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From Maui, Ha*

This is supplemental to Chief Maui Lea's testimony on U.S. Committee on Indian Affairs S. 2899 of August 28, 2000 and concerns specifically the Draft Report of the Department of the Interior and the Department of Justice dated August 23, 2000 and titled "From Makua to Makai: The River of Justice Must Flow Freely".

1. Recommendation 1 of the Draft Report states "...that the Native Hawaiian people continue to maintain a distinct community and certain governmental structures and they desire to increase their control over their own affairs and institutions". The use of the word "institutions" can be interpreted to exclude other than "certain governmental structures". There are in the "distinct community" of Native Hawaiians several diverse, established and recognized entities that consider themselves to be self-determined independent governments. This diversity is consistent with Tribal law.

2. A codification of state interests via the Akaka Bill is not the same as a new ability "to increase their control (over their own affairs and institutions)". A way to recast this misperception so as to encompass equally non-state government "institutions" is to have recognition by congress of the new government include de facto recognition of existing non-state Native Hawaiian governmental structures, both tribal law and monarchy era law Native Hawaiian entities. These include Ka Lahui, Hou Lahuichana, Independent Nation of Hawaii, Sovereign Nation of Hawaii, Kamehameha Schools Bishop Estate Missionary Trust, and others, as well as the state's Commission of the Hawaiian Homes Act, which is, we assume a "certain governmental structure"? (The fate of the state's Office of Hawaiian Affairs, a quasi-government, is in question at the time this is being written).

3. To include Native Hawaiian monarchist faction self-determined governmental structures by incorporating these as now being recognized under the new government leaves no one out while acknowledging the realities of diversity. International issues are not involved through recognizing Native Hawaiians who choose to organize themselves along monarchy era lines instead of along United States tribal law lines at this time. The democratic structure of the new representative government is the United States' half of the equation. The Native Hawaiians' half of the equation is recognition of the way things already actually exist. To only recognize the state's "institutions", even those with Native Hawaiians, is not justice since it is not fair to other than "certain (state) governmental structures". The state's Native Hawaiian formulated governmental structures should be recognized equally along with the rest of the Native Hawaiian's organizational forms because that is recognizing reality. Were the state's delegated authority to not exist, these other Native Hawaiian forms of self-government would still exist. In the future absence of the state in Native Hawaiian self-government, how does it strengthen Native Hawaiian self-determination to not include in a new government the established forms of self-government the Native Hawaiian has himself originated? And if the state were not involved as the interim delegated authority of the United States, would the United

States be recognizing the Native Hawaiian? It appears to be the intention of the United States to recognize the Native Hawaiian but that the state has placed itself in the middle. What else can the United States do but act on its intention in a manner that does not place the state's self-interest above that intention? The United States cannot go along with what the state will claim; namely that certain Native Hawaiian groups elected to not include themselves in the new government so therefore they have no standing. In a democratic state, government is representative of everyone, even those who appear to not choose to be represented. The danger of this exclusionary possibility of the Akaka Bill is a threat to its legitimacy that could be the loose thread that unravels the whole structure.

4. An issue of substantial judicial review has been the inability of the state to represent the Native Hawaiian interests separately from the state's own interests. On the part of the state, there is no consciousness, or policy, that these are two distinct areas. It is not justice to strengthen only the state because to do so results in weakening the Native Hawaiian. Isn't the idea to strengthen the Native Hawaiian not the state so that the Native Hawaiian can attain through self-determination an ability to manage his own affairs, independent of the state? So, the legislation should expand on what an "institution" is to encompass every institution not only "certain (state) governmental structures". And should name by name every diverse entity and make thereby the new government represent these entities and their members. They earned the right to be represented by their existence. They "enrolled" when they testified. The new government should reach out to all those who need representation and should not expect those who are not represented to carry the whole burden of reaching out to the governments of the state and the United States again. Did not the testimonies include the identities of these diverse entities? The United States must look past the state's myopia and see the reality of diversity. It is after all in the failure of the state's (institutional) governmental structures that the dissatisfaction has arisen. Is the United States now going to codify the failures of the state in congress and if so is that justice? (The state's Department of Hawaiian Homelands failed to settle all the eligible native Hawaiians of the blood on homesteads set up by the Hawaiian Homes Act of 1921 and the state failed to use revenues from the public lands in trust from the United States for the "betterment of the conditions of native Hawaiians". A remedy is that the President of the United States could under the authority established in the HECA order that the Secretary of the Interior take Native Hawaiian land directly into trust as a reservation, or homeland (lahuihoanaina) of a Native Hawaiian tribal government. That Tribal government could perform all the duties and responsibilities that the proposed new government will undertake, independent of the control of the state. This is a remedy preferred by the Native Hawaiian given the past inability of the state to manage its delegated responsibility in a way that is fair to the Native Hawaiian).

