

UN Report: Hawai'i's midwifery licensure law, Act 32, violates Human Rights

For Immediate Release:

CONTACT:

Pacific Birth Collective (808) 214-0468, (808) 987-9226 pacificbirthcollective@gmail.com

Ea Hānau Cultural Council (808)428-6400 eahanaupono@gmail.com

Mālama Nā Pua o Haumea

malamanapuaohaumea@gmail.com

Hawai'i Home Birth Collective

(808)228-9576

info@hihbc.org

Hawai'i's midwifery licensure law, Act 32, HRS 457-J, violates international human rights standards, according to a [shadow report](#) submitted by the Center for Reproductive Rights and 14 other reproductive health, rights, and justice organizations on September 12, 2023 and [published on the United Nations website today](#).

The report, entitled "[Retgression in U.S. Reproductive Rights: The Ongoing Fight for Reproductive Autonomy](#)," describes a subset of the human rights abuses presently occurring in the U.S. with regard to sexual and reproductive health and rights (SRHR), in violation of U.S. commitments to uphold rights to non-discrimination, gender equality, life, privacy, freedom from torture, cruel, inhuman or degrading treatment or punishment, and to equal protection (articles 2, 3, 6, 7, 17, and 26) under the International Covenant on Civil and Political Rights (ICCPR)." (p.2).

This comes as many traditional Maui midwives affected by criminalization of traditional midwifery following the [expiration of licensure exemptions](#) under 2019's Act 32 are [leading efforts to provide maternity care and other healing work](#) for underserved Maui residents and fire survivors at the community resilience hubs throughout West Maui.

Ki'i Kaho'ohanohano, a [cultural practitioner](#) and longtime [rural Maui midwife](#), has been leading the "Healer's Hui" that has been providing maternity assistance, Indigenous medicine and cultural trauma support to West Maui, as part of the [Maui Medic and Healer's Hui](#), since the day after the fires raged on August 8th. Legal uncertainties and broad language in HRS [457-J](#) via [Act 32](#), Hawai'i's 2019 midwife licensure law that prohibits unlicensed activities such as "care during pregnancy" and "providing advice" about childbirth, mean that although they believe that their work is constitutionally protected, she and other Indigenous birth workers question if they are safe from State persecution. This could entail fines of over \$1000 per day, and potential arrest for assisting Maui women in need.

[The Center for Reproductive Rights](#) is a global human rights organization that, in the United States, works to secure and expand legal protections for reproductive rights, including access to abortion and safe and respectful maternal health care. The Center became involved earlier this year after Hawai'i midwives [protested](#) criminalization of their work, bringing the matter to international attention as a matter of reproductive justice. Fifteen reproductive rights, health, and justice organizations collaborated on the [report](#), which documents the United States' failure to meet its obligations under the ICCPR, from criminalizing abortion care to widespread abuses of Black and Indigenous women in hospital-based maternity care, to the persecution of traditional midwives, with Hawai'i's law featured as a highlight of the latter (p.16).

A [shadow report](#) is a document that is submitted to a UN treaty monitoring body by a non-governmental organization (NGO) to supplement or counter reports that UN member countries are required to periodically file as part of their treaty obligations. [The Office of the High Commissioner for Human Rights](#) (OHCHR) is the leading United Nations entity in the field of human rights, with a unique mandate to promote and protect all human rights for all people.

Some significant problems highlighted by the report in the section concerning Hawai'i (pp 14-19) include:

- “Criminalization of midwifery care undermines reproductive health and autonomy.”
- “the U.S. has marginalized midwifery care by imposing medically unnecessary legal and financial barriers.”
- “Legal restrictions on midwifery are rooted in racism and economic competition.”
- “Criminalization of midwives disproportionately harms Black and Indigenous communities.”
- “The formal education programs that meet Act 32’s standards are not located in the state, and none of the midwives currently licensed under Act 32 appear to identify themselves as Native Hawaiian.”
- “An investigation by the Center for Reproductive Rights found that Native Hawaiian and Black families in Hawai'i have inadequate access to respectful maternity care and that the recent criminalization of traditional midwives will exacerbate this reality.”
- “Several mothers reported other coercive or punitive measures, including obstetricians threatening to report Black and brown women to child welfare authorities if they miss prenatal appointments, are deemed “difficult” for asserting their rights to bodily autonomy and informed consent, or if they birth at home.”
- “Mothers spoke of the harmful impact that the U.S. takeover of the Hawaiian kingdom and repression of Native Hawaiian cultural practices has had on Native Hawaiians’ health and well-being and saw culturally aligned, traditional midwifery care as key to self-determination.”
- “by effectively allowing only midwives trained outside Hawaii to practice, Act 32 threatens to regulate traditional Native Hawaiian midwifery out of existence.”

