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August 12, 2015

**FedEx-Delivered**

Denis Desnoyers, Superintendent  
Officer in Charge  
Sensitive and International Investigations  
National Division  
155 McArthur Avenue  
Ottawa, ON K1A0R4

***Re: Complaint of War Crimes Committed in the Hawaiian Islands***

Dear Superintendent Desnoyers,

This is in response to your letter dated July 2, 2015. I apologize for not responding sooner on this urgent matter, but I was in Paris, France, over the summer and just returned on August 2, 2015. On behalf of my client, Mr. Chase Kaho'okahi Kanuha, I would like to respond with regard to the decision that was made and to provide more clarity and specifics of the alleged crimes after I was able to get more information, which was absent from the original complaint.

In your letter, you stated "it was determined that Canada does not have jurisdiction over the issues that have been brought forward based on the requirements in section 8 of the *Crimes Against Humanity and War Crimes act.*" First, I would like to acknowledge and thank your office for initiating a preliminary inquiry and consulting with the Department of Justice's War Crimes Program regarding war crimes being committed in the Hawaiian Islands. While my client is not a Canadian citizen, the alleged perpetrators of war crimes committed against him stemming from the unlawful arrest and confinement of his person on the summit of Mauna Kea does fulfill the requirement under section 8(a)(i). This section provides that persons outside of Canada may be prosecuted for war crimes if they were "employed by Canada in a civilian or military capacity." The alleged perpetrators were employed in both civilian and military capacities "at the time the offense is alleged to have been committed."

Before identifying these alleged perpetrators, I will first need to clarify the status of the State of Hawai'i under international law since its officers are implicated in the war crimes committed against my client as pointed out in the my written complaint dated May 11, 2015. In consultation with Dr. Sai, he provided me an opinion on the status of the State of Hawai'i, being an armed force and not a *de jure* government, which is enclosed herein as

an Attachment “I.” Dr. Sai concluded, “Although pretending to be a *de jure* government as a component State of the United States of America, the State of Hawai‘i, as an armed force, operates in a military capacity, and, therefore, would fall under section 7 of Canada’s *Crimes Against Humanity and War Crimes Act* and its definitions of “military commanders” and “superiors” provided under section 7(6).”

Canada’s partnership in TMT is called the *Association of Canadian Universities for Research in Astronomy* (ACURA). ACURA includes the Canadian Government’s National Research Council, the University of Waterloo, University of Victoria, University of Toronto, University of Montreal, University Lethbridge, the University of British Columbia, and Dynamic Structures, Ltd. On April 6, 2015, Prime Minister Stephen Harper announced Canada’s intention to provide up to \$243.5 million dollars. The majority of the moneys will be spent in Canada, which includes a precision-steel enclosure by Dynamic Structures, Ltd., and adaptive optics technologies to be developed by the Government’s National Research Council in partnership with Canadian companies.

TMT hired the Honolulu based law firm Watanabe Ing LLP to represent them in Hawai‘i and is primarily responsible for the war crimes committed against my client by orchestrating and ordering the unlawful detainment carried out by State of Hawai‘i enforcement officers. James Douglas Ing is the primary attorney in charge of TMT matters on the summit of Mauna Kea.

The other civilians employed by TMT include the CEO and President of Goodfellow Bros, Inc., J. Stephen Goodfellow, and Chad Goodfellow, respectively, who was hired as the primary contractor for construction of the telescope on the summit of Mauna Kea. Other civilians included are the employees of Goodfellow, Inc.

Those individuals operating in a military capacity, and by direction of Douglas Ing in a civilian capacity, include, State of Hawai‘i armed force Governor David Ige, Attorney General Doug Chin, Deputy Attorney Generals Linda Chow and Julie China, and Director of the Department of Land and Natural Resources Suzanne D. Case, Hawai‘i County Police Officer Captain Richard Sherlock, Lieutenant Dareen Horio, Supervising Officer Nelson Acob, Reporting Officer James Pacheco, and arresting Officer Kelsey K. Kobayashi (Attachment “II”).

