

Intervention to the
United Nations Working Group on Indigenous Populations
on behalf of Hui Na'auao

Madam Chair:

Aloha mai. E na la la o keia ahahui na lahui o ke ao nei.

Greetings to the members of this group of peoples of the world.

*Mahalo a nui loa i ko ho'oku'u ana mai ia'u e kamailio a'e mamua ia
oukou.*

Thank you for the opportunity to speak before you.

O Elizabeth Ann Ho'oipo Kalaena'auao Pa Martin ko'u inoa.

My name is Elizabeth Ann Ho'oipo Kalaena'auao Pa Martin.

I serve as president of Hui Na'auao, a coalition of over fifty *na Hawai'i* organizations whose goal is to facilitate and promote awareness of *na Hawai'i* sovereignty and self-determination. We have started the second year of a three year project entitled the "Sovereignty and Self-Determination Community Education Project." I am also executive director of one of the organizations within Hui Na'auao, the Native Hawaiian Advisory Council, and we are currently working to increase awareness among *na Hawai'i* of our rights and entitlements to our water resources.

On behalf of Hui Na'auao, I would like to thank the Working Group on Indigenous Populations for the opportunity to provide information on the current human rights status of *na Hawai'i*. I hope that my comments will assist the Working Group, particularly as it drafts the Declaration on the Rights of Indigenous Peoples.

I dedicate my comments today to my late auntie Alice Aiwohi, a *he waihine Hawai'i*, a Hawaiian woman, who embodied great love, strength and courage as she fought to maintain her dignity and human rights in her

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struggle to return to her native land. She waited for many years for a homelands parcel held in trust by the State of Hawaii, and she was over seventy years old when she was finally awarded her land at Ho'olehua, Moloka'i. A state law, however, prohibited her from occupying her land until the state provided water, sewage, roads and the like -- which they then refused to do. In defiance of state law, she moved an abandoned cargo container onto her land and lived there, subsisting on her garden and teaching Hawaiian language to the neighborhood children. Auntie Alice died before she could fully use and enjoy her land, and before the human rights of *na Hawai'i* were fully recognized. It is in her memory that I appear before you.

As you are perhaps aware, 1993 is significant for two reasons. Not only, is this the United Nations Year of the World's Indigenous Peoples, 1993 also marks the 100th year since the illegal overthrow of the Hawaiian monarchy.¹

As a result of the colonization of Hawai'i by the United States, *na Hawai'i*, indigenous Hawaiians, became a subordinated people in our own land.² Our basic right to self determination has been consistently and forcefully denied. Traditional culture and language of *na Hawai'i* were

¹ In 1893, United States President Grover Cleveland acknowledged that the overthrow of the Hawaiian Monarchy was illegal, stating that "[a] substantial wrong has thus been done which a due regard for our national character as well as the rights of the [Hawaiian] people requires we should endeavor to repair." REPORT TO THE COMMISSIONER TO THE HAWAIIAN ISLANDS, PRESIDENT'S MESSAGE RELATING TO THE HAWAIIAN ISLANDS, December 18, 1893, H.R. Ex. Doc. No. 47, 53rd Cong., 2nd Sess. 445-458 (1893). Nonetheless, Hawai'i was annexed by the United States in 1898, and became a state in 1959. Since at least 1893, we, *na Hawai'i*, the indigenous people of Hawai'i, have suffered a continuing deprivation of the most fundamental of our human rights, including a denial of our right to self-determination. See HAUNANI KAY TRASK, FROM A NATIVE DAUGHTER 34-50 (1993).

² See TRASK, *supra* note 1, at 23.

banned.³ Over 1.5 million acres of our lands and resources, which were integral to the sustenance of our life and culture, were taken by the United States after the annexation.⁴ Although most of these lands are held "in trust" for *na Hawai'i*, we do not directly control these lands, and the United States and State of Hawaii have breached this trust through desecration and illegal use.⁵

As a result of the displacement from our lands and the devastation of our culture, *na Hawai'i* today are plagued by social, economic and health related problems.⁶

³ NATIVE HAWAIIAN STUDY COMMISSION, NATIVE HAWAIIANS STUDY COMMISSION REPORT 196 (1983) (Pursuant to Pub. Law 96-565, Title III).

⁴ MELODIE K. MACKENZIE, NATIVE HAWAIIAN RIGHTS HANDBOOK 10 (1991).