Additional Background:

(note: the following information is from Hawai'i sources; some of this is referenced in the shadow report and some is not)

Of the [34 midwives licensed in Hawai'i](#) since the passage of Act 32, none are Kanaka Maoli (Native Hawaiian) and none are originally from Hawai'i. This is believed to result from the [MEAC](#) schooling requirement in Hawaii's law, which entails years of schooling outside Hawai'i (or potentially online at increased cost and coordination), foreign frameworks of midwifery concepts, and study under licensed preceptors, very few of whom are available in Hawai'i. A rigorous [Portfolio Evaluation Process](#) (PEP) pathway to licensure [proposed](#) to allow for documented experience and testing to substitute for MEAC schooling was [shut down](#) by the Hawaii Legislature this year. Because many entry midwifery students are young mothers with small children, Hawai'i practitioners - many of whom have already been practicing as traditional midwives for many years - are at a serious economic, cultural and geographic disadvantage.

Statistics have long shown that midwife-attended births are far [safer](#) than births with no practitioner in attendance. Attended home births have generally been shown to have [outcomes](#) that are similar to hospital births.

Black and Indigenous women regularly face potentially dangerous [discrimination](#) in healthcare settings, including known [racial bias that affects clinical judgment](#) of medical providers, as well as [abuse](#) and lack of cultural understanding. Native Hawaiian and Pacific Islanders have the [highest maternal mortality of all groups](#), an escalating rate far bypassing even notoriously high Black and Native American death rates. Most deaths in this group have been identified as ["preventable."](#)

Act 32 contains an exemption for "traditional Hawaiian healers engaged in traditional healing practices of prenatal, maternal, and child care as recognized by any council of kupuna convened by [Papa Ola Lokahi](#)," a longstanding Native Hawaiian Health organization. Papa Ola Lokahi is [legally](#) able to convene [traditional healing councils](#) that have the ability to exempt qualified Indigenous practitioners from licensure. However, Papa Ola Lokahi's scope is currently limited to four practices (lomilomi, laau lapaau, laau kahea and hooponopono) that do not include hānau (birth) practices, and according to its current rules, councils must be ["attached"](#) to a Federally Qualified Health Center or federal "Look-Alike," none of whom are currently considering outside applications, and all of which cover limited geographic areas - a single island at most.

A Council of birth-knowledgeable elders who applied to Papa Ola Lōkahi was denied on July 31, because it did not meet these requirements. "We spoke to nearly every existing kupuna council and health center in Hawai'i," says Laulani Teale, a traditional birth worker who helped the kupuna (elders) to organize the [Ea Hānau Cultural Council](#) in hopes of protecting Indigenous practices threatened by the new law. "those councils are all awesome, but none of them can protect Indigenous birth practices. We would need our own council to do that." Teale says that she understands that Papa Ola Lokahi has many considerations to work through, and

believes that they will eventually work out a solution. “Everyone is busy and dealing with regulations, politics and more, and we understand that. But women are giving birth now, and their choices are taken from them by this law. With a hundred years of colonial confusion to overcome and no access to knowledgeable support, many Kanaka could be in real, imminent danger.”

The Center for Reproductive Rights and other reproductive rights, health, and justice organizations will present additional information to the United Nations Human Rights Committee in Geneva, Switzerland in October.



Cultural Midwife Ki'i Kaho'ohanohano assists an expectant mother in West Maui



Pacific Birth Collective midwives and other birth workers have been a major collaborative force in Maui fire relief efforts.



Moloka'i matriarchs Loretta Ritte and Scarlett Ritte are two of the kupuna (elders) on the [Ea Hānau Cultural Council](#) that is seeking recognition by Papa Ola Lōkahi. Both are home birth mothers and cultural practitioners whose daughters are now carrying on these traditions, despite obstacles.

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Resources:

UN Shadow Report:

https://reproductiverights.org/wp-content/uploads/2023/09/CRR-and-RR_RH_RJ-Coalition-ICCP-R-shadow-report-2023-FINAL-1.pdf

How a lapsing birth attendant exemption affects access to care in Hawai'i. Hawaii Public Radio |

By [Sabrina Bodon](#) June 30, 2023 at 10:51 AM HST

<https://www.hawaiipublicradio.org/local-news/2023-06-30/how-a-lapsing-birth-attendant-exemption-affects-access-to-care-in-hawaii>

Fifth periodic report submitted by the United States of America under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020 : International Covenant on Civil and Political Rights <https://digitallibrary.un.org/record/3947286?ln=en>

CDC: Home Births in the U.S. Increase to Highest Level in 30 Years

https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/20221117.htm

Unlicensed midwives push to practice in Hawaii without certification

https://www.kitv.com/news/unlicensed-midwives-push-to-practice-in-hawaii-without-certification/article_0f59a9be-bbd4-11ed-81a1-e7ef64f46bbf.html

THE LIFESTYLES AND WORLDVIEWS OF MOMS WHO CHOOSE HOME BIRTH IN HAWAI'I (Dissertation, Kisitū)

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Vital Signs: Pregnancy-Related Deaths, United States, 2011–2015, and Strategies for Prevention, 13 States, 2013–2017

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A meta-analysis of selected maternal and fetal factors for perinatal mortality.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4249209/>