

any condition attached to the gift or bequest. Hui Mālama I Nā Kūpuna O Hawai`i Nei maintains that families never authorized the taking of iwi kūpuna. This means that any condition attached to the gift or bequest of the iwi kūpuna to the Natural History Museum prohibiting release is wholly without authority and therefore is null and void. The result is that the third condition is satisfied due to the lack of requisite authority. Therefore, it is our opinion that the Board of Trustees of the Natural History Museum may authorize the release of the iwi kūpuna and any moepū regardless of the language of any condition attached to acquisition.

Officials of the Natural History Museum have maintained all along that the British Museum Act of 1963 prohibits repatriation and therefore its Trustees are unable to legally authorize permanent release of the iwi kūpuna. Yet the museum has never provided an explanation of its conclusion or a response to the position that the law allows for disposition in limited circumstances. Although Hui Mālama I Nā Kūpuna O Hawai`i Nei does not necessarily share the museum's opinion, we nonetheless recognize the necessity to clarify and provide requisite authority requiring the Natural History Museum to repatriate. This could include possible amendments to the British Museum Act or the enactment of stand-alone legislation similar to the Native American Graves Protection and Repatriation Act applicable in the United States.

F. A Native Hawaiian Organization Qualified to Repatriate

Hui Mālama I Nā Kūpuna O Hawai`i Nei member are trained in traditional cultural protocols relating to the care of iwi kūpuna and moepū. We have conducted reburial ceremonies throughout the Hawaiian island archipelago and including the Northwestern islands of Nihoa and Moku Manamana. We are recognized by two Federal laws including the National Museum of the American Indian Act and the Native American Graves Protection and Repatriation Act as having standing to repatriate iwi kūpuna and moepū from U.S. institutions and have conducted extensive repatriation and reburial efforts abroad.

Based on cultural training and practice, legal standing, and national and international efforts, we have repatriated over 5,732 iwi kūpuna and moepū from 31 institutions in the United States, Canada, Australia, Switzerland and Scotland¹³. We are knowledgeable about the export requirements of the United Kingdom following our repatriation experience with the University of Edinburgh in October 2000. With the experience and expertise gained from 11 years of focused efforts, Hui Mālama I Nā Kūpuna O Hawai`i Nei asserts that it is qualified to repatriate the approximately 153 iwi kūpuna and any moepū held by the Natural History Museum in London.

¹³ In October 2000, Hui Mālama I Nā Kūpuna O Hawai`i Nei repatriated 49 iwi kūpuna from the University of Edinburgh pursuant to the institution's policy on repatriation and the laws of the UK.

G. Consultation with the Natural History Museum

This case first began in the fall of 1990, when Hui Mālama I Nā Kūpuna O Hawai`i Nei requested the assistance of the Hawai`i State Historic Preservation Officer (SHPO) to assist with the identification of international institutions that held collections of iwi kūpuna (ancestral bones) and moepū (funerary items). A form letter was developed and mailed by the SHPO to over 200 institutions worldwide. One reply was received from Dr. Robin Cocks, Keeper of Paleontology at the Natural History Museum in London in November 1990.¹⁴ In that missive, Dr. Cocks stated with regard to its holdings of Hawaiian skeletal remains that '[w]e hold about 140 registered items from Hawaii (or the Sandwich Islands), most of which are crania.' Moreover, Dr. Cocks stated that his department looks after the scientific collections, 'with great care and sensitivity, and therefore normally only release details about them to bona fide scientific research workers.'

