



UNITED NATIONS HUMAN RIGHTS COMMITTEE

109TH SESSION (14 OCTOBER – 1 NOVEMBER 2013)

CONSIDERATION OF THE FOURTH PERIODIC REPORT OF THE UNITED STATES OF AMERICA UNDER ARTICLE 40 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Kai 'Ula Pono'i Texas Hawaiian Civic Club Shadow Report

Date: February 3rd, 2014

History of Hawaiian Civic Clubs:

The Association of Hawaiian Civic Clubs is the oldest Native Hawaiian community-based grass roots organization founded in 1918 by Prince Jonah Kuhio Kalaniana'ole, Delegate to the United States House of Representative. It is a confederation of fifty-two (52) Hawaiian Civic Clubs located throughout the State of Hawai'i and in the States of Alaska, California, Colorado, Illinois, Nevada, Utah, Virginia, Texas, Washington State and Tennessee. The Association is governed by a Board of Directors and maintains a strong voice at city, state and federal levels. The leader in advocating for improved welfare of native Hawaiians in culture, health, economic development, education, social welfare, and nationhood, the Association is also responsible for perpetuating and preserving language, history, music, dance and other cultural traditions. The Associations' vision is to remain a recognized voice of the Native Hawaiian people and make the organization self-sustaining. Our mission is to serve with pono (righteousness) in advocacy of culture, health, economic development, education, social welfare and nationhood. See www.aohcc.org.

Petitioners:

Kai 'Ula Pono'i Texas Hawaiian Civic Club was chartered on November 7, 2009, it has 66 Hawaiian members. Its purpose is to actively participate in the promotion, perpetuation and practice of the Native Hawaiian culture and values. Its objectives are: 1. To unite our members in the bonds of friendship, good fellowship, and mutual understanding. 2. To promote the theory and practice of the principles of good government and good citizenship, guided by Native Hawaiian values. 3. To promote the civic, health, and education activities of our community, in particular, the activities of those agencies and organizations who are responsible for the improvement of the conditions of the people of Hawaiian ancestry. 4. To preserve and perpetuate the culture and traditions of Hawai'i nei. 5. To encourage the teaching, learning and use of 'ōlelo makuahine. 6. To actively assert and defend the cultural and intellectual property rights of the Native Hawaiian peoples and 7. To provide funds for scholarships to be awarded to students of Hawaiian ancestry.

The Hawaiian Civic Club of Texas appreciates the opportunity to address the issues to be raised in the review of the United States of America's ("US") compliance as a State Party to the International Covenant on Civil and Political Rights (ICCPR). The submitters of this Shadow Report respectfully call the attention of UN Human Rights Committee ("the Committee") to critical human rights concerns that are not addressed, adequately or at all, in the US Government's Fourth Periodic Report to the Committee

This is the first ICCPR review of the US to be carried out since the adoption of the UN Declaration on the Rights of Indigenous Peoples ("UNDRIP") by the United Nations (UN) General Assembly on September 13th, 2007.

The UNDRIP, as the internationally accepted universal framework of minimum standards for the survival, dignity, well-being and rights of the world's Indigenous Peoples, provides a framework for the Committee's review of the United States' compliance with the Covenant in relation to the specific questions raised by the Committee regarding Indigenous Peoples.

The Committee has noted in its Question No. 27 to the US, regarding compliance with Article 27 of the Convention, the US government's obligation to obtain Indigenous Peoples' Free Prior and Informed Consent (FPIC) is a central concern for Indigenous Peoples. The failure of the US to fully respect and implement this minimum standard in its dealing with Native Hawaiians is a consistent pattern presented by Native Hawaiians who have contributed to this Shadow Report.

Free, Prior & Informed Consent:

For Indigenous Peoples, the Right of Free, Prior and Informed Consent (FPIC) is a requirement, prerequisite and manifestation of the exercise of their fundamental right to self-determination as defined in international law.

With the Adoption of the UNDRIP, as well as other international standards such as General Recommendation XXIII of the UN Committee on the Elimination of Racial Discrimination (CERD) and the 2005 UN General Assembly's Plan of Action for the 2nd International Decade of the World's Indigenous Peoples, FPIC is an undeniable operative international human rights framework to which the US is accountable. FPIC has also been affirmed in the jurisprudence of the Inter-American Human Rights Commission, the Inter-American Court and by a number of landmark Studies by UN Special Rapporteurs.

