

Solidarity Speaks: Aotearoa Citizen Alleges War Crimes in Hawai‘i

MERA PENEHIRA

Although I have been a frequent and grateful visitor to the ancestral islands of Hawai‘i over the last two decades, it wasn’t until early 2015 that I became fully cognizant that these were lands and waters under an illegal occupation by the US government since the Spanish-American War. The 1851 treaty between the Hawaiian Kingdom and the British Crown, as well as our connection as peoples of the Pacific, culminates a significant relationship between Aotearoa (New Zealand) citizens and Hawai‘i. As a wahine Māori and citizen of Aotearoa, I felt compelled to make a stand in solidarity with our tuakana of Hawai‘i in calling for an end to the continued illegal occupation of these ancestral lands. This article presents a media release and the official complaint I filed with the attorney general of Aotearoa alleging war crimes by the illegal occupiers of Hawai‘i, the US government. It concludes with the woefully inadequate response from the government of Aotearoa.

CORRESPONDENCE MAY BE SENT TO:
Mera Penehira
School of Indigenous Graduate Studies
Te Whare Wānanga o Awanuiārangi
Email: Mera.penehira@wananga.ac.nz

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Background and Introduction

There is heightened momentum in the political struggle and activism being undertaken by Native and Indigenous academics in our academic institutions and communities (Smith, 2007; Pihama, 2005; Penehira, 2011). In Hawai‘i, a “growing body of historical work by a new generation of Native Hawaiian scholars” prompted a well-known historian to change the subtitle of his book from *The Story of America’s Annexation of the Nation of Hawai‘i* to *The History of the American Occupation of Hawai‘i*. Coffman wrote, “In the history of Hawai‘i, the might of the United States does not make it right” (Coffman, 2016, p. xvi).

Many Native and Indigenous academics assert that it is not acceptable simply to theorize, research, and write about the issues of colonization, historical trauma, and the atrocities being conducted on our lands and in our

waters. A kaupapa Māori approach demands theory, research, *and* action (G. H. Smith, 2000; L. T. Smith, 1999; Pihama, 2005). We must make and take opportunities to stand alongside our whānau, hapū, iwi, and communities (Mikaere, 2003; Mutu, 2011). We follow a long line of activists, protestors, and protectors who have demonstrated the pressing need for this work to continue and have shown us how to conduct ourselves with power, strength, and dignity. Ka whawhai tonu tātou! Ake! Ake! Ake! We will continue the struggle! Always! Always! Always!

Te Whare Pora Hou is a Māori and Pacific women’s political advocacy collective in Aotearoa. The following is a copy of the media communication released by Te Whare Pora Hou on July 28, 2015.



Media Release

Allegations of War Crimes against New Zealand Citizen in Hawai‘i

“Dr Mera Lee-Penehira, from the University of Auckland, has this week lodged a criminal complaint with Attorney General Christopher Finlayson QC, under the International Crimes and International Criminal Court Act 2000.

“The U.S. unilaterally seized the islands of Hawai‘i back in 1898 for military interests during the Spanish-American War, and has remained there as an illegal occupier ever since. This is about acknowledging and righting the wrongdoings of the U.S. in Hawai‘i,” says Dr Lee-Penehira. A recent visit from leading political scientist Dr Keanu Sai of the University of Hawai‘i, who met with tribal and political leaders, has brought to the fore the illegal occupation of Hawai‘i, and

the implications for New Zealand. He states that, “In 2001, the Permanent Court of Arbitration at The Hague, acknowledged that, in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States. By virtue of the 1851 treaty between the Hawaiian Kingdom and the British Crown, as well as our connection as peoples of the Pacific, New Zealand citizens have a special relationship with Hawai'i.”

Dr Lee-Penehira has been to Hawai'i on a number of occasions in recent years, and last month visited Mauna a Wākea, a sacred site at the centre of contention between the U.S. government and Native Hawaiians. The planned construction of the world's largest telescope, the TMT project, on this sacred site, has received much media attention of late and many New Zealand citizens are concerned about this issue.