This reply was forwarded by the SHPO to Hui Mālama I Nā Kūpuna O Hawai`i Nei, who sent two letters of letter of its own to Dr. Cocks dated February 8, 1991 and November 14, 1991, and followed up with a telephone call requesting the repatriation of all iwi kūpuna and moepū held by the Natural History Museum. With that request, we included a copy of an informal inventory that identified 149 ancestral remains. Hui Mālama I Nā Kūpuna O Hawai`i Nei members gathered the inventory information while on a visit to the museum in the summer of 1991.¹⁵ Dr. Cocks replied in February of 1992 acknowledging the repatriation request, and stated that,

'[w]e recognise and respect your people's concern over the remains of their ancestors. However, we also recognise the genuine scientific value of the world-wide collections of human remains,... In this Museum the collections are actively researched, and give valuable insights into our human history, including the nature of diseases and changes in diets. In addition... we are precluded by the British Museum Act of 1963 from disposing of any items from our collections. Any modifications of that Act needs a decision of the British Parliament. Consequently, there is a genuine and difficult problem that cannot be readily resolved.'¹⁶

This communication made it clear that there were obstacles regarding the permanent release of the iwi kūpuna from the Natural History Museum.

¹⁴ See Report attachment B, letter from Dr. L.R.M. Cocks, Keeper of Paleontology, Natural History Museum to William Paty, Chairperson, Board of Land and Natural Resources, November 8, 1990.

¹⁵ See Report attachment C, Inventory of Native Hawaiian Remains at Museum of Natural History.

¹⁶ See Report attachment D, letter from Dr. Robin Cocks to Kūnani Nihipali, February 18, 1992.

We began to pursue diplomatic channels to help overcome these obstacles. A request was made to then U.S. Secretary of State James Baker III by letter dated April 27, 1992 for assistance to procure the release of iwi kūpuna from the Natural History Museum. A reply came from Eileen M. Heaphy, Director, Office of Northern European Affairs, U.S. Department of State dated June 16, 1992 suggesting that we write to the new Secretary of State for Great Britain, the Right Honorable David Mellor. This was done by missive dated July 14, 1992.

In addition, we wrote to the new U.S. Secretary of State Warren Christopher by letter dated April 30, 1993 requesting his support. John F. Teft, Director, North European Affairs, U.S. Department of State replied by letter dated June 4, 1993 stating that the State Department contacted Katherine Culpin in the Cultural Department of the British Embassy in Washington, D.C. and she suggested that we write to the Natural History Museum and 'offer to pay for the postage, insurance, and other costs that may be incurred in the repatriation process.' Moreover, that if Hui Mālama I Nā Kūpuna O Hawai`i Nei were to do this, she 'believes that the British Museum of Natural History might be more inclined to consider returning the ancestral remains you seek.'¹⁷ Furthermore, as part of an international human rights inquiry conducted by the United Nations' Working Group on Indigenous Populations to demonstrate the need for better protection of cultural property, Hui Mālama I Nā Kūpuna O Hawai`i Nei filed a report documenting its efforts to gain release of ancestral remains at the Natural History Museum in London and the Staatliches Museum Fur Volkerkunde in Dresden, dated April 9, 1993.¹⁸

Pursuant to our request, U.S. Senator Daniel K. Inouye, Chairman of the Senate Committee on Indian Affairs, wrote to Secretary of State Warren Christopher by letter dated June 7, 1993 requesting that the State Department respond to our request for assistance in gaining the release of ancestral Hawaiian remains from the Natural History Museum in London. Wendy R. Sherman, Assistant Secretary of Legislative Affairs made a prompt reply to Senator Inouye, U.S. Department of State.

On July 9, 1993, we wrote to the British Embassy in Washington, D.C. to request their assistance with the repatriation of iwi kūpuna from the Natural History Museum in London through a museum to museum transfer. Dr. David Cook, Acting Cultural Attaché, Cultural Department, the British Embassy, replied to Kūnani Nihipali, head of Hui Mālama I Nā Kūpuna O Hawai`i stating that,

¹⁷ See Report attachment E, letter from John F. Teft, Director, North European Affairs, U.S. Department of State to Kūnani Nihipali, June 4, 1993.

