**Drafting an Independence Constitution**

Following is a working draft of the Independence Model Constitution of the Aha Hawai`i `Oiwi.  The underlined sections, except for headings, were added after the convention had generally agreed to the document.  It is added here for further consideration.  Please review the full document and give your input on each of the sections.  –Poka Laenui, Chairperson

**Constitution of Hawai`i**

**Preamble**

Hawai`i, bequeathed to us from the Source of all creation since time immemorial, nurtures our bodies, minds and spirits upon a foundation of Aloha.

We rise in a unified cry to our devotion for Hawaiian sovereignty.  We proclaim our right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire.

We recognize that wisdom from the past forms the spring board into our future.  Ua mau kea o ka ‘aina i ka pono.  Only in Pono are we able to build a society worthy of the dignity of our past and the hope for our future. Thus, Pono forms the guiding principle upon which Hawai`i today must stand. In Pono we have partnership, mutual respect and cooperation with all that abounds and surrounds us.

We build this government upon partnership, recognizing the integrity of the distinct host people and culture of this land and the special place to be established within the government for their protection and perpetuation.  We recognize equally the human rights and fundamental freedoms to be accorded every person of Hawai`i and commit to the protection and perpetuation of such rights and freedoms within the governmental framework.  All people are free and equal, and endowed with inalienable rights and the responsible vigil of freedom.  He pono keia.

We recognize all the Divine elements of Hawai`i – of life, of change, of fluidity, of stability, of humanity, and all of the nature elements which give physical representation to those elemental forces – the sun, the wind, the sky; the fresh water, the salt water, the land, including the mountains and the forests, and the people who populate Hawai`i.  He pono keia.

We reaffirm our belief in a government of the people and by the people; for the generations who were, are and is yet to come.  We understand our relationship to the land, the kinship responsibility that unites us as a people with those around the globe.  We recognize the harm caused by our past abrogation of this kinship responsibility and avow to vigilantly guard against such a wrong again.  We acknowledge our commitment to each other and to the land; to our kupuna and to our mo’opuna yet to come.  He ali`i ka ‘aina; he kaua ke kanaka.

Deleted DECLARATION in earlier draft except for below

E mau ke ea o ka ‘aina i ka pono.

**Article I, Name**

[The nation shall be called is] Hawai`i.

**Article II, Territory**

The national territory [of Hawai`i] consists of the Hawaiian archipelago, stretching from Kure Atoll in the North to Hawai`i in the South and all of those lands, atolls and other territories whose jurisdiction have been assumed by the United States of America previously claimed by Hawai`i prior to the US 1893 invasion.  Those territories previously part of the constitutional Hawaiian monarchy but which have subsequently been declared the territory or possession of a state other than the United States of America may be included within the territorial jurisdiction of Hawai`i upon concluding negotiation with that claiming state and Hawai`i.

The territorial waters of Hawai`i shall include the waters twelve (12) miles from the shores of all lands of Hawai`i.  The exclusive economic zone defined by the 1982 Convention on the Law of the Sea is adopted as applying to Hawai`i.

**Article III, Supremacy**

This Constitution shall be the supreme authority of the government of Hawai`i.

**Article IV, Peoples Rights & Protections**

[To be finished after National Convention.]

The rights of the people established by this constitution shall not be abridged unless as set forth by the process established in this constitution and in no other manner.

Principle I

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of Aloha.

Principle 2

The fundamental rights and freedoms set forth to all citizens are to apply without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Principle 3

Everyone has the right to life, liberty and security of person.

Principle 4

No one shall be held in slavery or servitude.

Principle 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Principle 6

Everyone has the right to recognition everywhere as a person before the law.

Principle 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any prohibited discrimination and against any incitement to such discrimination.

Principle 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by this constitution or by law.

Principle 9

No one shall be subjected to arbitrary arrest, detention or exile.

Principle 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Principle 11

1.Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

2.No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Principle 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Principle 13

1.All citizens have  the right to freedom of movement and residence within the borders of Hawai`i consistent with this constitution, and the laws established by the national congress.

2.All citizens have the right to leave the country, and to return to the country.

Principle 14

1.Everyone meeting the requirements of this constitution and of law has the right to a nationality.

2.No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Principle 15

1.Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2.Marriage shall be entered into only with the free and full consent of the intending spouses.

3.The family is the natural and fundamental group unit of society and is entitled to protection by society and subject to regulation by the State.

Principle 16

1.All citizens have the right to own property alone as well as in association with others. The State shall have the right to regulate and register ownership off all property.

