

The Special Situation of Hawaii

A Shadow Report to the Human Rights Committee on The Violation of Human Rights of Native Hawaiians in the Hawaiian Archipelago

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Submitted by:

**Na Koa Ikaika o Ka Lahui Hawaii
Mililani B. Trask, Convener
Contact Info: (808) 961-2888 phone
Email: gibson@ilhawaii.net**

Kaiopua Fyfe for the Koani Foundation

**Richard Kekuni Blaisdell, Chair
Kanaka Maoli Tribunal Komike**

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I. **Executive Summary**

A. **The Apology Bill**

On November 23, 1993, the United States Congress passed Public Law 103-150 officially apologizing to the Hawaiian peoples for: "The illegal overthrow of (their nation) the Hawaii Kingdom...which resulted in the suppression of the inherent sovereignty of the Hawaiian people....".

The law states:

"The Congress apologies to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States and the deprivation of Rights of Native Hawaiians to self-determination." (Exhibit 1).

This law sets forth the historic facts relating to the overthrow and the complicity of the U.S. in the event which resulted in the "**loss of 1.8 million acres of land without consent or compensation to Native Hawaiians peoples**". The law also admits that the overthrow was an Act of War and a "**violation of international law**". It recognizes that "the indigenous Hawaiian peoples never directly relinquished their claims to their lands to the United States, either through plebiscite or referendum." (Exhibit 1).

The Apology law also details the efforts of the U.S. to obscure its role in the overthrow in order to annex Hawaii.

By passing the Apology law, the U.S. has admitted to the continuing violations of the human rights of the Hawaiian peoples and to the deprivation of their right to self-determination pursuant to Article 1 of the ICCPR. From 1893 to the present, Hawaiians have been denied their right to determine their political status and to freely pursue their economic, social and cultural development and have been denied control and access to their traditional lands, territories and resources, their right of subsistence and their right to freely dispose of their natural wealth. Hawaiians have been denied their right to self-determination.

B. **Hawaii Under the United Nations – Non Self Governing Territory Status**

In 1946 the UN listed Hawaii as a Non Self Governing Territory (NSGT) under U.S. administration pursuant to Chapter XI, Article 73 of the UN Charter. At that time the U.S. assumed a "sacred" obligation to prepare the Hawaiian peoples for self-government and to ensure that the United Nations decolonization process was

implemented pursuant to the UN decolonization resolutions including inter alia: UNGA Resolution 644, 637, 742, 1514 and 1541.

The U.S. ignored the mandate of international law and instead contrived to annex Hawaii and thereafter to incorporate Hawaii as a 50th State. The requirement that the native peoples be informed of their options for self-government and that their political aspirations be fulfilled through decolonization were violated (see Part II herein).

Upon the imposition of Statehood the U.S. notified the UN that they would cease reporting on Hawaii under provision 73 of the UN Charter. The UN complied but never inquired into the annexation or statehood process. The new State Constitution imposed on Hawaii dispossessed the Hawaiian peoples of their lands, territories and resources and made them wards or beneficiaries of "land trusts" under control of the State. These "land trusts" were reserved only for natives who could prove 50% blood quantum with Western documentation. Hawaiians who could not meet these requirements were totally dispossessed. This has been the case since 1959 and has been the subject of several reports of the Hawaii Advisory Committee to the U.S. Committee on Civil Rights.

Today Hawaiians are the poorest and most needy of all peoples in the U.S. Although classified as native-Americans by 80 U.S. statutes, they are denied the political status of other Native American federally recognized nations and continue to be denied their right to self-determination under the ICCPR and the UN Charter.

Note: For a complete chronology see Exhibit 4, *The Road to Colonization – Milestones of Hawaii's Interaction with the West*. For a complete history see Exhibit 5, Submittal of Research and Testimony to Kinau Kamalii, Chair, Native Hawaiian Study Commission by Dr. Haunani-Kay Trask, Attorney Mililani Trask and Professor Marion Kelly, Nov. 23, 1982.

