

STATEMENT OF ESTHER KIAAINA
Saturday - December 11, 1999

Introduction

My name is Esther Kiaaina and I am the Chief of Staff for Congressman Robert Underwood from Guam in Washington, D.C. Prior to my current position, I was the primary legislative aide on Native Hawaiian issues for Senator Daniel Akaka in Washington from fall 1990 until March 1999. I am here as a private citizen and my statements today represent my personal views.

Given the tortuous and inconsistent record of U.S. policy toward Native Hawaiians, which include the conflicting Blount and Morgan reports that followed the 1893 overthrow, the conflicting Majority and Minority reports of the 1983 Native Hawaiians Study Commission, and the flip-flops by the U.S. Department of Interior on whether or not a trust relationship exists between Native Hawaiians and the federal government, it should come as no surprise that I commend federal officials for their presence here today and that I fully support the reconciliation process.

My first point is that while there are many people who have advocated for certain models of self-determination and land dispute resolution under the framework of U.S. or international laws to deal with Native Hawaiians, I believe that the current legal norms are inadequate and that part of the reconciliation process should be focused on promoting new resolutions or models uniquely tailored for Native Hawaiians based on the doctrine of equity.

My second point is that apart from promoting federal programs to improve the social, health, and economic conditions of Native Hawaiians prior to the end of the Clinton Administration next year, I implore federal officials to determine what discretionary authority can be asserted by the President and other Cabinet officials to provide or promote the resolution of political status and ceded lands issues. Whether it be through a Presidential Executive Order, Directives by individual Department heads, or the establishment of a Federal-State Task Force on Ceded Lands and Political Status, what must be made clear to Native Hawaiians is that federal policy has moved beyond the Hawaiian Homes Commission Act and that it is in the national interest, not only the State of Hawaii's interest, to resolve these longstanding issues. Thank you.

Discussion: Positive Steps Toward Reconciliation

I believe that there should be a two track approach by the federal government on reconciliation. First, the federal government should continue working on a resolution of political status for Native Hawaiians. Second, the Departments of Interior and Justice should work with the State Department so that the U.S. can exert leadership on the United Nations' and Organization for American States' Draft Declarations on the Rights of Indigenous Peoples. Currently, the State Department policy has been poor on the rights of indigenous peoples at the international level, stating that such rights should be based on individual rights, not collective rights. Such a position is contrary to domestic Federal Indian law and it should raise concerns

among federal policymakers.

President Clinton should appoint an Ambassador at Large within the State Department and a liaison within the White House to work on the international draft declarations on the rights of indigenous peoples. It is embarrassing that other nation states like Australia and New Zealand have exerted greater leadership on these issues, particularly since the world is still commemorating the International Decade of the World's Indigenous Peoples.

The reason all of this is important is because I had stated earlier that I believe that the legal norms for self-determination as it pertains to Native Hawaiians are inadequate. At the international level, there are various sources for international law, which continues to evolve. It is not static. The United Nations Charter is only one source of international law. Customary international law is another source. When federal officials say that U.S. policy is constrained by federal law, they are constrained because current domestic and international norms, including Article 73 of the U.N. Charter, are inadequate. The U.S. government must reconcile the shortcomings of Federal Indian law at the domestic level and the Non-Self-Governing Territories provision under the U.N. Charter at the international level, so that new norms can be established on the rights of indigenous peoples either under federal law or international law. In that way, the U.S. government will have more flexibility in dealing with Native Hawaiians on self-determination.