

## **Ka Mana'olana O Ke Ea**

*The Hope For Sovereignty*

Aia ke kai hohonu

*There is a deep sea*

Eia ka 'āina kamaha'o

*Here, the wondrous land*

Aia ka 'eha o ka wā ma mua

*There is the pain of the past*

Eia ka mana'olana o ke Ea

*Here, the hope of Sovereignty*

E ho'opuana 'ia ka pono

*Cause the truth to be expressed*

Na Ka Lāhui Hawai'i

*By the Hawaiian Nation*

Na ka hānauna a'e

*For the coming generations*

Na nā 'Aumākua a pau loa

*And for all the Ancestral Guardian Spirits*

E aloha i nā po'e o Hawai'i e

*Aloha to the people of Hawai'i*

E aloha i nā pua onaona

*Aloha to our people, the fragrant flowers*

Kanalu Young 1/21/85

"Ho'okupu a Ka Lāhui Hawai'i," the Ka Lāhui Master Plan for Hawaiian sovereignty was prepared by the Ka Lāhui Hawai'i Mokuna (elected legislature) in 1994. It is a Ho'okupu - or sacred offering to the people of Hawai'i, Native and non-Native alike, to our 'Aumākua (guardian spirits) and the Akua (Creator). It is a proposal for a comprehensive strategy to achieve self-determination and self-governance for the indigenous peoples<sup>1</sup> of Hawaiian ancestry.

The purpose of "Ho'okupu a Ka Lāhui Hawai'i" is to set forth a template for future work in many political and community spheres and to propose a process of consensus building which can meet the needs of the many sovereign groups in Hawai'i.

Eia ka Ho'okupu a Ka Lāhui Hawai'i  
Here is the offering of Ka Lāhui Hawai'i Eo!

Heed the call of

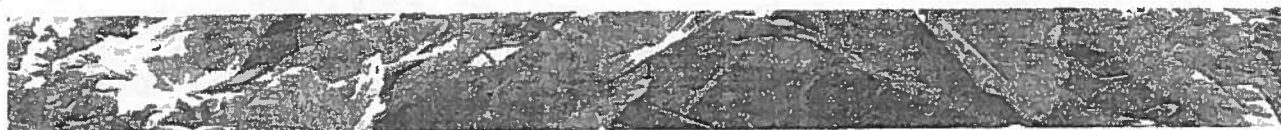
Ho'okupu a Ka Lāhui Hawai'i,

and join together as we

move towards self-determination

and self-government.

<sup>1</sup>For discussions on the term "peoples" see Hurst Hannum, *Autonomy, Sovereignty, & Self-Determination: Accommodation of Conflicting Rights*. (Philadelphia: University of Pennsylvania Press, 1990), 45, footnote 153. Also UN Charter, Article 1 Sec. 2, 1945. Also UN General Assembly Resolution 1514 (XV), Sec. 2, "Declaration on the Granting of Independence to Colonial Countries & Peoples," (Dec. 14, 1960).





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## **I. Endorsement of Fundamental Principles**

The Ka Lāhui Hawai'i Master Plan for Hawaiian Self-Government is founded upon a firm belief in and commitment to certain fundamental principles which set international standards for the protection of individual human rights and civil liberties, for maintaining the well-being and peaceful coexistence of our nation with other sovereigns, and for the protection and recognition of collective rights of our citizenry.

These Fundamental Principles include the following:

### **A. Commitment to Peace, Disarmament, and Non-Violence**

The practice of peace requires that we resolve conflict in a non-violent manner. This commitment to non-violence relates not only to our undertakings in the political arena, but involves the seeking of non-violent solutions to family, personal, and community problems. Violence in all forms including spouse and child abuse, elderly abuse and neglect is rejected.

Disarmament means that the Hawaiian Nation shall not engage in acts of militarism, nor shall it endorse military undertakings on its land or territories.

Civil disobedience is the use of non-violent means to oppose injustice, to stop violations of human rights, and to stop the degradation of our trust assets. Civil disobedience should be utilized only after good faith efforts to resolve conflict have failed. Where civil disobedience is contemplated, the community impacted should be supportive of the event and fully informed of the reasons for the event.

### **B. Recognition of the Inherent Dignity and of the Equal and Inalienable Rights of Native Hawaiians and their Descendants Under International Legal Standards**

Considering the obligation of States, including the United States, under the Charter of the United Nations to promote universal respect for and observance of human rights and freedoms of all peoples, Native Hawaiians and their descendants endorse and assert the rights and principles contained in the following international covenants, declarations, and agreements:

1. The Charter of the United Nations (done at San Francisco, June 26, 1945. [entered into force for the United States, October 24, 1945. 59 Stat. 1031, T.S. No. 993];
2. The Draft Declaration for the Rights of Indigenous Peoples (E/CN.4Sub.2/1993/29);
3. The International Covenant on Civil and Political Rights (999 UN Treaty Series 171);
4. The International Covenant on Social, Economic and Cultural Rights (999 UN Treaty Series 3).

### **C. The Right to Self-Determination**

Native Hawaiians and our descendants have the right of self-determination. By virtue of that right, we are entitled to freely

determine our political status and freely pursue our economic, social and cultural development (International Covenant on Civil and Political Rights, Section 1.1, 999 UN Treaty Series 171).

### **D. The Right to Self-Development**

Native Hawaiians and our descendants have the right to determine and set priorities and choose strategies for development. This right includes the development of and administration of programs relating to land, housing, economic and social needs.

Native Hawaiians and our descendants have the right to maintain and develop our own political, economic, and social systems; to be secure in the enjoyment of our own means of subsistence and development; and to engage freely in all traditional and other economic activities (UN Draft Declaration of the Rights of Indigenous Peoples, Articles 21 and 23, E/CN.4Sub.2/1993/29).

### **E. Termination of Wardship**

The imposition of the Western Doctrine of Manifest Destiny and the Tyler Doctrine in the Pacific Region resulted in the colonization of the Hawaiian Archipelago. The consequences of Hawai'i's unique legal and historical experience are:

1. The current political status of Native Hawaiians and their descendants as wards of the State of Hawai'i; and
2. The usurpation of our peoples collective rights to land and to political and social power by state agencies and instrumentalities; and
3. The violation of the human and civil rights of Native Hawaiians and their descendants by the United States of America and its agent, the State of Hawai'i.

The policy of wardship imposed by the United States and State of Hawai'i is explicitly rejected as a fundamental violation of Native Hawaiians' right to self-determination. Ka Lāhui Hawai'i Master Plan seeks to establish a new relationship between the Hawaiian peoples and other sovereigns, including the United States of America and its agent, the State of Hawai'i.

### **F. Establishment, Jurisdiction, and Recognition of Ka Lāhui Hawai'i**

The inherent right of self-determination provides for the establishment of an indigenous sovereign nation by processes determined and created by Native Hawaiians and their descendants without interference from other sovereigns. The Nation, as the collective representative of Native Hawaiians and their descendants, shall have jurisdiction over its lands, territories, internal and external relationships, including, but not limited to the following powers:

1. The power to determine its membership
2. Police powers;
3. The power to administer justice;
4. The power to exclude persons from National Territory;





5. The power to charter business organizations;
6. Sovereign immunity;
7. The power to regulate trade and enter into trade agreements;
8. The power to tax;
9. The power to legislate and regulate all activities on its land base, including natural resources and water management, activities and economic enterprises.

## II. Consensus Building

### Ho'okupu a Ka Lāhui Hawai'i - the Hawaiian Initiative for Self-Government

The legislature of Ka Lāhui Hawai'i has fashioned our Nation as a ho'okupu (offering) to future generations and to the 'Aumākua. We believe that we have provided a strong vehicle for the indigenous peoples of Hawai'i - to express self-determination. We offer our Ho'okupu to all of the peoples of Hawai'i, indigenous and non-indigenous.

Consensus can be achieved by building upon what has been established and agreeing to abide by and support determinations endorsed by the collective whole.