Marama Davidson, member of Maori and Pacific women's political advocacy group Te Whare Pora Hou, states, “Protectors of Mauna a Wākea have been occupying the sacred ancestral mountain on the island of Hawai'i for over 120 days now, to prevent the construction of this telescope. We stand in solidarity with the protectors in efforts to stop this destruction. This is a direct attack on the physical, spiritual and cultural integrity of the maunga, and the wellbeing of both the environment and people.”

In lodging the complaint Dr Lee-Penehira is invoking her right as a New Zealand citizen under the 1851 treaty. “We need to challenge everything the U.S. government does in Hawai'i, because on the basis of law, it is quite simply wrong. The historical documentation is clear, that the Hawaiian Kingdom continues to exist under an illegal occupation by the U.S. and that the laws of occupation must be complied with. As a victim of war crimes committed in Hawai'i, this cannot be allowed to continue to take place with impunity.”

The alleged war crimes at the centre of the complaint include both unlawful taxation by the State of Hawai'i, and the destruction of property by the State of Hawai'i for allowing the construction of telescopes on the summit of Mauna a Wākea.

Ms Davidson supports the complaint, saying, “These allegations of war crimes committed in Hawai'i are very serious, and if true will have a profound effect on all New Zealanders as well as the Trans Pacific Partnership negotiations that are ironically taking place this week in Hawai'i. It is now incumbent on New Zealand authorities to either prove that the Hawaiian Kingdom does not exist under international law and that there is no Hawaiian-British treaty, or initiate a criminal investigation into the allegations of war crimes committed against a New Zealand citizen.”



War Crimes Complaint

The following is a copy of the criminal complaint I filed with the attorney general of Aotearoa/New Zealand, alleging war crimes committed in the islands of Hawai'i against me as a New Zealand citizen. I am grateful for the expert advice and assistance provided by political

scientist Dr. Keanu Sai in compiling the complaint. This letter was submitted on July 24, 2015, and highlights the continued illegal occupation of Hawai'i by the United States.

Hon Christopher Finlayson QC
Attorney General
Crown Law Office
Level 3
Justice Centre
19 Aitken Street
Wellington, 6011
New Zealand

Re: Criminal Complaint under Section 8(b) and 11(2)(b) of the *International Crimes and International Criminal Court Act 2000* arising from war crimes committed in the Hawaiian Islands against Dr Mera Lee-Penehira, a New Zealand citizen

Dear Hon Christopher Finlayson QC:

I am a New Zealand citizen who is invoking my right under the 1851 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the British Crown, which has not been cancelled or voided,¹ during my three visits of the Hawaiian Islands from 16–28 May 2014, 13–19 April 2015, and 29 May to 6 June 2015. Attached is a copy of my passport. Article VIII provides:



1. David Keanu Sai, War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands, para. 1.9 & 9.9, Appendix III (July 18, 2015).

“British subjects in the Hawaiian Islands shall be at liberty to buy from and to sell to whom they like, without being restrained or prejudiced by any monopoly, contract, or exclusive privilege of sale or purchase whatever; and absolute freedom shall be allowed in all cases, to the buyer and seller, to bargain and fix the price of any goods, wares, or merchandise, imported into, or exported from, the Hawaiian Islands, as they shall see good; observing the laws and established customs of those Islands. The same privileges shall be enjoyed in the dominions of Her Britannic Majesty, by Hawaiian subjects, under the same conditions.

The subjects of either of the contracting parties, in the territories of the other, shall receive and enjoy full and perfect protection for their persons and property, and shall have free and open access to the courts of justice in the said countries, respectively, for the prosecution and defense of their just rights; and they shall be at liberty to employ in all causes, the advocates, attorneys, or agents, of whatever description, whom they may think proper; and they shall enjoy in this respect, the same rights and privileges as native subjects.”