Human Rights Violations: FPIC & Self-Determination

For several years the United States has acted in conjunction with the State of Hawaii to create a federally recognized 'governing entity' to act as a sovereign Hawaiian indigenous Nation for the purpose of facilitating Federal & State initiatives impacting indigenous Hawaiian entitlements, lands, territories & resources. These efforts are intended to and have prevented Hawaii's indigenous peoples from expressing their right to self-determination under the Convention and the UNDRIP.

In the USA, Hawaiians are excluded from the federal policy that affords American Indians the right of self-governance. Although the US 'recognizes' other indigenous peoples within its State boundaries, Native Hawaiians remain wards & 'beneficiaries' of the State of Hawaii. Hawaiians receive federal program benefits but have never been allowed to organize & form their own 'indigenous nation' as Indians have. Instead, the US & State of Hawaii have sought to prevent this exercise of self-determination and to impose a State & Congressional 'governing entity' on Native Hawaiians without their involvement and Free Prior Informed Consent.

For the past several years the Obama Administration, the State Office of Hawaiian Affairs and the State of Hawaii have conducted closed meetings & discussions with a small group of individuals seeking to obtain federal status and control over significant Hawaiian trust resources to the exclusion of hundreds of thousands of Hawaiian Peoples. In order to implement this agenda, and in violation of the inherent right of Native Hawaiians to Self Determination, the Federal Government and State of Hawaii have created & introduced State & Federal Legislation to define Native Hawaiians as ‘Indians’ under the US Constitution and create a Hawaiian ‘governing entity’ with no land, resources or territory and no authority or jurisdiction to be self-governing. [See S. 675 IN THE SENATE OF THE UNITED STATES—112th Cong., 1st Sess. And S.675 Fact Sheet & Section by Section analysis, attached hereto as Exhibit A].

The Apology Law:

These efforts contradict the admission of the United States Public Law 103-150, informally known as the **Apology Resolution**, is a Joint Resolution of the U.S. Congress adopted in 1993 that "acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through the Kingdom of Hawaii or through a plebiscite or referendum" (*U.S. Public Law 103-150 (107 Stat. 1510)*).

There still has not been any “plebiscite or referendum” by the Hawaiian People.

The Apology Resolution acknowledged that the United States facilitated an illegal overthrow of the lawful Hawaiian government replacing it with a Provisional government ...**“without the consent of the Native Hawaiian people or the lawful Government of Hawaii and in violation of treaties between the two nations and of international law”**. Since the passage of this Resolution, the US has not supported Hawaiian self-determination but has sought instead to create a “Governing Entity” without consultation or hearings in Hawaii with the Native Hawaiian peoples and without their Free Prior & Informed Consent.

Federal & State Efforts to Prevent Hawaiian Self Determination: 2000–2013:

Following passage of the “Apology Bill” in 1993, Hawaiians began organizing to address a strategy for “Reconciliation” under the Law. These efforts were countered by a State & Federal Government initiative to shape & control the process to ensure that a “Governing Entity” for Hawaiians would emerge through State & Federal legislation rather than a Hawaiian Indigenous Nation formed through the self-determined effort of indigenous Hawaiians.

The Federal/State effort began with the introduction of a measure (S-2899) in the Congress in 2000. It was introduced by Hawaii’s Senator Dan Akaka & became known as “the Akaka Bill”. The Bill languished in the Congress for over 13 years. Only 1 Hearing was ever held in Hawaii, the first hearing in 2000. Thereafter the Bill went through over 100 major amendments, all initiated by the Federal & State Governments without any significant input from the Hawaiian people. **NO OTHER HEARINGS WERE EVER HELD IN HAWAII NOR WERE HAWAIIANS ALLOWED TO TESTIFY IN WASHINGTON DC.**

To further the Federal/State initiative for U.S. recognition of the ‘governing entity’ a registration drive was initiated in Hawaii under the auspices of the State Office of Hawaiian Affairs. It was called ‘Kau Inoa’ and began on January 17th 2004.

The purpose of Kau Inoa was to register Hawaiians to participate in “Nation Building”. Hawaiians were urged to register & promised that the Kau Inoa list would not be used for any purpose other than to assist Hawaiians in forming their Nation. Hawaiian people were told that all information on the Kau Inoa registration forms would be maintained by Hawai'i Maoli, a 501(c)(3) non-profit entity of the Association of Hawaiian Civic Clubs, a confederation of 50 civic clubs located throughout Hawaii and the continental United States. Hawai'i Maoli was the independent, non-governmental repository for all registration forms. Later, this promise was repudiated and the list was transferred by the Civic Club non-profit to the State Office of Hawaiian Affairs for use in the Kanaiovalu effort that was initiated by the State legislature with the passage of Act 195 in 2011.