¹⁸ *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (1993).*

'the question of a possible museum to museum transfer which you have raised is, I believe, a matter which can only be pursued effectively through direct contact between the museums concerned. I have therefore forwarded your fax to Dr. Neil Chalmers, Director, British Museum of Natural History...'¹⁹

Soon thereafter, Hui Mālama I Nā Kūpuna O Hawai`i Nei received a missive from Dr. Neil Chalmers responding pursuant to a request from the British Embassy in Washington D.C. Dr. Chalmers' letter mirrors that of Dr. Cocks' previous correspondences. In sum, he stated, 'I regret that we cannot transfer these skeletons back to you.'²⁰ Senator Daniel Inouye then wrote to update us regarding his efforts to gain release of the ancestral remains through the U.S. State Department.²¹

We replied to Dr. Chalmers stating our disappointment and providing a review of the common law of bodies, burials, and rights of ownership and questioning the Natural History Museum's legal right to assert ownership and control over the 149 iwi kūpuna held in its collections. Director Chalmers responded by stating that,

'[a]s far as the legalities are concerned, the Museum is satisfied that it has proper legal title to the specimens under British law. Also under British law, the Trustees of the Museum cannot dispose of items in the collection except under very restricted circumstances as prescribed by Section 5 of the British Museum Act 1963... none of which apply in this case. I can only repeat our regrets that we cannot transfer these skeletons to you. Nor do I believe that any further correspondence on the matter would be productive.'²²

Having once again reached what appeared to be an impasse with the museum, we returned to seeking assistance from the British Government. Inquires were made with Prime Minister Tony Blair. After a series of replies stating that the request was being passed on, we received a response from Michael Helston of the Department of Culture, Media, and Sport stating that,

¹⁹ See Report attachment F, letter from Dr. David Cook, Acting Cultural Attaché, Cultural Department, The British Embassy to Kūnani Nihipali, July 14, 1993.

²⁰ See Report attachment G, letter from Dr. Neil Chalmers, Director, Natural History Museum to Kūnani Nihipali, July 22, 1993.

²¹ See Report attachment H, letter from U.S. Senator Daniel K. Inouye, Chairman, U.S. Senate Committee on Indian Affairs to Kūnani Nihipali, September 24, 1993.

²² See Report attachment I, letter from Dr. Neil Chalmers, Director, Natural History Museum to Kūnani Nihipali, November 9, 1993.

'this is entirely a matter for the Natural History Museum as museums and galleries in the United Kingdom are independent of government; and their collections are the property of the institution in question.'²³

Based on this response, Hui Mālama I Nā Kūpuna O Hawai`i Nei sought to develop a new proposal that would satisfy the interests and concerns of both itself and the Natural History Museum. Based on the communications of the past 9 years, we knew before traveling to London in September 1999 that:

- ◆ The Natural History Museum has approximately 149 iwi kūpuna.
- ◆ The islands of origin of these ancestral remains include Hawai`i and O`ahu.
- ◆ The Natural History Museum only allows access to information relating to the human remains in its collection to bona fide researchers. As such, access by Hui Mālama I Nā Kūpuna O Hawai`i Nei would require special authorization from the Keeper of Paleontology.
- ◆ The Natural History Museum respects Native Hawaiian concerns for the remains of their ancestors. However, the museum also recognizes the 'genuine scientific value of the world-wide collection of human remains,' and that these remains give 'valuable insights into human history, including the nature of diseases and changes in diets.'
- ◆ The Natural History Museum believes it is prohibited by the British Museum Act from disposing of items in its collections and that its Trustees can dispose of items only under strict circumstances as prescribed by section 5, none of which are currently applicable.
- ◆ A museum to museum transfer is a matter that can only be pursued effectively through direct contact with the museums involved. The Bernice Pauahi Bishop Museum in Honolulu is willing to serve as transferee if the Natural History Museum agrees to serve as transferor.
- ◆ The issue of disposition is solely within the authority of the Natural History Museum since museums are independent of government.
- ◆ The Natural History Museum is satisfied that it has legal title to the iwi kūpuna but has yet to demonstrate any evidence of such. There has been no demonstration of consent or authorization from next of kin, collateral relatives, or the reigning sovereign at the time of collection.

²³ See Report attachment J, letter from Michael Helston, Department of Culture, Media, and Sport to Kūnani Nihipali, October 13, 1998.

