, <https://www.oha.org/maunakea/> (last visited Mar. 18, 2020).

136. Herhold, *supra* note 132, at 47.

137. Anaya & Grossman, *supra* note 127, at 3.

138. *Hundreds Recognize 100th Day of Protest at Maunakea*, MAUINOW (Oct. 21, 2019), <https://mauinow.com/2019/10/21/hundreds-recognize-100th-day-of-protest-at-maunakea/>.

139. Pisciotta Testimony, *supra* note 123, at 1.

140. *Id.* at 9.

CONCLUSION AND REQUEST FOR RELIEF

The facts alleged herein establish that the United States clearly violated Kānaka Maoli rights under Articles III, XIII, and XXIII of the American Declaration by authorizing the TIO partnership to proceed with the TMT Project's construction on Maunakea.

Accordingly, Petitioner Ms. Pisciotta and Hawai'i's Kānaka Maoli community respectfully request the Inter-American Commission on Human Rights declare this Petition admissible and prepare a report setting forth all the facts and applicable law, and perform the following:

1. Investigate—with hearings, witnesses, and evidence as necessary—the allegations in this Petition;
2. Declare that the United States is responsible for the violation of Hawai'i's indigenous peoples' rights under the American Declaration of the Rights and Duties of Man; including, inter alia, their right to religious freedom and worship at Maunakea under Article III;
3. Declare that the United States is responsible for the violation of Hawai'i's indigenous peoples' rights under the American Declaration of the Rights and Duties of Man; including, inter alia, their right to the benefits of their culture under Article XIII;
4. Declare that the United States is responsible for the violation of Hawai'i's indigenous peoples' rights under the American Declaration of the Rights and Duties of Man; including, inter alia, their right to property under Article XXIII; and
5. Comply with any other remedies that the Commission deems appropriate to address the violations herein.

*Lillian K. Glenister**

* J.D. Candidate, California Western School of Law, 2021; B.A., *summa cum laude*, San Diego State University, 2018. From Samoan descent, Lillian is the president of California Western School of Law's Pacific Islander Law Student Association. She would like to thank the *California Western Law Review* team for their hard work and dedication in preparing this Note for publication. She would also like to thank her faculty advisor, Professor William J. Aceves, for his guidance and feedback throughout the writing process. Moreover, Lillian would like to thank her family and friends in the Native Hawaiian and Pacific Islander community who shared their insights and opinions with her. Finally, this Note is dedicated to Kealoha Pisciotta and the many Kānaka Maoli activists who continue to advocate for the protection of Maunakea. All errors and opinions are the author's sole responsibility.