Kanaiovalu was a State Legislative effort to again register Hawaiians into the Federal/State effort to create a ‘governing entity’. It was supposed to register 200,000 Hawaiians but after 2 years and 4 million trust dollars spent by OHA, the record revealed that less than 20,000 people had been registered. The Kanaiovalu effort was overseen by 5 politically connected Hawaiians (including Robin Danner) who were appointed by the Governor of the State of Hawaii not elected by the Hawaiian people.

The Danner Connection:

In order to create the impression that indigenous Hawaiians supported the establishments of a Federal/State ‘governing entity’, the Federal Government utilized Robin Danner who had previously been a lobbyist for the Alaska Pipeline.

Danner came to Hawaii as an employee of a Federal agency, was given Hawaiian Homelands by the State and within a short period of time, established the CNHA, Council for the Advancement of Native Hawaiians, a non-profit corporation that acted as a self-appointed governing ‘Council’ of Hawaiians. CNHA later received an estimated 20 million federal dollars from Senator Dan Inouye for ‘scoping sessions’, ‘seminars, trainings & conferences’. [See 5-part article by Anne Keala Kelly serialized from December 19, 2003 through January 19, 2004 in the newspaper “Indian Country Today” and also included in the on-line version of that newspaper.]

Danner re-incorporated the existing State Council of Hawaiian Homestead Associations (SCHHA) and created a new group called the Sovereign Councils of Hawaiian Homelands Assembly (SCHHA) to support & interface with the Federal Department of Interior and the Obama Administration.

Danner played a key role in the Akaka Bill effort, the Kau Inoa and the Kanaiovalu effort. Danner and the CNHA hosted US Secretary of Interior Sally Jewell in Hawaii in 2013 where the federal recognition of Hawaiians under Interior procedures available to ‘Indians’ was discussed as an ‘option’ for Hawaiians. [See *Interior Secretary Assures Hawaiians on Federal Recognition*, Chad Blair, Honolulu Civil Beat 9/5/13.]

Racist Opposition:

The Federal/State effort to create a U.S. recognized ‘governing entity’ for Hawaiians prompted a significant response from conservative groups & individuals who believe that the effort is race based, and hence unconstitutional. These groups oppose any recognition of Native Hawaiians as Indigenous Peoples with the right of self-determination and have gone to great lengths to preserve the record of Federal & State activities including Congressional bills & hearings relating to the ongoing effort of the United States and State of Hawaii to create a Hawaiian ‘governing entity’.

See <http://www.angelfire.com/hi2/hawaiiansovereignty/Akakahistory.html>

Conclusion: Recommendations of the US Commission on Civil Rights Ignored

1. In January 2006 the Members of the U.S. Commission on Civil Rights issued a report entitled The Native Hawaiian Government Reorganization Act of 2005 recommending against passage of the Akaka Bill, which would have created an Indian tribe for those with Native Hawaiian ancestry.
2. In 2012-2013 State appointees to Kanaiolowalu Robin Danner & John Waihee began closed discussions with the Obama Administration on Federal legislation intended to transform Hawaiians into American Indians. [See attached Federal Bill & justification sheet.] Also involved in these closed meetings are Robert Klein (OHA attorney) & Norma Wong a State consultant & close personal associate of Commissioner John Waihee (during his tenure as State Governor.)
3. On September 16th 2013, Commissioners of the US Commission on Civil Rights signed a letter to President Obama in response to an Aug. 22 article in The Washington Times, which reported on efforts by the all-Democrat Hawaii delegation to win tribal status for Native Hawaiians after years of congressional rejection. “Neither Congress nor the president has power to create an Indian tribe or any other entity with the attributes of sovereignty,” said the five-page letter.
4. The U.S Department of Interior has refused to open “consultations” with indigenous Hawaiians on the issue of self-determination in order to obtain their meaningful participation in an effort for ‘Reconciliation’ under the Apology Law.

The White House has rejected requests from Hawaiians for public hearings on proposed federal legislation relating to federal recognition.