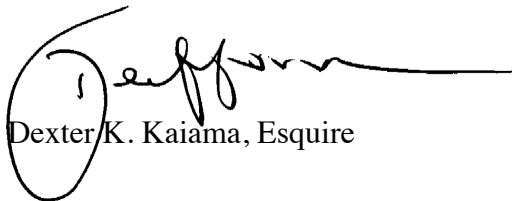
The war crimes committed by Doug Ing include ordering the arrest of my client, which is the war crime of unlawful confinement, and being an accomplice in depriving my client a fair and regular trial. Evidence of being an accomplice in the deprivation of a fair and regular trial, the *Hawai‘i Tribune-Herald* reported on July 19, 2015:

“In late April, in the wake of the initial 31 protestors’ arrest, Ing, who represents the TMT International Observatory, participated in at least two conference calls with Hawaii Deputy Attorneys General Linda Chow and

Julie China, as well as University of Hawaii attorney Ian Sandison and Hawaii County prosecutors,” reported the Tribune-Herald. “Shortly after an April 20 conference call, Ing sent out a document entitled ‘TMT— Legal argument re prosecution of protesters.’ ‘Thank you for joining the call today,’ Ing wrote in an email addressed to Elizabeth ‘Brit’ Bailey, the Hawaii County deputy prosecuting attorney assigned to the protesters’ cases. ‘In follow up, attached is the memo regarding sovereignty, the Kingdom, lack of jurisdiction issues and Judge Cardoza’s ruling. This was prepared by Ross Shinyama of our office. Feel free to contact him if you have questions.’ The nine-page document references a number of previous court rulings and outlines arguments for why TMT believes those arrested during protests against the \$1.4 billion project should be prosecuted for their crimes. ‘There is no dispute that the protestors’ conduct in obstructing state and county highways and road occurred within the State of Hawaii,’ reads the memo. ‘The protestors are therefore subject to the criminal jurisdiction of the State of Hawaii.’ The document also states that the existence of the Kingdom of Hawaii is not relevant to the issue of whether the state has jurisdiction over the protestors and their conduct. He referenced a 2013 case involving Kona resident Dennis Kaulia, in which the Hawaii Supreme Court held that ‘individuals claiming to be citizens of the Kingdom (of Hawaii) and not the State (of Hawaii) are not exempt from application of the State’s laws (Attachment “III”).’”

Accordingly, having provided the supplemental information, which meets the requirements of Section 8(a)(i), on behalf of my client and to prevent further imminent commissions of war crimes and the destruction of Mauna a Wakea, demand is hereby made for the immediate investigation and prosecution of the perpetrators identified herein.

Sincerely,



Dexter K. Kaiama, Esquire

enclosures

cc: Lt. Col. Peterson  
Commander, Army Garrison-Pohakuloa  
By his Deputy Garrison Commander  
Email: [gregory.r.fleming4.civ@mail.mil](mailto:gregory.r.fleming4.civ@mail.mil)

RCMP Superintendent Denis Desnoyers  
August 12, 2015  
Re: Complaint for War Crimes committed in the Hawaiian Islands  
Page 4

International Criminal Court  
Office of the Prosecutor  
Communications  
Email: [otp.informationdesk@icc-cpi.int](mailto:otp.informationdesk@icc-cpi.int)

Office of the United Nations High Commissioner for Human Rights  
Human Rights Council Branch-Complaint Procedure Unit  
OHCHR- Palais Wilson  
United Nations Office at Geneva  
Email: [InfoDesk@ohchr.org](mailto:InfoDesk@ohchr.org)

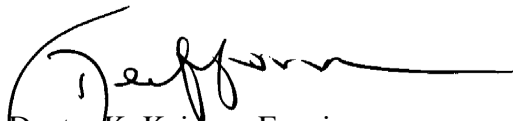
### CERTIFICATION

I, Dexter K. Kaiama, *Esq.*, attorney for the war crime victims, certify that the documents referred to in this amended complaint, and hereunder listed as Attachments “I”-“III,” are true and accurate copies of the originals.

