



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/>

July 20, 2020

Bill Burding
President-Elect, ALTA Board of Governors
Orange Coast Title Company
1551 N Tustin Avenue, Ste 300
Santa Ana, CA 92705-8638

Re: Royal Commission of Inquiry's Preliminary Report—*Legal Status of Land Titles throughout the Realm*

Dear Mr. Burding:

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, 2019.¹ Its mandate is to investigate war crimes and human rights violations committed within the territorial jurisdiction of the Hawaiian Kingdom since the United States’ unlawful overthrow of the Hawaiian government on January 17, 1893 and its subsequent belligerent occupation that has ensued since.

Article 1(3) of the proclamation states: “The results of the investigation will be presented to the Council of Regency, the Contracting Powers of the 1907 Hague Convention, IV, respecting the Laws and Customs of War on Land, the Contracting Powers of the 1949 Geneva Convention, IV, relative to the Protection of Civilian Persons in Time of War, the Contracting Powers of the 2002 Rome Statute, the United Nations, the International Committee of the Red Cross, and the National Lawyers Guild in the form of a report.”

The Royal Commission has acquired legal opinions from the following experts in international law: on the subject of the continuity of the Hawaiian Kingdom under

¹ Proclamation of the Council of Regency establishing the Royal Commission of Inquiry (17 April 2019) (online at: https://hawaiiankingdom.org/pdf/Proc_Royal_Commission_of_Inquiry.pdf.)

international law, Professor Matthew Craven from the University of London, SOAS, School of Law; on the subject of the elements of war crimes committed in the Hawaiian Kingdom since 1893, Professor William Schabas, Middlesex University London, School of Law; and on the subject of human rights violations in the Hawaiian Kingdom and the right of self-determination by the Hawaiian citizenry, Professor Federico Lenzerini, University of Siena, Italy, Department of Political and International Studies. These experts, to include the Head of the Royal Commission, are the authors of chapters 1, 2, 3, 4, and 5 of Part II of the Royal Commission’s publication, *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, which a hard copy of the book is enclosed.² The lawful authority of the Council of Regency has also been the subject of a second legal opinion by Professor Lenzerini, which can be accessed online.³

In *Restatement of the Law (Third) Foreign Relations Law of the United States*, it recognizes that when “determining whether a rule has become international law, substantial weight is accorded to...the writing of scholars.”⁴ United States courts have acknowledged that the “various Restatements have been a formidable force in shaping the disciplines of the law covered [and] they represent the fruit of the labor of the best legal minds in the diverse fields of law covered.”⁵ The *Restatement* drew from Article 38(1)(d) of the Statute of the International Court of Justice, which provides that “the teachings of the most highly qualified publicists of the various nations [are] subsidiary means for the determination of rules of [international law].”⁶ These “writings include treatises and other writings of authors of standing.”⁷ Professors Craven, Schabas, and Lenzerini are “authors of standing” and their legal opinions are “sources” of the rules of international law.

In his legal opinion concerning the authority of the Council of Regency, 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;”⁸ (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

² David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom* 163, 168 (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)).

³ 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).

⁴ *Restatement of the Law (Third) Foreign Relations Law of the United States* §103(2)(c) (1987).

⁵ Black’s Law, 6th ed., (1990).

⁶ Statute of the International Court of Justice, Article 38(1)(d) (online at: <https://www.icj-cij.org/en/statute>).

⁷ *Restatement of the Law (Third)*, §103, reporter’s notes, 38.

⁸ *Lenzerini Legal Opinion*, para. 9.

domestic and international level;”⁹ 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.”¹⁰ 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.”¹¹

At the international level, the Council of Regency represented the Hawaiian Kingdom in international arbitral proceedings at the Permanent Court of Arbitration, in *Larsen v. Hawaiian Kingdom*, from 1999-2001, where the undersigned served as the Hawaiian Kingdom’s Agent and head of its legal team.¹² 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, a Hawaiian subject. The *American Journal of International Law*, reported:

At the center of the [Permanent Court of Arbitration] 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.¹³

⁹ *Id.*

¹⁰ *Id.*, para. 10.

¹¹ *Id.*, para. 12.