Unbeknownst to me that Hawai'i has been under an illegal and prolonged occupation by the United States of America since the Spanish-American War, the war crime of pillaging was committed against me through revenues collected by the so-called government of the State of Hawai'i under the guise of taxation. Therefore, I am filing this complaint in accordance with New Zealand law and the *International Crimes and International Criminal Court Act 2000*. *Te Karere TVNZ* news provided coverage of Hawai'i's illegal occupation by the United States of America on 19 July 2015, when they interviewed Dr Keanu Sai, a Hawai'i political scientist who is a recognized expert in the legal and political history of Hawai'i, and myself.² I am also a faculty of education at the University of Auckland. I've also requested Dr Sai to draft a *War Crimes Report: International Armed Conflict and the Commission of War Crimes in Hawaiian Islands*, which covers the broader context of Hawai'i's occupation. Therefore, I will be incorporating, as though fully set forth in this complaint, the information and evidence provided in his report. I would also like to add that this information was brought to the attention of Minister Te Ururoa Flavell, who graciously met with Dr Sai and me at the Hotel Novotel Auckland Airport on the evening of 15 July 2015.

This complaint is filed with the Office of the Attorney General, because your office has the capacity of exercising passive personality jurisdiction under Section 7A(2A)(c)(i) of the *Crimes Act*



2. Te Karere TVNZ, “Academic places spotlight on Hawaiian Sovereignty,” July 19, 2015, available at <https://www.youtube.com/watch?v=7JoErlxrmM>



1961 since the following requirements have been met regarding crimes committed abroad where the victim is a New Zealand citizen. *First*, I am a New Zealand citizen; *second*, the war crime of pillaging is punishable under both New Zealand law and international humanitarian law, being the law applicable to the Hawaiian Islands since they are belligerently occupied by the United States; *third*, the offense allows for extradition under the 1970 United States/New Zealand Extradition Treaty and Section 15 of the *Extradition Act 1999* because war crimes are not “of a political character,” and therefore request for extradition is not based on “political opinions”; and, *fourth*, the alleged perpetrators have not been convicted or acquitted of the crimes committed against me. Accordingly, the New Zealand authorities are under a duty and obligation to exercise passive personality jurisdiction in prosecuting this case in accordance with Section 11(2)(b), *International Crimes and International Criminal Court Act 2000*, as hereinafter explained.

By this complaint I am expressly declaring that I have suffered grave harm and respectfully demand that your office initiate an immediate investigation into the private organization called the State of Hawai‘i³ for the war crime of pillaging under the guise of taxation in accordance with 11(2)(b) of the *International Crimes and International Criminal Court Act 2000* and fraud. The so-called taxes were collected under what the State of Hawai‘i calls a General Excise Tax (GET) at 4.712% while on the island of O‘ahu that includes a 0.546% “County Tax” and 4.166% on the other islands,⁴ and a Transient Accommodations Tax, also called a Hotel Room Tax, at 9.25%.⁵ The County Tax is deposited with the City and County of Honolulu, Island of O‘ahu.

When a car is rented at the State of Hawai‘i’s Honolulu International Airport, there is a State of Hawai‘i GET at 4.712%, a Highway Surcharge at \$3.00 a day, a Vehicle Registration fee between \$0.35 and \$1.45 a day, and an Airport Concession Recovery Tax at 11.1%. Except for the GET, the revenues collected for rental cars are deposited with the State of Hawai‘i Department of Transportation—Highway and Airport Divisions. Although the GET is levied on businesses for doing business in Hawai‘i, the State of Hawai‘i allows these businesses to pass those extra taxes on to the consumer of all goods in Hawai‘i.⁶

Since 2000, I traveled to Hawai‘i on three occasions in my capacity as a researcher and faculty member at the University of Auckland as well as in my private capacity.