### LIST OF ATTACHMENTS TO THE AMENDED COMPLAINT

#### Attachment

- “I”            Brief by David Keanu Sai, Ph.D., regarding the status of the State of Hawai‘i under the laws and customs of war, August 9, 2015.
- “II”           State of Hawai‘i Arrest Report, April 2, 2015.
- “III”          Hawai‘i Tribune Herald article, “TMT attorney had inside track on legal issues,” June 19, 2015.



Dexter K. Kaiama, Esquire

# Attachment “I”

Dr. Keanu Sai  
Political Scientist  
P.O. Box 2194 • Honolulu, HI 96805-2194 • Phone: 808-383-6100 • E-Mail: keanu.sai@gmail.com

August 9, 2015

Law Offices of Dexter K. Kaiama  
111 Hekili Street, Suite A1607  
Kailua, Hawai'i 96734

Re: The status of the State of Hawai'i under the laws and customs of war

Dear Mr. Kaiama,

Please find herein below my answer to your request that I provide you my opinion as to the status of the State of Hawai'i under the laws and customs of war. This opinion incorporates, as though fully set forth in this opinion, the information on the State of Hawai'i in my *War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands* (May 7, 2015) that accompanied your complaint submitted with the Canadian authorities dated May 11, 2015.

While the State of Hawai'i cannot claim to be a government *de jure* or *de facto*, nor a military government established in accordance with United States Army Field Manual 27-5—Civil Affairs Military Government, customary international law defines this entity as an armed force for the United States of America. Military manuals define armed forces as “organized armed groups which are under a command responsible to that party for the conduct of its subordinates.”<sup>1</sup> According to Henckaerts and Doswald-Beck, “this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command,”<sup>2</sup> and that this “definition of armed forces builds upon earlier definitions contained in the Hague Regulations and the Third Geneva Convention which sought to determine who are combatants entitled to prisoner-of-war status.”<sup>3</sup> Article 1 of the 1907 Hague Convention, IV, provides that

“The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: (1) To be commanded by a person responsible for his subordinates; (2) To have a fixed distinctive emblem recognizable at a distance; (3) To carry arms

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<sup>1</sup> JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, vol. I, 14 (2009).

<sup>2</sup> *Id.*, at 15.

<sup>3</sup> *Id.*

openly; and (4) To conduct their operations in accordance with the laws and customs of war.”

The laws and customs of war during occupation applies only to territories that come under the effectiveness of either the occupier’s military or an occupier’s armed force and that the “occupation extends only to the territory where such authority has been established and can be exercised.”<sup>4</sup> According to Ferraro, “occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts.”<sup>5</sup> Although unlawful, it is a fact that the United States created the State of Hawai‘i through congressional action and signed into United States domestic law by its President, Dwight D. Eisenhower, in 1959. It is also a fact that the United States approved the constitution of the State of Hawai‘i that provides for its organizational structure, despite the territorial limitation of congressional action.

As an armed force, the State of Hawai‘i established its authority over 137 islands,<sup>6</sup> “together with their appurtenant reefs and territorial and archipelagic waters.”<sup>7</sup> These islands include the major islands of Hawai‘i, Maui, O‘ahu, Kaua‘i, Molokai, Lana‘i, Ni‘ihau, and Kaho‘olawe. It is the effectiveness of the control exercised by the State of Hawai‘i over this territory, as an armed force for the United States, which triggers the application of occupation law.

Elements defining the State of Hawai‘i as an armed force in accordance with Article 1, Hague Convention, IV, respecting the Laws and Customs of War on Land, are as follows:

- *Allegiance to the United States*—The State of Hawai‘i, as an Armed Force, bears its allegiance to the United States where its public officers, to include its Governor, take the following oath of office: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as [...] to best of my ability;”<sup>8</sup>
- *Commanded by a Person Responsible for His Subordinates*—A Governor who is elected by U.S. citizens in Hawai‘i is head of the State of Hawai‘i. The Governor is responsible for the execution of its laws from its legislature and to carry out the

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<sup>4</sup> 1907 Hague Convention, IV, Article 42.