#### A. Building Upon What We Have Established

Ka Lāhui Hawai'i is a political expression of self-determination. Ka Lāhui Hawai'i was created by Native Hawaiians and their descendants. Our Constitution is a reflection of what we believe about ourselves, our culture, traditions and political rights, and other inalienable human rights. Ka Lāhui Hawai'i was created without interference or financial support from the United States of America or its agent, the State of Hawai'i.

Ka Lāhui Hawai'i is the evolutionary product of several generations of Hawaiians who sought to address past and present injustices arising from the subversion of our indigenous culture and political system and the overthrow and annexation of our territories by the United States of America.

Ka Lāhui Hawai'i has been endorsed by thousands of Native Hawaiians and their descendants. Our accomplishments include:

1. The formation of a strong, democratic, and elective nation whose indigenous citizens, by virtue of their individual vote (regardless of wealth, genealogy or sex) exercise self-determination.
2. The drafting of a constitution which incorporates traditional, cultural and spiritual values and practices with current processes and which can be altered to accommodate the need of the indigenous peoples to change;
3. Establishing a respected international reputation including membership in U.N.P.O. (Unrepresented Nations and Peoples Organizations - the Hague); acknowledgment and

inclusion in the UN Working Group Treaty Study; participation in International Consultation with the World Council of Churches in Geneva; and participation with other indigenous collectives in international consultations in Vienna, Austria; Geneva, Switzerland; Cairo, Egypt; Rio de Janeiro, Brazil; Darwin, Australia; and elsewhere;

4. A long track record on issues relating to human rights violations and the mismanagement of native trust assets and other entitlements by the United States government and the State of Hawai'i.

No other Hawaiian group or purported Hawai'i sovereign has such a record of accomplishments. These and many other achievements of Ka Lāhui Hawai'i can be shared with all those who endorse this initiative and choose to participate as citizens or legislators of the Nation.

#### B. Accepting the Challenge of Change

In order to safeguard the right of self-determination for future generations, Ka Lāhui Hawai'i's Constitution provides the opportunity for its citizens to change the nation's governmental structure, its processes, policies, and land base. Acknowledging that all things change, we accept that the Nation we have built may need to be changed to meet the needs of our peoples and of our 'āina. We believe that the process for change is what makes change possible.

All citizens of Ka Lāhui Hawai'i are empowered with the ability to create political change or to completely restructure the Nation if we can work collectively and gain the support of and the consensus of our own people.

Persons or groups who may favor other structures of government, for example: monarchical, traditional, free-association, or commonwealth status can change Ka Lāhui Hawai'i's structure if they win the support of the Nation's citizens and elected leaders. Ka Lāhui Hawai'i has the process for change, but it can only work if people choose to use it.

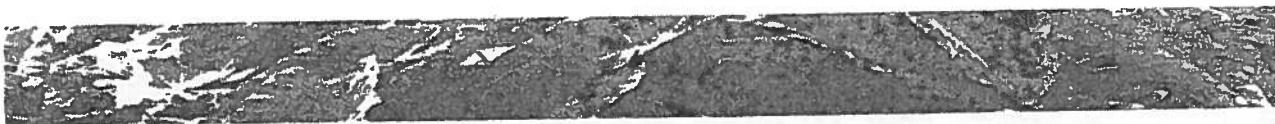
## III. Dealing with the United States

### A. The Evolution of United States Policy Relating to Hawai'i and its Indigenous Peoples

1. The Policy of Perpetual Peace and Friendship - 1826 - 1842

The United States recognized the sovereignty of the Hawaiian Nation and pledged perpetual "peace and friendship" between the United States and the "people and subjects" of the "Sandwich Islands" in the first United States/Hawai'i Convention dated December 23, 1826. Subsequent Conventions reiterated this pledge of mutual respect. (See *Treaty of Friendship, Commerce and Navigation*, December 1849; *Convention of Reciprocity*, June 1876.)

2. The Policy of United States Colonial Domination - The Tyler Doctrine 1842





On December 30, 1842 the United States Secretary of State Daniel Webster delivered to Hawaiian envoys a document which stated that the United States had a special interest in Hawai'i. This document, which was sent by the United States to England and France, stated, "no power ought either to take possession of the islands as a conquest, or for the purpose of colonization and that no power ought to seek for any undue control over the existing government." This document became known as the Tyler Doctrine after then United States President, John Tyler.

By imposing the Tyler Doctrine on Hawai'i, the United States was asserting that Hawai'i was within the United States sphere of influence and was to be subjected to United States colonial domination. All treaties and conventions between the Hawaiian Nation and the United States negotiated subsequent to 1842 favored United States' interests over those of the Nation.

### 3. The Policy of Armed Intervention - The Overthrow of 1893 and Annexation of 1898

In 1872 the United States War Department dispatched a secret military mission to Hawai'i "for the purpose of ascertaining the defense capabilities of the different ports...in order to collect all information that would be of service to the Country (United States) in the event of war...". This military mission also mapped and surveyed Pearl Harbor, Schofield Barracks, Fort Armstrong, and other staging areas of the islands. This mission and its report were kept secret until 1897, when they were released to the Congressional Committee considering Annexation. (See Volume II, *Native Hawaiians Study Commission*, June 23, 1994, page 39.)

The United States Congressional Record of the United States Senate (S.6956), June 23, 1969 reveals the following:

- a) In February 1874 United States armed forces landed in Hawai'i "to preserve order and protect American lives and interests during the inauguration of a new King";
- b) In July 1889 United States armed forces landed in Hawai'i "to protect American interests at Honolulu during a revolution"; and
- c) From January 16 to April 1, 1893 United States armed forces occupied Hawai'i "ostensibly to protect American lives and property; in actuality to promote a provisional government under Sanford B. Dole. This action was disavowed by the United States."

### 4. The Policy of the "Sacred Trust" 1946 - 1959

Following the annexation of Hawai'i in 1898, Hawai'i was held by the United States as a territory. In 1946 when the United Nations was created, the United Nations listed Hawai'i as a Non-Self-Governing Territory under United States Administration. Pursuant to Chapter XI of the United Nations Charter, the United States had a "sacred trust" obligation to promote the political aspirations of the peoples of the territory and to assist them in develop-

ing self-government (see Section VIII herein - International Issues).

The United States never fulfilled its "sacred obligation," nor did it comply with the international standards requiring that the peoples of the "territory" be provided with several options for self-government. In 1959 when the United States imposed statehood on Hawai'i, the United Nations without inquiry or investigation and at the United States' request, removed Hawai'i from the United Nations List of Non-Self-Governing Territories.

## B. The Current Policy of the United States Towards Hawaiians: The Policy of Non-Recognition, Denial, and State Wardship

### 1. State Wardship

In 1959 the United States created a policy of "State Wardship" which it imposed on Hawaiians and the State in the Admissions Act. Under this policy a small portion of vast traditional archipelagic territories were identified for "Native Hawaiians." (Those Hawaiians who could not prove they were "Natives" of 50% blood were excluded.) These lands were given by the United States to the State of Hawai'i in trust for "Native Hawaiians" for homelands and other uses, but they were never inventoried or mapped. Instead, these lands were combined with other public lands and transferred to the State of Hawai'i, thus commingling them with the remaining stolen Ceded Lands of the Kingdom. The United States retained and continues to use a significant portion of Hawaiian Lands.

Under the United States policy of State Wardship, Hawaiians are denied:

- a) Our collective right to self-determination;
- b) The power to collectively receive, develop, and utilize our lands and natural resources, fisheries, and cultural properties; and
- c) The ability to preserve and protect our entitlements for future generations.

### 2. Non-Recognition

Since 1959 the United States has maintained a policy of non-recognition of the indigenous peoples of Hawai'i and has consistently dealt with the State of Hawai'i despite an extensive record of State neglect and mismanagement of the native trusts. The record reveals that the United States itself by acting in collusion with the State has illegally acquired for its own use trust lands set aside by U.S. Congress for homesteading. For over 73 years, the United States has failed to protect the Civil Rights of Hawaiians (see *A Broken Trust*, Report of the Hawai'i Advisory Committee to the United States Commission on Civil Rights, December 1991.)

