

DAVID KEANU SAI, PH.D.

Head, Royal Commission of Inquiry
P.O. Box 2194
Honolulu, HI 96805-2194
Tel: +1 (808) 383-6100
E-mail: interior@hawaiiankingdom.org
Website: <http://hawaiiankingdom.org/>

June 2, 2020

Clare E. Connors
State of Hawai‘i Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

Re: Royal Commission of Inquiry—*Investigating War Crimes and Human Rights
Violations Committed in the Hawaiian Islands*

Dear Attorney General Connors:

My name is Dr. David Keanu Sai and I am the head of the Royal Commission of Inquiry (“Royal Commission”). The Royal Commission was established, by proclamation of the Council of Regency, on April 17, 2019. Its mandate is to investigate war crimes and human rights violations committed within the territorial jurisdiction of the Hawaiian Kingdom since the unlawful overthrow of the Hawaiian government in 1893 and the subsequent belligerent occupation by the United States that has ensued since.

I have a Ph.D. in political science from the University of Hawai‘i at Manoa where I specialized in international relations and public law. My doctoral studies and publications focused on the legal and political history of the Hawaiian Kingdom and its prolonged occupation by the United States since 1893. I also served as an officer for ten years in the Hawai‘i Army National Guard, 1st Battalion 487th Field Artillery. Before I was honorably discharged in 1994, I served as commander for Charlie battery.

I am aware that your office is responsible for having initiated investigations of myself and other officers of the Council of Regency. I can assure you that we are not a self-proclaimed sovereignty group, but rather the interim government of the Hawaiian Kingdom established by proclamation on February 28, 1997, that is vested with the rights and powers afforded

to a government of an occupied State in accordance with international humanitarian law. A recent documentary, which won several awards at independent film festivals, covers the Council of Regency and its strategy to engage the prolonged occupation of the Hawaiian Kingdom.¹

The lawful authority of the Council of Regency has also been the subject of a recent legal opinion by Professor Federico Lenzerini, a professor of international law from the University of Siena, Italy.² The American treatise, *Restatement (Third) of the Foreign Relations Law of the United States*, recognizes that “writings of scholars”³ are a source of international law in determining, in this case, whether the Council of Regency has been established in conformity with the rules of international humanitarian law.

In his opinion, Professor Lenzerini concluded, under the rules of international law and Hawaiian constitutional law, that (1) the “Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom;”⁴ (2) the Council of Regency “has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level;”⁵ and (3) the “Council of Regency is exactly in the same position of a government of a State under military occupation, and is vested with the rights and powers recognized to governments of occupied States pursuant to international humanitarian law.”⁶ He further concludes:

[U]nder international humanitarian law, the proclamations of the Council of Regency are not divested of effects as regards the civilian population of the Hawaiian Islands. In fact, considering these proclamations as included in the concept of “legislation”...they might even, if the concrete circumstances of the case so allow, apply retroactively at the end of the occupation, on the condition that the legislative acts in point do not “disregard the rights and expectations of the occupied population.” It is therefore necessary that the occupied government refrains “from using the national law as a vehicle to undermine public order and civil life in the occupied area.”⁷

¹ Hawaiian Kingdom Academia, *The Acting Hawaiian Council of Regency—Exposing the American Occupation of the Hawaiian Kingdom* (August 13, 2019) (online at: <https://www.youtube.com/watch?v=CF6CaLAMh98>).

² Federico Lenzerini, *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom*, in the Royal Commission of Inquiry’s Preliminary Report—The Authority of the Council of Regency of the Hawaiian Kingdom (2020) (online at: https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Regency_Authority.pdf).

³ *Restatement (Third) of the Foreign Relations Law of the United States* §103(2)(c) (1987).

⁴ Lenzerini *Legal Opinion*, para. 9.

⁵ *Id.*

⁶ *Id.*, para. 10.

⁷ *Id.*, para. 12.

At the international level, the Council of Regency represented the Hawaiian Kingdom in arbitral proceedings at the Permanent Court of Arbitration, in *Larsen v. Hawaiian Kingdom*, from 1999-2001, where I served as the Hawaiian Kingdom's Agent and head of its legal team.⁸ The Permanent Court of Arbitration acknowledged the Council of Regency as the government of the Hawaiian Kingdom. At the center of these proceedings was the unlawful imposition of United States municipal laws, by the State of Hawai'i, within the territory of the Hawaiian Kingdom that led to the war crimes of *unfair trial*, *unlawful confinement* and *pillaging* of Mr. Larsen. The *American Journal of International Law*, reported:

At the center of the PCA proceeding was...that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States' 'unlawful imposition [over him] of [its] municipal laws' through its political subdivision, the State of Hawaii. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States committed against him.⁹

Imposition of United States legislative and administrative measures constitutes the war crime of *usurpation of sovereignty* under customary international law. This includes the legislative and administrative measures of the State of Hawai'i and its Counties. Professor William Schabas, renowned expert in international criminal law, authored a legal opinion for the Royal Commission that identified *usurpation of sovereignty*, among other international crimes, as a war crime that has and continues to be committed in the Hawaiian Islands.¹⁰ His legal opinion was also incorporated in a book published by the Royal Commission as chapter 4—*War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom*.¹¹ This publication is downloadable as an eBook at no charge.¹²

⁸ Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at: <https://pca-cpa.org/en/cases/35/>).