<sup>5</sup> TRISTAN FERRARO, *Determining the beginning and end of an occupation under international humanitarian law*, 94 (no. 885) INT’L REV RED CROSS 133, 134 (Spring 2012).

<sup>6</sup> “Hawai‘i Facts and Figures” (December 2014), State of Hawai‘i Department of Business, Economic Development & Tourism.

<sup>7</sup> State of Hawai‘i Constitution, Article XV, section 1, available at <http://lrbhawaii.org/con/>.

<sup>8</sup> *Id.*, Article XVI, sec. 4.

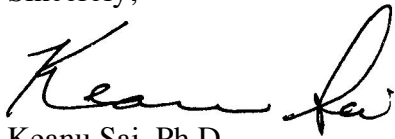


decisions by its courts. The Governor is also the “commander in chief of the armed forces of the State and may call out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion.”<sup>9</sup> The Governor’s subordinates include all “executive and administrative offices, departments and instrumentalities of the state government;”<sup>10</sup>

- *Fixed Distinctive Emblem Recognizable at a Distance*—According to its constitution, “The Hawaiian flag shall be the flag of the State;”<sup>11</sup>
- *Carry Arms Openly*—Law enforcement officers of the State of Hawai‘i, to include the Sheriff’s Division, Department of Land and Natural Resources, and the police of the State’s four Counties, all openly carry arms. Also included are the State of Hawai‘i Department of Defense’s Army National Guard and Air National Guard who openly carry arms while in tactical training;
- *Conduct Operations in Accordance with the Laws and Customs of War*—As the Governor is the commander in chief of the State’s Armed Forces, and is responsible for the suppression or prevention of insurrection or lawless violence, as well as repelling an invasion, the State of Hawai‘i is capable of conducting operations in accordance with the laws and customs of war during occupation. The State of Hawai‘i Department of Defense’s Army National Guard and Air National Guard are trained in the laws and customs of war, and has been deployed to international armed conflicts throughout the world, *i.e.* Iraq war, Afghanistan war, Vietnam war, Korean war, World War II, and World War I;<sup>12</sup>

Although pretending to be a *de jure* government as a component State of the United States of America, the State of Hawai‘i, as an armed force, operates in a military capacity, and, therefore, would fall under section 7 of Canada’s *Crimes Against Humanity and War Crimes Act* and its definitions of “military commanders” and “superiors” provided under section 7(6).

Sincerely,



Keanu Sai, Ph.D.

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<sup>9</sup> *Id.*, Article V, sec. 5.

<sup>10</sup> *Id.*, sec. 6.

<sup>11</sup> *Id.*, Article XV, sec. 3.

<sup>12</sup> State of Hawai‘i Department of Defense, available at <http://dod.hawaii.gov/>.

# Attachment “III”

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Star



By CHRIS D'ANGELO Hawaii Tribune-Herald

A private attorney for the Thirty Meter Telescope was allowed in on state and county officials' conversations about jurisdictional issues on Mauna Kea, according to documents obtained by the Tribune-Herald.

Additionally, J. Douglas Ing, of Honolulu-based Watanabe Ing LLC, provided those officials with TMT's legal arguments supporting prosecution of the protesters who were arrested for blocking construction of the telescope atop Hawaii's tallest mountain.

In late April, in the wake of the initial 31 protesters' arrest, Ing, who represents the TMT International Observatory, participated in at least two conference calls with Hawaii Deputy Attorneys General Linda Chow and Julie China, as well as University of Hawaii attorney Ian Sandison and Hawaii County prosecutors, emails show.

