

The Situation of the Hawaiian Islands

The Shadow Report of the Koani Foundation and Ke Aupuni O Hawaii to the UN Human Rights Council for the Fourth Cycle of the Universal Periodic Review of United States of America, Concerning the Human Rights Situation in the Hawaiian Islands

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A Shadow Report

Submitted by:
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I. Executive Summary

The Koani Foundation, a Hawaii NGO, calls to the attention of the UN Human Rights Council, the ongoing flagrant violations of the human rights of the people of the Hawaiian Islands by the United States of America. These flagrant human rights violations are the direct result of the prolonged illegal occupation of the Hawaiian Islands by the United States of America. The human rights situation in Hawaii is an international wrongdoing and therefore demands the intervention of the Human Rights Council and all other relative organs of the United Nations.

These violations have been repeatedly reported to UN bodies such as the Human Rights Commission, the Human Rights Committee, the Committee for the Elimination of Racial Discrimination and the Human Rights Council in the forms of Shadow Reports, petitions and interventions. To no avail.

At the first cycle of the UPR of the USA, Cuba queried the USA about its disposition of occupied territories. This was presumably referring to Alaska and Hawaii since the term “occupied” could not be applied to any other U.S. territory. The U.S. did not respond to the question.

At the second cycle of the UPR of the USA, the Islamic Republic of Pakistan asked the U.S. to “Respond to the suggestion made by the Special Procedures in paragraph 69(n) of report A/68/284 regarding the cases of Alaska, Hawaii and the Dakotas.” This was in reference to a recommendation made in a 2013 report to the UN General Assembly by Dr. Alfred M. deZayas, the UN Independent Expert on the promotion of a democratic and equitable international order, that the UN Decolonization Committee should receive communications from indigenous and non-represented peoples. Pakistan’s query cast the situations of Alaska, Hawaii and the Dakotas as within the purview of international procedures pertaining to decolonization. The U.S. did not respond to the question.

‘The prolonged, persistent, multiple violations of human rights by the United States toward the Hawaiian people began in 1893 with the landing of a company of fully armed U.S. Marines in Honolulu to topple the government of the Kingdom of the Hawaiian Islands, a sovereign, independent state at peace with the world. This act of aggression by the U.S., without warning or cause, constituted an unprovoked act of war in clear violation of international laws. Even more, it comprised a betrayal of the 100-plus years

of binding treaties of peace, friendship and commerce between the two sovereign states. The United States' blatant seizure of Hawaii intimidated other states, causing them all to abandon their treaty obligations with the Hawaiian Kingdom.

In 1898, under cover of the Spanish-American War, without producing a treaty of annexation, the United States declared it had annexed the Hawaiian Islands and took firm control, reducing Hawaii from a sovereign state into a captured territory of the U.S. After an intense denationalization and re-indoctrination program, the U.S. arbitrarily and unlawfully converted Hawaiian nationals into U.S. citizens, then in 1959 manipulated the United Nations to accept the U.S. claim that Hawaii had consented to become integrated as a "state" of the United States.

Because the United States' very presence in the Hawaiian Islands is patently unlawful and in collusion with many other foreign nations, the United States' operations in Hawaii constitute a multi-national criminal enterprise. Among its harmful effects are egregious violations of the human rights of the Hawaiian people.

It is important to note that the seizure of the Hawaiian Islands by the U.S. set the pattern for the past 132 years of U.S. bad behavior in fomenting regime change, acts of war, gross exploitation, displacement of populations and the deprivation of the human rights of peoples all over the world.

II. Violations of International Law

A. Facts relating to annexation, U.S. policy issues, the imposition of a foreign nationality and forced integration as a domestic state.

1. The specific reasons for the (purported) U.S. annexation of Hawaii were set forth in both U.S. Senate Report 681 and U.S. House Report No.1355, accompanying the Joint Resolution of Annexation. These specifics included: the prevention of alien [non-American] establishment in the North Pacific and securing the commerce of the islands. It was expressed thusly: [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 [non-American]... It is no longer a question of whether Hawaii shall be controlled by the people of Hawaii... The question is, what foreign people [other than Americans] shall control Hawaii?"¹ .
2. The "annexation" of Hawaii was not achieved by any legal means pursuant to U.S. law or international law or Hawaiian Kingdom law. There were two failed attempts by the U.S. to annex the Hawaiian Islands by treaty, in 1893 and in 1897. Following those failures to pass a treaty of annexation, the United States resorted to outright deceit, using an illegitimate Joint Resolution

of Congress,² to make the United States' taking of the Hawaiian Islands appear to be a legitimate acquisition by the U.S.