### 3. Reagan, Bush, and Clinton Administrative Policy - Abandonment

In 1979 the Deputy Solicitor of the United States Department of Interior in a letter to the Director of the United States Commission on Civil Rights (Western Division)



wrote, "... it is the Department's position that the role of the United States under Section 5(f) of the Admissions Act is essentially that of a trustee... The responsibilities of the Federal Government are more than merely supervisory and the United States can be said to have retained its role as trustee under the Act while making the State its instrument for carrying out the trust." (*Breach of Trust*, ID at page 9)

The Reagan Administration began to disavow its responsibilities over the native trusts in 1986. (See Presidential Statement H.J.R. Res. 17, Public Law No. 99-557, October 27, 1986) On August 2, 1990 Tim Glidden, the Secretary of Interior under George Bush, notified the U.S. Commission on Civil Rights that the Interior Department "disclaimed any trusteeship role in the administration of the [Admissions] Act." On January 19, 1993 the Solicitor of the Department of Interior issued a lengthy legal memo entitled "The Scope of Federal Responsibility for Native Hawaiians under the Hawaiian Homes Commission Act." The memo set forth the following conclusion, "We conclude that the United States had no trust responsibilities to the Native Hawaiians either before Statehood or after." (See Memo of Solicitor to Counselor to the Secretary of Interior and Secretary Designate, January 19, 1993.)

On November 15, 1993 the new Clinton Administration's Solicitor, John D. Leshy issued a statement withdrawing the Bush policy of January 19, 1993 and indicating that although the Bush policy (no trust obligation) was withdrawn, the Clinton Administration would continue to assert there was no trust obligation in Federal Court! Since this time the Administration has continued to deny its legal trust obligation to Hawaiians and has undertaken closed negotiations with the State of Hawai'i intended to limit United States and State liability. Hawaiian peoples have been completely ignored in the process.

#### 4. The Apology Bill

In 1993 the United States Congress passed the Apology Bill (Act of Nov. 23, 1993, Pub. L. No. 103-150, 103d Congress, 107 STAT. 1510), acknowledging its role in the illegal overthrow of the Hawaiian Nation in 1893 and calling for "Reconciliation." The law does not provide for a process for "reconciliation," nor does it define "reconciliation."

The Apology Bill states "...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."

#### C. Ka Lāhui Hawai'i's Position Regarding United States Policy

1. Ka Lāhui Hawai'i rejects the United States Policy of State Wardship and calls for the immediate termination of this policy by the United States and the State of Hawai'i.
2. The United States accepted a "sacred trust" obligation over Hawai'i under the United Nations Charter and has admitted to its role as a Trustee of the Native Hawaiian trusts. In both instances, the United States has violated

its trust obligations and is obligated to restore the rights and entitlements of the indigenous peoples of Hawai'i to self-determination and to our lands, assets, and natural resources under the United Nations Charter and other international covenants, and pursuant to its own laws.

3. By adoption of the Apology Bill, the United States has acknowledged that "the indigenous Hawaiian people have never directly relinquished 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." Therefore under international law, the American government is engaged in an illegal occupation of Hawai'i.
4. As an act of our collective right to self-determination and to self-governance, Ka Lāhui Hawai'i accepts the United States Apology and proposes the following process for "reconciliation" under Public Law 103-150.

#### D. The Ka Lāhui Hawai'i Initiative for "Reconciliation" with the United States Pursuant to U.S. Public Law 103-150 (The Apology Bill)

##### 1. The goals of "Reconciliation" are:

- a) The final resolution of historic claims relating to
  - i. the overthrow;
  - ii. claims relating to State and Federal misuse of native trust lands and resources;
  - iii. violations of human and civil rights; and
  - iv. Federally held Lands and resources;
- b) The structuring of a new relationship between Ka Lāhui Hawai'i and the United States which acknowledges the rights of Native Hawaiians and their descendants, including our right to self-determination.

##### 2. The Essential Elements of "Reconciliation" with the United States shall include but not be limited to the following:

- a) Express termination of the United States policy of non-recognition of Native Hawaiian self-determination. Repudiation of United States policy of State Wardship.
- b) Federal recognition of Ka Lāhui Hawai'i as the indigenous sovereign Hawaiian Nation and Federal recognition of the jurisdiction of Ka Lāhui Hawai'i over its national assets, lands, and natural resources.
- c) Federal programs, legal and fiscal entitlements, tax benefits, and other obligations to be negotiated.
- d) Recognition of Hawaiian sovereign rights to trade and commercial activities based on treaties between the Hawaiian Nation and other sovereigns - before and after the overthrow.



- e) A commitment to decolonize Hawai'i through the United Nation process for non-self-governing territories.
3. Provision for Land, Natural Resources, and Cultural Resources include:
- a) Restoration of traditional lands, natural resources, ocean and energy resources to the Ka Lāhui National Land Trust:
    - i. The United States and the State of Hawai'i shall inventory and restore the lands of the native trusts (State controlled Hawaiian Home Lands and Ceded Lands) and Federally held Lands, and the United States shall remedy all Federal and State breaches of trust relating to these assets.
    - ii. The United States and the State of Hawai'i shall segregate the Hawaiian National Trust Lands from other public and private lands.
    - iii. The United States and the State of Hawai'i shall allocate not less than two (2) million acres of land drawn from State-controlled Ceded Lands, State-controlled Hawaiian Homes Lands, and Federally-controlled Lands to the National Land Trust.
    - iv. The Base Closure Act and Federal Surplus Property Act shall be amended to allow for land banking of these lands for the National Land Trust.
  - b) Cultural, traditional, religious, and economic rights

The United States shall recognize individual and collective Hawaiian rights to cultural and religious properties, marine resources (to the 200 mile limit established under International Law) and cultural ecosystems. These entitlements and economic entitlements should be recognized as the jurisdiction of Ka Lāhui Hawai'i, the indigenous Hawaiian Nation.

#### IV. Terminating Wardship Under the State

Native Hawaiians and their descendants have not benefited from the illegal United States imposed policy of State Wardship which was created in 1959 as part of Statehood. On the other hand, the State of Hawai'i has benefited by utilizing its power as a Trustee to diminish, transfer, encumber, and toxify our native trust lands and resources. By failing to settle Hawaiians and Native Hawaiians on 5(f) Ceded and Hawaiian Home Lands, the State withheld from Native peoples their land entitlements, while Hawaiian "beneficiaries" died in poverty and destitution. The State acted in collusion with the Federal Government to violate the human and civil rights of Hawai'i's indigenous peoples, and participated in denying the Hawaiian people their collective rights to self-determination and self-government.

##### A. Ka Lāhui Hawai'i's Position on State Issues (Generally)

###### 1. Self-Determination:

The State of Hawai'i by legislation shall agree to repudi-

ate the United States imposed policy of State Wardship and recognize Ka Lāhui Hawai'i as a sovereign government with all of its rightful power and jurisdiction over its lands and resources.

###### 2. Native Trust Lands, Assets, and Resources:

The State of Hawai'i shall cease the sale, transfer, lease, or encumbrance of Hawaiian Homes and State Ceded Lands to non-Hawaiians and shall work collectively with Ka Lāhui Hawai'i and the United States to segregate traditional lands and natural resources for the National Land Trust (see Sec. V herein - Establishment of a National Land Trust). The State shall segregate the financial resources of Native Hawaiians and their descendants and transfer these fiscal resources to the Hawaiian Nation. (The State shall repeal any legislation that provides for the sale of ceded lands.)

###### 3. Hawaiian Home Lands and Natural Resources:

- a) Hawaiian Homes residential, pastoral, and agricultural Lessees shall be given a choice of remaining lessees of the State of Hawai'i or becoming lessees of the Hawaiian Nation. No Native Hawaiian or Hawaiian leases shall be canceled. All of the above leases shall be continued; all residential leases shall be renewable 99 year leases.
- b) All other encumbered Hawaiian Home Lands and all commercial and industrial Hawaiian Homes leases shall be transferred to the National Land Trust.
- c) The State of Hawai'i shall assume liability for illegal transfers of these lands and for pollution and waste of these trust assets. If such issues cannot be resolved through negotiation, the State shall consent to be sued for its breaches of trust.
- d) The State of Hawai'i shall work cooperatively with Ka Lāhui Hawai'i to obtain redress from the United States for all actions of the United States which have diminished the Hawaiian Home Lands Trust or the Ceded Land Trust.