⁵ OFFICE OF STATE PLANNING, OFFICE OF THE GOVERNOR, STATE OF HAWAII, REPORT ON FEDERAL BREACHES OF THE HAWAIIAN HOME LANDS TRUST PART I 12-17, 35 (1992). Currently, the United States government does not recognize that it committed wrongful acts by participating in the overthrow of the Hawaiian monarchy and negotiating the receipt of lands from the illegitimate Republic of Hawai'i, and as such, the United States to this date has not re-recognized the inherent sovereignty and right to self-determination of *na Hawai'i*. Elizabeth Pa Martin, *Hawaiian Natives Claims of Sovereignty and Self-Determination*, 8 ARIZONA J. OF INTERNATIONAL AND COMPARATIVE LAW 273, 276 (1991).

⁶ TRASK, *supra* note 1, at 22. Several studies have concluded, for example, that while pre-contact *na Hawai'i* were generally healthy, *na Hawai'i* today are at high risk for cardiovascular disease, diabetes, hypertension, obesity and other diet-related diseases. See generally NATIVE HAWAIIAN STUDY COMMISSION, *supra* note 3, at 99-122 (section on pre-contact *na Hawai'i* health written by Kekuni Blaisdell, M.D.). See also ALU LIKE, NATIVE HAWAIIAN HEALTH STUDY REPORT (1985); Kekuni Blaisdell, M.D., 32 SOCIAL PROGRESS IN HAWAII 1 (1989); Terry T. Shintani et al., *Obesity and cardiovascular risk intervention through the ad libitum feeding of traditional Hawaiian diet*, 53 AM. J. OF CLINICAL NUTRITION 1647S, 1647S (1991). Nutrition Programs such as the Wai'anae Diet have proved that eating traditional *na Hawai'i* foods, including taro, can significantly reduce the risk of diet-related diseases. *Id.* at 1649S. However, water resources required to grow taro, the staple of our traditional diet, were originally cut off by the sugar plantations, contributing to the migration of *na Hawai'i* into ghetto-like conditions in the cities. See NATIVE HAWAIIAN STUDY COMMISSION, *supra* note 3, at 43-45. Today, because of a shortage of both water and land, we have been unable to grow enough taro to meet our own needs.

Madame Chairperson, in relating developments concerning the situation of Na Hawaii, I would like to point out how the draft Declaration developed by the Working Group last week directly applies to the human rights condition of *na Hawai'i*.

The development and implementation of the Hawai'i State Water Code, adopted in 1987⁷, continued the process of ignoring indigenous water rights concerns, and provides an excellent example of how the Declaration could assist our efforts in Hawai'i. One member of our organization, the Native Hawaiian Advisory Council, is actively involved in defining and asserting indigenous rights to water, including ocean and submerged-land resources, under this newly developed and continually evolving code. Now, as the State of Hawaii begins its first comprehensive review of the Water Code, the Draft Declaration on the Rights of Indigenous Peoples can be effectively applied to assist us in our struggle to enforce our right to traditional lands and resources.

The State of Hawaii has been involved in a process of allocating water through its water code without fully taking into account our status as *na Hawai'i*.⁸ Although the code, and the Hawaii State Constitution, recognize indigenous water rights, those rights are often ignored in practice in the face of competing claims by sugar plantations and commercial enterprises.⁹ As a result, indigenous farmers and homesteaders are without an adequate supply of water, while golf courses, resort hotels and sugar cane fields use this precious resource.

⁷ HAW. REV. STAT., ch. 174C (1991 Supp.) (enacted July 1, 1987).

⁸ MARTIN, *supra* note 5, at 279.

⁹ See *id.* at 279.

The draft Declaration **provides** support for water rights of *na Hawai'i*. It recognizes the right of indigenous peoples to the protection of the environment and the restoration of productive capacity of their lands. This is particularly relevant to *na Hawai'i*, because water rights are meaningless without restoration and rehabilitation of the environment. The Declaration acknowledges indigenous peoples' right to practice their traditional means of subsistence. For *na Hawai'i*, water is critical to the farming of taro, a traditional staple, and there is a renewed interest in cultivating and consuming this food.

[Provisions in the Declaration could serve to] ~~Paragraphs 24, 26 and 19 of the Declaration~~ greatly strengthen our position that the waters of Hawai'i originally belonged to *na Hawai'i*, and the State of Hawaii has a clear obligation to recognize and enforce our rights to these resources.

Although Paragraphs 24, 26 and 19 focus on control over indigenous lands and resources, Paragraph 25 affords indigenous peoples the right to restitution or fair and just compensation for lands taken or used without their consent. Such lands include the 1.5 million acres of Hawaiian lands taken by the United States after the annexation of Hawai'i. The group that I represent strongly supports the return of these lands to the control of *na Hawai'i*.