Questions to the United States

1. In light of the historical facts underlying the overthrow of the Hawaii Kingdom to which the U.S. admits, and the current status of the Hawaiian peoples as wards of the state of Hawaii, and in light of Article 1 of the ICCPR, how does the U.S. intend to rectify the violations of the right of self-determination of the indigenous Hawaiian peoples in order to guarantee their right to determine their political status and freely pursue their economic, social and cultural development.
2. In light of the legal admissions of the U.S. Congress in the Apology Law, (Pub. L. 103-150) and the loss of 1.8 million acres of Hawaiian lands, territories and resources (including submerged lands and energy and marine resources), how does the U.S. plan to restore land and natural resources to the Hawaiian peoples, and to ensure their subsistence rights and their right to freely dispose of their natural wealth will be respected and acknowledged.

3. How does the U.S. intend to harmonize its National Security Council policy on indigenous peoples' right to self-determination with the provisions of Article I of the ICCPR?

II. Violations of International Law

A. Additional facts relating to annexation, the U.S. policy issues and the imposition of statehood.

1. The specific reasons for the U.S. annexing Hawaii were set forth in both Senate Report 681 and House Report No.1355, accompanying the Joint Resolution of Annexation. These specifics included the prevention of alien establishment in the North Pacific and securing the commerce of the islands. A more important consideration was that the.... "United States must act NOW to preserve the results of its past policy and to prevent the dominating in Hawaii of a foreign people..... It is no longer a question of whether Hawaii shall be controlled by the Native Hawaiians.....The question is, what foreign people shall control Hawaii.?" H.R. Rep. No. 1355, 55th Congress, 2d Sess., p 29 (1898).
2. The annexation of Hawaii was not achieved by legal means pursuant to U.S. law or international law. Several attempts were made to utilize the legal mechanism of a Treaty. These efforts failed when the U.S. Senate refused to ratify the Treaty. For expediency, the U.S. pro-annexationists used a Joint Resolution of Congress. (See Exhibit 6, Native Hawaiian Study Commission Report on the Culture, Needs and Concerns of Native Hawaiians (June 23, 1983, pp 300-303). Under domestic and International Law a Joint Resolution is effective only within the boundaries of the U.S. it would not apply in a foreign nation. See *Islands in Captivity, The International Tribunal on the Rights of Indigenous Hawaiians*, Ward Churchill and Sharon Venne, South End Press (2004), hereafter *Islands in Captivity*.
3. In 1946, Hawaii was listed by the United Nations as a Non-self Governing (NSG) Territory under the administration of the United States. GA Reso 66 (I) 14-Dec. 1946; The United States began immediately to draft legislation to impose statehood on Hawaii. The first Statehood Bill was sent to Congress in 1947 (U.S. Congress, Statehood for Hawaii, House of Representatives, 80th Cong. 1st Sess, H.R. 49, Washington G.P.O. 1947). Hawaiians filed suit in 1948 to stop the expenditure of public funds to 'propagandize' statehood but U.S. territorial courts denied their petition. (See Exhibit 7).
4. The Statehood plebiscite by which Hawaii was incorporated into the United States did not provide the options required by international law for NSG Territories nor did the United Nations supervise the election in which the U.S. military and other U.S. citizens were allowed to vote (*Islands in Captivity*); See also Exhibit 8 the ballot; and Exhibit 9.
5. On September 17, 1959, the United States informed the United Nations that a "new Constitution" had been adopted in Hawaii and that the U.S. had incorporated Hawaii and would no longer transmit information under Article

- 73 of the charter. (See Cessation of the Transmission of information under Article 73 e, UNGA Doc. No. A/4226, 24 Sept. 1959, pp99 -103, Exhibit 9).
6. Following Statehood and by virtue of Sections 4 and 5 of the Hawaii Constitution, Native Hawaiians were dispossessed of their traditional lands, territories and resources and were made wards or beneficiaries of trusts under control of the State. Pursuant to Section 5(f) of the Constitution, the 'trusts' were created for those with 50% blood. Hawaiians of less than 50% blood were totally dispossessed of any interest in the 50% blood trusts (Exhibit 9, p. 102).
 7. Native Hawaiians are excluded from the U.S. policy which provides recognition and jurisdictional authority to native Indians of the U.S. Continent (see U.S. Periodic Report to ICCPRs, Para. 9 - 25). Because of this, Hawaiian programs and federal funding are now being challenged as 'racially suspect' classifications (See U.S. Periodic Report, para. 29-32);

B. The United States has historically violated and continues to violate the right of Self-Determination of Hawaiians and its obligation to respect and promote equal rights and Self-Determination of Hawaiians under the Law of Nations, the UN Charter and the ICCPR.