###### 4. State Controlled 5(f) Lands and Natural Resources:

- a) The State of Hawai'i, including the Office of Hawaiian Affairs, shall work cooperatively with Ka Lāhui Hawai'i and the United States to finalize one accurate inventory of the Ceded Lands, and the segregation of not less than one-half of these lands for the National Land Trust. The State of Hawai'i, including the Office of Hawaiian Affairs, shall work cooperatively with Ka Lāhui Hawai'i to inventory the financial resources of the Native Hawaiians and their descendants and transfer these fiscal resources to the Nation.
- b) The State of Hawai'i shall acknowledge the jurisdiction of Ka Lāhui Hawai'i over its lands and natural resources, including but not limited to:





- i. the total environment of the lands, air, water, coastal seas, submerged lands, flora and fauna, and other resources which we have traditionally owned or otherwise occupied or used, and
- ii. surface and ground water, and energy resources.

The State of Hawai'i shall agree that National Land Trusts are not subject to State or County Taxation, legislation, or control or jurisdiction. Ka Lāhui Hawai'i believes that the management of natural resources will involve working collectively with all those who use these resources.

- c) The State of Hawai'i shall assume liability for illegal transfer of these lands and for pollution and waste of these trust assets. If such issues cannot be resolved through negotiation, the State will consent to be sued for its breaches of trust.

## V. Establishment of a National Land Trust

### A. The Need

The survival of Native Hawaiians, our ancestors, and descendants is rooted deeply in the land. The life of the land is the spiritual and cultural foundation of Native Hawaiians and our children. Therefore, Ka Lāhui Hawai'i, like all other sovereign nations, needs to reclaim and recover its land base. Land is one of the fundamental elements of sovereignty. The Hawaiian peoples' loss of their traditional lands has resulted in genocide and diaspora. In order to care for its peoples and to ensure their survival, Ka Lāhui Hawai'i seeks to establish a National Land Trust to develop housing, medical and educational facilities, and business enterprises. Lands and natural resources also include the cultural properties, sacred sites, traditional fisheries, and other resources of the Hawaiian nation which are necessary to maintain and preserve the spiritual and economic foundation of the indigenous culture for future generations.

### B. The Entitlement

Ka Lāhui Hawai'i's Constitution identifies the land and natural resource entitlements of indigenous Hawaiians within the archipelagic boundaries of our traditional territories because we assert that our collective rights to land and natural resources preceded the illegal overthrow of 1893.

Ka Lāhui Hawai'i's Constitution sets forth an expansive view of these entitlements, including, but not limited to, the following:

1. State held trust lands: Hawaiian Homes and ceded lands;
2. Marine Resources and Fisheries to the 200 mile limit recognized under international law;
3. Surface and ground water rights and submerged lands (i.e. shoals, reefs, atolls, estuaries, and marshes to the 200 mile limit);
4. Lands and natural resources under the Federal Government of the United States;

5. Energy resources: Ocean thermal and geothermal resources;
6. Minerals and other metallic substances;
7. Airspace above the land and marine resources;
8. The trust assets of the Private Trusts - (see Section VI herein - The Private Land Trusts).

### C. The Commitment

Ka Lāhui Hawai'i asserts that the Hawaiian Nation has an obligation to maintain, protect, and preserve the lands and the resources of the Hawaiian peoples for future generations. The following are the basic components which comprise Ka Lāhui Hawai'i's Land Management and development strategy:

1. The lands and natural resources of the Hawaiian Nation shall be held for future generations. The lands and natural resources of the Hawaiian Nation are inalienable.
2. Maintenance and development of the national land base shall be guided by the traditional concept of Mālama 'Āina, which includes sound principles of Natural Resource Management based on the carrying capacity of the land or the resource.
3. Cultural and historic properties, sacred sites, and other ecosystems of religious or archeological significance shall be inventoried, managed, and preserved.
4. National lands and resources shall be allocated not only for the collective needs of the citizenry (national undertakings), but for the individual private uses of the citizens which are licensed or permitted by the Hawaiian Nation.

### D. The Establishment of a National Land Trust

The preservation and management of our Traditional lands and natural resources require the establishment of a National Land Trust under the control and management of the Hawaiian nation. Hawaiian lands and resources are currently under the control of state and federal agencies, private trusts, corporations, and individuals.

The termination of the United States imposed policy of wardship shall require that Hawaiians devise a new way to:

1. Marshal our lands and resources, and
2. Collectively manage our lands and resources in order to ensure their appropriate use for future generations, and
3. Most importantly to prevent other sovereigns and private corporations who may attempt to deplete, encumber, tax, or otherwise utilize and diminish our resources.

To this end, Ka Lāhui Hawai'i asserts that a National Land Trust should be established immediately as a preliminary primary undertaking. This undertaking should precede any formal ne-







gotiation or claims settlement with the United States or the State of Hawai'i. The criteria used above should be utilized in the process of amassing the lands of the Hawaiian nation.

Land and water resources which have been toxified, polluted, or rendered dangerous by virtue of military, state, commercial, or industrialized uses should not be automatically transferred to the Hawaiian Nation. Rather, the Hawaiian Nation and its citizens shall establish a method to secure lands and resources which can be used or need to be preserved for future uses.

The National Land Trust shall be comprised of lands currently called:

1. Hawaiian Home Lands;
2. State Ceded Lands;
3. Federally held lands; and
4. Private Land Trusts (see Sec. VI herein - The Private Land Trusts).

Ka Lāhui Hawai'i asserts that the current and immediate needs of the Hawaiian peoples for economic development, housing, education, health, and for the protection of cultural ecosystems and historic and sacred properties requires not less than two (2) million land acres. It is Ka Lāhui Hawai'i's position that the National Land Trust of the Hawaiian Nation should eventually encompass all of the traditional lands of the Native Hawaiians and their descendants.

## **VI. The Private Land Trusts**

The Hawaiian Monarchy provided for future generations by bequeathing their personal entitlements to land in trust for the Hawaiian people. These include:

1. The Kamehameha Schools / Bishop Estate;
2. The Queen Emma Foundation, Queen's Medical Center and Health Care System;
3. The Lunalilo Trust;
4. The Queen Lili'uokalani Trust;
5. The Queen Kapi'olani Women's and Children's Medical Center.

These private trusts were created to provide for education, medical assistance and assistance for elderly and orphaned children. These private trust lands and assets are currently managed pursuant to State and Federal law, despite the fact that they are entitlements of Hawaiians.

Hawaiian beneficiaries have never had any opportunity to set policy for the administrations of these assets, nor have they been able to participate in the selection or appointment of the persons who administer the trusts. The appointment process for trustees and administrators of these trusts has been highly politicized and has resulted in the mismanagement of these trusts.

Some of the Private Trust Lands and assets have been severely diminished by State condemnation. The Bishop Estate lands have been confiscated by State law in order to provide for private home ownership - a State obligation which the State did not address. These lands are not entitled to the tax and other benefits as proposed by the Ka Lāhui Hawai'i National Land Trust.

### **A. Ka Lāhui Hawai'i's Position Regarding the Private Trusts**

1. Ka Lāhui Hawai'i asserts that Native Hawaiians and their descendants are beneficiaries of these trusts, and should be able to participate in their management and in the setting of policies relating to these lands.
2. Ka Lāhui Hawai'i asserts that the lands and assets of the private trusts must be protected from State and Federal actions which diminish their land base or financial resources.