¹² Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at: <https://pca-cpa.org/en/cases/35/>); see also the documentary on the oral hearings of the *Larsen* case at the Permanent Court of Arbitration (online at: <https://www.youtube.com/watch?v=tmpXy2okJlg&t=269s>).

¹³ 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).

A recent documentary has garnered public attention of the Council of Regency's strategy to expose the prolonged occupation in order to bring the United States into compliance with international humanitarian law.¹⁴ Additionally, the Smithsonian Institute has recently released a documentary series titled *Language of a Nation* that uncovers the true history of the Hawaiian Kingdom and its current situation of occupation.¹⁵

On July 16, 2020, the Royal Commission completed its third preliminary report on the subject of the legal status of land titles throughout the Hawaiian Islands, which can be accessed online.¹⁶ This letter of correspondence is to inform the American Land Title Association (ALTA) that based upon the facts and the relevant laws of the time, all land transactions done after January 17, 1893, to include deeds and mortgages, are void, not voidable.¹⁷

The public has become aware of the status of land titles and mortgages in the Hawaiian Islands, and, consequently, title insurance companies should be aware that notices of claims will be filed with the appropriate title insurance companies in accordance with the provisions of the owner's and lender's policies. This preliminary report provides the proof of loss for the insured to include in the notice of claim that describes the defect in both titles and mortgages.

In this preliminary report, however, the Council of Regency is prepared to provide remedial prescriptions that will establish title to real property thereby remedying fee-simple mortgages, or establish up to thirty-year leases on Crown Lands thereby transforming fee-simple mortgages into leasehold mortgages in compliance with Hawaiian Kingdom law that were previously held by individuals or lenders.¹⁸ The Royal Commission does acknowledge section 5(b) of both ALTA's Owner's Policy (6/17/06), and Loan Policy (6/17/06), to wit:

The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost...to do any other act that in its opinion may

¹⁴ Documentary, *The Acting Council of Regency: Exposing the American Occupation of the Hawaiian Kingdom* (online at https://www.youtube.com/watch?v=CF6CaLAMh98&feature=emb_logo).

¹⁵ Smithsonian Institute's *Language of a Nation*: Episode #1—*Birth of a Literate Nation* (online at: https://www.youtube.com/watch?v=zD1xmjbv548&feature=emb_logo); Episode #2—*Hawaiian Diplomacy* (online at: https://www.youtube.com/watch?v=39QdOVqQNSE&feature=emb_logo); and Episode #3—*How to Overthrow a Government* (online at: https://www.youtube.com/watch?time_continue=1273&v=A8B0I1LhagM&feature=emb_logo).

¹⁶ Information on the Royal Commission of Inquiry, to include its publication and reports can be accessed online at <https://hawaiiankingdom.org/royal-commission.shtml>. Information on the Council of Regency can be accessed online at <https://hawaiiankingdom.org/index.shtml>.

¹⁷ Royal Commission of Inquiry's Preliminary Report—*Legal Status of Land Titles throughout the Realm* 43 (2020) (online at: https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Land_Titles.pdf).

¹⁸ *Id.*, 46-47.

be necessary or desirable to establish the Title [or the lien of the Insured Mortgage], as insured, or to prevent or reduce loss or damage to the Insured.

If ALTA, whose members include title insurance companies, are acceptable to the Council of Regency's proposed remedial prescriptions it may contact the undersigned at the address or email above. However, should the title insurance companies fail to "establish the Title [or the lien of the Insured Mortgage]" recognized by Hawaiian Kingdom law, it must pay the insured the amount covered by the owner or loan policies.

In the event the title companies refuse to comply with the terms of their policies, the Royal Commission shall view the payments of the premiums paid by owners and borrowers under both policies as evidence of the war crime of pillaging. For the purposes of international humanitarian law, the amount covered under the policies is considered personal property of the insured and depriving the owner of this property constitutes pillaging and satisfies the requisite element of *mens rea*.¹⁹ According to Professor Schabas, "[t]he *actus reus* of pillage [in the Hawaiian Islands] consists of the appropriation of property belonging to members of the civilian population without the consent of the owner."²⁰

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. The Royal Commission also acknowledges 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."²¹

As a government of an occupied State, the Council of Regency's foremost priority is to protect and enforce the "rights and interests of the civilian population" of the Hawaiian Kingdom in accordance with international humanitarian law and human rights law.