⁹ David J. Bederman and Kurt R. Hilbert, "Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii," 95 *Am. J. Int'l L.* 927, 928 (2001).

¹⁰ William Schabas, *Legal Opinion on war crimes related to the United States occupation of the Hawaiian Kingdom since 17 January 1893* (2020) (online at: https://hawaiiankingdom.org/pdf/Opinion_War-Crimes_Schabas_RCI.pdf).

¹¹ William Schabas, "War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom* 151-169 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

¹² David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom* (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

One of the profound consequences of the prolonged occupation renders all judgments and orders of judicial or administrative courts of the United States in Hawai‘i, to include the State of Hawai‘i, void. According to the “voidness doctrine,” any judgment of a court without having subject matter jurisdiction over the case before it is entirely null and void.¹³ “When a suit is brought and determined in a court which has no jurisdiction in the matter,” says Henry Black, “then it is said to be *coram non judice*, and the judgment is void.”¹⁴

In *State of Hawai‘i v. Lorenzo*, the Appellate Court in 1994 acknowledged the consequences of the 1893 overthrow of the Hawaiian Kingdom government. In its decision, the Court stated, the “illegal overthrow leaves open the question whether the present governance system should be recognized, even though the illegal overthrow predated the United Nations Charter.”¹⁵ According to the rules of international law as it stood in 1893 and how it stands today, United States governance, to include the State of Hawai‘i and its Counties, in the Hawaiian Islands cannot be recognized as lawful.¹⁶

In its first preliminary report, the Royal Commission addressed the volitional element of war crimes, which is a perpetrator’s awareness of the factual circumstances that established an occupation.¹⁷ Under international criminal law, criminal culpability is met when the perpetrator is aware of the factual circumstances that established the United States occupation of the Hawaiian Kingdom. In its preliminary report, the Royal Commission concluded:

The element of awareness is not an outcome of a moral or legal conclusion on the part of the accused because there is “no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international,” nor is there a “requirement for awareness by the perpetrator of the facts that established the character of the conflict as international.” As the International Criminal Court’s Pre-Trial Chamber stated, “it is not necessary for the perpetrator to have made the necessary value judgment to conclude that the victim did in fact have protected status under any of the 1949 Geneva Conventions.” While there is, however, “only a requirement for the awareness of the factual circumstances,” the Royal Commission will satisfy this element of awareness where there exists clear and unequivocal evidence of awareness on the

¹³ *The Marshalsea*, 10 Co. Rep. 68b, 77 Eng. Rep. 1027 (K.B. 1613).

¹⁴ Black’s Law, 6th ed., 337 (1990).

¹⁵ *State of Hawai‘i v. Lorenzo*, 77 Haw. 219, n. 2 (1994); see also David Keanu Sai, “The Royal Commission of Inquiry,” in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom* 38-40 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

¹⁶ Sai, *Royal Commission of Inquiry*, 37-38.

¹⁷ Royal Commission of Inquiry’s Preliminary Report—*The Material Elements of War Crimes and Ascertaining the Mens Rea* (2020) (online at: https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Mens_Rea.pdf).

part of the accused of the United States occupation of the Hawaiian Kingdom, *e.g.* court records, correspondences, course curriculum, sworn declarations, etc. Also, the fact of being part of the political organization of the United States, to include the State of Hawai‘i and its Counties, because in that case the knowledge of the existing “political” situation could be reasonably presumed especially in light of the 1993 Congressional joint resolution apologizing for the illegal overthrow of the Hawaiian Kingdom government on 17 January 1893.¹⁸

I am not aware whether you were informed of three meetings I had in 2015 with Mike McCartney, former chief of staff for Governor David Ige, at his office in the Executive Chambers regarding the subject of war crimes and the American occupation. This prompted a report I submitted to him that summarized what we discussed in those three meetings and how the State of Hawai‘i has a duty, under international humanitarian law, to transform itself into a Military government by virtue of Article V, section 5 of the Constitution of the State of Hawai‘i.¹⁹ United States practice for Military government is covered in United States Army and Navy FM 27-5, and occupation of an occupied State is covered in FM 27-10. The Adjutant General, MG Kenneth Hara, should be aware of these regulations and the function of a Military government.