**B. Ka Lāhui Hawai'i, as the Native Hawaiian Nation, acknowledges its responsibility and obligation to provide for the health, education, and welfare of its peoples. To this end, our national objectives and those of the private trusts are common goals.**

**C. The Private Trusts shall work cooperatively with Ka Lāhui in the following areas:**

1. To find ways in which the assets of the Private Trusts can be incorporated into the National Land Trust or otherwise designated "National Lands" in order to shield them from State, Federal, and County actions (including taxation);
2. To devise processes which shall allow native peoples and Ka Lāhui Hawai'i to participate in the setting of policies relating to the management of the private trusts and the appointment and employment terms of the trustees and administrators overseeing these trusts;
3. To collectively develop and implement Service Programs so that duplication is avoided and adequate financing is available;
4. The creation of an H.M.O. (Health Maintenance Organization) providing health services and coverage to all citizens of Ka Lāhui Hawai'i who subscribe and which can maximize medical benefits from Medicaid, Medicare, et cetera. Medical and health services should include, but not be limited to: mental health, substance abuse, family and domestic abuse, nutrition and dietary needs, and elderly health services. Medical services shall be provided to all indigent Ka Lāhui Hawai'i citizens.

There are many issues which the Private Trusts and Ka Lāhui Hawai'i need to explore. The Private Trusts cannot avoid Sovereignty or escape the ramifications of Hawaiian self-determination. Working cooperatively with Ka Lāhui Hawai'i towards common goals is an alternative to beneficiary suits.

Our private trusts are being targeted and diminished; we must all work collectively to maintain and maximize these assets for future generations.





## VII. Economic Development

Ka Lāhui Hawai'i defines the fifth element of sovereignty as an economic base, the ability of the nation to work on behalf of its citizens to be self-supporting. Ka Lāhui Hawai'i asserts that the goal of nationhood is economic self-sufficiency.

The cornerstones and fundamental building blocks of our sovereign initiative for economic development are the following:

1. The Hawaiian Nation shall establish a National Land Trust and have jurisdiction over its capital assets (revenues) in order to support economic initiatives for housing, employment, education, and the development of its own businesses and those of its citizens;
2. The Hawaiian Nation shall attain international and United States recognition of its sovereignty and shall negotiate economic and tax benefits appropriate for a National Land Trust. This shall not only exempt "national" business from taxation, but it shall provide the private sector (Hawaiian and non-Hawaiian) businesses with the opportunity to share in these benefits if they undertake to joint-venture with the Hawaiian Nation. This approach provides the Hawaiian Nation with the ability to utilize the tax incentive to work with the broader business community in meeting the needs of our citizens while creating more opportunities for affordable products and services.
3. The international trade agreements, covenants, and treaties between the Monarchy and other "foreign" nations are a historic entitlement, the benefits of which are due Native Hawaiians and their descendants. Therefore, the Hawaiian Nation has an established history of international trade agreements which is a basis for seeking such status with other nations, including the United States. It is Ka Lāhui Hawai'i's position that our sovereign nation should be free to enter into international trade agreements and contracts without the burden of United States customs, tariffs, and import and export regulations and costs.
4. Ka Lāhui Hawai'i supports the concept of community-based economic development. Economic self-sufficiency is an achievable goal of our citizens and local communities. Hawaiian small businesses should be given the financial and technical support to create and maintain businesses which employ citizens and return benefits to the community that supports the business enterprises.

### A. Taxation and Regulations

The power to tax and to regulate economic activities on its land base is an essential expression of self-determination of peoples through their sovereign nation. This power cannot be limited to economic activities of indigenous peoples, but must extend to all economic undertakings pursued within the domain (land, air, and water) of the Hawaiian Nation.

### B. The Right to Self-Development and Technology

Ka Lāhui Hawai'i asserts that economic development must be

culturally appropriate and environmentally responsible. Technological applications which meet these criteria should be utilized by the Hawaiian Nation. The right to determine whether development occurs and how development proceeds is a sovereign right vested in the Hawaiian Nation.

In keeping with our national commitment to peace and disarmament, Ka Lāhui Hawai'i opposes the use of all trust lands and marine and air resources for military ends.

## VIII. International Issues

### A. Reinscription

#### 1. History

Hawai'i was part of the United Nations System until 1959 when the United States imposed statehood on the archipelago. Hawai'i was one of several territories on the United Nations list of Non-Self-Governing Territories from 1946 to 1959. During this time the United States was, under international law, the "administering agent" of Hawai'i. Pursuant to Chapter XI, Article 73 of the United Nations Charter, the United States, as Hawai'i's "administering agent", accepted as a "sacred trust" the obligation to assist the "inhabitants" of the territory "in the progressive development of their free political institutions." In 1953 the Fourth Committee of the United Nations General Assembly passed Resolution 742.<sup>2</sup> Resolution 742 required that the inhabitants of the territories be given several choices in achieving self-government. These choices included: Free Association, Commonwealth, Integration (Statehood), and Independence or "other separate systems of self-government."

The United States never initiated a program for "decolonization" in Hawai'i under the United Nations process, nor did it allow the inhabitants of the territory their right to choose the options identified in Resolution 742. In 1959 the United States controlled the Statehood Plebiscite; the ballot provided for only one choice - statehood. History reveals that the 1959 Statehood Plebiscite was a violation of international legal standards intended to protect Hawai'i's indigenous peoples.

#### 2. Position Statement

Ka Lāhui Hawai'i supports the reinscription of Hawai'i on the United Nations list of Non-Self-Governing Territories. Ka Lāhui Hawai'i in its work to date has chosen to develop a culturally appropriate "separate system of self-government," which incorporates Hawaiian values and traditions and which sets forth the "cultural jurisdiction" of the Hawaiian Nation as provided by Part II of Resolution 742. The Commonwealth and Free Association options under international law are essentially western forms of government which do not address or protect the rights of the indigenous peoples of the land.

<sup>2</sup>UN General Assembly Fourth Committee Resolution 742 (VIII), "Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government", 27 November 1953, item 83.





3. By adoption of the Apology Bill, the United States has acknowledged that "the indigenous Hawaiian peoples have never directly relinquished 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." Therefore under international law, indigenous peoples of Hawai'i are entitled to a separate system of self-government.

#### B. International Treaties

Prior to the illegal overthrow of the Hawaiian government, the Kingdom had negotiated several international treaties with all the sovereigns of Western Europe, the United States, Japan, and Russia. These treaties were declared by the United States to be null and void upon annexation. Ka Lāhui Hawai'i asserts that these treaties should be honored by the United States and

other treaty signatories and that the trade and commercial benefits conferred by these treaties should be recognized.

To date, Ka Lāhui Hawai'i has negotiated and ratified 17 treaties with 85 indigenous nations on the American Continent. Ka Lāhui Hawai'i has also been granted voting membership with U.N.P.O (Unrepresented Nations and Peoples Organizations - the Hague).

#### C. International Instruments

Ka Lāhui Hawai'i asserts that the indigenous peoples of Hawai'i are entitled to the full protection of all international instruments, conventions, and treaties. Ka Lāhui Hawai'i is committed to achieving the passage of the *Draft Declaration for Rights of Indigenous Peoples* in the form in which it was passed by the United Nations Working Group in August 1993.

## Conclusion

### Oli Ho'ōikaika

*Prophecy of a Nation*

**E iho ana a luna,  
E pi'i ana o lalo,  
E hui ana nā moku,  
E kū ana ka paia.**

*That which is above shall be brought down,  
That which is below shall be lifted up,  
The islands shall be united,  
The walls shall stand upright.*

David Malo

Ka Lāhui Hawai'i is a Native Hawaiian grassroots initiative for self-determination. It is an enduring vision woven with traditional beliefs and cultural values by several generations of Hawaiians who seek and continue to work for resolution of the past and present injustices—i.e., the illegal overthrow of the Hawaiian Nation, the loss of our lands by American colonization.

Ka Lāhui Hawai'i Master Plan is our mana'o (ideas, thoughts) for self-government that we bring into the broader Hawaiian community for discussion. We strongly encourage and welcome other members of the Hawaiian community to bring forth their mana'o as well. Together the Hawaiian people can exercise Native self-determination by deciding what political structure our Nation will have.

We look forward to hearing from you so that a pūwalu (working together in unison) can be convened where we all can share, discuss, and build our Nation.

