

Questionnaire on Indigenous Issues/PFII

A. General information and background on your organization/institution

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 Office of Hawaiian Affairs is based in Honolulu, Hawai'i and is a semi-autonomous agency of the State of Hawai'i. Pursuant to Hawai'i Revised Statutes Section 10-3, a primary purpose of the Office of Hawaiian Affairs is the betterment of conditions of Native Hawaiians.¹ While OHA was established through the Hawai'i State Constitution, and U.S. courts have determined that OHA is a state agency, OHA responds to this questionnaire in its capacity as an advocate for Native Hawaiians, and not as a representative of the U.S. Government or any of its subdivisions.

2. What is the total number of indigenous peoples in your country? Please also include official sources/references.

Indigenous Peoples (total figures)		
Indigenous Peoples (please provide the names of different groups)	Country	Total indigenous population (Indicate source)
Native Hawaiian	United States of America	527,077 (Office of Hawaiian Affairs Databook) ²
American Indian/Alaska Native	United States of America	2.9 million (National Congress of American Indians) ³

¹ Other statutory purposes include: “(3) Serving as the principal public agency in the State responsible for the performance, development, and coordination of programs and activities relating to [Native] Hawaiians . . . ; (4) Assessing the policies and practices of other agencies impacting on [Native] Hawaiians . . . and conducting advocacy efforts for [Native] Hawaiians . . . ; (5) Applying for, receiving, and disbursing, grants and donations from all sources for [Native] Hawaiian . . . programs and services; and (6) serving as a receptacle for reparations” HAW. REV. STAT. §10-3 (2016) http://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/HRS0010/HRS_0010-0003.htm (accessed December 14, 2016).

² Data presented by the Office of Hawaiian Affairs originates from the United States Bureau of the Census (“Census Bureau”). It may be important to note that the Census Bureau “allow[ed] respondents the option to self-identify themselves” Native Hawaiian Population by Region in the United States: 1990, 2000, 2010. Office of Hawaiian Affairs Databook. Table 1.19 <http://www.ohadatabook.com/T01-19-15.pdf> (accessed December 15, 2016).

³ Indian Country Demographics. National Congress of the American Indian. <http://www.ncai.org/about-tribes/demographics> (accessed December 15, 2016). Please note that this category also includes individuals who identified as American Indians who are indigenous to areas other than the U.S., such as Mexico and Central America.

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
Native Hawaiians	United States of America	Activities are primarily in Hawai'i, but OHA serves all Native Hawaiians	289,970 ⁴ in Hawai'i, 527,077 throughout the United States

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

Yes, the Office of Hawaiian Affairs participated in the 2013 session of the Permanent Forum on Indigenous Issues.

B. Recommendations of the UN Permanent Forum on Indigenous Issues

5. Has the work of the Permanent Forum supported indigenous peoples? Please provide details with specific examples.

Although the Office of Hawaiian Affairs' participation with the Permanent Forum on Indigenous Issues has been limited, the Administration of the Office of Hawaiian Affairs believes the work of the Permanent Forum has supported indigenous peoples. A recent example of this support is the "Recommendations to Member States" from the 15th Session of the UN Permanent Forum on Indigenous Issues.

Item 31 was specific to Native Hawaiians regarding Mauna Kea where the "Permanent Forum strongly recommend[ed] that the free, prior, and informed consent of [N]ative Hawaiians be recognized."

6. Please provide information on any measures your organization has taken to strengthen the role and rights of indigenous women. Please also include information on any steps to address

⁴ Native Hawaiian Population by Place of Residence in the United States: 1990, 2000, 2010. Office of Hawaiian Affairs Databook. Table 1.20 <http://www.ohadatabook.com/T01-20-15.pdf> (accessed December 15, 2016).

sexual and gender-based violence against indigenous women and girls, in particular in conflict situations. (para. 57 of 2016 Report).

No response provided

7. Please provide information on any projects or programmes your organization has taken to support indigenous youth. Please also provide information on any action taken to (i) prevent self-harm and suicide; and (ii) facilitate the inter-generational transfer of traditional knowledge and histories among your peoples/communities.

