

INTERVENTION OF NA KOA IKAIIKA O KA LAHUI HAWAII

Agenda: 5 **Topic:** Reviewing recent developments in human rights

Presenter: Le'a Malia Kanehe



Aloha Mr. Chairman, experts of the Working Group, Indigenous peoples and Nations of the World, and observer states. 'O wau 'o Le'a Malia Kanehe. He Hawai'i no au. No Wainiha, Kaua'i ko'u kupuna. No Manoa, O'ahu mai au. I am pleased to be here at this twentieth session of the Working Group on Indigenous Population to represent Na Koa Ikaika o Ka Lahui Hawai'i and bring the human rights issues facing the Indigenous Peoples of Hawai'i to the nations of the world.

I have two recent developments to report concerning our human right to self-determination, which gives us the right, as all peoples do, to freely determine our political status and freely pursue our economic, social and cultural development.

1. National Legislation to Recognize a Native Hawaiian Governing Entity Without Consent or Participation of the Native Hawaiian Peoples

In 2000, primarily as a response to the legal challenges to all programs benefiting Native Hawaiians as race-based discrimination, Hawai'i's federal delegation to the U.S. Congress introduced a bill for federal recognition of a Native Hawaiian governing entity. That first bill was supported by many Native Hawaiians because it was drafted with participation of a Native Hawaiian working group, included a transparent process for participation and creation of the governing entity, and allowed for all Native Hawaiians, without regard to blood quantum, to participate. This original bill was secretly changed and a new measure with oppressive language introduced that has minimal Native Hawaiian support because of the lack of consultative hearings, no process for Native Hawaiian participation prior to the creation of the governing entity, and only Native Hawaiians with 50% blood quantum allowed

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2. Biopiracy on Native Hawaiian Trust Lands

Hawai'i is the only state of the U.S. with an admission act that imposes a trust on all public lands, submerged lands and resources for the public and for the indigenous peoples of these lands. This is the result of Hawai'i's unique history as an independent Kingdom, the historical facts underlying its overthrow, and the "Sacred Trust" obligation imposed on the U.S. as the administering agency of the non-self-governing Territory of Hawai'i under international law and the United Nations procedures in place from 1944 to 1959. Since statehood in 1959, Native Hawaiians have been kept as wards of the State of Hawai'i and we are therefore unable to protect our rights to our lands. Throughout our history of U.S. colonization, title to hundreds if not thousands of acres of our lands have been sold or given away, with zero or minimal benefit returning to us. In 1893, our Queen was overthrown by force of the U.S. military, which continues to occupy our lands to this day. But today, a new form of colonization, known as biocolonialism threatens our rights to our traditional knowledge and natural resources.

Last month, Diversa Corporation, which collects DNA worldwide and develops small molecules and enzymes for pharmaceutical, agricultural, chemical and industrial markets, has signed an agreement for biodiversity access and research in Hawai'i. This agreement with the University of Hawai'i's Marine Bioproducts Engineering Center gives Diversa the right to discover genes from existing collections and from environmental samples, with the intent of commercializing resulting products. The negotiations and signing of this agreement were conducted without the free and prior informed consent, consultation or participation of Native Hawaiians in contravention of the Convention on Biological Diversity. In particular, Article 8(j) of the Convention provides that holders of traditional knowledge have the right of "approval" and "involvement" in any decision making process relating to the use of biological

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participation. In addition, all reference to our rights to natural resources, the right of economic self-determination, and protection of our claims under international law have been gutted from the bill. We are also concerned that there's a movement for a land claims settlement without a complete inventory of our lands and without full and fair negotiation.

The U.S.' international policy regarding Indigenous Peoples, as released in a January 2001 memorandum, is to recognize a right of "internal self-determination." By virtue of that right, the U.S. government maintains that Native Peoples within the U.S. have a right to "negotiate [our] political status within the framework of the existing nation-state." Under International Human Rights law, however, there is no such thing as internal self-determination. Nevertheless, although the U.S.' national policy is to recognize a limited right to territorial autonomy and Native self-governance by American Indians and Alaska Natives, Native Hawaiians have not been officially included in this policy. The severely altered bill now being pushed for federal recognition of a Native Hawaiian governing entity does not even meet the national standard, let alone the international standard for self-determination. Recent mainstream media coverage on this issue will lead one to believe that a majority of Native Hawaiians support the measure. We want the World to know that this is not an accurate statement about the will of the Native Hawaiian people on this matter. Although we support inclusion of Native Hawaiians in the U.S. policy for federal recognition, it must occur in a transparent and inclusive process. Currently, with the language of the bill only a majority of those Native Hawaiians with 50% blood quantum who are allowed to and chose to participate can create and form the membership of this proposed Native nation. There is nothing to involve or ensure the approval of the vast majority of Native Hawaiians. This predicament is a flagrant violation of our right to freely determine our political status.

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diversity, and to an "equitable sharing of benefits arising from the utilization of such knowledge, innovations or practices." Currently, there are no regulations in Hawai'i to ensure protection of our rights. Also without the federal recognition of a governing body for Native Hawaiians, we do not have the jurisdictional power to enforce any regulations of our own. These actions taken by the State of Hawai'i, through its public university, to contract away through legal means our rights to our natural resources adversely impacts our rights to cultural and economic development subsumed within our right to self-determination. This is a human rights violation.

We support a comprehensive report on the human rights violations that have been and continue to be reported and activities towards standard setting. Both of these will be a tremendous step towards upholding Indigenous Peoples human rights. These are tasks within the mandate of the WGIP and to which it is better suited than the Permanent Forum. Therefore we want to lend our voice of support to the continuation of the WGIP.

Thank you again for this opportunity. Aloha.

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