(1) Historic Violations prior to the UN's listing of Hawaii as a Non-Self-Governing Territory in 1946.

1. Under Articles 1 and 55 of the Charter, the law of Nations, and Article 1 of the ICCPR the U.S. had an obligation to "maintain international peace and security" to "suppress acts of aggression", and to "develop friendly relations among nations" "based on principles of equality and self-determination".

2. The U.S. through its actions preceding and during the overthrow violated the right of the Hawaiians to self-determination as citizens of an independent Kingdom. To wit, Hawaiians had freely determined their political status (to be citizens of the indigenous Hawaiian Kingdom) and through the laws and protocols of that Kingdom to freely pursue their economic cultural and political development (Exhibit 1, pp 1-6, The U.S. Apology Law).

3. The U.S. violated international law and the right of self-determination of Hawaiians by aiding, abetting and participating in the subversion of the Hawaiian peoples' right to self-governance and their Kingdom in violation of the territorial integrity of the Kingdom and G.A. Reso 1514 (XV) of 14 December 1960. (See Exhibit 2, pp 1-6).

4. The records of Congress also verify that during this period and pursuant to the Doctrine of Manifest Destiny and the Tyler Doctrine, the U.S. utilized its military forces globally to foment violence and destabilize independent and democratic states, including the indigenous Hawaiian Kingdom which comprised the traditional lands,

territories and resources of the Hawaiians, depriving them of their rights to freely dispose of their natural wealth and resources and their means of subsistence guaranteed under ICCPR Article 1.2 in violation of ICCPR Article 1.3.

See Exhibit 10, Records of Congress of U.S. military incursions 1789-1945 which records: "1893 Hawaii, January 16 – April 1, ostensibly to protect American lives and property: actually to promote a provisional government under Stanford B. Dole. This action was disavowed by the United States."

C. Violations which occurred while Hawaii was listed as a Non-Self-Governing Territory 1946-1959.

1. The United States violated its obligations under the UN Charter Articles 1, 55 and 73, and Article 1 of the ICCPR to Hawaiians who were indigenous inhabitants of the Non-Self-Governing Territory (NSGT) of Hawaii from 1946 – 1959. International law provided specific provisions, procedures and obligations of administering states towards NSGT's which were set forth in General Assembly Resolutions, including inter alia, Resolutions 644 (VII), 637 (VII), 742 (VII), 1514 (XV), 1541 (XV). These Resolutions provide the criterion and procedure to ensure that the indigenous inhabitants of NSGT's are prepared for self-governance and obtain their right to self-determination.

2. In 1946, the UN listed Hawaii as a Non-Self Governing Territory under the administration of the United States, GA Reso. 66 (I) of 14 December 1946.

3. From 1946 to 1959, pursuant to Article 73 of the UN Charter and the ICCPR owed a "sacred trust" obligation to Hawaiians, the indigenous inhabitants of the Territory to ensure with due respect for their culture, "Their political, economic, social and educational advancement taking into account their political aspirations "to assist them in the progressive development of their political institutions".

4. Under G.A. Reso, 644 (VII), 10 Dec. 1952, the U.S. as Administering Agent of the NSGT of Hawaii had an affirmative obligation to recognize the interests of the inhabitants of the Territory were "paramount" and that "protective measures to safeguard the rights of indigenous inhabitants" were not deemed discriminatory.

5. Under G.A. Reso 637 (VII) 16 Dec. 1952, the U.S. as an Administering State was directed to uphold the principle of self-determination under the Charter and to take steps in preparation of the realization of self-determination... "To ensure the direct participation of the indigenous populations....to prepare them for complete self-governance or independence..."