No response provided

C. UN Declaration on the Rights of Indigenous Peoples

*The UN Declaration on the Rights of Indigenous Peoples was adopted in 2007. To mark the ten year anniversary, and assess gains and achievements, the theme of the Permanent Forum's 2017 annual session will be: **Tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: measures taken to implement the Declaration.***

8. How has the situation of the indigenous peoples in your country evolved since the adoption of the UN Declaration in 2007? Has the adoption of the UN Declaration made a difference? Please include information in the matrix below:

No response provided

	Better	Worse	No change	Comments & details
Culture				
Education				
Environment				
Health				
Human Rights				
Socio-economic Development				
Lands, territories & Resources				
Participation in decision-making				

Law and Policy				
Other				

9. Do you have any examples of good/best practices in implementing the UN Declaration? If so, please provide details.

No response provided

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?

The Permanent Forum on Indigenous Issues submitted a number of recommendations to member States after its 15th Session. The recommendations highlighted different Indigenous human rights concerns that States should address and work to improve. The Permanent Forum submitted the following recommendation to the United States of America regarding the Indigenous human rights of Native Hawaiians:

Mauna Kea, the sacred mountain for native Hawaiians is currently targeted for the placement of an international observatory featuring a 30-metre telescope. Such an activity inhibits and is contrary to the rights articulated in articles 11 and 12 of the United Nations Declaration. In addition, the Permanent Forum strongly recommends that the free, prior and informed consent of native Hawaiians be recognized.⁵

The Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz, has noted generally that because barriers exist, States and indigenous peoples often “settle into entrenched positions and take adversarial approaches,”⁶ when dealing with issues in the context of natural resource development. Native Hawaiians used the judicial system as well as peaceful demonstrations to stop what they considered to be the desecration of Mauna Kea. At the time the PFII recommendation was originally made, the Mauna Kea issue may have been an indicator that there continued to be obstacles regarding the free, prior, and informed consent. The Office of Hawaiian Affairs has taken a leadership role with the State of Hawai’i to truly address the need for improved management of Mauna Kea, for meaningful consultation with

⁵ 15th Session of the UN Permanent Forum on Indigenous Issues, Recommendations to Member States

⁶ UN Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, Summary*, August 11, 2014, A/HRC/27/52, available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_41_ENG.docx (accessed December 19, 2016).

Native Hawaiians on activities and regulations related to Mauna Kea, and for incorporation of Native Hawaiians in State of Hawai'i decision-making processes.

As a separate issue, President Obama's Administration advanced efforts to create a process for reestablishing a government-to-government relationship between Native Hawaiians and the federal government. To a large degree this may be considered a success and the Office of Hawaiian Affairs is monitoring what may happen with this effort under a Trump Administration.

Land claims are another issue. For more than two decades OHA has taken the position that Native Hawaiians have unrelinquished claims to the "ceded" lands corpus and the State of Hawai'i cannot reduce the "ceded" lands corpus until such claims are resolved. "Ceded" lands refer to the government and Crown lands (that belonged to the Hawaiian Kingdom before the overthrow of its government in 1893, but were "ceded" to the federal government in 1898), most of which were transferred to the State of Hawai'i in 1959 upon statehood. OHA has consistently taken the position that the State of Hawai'i should protect the corpus and the resources it contains and that inappropriate disposition is inconsistent with the State's fiduciary obligations.

D. World Conference on Indigenous Peoples

In 2014, at the World Conference on Indigenous Peoples (A/RES/69/2), Member States committed to taking a number of measures to achieve the ends of the Declaration.

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.*

The Office of Hawaiian Affairs has been involved in legislative, policy and/or administrative measures taken by the Government to implement the principles and aspirations of the UN Declaration on the Rights of Indigenous Peoples.

On July 7, 2010, the Board of Trustees to the Office of Hawaiian Affairs unanimously voted "to urge U.S. support of the United Nations Declaration on the Rights of Indigenous Peoples." The particular action item voted-on acknowledged "[t]he Declaration adds another tool in our tool box that we could use to push for Native Hawaiian causes, such as self-determination and the return of or compensation for Ceded Lands." The action item also identified specific articles of the Declaration that were relevant to the Office of Hawaiian Affairs' strategic results such as: economic self-sufficiency, land & water, culture, health, governance, and education.

During the 2011 State of Hawai'i legislative session, the Office of Hawaiian Affairs provided constructive suggestions for a legislative bill that was signed into law and became known as Act 195.⁷ Within the act was an explicit recognition of Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples. Act 195 recognized "the Native Hawaiian people . . . as the only indigenous, aboriginal, maoli people of Hawaii." Through Act 195, the State of Hawai'i legislature "urge[d] the office of Hawaiian affairs to continue to support the self-determination process by Native Hawaiians in the formation of their chosen governmental entity."