Based on this knowledge and hours of research and discussion, we developed a new proposal for museum consideration. By letter directed to Dr. Chalmers, we requested the opportunity to present the new proposal in person.²⁴ By electronic mail, Hui Mālama I Nā Kūpuna O Hawai`i Nei was notified by Dr. Paul Henderson, Director of Science, that the Natural History Museum,

'would be pleased to give consideration to any new proposal and we would ask that you put this in writing so that we will give it proper and serious consideration. Once we have been able to consider your proposal we may well be able to have a meeting... 24 September may be possible. I would be interested, therefore, to hear your reaction to my suggestion that you write to us first. If you are prepared to do that they we can fix a date and time for us to meet.²⁵

By electronic mail, Hui Mālama I Nā Kūpuna O Hawai`i Nei replied and agreed to provide a written proposal prior to the meeting date and stated that a copy will be telefaxed by Friday, September 17, 1999 with the attachments to be sent by express mail the same day. In addition, we stated the hope that a meeting could be held on September 24, 1999. Finally, authorization for access was requested in order to conduct ceremonial protocols that are an integral part of the cultural responsibility of caring for the iwi kūpuna.²⁶

It was the sincere hope of Hui Mālama I Nā Kūpuna O Hawai`i Nei that the tone of the upcoming face to face discussions would be highly cordial, respectful, and insightful. Our sense of aloha required that we share a part of ourselves and our culture with those we meet. Our sense of commitment to our ancestors and their well being demanded that we conduct ourselves by the highest standards of decorum with the recognition that we act as ambassadors on behalf of our people, especially the ancestors, whose voices are now silent.

Furthermore, we shared with Natural History Museum officials the fact that history has demonstrated that our two countries enjoyed a mutual respect and admiration for the each other, a practice that was extended to the care and protection of citizens of the two respective nations whenever one was visiting the other. From the mutual regard held by King Kamehameha I for King George, to the aloha shared by Queen Elizabeth for her godson Prince Edward Albert Kauikeaouli, son of King Kamehameha IV Alexander Liholiho and Queen Emma Rooke, granddaughter of Englishman John Young, history is replete with

²⁴ See Report attachment K, letter from Kūnani Nihipali, Po`o, Hui Mālama I Nā Kūpuna O Hawai`i Nei to Dr. Neil Chalmers, August 31, 1999.

²⁵ See Report attachment L, letter from Dr. Paul Henderson, Director of Science, Natural History Museum to Kūnani Nihipali, September 14, 1999 sent by electronic mail as an attachment.

²⁶ See Report attachment M, electronic mail message from Edward Halealoha Ayau, Hui Mālama I Nā Kūpuna O Hawai`i Nei to Dr. Paul Henderson, September 15, 1999.

numerous examples of the respect and aloha accorded between both countries.²⁷ It is this same spirit of good faith relations that was observed historically between England and the Kingdom of Hawai`i, that we respectfully requested every courtesy and honor be extended to each other as we embrace the challenge of finding a form of resolution mutually satisfactory to both parties.

The history of consultation between Hui Mālama I Nā Kūpuna O Hawai`i Nei with the Natural History Museum for the past decade and up until September 1999 is summarized in a report called, 'Proper Disposition: A Proposal Relating to All Ancestral Native Hawaiian Remains Held in the Collections of the Natural History Museum London, England September 16, 1999' (**attachment 6**). The report was presented to officials of the Natural History Museum in advance of the first face to face meeting held in September 1999.

At the September 24, 1999 meeting, Dr. Paul Henderson (Director of Science), Dr. Stephen Donovan (Keeper of Paleontology), and Mr. John Jackson (Science Policy Director) represented the Natural History Museum. Kūnani Nihipali, Ipō Nihipali and Edward Halealoha Ayau, Esq. represented Hui Mālama I Nā Kūpuna O Hawai`i Nei. The meeting was cordial and some progress was made. The outcome of the meeting included the following agreements.