6. Reso 637 also required the U.S. to take practical steps to "ensure the direct participation of the Indigenous populations in the legislative and executive organs of government" of Hawaii.... Part B of Reso 637 required the U.S. to report specific items under 73c of the Charter. To wit, "...details regarding the extent to which the right of peoples and nations of self-determination is exercised by the peoples of the(se) territories

and in particular, their political progress and the measures taken to develop their capacity for self-administration to satisfy their political aspirations and to promote the progressive development of their free political institutions...”

7. GA Reso 742 (VII) 27 Nov. 1953 expounded that in exercising the right of self-determination, Hawaiians were to be afforded 3 choices for self-governance: 1) Independence; 2) Free association; or 3) Separate System of Self-government. It set forth the factors indicative of attainment of these options in the annex. The Resolution is clear that the legitimacy of “any form of association between a NSG Territory and a State would depend “on the freely expressed will of the people at the time of the decision”. (See Consideration Section E., Reso 742).

a. Note: GA Reso 1541 (XI) 16 Dec. 1960 Annex Principle VI, lists the options of Non-Self Governing Territories as 1) Independence; 2) Free Association and 3) Integration with the State. GA Reso 742 – Second part sets forth the factors indicative of attainment of ‘other systems of self-government (or integration) which factors are incorporated herein by reference.

8. G.A. Reso 1514 (XV), 14 Dec. 1960, provisions 1-7, provides that peoples under “alien subjugation, domination & exploitation are denied human rights that the administering states should transfer all powers to the peoples of NSGT’s and that states must adhere to the principle of non-interference”.

9. Principle IX of G.A. Reso 742 sets forth the criterion to determine the legitimacy of integration with a state, specifically, “(b) The integration should be the result of the freely expressed wishes of the territories’ peoples acting with the full knowledge of the change of their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal suffrage. The United Nations could when it deems it necessary, supervise these processes.”

10. These G.A. Resolutions which define and delineate the factors and processes for the exercise of the right of self-determination by Hawaiian inhabitants of the NSG Territory of Hawaii, as well as obligations of the U.S. were violated by the direct actions of the U.S. to wit:

a. Reports of the U.S. under Article 733 of the Charter indicate that no effort was made by the U.S. to inform, educate or involve indigenous peoples in the governance of the Territory, nor did the U.S. educate or inform Hawaiians (or the descendants of the citizens of the Kingdom) to the options of Free Association and Independence on the ballot of 1959.

b. The 1959 ballot did not contain the options required by international law. (Exhibit 3, U.S. Military personnel and U.S. ex-patriots were allowed to vote).

c. Efforts of Hawaiians and their aspirations for independence and restoration of the monarchy were ridiculed by U.S. officials with oversight of the process

(Exhibit 11) and denied by the U.S. federal court which heard the petition of Kamokila Campbell for an injunction to prevent the use of public funds for "the purpose of propagandizing, subsidizing and....advancing statehood" (Exhibit 7).

d. No "protective measures" were instituted for the benefit of Hawaiians, nor were the needs of Hawaiians treated as being "paramount". The true political aspirations of the Hawaiians were subverted. Integration dispossessed Hawaiians of their lands, territories and resources. Upon the imposition of statehood, the U.S. separated Hawaiians by blood quantum, all lands territories and resources were given to the State, 50% blood trusts were established to be controlled by the State. Hawaiians were denied the right to litigate or sue in Federal courts to protect these trust assets. (See Constitution of Hawaii Section 4 & 5 Exhibit 9, p. 102). Hawaiians were made wards of the State under the Admissions Act which imposed statehood on Hawaii and purported to integrate Hawaii into the U.S.

Part III.

A. **The United States as a Matter of law has admitted to violating international law, depriving Hawaiians of their right to self-determination under Article I, ICCPR, and that the consequences of these violations against Hawaiians have been.... "devastating to the health and well being of the Hawaiians."** (Exhibiti 1, pp. 1-6). Note: The consequences in and of themselves are also violations of the ICCPR.

