
Agenda Item 7: Study and advice on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage

Statement by Edward Halealoha Ayau, Kingdom of Hawaii

Mr Chair,

O wau o Edward Halealoha Ayau, he keiki a Reynolds Leialoha Ayau laua o Merle Moaikē'ala Ka'eo. Mai Pelekuu a me Ho'olehua Molokai mai au. I am a product of the values, beliefs and conscience of my ancestors. I am a product of my kumu Edward and Pualani Kanahele of Hilo through training as Hui Mālama I Nā Kūpuna O Hawai'i Nei. I am also a product of Walter Echo-Hawk, the Native Americans Rights Fund and the University of Colorado School of Law. He Hawai'i au mau a mau, I am Hawaiian for ever and ever.

The segment of cultural heritage that I address with these statements involves international repatriation. I am humbled to present these statements on behalf of the Hawaiian people, especially those whose nā iwi (bones) and moe pū (funerary possessions) are held in institutions the world over after having been stolen from their original place of interment.

**Experience with International Repatriation**

Our first technical international repatriation occurred in March 1992 and the most recent occurred in August 2014. The 1992 repatriation involved the University of Zurich here in Switzerland which held a complete skeleton of a Hawaiian. The 2014 repatriation involved a single ancestral Hawaiian skull from the Museum of Natural History at Oxford University and a brain of another Hawaiian preserved in spirit. In total we have conducted 12 international repatriations over a 22 year period including 145 skulls from the Natural History Museum (see attachment A). In addition, we supported the repatriation of ancestral Tahitian, Maori, Chamorro, Aborigine, and Native Americans from institutions in Hawaii. Moreover, we conducted over 100 domestic repatriations within the United States (see attachment B).

Ma ka hana ka 'ike, ma ka 'ike ka maopopo
Knowing by doing leads to understanding

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1 The term "technical" refers to the fact that like many 'Oiwi (Native Hawaiians), I carry in my heart the true country, the Kingdom of Hawai'i, unlawfully taken over in January 1893 and still occupied until this day by the United States. Ergo, all repatriations in our minds are international in nature.
There is no greater teacher than real life experience. I have been a repatriation practitioner for 25 years, almost half my life. I am not guessing as to how this can work. Instead, I am reporting what our experiences have taught us. We sought repatriation on the international level based upon our duty and responsibility as nā mamo a Hāloa, living descendants of the first Hawaiian. We were armed with a clear understanding of who we are as Hawaiians and the responsibilities that entails including the duty to maintain the integrity of our ‘ohana or family, both ancestral and living.

I completely support the United Nations Expert Mechanism on the Rights of Indigenous Peoples 8th session, 20 – 24 July, 2015 Submission by the International Repatriation Project/Association on American Indian Affairs and the International Indian Treaty Council (IITC) for the EMRIP Study on the Promotion and Protection of the Rights of Indigenous Peoples with respect to their Cultural Heritage (hereinafter Submission). Specifically, I reify the core principles stated in the Submission that should be the basis for development of a new mechanism or process for international repatriation.

The Submission focuses on our rights and I intend to make clear that duties go hand with such rights. The Hawaiian word kuleana means "responsibility, duty and privilege." Privilege or rights are earned by being responsible and dutiful. A right is exercised when one feels like it whereas a duty is required and does not include choice. We view repatriation as a duty as much as, if not more than, a right.

**Human Skeletal Remains**

For Hawaiians, the care of ancestral remains and burial sites is fore mostly a family matter. In every single repatriation case conducted by the Native Hawaiian organization Hui Mālama I Nā Kūpuna O Hawai‘i Nei over the past 24 years, not once did a museum or private collector provide evidence that the family of the deceased consented to the taking of the ancestral remains. Not once. The acquisition of ancestral human remains without consent and knowledge of the living descendants is an illicit act that must no longer be supported.

There are certain fundamental rights that transcend national boundaries and jurisdictions--- certain aspects of the human experience that demand respect regardless of political, cultural, philosophical, religious,

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2 The corporate body of this organization was legally dissolved of its own accord on January 23, 2015. This statement reflects its position in the past and the position of those Native Hawaiians including the author who will forever have the kuleana (duty, responsibility, privilege) to care for ancestral remains and funerary objects.
scientific or other value systems. One such essential right is for
descendants to be able to care for ancestral remains. Institutions that
refuse to support the repatriation of ancestral human remains violate
humanity by denying the inherited ability to maintain the integrity of the
cultural family, both living and deceased.

One thing that we learned from 24 years of repatriation experience is
that there is a need to critically analyze the needs of science and where
acquisitions of human remains are illicit and void of consent, scientific
needs cannot be held to outweigh the needs of the ancestral and living
family. In the case involving the Natural History Museum in London,
England which took 23 years to resolve and which resulted in the
repatriation of 145 Hawaiian skulls in August 2013, we were faced with
this issue of weighing scientific interests and cultural interests.

Ergo, focus must be on the affirmation of informed consent and not on
the ability to establish direct lineal decent. In order to repatriate, some
museums require claimants to establish lineal connections to the
remains in their collections while simultaneously ignoring the fact that
the remains were collected by theft. This is an example of intellectual
savagery. Such institutions insist on holding native claimants to the
highest standards while holding themselves to the lowest. Why? Because
they can. Illicit possession affords such institutions with the ability to
set up the framework for the discourse on repatriation. There needs to
be a leveling of the playing field and this is an area the UN.

Where iwi kūpuna (ancestral bones) are disturbed, living Hawaiians have
a duty to restore the integrity of the moeloa, the long sleep. Our spiritual
well being is a function of knowing the ancestors are where they are
supposed to be, in the bosom of Papahānaumoku, the earth mother, who
looks after them until they complete the journey of returning to the
elements.