First, the Natural History Museum agreed to provide an inventory of the approximately 149 individuals comprised mostly of skulls from the islands of Hawai`i and O`ahu respectively by the end of December 1999. The museum hired a researcher to conduct an inventory of their entire collection and the work should be done by the end of the year. Current policy restricts the release of information to bona fide researchers but the museum agreed to seek amendments to its policy. Once the new policy is in place, the museum will release the inventory information to us.

Second, the Natural History Museum is willing to enact a new policy that allows us direct access to the iwi kūpuna (ancestral bones). The current museum policy does not provide access to the collection for non-researchers. Once the inventory is completed, the museum will segregate the iwi kūpuna so that when we visit in the future, we should be able to directly access them without exposing other human remains in the collection. The time frame for this policy development and enactment is the end of the first quarter of next year. The new policy would be limited to Hui Mālama I Nā Kūpuna O Hawai`i Nei accessing the iwi kūpuna.

Third, the Natural History Museum stated that as a demonstration of their good faith, it was agreed that no research studies or examinations of any kind

²⁷ For further examples, see attachment N, 'Facts Indicative of Friendly and Respectful Historical Relations Between Britain and Hawai`i.'

would be allowed on the iwi kūpuna (ancestral bones). More specifically, the Museum stated that they have never and will never allow DNA analysis on the iwi kūpuna because the process is destructive.

Finally, both parties explored the merits of a museum to museum transfer with the Bernice Pauahi Bishop Museum in Honolulu, Hawai`i. The Natural History Museum officials inquired whether we intended to immediately repatriate from the Bernice Pauahi Bishop Museum if the collection was transferred. We made it very clear that our intentions are to repatriate and rebury the ancestors and that we were acting out of a strong sense of cultural duty. The officials inquired whether we would consider the merits of a permanent loan to the Bernice Pauahi Bishop Museum so that the iwi kūpuna (ancestral bones) would be back in Hawai`i but not reburied. We asked that a time frame be attached to release instead. Overall, the meeting was quite disappointing for the three Hui Mālama I Nā Kūpuna O Hawai`i Nei members who flew thousands of miles to attempt to gain release. It was even more disappointing for the ancestors.

By letter dated February 9, 2000, the Natural History Museum provided Hui Mālama I Nā Kūpuna O Hawai`i Nei with an inventory of approximately 153 iwi kūpuna held in its collections. Included was limited information as to provenance, bone type, collector and the year acquired. In addition, museum officials reported that approval of proposed amendments to current museum policy relating to access to the human remains collections by non researchers including members of Hui Mālama I Nā Kūpuna O Hawai`i Nei was being pursued with the Board of Trustees. Electronic mail communications between the parties continued throughout this time.

In October 2000, attempts at coordinating a follow up meeting that month fell through due to misunderstandings and the inability to coordinate the schedules of the Natural History Museum officials. The second meeting finally took place on February 8, 2001 with Edward Halealoha Ayau traveling to London to represent Hui Mālama I Nā Kūpuna O Hawai`i Nei. Joining him were Dr. Cressida Fforde and Russell Leilani Ka`eo, a Native Hawaiian who resides in London. John Jackson was the sole museum representative. The following was discussed at that meeting, most of which was presented by Mr. Jackson.

First, the draft policy changes go to the Trustees for consideration on February 20, 2001. It will be a public, stand-alone document that will address access, research and loans. The proposed policy change reiterates the museum opinion that the British Museum Act prohibits repatriation and addresses access to the human remains collection. The proposed policy change provides for access by non-scientists with good reason, subject to agreement between the requesting party and the Keeper of Paleontology. Moreover, that a request by Hui Mālama I Nā Kūpuna O Hawai`i Nei for access for protocol purposes would

be considered a good reason. In addition, access to archival information will also be made available. Mr. Ayau questioned whether the proposed change in access would nullify the previous agreed upon moratorium on research on the iwi kūpuna. Mr. Jackson replied that there is the assumption that research would occur but no reason why an agreement for a continued moratorium can't be made. It's a matter that is 'up for further discussion'.