1. On November 23, 1993, the U.S. Congress passed Public-Law 103-150, Apologizing to Hawaiians for the illegal overthrow of their independent Hawaiian Kingdom, for violating treaty and international law "and the deprivation of the rights of Native Hawaiians to self-determination". (See Exhibit 1, p. 5).

2. By this law the U.S. congress specifically admits to its conspiracy and actions by reciting the historical facts set forth in Part 1 hereto. The U.S. also admits that Hawaiians have been deprived of their right to self-determination. (See Exhibit 1 hereto for the law in its entirety).

Part IV: The United States has violated and continues to violate the rights of Hawaiians and all of the indigenous peoples of the world (350 million people) to self-determination under Article 1 of the ICCPR by the implementation of its national security policy entitled: 'Position on Indigenous Peoples'. This policy also violates Article 5 and Article 26 of the ICCPR (See Exhibit 12 for the policy in its entirety).

1. The right to self-determination is well established in international law. It is defined in the ICCPR common Article 1.
2. In 2001, the U.S. decided to change the definition of self-determination as it relates to the world's indigenous peoples including Native Hawaiians. This action was undertaken by the U.S. National Security Council (NSC), which is

chaired by the President of the United States, because the NSC has determined that indigenous people's human rights threaten the national security of the U.S.

3. In an effort to avoid claims and restitution for human rights violations against indigenous peoples, including Hawaiians, the U.S. has created and implemented its own "international law" on self-determination relating to indigenous peoples. This policy and its application are patently racist in that it only applies to indigenous peoples because of their racial, cultural and social characteristics (i.e. their "indigenesness").
4. The NSC policy of the U.S. violates Article 5, (1) and (2) of the ICCPR because it destroys the rights and freedoms guaranteed to indigenous peoples and Native Hawaiians (self-determination and other rights under the ICCPR and the UN Charter) and because it derogates from fundamental human rights standards set forth in common Article 1 of the ICCPR and ICESCR.

Part V: The United States is violating Article 26, 23 & 24, Article 22, Article 2 and Article 1 & by its unequal and disparate treatment of Native Hawaiians visavis its policy towards "federally recognized Indian tribes."

1. Article 26 of the ICCPR requires that all peoples be treated equally before the law. The U.S. in its report indicates that 'equal protection of the law' in the U.S. requires that people in similar situations or of similar status should be treated similarly.
 - a. The U.S. recognizes Hawaiians, Alaska Natives and Indians as 'Native Americans'. American Indians that are federally recognized have established nations, they control land and resources, administer their own courts, school, police & fire departments. They have political and legal jurisdiction to pass tribal codes, impose taxes and enter into and pursue commercial and economic development contracts. They are free to dispose of their natural wealth and to pursue their economic, social and cultural development. Hawaiians are denied these rights.
 - b. Hawaiians are recognized as Native American in over 80 U.S. laws, but their status is as wards of the state. They are denied the right to associate with each other as 'a native nation', a right which 350+ Indian nations and tribes have. This violates Article 22 of the ICCPR.
 - c. Indian Children removed from dysfunctional Indian homes have a legal right to be placed with Indian families. The U.S. Congress and courts provide this protection because it is in the best interest of the Indian child and family. Hawaiian children do not have this right. Hawaiian children are regularly removed from Hawaiian homes and traumatized by placement with whites and Asians. This violates Article 23 & 24 of the ICCPR.
 - d. Federally recognized Indians have the right to sue and raise claims in the Federal District court. This is a fundamental right to judicial review and

remedy. The Federal District Court standards for Indians do not apply to Hawaiians. The Statehood Admissions Act provides that only the U.S. can sue to raise issues relating to breach of the Ceded Land trust (Exhibit 9). No such suit has ever been filed by the U.S. because of conflict of interest. Federal courts have ruled that Hawaiians can bring 1983 actions (Civil rights) in the Federal Court. However, the remedy is limited to declaratory and injunctive relief in '1983' actions. 1983 actions cannot remedy or resolve land, or resource issues, nor could such an action provide the redress needed to secure human rights. This situation violates Article 2.2 and Article 14 of the ICCPR.

Part VI: Hawaiians, as the indigenous and first peoples of Hawaii retain their right to seek appropriate redress for the denial of their right to self-determination under the UN Charter.