Funerary Objects & Sacred Objects
It is imperative that coverage be extended to moepū (funerary objects)
and mea kapu (sacred objects). For moepū the reason is that it is part of
the sanctity of the moeloa (long sleep). It is part of the sanctity of the
death experience. Items placed with the dead are considered the
possessions of the deceased creating a permanent bond that must not be
broken. Many institutions that have adopted human remains policies
ignore funerary objects.3 With UN support this ignorance must change.

3 In the United Kingdom, the Human Tissues Act of 2004 makes no mention of funerary
possessions. Neither does the Human Remains Policies at Oxford University and
Cambridge University to name a few.
For us, museums with ancestral Hawaiian skeletal remains, funerary objects and sacred objects are not special, they are just next. A war has been raging for several years amongst Native peoples and institutions over who gets to determine the treatment of the ancestral past. The warriors on both sides consider their respective causes to be just, with science on one side and culture on the other.\(^4\) In my view the true battle is over the ability to best express our collective humanity. These are golden opportunities to demonstrate compassion in a most profound way through repatriation which supports the restoration of the ancestral foundation. As Dr Sam Alberti Director of the Hunterian Museum Royal College of Surgeons of England eloquently stated, repatriation is the beginning of the discussion and not the end.

**Challenges to Overcome**

Challenges that continue to plague the repatriation process include the extraordinary length of time it takes for repatriation claims to be processed; at times, the refusal of museums to engage in meaningful consultation; the lack of adequate funding to conduct consultation and repatriation; and forcing indigenous peoples to bear the burden of proof to repatriate.

The best case scenario is where a repatriation claim is accepted and responded to in a timely fashion. Next, there is meaningful consultation whereby a museum or institution explains its repatriation process, terms are defined, timelines agreed upon and additional information provided. Thereafter, due diligence is undertaken and careful consideration is given to the merits of the claims. A decision is made to repatriate or a decision is made to provide additional information in order to reach a repatriation decision.

In our experience, the best repatriation effort undertaken involved the University of Zurich Department of Anthropology because the process followed the steps identified in the paragraph above. This was in 1992 and the consultation period was about a year’s time.

The worse scenario includes institutions in Germany and Russia where repatriations claims have been pending for over 20 years with little guidance provided by the institutions except to say no to repatriation claims. Interestingly, a current claim involving an unnamed institution in the UK is proving to be the most difficult due to the approach taken by the museum. In response to a claim for repatriation of 19 skulls

\(^4\) Although I would argue that Native peoples are the world's original natural scientists with the major difference being native scientists infused their empirical observations with spirituality in order to complete the picture and not short change their world view.
identified by historic documentation has having been removed from the island of O'ahu in Hawai'i and an agreement by our organization for the conduct of physical examination through metric measurements only, the museum study concluded the following. First, the 19 skulls were compared to three groups for purposes of comparative analysis including group 1: Egyptian; group 2: Southeast Asian and group 3: Hawaiian skulls from O'ahu. The results were that some of the 19 skulls exhibited attributes or traits of the skulls in group 1 and group 2. However, when it came to group 3, all 19 skulls matched the attributes of this group. The conclusion reached was that the identification of the ethnicity of the 19 skulls were inconclusive even though all 19 matched skulls from the area indicated by the archival information as the place of origin. Based on this inconclusive finding, the museum was therefore unable to support the repatriation claims for the 19 skulls. This is a prime example of intellectual savagery at its finest. A scientific sleight of hand, if you will. Cases such as this must be regulated by the United Nations to provide a fair and objective result.

Recommendations

We respectfully recommend that the U.N. Human Rights Council through the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) formally declare and adopt the following findings as part of its official record and take steps to ensure these rights are protected:

1. It is an international human right and for many a sacred duty to repatriate ancestral human remains and funerary items including those held in foreign jurisdictions. Civilized nations must accord the utmost respect to ancestral remains removed without consent. The ability of living descendants and representative organizations to exercise requisite care through repatriation must be recognized, honored and supported.

2. The ability of science to attain higher levels of understanding of the world and the universe is respectfully acknowledged. It is also recognized that science is an important value, but not an absolute right. In the absence of informed consent, the values of science shall not be imposed over the ability to care for ancestral remains and funerary items. Where repatriation is requested, science officials should become a cooperative partner in efforts to honor the deceased and the sensivities of the living and thereby elevate the level of the human experience.

3) Encourage states to require their institutions both public and private to provide indigenous peoples with detailed inventories of ancestral human skeletal remains, funerary objects, sacred objects, and objects of cultural patrimony developed through meaningful consultation to ensure cultural sensitivity to such issues as photography,
measurements, exposure to light, menses cycles of female staff (making them off limits to the ancestral remains during this time), etc.

4) Develop protocols and procedures for international repatriation involving respective national Customs and Border agencies, airline carriers and other related entities to provide a respectful, secure, safe and seamless process to transport repatriated items to their nation of origin.

5) Provide full access and assistance with archival research when requested to help identify the circumstances regarding the acquisition of ancestral remains and cultural items.

Closing

I close with the words of the Master Navigator Mau Pailug from Satawal Micronesia, "If I have courage it is because I have faith in the knowledge of my ancestors." Like all Hawaiians, at my birth I inherited the DNA of my kūpuna (ancestors) which included their knowledge, memories, and values. I therefore have courage. We all do. I employ the United Nations to provide the authority and higher level of understanding necessary to protect the cultural heritage of native peoples through international repatriation and by doing so, elevate the level of the human experience.