



## INDEPENDENT & SOVEREIGN NATION STATE OF HAWAI'I

41-1300 Waikupanaha Street  
Waimānalo, HI 96795  
c/o Head of State,  
Dennis "Bumpy" Kanahele  
January 1, 2017

### UNPFII Questionnaire to Indigenous Peoples' Organizations

**1. Please provide the name of your organization/entity and where it is based. Please also provide details on the objectives and goals of your organization.**

The Independent & Sovereign Nation State of Hawai'i (Nation of Hawai'i) is based out of Waimānalo, on the island of Oahu, in the "State" of Hawai'i. The Nation of Hawai'i's main goals are to correct the injustice, restore the National Sovereignty of the Hawaiian people and help our people exercise their right to self-determination in a meaningful, practical way. The following websites provide a lot of great background information about the Nation: [bumpykanahele.com](http://bumpykanahele.com) and [hawaii-nation.org](http://hawaii-nation.org).

The Nation of Hawai'i runs many of its operations through its U.S.-based 501(c)(3) non-profit organization, Aloha First, so we have a long history of operating as an official organization that serves Hawaiians. Aloha First is a Hawai'i-based, Hawaiian owned and operated non-profit organization, whose charter is to facilitate the development of a comprehensive blueprint and road map for Hawaiian reconciliation and restitution, and to provide support, guidance, programs, and services for the business and asset formations required to make it all happen and keep it all moving forward. For more information, please visit our website at <http://alohafirst.com/>.

Dennis "Bumpy" Kanahele's involvement in the Hawaiian National sovereignty movement started in 1978, at the end of the session of the Hawai'i State Constitutional Convention that resulted in the creation of the Office of Hawaiian Affairs (OHA). In 1980, Kanahele ran for OHA's trustee at-large seat, knowing that something really bad had happened to our ancestors and wanting to do something about it. At the time, there was a different atmosphere regarding Hawaiian issues. No one knew very much about the illegal overthrow of the Kingdom of Hawai'i, which was unfortunate and those that knew what really happened were probably related to those responsible for the illegal overthrow. The U.S. democratic machine took over the State of Hawai'i through the powerful voting block of Japanese Americans and the economic backing of the Big Five (the co-conspirators in the illegal overthrow and the dominant business interests in Hawai'i)--Alexander & Baldwin, Amfac, Castle & Cooke, C. Brewer and Theo Davies.

It was a very new thought process from the mindset that had been forced upon us and a time of mental and spiritual awakening for Hawaiians who began to learn about what had really happened to our people and who began to strategize on how to achieve justice for these awful crimes committed against our people and our Nation. To actually have an Office of Hawaiian Affairs at that time was very exciting. From the 1980's to the 1990's, the Trustees of this newly created office had to negotiate with the State of Hawai'i about back payments and future payments from the Public Lands Trust that would fund OHA. OHA Trustees had no playbook to work with and were at an extreme disadvantage in their negotiations with a stacked deck--the federal and state governments that had a ton of resources and manpower.

In 1987, inspired by unrelinquished land claims through genealogical ties to Queen Kalama, a group of Hawaiians occupied Makapu'u Lighthouse, under Ka'awa estates for two months. During that land occupation, the U.S. government accused Kanahale of firearms violations and Kanahale ended up serving eleven months in federal prison. Kanahale was released in 1988.

### Timeline of Events

**August 1992** – Ohana Council is established (the vehicle that created the Kupuna Council).

**June 1993** – 15-month land occupation of Kaupo Beach Park, Makapu'u (across from Sea Life Park Hawaii).

**January 17, 1993** – 100<sup>th</sup> Anniversary of the Illegal Overthrow of the Kingdom of Hawai'i.

**July 1, 1993** – Dennis “Bumpy” Kanahale is appointed to the 21-member Hawaiian Sovereignty Advisory Commission (HSAC) by Governor Waihe'e.

**November 23, 1993** – U.S. Public Law 103-150 – Apology Law (a.k.a. Apology Bill or Apology Resolution).

**December 28, 1993** – Francis A. Boyle's legal opinion on U.S. Public Law 103-150 (Apology Law): “When I read the Public Law for the first time, the first thought that occurred to me is that now, after 100 years, the United States government, has finally and officially conceded, as a matter of United states law that the Native Hawaiian people have the right to restore the Independent nation state that you had in 1893.”

The following excerpts from an affidavit<sup>1</sup> prepared by international law scholar and attorney Francis A. Boyle for the 1995 Hawai'i federal district court case against Dennis “Bumpy” Kanahale describe in detail the formation of the Nation of Hawai'i:

3. To the best of my recollection, sometime during the early Fall of 1993, I received a telephone call from Mr. Kanahale who identified himself as a Native Hawaiian, the leader of the Ohana Council, and a Commissioner of the Hawaiian Sovereignty Advisory Commission (HSAC) for the State of Hawaii. Mr. Kanahale informed me that he and his people were giving serious consideration to moving toward independence. In his

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<sup>1</sup>See Attachment A.

capacity as HSAC Commissioner, Mr. Kanahale invited me to come out to Hawaii and speak before the HSAC and to his people about the international legal right of the Native Hawaiian People to establish an independent nation state of their own. I informed Mr. Kanahale that I would be happy to do this, but that outstanding professional commitments would prevent me from coming to Hawaii until the end of December 1993.

4. Mr. Kanahale then put me in touch with Ms. Lulani McKenzie, who was the Executive Director of HSAC. All three of us agreed that I would come out to Hawaii during the last week of December 1993. We further agreed that I would give one public lecture to the HSAC Commissioners and the general public on the right of the Native Hawaiian People to establish an independent state of their own--specifically with reference to Public Law No. 103-150, that had just been signed into law by President Clinton. We also agreed that I would make one personal appearance before the HSAC Commissioners to answer any questions they might have about my public lecture. In return, Ms. McKenzie informed me that the State of Hawaii would pay all of my out-of-pocket expenses incident to my trip to Hawaii and a modest Honorarium for my professional services. These terms were acceptable to me. The State of Hawaii did indeed pay all of my out-of-pocket expenses and I was later sent a check by the State of Hawaii signed by then Governor Waihee for the Honorarium. Therefore, I considered myself to have been hired by the State of Hawaii as an official consultant on international law to HSAC and the Commissioners, including Mr. Kanahale, for the aforementioned purposes.

5. On Sunday, December 26, 1993, I flew to Hawaii and met Mr. Kanahale for the first time. He immediately proceeded to seek my legal advice and counsel as to the establishment of an independent nation state for Native Hawaiians. Therefore, I date the establishment of my attorney-client relationship with Mr. Kanahale to these conversations on December 26, 1993. These conversations with Mr. Kanahale continued almost fulltime until my departure from Hawaii on the late evening of Thursday, December 30, 1993.

6. On the evening of December 28, 1993, I gave a public lecture to the Hawaiian Sovereignty Advisory Commission on the subject of The Restoration of the Independent Nation State of Hawaii Under International Law at Mabel Smyth Hall in Honolulu under the official auspices of HSAC. The address and question-and-answer session with the Commissioners and the members of the public took approximately three hours. Mr. Kanahale sat in the audience with the other HSAC Commissioners for the entire Address and question-and-answer session. There is available a verbatim transcription of my 28 December 1993 Address to the HSAC Commissioners that I would be happy to make available to the Honorable Court upon your request. As I understand it, there is also a videotape of my Address that I believe Mr. Aluli could make available to the Honorable Court at your request. I later published a slightly revised and edited version of my Address in Volume 7 of the St. Thomas Law Review Symposium Issue on "Tribal Sovereignty: Back to the Future?" under the title Restoration of the Independent Nation State of Hawaii Under International Law, pages 723-56 (Summer 1995). I believe a copy of this article has been submitted to the Court by Mr. Aluli.

