

The Special Situation of Hawaii

The Koani Foundation Shadow Report to the Human Rights
Council for the Third Cycle of the Universal Periodic Review of
United States of America, Concerning the Human Rights Situation
in the Hawaiian Islands

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Submitted by:

Leon Siu for The Koani Foundation
Contact Info: +1 (808) 265-2085
Email: leonhits@gmail.com

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A Shadow Report

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I. Executive Summary

The Koani Foundation wishes to call to the attention of the 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 a serious breach of international law, namely, the prolonged illegal occupation of the Hawaiian Islands by the United States of America. The human rights situation in Hawaii are international in scope and, therefore, requires international intervention.

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 asked the USA about its disposition of its occupied territories. This was presumably referring to the international political status of Alaska and Hawaii since the term “occupied” could not be applied to any of the other U.S. territories. 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 the 2013 report to the UN General Assembly by Dr. Alfred deZayas, the UN Independent Expert on the promotion of a democratic and equitable international order; that the UN Decolonization Committee be allowed to receive communications from indigenous and non-represented peoples. Pakistan’s query implied the situations of Alaska, Hawaii and the Dakotas are 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 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 peace, friendship and commerce and binding treaties between the two sovereign countries and

an abandonment of friendship and treaty obligations by all of the treaty partners of the Hawaiian Kingdom.

Since its illegal military incursion of 1893, the United States installed a succession of puppet governments to control all aspects of the economic, social, educational, military and political factors of the Hawaiian nation, reducing it to a captured territory of the U.S. The U.S. sought to conceal the wrongdoing by bestowing U.S. citizenship (a foreign nationality) to the Hawaiian people, and by manipulating international systems to create the appearance of legitimacy of its claim of sovereignty over the Hawaiian Islands. The wrongful taking and ensuing occupation makes every act by the United States in the Hawaiian Islands, an international crime producing egregious violations of human rights.

It is important to note that the seizure of the Hawaiian Islands by the U.S. is the genesis of the past 126 years of U.S. impunity in fostering regime change, acts of war, economic terrorism, displacement of populations and the deprivation of the human rights of peoples of all over the world.

II. Violations of International Law

A. Facts relating to annexation, the U.S. policy issues, the imposition of a foreign nationality 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 [non-American] establishment in the North Pacific and securing the commerce of the islands. This was expressed: (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 the Hawaii... The question is, what foreign people shall control Hawaii?”¹ .
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, thus, for expediency, pro-annexationists utilized a Joint Resolution of Congress,² an instrument incapable of acquiring a foreign nation.
3. In 1946, Hawaii was listed by the United Nations as a Non-Self-Governing (NSG) Territory 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’ 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 the U.S. had

incorporated Hawaii and would no longer transmit information under Article 73 e of the charter.⁶

5. 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.⁷
6. The U.S. ignored tenets of international law and principles of the UN Charter and falsely presented Hawaii as a territory of the U.S. to be decolonized. Thereafter, the U.S. manipulated the UN decolonization process to validate the incorporation of Hawaii as a State of the Union. The requirement that those citizens of the Hawaiian nation be informed of their options for self-government and that their political aspirations be fulfilled through decolonization were denied. Only U.S. citizens were allowed to vote. Hawaiian nationals — the “self” in “self-determination” — were excluded.
7. 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. Hawaiian nationals’ private property were seized... Pursuant to Section 5(f) of the Constitution, the ‘trusts’ were created for those with 50% blood quantum. Hawaiians of less than 50% were excluded from those trust benefits.⁸
8. 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 U.S. Periodic Report, para. 29-32);
9. The most egregious Human right violations of the United States 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 Independent Expert Dr. Alfred M. deZayas calls in a 2017 memorandum, “a strange form of occupation.”

B. The Apology Law

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. By 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 a nation.
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, has been the subject of several reports of the Hawaii Advisory Committee to the U.S. Committee on Civil Rights.
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 misappropriated 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.¹⁰ 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 and further confirmed in the ICCPR and the UN Charter.

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. We continue to Diplomatically Protest the United States' presence in the Hawaiian Kingdom.

- 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. 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 or Principles of International Law Concerning Friendly Relations and co-operation Among States in Accordance with the Charter of the United Nations.¹¹
- C.** Pursuant to G.A. Reso 1514 (XV) of 14 Dec. 1960, the Hawaiian peoples have an immediate and continuing right to be free of “alien subjugation, domination and exploitation and an unqualified right to self-determination”¹²
- D.** 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”.*
- E.** The U.S. has previously asserted that 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.¹³

Questions to the United States

1. In light of the historical facts underlying the 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 right of self-determination of Hawaiian nationals 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 – or conserve – their natural wealth will be acknowledged and respected?

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?

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, Exhibit 9)

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; See also Exhibit 8 the ballot; and Exhibit 9

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

¹¹ G.A. Reso 2625, UN GAOR 25 Sess. (1970)

¹² GA Reso 1514 (XV) pp 1 & 2

¹³ IA/Court H.R., Case of Moiwana Village v. Suriname, Judgment June 15, 2005, p. 10-11, para. 29 and p. 44, para. 92