**E ala! E alu! E kuilima! Arise! Together! Join hands!**



# THE KA LAHUI HAWAII PLATFORM ON THE FOUR ARENAS OF SOVEREIGNTY

Sovereignty as a political concept is applied in four distinct political arenas. It is important to understand these political arenas if you are to understand what the Ka Lahui Hawaii Sovereign initiatives are. All indigenous peoples working with sovereignty work in these four arenas.

## POLITICAL ARENA NO. 1: NATIVE TO NATIVE

All native peoples committed to sovereignty must deal with themselves, their culture, their traditions, lands and government. Indeed, all indigenous peoples must begin by defining who they are, and what they mean when they say they are sovereign.

### Political Issues and Agenda in Arena No. 1

#### A. Issues relating to Native Entitlements and National Identity

1. What kind of nation do we Hawaiians want?
2. Do we believe in self-determination?
3. What do we say sovereignty means?
4. What are our cultural traditions? How are they incorporated in our Nation?
5. What is the land base of the Nation?
6. What are our entitlements?
7. How will we govern ourselves and exercise jurisdiction over our lands?
8. What is the goal of our Nation? What principles are we committed to?

#### B. Issues relating to the obligations and responsibilities of the nation

1. How will the "government" provide for and incorporate the mana'o (thoughts) of its citizens in meeting the needs?
2. What national initiatives will be pursued for health, education, welfare, housing, etc. for our citizens and their families?
3. How will the nation train our leaders and acquire the necessary skills for self-governance?
4. How will the nation generate revenue and develop an economic base?
5. How will we provide for land and natural resources management?

#### C. Ka Lahui Hawaii's Agenda in Arena No. 1 (by priority)

1. Create a native initiative for self-governance. Create a real nation which incorporates self-determination into its governing structure. Stop mourning the loss of sovereignty and begin the work of nationhood. Kanaka Maoli must define the terms and powers of government.
2. Develop and implement a mass educational project on our entitlements, land base, status, etc.
3. Seek funding to train Hawaiians in areas needed to strengthen our skills in self-governance (land, education, finance and health).
4. Obtain resolutions of support from our broader community, especially our churches.

## POLITICAL ARENA NO. 2: NATIVE TO NATION / STATE

Many indigenous peoples and nations were taken over or colonized by Western and European powers. These native cultures, when asserting sovereignty, must deal with the nations/states that have control over their traditional lands. Hawaiians, Alaskan Natives, American Indians, Western Samoans, Puerto Ricans, Chomorro (native people of Guam) all deal with the U.S. The Yanonami's deal with Brazil, the Inu with Japan. Some indigenous peoples deal with many nation/states i.e. the Sami (Laplancers) deal with Russia, Sweden, Denmark and Finland.

### Political Issues and Agenda in Arena No. 2

#### A. Issues to the U.S. and its agent the State of Hawaii.

1. Why has the U.S. Policy for native self-governance not been extended to Hawaiians? Why are we the only natives residing within a state that are wards of the State?
2. What is the nature of the State-Federal trust obligation to "native Hawaiians" and to "Hawaiians"?
3. Segregation and transfer of trust assets, revenues and lands to the native nation.
4. Our right to access the federal court system to sue the U.S. and State to protect our land and enforce the State and Federal statutory and trust obligations.
5. Reparations for the illegal overthrow and illegal uses of our trusts and for violations of our human and civil rights.

#### B. Ka Lahui Hawaii's Agenda in Arena No. 2

1. Maintain our commitment to peace and disarmament (we will not declare war or engage in violence).
2. Participate to the greatest extent in all U.S./ State legislative process promoting our national platform. Obtain

# THE KA LAHUI HAWAI'I PLATFORM ON THE FOUR ARENAS OF SOVEREIGNTY

*Continuation of Political Arena No. 2. . . .*

- federal and state recognition of our nation under the U.S. Policy. Termination of the policy of wardship. Take it to Washington D.C.
3. Obtain segregation of our lands, trust assets and revenues from the State. Establish jurisdiction to tax and raise revenues and tax exemption for national undertakings.
  4. Establish the record of the extensive human and civil rights abuse of Kanaka Maoli. Advocate strenuously for correction of these abuses and for allocation of our lands. Use civil disobedience if necessary.
  5. Raise the National (U.S.) consciousness about our status. See National (U.S.) publication of our issues.
  6. Oppose and expose the Inouye/ Waihee/OHA plan, ceded land settlement, etc.

## POLITICAL ARENA NO. 3. THE INTERNATIONAL ARENA

The International Arena is not just limited to the United Nations. It includes the International Labor Organization (ILO), World Council of Churches (WCC), the International Court and various international/regional associations such as the Organization of American States (OAS). Also, it includes associations of people and groups not in the U.N. but in the international arena such as the NGO's (FWGIA/ITC) international jurists, Anti-Slavery Society, etc.

Issues impacting the global community of indigenous peoples are addressed in the international arena. Human rights conventions, the Draft Universal Declaration, the Martinez Treaty Inquiry, the Law of the Sea Convention, the International Convent on Civil and Political Rights, etc., impact the global indigenous community.

### A. Political Issues and Agenda in Arena No. 3

1. The listing and removal of Hawai'i from the U.N. list of non-self governing territories in 1959.
2. The violations of human and civil rights under the Covenant on Civil and Political Rights, OAS and other documents and conventions.
3. U.S. position at U.N. on Draft Declaration and its recent proposal to redefine the term self-determination.
4. Identification of the Pacific Basin as a toxic and munitions dump site for U.S. and Western ordinance (weapons and chemicals).
5. Position on Nations/States regarding treaties with the Hawaiian government (Kingdom).

### B. Ka Lāhui Hawai'i's Agenda in Arena No. 3

1. Establish a presence in the International Arena through our Diplomatic and Foreign Ministry. Educate Internationally.
2. Attend Human rights and working group sessions and file written interventions on the Draft Declaration, Martinez Treaty Study, etc.
3. Counter U.S. positions. Work with NGOs.
4. Initiate an international complaint on human rights violations against the United States.
5. Get Hawai'i back on the U.N. list of Non-Self Governing Territories (with Guam and Puerto Rico).

## POLITICAL ARENA NO. 4. NATION TO NATION


Regardless of whether Nations/States (U.S.) recognize indigenous nations whose lands they have colonized, Native Nations can & must solidify diplomatic relations between themselves and other Nations/States. Indigenous nations face common threats and issues in the international arena. Native nations need to forge unified positions in the global arena for the protection of their lands, territories and human rights.

### A. Issues in Arena No. 4

1. What is the best and strongest position all indigenous nations can take on the Draft Declaration and other international conventions.
2. What is the global indigenous response to the U.S. positions at U.N. on conventions and Pacific Basin development.
3. GATT, NAFTA, etc. - The New World Order and Supra-National Corporate treaties which impact native territories and entitlements.
4. How can we benefit from or help other native nations who are dealing with similar health, housing, educational, etc. problems and issues?

### B. Ka Lāhui Hawai'i Agenda in Arena No. 4

1. Network through WCC. Attend regional consultations on issues No. 1, 2 and 3 above.
2. Enter into treaty negotiations with other Native nations in the U.S. to mutually benefit our people.
3. Associate with other nations and jointly file interventions at the U.N.



# HAWAII AND THE UNITED NATIONS

By Mililani B. Trask

## HISTORY

Many people don't know that Hawaii was part of the United Nations system until 1959 when statehood was imposed. One year after Pearl Harbor was bombed in January 1942, 26 Nations who were fighting the Axis aggressors, signed the Declaration by the United Nations. This declaration was to be the foundation of the U.N. Charter which was signed in 1945. Hawaii was a "territory" of the United States in 1945.