2.No one shall be arbitrarily deprived of his property.

Principle 17

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. The government shall make no law establishing a religion or religious practice.

Principle 18

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Principle 19

1.Everyone has the right to freedom of peaceful assembly and association.

2.No one may be compelled to belong to an association.

Principle 20

The people shall have the right to privacy and to be secure in their persons, houses, papers, conversations, ideas and effects.  This right shall not be infringed upon through unreasonable searches and seizures.  No Warrants shall issue, but upon probable cause, supported by Oath or affirmation particularly describing the place to be searched, and the persons or things to be seized.

Principle 21

No person shall be held for a felony unless on a presentment or indictment of a Grand Jury, unless in the military service of the government in time of War or public danger.  No person shall be subject for the same offense to be twice put in jeopardy, to be compelled in any criminal proceeding to be a witness against himself, nor be deprived of liberty or property without due process of law.  In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of his peers within the district wherein the crime shall have been committed, to be informed of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel.

Principle 22

The government shall have the power to impose taxes.

Principle 23

1.Every citizen  has the right to take part in the government, directly or through freely chosen representatives.

2.Every citizen has the right to equal access to public service.

3.The will of the citizens shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. Every elector shall be free from arrest on election days, during his attendance at election and in going to and returning therefrom, except in cases of treason, felony, or breach of the peace.  No elector shall be obliged to perform military duty on the day of election as to prevent his voting, except in time of war or public danger.

Principle 24

All citizens have the right to social security and is entitled to realization of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. All citizens have the responsibility for the contributions to society necessary to effectuate the social security and economic, social and cultural rights accorded to its citizens.

Principle 25

1.All citizens have the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

2.Everyone, without any discrimination, has the right to equal pay for equal work.

3.Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4.Everyone has the right to form and to join trade unions for the protection of his interests.

Principle 26

1.Everyone has the right to a standard of living adequate for the health and well‑being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2.Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Principle 27

1.Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2.Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities for peace in the world.

3.Parents have a prior right to choose the kind of education that shall be given to their children.

Principle 28

1.Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2.Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Principle 29

1.Everyone has duties to the community.

2.In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public, peace, safety, and the general welfare in a democratic society.

3.These rights and freedoms may in no case be exercised contrary to the purposes and principles of this constitution and of pono.

Principle 30

Nothing in this bill of Rights may be interpreted as implying for the government, any group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

**Article V, Aboriginal/Hawaiian Rights/Entitlements**

[We respect human and civil rights.  We are favorable to, but not pa`a on, the ILO, State of Hawai`i, US Constitutions that already state basic rights.  Reserving for Ke Kumu Hawai`i.]

**Right of Self-Definition**: The Kanaka Hawai`i Maoli are the aboriginal people of islands of the Hawaiian archipelago and those people whom they shall define within their system of self-governance.  Individuals so defined as Kanaka Hawai`i Maoli shall have the opportunity to decline such attribution to themselves individually.

**Right of Self-Government**: The Kanaka Hawai`i Maoli shall have the right to decide their own priorities in the process of development, as it affects their lives, beliefs, institutions and spiritual well-being and the territories (including land and sea) under their jurisdiction, as further defined by this constitution.  They shall also have control over their own economic, social and cultural development, including management and policy control over vocational training, health services, and education.  The administration of justice and the power to retain or create social institutions to address the needs of the Kanaka Hawai`i Maoli are also reserved to them.

**Territorial Rights**: There shall be set aside lands, waters, and other natural resources for the exclusive control of the Kanaka Hawai`i Maoli as expressed through the Kumu Hawai`i established in this constitution at Article VII.  Such areas shall be limited to undeveloped or minimally developed lands which were previously in the inventory of the Crown and Government lands of Hawai`i prior to July 4, 1894.  Such resources shall be sufficient for the maintenance of the Kanaka Hawai`i Maoli in their traditional system of living, not less than the equivalent size of one traditional ahupua`a (including access to ocean) on each island in which a Kanaka Hawai`i Maoli population of 1,000 exist. These include the rights to hunt, fish, trap and gather, and to control mineral and subsurface resources.

**Cultural Rights**: The right to maintain the cultural traditions of the Kanaka Hawai`i Maoli shall not be impaired.  Included in this right shall be the right to maintain contact with other indigenous and tribal peoples across oceans to pursue shared economic, social, cultural, spiritual and environmental development, the right to educate their children in their own native language, the right to practice their own traditional health and healing practices, and the right to express their own sense of spirituality in their own form.  All of these rights shall remain subject to the limitations that they are not to be destructive to the protected rights of all other individuals in the society.