With regard to loans of human remains, the draft policy change assumes two needs for such. The first is scientific research and the second is public exhibition, although Mr. Jackson felt strongly that it was unlikely that public exhibition loans would be undertaken. However, there is no explicit provision for loans of the type that Hui Mālama I Nā Kūpuna O Hawai`i Nei has been proposing. Nevertheless, it was acknowledged that there is nothing to prohibit this type of loan either. Therefore, it may be possible to develop an agreement with the Bernice Pauahi Bishop Museum for the loan of the iwi kūpuna. A specific proposal for such an exception would probably have to go to the Board of Trustees for approval. Mr. Jackson made clear that the bottom line is that the human remains are at the museum for scientific purposes, so loans based on an exception must be strongly supported. He was candid in sharing a lack of optimism that such a proposal would be approved, but thought it was worth the effort. The Trustees discussed issues relating to human remains at their July meeting and would be briefed before considering the draft policy amendments.

Mr. Jackson shared repatriation-related developments in the United Kingdom including a repatriation and restitution report from the Select Committee on Culture Media and Sport. This document recommended that human remains should be considered a separate category to other museum items and that consultation should take place to possibly lead to an amendment to the British Museum Act. It was reported that Natural History Museum Director Neil Chalmers favored such a process. The meeting concluded with a promise by Mr. Jackson that after the February 20, 2001 Board of Trustees meeting, he would contact Hui Mālama I Nā Kūpuna O Hawai`i Nei representatives to begin discussions regarding access to the iwi kūpuna. Since February 20, 2001, there has been very little communication from Mr. Jackson. It is unclear whether the Board of Trustees has formally adopted the policy amendments relating to access, although we understand access to the archives is being accommodated.

In the meantime, we are continuing our efforts to gain the release of the iwi kūpuna and any moepū so that they may be returned home and reburied. We are confident that the Natural History Museum will allow for the release of our ancestors whereupon a law is enacted that addresses any perceived prohibition by providing the necessary authorization to repatriate.

H. Support for Release Based on Human Rights

We believe that there are certain fundamental rights that transcend national boundaries and jurisdictions--- certain aspects of the human experience that demand respect regardless of cultural, philosophical, religious, scientific or other value systems. One such right is for living descendants to care for ancestral remains. Institutions that refuse to support the repatriation of ancestral human remains violate humanity by denying the fundamental right to maintain the integrity of the cultural family, both living and deceased.

Hui Mālama I Nā Kūpuna O Hawai`i Nei has received support for its efforts to repatriate the iwi kūpuna from the Natural History Museum from many sources, three of which are mentioned here. The first is Dan Monroe who is the current Executive Director of the Peabody Essex Museum in Salem, Massachusetts. He is also the former President of the American Association of Museums and a founding member of the NAGPRA Review Committee. In his statement, Monroe points out that the limited scientific value of these remains is outweighed by the tremendous cultural importance to Native Hawaiians,²⁸

'weighing scientific values against cultural and religious values is an exercise that all modern museums must confront. Since nearly all Native Hawaiian human remains were removed without permission of heirs, or appropriate Native Hawaiian groups, it is necessary for museum professionals to also consider basic human rights in weighing rights of scientific study, possession, or return of human remains. While laws in the United States clearly have no bearing on your Institution, the ethical issues involved with Hui Mālama's request remains the same.'²⁹

In addition, our efforts are supported by the U. S. Senator from the State of Hawai`i and the Chairman of the Senate Indian Affairs Committee, Honorable Senator Daniel K. Inouye. Senator Inouye has intervened requesting the Natural History Museum to honor our request for repatriation.³⁰

Finally, Hui Mālama I Nā Kūpuna O Hawai`i Nei has also received support for our efforts from the Episcopal Church in Hawai`i, who in turn requested the support of the Church of England, through the Archbishop of Canterbury.³¹

²⁸ See Report attachment V, letter from Dan Monroe, Executive Director, Peabody Essex Museum, Salem, Massachusetts, September 10, 1999.

²⁹ Id.