## THE U.N. CHARTER, "TERRITORIES" & THE U.S. OBLIGATIONS

Chapter XI of the Charter of the United Nations deals with Non-Self-Governing Territories, and calls for international accountability regarding of peoples who have not achieved a full measure of self-government. Article 73 reads in part as follows:

"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;
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement...;
- e. 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 other than those territories to which Chapters XII and XIII apply."<sup>1</sup>

*Note: Ka Lāhui Hawaii incorporates the "Sacred Trust" referred to in the U.N. Charter, Chapter XI, Article 73, in the Bill of Rights Article I, Section 3 of the Ka Lāhui Hawaii Constitution.*

Since Hawaii was a "territory" of the United States in 1945, it is no surprise that the United Nations in 1946 listed Hawaii as a Non-Self-Governing Territory under the administration of the United States (Resolution 55(I) of 14th December 1946). Also listed as non-self-governing territories under the jurisdiction of the United States were Alaska, American Samoa, Guam, Puerto Rico and the Virgin Islands.


From 1946 to 1959 when Statehood was imposed, the United States had: 1) a "sacred trust" obligation to the "inhabitants" of Hawaii detailed in sections a. and b. above, and 2) an annual reporting obligation to the General Assembly under e. above.

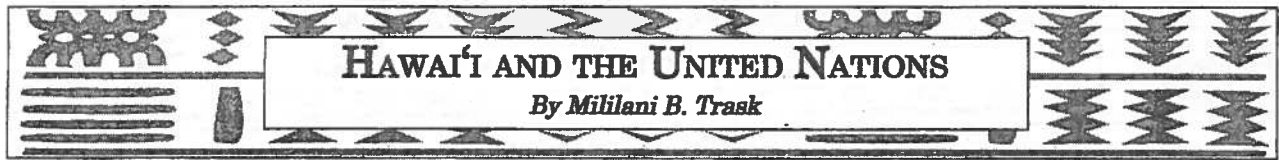
America transmitted annual reports on Hawaii to the U.N. Secretary General from 1946 until September 1959. By letter dated September 17, 1959, the United States notified the U.N. Secretary-General that Hawaii had become a State of the Union in August 1959 and that the United States would thereafter cease to transmit information to the United Nations.

Upon receipt of this letter, the United Nations removed Hawaii from its list of Non-Self-Governing Territories.

## HOW THE U.S. VIOLATED ITS INTERNATIONAL OBLIGATIONS TO HAWAII'S PEOPLES

On November 27, 1953, the Fourth Committee of the General Assembly passed Resolution 742. This resolution was entitled "Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government". Part I of the Resolution identified "Factors indicative of the attainment of independence." Part II of the Resolution listed factors indicative of the attainment of 'other separate systems of self-government'. Part II of the Resolution addressed factors indicative of the Free Association of the territory as an integral part of that country.





# HAWAII AND THE UNITED NATIONS

By Mililani B. Trask

Hawaii was made a State of the Union. Our peoples were not given Independence nor Free Association status, nor were we allowed to create our own separate form of government.

The factors listed in Part II of Resolution 742 include:

*A.2. Freedom of choice.* Freedom of choosing on the bases of the right to self-determination of peoples between several possibilities, including independence.

*A.5 Ethnic and cultural considerations.* The extent to which the populations are of different race, language, or religion, or have a distinct cultural heritage, interests or aspirations, distinguishing them from the peoples of the country with which they freely associate.

*C.3. Economic, social and cultural jurisdiction.* Degree of autonomy in respect of economic, social and cultural affairs, was illustrated by the degree of freedom from economic pressure as exercised, for example by a foreign minority group which, by virtue of the help of a foreign power, has acquired a privileged economic status prejudicial to the general economic interest of the people of the Territory; and by the degree of freedom and lack of discrimination against the indigenous population of the Territory in social legislation and social developments."

History verifies that the United States violated the provisions of Resolution 742. The federal ballot used in the 1959 did not afford the people of Hawaii "several possibilities, including independence" nor were the Hawaiian people given the option to create their own "separate system of government." And consequently, did not respect and afford the people of Hawaii the "right to self-determination."

There is also evidence that some Hawaiians did want to restore the monarchy. These efforts were raised by George Melon in a letter to James E. Murray, Chair of the U.S. Senate Interior Committee, which had oversight of the Statehood Bill. Murray responded that "such an action by our Republic would be utterly inconceivable."

Melon had sent his letter to clarify what would happen if the voters of Hawaii rejected the Statehood plebiscite. Murray responded that it would be extremely unlikely that any Statehood legislation would be seriously considered for many years. These matters were made public in the Honolulu Star-Bulletin, April 22, 1959. This controversy had surfaced earlier when Kamokila Campbell filed an injunction to halt the use of public funds to support the Statehood Campaign. Kamokila lost in court.

## CONCLUSION

The United Nations never inquired into the Statehood Plebiscite nor did the United Nations monitor the process. The U.N. record reveals that the United States was a permanent member of the U.N. Committee that received and acted upon America's report on statehood. Subsequent to receiving the report, the U.N. removed Hawaii from its list of Non-Self-Government Territories — regardless of the fact that the United States had violated its "sacred trust" to the Hawaiian people and all the people of the Territory.

## KA LAHUI HAWAII'S POSITION

Ka Lahui Hawaii believes that Hawaii should be reinscribed on the U. N. list of Non-Self-Governing Territories in order for the process of decolonization to begin. In light of the 1991 Report of the Hawaii Advisory Committee to the U.S. Commission on Civil Rights, there can be no doubt that the civil rights of the Hawaiian people are being violated. Until these issues are addressed, the United States should be required to file annual reports at the United Nations on the status of Hawaii and its native people.

In 1989 Ka Lahui Hawaii was able to submit a resolution at The World Conference of Churches Global Consultation in Geneva, calling for Hawaii to be reinscribed on the U.N. list of Non-Self-Governing Territories. In 1993 while attending the World Conference on Human Rights in Vienna, the Global Indigenous Delegates address to the U.N. Plenary Session called for Hawaii's reinscription on the U.N. list of Non-Self-Governing Territories. The Global Indigenous statement was presented to the Plenary by Kia'aina, Mililani Trask.

<sup>1</sup> United Nations Action in the Field of Human Rights, U.N. Publications Sales No. E.83.XIV.2, United Nations, New York 1993.



# NATIVE PEOPLE AND INTERNATIONAL LAW:

## CHANGING TIMES *By Mililani B. Trask*

### The Dilemma Has Always Been There

The "indigenous question" has been an evolving issue in international law ever since the industrial powers of the world realized that a substantial portion of the underpaid laborers of the world were native people. It is also true that there has always been a divergent opinion — that of the native people themselves, that they were not merely 'laborers' but were peoples and were entitled to the rights, privileges and protections that other (white) peoples receive under various international legal documents. This historic perspective was enunciated in 1923 by Cayuga Chief Deskahch of the

Iroquois Confederacy who traveled to the League of Nations in Geneva seeking membership for the Confederacy in the League. The League never admitted the Iroquois and never allowed the issue to be officially discussed.

Indigenous peoples and nations are not allowed a place in the United Nations structure nor are they allowed a seat in the General Assembly. There have been a few international instruments which refer to the rights of the native peoples, but these instruments generally discount the rights of the indigenous

peoples as the original inhabitants of traditional lands with collective cultural, religious and political rights. Until the 1980's, International instruments have viewed indigenous peoples as "ethnic minorities," "indigenous populations," or "insular minorities." The difference is simple — "ethnic minorities" are not entitled to the rights afforded to "peoples." They are second class global citizens who are not entitled to 'self-determination' (the right to determine their political status), and who are to be treated as wards of the states (nations) in which they reside.



### The I.L.O. Convention

The International Labor Organization (I.L.O.) was created by the Treaty of Versailles in 1919. It immediately began studying global labor problems, and it was in this context that it undertook studies of indigenous workers in 1921. From 1921 to 1957, the ILO continued its inquiries regarding the global native labor force. Numerous studies and conferences were held, with a focus on penal (jail) sanctions against indigenous peoples who violated employment contracts with nations and evolving multi-national corporations.