Subsequent to the Obama Administration's announcement of its support of the Declaration in which Native Hawaiians were specifically identified as among America's indigenous peoples, the Office of Hawaiian Affairs advocated for federal administrative policies that essentially attempt to implement the Declaration in a manner that applies specifically to Native Hawaiians.

In June of 2014, the Obama Administration announced the possibility of developing a federal administrative rule for the reestablishment of a government-to-government relationship between the United States and the Native Hawaiian community. The Department of Interior issued an Advance Notice of Proposed Rulemaking (ANPRM). Immediately following this announcement, the U.S. Departments of the Interior and Justice conducted fifteen community meetings throughout the State of Hawai'i and held five tribal consultations on the continental United States. The Office of Hawaiian Affairs had a presence at all these meetings and consultations. The state-wide meetings and tribal consultations took place within a 60-day public comment period. The Office of Hawaiian Affairs provided a comment to the Department of Interior's ANPRM supporting federal rulemaking and urged Native Hawaiian organizations and individuals to submit a comment as well.

In October of 2015, the Department of the Interior published a proposed rule for reestablishing a government-to-government relationship between the United States and the Native Hawaiian community. Immediately after publication, a 90-day public comment period followed. The Office of Hawaiian Affairs submitted a comment supporting the rule with amendments.

In October of 2016, the Department of Interior published its final rule that provides procedures for reestablishing a government-to-government relationship with the United States and the Native Hawaiian community.

12. *Have any steps been taken or are planned to develop a national action plan or strategy on indigenous peoples? Please also include information on information sharing and capacity building to strengthen awareness and action to implement the UN Declaration.*

⁷ Act of July 6, 2011, No. 195, 2011 Haw. Sess. Laws 646.

To our understanding, the United States has not developed an official and well-publicized “national action plan or strategy on indigenous peoples” that has been described specifically as such.⁸ Guidelines about the development of a system-wide action plan (SWAP-Indigenous Peoples) were shared.⁹ Although the U.S. has taken some actions to support indigenous peoples in the U.S., it may not have met all of the SWAP elements. While the U.S. has taken positive actions supporting Indigenous Peoples’ rights, a substantial need for better consultation, input, and enforcement mechanisms still exists. Greater consultation, input, and enforcement is needed so that U.S.-based Indigenous Peoples are able to more fully exercise their *international human rights as Indigenous Peoples*.

The development of a national action plan is important for indigenous groups like Native Hawaiians who are entitled to the same international human rights protections as other indigenous peoples in the U.S. even without formal federal recognition. The United States has met some of the SWAP elements¹⁰ and there continues to be more to be done since much of U.S. action focuses on federally recognized Indian tribes and Alaska Natives. A Native Hawaiian government has yet to achieve formal federal recognition through either a Congressional act or a federal rule. Although the United States mentions Native Hawaiians in its reports, Native Hawaiians do not share all the benefits, nor do they have the powers, currently exercised by other federally recognized indigenous nations in the U.S.¹¹

⁸ An e-mail inquiry (dated December 16, 2016) to the United States Department of State about the existence of “a published or available ‘national action plan’ showing how the U.S. will achieve the aspirations and goals of the UN Declaration on the Rights of Indigenous Peoples,” at the time this response was drafted had not yet been responded to.

⁹ “The outcome document of the 2014 World Conference on Indigenous Peoples contains a series of commitments calling for . . . action by . . . Member States [and] the United Nations system. Among these is a request that the Secretary-General develop a system wide action plan . . .” Additionally, the “action plan was developed by the Inter-Agency Support Group on Indigenous Issues (IASG) . . . and was finalized . . . October 2015.” *System-Wide Action Plan on the Rights of Indigenous Peoples*, Department of Public Information, United Nations, 2 and 33. http://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/SWAP_Indigenous_Peoples_WEB.pdf (accessed December 19, 2016).