McCartney did not follow up with me and it would appear he did not receive good advice from, I would speculate, the Attorney General at the time, Doug Chin. However, I could be mistaken. Either way, my report that he received firmly establishes that the administration was aware of the United States occupation for purposes of international criminal law. Until the State of Hawai‘i is transformed into a Military government recognizable under international humanitarian law, the war crime of *usurpation of sovereignty* and also war crimes that stem from *usurpation of sovereignty, i.e. unfair trial, destruction of property, pillaging, etc.*, will continue to be committed. As such, this conduct and actions come under the purview of the Royal Commission for investigation and reporting. War crimes have no statute of limitations.

As you will see in Professor Lenzerini’s legal opinion that under international humanitarian law a “relationship between the Regency and the administration of the occupying State should have the form of a cooperative relationship aimed at guaranteeing the realization of the rights and interests of the civilian population and the correct administration of the occupied territory.”²⁰ Last year, the Maui County Council reached out for information and I provided three workshops to the Planning and Sustainable Land Use Committee on the

¹⁸ *Id.*, 6.

¹⁹ Dr. Keanu Sai, *Report on Military Government* (July 2, 2015) (online at: [https://hawaiiankingdom.org/pdf/McCartney_Ltr_7_2_15_\(Report\).pdf](https://hawaiiankingdom.org/pdf/McCartney_Ltr_7_2_15_(Report).pdf)).

²⁰ *Lenzerini Legal Opinion*, para. 20.

subject of Hawai‘i under international law.²¹ The first workshop was a front-page cover story in the *Mauitime* newspaper.²²

The Royal Commission sees as its priority the establishment of the Military government in order to administer the laws of the occupied State, and, thereby, bringing the State of Hawai‘i and its Counties into compliance with international humanitarian law. Members of the State of Hawai‘i and its Counties are not the insurgents of 1893, but rather friends and family that found themselves in a tenuous situation without any fault of their own. Their actions viewed through the lens of international humanitarian law, however, have led to the commission of war crimes against the civilian population who have been made aware of the prolonged occupation and when they were asserting their rights, they were attacked.

The awareness of the prolonged occupation has reached the National Education Association (NEA) by a resolution introduced in 2017 by the Hawai‘i State Teachers Association at the NEA’s annual convention in Boston.²³ This resulted in three articles I wrote that was published by the NEA on its website in 2018.²⁴ In my last NEA article, *The Impact of the U.S. Occupation on the Hawaiian People*, I specifically mention war crimes. Furthermore, the National Lawyers Guild, “the oldest and largest progressive bar association in the United States, calls upon the United States to immediately begin to comply with international humanitarian law in its prolonged and illegal occupation of the Hawaiian Kingdom since 1893.”²⁵

²¹ First workshop on the status of the Hawaiian Kingdom under international law (May 5, 2019) (online at: <https://hawaiiankingdom.org/blog/video-of-dr-keanu-sais-presentation-to-the-maui-county-council-on-the-status-of-the-hawaiian-kingdom-under-international-law/>). Second workshop (June 5, 2019) (online at: <https://hawaiiankingdom.org/blog/video-of-dr-keanu-sais-second-presentation-to-the-maui-county-council-on-how-the-county-council-complies-with-international-law/>). Third workshop (August 21, 2019) Part I (online at: <https://www.youtube.com/watch?v=dnFxKdHNxN0&t=342s>), and Part II (online at: <https://www.youtube.com/watch?v=jC4mqnY0KhU&t=1217s>).

²² *Mauitime*, *Hawai‘i: The Fake State—Dr. David Keanu Sai Talks to the Maui County Council about the Ongoing American Occupation of the Hawaiian Kingdom* (March 24, 2019) (online at: <https://mauitime.com/news/politics/hawaii-the-fake-state-dr-david-keanu-sai-talks-to-the-maui-county-council-about-the-ongoing-american-occupation-of-the-hawaiian-kingdom/>).

²³ Hawaiian Kingdom Blog, *American National Teachers Union Recognizes the Illegal Occupation of the Hawaiian Kingdom* (July 11, 2017) (online at: <https://hawaiiankingdom.org/blog/american-national-teachers-union-recognizes-the-illegal-occupation-of-the-hawaiian-kingdom/>).

