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5 January, 2000

John Berry, Assistant Secretary  
Department of Interior  
1849 C Street, N.W.  
Washington, DC 20240

Mark Van Norman, Dep. Director  
Office of Tribal Justice  
Tenth Street & Constitution Ave. N.W.  
Washington, DC 20530

Mr. Berry and Mr. Van Norman,

The purpose of the Reconciliation hearings are to commence a public consultation process with Native Hawaiians under domestic US law<sup>1</sup> to reconcile the wrongs suffered by the Hawaiian people as the result of the illegal overthrow of the Kingdom of Hawai'i as stated in PL 103-150.

Implicit in PL 103-150, commonly termed the 'Apology Bill', are the following wrongs that were committed as a result of the overthrow:

- Deprivation of Hawaiian rights to sovereignty
- Deprivation of rights of Native Hawaiians to self-determination
- Violations of international law
- Loss of ceded lands without compensation
- Loss of jurisdiction over social and economic conditions
- The loss of cultural traditions and self-identity
- Loss of health and well-being as a result of separation from our land

The testimony presented here is premised on the principles expressed in restorative justice. Restorative justice can guide a process by which the wrongs committed by the US may be addressed in a meaningful way. There are four dimensions of restorative justice that define an approach for inquiring into and acting on intergroup tensions that are marked by conflict and distrust, as well as, a desire for peaceable and productive relations.<sup>2</sup>

1. Recognition - This asks that groups acknowledge the disabling constraints imposed by one group on another and the resulting groups wounds to identify related justice grievances.

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<sup>1</sup> "We're undertaking a process under domestic law . . . greater self-determination or nation within a nation, that's the kinds of dialogue we can have." Mark Van Norman, Director of the Justice Department's Office of Tribal Justice. Kaua'i Reconciliation Hearings, Honolulu Advertiser, December 5, 1999.

<sup>2</sup> Yamamoto, Eric. 1999. Interracial Justice: Conflict and Reconciliation in Post-Civil Rights America. New York: New York University Press.

2. Responsibility - This asks groups to assess carefully the dynamics of group agency in imposing disabling constraints on other and accepting responsibility for healing resulting wounds.
3. Reconstruction - This asks that active steps be taken toward healing the social and psychological wounds resulting from disabling group constraints.
4. Reparation - This means to repair the damage done in order to attenuate one group's power over the other i.e. economic, political, social. This means material changes in the structure of the relationship to guard against 'cheap reconciliation' in which healing efforts are just talk.

Implicit in the concept of restorative justice is a hard acknowledgment of ways in which groups harm one another. Furthermore, restorative justice endorses affirmative efforts to redress grievances with present-day effects. It is my hope that your commission is serious and guards against 'cheap reconciliation'.

The Kanaka Maoli<sup>3</sup> peoples are at a historic moment in time. We are in the tenuous position of making decisions that will affect untold generations of indigenous Kanaka to come. This is indeed a heavy burden to shoulder.

It is in the best interest of the Kanaka Maoli peoples to ask pertinent questions regarding first and foremost our future relationship with the US. Will a domestic relationship with the US serve to rectify the egregious wrongs articulated in PL 103-150? This is a fundamental question to ask especially when one considers that the United Nations can address reconciliation efforts.

Self-determination under the US framework is confined to the promotion of tribal self governance and autonomy over a broad range of issues. This relationship provides for tribal governments, as subordinates, to expend money that has been allocated (and which can quickly be unallocated) by the federal government. Overarching title lay with the US which in effect equals indirect rule. In other words, US domestic law of self-determination affords Indigenous Peoples rights only as domestic dependent nations and only to the degree that the 'plenary power' of the US Congress allows them to exercise.<sup>4</sup>

It is abundantly clear that American Indian governments that currently interface under US domestic law remotely resemble anything exercising self-determination. The unilateral assertion of US plenary power over American Indian nations in effect has reduced self-governance to that which states of the union currently enjoy. American Indian nations are controlled by the very states that have placed them in their current desperate circumstance. Thus, Indian nations within the territory claimed by the US exist in a condition of 'internal colonization' i.e. a foreign power has usurped the rights to self-governance.<sup>5</sup>

Granted, Hawai'i is indeed in a different situation than that of the Native American. The US will not concede for Native Americans that they had a state unlike Hawai'i. Kanaka Maoli are entitled to much more and thus cannot settle for less under a domestic relationship with the US.

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<sup>3</sup> Kanaka Maoli is the term that the indigenous peoples of Hawai'i use to refer to themselves.

<sup>4</sup> Morris, Glenn. "US Model of Indigenous Rights Subverts Intersessional Working Group". IN Fourth World Bulletin. Spring/summer 1996.

<sup>5</sup> Robbins, R. "Self-Determination and Subordination: The Past, Present and Future of American Indian Governance." IN The State of Native America. 1992. Annette Jaimes Editor.

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As such, an interface under US domestic law simply cannot address the wrongs committed to the Native Hawaiians as stated in PL 103-150. The Department of Interior and Department of Justice have jurisdiction over the internal affairs of the US and have admitted as much. However, in order to truly repair the damage that was done the appropriate department to officiate a meaningful reconciliation and reparation procedure should be the US Department of State. Regardless of the outcomes of this process the Kanaka Maoli peoples reserve the right to seek proper redress to our self-determining rights before an appropriate and impartial international forum.

At best, the members of this commission can only serve to address the current distress that Kanaka Maoli peoples are experiencing today.

Me ka 'oia'i'o no,

A handwritten signature in cursive script, appearing to read "Konia Freitas", written in black ink.

Konia Freitas

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