¹⁰ The SWAP elements are: 1) Raise awareness of the Declaration on the Rights of Indigenous Peoples, 2) Support the implementation of the Declaration on the Rights of Indigenous Peoples, particularly at the country level, 3) Support the realisation of indigenous peoples’ rights in the implementation and review of the 2030 Agenda for Sustainable Development, 4) Conduct a mapping of existing standards and guidelines, capacities, training materials and resources within the UN system, International Financial Institutions, and IASG members for the effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples, 5) Develop capacities of States, indigenous peoples, civil society and UN personnel, and 6) Advance the participation of indigenous peoples in UN processes. *System-Wide Action Plan on the Rights of Indigenous Peoples*, Department of Public Information, United Nations, 17-29. http://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/SWAP_Indigenous_Peoples_WEB.pdf (accessed December 19, 2016).

¹¹ Indigenous Hawaiians “benefit from some federal programmes available to Native Americans, but they have no recognized powers of self-government under federal law.” UN Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, Addendum : The situation of indigenous peoples in the United States of America*, August 30, 2012, A/HRC/21/47/Add.1, available at

13. *The UN has recently developed a system wide action plan to promote improved support to Member States as well as indigenous peoples themselves to achieve the UN Declaration on the Rights of Indigenous Peoples (SWAP-Indigenous Peoples). Please provide information on the involvement of your organization/peoples in any projects, activities/dialogues and/or events of the UN in your country to advance rights and opportunities for indigenous peoples.*

The Office of Hawaiian Affairs has not yet been involved in any projects, activities, or events of the UN in the United States to advance rights and opportunities for indigenous peoples, but has nonetheless actively worked to advance the rights and opportunities for Native Hawaiians as part of its statutory obligations.

E. 2030 Agenda for Sustainable Development *The 2030 Agenda for Sustainable Development sets the framework for global development efforts until 2030.* The Permanent Forum on Indigenous Issues will address the follow up and review of the 2030 Agenda. Please provide information on the following

14. *Has your government consulted you in the national level implementation, review and follow-up to the 2030 Agenda?*

No, the Office of Hawaiian Affairs has not been consulted with regarding the 2030 Agenda for Sustainable Development. OHA is an organization on the Department of the Interior's list of Native Hawaiian Organizations (NHOs)¹² which is "designed to assist the DOI and other agencies to locate and communicate with interested Native Hawaiian organizations."¹³

15. *Which goal/s of the 2030 Agenda are most important for your work and how you will engage in the implementation? Please describe any 2030 Agenda programmes, activities or other initiatives your organization is involved in at the community, national, regional or global level*

Goals 6 (Ensure availability and sustainable management of water and sanitation for all), 14 (Conserve and sustainably use the oceans, seas and marine resources for sustainable development) and 15 (Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss) are goals that are important to OHA's work separate and apart from

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47-Add1_en.pdf (accessed December 19, 2016).

¹² U.S. Dept. of Interior. Native Hawaiian Organization List.

https://www.doi.gov/sites/doi.gov/files/uploads/NHOL-Complete-List_7.pdf (accessed December 19, 2016).

¹³ U.S. Dept. of Interior. FAQs about the NHO Notification List. <https://www.doi.gov/hawaiian/faqs#1> (accessed December 19, 2016).

actual community or regional level-implementation. The Office of Hawaiian Affairs' Compliance Enforcement Program "provides legal and policy compliance review, assessment and corrective action services to OHA's top leadership allowing the organization to take proactive steps when organizations interpret or implement laws in ways that may harm the Hawaiian community or may not be in its best interest."¹⁴

16. *Is your organization involved in the collection and dissemination of disaggregated data or culturally relevant data on indigenous peoples? Please mention if and how you work with National Statistical Offices to integrate the data in official reports for review of the 2030 Agenda.*

Yes, the Office of Hawaiian Affairs' Research Line of Business "prepares reports and conducts surveys intended to help guide strategic direction and policy decisions"¹⁵ focused on indigenous Hawaiians. OHA compiles and disseminates data on indigenous Hawaiians. OHA works indirectly with the U.S. Census Bureau, U.S. Department of Health and Human Services, U.S. Department of Education, U.S. Department of Commerce, and others, without any formal understanding or agreement that such data will be integrated into official reports for review of the 2030 Agenda.

¹⁴ Office of Hawaiian Affairs. Compliance Enforcement. <http://www.oha.org/governance/compliance-enforcement/> (accessed December 19, 2016).

¹⁵ Office of Hawaiian Affairs. Research. <http://www.oha.org/research> (accessed December 19, 2016).