

INTERVENTION TO THE
UNITED NATIONS WORKING GROUP ON INDIGENOUS POPULATIONS
ON BEHALF OF HUI NA'AUAO

11th Session

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'emamua 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. I am also executive director of one of the organizations within Hui Na'auao, the Native Hawaiian Advisory Council (NHAC), and we are currently working to increase awareness among na Hawai'i of our rights and entitlements to our water resources. I hope that my comments on developments in Hawai'i 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 waihiine Hawai'i a Hawaiian woman, who embodied great love, strength and courage as she fought to maintain her dignity and human rights in her 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 gained access to land parcel 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 the State has not undertaken to do. In defiance of state law, she moved an abandoned cargo container onto her land and with her sick husband they 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 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) Water resources required to grow taro, the staple of our traditional diet, were cut off by the sugar plantations, contributing to the migration of na Hawai'i into ghetto-like conditions in the cities.(6) 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.(7)

Madame Chairperson, in relating developments concerning the situation of na Hawai'i I would like to point out how the spirit and intent of the draft Declaration now being developed by the Working Group could be directly applied to the human rights condition of na Hawai'i.

The development and implementation of the U.S. State of Hawaii's first Water Code. adopted in 1987,(8) continued the process of ignoring indigenous water rights concerns. Na Hawai'i were neither consulted nor specifically represented in developing Hawaii's Water Code. Since the adoption of the Water Code, the State of Hawaii has continued a process of allocating water without fully taking into account our status as na Hawai'i.(9) Although the code, and the Hawaii State Constitution, recognize indigenous water rights as paper rights, in practice these rights are often ignored in the face of competing claims by resort developments and other commercial enterprises.(10) As a result, in many areas of Hawaii indigenous farmers and homesteaders are without an adequate supply of water for traditional forms of subsistence agriculture, while golf courses. resort hotels and sugar cane fields use this precious resource.

After the Water Code was adopted, one member of our organization, the Native Hawaiian Advisory Council (NHAC)

was organized and became actively involved in defining and asserting indigenous rights to water under this newly developed and continually evolving code. NHAC has been increasingly effective in sensitizing both na Hawai'i and state policy makers about the importance of Hawaiian water rights issues.

Now, as the State of Hawaii begins its first comprehensive review of the Water Code, Hawaiian water rights issues have become one of state policy makers primary concerns. The indigenous rights norms expressed by the draft Declaration on the Rights of Indigenous Peoples can help assist us in our struggle to assert na Hawai'i's right to self determination as we lobby for changes to the Water Code that will advance our right to productive traditional lands and adequate water resources,

The draft Declaration's recognition of the right of indigenous peoples to practice their traditional means of subsistence is particularly relevant to na Hawai'i. For na Hawaii, water is critical to the farming of poi taro, a traditional staple. Recent studies have clearly established the connection between Hawaiian's serious health problems and their diet. The traditional diet of fish and poi (a taro product) offers many Hawaiians the opportunity to reverse deterioration of their health, thus, there is a very strong renewed interest in cultivating and consuming this poi taro.

Several provisions (paragraphs 19, 24 and 26) in the Declaration could serve to strengthen our position that na Hawaii's subsistence agricultural practices and other traditional land and water resource management practices must be perpetuated. Articles providing that the State has a clear obligation to recognize and prevent interference with our rights to manage these resources could have a far reaching affect on commissions and legislators who will be considering revisions to the Hawaii Water Code over the next few years.

The Declaration's acknowledgement of indigenous peoples' right to the protection of the environment and the restoration of the productive capacity of their lands is also critical because having paper water rights is an empty promise if they can not be applied to restore and rehabilitate Hawaiian's traditional agricultural lands and their threatened environment. 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.(11)

The lack of full participation in the political and economic life in the U.S. State of Hawaii by na Hawai'i has seriously impeded their pursuit of economic, social and

cultural development The draft Declaration's emphasis on the right to self determination provided in article 3 which includes the right to freely pursue their economic, social and cultural development and the right to participate fully in political, economic and social life of the State provided in article 4 and 17 should provide very clear guidance to the States and their citizens as they, work with indigenous peoples to address and resolve their concerns.

Let me offer a concrete example of how the application of these particular provisions of the draft Declaration might have assisted our efforts to enforce our indigenous rights. In 1921, the United States Congress passed the Hawaiian Homes Commission Act (12), 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 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.(13) 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.(14)

The State of Hawaii has begun a process to settle Hawaiian claims for back rents for misuse of Hawaiian trust lands. At that time, 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 ignored these requests and negotiated a settlement with a task force comprised of representatives from various State departments without any na Hawai'i representation. As a result, the Native Hawaiian Advisory Council initiated lawsuit on behalf of Aunty Alice Aiwahi in the Hawaii state courts.(15) 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.

The Hawai'i Water Code and na Hawai'i representation in land settlement issues are two examples of why the draft Declaration and many of the principles contained in its articles (paragraphs 3, 4, 11, 17, 18, 19, 24, 25, 26 and 28) 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.)

NOTES

- 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.
- 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 See NATIVE HAWAIIAN STUDY COMMISSION, supra note 3, at 43-45.

7 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 HAWAI'I 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.

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

9 MARTIN, supra note 5, at 279.

10 See id. at 279.

11 See TRASK, supra note 1, at 47.

12 48 U.S.C. ss 961-717 (1958) (set out in full as amended at HAW. REV. S 1-146 (1980))

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

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

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

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