³⁰ See Report attachment H, letter from U.S. Senator Daniel K. Inouye, Chairman, U.S. Senate Committee on Indian Affairs to Kūnani Nihipali, September 24, 1993

³¹ See Report attachment W, letter from The Rt. Rev. Tom Van Culin, St. Matthew's Episcopal Church in Hawai`i to The Rt. Rev. Richard S.O. Chang, Bishop, Sept 13, 1999 requesting that he seek the assistance of the Archbishop of Canterbury to support Hui Mālama I Nā Kūpuna O Hawai`i Nei's repatriation request.

I. Declaration of Findings

Hui Mālama I Nā Kūpuna O Hawai`i Nei respectfully recommends that the Working Group on Human Remains formally declare and adopt the following findings as part of the official record of these proceedings:

1. It is an international human right--- and for many a sacred duty--- to repatriate ancestral remains and funerary items including those held in foreign jurisdictions. Civilized nations must accord the utmost respect to ancestral remains removed without consent. The ability of living descendants and representative organizations to exercise requisite care through repatriation must be recognized and supported.
2. The ability of science to attain higher levels of understanding of the world and the universe is respectfully acknowledged. It is also recognized that science is an important value, but not an absolute right. The values of science should not be imposed over the ability to care for ancestral remains and funerary items. Where repatriation is requested, science should become a cooperative partner in efforts to honor the deceased and elevate the level of the human experience.
3. Seeking to repatriate ancestral remains from publicly funded museums and galleries in the United Kingdom does not require special treatment to be conferred by the government upon claimant organizations. Instead, the government need only assure that equity in the form of the ability of cultural descendants to properly care for human remains and funerary items is achieved.

J. Recommended Action: Legislate Repatriation


Hui Mālama I Nā Kūpuna O Hawai`i Nei is of the opinion that the British Museum Act of 1963 provides the Board of Trustees of the Natural History Museum with the requisite authority to dispose of human remains and funerary items pursuant to section 5. In the event this opinion is not accepted, we strongly urge the Working Group on Human Remains to amend the British Museum Act of 1963 to require the Board of Trustees of the British Museum, the Natural History Museum, and any other public-funded museum and gallery to comply with bona fide requests by appropriate organizations for the repatriation of ancestral remains and funerary items. Elements of such a legislative authorization should include:

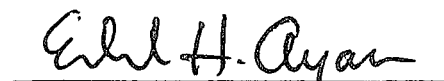
- ❖ an inventory process for all human remains and funerary items including minimal standards of information including bone type, cultural affiliation, collector, circumstance of collection, year collected, accession and catalog numbers;

- ❖ standards of identification for cultural affiliation of the human remains applied as a 3-tier approach including 1) clearly identifiable; 2) reasonable belief; and 3) preponderance of the evidence;
- ❖ a process that establishes minimal requirements for organizations to establish standing to claim ancestral remains and funerary items for repatriation;
- ❖ a requirement for an active and meaningful consultation process between the parties including the sharing of information;
- ❖ a prohibition on intrusive research approaches and scientific studies allowed only by the consent of living descendants or representative organizations;
- ❖ a clear and unambiguous requirement for publicly funded museums and galleries to repatriate to an appropriate claimant upon the satisfaction of all applicable requirements;
- ❖ a 5-year deadline for completing inventories of all human remains and funerary items and civil penalties imposed against museums or galleries for non-compliance; and
- ❖ establishment of a national program to monitor and guide implementation of the repatriation process similar to the efforts of the National Park Service with regard to NAGPRA implementation.

Hui Mālama I Nā Kūpuna O Hawai`i Nei respects the process that must be conducted in order for the iwi kūpuna and any moepū to be released for reburial. We have been very patient throughout the years. We are proud to present this testimony in order to convince the Working Group on Human Remains to take appropriate actions to guarantee that humanity is allowed to be expressed in the form of repatriation and reburial. We urge the Working Group to join with us to gain the release of our ancestors so we can replant them, restore precious mana, and move ahead with the greater task of healing our people.

Ola nā iwi (the bones live),


 Kūnani Nihipali
 Po`o


 Edward Halealoha Ayau, Esq.
 Member