3. In 1946, the U.S. ignoring tenets of international law and principles of the UN Charter, concealed the true status of the Hawaiian Kingdom as a sovereign state under occupation, and falsely presented "Hawaii" as a territory of the U.S. to be decolonized. Thus, Hawaii was erroneously listed by the United Nations as a Non-Self-Governing Territory (NSGT) under the administration of the United States.³ The United States began immediately to draft legislation to impose statehood on Hawaii. The first Statehood Bill was sent to Congress in 1947.⁴ Hawaiians filed suit in 1948 to stop the expenditure of public funds to 'propagandize' for statehood, but U.S. territorial courts denied their petition.⁵
4. On September 17, 1959, the United States informed the United Nations that a "new Constitution" had been adopted in Hawaii and that a referendum was conducted and that the "people of Hawaii" consented to be incorporated into the United States; and that the U.S. had indeed inducted Hawaii into the U.S. as a domestic state and would no longer transmit information about Hawaii as a non-self-governing territory under Article 73 e of the charter.⁶
5. The ballot for the Statehood referendum by which Hawaii was incorporated into the United States did not provide the options required by UN procedures for decolonization — that it be a legitimate exercise of self-determination — nor did the United Nations supervise the referendum. Consequently, there were two serious irregularities showing U.S. manipulation of the UN's decolonization process in order to create the appearance that Hawaii had voluntarily become the 50th State of the United States.
6. First irregularity: Only U.S. citizens (resident aliens) were allowed to vote, including U.S. military personnel and their dependents.⁷ Hawaiian nationals — the "self" in "self-determination" — were excluded from voting.
7. Second irregularity: The U.S. failed to inform or present to Hawaiian nationals their options for determining and obtaining self-government. Thus, the political aspirations of the Hawaiian people intended to be fulfilled through a process of self-determination was instead hijacked and denied.
8. Following "Statehood" and by virtue of Sections 4 and 5 of the State of Hawaii Constitution, Native Hawaiians were systematically dispossessed of their lawful lands, territories and resources and were made wards or beneficiaries of trusts under control of the State. Hawaiian nationals' private properties were seized... Pursuant to Section 5(f) of the Constitution, 'trusts' were created for those with 50% blood quantum. Hawaiians of less than 50% were excluded from those trust benefits.⁸
9. U.S. policy harshly discriminates against Hawaiian Nationals depriving them of basic civil rights, human rights and political rights. Hawaiian nationals living in the Hawaiian Islands are being constantly harassed and denied basic

rights.⁹ Because of this, Hawaiian programs and federal funding are now being challenged as ‘racially suspect’ classifications (See 2020 U.S. Periodic Report, para. 29-32);

10. The most egregious Human right violations in the Hawaiian Islands stem from the illegal, prolonged occupation of Hawaii by the United States, under a façade of legitimacy endorsed by the UN ... what Dr. Alfred M. deZayas the former Independent Expert for a democratic order calls in a 2017 memorandum, “a strange form of occupation.”¹⁰

B. The Apology Law (Exhibit 1)

1. On November 23, 1993, 100 years after the fact, the United States Congress passed and President William J. Clinton signed U.S. Public Law 103-150, officially apologizing to the Hawaiian people for the illegal overthrow and wrongful taking of the Hawaiian Kingdom... which resulted in the suppression of the sovereign state and the human rights of its people.
2. In passing the Apology law, the U.S. admitted to violations of the human rights of the Hawaiian peoples and to the denial 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 or conserve their natural wealth.

C. Land fraud

1. Upon the completion of the “Statehood” vote, the U.S. notified the UN that they would cease reporting on Hawaii under provision 73 e of the UN Charter. The UN accepted the U.S. report (A/2446) but never confirmed the veracity of the statehood process. Thus, through that failure, the UN became complicit in the wrongful subjugation of the Kingdom of the Hawaiian Islands.
2. Through the federally imposed Hawaii State Constitution the U.S. dispossessed the Hawaiian peoples of their lands, territories and resources and made them wards or “beneficiaries” of “land trusts” under control of the State of Hawaii. This has been the case since the inception of “statehood” in 1959, and has been the subject of several reports, including the Hawaii Advisory Committee to the U.S. Commission on Civil Rights.¹¹
3. Another land-related violation involves the rights of the heirs and descendants who hold titles to substantial amounts of lands. In many cases, their rights have been arbitrarily appropriated by the courts of the State of Hawaii acting

contrary to a fundamental principle (both domestic and international) that titles to private property do not necessarily change should the regime of the country change, even in cases of foreign acquisition.¹² Thus, preventing Hawaiians from using their own property assets for their private use or for the betterment of their people is a miscarriage of justice as well as a serious human rights violation.