3. See Dr Sai’s Report, para. 12.1–12.7.

4. *Department of Taxation, State of Hawai‘i, Annual Report 2013–2014*, p. 3 (Nov. 25, 2014).

5. *Id.*, p. 9.

6. Honolulu Civil Beat, “Hawai‘i General Excise and Use Tax,” available at <http://www.civilbeat.com/topics/hawaii-general-excise-and-use-tax/>

- 29 May to 6 June 2015: Research Trip (Meetings to discuss Maori and Indigenous Doctoral programme and its potential relevance in Hawai'i, visiting friends). Accommodation (University of Auckland funded) at Outrigger Reef Hotel Waikīkī for duration; airfares x 2 return to Hawai'i Island; 3 day rental car; usual food and dining purchases for duration; minor gift purchases including clothing, paddle bits and pieces, books and child sweet treats, estimated expenditure of U.S. \$5,000.
- 13–19 April 2015: Research Trip (Meetings with various academics and community people to discuss and scope potential research projects). Accommodation (University of Auckland funded) at Outrigger Beach Resort Waikīkī for duration; usual food and dining purchases for duration; minor gift purchases including clothing, paddle bits and pieces, books and child sweet treats, estimated expenditure of U.S. \$6,500.
- 16–28 May 2014: Conference Trip “World Indigenous Peoples Conference on Education (WIPCE) 2014.” Accommodation (University of Auckland funded) at Aston Waikīkī Hotel for duration; Conference registration WIPCE Honolulu; usual food and dining purchases for duration; minor gift purchases including clothing, new paddle and bits and pieces, and books, estimated expenditure of U.S. \$7,000.

Attached to this complaint are credit card purchases while I was in Hawai'i, which include bookings/invoices showing amounts and with my name, as well as a copy of the State of Hawai'i Annual Report of Taxation (2013–2014), which is evidence of the crime of pillaging at a colossal scale.⁷ I am also providing evidence of criminal fraud committed against my partner and me when we acquired a marriage license from the State of Hawai'i. We paid for a marriage ceremony held at Waimānalo Beach, Island of O'ahu, and a party on June 2, 2015. The following day, after paying \$60.00 to the State of Hawai'i Department of Health, we received a marriage certificate, a copy of which I am attaching to this complaint. Being that the organization of the State of Hawai'i is not a government de jure nor de facto, but rather an Armed Force as defined under the laws and customs of war, its collection of \$60.00 is also considered pillaging and its marriage certificate fraudulent. Because of this fraud my partner and I are applying for a marriage license from the New Zealand government.



7. Id., para. 12.12–12.13.



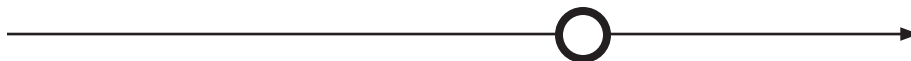
Additionally, I am reporting the war crimes of destruction of property by the State of Hawai'i for allowing the construction of telescopes on the summit of Mauna Kea, which includes the proposed construction of the TMT telescope. I am attaching a cease and desist letter, dated April 16, 2015, provided to TMT International Observatory, LLC, by attorney Dexter Ka'iama, Esq., which fully elucidates the circumstances of the war crime. In this reporting, I am not claiming to be a victim, but merely reporting the war crime of destruction of property to the proper authorities because under New Zealand law and being a member of the International Criminal Court's Rome Statute, the Attorney General has the authority to prosecute war crimes committed abroad under universal jurisdiction.

