

Testimony for IEM
June 22, 2017
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Position:

Not in support of these two ordinances on the agenda as they are written as they offer very little protection to Iwi Kupuna.

III. NATIVE HAWAIIAN KULEANA

Kapu ka haloa ku ma ka pe'a Kanu ia Haloa ulu hahaloa O ka lau o Halaoa i ke ao la Puka. Taboo the taro stalk that stood by the woman's taboo house Haloa was buried [there], a long taro stalk grew The offspring of Haloa [born] into the day Came forth.¹¹⁵

Native Hawaiians groups have demonstrated vigorous efforts to protect their iwi kūpuna by advocating for stronger legislation which broadens the preservation of iwi kūpuna. In an effort to illustrate the common motivations of Native Hawaiian groups, this section will explain the cultural ties and significance that human remains play within Native Hawaiian culture.

A. Genealogy

According to the Kumulipo, the Hawaiian creation chant, Hāloanaka (quivering long stalk), the stillborn child of Wākea (father-sky) and his daughter Ho'ohōkūkalanī (star-of-heaven), was the first burial in Hawai'i.¹¹⁶ From Hāloanaka's burial site, a taro plant appeared.¹¹⁷ A second child named Hāloa followed.¹¹⁸ Hāloa is believed to be the progenitor of the Hawaiian people.¹¹⁹ This narrative establishes the interconnection, the interdependent relationship between the gods, the land and the people. The burial of iwi results in physical growth of plants and spiritual growth of mana (life force).¹²⁰ The descendants of Hāloa receive physical nourishment from the land they mālama (take care of) and spiritual sustenance by ensuring that the bones of their ancestors are properly cared for and in their rightful place.¹²¹

Therefore, the —kuleana (responsibility) to care for iwi kūpuna is a fundamental responsibility of the living, in order to maintain harmony between the living, the dead and the aina (land).¹²²

B. Nā Iwi (The Bones)

O na hōkū o ka lani i 'ike ia Pae. Aia a loa'a ka pūnana o ke kōlea, loa'a 'oia ia 'oe.
Only the stars of heaven know where Pae is. When you find a plover's nest, then you will find him.¹²³

The above ōlelo no eau (proverb) is used to refer to something well hidden, which will not be found.¹²⁴ It tells the story of Pae, a priest who was a lucky fisherman.¹²⁵

His luck was renowned among the chiefs, and they desired his bones for fishhooks after his death.¹²⁶ When Pae died, his sons hid his bones so well that none of the chiefs and priests could find them.¹²⁷

The interconnection between iwi kūpuna, nature, and the identity of Kanaka Maoli

(people of Hawaiian ancestry) exists within the Hawaiian language itself.¹²⁸ For example, the word —iwi can also refer to the marks of stone or ridges signifying land boundaries, while —iwi honua describes a shoal or rock projecting on a coral reef.¹²⁹ Also, the Hawaiian word for—homeland is —kulāiwi, and the term for —native is —ōiwi.¹³⁰ By reburying and protecting the iwi, Native Hawaiians —strengthen the ancestral foundation, continue the interdependence between past and present, and re-infuse the land with ana necessary to sustain the ancestors, the living and the generations to come.¹³¹ The mana embodied within the iwi would be imparted to their burial place, the ahupua‘a (traditional land district), and eventually to the island.¹³²

Today, iwi are found in unmarked locations because historically, burial sites were never marked. The ancient people left burial sites unmarked in order to deter enemies from manipulating and exploiting the mana within the iwi.¹³³ Desecration of iwi could occur in different ways, such as leaving the bones uncovered and exposed to sunlight, turning iwi into fishhooks, misuse of a skull, and ultimately the destruction of iwi.¹³⁴

For Native Hawaiians, iwi and the uhane (spirit) were connected and the uhane remained near iwi after death.¹³⁵ It was believed that the uhane took three possible paths after death – it could join the aumākua (ancestral gods), it could stay in the burial area and later join the gods, or it could remain with the iwi in order to serve its kahu (keeper).¹³⁶

The traditional Hawaiian beliefs on proper treatment of iwi are in conflict with modern customs of marked graves or cremation. It is through the understanding of these traditional Hawaiian customs that one can fully grasp the reasoning behind this struggle within the State of Hawai‘i for their repatriation. Repatriation of iwi is fundamental, because they re-infuse the āina with their mana, they are the connection to our ancestors, and most importantly, their proper treatment is our kuleana.