**Custom and Protocol**: Reserved to the Kanaka Hawai`i Maoli, as expressed through the Kumu Hawai`i, shall be all of the official state customs and protocols, including ceremonies of international import with other states.

**Immigration & Population**: Reserved to the Kanaka Hawai`i Maoli, as expressed through the Kumu Hawai`i, shall be the control over immigration, determining the criteria for further transfer of population into Hawai`i, the conditions of visa awards, and treaties and executive agreements touching on the temporary and permanent residents of non-Hawaiian citizens.

All of the kuleana set aside for the Kumu Hawai`i and the Kanaka Hawai`i Maoli shall be be limited by the constitutional guarantees of human rights as well as other constitutional limitations or powers specifically set forth therein.

**Crown and Government Lands and Natural Resources:** The Kumu Hawai`i shall have the exclusive right of management over the lands and natural resources whose titles were previously part of the inventory of the Crown and Government lands of the Hawaiian nation prior to July 4, 1894.  With the exception for the lands set aside under territorial rights described above, all net proceeds from the management of the former Crown and Government lands and natural resources under this provision shall be allocated 20% to the Kumu Hawai`i and 80% to the general Hawai`i public.

**Participation in the Kumu Hawai`i**: Initially, any Kanaka Hawai`i Maoli, 16 years and older, shall be permitted the privilege of participating, including voting, in all activities of the Kumu Hawai`i.  Upon adoption of this constitution, the Kumu Hawai`i shall organize itself, through the election of delegates, one per three thousand people, into a system formulated under the transitional provision of this constitution.

**Article VI, Citizenship**

Citizenship shall consist of three general classes:

‑all Kanaka Maoli throughout the world who elect to be citizens;

‑descendants of subjects of the Hawaiian Kingdom prior to July 4, 1894 who elect to be citizens; and

‑all persons born in Hawai`i, and other individuals who have been a resident of Hawai`i for a continuous period of five years prior to this constitution coming into force and effect, and who choose willfully to pledge their allegiance to Hawai`i, [and join our culture and society through a naturalization process which shall be provided by law.]

Five years following the ratification of this constitution by the citizens of Hawai`i, the qualifications as well as the naturalization process for citizenship may be altered by the legislative body, including changing the requirements of one or more of the above classes of citizenship but not necessarily of all the classes.

**Article VII, Government Structure**

The nation shall have two primary governing bodies operating in partnership for the Kanaka Hawai`i Maoli public and the general Hawai`i public.

I) The Kumu Hawai`i, comprised of Kanaka Hawai`i Maoli, whether citizen or not, shall have exclusive management rights over crown and government lands and natural resources; the right to self‑definition; the right to self‑governance; control over immigration and population transfer; indigenous education and health care; and international protocol all as set forth above in Article V.  All other powers not specifically reserved to the Kumu Hawai`i shall accrue to the General Government.

[Ownership, use and control of territories and resources specifically delineated herein shall be under the exclusive jurisdiction of the Kumu Hawai`i.]

2)  The General Government, comprised of all citizens, shall have all powers not reserved to [Ke] the Kumu Hawai`i. [Upon adoption of this document by the Kanaka Maoli people there shall beheld a National Convention within twelve months of ratification wherein all naturalized citizens shall construct the general governing structure of this independent nation.  The resulting structure will be incorporated into this constitution.]

Either or both of these bodies, the Kumu Hawai`i or the General Government, may permit appropriate political subdivisions within their realm of responsibilities, such as counties, ahupua`a, townships, etc. These bodies may also create other branches of government, including an executive and judicial branch, for the nation.

An advisory conflict resolution office shall be established to which disputes not readily resolvable between the two bodies shall be submitted.  This office shall consist of five members, two of whom shall be appointed by each government partner and the fifth appointed by the members appointed by the partners.  Should it not be able to resolve any dispute of a non‑constitutional nature, this office shall be empowered to put the question of controversy before all the citizens of Hawai`i for a vote and require a mere majority of the votes cast to decide the matter.  If a dispute of a constitutional nature should arise calling for an amendment to this constitution resulting in a detraction of the rights and powers of the Kumu Hawai`i or of the Kanaka Hawai`i Maoli citizen, both [bodies] government partners would have to ratify said amendment [if it will result in a detraction of the rights and powers of the Kumu Hawai`i].  Otherwise, only a majority of the votes cast would be required to amend the constitution.