5. The term "self-determination" must be defined in detail by reference to U.S. Tribal law in Senator Akaka's bill. Spell out in detail,

a, b, c, d, etc., what "self-determination over their own affairs within the framework of Federal law, as do Native American tribes" means. In doing so, no one can argue later that these legal rights are not the intent of the Akaka bill.

6. The recommendation appears to believe that the Native Hawaiian already exercises "self-determination over their lands, cultural resources and internal affairs", but lacks a recognized "government to government" relationship with the United States. Once again, the state is merely imposing itself as a stand in with delegated authority for the actual Native Hawaiian not because the state is interested in the Native Hawaiian's interest but because the state is interested in controlling its own interests insofar as the Native Hawaiian may be involved in those interests. The United States could recognize a "Tribal Commission" as the new interim governing body that represents Native Hawaiian interests and which could include a component of state government wherein that component would represent the state's own Native Hawaiian interests. This is preferable to the Native Hawaiian interests playing an inferior role to the state in such a new government to government relationship. This Tribal Commission could take the state's administrative share of federal funds allocated by congress for Native Hawaiian programs.

7. It is not a reality that the Native Hawaiian exercises self-determination over his lands, cultural resources and internal affairs to the fullest extent permissible in United States law. There are no special rights in state law that allow the Native Hawaiian to do so and up to the Akaka Bill, the United States has never stepped up to the plate in enforcement of that right to self-determination in Federal law. The state and city and county determine how a Native Hawaiian may use land. The state has never treated any Native Hawaiian self-government body in fact as different from anyone else except for its own creation, the quasi-government Office of Hawaiian Affairs, a state agency, which the state utilized to attempt to settle in a self-serving way its liabilities resulting from breaches by the state of the HACA and the 5f of the Admissions Act.

8. Congress could recognize a Confederated Commission of self-determined Native Hawaiian entities incorporated as a self-government of the Tribal Native Hawaiian people of the United States for the purpose of a direct government to government political relationship. There is no requirement in federal law that this body be a state government body. It is not true that in order to protect the United States only a state Native Hawaiian government entity can carry out a direct government to government political relationship. A non-state Native Hawaiian government can and would protect the United States' interests insofar as Native Hawaiian issues are concerned. The fact that the state's involvement in Native Hawaiian affairs is now so deep that it is virtually impossible at present to separate the two interests, the state from the Native Hawaiian interests, is not an impediment to the United States separately recognizing a Native Hawaiian government independent of the state. It would only mean that there would be two governments in

Hawaii to deal with concerning United States' interests. That would be consistent with continental Tribal government to government realities. Now that Bishop Estate has seen the wisdom of the protection of its assets and land provided by United States Tribal law, those Hawaiian organizations advocating for secession or restoration of the monarchy that were directly or indirectly funded by Bishop Estate interests will wither in time and disappear. So it is not possible for the state to represent to the United States that the United States needs the state to protect the United States from secessionist Hawaiian factions. Furthermore, the Native Hawaiian tribal leaders are knowledgeable about United States interests in Hawaii and ready to accommodate those interests through any means necessary. (Bishop Estate manages a multi-billion dollar Missionary Hawaiian trust so already has all the governmental skills any tribal body self-government could ever desire to have. It is perfectly moral, legal and just, as well as historically correct, that Bishop Estate obtain the protection for its assets that the United States provides to its indigenous people through United States Tribal law. It is the hope of every other Native Hawaiian entity, none anywhere near as financially powerful or politically powerful as Bishop Estate, that the shift of Bishop Estate to the Tribal law path means that those Hawaiian entities who have long been following the Tribal path, like Chief Maui Loa's own Hou Lauchihana of the Kalaeloa Kaiakua Kawaiioa Lono Makahiki Ehu Hou clans, will obtain at least as much protection and benefit from the shift for their own assets, however small and weak they may be in comparison to the massive assets of Bishop Estate).