The Obama Administration has an affirmative obligation under international human rights conventions and the UNDRIP to ensure the meaningful and effective involvement of indigenous Hawaiians in the expression & exercise of their right to self-determination. The Hawaiian peoples have not given their Free, Prior or Informed consent to the efforts of the Obama Administration to create a ‘Hawaiian governing entity’ (with no land or legal authority to govern the Hawaiian peoples). This right belongs to the Indigenous Hawaiian Peoples.

Kai 'Ula Pono'i Texas Hawaiian Civic Club calls on the United States to address the political status of the Hawaiian peoples & provide redress for admissions contained in Pub. Law 103-150. Kai 'Ula Pono'i Texas Hawaiian Civic Club requests the right of consultation under the UNDRIP.



Melissa L. Moniz, President,

Kai 'Ula Pono'i Texas Hawaiian Civic Club

Exhibit A – US S.675

S. 675 Native Hawaiian Government Reorganization Act (NHGRA)

Fact Sheet

About S. 675

- The **Native Hawaiian people are already federally-recognized** and have a trust relationship with the United States, like over 500 other Native peoples across the nation.
- Historically, the trust relationship has meant a **federal responsibility** to provide for the **health, education, general welfare and housing** needs of Native peoples, and to ensure their **right to self-governance** and self-determination.
- The **Congress** has **created** and continues to fund **programs to address the Native Hawaiian needs in the areas of health, education, welfare and housing**, but has failed to uphold the final and most important piece of the trust relationship with Native Hawaiians, a guaranteed right to self-governance. Separate treatment is not equal treatment.
- The federal policy on self-governance ensures that Native peoples have the authority to regulate their internal affairs. These authorities include: **defining family relationships; effecting justice through traditional systems; and making decisions about the best use of collective resources**. Simply put, self-governance empowers Native peoples to **regulate themselves and their communities** according to their own cultural values and traditions.
- S. 675 **does not create a new federal relationship** with a Native people, it simply ensures that the United States is **providing parity** to Native Hawaiians and upholding the **whole** trust relationship by engaging with the Native Hawaiian government, once reorganized.
- On **April 7, 2011**, the Senate Committee on Indian Affairs ordered S. 675 to be reported without amendment. Since then, there have been **developments in the State of Hawaii** which needed to be accounted for in the bill.
- On **September 13, 2012**, Senator Akaka proposed a substitute amendment to S. 675. The Senate Committee on Indian Affairs **voted to report S. 675, as amended**, to the full Senate for consideration.

Reasons for the Substitute Amendment

- This year, the State of Hawaii's **Native Hawaiian Roll Commission began developing a roll** of Native Hawaiians for the purposes of reorganizing a Native Hawaiian government. As a result, **significant portions of the NHGRA** dedicated to the same purpose are **no longer required**.
- Based on extensive consultation and testimony received in a number of hearings, Congress must make clear its **intent to treat Native Hawaiians the same as other federally-recognized Indian tribes**, and **ensure parity in federal policy** on American Indians, Alaska Natives and Native Hawaiians. The bill **relies more heavily on existing federal law** to achieve that goal.

- The bill has been streamlined to **remove any provisions not directly tied to the legislation’s primary goal** of providing a process for the reorganization and recognition of a Native Hawaiian governing entity, with the same privileges and immunities available to other federally-recognized Indian tribes.

Existing Federal Law & Concepts Referenced in S. 675, as Amended

- **Indian Tribes:** The terms “Indian” and “Tribes” are **legal words** or **terms of art**, used in the Constitution, to refer to all Native peoples individually (Indians) and collectively (Tribes). “Tribe” can mean the Native people as a whole, or the government that represents them.
 - Federal law recognizes that **there are hundreds of unique Native groups**, with distinct languages and cultures, indigenous to what is now the United States. Defining them all as “Indian Tribes” **promotes parity** in federal treatment among these diverse groups, in terms of rights protection and access to programs and services. By treating them equally with the same terminology under federal law, **Native peoples are empowered to the same extent** to preserve and perpetuate their unique languages and cultures, and to address their community needs.
 - In order for Native Hawaiians to be **treated with parity**, the U.S. must extend the government-to-government relationship and **provide access to the same laws** as all other Indian Tribes.
 - It is important to use this terminology in legislation to **make it clear that Congress is exercising the powers afforded to it by the Constitution** in enacting legislation for Native Hawaiians.
- **Indian Reorganization Act (IRA):** The IRA is the law that allows American Indians and Alaska Natives to reorganize themselves and their governments. The IRA provides the **Secretary of the Interior the authority to extend the government-to government** relationship to the reorganized tribal governments, and do a number of other things at the tribe’s request. Section 16 of the IRA defines the process the Secretary must engage to extend that relationship. The clauses in Section 6(c) of S. 675 **empowers the Secretary to do things for the Native Hawaiian people that he can do for American Indians and Alaska Natives**, ensuring that Native Hawaiians have parity with other Native groups.
- **Indian Gaming Regulatory Act (IGRA):** The IGRA sets out the framework to governing tribal gaming. Gaming under IGRA **must be currently allowable under state law**, or agreeable to the state through a tribal-state compact. Because Hawaii state law prohibits all forms of gaming, the **application of IGRA** to the Native Hawaiian governing entity **effectively prohibits gaming by the Native Hawaiian Governing Entity**.