**Article VIII, General Provisions**

Private Real Property Ownership

I.  Assurances to Private Ownership:

Hawaiian citizens and non‑citizen residents may own their residence in their own name.

II.  Forfeiture for Non‑residents

Non‑citizen, non‑residents: Non-citizen non‑resident [foreign] ownership of land may be subject to termination within ten (10) years following their [departure] continuous non-residence of [departure from] Hawai`i.  If terminated, said land ownership will be included in the inventory of the general government.

Citizen, non‑resident:  Citizen, non‑resident ownership of land may be subject to termination within twenty (20) years following their continuous non-residence [departure from] of Hawai`i.  If terminated, said land ownership will be included in the inventory of the general government.

III. Prohibition of Sale of Real Property to Non‑residents

Transfer of real property title to non‑resident, non‑citizens shall be prohibited.

There shall be no transfer of real property to non‑residents with the exception of citizens who establish residence in Hawai`i within five years from date of transfer.

Official Languages

`Olelo Hawai`i and English shall be the official languages of Hawai`i in which any and all official proceedings and legal transactions may be conducted.

The Education Department of the General government shall be required to incorporate the teaching of `Olelo Hawai`i co‑extensive with the teaching of English.

[The public laws shall require training of] Within ten years after the formation of the general government, all public employees [to become] shall be proficient in both languages as working languages. [Within ten years after the formation of the general government all new hires are required to have a working knowledge of both languages.]

Flag

[A national contest shall be held to choose an official flag.]

A national flag design shall be chosen by agreement of the two governing partners.

Motto

[The nation shall have a motto.]

A national motto shall be chosen by agreement of the two governing partners.

Anthem

[The nation shall have a government.]

A national anthem shall be chosen by agreement of the two governing partners.

National Security Board

A National Security Board shall be established to advise on the nation’s security from

domestic or external influences.  This board shall consist of 15 members from among whom

shall be individuals with education, training and experience in the fields of economics,

agriculture, international affairs, public health, military defense, and local cultures.  Members

of the board shall be appointed, 8 by the general governing body and 7 by

the Kumu Hawai`i.  The members shall appoint their leadership from among themselves

and may otherwise organize their work as they deem appropriate.  None of these

members may hold any elective office nor any rank within any military force, and

shall resign from office and remain out of office for a period of two years prior to undertaking

any public office or military post.

Outstanding Claims Post‑Colonization

[Certain claims against the United States would of course remain unresolved for a number of years.]  A claims resolution panel consisting of the members of the National Security Board, shall advance the claims against the United States of America, through any and all avenues deemed appropriately by said board.  Among such claims are:

1)      Claims for damage over a period [of one hundred years] since January 17, 1893, upon the indigenous language, culture, tradition, use of lands and waters and for destruction of certain aspects of the environment including the radioactive and chemical waste left in Hawai`i [upon decolonization] following independence.

2)      Claims against the U.S. social security, veterans benefits, and all other benefit programs for contributions by Hawaiian citizens who have not yet collected upon said benefits to its full extent up to the time of [decolonization] independence;

3)      Individual claims for forced military services and for individuals deprived of property rights.  Such claims in this category shall be made only on behalf of individuals or their descendants who register their individual claims with the panel.

4)         Other claims determined by the board to be just and appropriate.

**Article IX,  Amendments**

Any amendment to this Constitution must be approved by a majority of the citizens of Hawai`i.

Furthermore, any amendment to this constitution which would alter the defined rights of the Kumu Hawai`i or of the Kanaka Hawai`i Maoli would require the [official consent of Ke Kumu Hawai`i] approval of the Kumu Hawai`i.

**Article X, Ratification & Transition Process**

Upon approval of this constitution by the Aha Hawai`i `Oiwi, it shall be presented to the Kanaka Hawai`i Maoli population throughout the world for ratification.  If ratified by a majority of the votes cast, an election for 51 members of the Kumu Hawai`i shall be held.

Upon election of said members of the Kumu Hawai`i, this constitution shall be presented to the eligible citizens of Hawai`i for ratification.  If ratified by a majority of the votes cast, an election of 51 delegates constituting the general governing body shall be held.

Upon election of said members of the general governing body, the Kumu Hawai`i and the general governing body shall collaborate in the review of this constitution, determine their on-going structure of governance, and establish the mechanism for the safe and smooth transition of authority in Hawai`i from the United States of America.

For further information, please contact Pōkā Laenui, Chairperson, Aha Hawai`i `Oiwi, 86-641 Pu`uhulu Rd., Wai`anae, HI 96792 plaenui@hawaiianperspectives.org (800)200-2682