9. The United States has an obligation to revisit the trust it set up in the Admissions Act concerning the disposition of the crown lands. The crown lands are aboriginal lands of the Native Hawaiian and all clan ancient land claims involve these lands. The United States ought to make a new, direct arrangement with a new Native Hawaiian self-government concerning the disposition of the crown lands that satisfies the dispossessed chief families and the so-called common people alike. The state has a conflict of interest concerning disposition of the crown-public lands vis-a-vis the United States. The state controls all the crown lands while the Native Hawaiian has control over none. (The United States intended to protect the body of crown lands it allocated to Hawaiian homelands usage through prohibiting its sale and a method the United States choose was to only lease the land to its native Hawaiian occupants).

10. The Akaka bill seems to absolve the state of obligations arising from its breach through reaffirming the state's delegated authority for the welfare of Native Hawaiians. While the Akaka bill appears to let the state wiggle off the hook, the issue of liability for the United States on this matter is unresolved in the Bill. It is for this reason that the United States should take this as an opportunity to revisit the Admissions Act with the intention to learn from the mistakes and this time fulfill the original intentions of the United States with respect to the dispossessed Native Hawaiian people. The United States intended that the disposition of the crown-public lands would compensate the

Native Hawaiian for loss of his land and nation as well as fund infrastructure improvements and settlement expenses of Hawaiian homelands. Nevertheless, the state has been found in breach and the state acknowledged its own liability when it offered to make a settlement through its own constitutional and statutory scheme, the quasi-government over Native Hawaiians, the state agency Office of Hawaiian Affairs. Now, if the state has been proven to be adversarial to the Native Hawaiian, can the state now become the Native Hawaiian is the unanswered question of the proposed new government?

11. The ceded lands of the HNCA were taken from the crown lands and the 100,000 acres that the state proposed to give title to OHA of came from the crown lands. The sum in dollars proposed by the state to OHA in settlement was based on the revenues of the crown-public lands. At the time of his death, David Kalakaua, Chief Maui Lea's great grandfather, an elected monarch, was in the process of returning lands taken from the Chief families of the bloodline in the earlier mahaheles. This process was cut short. Had the process been completed, there would be no dispute over the crown lands because those lands originally taken away from the Chief families in the mahaheles by Kamehameha III would have been returned to their original owners and the crown lands would not have become government lands, or, public lands.

12. The state seeks to convert certain of these wrongfully taken crown lands into national parks. Some public land was taken by the United States in WW II for military use. Who has a claim on what public lands is a well known fact amongst the families affected and their testimony should be accepted, and then the identified lands should be returned and then protected by also being placed in trust to the United States via the new Native Hawaiian government being now established. In circumvention of GSA rules that apply in all other states, when crown lands occupied by the United States are made surplus, even when an original owner claims it, the land automatically goes to the state as the delegated authority of the United States. (Pollution of land and water issues are connected to this in terms of who is going to restore the land and water to healthy pre-military use conditions). All Native Hawaiian land, right down to the smallest kuleana, must be permitted to be placed in trust by private owners and equally protected, along with state controlled "Native Hawaiian" land, as land subject to self-determination governance of the Native Hawaiian people, via their Tribal Commission, or, whatever the term applied to the new interim and permanent government enabled by the Akaka bill. In total, all such land could be known as the Lahuichanaina of the Sovereign Nation of Hawaii.

13. It is Chief Maui Lea's experience, and the experience of all Native Hawaiians, that there are discriminatory attitudes operating as governmental policy, as administrative regulations and as city and county and state laws, that are aimed at Native Hawaiians. These can be exposed and rooted out through judicial means. Or, the Native Hawaiian government being newly established can systematically examine these and work with the state legislature and city and county governments to repeal these.

14. To pursue this objective will isolate the differences that separate the state and the Native Hawaiians. It is an absolute certainty that some Native Hawaiian entity will pursue a judicial remedy of this government discrimination of the Native Hawaiian people. A question for the delegation concerning this is whether or not the delegation wishes to include the task of rooting out these discriminatory laws, policies and regulations in the initiatives of the Akaka bill? The United States has studied one or two areas of state and city and county law wherein government policy discriminates against Native Hawaiians. This is an opportunity for the United States to relieve the Native Hawaiian of the burden this places on him through directing the delegation to rectify these wrongs on their own in the state legislature, to bring local policy, law and regulations up to par with other states concerning their indigenous people. For the United States to simply allow the state to codify the state's current positions, and the city and county positions across the state, as in the state's DNHL current position, or the state's current OHA position, is to simply codify not remedy the state's wrongful acts against Native Hawaiians.

Respectfully Submitted,

CHIEF MAUI LOA

And Professor Frederick Nicholas Trenchard, Senior Advisor to Chief Maui Loa