4. Today, Hawaiians, as a group are the poorest and most disadvantaged of all peoples in the Hawaiian Islands. This is definitely tied to the denial of their right to self-determination to which they are entitled by natural law, legal precedence, customary international laws and as confirmed by the UN's International Covenant on Civil and Political Rights (ICCPR).

Part IV: Hawaiian nationals, the descendants the subjects of the Kingdom of the Hawaiian Islands, retain their right to seek appropriate redress for the wrongful taking of their country and the subsequent denial of their right to self-determination under the UN Charter.

- A. Hawaiian nationals and subjects emphatically maintain the **Diplomatic Protest** initially filed by Queen Liliuokalani on January 16, 1893 against the United States for landing an invasive force to depose her and seize control of the Kingdom of the Hawaiian Islands.¹³ We continue to Diplomatically Protest the United States' presence and operations in the Hawaiian Islands.
- B. 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. Resolution 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 or Principles of International Law Concerning Friendly Relations and co-operation Among States in Accordance with the Charter of the United Nations.¹⁴
- C. Pursuant to G.A. Reso 1514 (XV) of 14 Dec. 1960, the Hawaiian people have an immediate and continuing right to be free of "alien subjugation, domination and exploitation and an unqualified right to self-determination"¹⁵
- D. G.A. Resolution 2625 provides that Hawaiians, as peoples deprived of their right to self-determination have the right to seek international support from the Human Rights Council and other UN mechanisms. *"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”.

- E. The U.S. has previously asserted that the principle of non-retroactivity bars any consideration of Human Rights violations which occurred historically. The principle of non-retroactivity is not applicable in this case where there is a continuing violation which results in a continuing deprivation of human rights.¹⁶

Questions to the United States

1. In light of the historical facts underlying the illegal overthrow of the Hawaiian 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 human rights of Hawaiian nationals, specifically their right to self-determination?
2. In light of the legal admissions of the U.S. Congress in the Apology Law, (U.S. Public Law 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 people and to ensure their subsistence rights, development rights and their right to freely dispose of, or conserve, their natural wealth?
3. How does the U.S. intend to harmonize its National Security policies with the Hawaiian people's right to self-determination within the provisions of Article I of the ICCPR; and the right to peace and safety?

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Endnotes

¹ H.R. Rep. No. 1355, 55th Congress, 2d Sess., p 29 (1898)

² Native Hawaiian Study Commission Report on the Culture, Needs and Concerns of Native Hawaiians (June 23, 1983, pp 300-303)

³ General Assembly Resolution 66 (I) 14 Dec. 1946

⁴ U.S. Congress, Statehood for Hawaii, House of Representatives, 80th Cong. 1st Sess, H.R. 49, Washington G.P.O. 1947)

⁵ “Kamokila Campbell Files Statehood Suit”, Honolulu Advertiser, Jan. 18, 1948, p. 1 and p. 6

⁶ Cessation of the Transmission of information under Article 73 e, UNGA Doc. No. A/4226, 24 Sept. 1959, pp 99 -103

⁷ *Islands in Captivity, 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

⁸ Official Records of the General Assembly, 14th Sess. Annexes, 15 Sept. - 13 Dec. (1959), pp. 99 – 103, Doc. A/4226

⁹ U.S. Periodic Report to ICCPR, Para. 9 – 25)

¹⁰ *Memorandum to Members of the Judiciary for the State of Hawaii*, Dr. Alfred M. deZayas, 25 February 2017

¹¹ *A Broken Trust: the Hawaiian Nomelands Program*, U.S. Commission on Civil Rights, Hawaii Advisory Committee (1991)

¹² Foster & Elam v. Neilson, 27 U.S. 253 (1829)

¹³ *The Protest of Queen Liliuokalani to the United States*, Queen Liliuokalani (1893)

¹⁴ G.A. Reso 2625, UN GAOR 25 Sess. (1970)

¹⁵ GA Reso 1514 (XV) pp 1 & 2

¹⁶ IA/Court H.R., Case of Moiwana Village v. Suriname, Judgment June 15, 2005, p. 10-11, para. 29 and p. 44, para. 92