113 Id. §§ 10.9(e)(4), (7).

114 25 U.S.C.A. § 3005(a)(1) (2001).

115 See Moses Haia & Sunny Greer, *Iwi Kūpuna: Native Hawaiian Burial Rights*, in *Native Hawaiian Law*, in NATIVE HAWAIIAN RIGHTS HANDBOOK 2 (forthcoming 2012).

116 Id. 117 Id. 118 Id. 200 Asian-Pacific Law & Policy Journal [Vol. 12:2

119 Id. 120 Id. quoting Kunani Nihipali, *Stone By Stone, Bone by Bone: Rebuilding the Hawaiian Nation in the Illusion of Reality*, 34 ARIZ. ST. L.J. 27, 36-37 (2002).

121 Haia & Greer, *supra* note 110. 122 Id. 123 PUKUI, *supra* note 1, at 2514. 124 Id.

125 Id. 126 Id. 127 Id. 128 Haia & Greer, *supra* note 110, at 3. 129 Id.

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130 Id. 131 Kunani Nihipali, *Stone By Stone, Bone by Bone: Rebuilding the Hawaiian Nation in the Illusion of Reality*, 34 ARIZ. ST. L.J. 27, 37 (2002). 132 HALEALOHA AYAU, *Native Hawaiian Burial Rights*, THE NATIVE HAWAIIAN

RIGHTS HANDBOOK 245, 247 (University of Hawai‘i Press 1991). 133 Id.

134 Id. 135 Id.

136 Id.

137 *Brown v. Hawaii*, 679 F.Supp.2d 1188 (D. Haw. 2009). The case will not be discussed in detail as it addresses numerous other issues which are not relevant for the purpose of this paper.

Source:

Asian-Pacific Law & Policy Journal [Vol. 12:2

How to Remedy the NAGPRA's Unintended Effect on Hawai'i after *Brown v. Hawaii*
Jeannin-Melissa Kapuakawekiu Russo* Page 199-201
http://blog.hawaii.edu/aplpj/files/2011/11/APLPJ_12-2_Russo_Final.pdf

UN Declaration on the rights of Indigenous people.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Source:

https://www.google.com/imgres?imgurl=http://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2015/06/undripen.png&imgrefurl=https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html&h=200&w=300&tbnid=rGTNXybYUFIWsM:&tbnh=160&tbnw=240&usq=__KBLqK8ur07wAiSs8iBr8vQjDMjU=&vet=10ahUKEwihgpfYg9HUAhVD9WMKHd8dAhwQ9QEIKjAA..i&docid=qUPYF8KcZ1HVmM&sa=X&ved=0ahUKEwihgpfYg9HUAhVD9WMKHd8dAhwQ9QEIKjAA

The ordinance in question was initially written in response to the sand mining at Maui Lani and while I appreciate the effort, this new ordinance gives no protection to Iwi Kupuna. What we need is as a complete ban on sand mining and a protected cultural/ burial preservation in the central maui sand dunes from kapuna to ma'alaea on all undeveloped land.

As described in the UN rights of Indigenous people, we have the right to not be subjected to the destructuion of our culture. And that is exactly what has been happening, all over our homelands but in this case in Maui Lani. We are being injured by the desecration of our Iwi Kupuna and our collective mana contained in the sand. That mana is for our keiki and the next seven generations. Not because it's a resource, but because it is a part of our identity.

The `Aina at Maui Lani should have never been sold and developed. There is still time to save the last remaining dunes. The Wahi Pana needs to be protected! The community plan is set up to preserves cultural resources. The sand dunes should be designated as a cultural resource.

In addition, the permitting process needs to be re-legislated. The process favors the developers and there is little to no enforcement. There needs to be a process to verify that the information on the permit application is true and correct. For example, maui lani's archeologist always checks no known burials, even though her own documentation says the likelihood of finding burials is high. They can do this because they only need to test one small area of a parcel which represents the entire parcel, and, they will change a TMK so that an area near a known burial site will shift in order to do their testing.

We know resource extraction was not a permitted activity and yet no one stopped them.

We know stockpiling was not in the scope of ameron/ hc&d's permit and yet they went unchecked.

There are reports of work being done at maui lani without monitors.

We know there was grading happening in a burial preserve.

The required reports to OHA upon discovery of `Iwi have not been sent.

The list of violations is extensive.

Whoever allowed all of these violations is RESPONSIBLE. We demand accountability and we need solutions. We need your help to preserve this irreplaceable wahi pana.