7. The very next morning, on December 29, 1993, I made a personal appearance before the HSAC Commissioners at a government building in downtown Honolulu to answer any questions they might have about my Address the preceding evening. This session was open to the public, but essentially it was designed to permit a dialogue between the Commissioners and me. This session lasted approximately three hours. Mr. Kanahale was present at this session for the entire time in his capacity as HSAC Commissioner.

8. Later that day, and after further consultation with me, Mr. Kanahale decided to resign as HSAC Commissioner because he concluded that his fellow Commissioners were not seriously interested in considering the option of creating an Independent Nation State for Native Hawaiians. Sometime after my departure from Hawaii on 30 December 1993, Mr. Kanahale informed Governor Waihee of his decision to resign from HSAC for these reasons.

9. While I was in Hawaii Mr. Kanahale asked me to help draft the functional equivalent of a Declaration of Independence for him, the Ohana Council, and all the Native Hawaiian People. I agreed to do this. This document was completed just before my departure from Hawaii. Pursuant to conversations I had with Mr. Kanahale, we decided to call this document "Proclamation Restoring the Independence of the Sovereign Nation State of Hawaii." I believe a copy of this Proclamation has already been provided to the Court by Mr. Aluli.

10. During my time in Hawaii, and at my express request, Mr. Kanahale took me around all of the Hawaiian Islands to meet his people at their homes and encampments on the beaches of Hawaii. During these meetings, I gave many lectures that basically repeated the substance of my 28 December 1993 Address, and answered any questions these people might have. I estimate that I gave approximately two to three lectures per day for every day I was in Hawaii. Mr. Kanahale attended almost all of these lectures in his then current capacity as HSAC Commissioner.

11. Quite frankly, as a human being and as a lawyer, I was appalled by the atrocious conditions in which these Native Hawaiians were forced to live in a beautiful land that was once all their own.

12. I flew back home on the late evening of Thursday, December 30, 1993 in order to arrive home on time to spend New Years Eve with my wife. I have not yet had the opportunity to return to Hawaii. But I have remained in continuous contact with Mr. Kanahale and his people by phone, fax, and mail until today.

13. On 16 January 1994, Mr. Kanahale and a fairly large number of Native Hawaiians declared their independence from the United States for all Native Hawaiians and issued the Proclamation to that effect which I helped him draft. Soon thereafter, Mr. Kanahale and his people established themselves as the Independent Nation State of Hawaii. Mr. Kanahale asked me to serve as Legal Adviser to the Nation of Hawaii, which I agreed to do. Thereafter, I have provided legal advice and counsel to Mr. Kanahale and the citizens

of the Nation of Hawaii concerning the establishment of their state continuously until today. I have also given them all legal advice and counsel concerning the protection of the human rights of Native Hawaiians continuously until today.

14. Pursuant to Mr. Kanahale’s request, I participated in drafting a Constitution for the Nation of Hawaii. Upon the adoption of the Constitution by the citizens of the Nation of Hawaii, Mr. Kanahale became Head of State of the Nation of Hawaii. In this capacity, Mr. Kanahale is entitled to receive all the privileges and immunities, respect and deference, that must be accorded to a Head of State as required by the general principles of public international law.

15. During my many conversations with Mr. Kanahale over the phone and in person during the past two years, he has repeatedly emphasized to me the critical importance of adopting exclusively peaceful and nonviolent means for the establishment of the Nation of Hawaii in accordance with the Native Hawaiian spirit of Aloha. During the past two years, I have never had any reason to doubt Mr. Kanahale’s sincere commitment to the pursuit of peaceful, nonviolent means for the establishment of the Nation of Hawaii in the spirit of Aloha.

16. I have never charged Mr. Kanahale or the Nation of Hawaii any fee for my professional services and they have never paid me any fee. I have assumed the representation of Mr. Kanahale and the Nation of Hawaii out of great respect and admiration for him personally and for the Native Hawaiian People. My representation of Mr. Kanahale and the Nation of Hawaii is *pro bono publico* in the true sense of that term.

**3. Which indigenous peoples/communities does your organization represent and/or work with?**

**Indigenous Peoples (represented by your organization)**

Indigenous Peoples*	Country	Region and areas	Total indigenous population represented
Kānaka Maoli Hawaiians	United States of America	Hawaiian Islands, the U.S. & other Foreign Countries	All Kānaka Maoli who can trace their ancestry prior to 1778 (pre-Western contact).

\*Hawaiians are an indigenous people who also possess a ***national identity***.

The ***Nation*** of Hawai‘i is composed of the Kānaka Maoli (Hawaiian people) who are indigenous if you define that term in the broadest sense (i.e. the original people inhabiting the land prior to Western contact) but the Nation focuses on reframing Hawaiian as a ***national and an indigenous identity***. We request that the U.N. and the international community refer to us exclusively as “Kānaka Maoli” or “Hawaiian.” The U.S.-created terms “Native Hawaiian” and “native Hawaiian” have been very divisive and problematic and it is painful to see them used in U.N. reports and other international law documents. Naming and self-identification are so

important to a people's identity and we ask that you show due deference and respect for our right to name ourselves in a way that is true to who we are.

The Nation of Hawai'i's land base, Pu'uhonua o Waimānalo, has about 20 households and about 80 people currently living there but we have citizens throughout the State of Hawai'i, the continental U.S. and the world and we would like to increase our land base so that we can bring more Hawaiians home. Although the Nation focuses on the Kānaka Maoli people, we work closely with many non-Hawaiian allies and partners who support the Nation and its fight to correct these injustices.

Prior to the Apology Bill, the Kānaka Maoli people were profiled into one or all of the following groups--ethnic, racial or religious. All Hawaiians were unilaterally re-identified as U.S. Nationals and as such, many have been convinced that being a Hawaiian National is not an option. After the Apology Resolution passed into U.S. law in 1993, the distinction between indigenous and National or Nationality became clear for the Kānaka Maoli people. International law scholar and lawyer Francis A. Boyle said that he could prove that the Kānaka Maoli people have been subjected to the crime of genocide. Our position is that the denial of a Hawaiian national identity is a genocidal act. Today, many of the lawsuits against Hawaiian trusts are based on claims that Hawaiian entitlements constitute *racial* discrimination (per the destructive and dangerous 2000 U.S. Supreme Court decision in *Rice v. Cayetano*).<sup>2</sup> None of those lawsuits address the Nationality of the Hawaiian people. However, we will discuss the significance and importance of a Hawaiian nationality at length in Question 10.

**4. Has your organization/institution participated in any sessions of the Permanent Forum on Indigenous Issues? If yes, please indicate the year(s).**

The Nation of Hawai'i has participated in UNPFII sessions through the International Indian Treaty Council (IITC). IITC is an NGO with general consultative status under ECOSOC.

**10. What are the major successes as well as the remaining obstacles for the implementation of the UN Declaration on the Rights of Indigenous Peoples in your country?**

Victoria Tauli-Corpuz, U.N. Special Rapporteur on the Rights of Indigenous Peoples, in her 2014 report to the Human Rights Council, discussed the importance of reconciliation and redress for historical wrongs as well as the need to address and combat continuing negative impacts:

*27. Also presenting barriers to the full and effective realization of the rights of indigenous peoples are steps that have not yet been taken towards reconciliation with indigenous peoples and redress for past violations of human rights. Indigenous peoples around the world in the past have suffered gross and systematic violations of their human rights and those violations have ongoing consequences in the present day that continue to affect their human rights situation. In most countries in which indigenous peoples live, however, meaningful reconciliation efforts have yet to [take] place. Without such efforts, it will be difficult for indigenous peoples to overcome their situations of extreme*

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<sup>2</sup>*Rice v. Cayetano*, 528 U.S. 495 (2000).