Sincerely,



David Keanu Sai, Ph.D.
Head, Hawaiian Royal Commission of Inquiry

¹⁹ 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* 163, 168 (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)).

²⁰ *Id.*

²¹ *Lenzerini Legal Opinion*, para. 20.

cc: Mary O'Donnell, President, ALTA Board of Governors
Don Kennedy, Treasurer, ALTA Board of Governors
Richard H. Welshons, Chair, Finance Committee, ALTA Board of Governors
Jack Rattikin III, Chair, A&A Section, ALTA Board of Governors
Daniel M. Wold, Chair, Und Section, ALTA Board of Governors
Maureen Pfaff, Representatives, A&A Section, ALTA Board of Governors
Sylvia A. Smith-Turk, Representatives, A&A Section, ALTA Board of Governors
David Townsend, Und Section, ALTA Board of Governors
Robert J. Wineman, Representative A&A Section, ALTA Board of Governors
Cynthia D. Blair, Immediate Past President, ALTA Board of Governors
Diane Tomb, Chief Executive Officer, ALTA (via email without enclosure)
Steve Gottheim, Senior Counsel, ALTA (via email without enclosure)
David Ige, Governor, State of Hawai'i (without enclosure)
Josh Green, Lieutenant Governor, State of Hawai'i (without enclosure)
Ron Kouchi, President of the Senate, State of Hawai'i (without enclosure)
Scott Saiki, Speaker of the House of Representatives, State of Hawai'i (without enclosure)
Clare E. Connors, Attorney General, State of Hawai'i (without enclosure)
Kenneth Hara, Adjutant General, State of Hawai'i (without enclosure)
Kirk Caldwell, City & County of Honolulu Mayor (without enclosure)
Harry Kim, Hawai'i County Mayor (without enclosure)
Michael Victorino, Maui County Mayor (without enclosure)
Derek Kawakami, Kaua'i County Mayor (without enclosure)
Brian Schatz, United States Senator, State of Hawai'i (without enclosure)
Mazie Hirono, United States Senator, State of Hawai'i (without enclosure)
Ed Case, United States Representative, State of Hawai'i (without enclosure)
Tulsi Gabbard, United States Representative, State of Hawai'i (without enclosure)
Victor Brock, President, Mortgage Bankers Association of Hawai'i (via email without enclosure)
Wendy Oshiro, Vice President, Mortgage Bankers Association of Hawai'i (via email without enclosure)
Lisa Tarumoto, Treasurer, Mortgage Bankers Association of Hawai'i (via email without enclosure)
Patsy Saiki, Secretary, Mortgage Bankers Association of Hawai'i (via email without enclosure)
Yvonne Ako, Director, Mortgage Bankers Association of Hawai'i (via email without enclosure)
Pete Castillejos, Director, Mortgage Bankers Association of Hawai'i (via email without enclosure)

Jennifer Coutts, Director, Mortgage Bankers Association of Hawai'i (via email without enclosure)

Leonard Fernandez, Director, Mortgage Bankers Association of Hawai'i (via email without enclosure)

Anders Hostelley, Director, Mortgage Bankers Association of Hawai'i (via email without enclosure)

Mark James, Director, Mortgage Bankers Association of Hawai'i (via email without enclosure)

Daren Kimura, Director, Mortgage Bankers Association of Hawai'i (via email without enclosure)

Reina Miyamoto, Director, Mortgage Bankers Association of Hawai'i (via email without enclosure)

Linda Nakamura, Director, Mortgage Bankers Association of Hawai'i (via email without enclosure)

Rusty Rasmussen, Director, Mortgage Bankers Association of Hawai'i (via email without enclosure)

Keith Rogers, Director, Mortgage Bankers Association of Hawai'i (via email without enclosure)

Kelly Tasaki, Director, Mortgage Bankers Association of Hawai'i (via email without enclosure)

enclosure