Asked why an attorney for TMT would have been included in such conversations and allowed to offer legal arguments, Joshua Wisch, a spokesman for state Attorney General Doug Chin, pointed out that a number of the arrests April 2 involved protesters trespassing on the TMT site.

"Footage of people trespassing on the TMT site was videotaped by TMT security," Wisch said. "As a result, the purpose of the discussions ... was likely to coordinate with the Hawaii County prosecutor to make sure they had the necessary information to proceed with the cases, and so enforcement personnel would understand what evidence would be required for any future potential enforcement actions."

The conference calls were arranged by Sandison. Reached via email, Sandison referred the Tribune-Herald to UH spokesman Dan Meisenzahl, who deferred to the AG's office.

Shortly after an April 20 conference call, Ing sent out a document entitled "TMT - Legal argument re prosecution of protesters."

"Thank you for joining the call today," Ing wrote in an email addressed to Elizabeth "Britt" Bailey, the Hawaii County deputy prosecuting attorney assigned to the protesters' cases.



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"In follow up, attached is the memo regarding sovereignty, the Kingdom, lack of jurisdiction issues and Judge Cardoza's ruling. This was prepared by Ross Shinyama of our office. Feel free to contact him if you have questions."

The nine-page document references a number of previous court rulings and outlines arguments for why TMT believes those arrested during protests against the \$1.4 billion project should be prosecuted for their crimes.

"There is no dispute that the protesters' conduct in obstructing state and county highways and roads occurred within the State of Hawaii," reads the memo. "The protesters are therefore subject to the criminal jurisdiction of the State of Hawaii."

The document also states that the existence of the Kingdom of Hawaii is not relevant to the issue of whether the state has jurisdiction over the protesters and their conduct. He referenced a 2013 case involving Kona resident Dennis Kaula, in which the Hawaii Supreme Court held that "individuals claiming to be citizens of the Kingdom (of Hawaii) and not of the State (of Hawaii) are not exempt from application of the State's laws."

Sovereignty has been a resounding issue for TMT protesters, who have taken a firm stance against further telescope development on the mountain they consider sacred.

During an initial appearance April 28 in Hilo District Court, Oahu attorney Dexter Kaiama, representing seven of the defendants, said he planned to argue that the Hawaiian Kingdom still lawfully exists and that the United States doesn't have jurisdiction over the matter. In early May, during a second proceeding, this time in Waimea, a number of defendants demanded the hearings be moved back to Hilo.

The documents obtained by the newspaper also included several photographs of the April 2 protest, a map outlining the different jurisdictions along Mauna Kea Access Road and an April 17 email from Hawaii County Deputy Prosecuting Attorney Darien Nagata introducing others to Bailey, who is assigned to the Waimea courthouse.

"Britt has already charged/filed Criminal Trespass 2 (HRS 708-814) cases and it is anticipated that we will be charging additional charges of Obstructing (HRS 711-1105) on other cases referred to our office," she wrote.

"For future cases, we would stress that we need to have the return to Hamakua Court (versus South Hilo Court) should the defendant(s) bail out and be provided with a future court date and courthouse."

Kahookahi Kanuha, a protest leader who has been arrested twice, said allowing Ing to participate in the calls is yet another example of corruption and the state going above and beyond to protect the rights of private interests, while working against the other.

"How is protecting the rights of foreign entities over the rights of people of this place a sign of respect to the host culture?" Kanuha said, referring to comments made by Gov. David Ige in May.

This week, Ige signed a new emergency rule that prohibits camping and restricts public access on Mauna Kea. State officials say the rules are necessary to address an "imminent peril" to public safety and natural resources resulting from the ongoing protests.

Williamson Chang, a professor of law at the University of Hawaii Richardson School of Law and TMT opponent, filed a petition Wednesday seeking to repeal the rule.

He argues it prevents telescope opponents from legally exercising their rights to peacefully protest.

Email Chris D'Angelo at [cdangelo@hawaii.tribune-herald.com](mailto:cdangelo@hawaii.tribune-herald.com).

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