*marginalization, and to ensure sustainable relationships based on trust, mutual respect and partnership, between indigenous peoples and the States within which they live.*<sup>3</sup>

Tauli-Corpuz's sentiments capture the current situation of the Hawaiian people perfectly. Our *current* predicament is a direct *consequence* of the overthrow of our once sovereign nation that continues to have impacts on our people to the present day. We cannot overcome our extreme marginalization in all facets of life unless these outstanding wrongs are addressed and until we achieve true justice for what was and what continues to be done to us. We have carried around the pain of an **124 year old crime** that has still not been adjudicated and we are awaiting a true tribunal of justice to vindicate our claims and let us move forward in the true spirit of *ho'oponopono* (healing and mutual reconciliation).

The Hawaiian people have been subjected to grave injustices--both historical and continuing--that implicate all of the principles articulated in the U.N. Declaration on the Rights of Indigenous Peoples (hereinafter the Declaration or the UNDRIP) as well as the foundational principles encompassed by various sources of international human rights jurisprudence in general. Our submission does not touch on all of these principles, but we hope that our story helps the world better understand that Hawaiians cannot live truly free until these outstanding injustices are addressed in a meaningful, fair and effective manner. We carry the hurt and pain of generations of Hawaiians who were treated as if they were nothing and we still bear the heavy burden of **124 years** of suffering and abuse that has not been adequately addressed by the U.S. and its various political subdivisions that systematically carry out this oppression to this day. The U.S. and the State of Hawai'i have made some concessions but we still do not enjoy a widely recognized and formal political status as a nation. More importantly, we are still alienated from the lands that are essential to who we are.

And so, we ask that you revisit the scene of the crime with us (the overthrow of the Kingdom of Hawai'i and all the injustice that ensued thereafter) and consider critically all the evidence that the U.S. government has left behind and evaluate your role in bringing them to justice and helping us live in the manner the Declaration mandates.

#### *Crime Scene Exhibit A: Unrelinquished and Unaddressed "Ceded" Lands Claims*

*Āina* (land) is of particular significance to Hawaiians because we view our lands as members of our family and Hawaiians are supposed to be caretakers of the land, which in turn provides us with sustenance and also grounds us as a people. However, most of our lands are currently held by the U.S. federal and state governments who have not treated the *āina* well--bombing Kaho'olawe, establishing military bases, building harmful developments and preventing us from being the caretakers we were destined to be.

Hawaiians without land is akin to humans without air for the land serves as our life force. The large number of Hawaiians currently in diaspora illuminates this painful reality. To survive in this world, they must leave our islands and this dislocation manifests itself physically, spiritually and mentally. Esteemed Hawaiian scholar David Malo explained that *āina* has meaning because of people living on it, "Two names were used to indicate an island; one was *moku*, another was *aina*. As separated from other islands by the sea, the term *moku* (cut off) was

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<sup>3</sup>Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz, A/HRC/27/52, <http://unsr.vtaulicorpuz.org/site/images/docs/2014-annual-hrc-a-hrc-27-52-en.pdf>, pg. 10 (Aug. 11, 2014) (emphasis added).

applied to it; *as the stable dwelling place of men*, it was called *aina*, land, (place of food).”<sup>4</sup> E.S. Craighill Handy and Elizabeth Green Handy, with the collaboration of Mary Kawena Pukui, expressed similar sentiments, “‘*Aina* is the specific term meaning land...In relationship to birth and family, ‘*aina* conveys the sense of homeland, birthplace, one’s country.”<sup>5</sup> They further explain:

‘*Aina* also conveys the sense of arable land. It is essentially a term coined by an agricultural people, deriving as it does from the noun or verb ‘*ai*, meaning food or to eat, with the substantive *na* added, so that it may be rendered either “that which feeds” or “feeder.” ‘*Aina* thus had connotations in relation to people as conveying the sense of “feeder,” birthplace, and homeland. In this sense it entered also into the compound *ma-ka-‘aina-na*, meaning the common people or country folk in general as distinguished from the *ali‘i* and their entourage. The broad social concept contained in our phrases “the folk,” “the people,” was for the Hawaiian derived from ‘*aina* meaning land, which in its turn is a derivative of the word meaning food, primarily cultivated food, and specifically in many uses, taro.<sup>6</sup>

In this way, we are not fully Hawaiian and we will never have a homeland and a nation without our lands. This forced alienation is painful and it manifests itself in the many socioeconomic ills Hawaiians suffer today.

The land base for the Nation of Hawai‘i, Pu‘uhonua o Waimānalo (aptly named a “refuge”), in stark contrast, serves as a living testament to the power of ‘*āina*, place and space to Hawaiian identity. You can breathe easier here because our lands are set apart from the State of Hawai‘i and the U.S. and they belong to and are exclusively managed and maintained by our people. That feeling cannot be matched and I encourage anyone--both Hawaiian and non-Hawaiian--who does not believe that we can achieve true independence again to visit, to walk the land, to breathe the air and to talk to the people here. It is truly a safe space for our people and a physical reminder of the power of ‘*āina* and the peace, joy and contentment that comes with caring for it in *pono* (just) way.

And so, Pu‘uhonua o Waimānalo, the only sovereign Hawaiian land base in existence today, is both a hope and a promise for a better future for Hawaiians--one where we can get back to the land and *mālama* (take care of) it in the way that only Hawaiians can--with the proper cultural and spiritual foundations and with a focus on bringing our people home. Pu‘uhonua o Waimānalo lives in a peaceful coexistence with the State of Hawai‘i as a true starting point and a land base for the development of an independent and sovereign Hawaiian Nation State. This unique attribute speaks directly to Article 46 in the UNDRIP, which emphasizes the territorial integrity of the State:

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action

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<sup>4</sup>DAVID MALO, HAWAIIAN ANTIQUITIES (MOOLELO HAWAII) 36-37 (Dr. N. B. Emerson trans., Hawaiian Gazette Co., Ltd. 1903) (emphasis added).

<sup>5</sup>E.S. CRAIGHILL HANDY & ELIZABETH GREEN HANDY WITH MARY KAWENA PUKUI, NATIVE PLANTERS IN OLD HAWAII: THEIR LIFE, LORE AND ENVIRONMENT 44 (Bishop Museum Press rev. ed. 1991) (emphasis added).

<sup>6</sup>*Id.* at 45 (emphasis added).

which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.<sup>7</sup>

However, due to Hawai‘i’s unique history, geographical distance and cultural distinctiveness from the continental U.S. anyways, this would not actually disrupt the territorial integrity of the original U.S. Nation State. Hawai‘i and the other U.S. territories were always considered and treated as additions to, rather than integral parts of the U.S. (as shown through the independence option mandated by the Article 73 decolonization process).

So many Hawaiians are disconnected from our Hawaiian identity and our land is a place to start rebuilding who we were meant to be as a people. It is our great hope that all Hawaiians--especially those living far away--will have a place and space to come home. It starts with us but we need more lands to expand our work and create greater opportunities for other Hawaiians to live truly free as Hawaiian nationals. May our lands live up to the true meaning of ‘āina--our homeland and more importantly, **our Hawaiian nation.**

The Declaration has several provisions that address the importance of land, but Articles 27, and 28 are particularly relevant. Article 27 describes the process that must be followed for adjudicating land claims:

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.<sup>8</sup>

Article 28 describes the redress mechanisms for outstanding land claims:

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.<sup>9</sup>

To achieve true justice, the Nation of Hawai‘i needs its land claims to be addressed in the manner described above and the U.S. can take major pointers from the approach, philosophy and the spirit the Declaration embodies. Thus far, Hawaiians have been denied a fair, collaborative process and we have never been given any form of redress for our outstanding claims even though it has been **124 years.** The U.S. acknowledges both the crime and its complicity in it yet

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<sup>7</sup>United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, at 14 (Sept. 13, 2007), available at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) (emphasis added).