²⁴ See Keanu Sai, *The Illegal Overthrow of the Hawaiian Kingdom Government* (April 2, 2018) (online at: <http://neatoday.org/2018/04/02/the-illegal-overthrow-of-the-hawaiian-kingdom-government/>); *The American Occupation of the Hawaiian Kingdom* (October 1, 2018) (online at: <http://neatoday.org/2018/10/01/the-u-s-occupation-of-the-hawaiian-kingdom/>); and *The Impact of the U.S. Occupation on the Hawaiian People* (October 13, 2018) (online at: <http://neatoday.org/2018/10/13/us-occupation-of-hawaii/>).

²⁵ National Lawyers Guild, Press Release, *NLG Calls Upon US to Immediately Comply with International Humanitarian Law in its Illegal Occupation of the Hawaiian Islands* (January 13, 2020) (online at: [https://www.nlg.org/nlg-calls-upon-us-to-immediately-comply-with-international-humanitarian-law-in-its-illegal-occupation-of-the-hawaiian-islands/#:~:text=The%20National%20Lawyers%20Guild%20\(NLG,the%20Hawaiian%20Kingdom%20since%201893\).](https://www.nlg.org/nlg-calls-upon-us-to-immediately-comply-with-international-humanitarian-law-in-its-illegal-occupation-of-the-hawaiian-islands/#:~:text=The%20National%20Lawyers%20Guild%20(NLG,the%20Hawaiian%20Kingdom%20since%201893).)).

The Royal Commission recognizes that war crimes and human rights violations cannot continue to be committed with impunity and the perpetrators must be held accountable, but it does recognize that the Council of Regency must have a “cooperative relationship aimed at guaranteeing the realization of the rights and interests of the civilian population and the correct administration of the occupied territory.”²⁶ To this end, I have written this letter of correspondence.

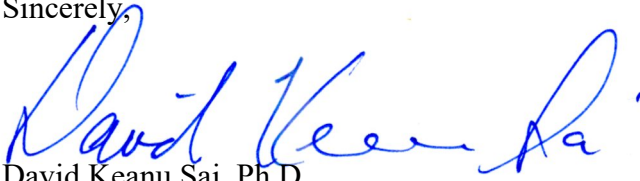
These are not normal times but you are the legal advisor to the Governor, and due to the severity of the situation under international criminal law and the material elements of *mens rea* and *actus reus*, I respectfully implore you to carefully review the information I have provided you and to advise the office of the Governor accordingly. Under international humanitarian law, decisions on this matter are not with the federal government nor is it with its military here in the islands, but solely on the shoulders of the State of Hawai‘i as it is the entity in effective control of Hawaiian territory thereby triggering the law of occupation.²⁷ I should also note that the governmental infrastructure of the State of Hawai‘i is that of the Hawaiian Kingdom. The only change was in name, e.g. the Department of Land and Natural Resources is the Ministry of the Interior. All that was changed in 1893 was the Queen and her cabinet, and the top law enforcement of the kingdom, being forcibly replaced by insurgents calling themselves the Executive and Advisory Councils.

Notwithstanding the warrantless attacks against myself and other officers of the Council of Regency by the State of Hawai‘i, I am hopeful that its current leadership, as the administration of the occupying State, will begin to meet with the Council of Regency in order to establish a “cooperative relationship” provided by international humanitarian law. In the meantime, the Royal Commission will continue to fulfill its mandate of investigating war crimes and human rights violations and providing periodic reports with the purpose of holding perpetrators accountable under international humanitarian law and human rights law.

²⁶ To see how the law of occupation plays a crucial role with the pandemic here in the islands and the protection of the “civilian population and the correct administration of the occupied territory,” read the latest article on the Hawaiian Kingdom Blog titled *Can Hawai‘i Successfully Live with COVID-19 Without a Vaccine? The Answer is Yes But Under the International Law of Occupation* (May 19, 2020) (online at: <https://hawaiiankingdom.org/blog/can-hawaii-successfully-live-with-covid-19-without-a-vaccine-the-answer-is-yes-but-under-the-international-law-of-occupation/>).

²⁷ David Keanu Sai, “United States Belligerent Occupation of the Hawaiian Kingdom”, in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom* 109-111 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

Sincerely,



David Keanu Sai, Ph.D.

Head, Hawaiian Royal Commission of Inquiry

cc: David Ige, Governor
Josh Green, Lieutenant Governor
Ron Kouchi, President of the Senate
Scott Saiki, Speaker of the House of Representatives
Kenneth Hara, Adjutant General
Kirk Caldwell, City & County of Honolulu Mayor
Harry Kim, Hawai'i County Mayor
Michael Victorino, Maui County Mayor
Derek Kawakami, Kaua'i County Mayor
Brian Schatz, United States Senator
Mazie Hirono, United States Senator
Ed Case, United States Representative
Tulsi Gabbard, United States Representative

enclosures