1. Pursuant to G.A. 2625, the NSG Territory (colony) of Hawaii under the U.N. Charter had a status separate and distinct from that of the United States. Reso 2625 makes it clear that this distinct status shall exist until the people of the colony or NSG Territory have exercised their right to self-determination in accordance with the Charter, its purposes and principles. Declaration of Principles of International Law Concerning Friendly Relations and co-operation Among States in Accordance with the Charter of the United Nations, G.A. Reso 2625, UN GAOR 25 Sess. (1970).
2. Pursuant to G.A. Reso 1514 (XV) of 14 Dec. 1960, the Hawaiians peoples have an immediate and continuing right to be free of "alien subjugation, domination and exploitation and an unqualified right to self-determination" GA Reso 1514 (XV) pp 1 & 2
3. G.A. Reso 2625 provides that Hawaiians, as peoples deprived of their right to self-determination have the right to seek international support from the Human Rights Committee and the UN. *"Every state has the duty to refrain from any forcible action which deprives peoples referred to above [those with the right to self-determination] in the elaboration of the present principle of their right to self-determination and freedom and independence. In their action against, and resistance to such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the charter"*.
4. The U.S. has previously asserted that under the principle of non-retroactivity bars any consideration of Human Rights violations which occurred historically. This is not correct under international law where there is a continuing violation which results in continuing deprivation of human rights. See IA/Court H.R., Case of Moiwana Village v. Suriname, Judgment June 15, 2005, p. 10-11, para. 29 and p. 44, para. 92.

List of Exhibits

- Exhibit 1:** Pub. L. 103-150, The U.S. Apology Law, Oct. 27, passed Senate Nov. 15 passed House, signed into law by President Bill Clinton Nov. 23, 1993, Cong. Rec. Vol. 139 (1993);
- Exhibit 2:** The Blount Report, Report of James Blount to Secretary of State W.Q. Gresham on Recent Events Transpiring in the Hawaiian Islands (Washington: Government Printing Office, 1893);
- Exhibit 3:** Special Message to Congress on Recent Events in the Kingdom of Hawaii, December 18, 1893, reprinted in the Honolulu Star Bulletin, Thursday, January 6, 1983, p. A-16;
- Exhibit 4:** The Road to Colonization, Milestones of Hawaii's Interaction with the West, Islands in Capacity, Record of the International Tribunal of the Rights of Indigenous Hawaiians, compiled and edited by Ward Churchill and Sharon H. Venne, South End Press (2004), p. XXXV;
- Exhibit 5:** Submittal of Research and Testimony to Kinau Kamalii, Chair, Native Hawaiian Study commission by Dr. Haunani-Kay Trask, and Professor Marion Kelly, Nov. 23, 1982, printed in its entirety in the Native Hawaiian Study Commission Report (See Exhibit 6);
- Exhibit 6:** Native Hawaiian Study commission Report on the Culture, Needs and concerns of Native Hawaiians (June 23, 1983), pp. 300-303;
- Exhibit 7:** "Kamokila Campbell Files Statehood Suit", Honolulu Advertiser, Jan. 18, 1948, p. 1 and p. 6;
- Exhibit 8:** Plebiscite Ballot, Honolulu Advertiser, June 16, 1959;
- Exhibit 9:** Official Records of the General Assembly, 14th Sess. Annexes, 15 Sept. – 13 Dec. (1959), pp. 99 – 103, Doc. A/4226;
- Exhibit 10:** Records of U.S. congress of Military and Armed Interventions 1789-1945 and the Use of U.S. Armed Forces, Cong. Rec. Senate, June 23, 1969, p. 29-31;
- Exhibit 11:** "Islanders plea for Hawaiian Monarchy Labeled 'Inconceivable' by Senator, Honolulu, Star Bulletin, Wed. April 22, 1959;
- Exhibit 12:** U.S. Policy Statement on Indigenous Peoples National Security Council (NSC) Memo to U.S. Dept of State, U.S. Secretary of Interior, U.S. Dept. of Justice, and foreign governments, Jan. 18, 2001;