<sup>8</sup>*Id.* at 10 (emphasis added).

<sup>9</sup>*Id.* at 10-11 (emphasis added).

by refusing to negotiate fairly and refusing to truly reconcile with us as equals, we cannot move on from the pain, suffering and anguish that comes with knowing someone has wronged our people and is still getting away with it.

U.N. Special Rapporteur Victoria Tauli-Corpuz captures perfectly why Hawaiians can never move on from what was done to us unless our perpetrator is brought to justice, stating:

39. Other kinds of *distorted views* about indigenous peoples demonstrate a *lack of understanding of why and how indigenous peoples' rights should be protected*. Certainly, there are *still many among the non-indigenous population who hold the view that indigenous peoples should just join the mainstream, or that they should "get over" their pasts and "move on"*. In that connection, indigenous peoples may be viewed as receiving special entitlements and privileges not enjoyed by the rest of the population, resulting in feelings of resentment among the broader society. Even if those *views may not be outwardly pernicious, they can inhibit the development of differentiated rights protection and affirmative action measures that are needed for remedying ongoing situations of marginalization and ensuring that indigenous peoples can survive as distinct peoples*.<sup>10</sup>

Hawaiians will never be able to “get over” the illegal overthrow of our nation and the mistreatment of our beloved *Mō‘ī Wahine* Queen Lili‘uokalani, who gave us the ultimate gift and a powerful political and legal tool by refusing to give in to her oppressors and ***preserving in perpetuity our right to become a sovereign and independent Hawaiian nation once again***. Hawaiians are still standing firm almost 124 years later--living and breathing her sage motto of ‘*onipa‘a* (steadfast, firm, resolute, determined) as if our beloved Queen had predicted even back then that her people--no matter how lengthy and difficult our journey has been--will never give up until we have our Hawaiian nation once again. Hawaiians will never rest until justice prevails and we hope that you will help us in our fight for truth, justice and reconciliation.

The World Conference on Indigenous Peoples (WCIP) outcome document also addressed the need for effective processes to address land claims:

21. We also recognize *commitments made by States, with regard to the Declaration, to establish at the national level, in conjunction with the indigenous peoples concerned, fair, independent, impartial, open and transparent processes to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to lands, territories and resources*.<sup>11</sup>

The U.S. made this commitment two years ago to collaborate with the “indigenous peoples concerned” to develop “fair, independent, impartial, open and transparent processes,” for land claims. Why hasn’t the U.S. government worked Hawaiians to address our land claims?

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<sup>10</sup>Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz, A/HRC/27/52, <http://unsr.vtaulicorpuz.org/site/images/docs/2014-annual-hrc-a-hrc-27-52-en.pdf>, pg. 13 (Aug. 11, 2014) (emphasis added).

<sup>11</sup>General Assembly, Resolution adopted by the General Assembly on 22 September 2014, 69/2. Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, A/Res/69/2, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/69/2](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/2), pg. 4 (emphasis added).

Recommendation Number 40 to Member States from the 15<sup>th</sup> Session of the UN Permanent Forum on Indigenous Issues also emphasizes the need for full and effective redress regarding land claims:

40. Consistent with the commitments in the outcome document of the...World Conference on Indigenous Peoples (General Assembly resolution 69/2) and the standards for *indigenous peoples' survival, dignity and well-being contained in the United Nations Declaration*, the Permanent Forum recommends that *States fully engage indigenous peoples in good-faith negotiations of treaties, agreements and other constructive arrangements on the basis of the unequivocal recognition of indigenous peoples' rights to lands, territories and resources and to fully reject the extinguishment of indigenous rights in form or result*. Furthermore, the Forum recommends that States *address the call for full and effective redress for the loss of lands, territories and resources and State breaches of treaties, agreements and other constructive arrangements*. The Forum reiterates the *urgent need for States to institute, in conjunction with indigenous peoples, high-level oversight bodies to guide and oversee the conduct of negotiations and implementation of treaties, agreements and other constructive arrangements in the light of ongoing negotiation and implementation issues*. Building on the recommendations advanced at the eleventh session of the Forum, States are *encouraged to support the resolution of disputes between indigenous peoples by providing financial and other methods of support to achieve peaceful resolution*.<sup>12</sup>

The U.S. has failed to comply with this recommendation and has made it abundantly clear that Hawaiians need the assistance of the U.N. and the international community to help bring the U.S. into compliance. Why aren't Hawaiians entitled to good-faith negotiations and full and effective redress for our land claims? As Recommendation Number 40 so clearly states, Hawaiians need a high-level oversight body to "guide and oversee the conduct negotiations" because the U.S. has never engaged with us fairly and we need an independent arbiter to ensure that our negotiations are both effective and fair. We hope that the U.N. can serve as such an oversight body.

Even the U.S. government validates our claims to our lands in the Apology Bill, admitting:

Whereas, the *Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government*.

Whereas, the *indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum*].<sup>13</sup>

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<sup>12</sup>Permanent Forum on Indigenous Issues, Report on the fifteenth session (9-20 May 2016), E/2016/43-E/C.19/2016/11, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=E/2016/43&referer=http://www.un.org/en/documents/index.html&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=E/2016/43&referer=http://www.un.org/en/documents/index.html&Lang=E), pg. 12 (2016) (emphasis added).

<sup>13</sup>Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii, and to Offer an Apology to Native Hawaiians on Behalf of the United States for the Overthrow of the Kingdom of Hawaii, Pub. L. No. 103-150, 107 Stat. 1510, 1512 (Nov. 23, 1993) (emphasis added).

The U.S. has *openly admitted in its own law* to assuming control over *1.8 million acres of stolen Hawaiian lands*, but has done nothing to address the illegality and immorality of this fact even though by its own laws, an American citizen can be *fined and/or imprisoned* for knowingly receiving stolen goods. 18 U.S.C. § 2315, which is entitled, “Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps,” states:

Whoever receives, possesses, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of \$5,000 or more... which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken... Shall be fined under this title or imprisoned not more than ten years, or both.<sup>14</sup>

If the U.S. can punish American citizens for receiving and converting stolen property, why can't it hold itself accountable for the unlawful cession of our Hawaiian lands? And so, we ask that the U.N. and our international allies take a leadership role in helping us gain meaningful and effective redress for our outstanding land claims since the U.S. has blatantly refused to do so. An apology is a good first step, but *we need justice*.

*Crime Scene Exhibit B: Lack of Meaningful, Practical and Effective Mechanisms for Redress*

U.N. Special Rapporteur Victoria Tauli-Corpuz emphasizes the importance of effective mechanisms for redress to remedy continuing harms:

30. Also essential to reconciliation are *affirmative steps of redress to remedy the ongoing manifestations of harm*. Throughout the United Nations Declaration on the Rights of Indigenous Peoples there are calls for *“effective mechanisms” for redress in connection with a range of rights*... Specifically, redress is required for any action aimed at *depriving indigenous peoples of their integrity as distinct peoples* (art 8, para. 2 (a)); any action with the *aim or effect of dispossessing them of their lands, territories or resources* (art. 8, para. 2 (b)); any form of *forced assimilation or integration* (art. 8, para. 2 (d)); for the *taking of their cultural, intellectual, religious or spiritual property* (art 11); *depriving them of their means of subsistence* (art. 20, para. 2); as well as for the *development, utilization or exploitation of their mineral, water or other resources* (art. 32, para. 2).<sup>15</sup>

31. Perhaps the *clearest manifestation that redress is still needed for indigenous peoples around the world is their continued lack of access to and security over their traditional lands*... While advances have without a doubt been made over the past several decades in returning lands to indigenous peoples and protecting their existing land bases, *more remains to be done nearly everywhere*. There are, of course, a number of ways in which land restitution can and has taken place, including through executive decrees, judicial

<sup>14</sup>18 U.S.C. § 2315 (emphasis added).