In 1957, the ILO adopted Convention 107 - "concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries". The stated goal of ILO #107 which became effective in June 1959, was "protection and integration." Under #107 'Governments' had the primary responsibility over indigenous 'populations' who were "allowed to retain their own customs

and institutions where these are not incompatible with the national legal system or the objectives of integration programs." ILO #107 allows the removal of indigenous peoples from their lands by national governments and subjected their 'individual' rights to "national laws and regulations." No collective rights were recognized or provided for. By and large, ILO #107 failed to identify or set international standards for protection of the rights of indigenous peoples and strongly supported national regulation over the lives of native peoples. In addition, ILO#107 confirmed the status of the global native community as "populations" - a minority group entitled to less than peoples.

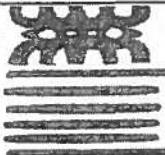
As anticipated, the industrialized and imperialist nations rushed to sign ILO Convention #107. It gave them control over indigenous populations who were viewed as a cheap labor force and confirmed their control and ability to relocate native people when their lands were needed

for military or industrial uses.

The passage of ILO#107 caused a fire storm among the global native community and provoked strong criticism from the new nations in Africa and elsewhere who were emerging from their own colonial oppression. This negative reaction led the ILO to revise ILO Convention #107. In 1989, the revised convention ILO #169 was adopted "with a view to removing the assimilationist orientation of earlier standards." ILO #169 utilized the term 'peoples' but stated that the word did not have any implications under international law — i.e., that indigenous peoples were not entitled to the right of self-determination. ILO #169 allowed natives to be 'consulted' on matters impacting their lives but it did not entitle them to have their concerns met. In addition, ILO #169 con- tinued to allow the forced relocation of indigenous peoples from their traditional lands.

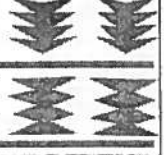






# NATIVE PEOPLE AND INTERNATIONAL LAW:

CHANGING TIMES *By Mililani B. Trask*



## The United Nations Instruments

In 1948, the Government of Bolivia proposed that the U.N. Economic and Social Council (ECO-SOC) create a Subcommittee to study the problems of 'aboriginal' populations in the America continent. This initiative would eventually result in the passage of the Genocide Convention — Convention on the Prevention and Punishment of the Crime of Genocide, on December 9, 1948. The Genocide Convention prohibits acts of genocide against

'racial' and 'ethnic' groups.

One day after the Genocide Act was passed, on December 10, 1948, the U.N. passed the Universal Declaration of Human Rights which did not contain any specific provision relating to indigenous populations. Although the Universal Declaration on Human Rights purports to be binding on all U.N. Nation states, the International Court of Justice in the Hague will not accept complaints

filed by indigenous peoples regarding violations of their human rights. There are various complaint procedures available under the U.N. system (the OAS procedure, UN 1235 procedure, UN 1503 procedure, etc.). These complaint procedures do not afford direct relief. In effect, the existing procedures ask international human rights organizations such as the U.N. Commission on Human Rights for assistance in protecting the rights of victims.



## The International Covenants on Human Rights

The general rights referred to in the U.N. Charter and the Universal Declaration on Human Rights were detailed in two international covenants which became effective in 1976.

The International Covenant on Civil and Political rights is intended to "ensure the equal rights of men and women to enjoy civil and political rights...without distinction of any kind..." Freedom of thought, reli-

gion and travel are protected. Indigenous peoples are referred to as "minorities" and their 'collective' rights are limited to culture, religion and language. No specific right to land is provided for "minorities" under the Covenant. The USA only recently became a signatory to the Covenant. Its first reporting period was September 1993.

The International Covenant on Eco-

nomie, Social and Cultural Rights established economic, social and cultural goals which governments are invited to work towards. This covenant did not establish legal rights which governments are obligated to protect. Social security, right to work and to receive vocational training are addressed. Health protections and the right to an education are also identified. Most importantly, discrimination is prohibited.



## Changing Times - Changing Standards

In 1982, the U.N. Commission on Human Rights established the Working Group on Indigenous Populations under its Subcommittee on Prevention of Discrimination and Protection of Minorities. One of the tasks of the Working Group has been the setting of international standards relating to the rights of indigenous peoples.

From 1982 to 1993, the Working Group received testimony on the indigenous issue and authorized the Draft Declaration on the Rights of

Indigenous Peoples. In the summer of 1993, the Working Group completed the Declaration and forwarded the document to the Subcommittee for review. This instrument is viewed as the first comprehensive international instrument addressing the rights of indigenous peoples. It provides:

*Part I - Article 3: Indigenous peoples have the right of self-determination. By virtue of that right they may freely determine their political status and freely pursue their eco-*

*nomie, social and political development.*

In addition, the Declaration provides protection against forced relocation from territorial lands, and guarantees the right to development. All collective, cultural and traditional rights are acknowledged and rights to cultural and intellectual property are protected.

The Declaration sets a new standard for indigenous peoples in the global community.





## NATIVE PEOPLE AND INTERNATIONAL LAW: CHANGING TIMES *By Millani B. Trask*

### Self-determination of Indigenous People and Peoples

The U.N. Charter refers to the right of "self-determination of peoples". As has been demonstrated in the previous discussion, most international instruments do not refer to natives as "peoples," but have identified them as "minorities". Minorities do not have the right to govern their affairs or decide their legal and political relationships with other peoples or nations.

The International Court of Justice and the International Commission of Jurists utilize definitions which provide for common history, racial, cultural and linguistic ties, common territory and economic base and sufficient number of people. Under these definitions, Hawaiians

and all indigenous peoples should be afforded the rights of "peoples."

ILO #169 and the Vienna documents refer to 'indigenous people'. These documents specifically limit the rights of indigenous people by excluding the right to self-determination and by allowing only individual rights — no collective rights to land or self-governance are afforded.

The emergence of the Declaration on the Rights of Indigenous Peoples from the Working Group in 1993 sets the international standards for natives on the same footing as standards established for the white majority.

As a result of the above progression, U.N. Nation States have begun to organize against the Declaration passed by the Working Group. Several nations, including the USA have written positions against the provisions in the Declaration relating to self-determination. Assisting these nations are natives who believe that the global indigenous community should relinquish the right to self-determination and collective rights in favor of programs and the right to be consulted. The debate is just beginning. Students of international law will be tracking the Declaration through the Sub-commission in 1994.



*Part*



## **Pule Hō'ōla**

*(A prayer to strengthen the Nation)*

**Nā 'Aumākua mai ka lā hiki a ka lā kau!**

*The ancestral deities from the rising to the setting!*

**Mai ka ho'oku'i a ka hālāwai!**

*From the zenith to the horizon!*

**Nā 'Aumākua iā ka hīna kua, iā ka hīna alo!**

*The ancestral deities who stand at our back and at our front!*

**Iā ka 'a Akua i ka lani!**

*You Gods who stand at our right hand!*

**'O kihā i ka lani,**

*A breathing in the heavens,*

**'Owē i ka lani,**

*An utterance in the heavens,*

**Nunulu i ka lani!**

*A voice reverberating in the heavens!*

**Eia ka pulapula a 'oukou!**

*Here is your child!*

**E mālama 'oukou iā mākou!**

*Safeguard us!*

**E ulu i ka lani!**

*That we may grow in the heavens!*

**E ulu i ka honua!**

*That we may grow on the earth!*

**E ulu i ka pae 'āina o Hawai'i!**  
*That we may flourish in the islands of Hawai'i!*

**E hō mai i ka 'ike**

*Grant us knowledge,*

**E hō mai i ka ikaika,**

*Grant us strength,*

**E hō mai i ke akamai,**

*Grant us intelligence,*

**E hō mai i ka maopopo pono,**

*Grant us a true understanding,*

**E hō mai ka 'ike pāpālua,**

*Grant us the spiritual gift of second sight,*

**E hō mai ka mana.**

*Grant us the ability to spiritually empower our people as a Nation.*

David Malo



The front of the 'Ike Pono March for Sovereignty on January 17, 1993 marking the 100th year since the illegal overthrow of the Hawaiian Kingdom was led by Ka Lāhui Hawai'i officials. An estimated 15,000 marchers participated in this historical event.

*(Advertiser photo by Bruce Asato)*



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