S. 675, as Amended, Section-by-Section

Section 1: Short Title: The Act may be cited as the “Native Hawaiian Governing Reorganization Act of 2012”.

Section 2: Findings: The findings focus on establishing the following:

- Congress has already recognized Native Hawaiians as an indigenous, native people of the United States and treated them as “Indians” within the meaning of the Constitution and exercised that authority.
- The United States acknowledged, through the P.L. 103-150, that Native Hawaiians never relinquished their claims to their inherent sovereignty and pursuant to P.L. 103-150, the Departments of Justice and the Interior recommend Congress enact legislation like the NHGRA;
- The UN Declaration on the Rights of Indigenous Peoples, which the U.S. supports, recognizes the right of self-determination and self-governance for indigenous peoples, including Native Hawaiians; and
- The State of Hawaii has long supported the reaffirmation of the legal and political relationship between the United States and the Native Hawaiian government.

Section 3: Definitions: Defines various terms used in the Act.

Section 4: United States Policy and Purpose: This section provides the following:

- Congress possesses and exercises the constitutional authority to address Native Hawaiian conditions;
- The Native Hawaiian people have the right to autonomy in internal affairs, an inherent right of self-determination and self-governance; the right to reorganize and the right to become economically self-sufficient;
- The United States reaffirms the special political and legal relationship between the United States and the Native Hawaiian people, and the authority delegated to the State of Hawaii in the Admissions Act;
- The United States ensures parity in policy and treatment among all federally-recognized indigenous groups.
- The U.S. will continue to engage in reconciliation process and political relations with the Native Hawaiian people; and
- The purpose of the bill is to provide a process for the reorganization and federal recognition of a single Native Hawaiian government that exercises the inherent powers of native self-government under existing federal law, with the same privileges and immunities as other federally-recognized Indian tribes.

Section 5: Reorganization of the Native Hawaiian Governing Entity: This section was streamlined and now does the following:

- Recognizes the Native Hawaiian right to reorganize under Section 16 of the Indian Reorganization Act. This effectively identifies the process the Secretary of Interior must complete to extend the government-to-government relationship to a Native Hawaiian government, once reorganized.
- Defines the membership of the Native Hawaiian people, for the purposes of reorganization, as those people appearing on the roll certified by the State of Hawaii Native Hawaiian Roll Commission authorized under Act 195. The Native Hawaiian people will be able to develop their own criteria for membership in their Constitution and By-Laws.
- Provides for the establishment of an Interim Governing Council, tasked with preparing the Constitution and By-Laws and submitting them for Secretarial approval.
- Requires the Interim Governing Council, with assistance from the Secretary, to conduct the election of officers of the Native Hawaiian governing entity, then terminates the Council.

Section 6: Applicability of Other Federal Laws: This section provides the following:

- The Native Hawaiian Governing Entity has the inherent powers and privileges of self-government of an Indian tribe, including the power to define its own membership, and will be listed as an Indian tribe on the Federally Recognized Indian Tribe List;
- The Native Hawaiian Governing Entity is subject to the Indian Gaming Regulatory Act (IGRA) and its gaming prohibitions. Effectively, the Native Hawaiian Governing Entity will be barred from gaming, as all gaming in the State of Hawaii is prohibited under state law.
- The Secretary may treat the Native Hawaiian governing entity as an Indian tribe for the purpose of carrying out any activity authorized under the Indian Reorganization Act.

Section 7: Severability: If any provision of the Act is held invalid, it is the intent of Congress that the remaining provisions remain in effect.

Section 8: Authorization of Appropriations: There is authorized to be appropriated such sums as are necessary to carry out the Act.