<sup>15</sup>Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz, A/HRC/27/52, <http://unsr.vtaulicorpuz.org/site/images/docs/2014-annual-hrc-a-hrc-27-52-en.pdf>, pg. 11 (Aug. 11, 2014) (emphasis added).

decisions or negotiated arrangements, although complications can arise, especially when competing private third party interests are involved.<sup>16</sup>

Hawaiians have been subjected to and continue to be subjected to all of the violations described above and we need effective redress mechanisms to combat them. U.S. domestic laws have mostly failed to protect us so we are calling on the international community to help us in our fight for survival and dignity in an oppressive State environment. Moreover, Tauli-Corpuz's wise assessment about competing interests illuminates one of the major obstacles we face in trying to negotiate our claims with the U.S.--since it is not in their best interest to give us what we are legally and morally entitled to, they either ignore us entirely or distract us with subpar offers.

Tauli-Corpuz also discussed how historical injustice often results in contemporary suffering:

44. First of all, it is necessary to understand the linkages between indigenous peoples' current disadvantaged situations and their history of being denied self-determination land and resource rights, and related rights essential to their economic and social development. In fact, development around the world has historically taken place and still takes place today at the expense of indigenous peoples; it has often been the case that indigenous peoples' lands and resources have been taken, to their detriment and to the benefit of the development of others. Responses aimed at bettering the social and economic situation of indigenous peoples must take that history into account and attempt to restore to indigenous peoples what has been lost, including sufficient land to ensure a basis for economic development, and the means to exercise their self-determination over their development. Indeed, numerous studies have shown that increasing indigenous peoples' control over their internal decision-making results in better economic growth outcomes.<sup>17</sup>

The U.N. Special Rapporteur's statements really illuminate the importance of land to the mental, physical and spiritual restoration of the Hawaiian people and show just how important our land base has been to our continued fight for our Nation. Because Nation of Hawai'i is set apart from the U.S. and the State of Hawai'i and because we have exclusive control and sovereign authority over our lands and all the decision-making related to it, we are able to not only operate and truly live independently but we also enjoy the spiritual, mental, physical and economic benefits that come with not having an outside government dictate our lives.

The U.S. government agrees with our assessment of the continuing negative impacts of the overthrow on the Hawaiian people and our need for true reconciliation so that we may achieve justice for the historical and continuing crimes against us. The U.S. admits freely in the Apology Bill:

Whereas, the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;

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<sup>16</sup>*Id.* (emphasis added).

<sup>17</sup>*Id.* at 14 (emphasis added).

Whereas, the *long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people;*

Whereas, the Native *Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions;*

Whereas, it is *proper and timely for the Congress on the occasion of the impending one hundredth anniversary of the event, to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaii, to express its deep regret to the Native Hawaiian people, and to support the reconciliation efforts* of the State of Hawaii and the United Church of Christ with Native Hawaiians[.]<sup>18</sup>

However, various institutional and systemic barriers exist that prevent us from achieving true nationhood.

The Department of the Interior’s final administrative rule entitled, “Procedures for Reestablishing a Formal Government-to Government Relationship with the Native Hawaiian Community” was published in the U.S. Federal Register on October 14, 2016, and provides a Hawaiian government with an administrative pathway for reestablishing a formal government-to-government relationship with the U.S.<sup>19</sup> However, the Final Rule does not address land and jurisdiction issues and instead emphasizes that those issues will be addressed in future negotiations (i.e. a through Congressional acts).<sup>20</sup> The Department of the Interior (DOI) emphasized that reconciliation would be a subsequent process to the rule itself:

*Changes in title to Federal lands require statutory authority. This rule does not alter any existing Federal law that authorizes the transfer of Federal property. It is possible, however, that a future Native Hawaiian Governing Entity may be qualified to receive Federal property under provisions of Federal law.*

With respect to comments questioning the *legal status of existing Federal property*, the Supreme Court recently discussed this issue in *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009), and *found that title was properly in the Federal government. Therefore, only Congress can resolve the commenters’ concerns.*<sup>21</sup>

The U.S. has also maintained that the Indian Reorganization Act (IRA) does not extend to Hawaiians and so, Hawaiians have been left out of existing mechanisms for the U.S. government to take lands into trust on our behalf, as the DOI explains:

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<sup>18</sup>Pub. L. No. 103-150, 107 Stat. 1510, 1512-13 (emphasis added).

<sup>19</sup>Procedures for Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community, 81 Fed. Reg. 71,278 (October 14, 2016) (to be codified at 43 C.F.R. pt. 50) [hereinafter Final Rule]. Specific sections of the Final Rule will be cited as “FR” followed by the section number.

<sup>20</sup>81 Fed. Reg. at 71,323; FR § 50.44(f).

<sup>21</sup>81 Fed. Reg. at 71,305 (emphasis added).

The Department *recognizes the vital importance of a land base to the governments of indigenous communities in the United States, including the Native Hawaiian community.* There is *no present Federal statutory authority, however, for taking land into trust for the Native Hawaiian community,* including the HHCA, which applies to the Hawaiian home lands that are under State (not Federal) jurisdiction.<sup>22</sup>

This is very troubling because the DOI calls Hawaiians “Indians” when defending their authority to make an administrative rule for us, explaining, “Over many decades and more than 150 statutes, Congress exercised its *plenary power over Indian affairs to recognize that the Native Hawaiian community exists as an Indian tribe* within the meaning of the Constitution.”<sup>23</sup> However, the U.S. then denies Hawaiians the two major benefits that other federally-recognized Indian tribes and Alaska Natives possess--the right to have land taken into trust (and the many benefits that come with that) and the right to access lucrative Native American programs.<sup>24</sup> The DOI rationalizes its decision to exclude Hawaiians from Native American programs as follows:

To the *extent that Native Hawaiians are not eligible for certain programs,* it follows that this treatment reflects a *conscious decision by Congress.* Moreover, because of the structure of many Federal programs, to treat a Native Hawaiian government or its members as eligible for programs provided generally to federally-recognized tribes or their members in the continental United States could result in *duplicative services or benefits.* The Department concludes that *it is for Congress to decide* to include Native Hawaiians in additional Federal programs directed towards Native Americans.<sup>25</sup>

This argument is problematic because many of the Native American programs that exclude Hawaiians prevent us from accessing important federal funding. Moreover, rather than worrying about “duplicative services or benefits,” the U.S. government should be more concerned with helping Hawaiians catch up with the more established federally-recognized native nations in the U.S. Congress has mostly failed to support the advancement of Hawaiian rights, so waiting for them to decide to give us access to Native American programs is a dead end.

The DOI also explains that the Final Rule does not address potential claims for redress:

*Any existing claims that the Native Hawaiian people may have for redress under Federal law, either individually or collectively, are not addressed by this rule.* The Department *makes no comment as to the potential merits of any such claims, which are properly addressed by the legislative or judicial branches of the Federal Government rather than in this rulemaking.* The existence and consideration of any claims that may exist are not related to the final rule and are separate and distinct matters.<sup>26</sup>

All of the U.S. government’s statements in the DOI Final Rule make it clear that the U.S. is unwilling to negotiate about our land claims in an upfront and fair manner. Moreover, they only offer us an empty promise that the federally-recognized Hawaiian government will be able

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<sup>22</sup>81 Fed. Reg. at 71,306 (emphasis added).

<sup>23</sup>81 Fed. Reg. at 71,286 (emphasis added).