Because I am unable to “have free and open access to the courts of justice [of the Hawaiian Kingdom] . . . for the prosecution and defense of [my] just rights” (Art. VIII, Hawaiian/British Treaty) because of the Armed Force—State of Hawai'i's effective control of Hawaiian territory, I am filing this complaint with my country's government. Therefore, I am requesting prosecution of the following named individuals responsible for the pillaging of my personal property and criminal fraud that has rendered my marriage license worthless. I am also seeking restitution. The individuals include, but are not limited to, former State of Hawai'i Governor Neil Abercrombie, present State of Hawai'i Governor David Ige, former and present Lieutenant Governor Shan Tsutsui, Director of Taxation Frederick D. Pablo, Acting Deputy Director of Taxation Ted S. Shirashi, Director of Transportation Ford Fuchigami, and City and County of Honolulu Mayor Kirk Caldwell.

I represent all citizens of New Zealand who live in Hawai'i, travelled through Hawai'i, or have done business in Hawai'i, because we all have suffered the same, if not, similar harm done by the Armed Force—State of Hawai'i. However, should my government provide clear and conclusive evidence that the Hawaiian Kingdom does not exist under international law and that the 1851 Hawaiian/British Treaty has been voided, please disregard this complaint and accept my apologies for the misunderstanding. But if it is unable to provide clear and conclusive evidence to the contrary, I should expect the Attorney General and the respected office you represent to expeditiously commence criminal proceedings in this matter. Should you require further information or elaborations on the materials submitted, please do not hesitate to contact me by email at [removed for privacy].

Sincerely,

Dr Mera Lee-Penehira



Ake! Ake! Ake! The Ongoing Struggle!

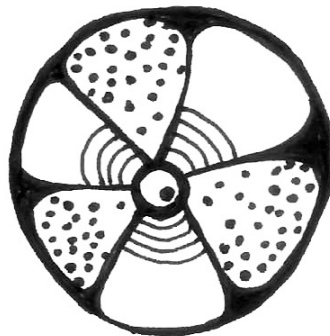
The Crown Law Office responded to my letter in August 2015. Although the response was woefully inadequate, we celebrated the achievement of having engaged the crown in a conversation at this level concerning the illegal occupation of Hawai'i by the United States government!

In short, the crown's one-page response declined to initiate a criminal investigation, stating that the Hawaiian Kingdom ceased to exist and that its 1851 Hawaiian-British Treaty was voided on August 12, 1898. However, the office provided no evidence to substantiate that conclusion, other than directing me to a government website. Moreover, they stated, "To the extent the allegations of unlawful conduct are based upon the assertion that Hawai'i is under an illegal occupation by the United States of America, the underlying claim is incorrect."

In my correspondence back to the crown, I advised them that such a response completely ignored the information provided in the report (146 pages) of political scientist Dr. Keanu Sai, which accompanied my complaint. I

further advised the crown that as a citizen of Aotearoa/New Zealand, I found their response to this serious matter very unsatisfactory.

My interaction with the Crown Law Office remains an important and unfinished struggle of particular significance. We cannot let our governments get away with anemic responses to serious allegations of war crimes and crimes against our ancestral lands. The degradation of sacred sites such as Mauna a Wākea cannot be allowed to continue. The pollution of the waters of Waikīkī—and indeed all of the islands—cannot be allowed to continue. Our strength as Native and Indigenous protectors of these lands and waters lies in our solidarity. Mouri whenua, mouri moana, mouri ora, mouri tangata! The life force of our lands and waters is indeed the life force and energy of ourselves!



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ABOUT THE AUTHOR

Associate professor Mera Penhira descends from the iwi of Ngāti Raukawa, Rangitāne, and Ngaiterangi. Mera is a mother, academic, and active(ist) in her community. She completed her master's in educational psychology at the University of Auckland. Her doctoral research centered on Māori women's health and traditional healing practices, in particular moko, traditional Māori skin carving. Mera has a passion for Native and Indigenous women's well-being, the ocean, wa'a, and how these intersect. Mera is the International Indigenous Doctoral Programme coordinator in the School of Indigenous Graduate Studies at Te Whare Wānanga o Awanuiārangi, Aotearoa. She works with students in Hawai'i, Washington state, and Aotearoa.