Understandably, Paragraph 25 is among the most controversial provisions of the draft declaration, and will likely meet fierce resistance from certain countries. However, I would like to impress upon the Working Group that Paragraph 25 is critically important to the restoration of basic human rights.

The return of lands to indigenous management and control is essential to the ability of *na Hawai'i* to exercise other fundamental human rights, such as the right to self-determination.¹⁰

We have worked to enforce our land and trust rights through domestic political channels, such as lobbying for state and federal legislation.¹¹ Despite clear evidence of wrongdoing and neglect, the issue of restitution regularly meets with strong resistance at both levels of government. **Therefore, an international standard for restitution is appropriately included in the Declaration. The community of *na Hawai'i* could draw strength from this provision of the Declaration.**¹²

Let me offer a concrete example of how the application of a particular provision of the draft Declaration could assist our efforts to enforce our indigenous rights. In 1921, the United States Congress passed the Hawaiian Homes Commission Act¹³, which required the federal government, and subsequently the Hawai'i state government, to return a portion of the lands taken after the annexation to eligible *na Hawai'i* for homesteading. The United States assumed the role of trustee over the Hawaiian Home lands for thirty-eight years. When Hawaii became a state in 1959, the United States transferred administrative control of the

¹⁰ See TRASK, *supra* note 1, at 47.

¹¹ See generally Alicia Brooks, *Inouye bill would allow homelands lawsuits*, HONOLULU ADVERTISER, Feb. 7, 1992 (describing federal legislation).

¹² Paragraph 17 could be further strengthened by the inclusion of a specific enforcement clause, providing for further assurance to indigenous peoples that our rights would be protected by the United Nations under the Declaration.

¹³ 48 U.S.C. §§ 961-717 (1958) (set out in full as amended at HAW. REV. STAT. § 1-146 (1980)).

Hawaiian home lands program to the state, although the United States retained supervisory control.

Since its inception, the program has been plagued by numerous breaches of trust. The federal and state governments confiscated the home lands without compensation and grossly underfunded the program.¹⁴ As a result, only 17.5% of the lands originally set aside have been actually awarded to *na Hawai'i* for homesteading, and over 19,000 of us are currently waiting for homestead awards. In addition, many of the lands actually awarded are unusable because of a lack of infrastructure.¹⁵

In a lawsuit that the Native Hawaiian Advisory Council recently litigated in the Hawaii state courts¹⁶, community leaders demanded that *na Hawai'i* be independently represented in negotiations with the State of Hawaii regarding compensation for Hawaiian home lands wrongfully taken by the State. Initially, the State negotiated a settlement with a task force comprised of representatives from various State departments without any *na Hawai'i* representation. Despite our requests to participate in the process, no *na Hawai'i* independent representative participated on the task force. After considerable time, money and effort in the Hawaii state courts, the state agreed to appoint an independent representative of *na Hawai'i* to the task force.

Paragraph 25 must be interpreted in light of paragraph 17, which gives indigenous people the right to "participate fully at all levels of government, through representatives chosen by themselves," in decision-making about matters affecting them.

¹⁴ OFFICE OF STATE PLANNING, OFFICE OF THE GOVERNOR, STATE OF HAWAII, *supra* note 5, at 12-20.

¹⁵ NATIVE HAWAIIAN LEGAL CORP., HANDBOOK FOR NATIVE HAWAIIANS 43, 51 (1991).

¹⁶ *Ka'ai'ai v. Drake*, Civ. No. 92-3642-10 (Cir. Haw. filed Oct. 7, 1992).

Paragraph 25 and Paragraph 17 if applied to our lawsuit would have greatly assisted our efforts.

The Hawai'i Water Code and *na Hawai'i* representation issues are two examples of why the Draft Declaration, and the principles contained in **Paragraphs 24, 26, 19 and 25** are critical to the continuing efforts of *na Hawai'i* to enforce our claims to native lands, resources, and self-determination. I urge this Working Group to adopt the provisions of Paragraph 25 without yielding to the States who strongly oppose human rights concerning adequate compensation and restitution of lands and resources. If adopted, the Declaration will send a strong message to the United States and the State of Hawaii that the international community recognizes the fundamental human rights of *na Hawai'i* as the true and rightful owners of lands and resources that were wrongfully and illegally taken, and that we deserve just and fair restitution as a matter of right.

On behalf of Hui Na'auao, I'd like to thank the Working Group on Indigenous Populations for the opportunity to speak with you today to present this intervention on the status of human rights for *na Hawai'i*.

Me ke aloha pumehana. With warmest love.