<sup>24</sup>81 Fed. Reg. at 71,307.

<sup>25</sup>*Id.* (emphasis added); See 81 Fed. Reg. at 71,322, FR § 50.44(d).

<sup>26</sup>81 Fed. Reg. at 71,307 (emphasis added).

to secure lands and address its other claims at a later date through Congress. However, as shown through the many failures of the Akaka Bill, whose many iterations could never gain full Congressional approval, the U.S. Congress is not a good forum for Hawaiians to engage with the U.S. in the negotiation of our claims. The extraordinary number of Hawaiians who engaged in the public comment process for the administrative rule<sup>27</sup> shows that the Hawaiian community had grave concerns about the rule and many commenters were especially concerned that the rule did not provide for lands for the Hawaiian government and also tried to make Hawaiians fit into existing Federal Indian Law frameworks that were never made for us.

### Crime Scene Exhibit C: Blatant Violations of the Article 73 Decolonization Process

Under the U.N. Charter, Chapter XI, Article 73, the U.S., as the administering power of the then territory of Hawai‘i, was obligated to prioritize the interests of the territory’s inhabitants and also fulfill a sacred trust obligation to promote the well-being of those inhabitants, as Article 73(a) clearly mandates:

*Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:*  
*a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses.*”<sup>28</sup>

Article 73(a) emphasizes that the Member State (the U.S.) overseeing the process must respect the culture of the peoples concerned (which should have focused on Hawaiians), improve their political, economic, social, and educational conditions, ensure their just treatment and protect them against abuses. Article 73(e) speaks to the Member State’s obligations “to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible.”<sup>29</sup>

However, the U.S. blatantly violated both of these provisions and they are spelled out clearly in the report the U.S. wrote under its Article 73(e) reporting mandate about the decolonization process for Hawai‘i.<sup>30</sup> During a December 3, 1959, meeting concerning “Information from Non-Self-Governing Territories transmitted under Article 73 e of the

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<sup>27</sup>See <https://www.regulations.gov/document?D=DOI-2015-0005-2438>. As of 1/1/17, the regulations.gov website lists the total number of “Comments Received” for the DOI rule as 55,123. That is an unprecedented and extremely high number of comments for a U.S. administrative rule.

<sup>28</sup>U.N. Charter art. 73(a) (emphasis added).

<sup>29</sup>U.N. Charter art. 73(e) (emphasis added).

<sup>30</sup>See Attachment B. U.N. General Assembly, 7th Sess., Information from Non-Self-Governing Territories: Summary and Analysis of Information Transmitted Under Article 73 e of the Charter; Report of the Secretary-General; Summary of information transmitted by the Government of the United States of America, Hawaii, at 15-33, U.N. Doc. A/2135 (June 4, 1952).

Charter,” Mr. Espinosa and Mr. Prieto from Mexico emphasized the importance of equality and consent to the decolonization process:

9. ...he emphasized that the association of any territory with a State or group of States was, internationally, a very delicate matter, since it meant an enlargement of the State concerned. It was therefore necessary to establish, in the most formal way, not only that such a step was taken on the basis of absolute equality, but also, and principally, that it corresponded to the freely expressed wishes of the peoples concerned, in whom the national sovereignty resided.<sup>31</sup>

They also added:

10. In the case of Alaska and Hawaii, it was beyond doubt that, in achieving the status of free and sovereign States within a great federation, they were assured of full and complete equality. But the evidence concerning the exercise of self-determination was even more impressive. There had never existed in either of the two Territories, so far as was known, any movement for independence or for any other status; on the contrary, their peoples had long been urging their integration with the Union, and the difficulties had arisen solely on the United States side.<sup>32</sup>

They clarified this statement with “so far as was known,” and since the U.S. controlled all the information in the report, how would the U.N. have known otherwise? The statement about the lack of an “any movement for independence” is all the more alarming because Hawaiians have been fighting for independence in a very organized, public and persistent manner ever since the illegal overthrow and are still fighting for the Hawaiian nation to become independent to this day. The U.S.’s report erased the Hawaiian people entirely, in stark contrast to the report about American Samoa, which states that the “population of American Samoa is almost entirely indigenous”<sup>33</sup> and provides specific numbers for its “indigenous” and “non-indigenous” inhabitants.<sup>34</sup> What happened to all the Hawaiians? Hawaiians are the original people of Hawai‘i in whom the national sovereignty resided and still resides because although we are indigenous to this land, we were also internationally recognized as a sovereign nation on par with other Nation States and can be once again. Although the U.S. can deliberately leave Hawaiians out of their reports, the U.S. cannot change the fact that we will always be the peoples concerned and they still have a sacred trust obligation to promote our well-being, advance our political, economic, social, and educational conditions, ensure our just treatment and protect us against abuses.

Even the U.S. government freely admits in the Apology Bill that there were major issues with the Article 73 decolonization process in Hawai‘i, explaining, “Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a

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<sup>31</sup>U.N. General Assembly, 14th Sess., Consideration of Draft Resolutions, at 606, ¶ 9, U.N. Doc. A/C.4/L.632 and ADD.1, A/C.4/L.633 (continued) (Dec. 3, 1959) (emphasis added).

<sup>32</sup>*Id.* at 606, ¶ 10 (emphasis added).

<sup>33</sup>See Attachment C. U.N. General Assembly, 7th Sess., Information from Non-Self-Governing Territories: Summary and Analysis of Information Transmitted Under Article 73 e of the Charter; Report of the Secretary-General; Summary of information transmitted by the Government of the United States of America, American Samoa, at 4, U.N. Doc. A/2135 (June 4, 1952).

<sup>34</sup>*Id.* at 13.

*people or over their national lands* to the United States, either through their monarchy or *through a plebiscite or referendum[.]*”<sup>35</sup> The fact that an independence option was not offered to the people of the territory of Hawai‘i is one of the major reasons. The ballot only asked, “Shall Hawaii immediately be admitted into the Union as a state?” and the only options were “yes” or “no.”<sup>36</sup> This was a blatant violation of the Article 73 process.

*Crime Scene Exhibit D: Problematic U.S. Reporting about the Real Situation of Hawaiians*

The U.S. changed its position on the Declaration to one of support in its 2010 “Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples,” stating:

The United States supports the Declaration, which—while not legally binding or a statement of current international law—has both moral and political force. It expresses both the *aspirations of indigenous peoples around the world and those of States in seeking to improve their relations with indigenous peoples*. Most importantly, it expresses aspirations of the United States, *aspirations that this country seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations*, while also seeking, *where appropriate*, to *improve our laws and policies*.<sup>37</sup>

The U.S. qualifies its support of the Declaration by emphasizing that it is “not legally binding or a statement of current international law” and stating that it will seek to achieve the aspirations in the Declaration subject to “U.S. Constitution, laws, and international obligations.” It does, however, state that it will seek “where appropriate, to improve our laws and policies.” This is essential because as shown by the glaring evidence we discuss in this submission, the U.S. needs to make major improvements to its laws and policies in order to improve its relationship with Hawaiians. The U.S. discusses the need to improve relationships with native peoples and to take a leadership role with regards to policy, stating, “Moreover, the United States is *committed to serving as a model in the international community* in promoting and *protecting the collective rights of indigenous peoples as well as the human rights* of all individuals.”<sup>38</sup> Hawaiians need the U.S. to live up to the promise it made six years ago to promote both indigenous and human rights.

The U.S. referred directly to how it has helped Hawaiians:

In addition to enhancing the self-determination of federally recognized tribes, the Obama Administration has supported the Native Hawaiian Government Reorganization Act, which provides a process for forming a Native Hawaiian governing entity that would be recognized by, and have a government-to-government relationship with, the United States. Congress has also enacted many more narrowly focused statutes for Native Hawaiians similar to those for other native people, such as the National Historic Preservation Act, which provides protections to properties with religious and cultural

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<sup>35</sup>Pub. L. No. 103-150, 107 Stat. 1510, 1512 (emphasis added).

<sup>36</sup><https://www.hawaii-nation.org/statehood.html#ballot>.

<sup>37</sup>Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples, <http://www.state.gov/documents/organization/184099.pdf>, pg. 1 (emphasis added).

<sup>38</sup>*Id.* at 2 (emphasis added).

importance to Native American Indian tribes and Native Hawaiians; the Native Hawaiian Education Act, which establishes programs to facilitate the education of Native Hawaiians; the Native American Housing Assistance and Self-Determination Act, which provides housing assistance in the form of grants and loans; and the Native American Graves Protection and Repatriation Act, which protects Native American Indian, Alaska Native, and Native Hawaiian gravesites.<sup>39</sup>

We acknowledge that the U.S. has made some attempts to support Hawaiians, but we need the U.S. to internalize the Declaration's principles and begin to really promote and protect our rights. The U.S. concluded its statements about the UNDRIP by arguing:

The United States has made *great strides* in improving its relationship with Native Americans and indigenous peoples around the world. *However, much remains to be done.* U.S. agencies look forward to continuing to work with *tribal leaders, and all interested stakeholders*, so that the United States can be a *better model for the international community* in protecting and promoting the rights of indigenous peoples.<sup>40</sup>

Hawaiians counter these assertions by emphasizing that the U.S. has made *some strides* but *much remains to be done*. Acknowledging the national sovereignty of the Hawaiian people, giving us back our lands and supporting the reestablishment of the Hawaiian nation would be great first steps.

Although the U.S. made the above-mentioned promises to fulfill the principles in the Declaration, recent U.S. reports to the U.N. about the situation of Hawaiians reflect the same erasure and marginalization in the earlier Article 73(e) reports. The U.S. has only ever submitted two "Questionnaire to Governments" responses to the U.N. Permanent Forum on Indigenous Issues (UNPFII) in *fourteen years*--in 2011 (after they finally signed on to the Declaration) and in 2015--but Hawaiians per usual are almost entirely absent from the reports.

The U.S.'s 2011 questionnaire response regarding recommendations from the UNPFII's Ninth Session discussed how it changed its position on the Declaration and referred to its "recent federal government work on many indigenous issues."<sup>41</sup> Hawaiians were mentioned only four times, lumped in with Native Americans and Alaska Natives even though we are drastically different with respect to geography, culture and history among other things.<sup>42</sup> The focus on Native Americans and Alaska Natives shows that although the U.S. considers us to be an indigenous people, it does not prioritize our interests nor does it acknowledge and honor our unique needs and attributes as Hawaiians.

The U.S.'s 2015 questionnaire response regarding recommendations from the Thirteenth Session of the UNPFII focused on its work implementing the World Conference on Indigenous Peoples (WCIP) outcome document goals.<sup>43</sup> The U.S. report also discussed consultations with

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<sup>39</sup>*Id.* at 4.

<sup>40</sup>*Id.* at 15 (emphasis added).

<sup>41</sup>United States, Questionnaire to Governments Re: Recommendations from the Ninth Session of the United Nations Permanent Forum on Indigenous Issues (UNPFII) or Recommendations from Previous Sessions (Not Addressed in Previous Reports) that Were Addressed, [http://www.un.org/esa/socdev/unpfii/documents/session\\_10\\_USA.pdf](http://www.un.org/esa/socdev/unpfii/documents/session_10_USA.pdf), pg. 1.

<sup>42</sup>*Id.* at 2, 4, 7.

<sup>43</sup>United States, Questionnaire to Governments Re: Any Action Taken or Planned in Response to the Permanent Forum's Recommendations, <http://www.un.org/esa/socdev/unpfii/documents/2015/states-info/USA.pdf>, pg. 3.

“indigenous *tribal leaders and representatives*,” explaining, “The U.S. Department of State held *consultations with indigenous tribal leaders and representatives to develop the U.S. position on the WCIP outcome document*, and continues to be in *close contact with indigenous leaders* on follow-up to the WCIP and implementation of its outcome document.”<sup>44</sup> Hawaiians are not mentioned by name at all even though the U.S. applauded its consultation efforts regarding the Declaration with *tribal leaders and representatives*. Why were Hawaiians not included in these discussions? How come we were not deserving of a consultation opportunity even though as a ***non-federally recognized*** indigenous people, ***we are at the greatest risk of having our rights violated?*** Hawaiians have a lot to say about the U.S.’s appalling and numerous failures to uphold and honorably apply the principles in the Declaration. Given the unique and truly exceptional nature of Hawaiian identity--we are ***an indigenous people who possess an unrelinquished and inalienable right to reform a Hawaiian Nation State***--we need the international indigenous human rights regime to assist in our quest for justice because the U.S. not only refuses to but is actually incapable of providing us with effective redress mechanisms for the many injustices it has committed against us.

The U.S.’s troubling statement about obstacles for implementing the UNPFII recommendations shows how little the U.S. understands international indigenous human rights as well as its self-centered and rather egotistical perception of its own actions, “The United States has *strong mechanisms* in place to discuss the merits of PFII recommendations and whether and how they may be accommodated.”<sup>45</sup> Obviously, these mechanisms are not strong enough because they are not working for Hawaiians and other indigenous peoples in the U.S.

U.N. Special Rapporteur James Anaya shared concerns with the U.S. that he had “received information regarding ongoing grievances with special legal and policy regimes that affect indigenous peoples in Maine, Alaska, Hawaii and Guam,” in a 2014 follow-up letter to his 2012 visit and report, but the U.S. failed to reply within the time period of his report.<sup>46</sup>

In a letter dated May 12, 2015, the U.S. finally responded to the following question, “What measures are being taken by federal or state governments to address the outstanding grievances of indigenous Hawaiians stemming from the overthrow of the Hawaiian monarchy and the annexation of Hawaii by the United States, and to implement the right to self-determination for indigenous Hawaiians?”<sup>47</sup> The U.S. admitted that the “Native Hawaiian community has a *unique status as the indigenous people of a once-sovereign nation with whom the United States has a special political and legal relationship*” and that “Congress has reflected this in a number of statutes.”<sup>48</sup> The U.S. then described the Apology Resolution in such a way that makes it clear that the U.S. government blatantly tries to minimize its power:

At the time of the Apology Resolution...Congress determined that it was appropriate to acknowledge the United States’ *moral responsibility for past historical injustices, and as the Apology Resolution illustrates, resolve to do it better*. This resolution is significant

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<sup>44</sup>*Id.* at 4 (emphasis added).

<sup>45</sup>*Id.* at 4-5 (emphasis added).

<sup>46</sup>Report on observations to communications sent and replies received by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Addendum, Observations on communications, A/HRC/27/52/Add.4, <http://unsr.vtaulicorpuz.org/site/images/docs/comm/2014-communications-a-hrc-27-52-add-4-av.pdf>, pg. 48 (Sept. 3, 2014).

<sup>47</sup>U.S. Response to Special Rapporteur’s February 2014 Letter, [https://spdb.ohchr.org/hrdb/30th/USA\\_12.05.15\\_\(5.2014\).pdf](https://spdb.ohchr.org/hrdb/30th/USA_12.05.15_(5.2014).pdf), pg. 9 (May 12, 2015).

<sup>48</sup>*Id.* (emphasis added).

*politically and historically, but does not confer any judicially enforceable rights or award damages.* We are aware that some individuals routinely assert the illegitimacy of Hawaii's statehood within the United States. The United States disagrees with those assertions.<sup>49</sup>

The U.S. then goes on to describe its “reconciliation efforts” with Hawaiians, referring to its support of the Akaka Bill and the establishment of the Office of Native Hawaiian Relations.<sup>50</sup> The Akaka Bill was never passed and the Office of Native Hawaiian Relations has not been a strong advocate for Hawaiians probably because it is tied to the U.S. government and cannot freely advocate for our rights. The U.S. concludes its statements with a troubling reminder, “We view the question of our relationship with the Native Hawaiian community as a *domestic one*, as we do our relationship with the other *tribal communities* that exist within our borders.”<sup>51</sup> As we have stated at length, the U.S.’s approach to Hawaiians does not comply with the mandates in the Declaration and we do not fit into the current frameworks the U.S. is offering us because ***we are not a tribal community and we will never be.*** We need more than an empty apology and we call on the U.N. and the international community to help us achieve the aspirations in the UNDRIP.

#### *Crime Scene Exhibit E: Suppression and Denial of Hawaiian National Sovereignty*

The U.S.’s own “Genocide Convention Implementation Act of 1987 (the Proxmire Act)” describes the crime of genocide as:

- (a) BASIC OFFENSE. — Whoever, whether *in time of peace or in time of war and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such—*
- (1) kills members of that group;
  - (2) causes serious bodily injury to members of that group;
  - (3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;
  - (4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;
  - (5) imposes measures intended to prevent births within the group; or
  - (6) transfers by force children of the group to another group[.]<sup>52</sup>

The Act defines the term “national group” as a “set of individuals whose *identity as such is distinctive in terms of nationality or national origins.*”<sup>53</sup> Tragically, all of these offenses have been committed against Hawaiians ***with the specific intent to destroy their national identity.***

Article 6 of the UNDRIP states, “Every indigenous individual has the right to a nationality.”<sup>54</sup> For Hawaiians, although we may be indigenous, our right to a nationality also

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<sup>49</sup>*Id.*

<sup>50</sup>*Id.*

<sup>51</sup>*Id.* (emphasis added).

<sup>52</sup>Genocide Convention Implementation Act of 1987, Pub. L. No. 100-106, 102 Stat. 3045 (1987); 18 U.S.C. § 1091(a).

<sup>53</sup>18 U.S.C. § 1093(5) (emphasis added).

<sup>54</sup>United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, at 5 (Sept. 13, 2007), available at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) (emphasis added).

encompasses our right to a *Hawaiian nationality*. If we apply the broad definition for a “national group” used in the U.S.’s own 1987 Genocide Convention Implementation Act, Hawaiians, who are able to trace their national identity (which has never been relinquished) back to the internationally recognized Kingdom of Hawai‘i, would comprise such a *set of individuals whose identity is distinctive in terms of nationality or national origins*. If the United Nations had existed during the time of the Kingdom of Hawai‘i, our Hawaiian nation would have been considered equal to other Nation States and *since we have never relinquished our right to be Hawaiian nationals, it is our right to claim the Hawaiian nation as our chosen nationality*.

All of the blatant inconsistencies in these legal documents are clear evidence of the crime that the U.S. always tries to cover up because they cannot make Hawaiians go away. There are too many missing pieces to make us properly fit into the only mold the U.S. has ever offered us-- the status of federally-recognized Indian tribes. However, we can never fit into this model precisely because it was never made for us and more importantly, it does not speak to our need for true justice that honors who we were and who we are meant to be. There will never be true justice for Hawaiians unless the U.S. starts acknowledging the immutable facts of their crime against us, accepts who Hawaiians are as a people and starts working together with us to come to a mutually beneficial resolution. The only resolution to the original crime of the illegal overthrow that will allow us to achieve true and real justice is for us to become an independent Hawaiian nation again. U.S. Republican Senator Slade Gorton from Washington state agreed with our position in an October 27, 1993, Senate Congressional hearing regarding the Apology Bill, arguing:

Are there adverse or unhappy consequences? Are these consequences or ramifications of that overthrow which we wish to undo? I know that the two Senators from Hawaii do not agree with the radicals who wish independence as a result, *but the logical consequences of this resolution would be independence. That is the only way that the clock can ever truly be turned back.*<sup>55</sup>

International law scholar and lawyer Francis Boyle pushed this notion even further, explaining:

Moving forward through the Public Law, *we encounter more admissions...* The *Hawaiian people have been subjected to the international crime of genocide, as determined and defined by the 1948 Genocide Convention, and the 1987 Genocide Convention Implementation Act, the Proxmire Resolution*. That is clear. That was one of the findings of the San Francisco Tribunal. That was one of the key findings of the Tribunal held here this summer concerning Hawaii (*Ka Ho‘okolokolonui Kanaka Maoli*)...I submit that *there would be no difficulty in convincing the World Court that genocide has been practiced by the United States government against Native Hawaiians*. Now, that is bad enough, but where does that lead you? I suggest that where *it leads you is back to the creation of a State. One of the few and only protections a people have from being exterminated, by means of genocide, is their own state and ultimately, United Nations membership.*<sup>56</sup>

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<sup>55</sup>103 CONG. REC. S14,479 (Oct. 27, 1993) (statement of Sen. Slade Gorton) (emphasis added).

<sup>56</sup>Francis Anthony Boyle, *Restoration of the Independent Nation State of Hawaii Under International Law*, 7 ST. THOMAS L. REV. 723, 741-42 (1995) (footnotes omitted) (emphasis added).

Both U.S. Senator Gorton's and Francis Boyle's statements support our own assertion that Hawaiians need to be able to practice and fully express their Hawaiian national sovereignty as a starting point and as an end goal, Hawaiians must be given a fair and practical means of reestablishing an independent and sovereign Hawaiian nation in the present day.

The U.S.'s weapons have become more subtle but they are deadly nonetheless because they are largely silent, invisible and confusing. It is no longer acceptable for the U.S. to engage with Hawaiians in the imperialist and openly oppressive way they used to because they must maintain their image and status as a champion of peace, justice and freedom. And so, the U.S. government has used legal, political and economic weapons to wage mental, physical, spiritual, historical and legal warfare on us. The American Empire is still alive and well but they have put on the façade of a benevolent caretaker, openly praising their self-imposed trust relationship with Hawaiians. Yet Hawaiians feel this cognitive dissonance to our core and this is why we can never fully trust what the U.S. offers us in terms of truth, reconciliation and justice. This perfectly exemplifies the U.S.'s own description of the crime of genocide:

(a) BASIC OFFENSE. — Whoever, whether *in time of peace or in time of war and with the specific intent to destroy, in whole or in substantial part, a national*, ethnic, racial, or religious group as such—

(1) *kills members* of that group;

(2) causes *serious bodily injury* to members of that group;

(3) causes the *permanent impairment of the mental faculties* of members of the group through drugs, torture, or similar techniques;

(4) subjects the group to *conditions of life* that are *intended to cause the physical destruction of the group in whole or in part*;

(5) *imposes measures intended to prevent births* within the group; or

(6) *transfers by force children of the group* to another group[.]<sup>57</sup>

Hawaiians need an impartial, fair and apolitical external body to oversee any negotiations regarding our lands and other claims. The U.S. has never played fair and we do not trust them to do so now. We call on the U.N. and the international community to help us in this process. Now that you have visited the scene of the crime and have all the evidence, you have a duty to bring our perpetrator to justice.

**11. Has your organization been involved in any legislative, policy and/or administrative measures taken by the Government to implement the UN Declaration on the Rights of Indigenous Peoples? Please provide details.**

No. However, Nation of Hawai'i has been a long-time participant in the International Indian Treaty Council (IITC). Head of State for the Nation, Dennis "Bumpy" Kanahale is an IITC executive board member and an active participant in all of its activities.

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<sup>57</sup>18 U.S.C. § 1091(a) (emphasis added).