Sovereign Union of First Nations and Peoples in Australia
Asserting Australia's First Nations Sovereignty into Governance
www.sovereignunion.mobi

His Excellency Ban Ki-moon

Secretary General of the United Nations

United Nations Building

SA-1b15 New York

New York 10027 USA

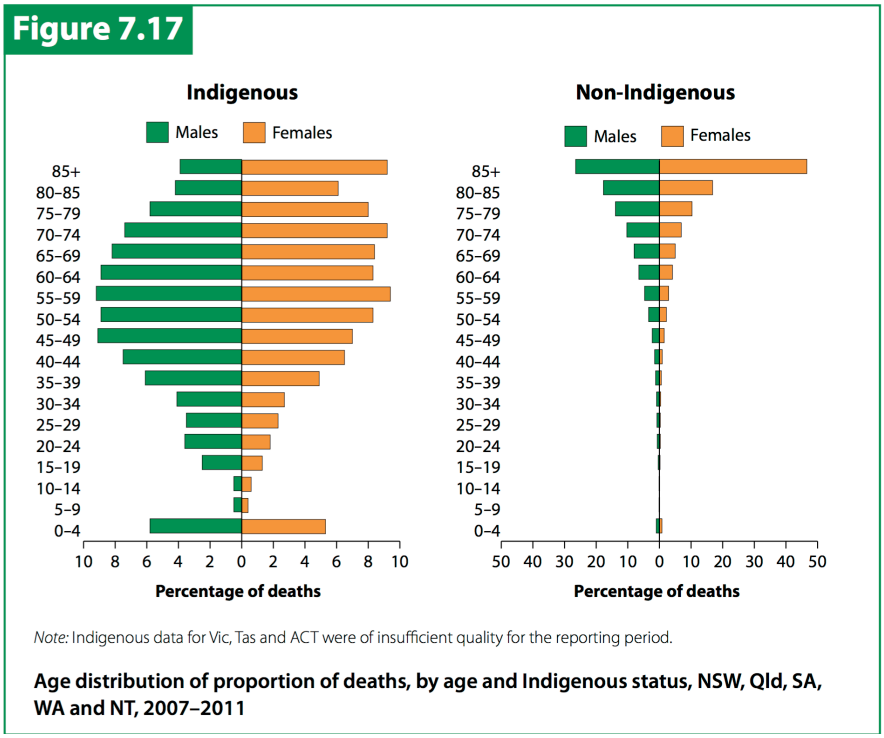
31 March 2016

Your Excellency

Re: Opposition to Australia gaining a seat on the Human Rights Council in 2018

The Sovereign Union is shocked and alarmed that Australia should be seeking to be a member of the Human Rights Council in 2018. [https://theconversation.com/australias-bid-for-the-un-human-rights-council-48385]

We object in the strongest terms to Australia being considered for such a high and important role in world affairs. On 10 November 2015 110 UN Member States criticised Australia's human rights record and made over 300 recommendations to improve its Human rights standards and practices.



Source: http://www.aihw.gov.au/australias-health/2014/indigenous-health

Australia's policies in relation to Human Rights are a history of abhorrence, which continues into the present.

In the 1830's during the Australian gold rush period the colonies created an absolute ban on Chinese participation in the gold fields. During this same period Australia went against British Crown instructions in respect to the native population's rights being preserved and protected, so much so that massacres and mass murder occurred on and within the mainland. Australia was investigated during the British parliamentary Select Committee Inquiry into the killing of Aboriginal people within the British colonial dominions, with a particular focus on Australian colonies.

> [Great Britain. Parliament. House of Commons Select Committee on Aborigines (British Settlements) *Report from the Select Committee on Aborigines (British Settlements)*: with the minutes of evidence / appendix and index. Ordered by the House of Commons to be printed, 26 June 1837.]

After the 1837 Inquiry Aboriginal Peoples were under a protectorate regime at the request of Britain.

As soon as Australia became a Federation of colonies the parliament introduced in *Immigration Restriction Act 1901.* This law was a copy the South Africa's *Natal Franchise Act* 1896 and the Australian legislators merely replaced the words South Africa with Australia. In introducing this bill to the parliament Prime Minister Edmund Barton MP quoted Professor Charles Pearson to emphasise Australia's need for a White Australia policy:

> The fear of Chinese immigration which the Australian democracy cherishes … is, in fact, the instinct of self-preservation, quickened by experience … We are guarding the last part of the world in which the higher races can live and increase freely, for the higher civilisation … The day will come … when the European observers will look around the globe girdled with a continuous zone of the yellow and black races. It is idle to say that if all this should come to pass our pride and place will not be humiliated. We are struggling among ourselves for supremacy in a world which we thought of as destined to belong to the Aryan race; and to the Christian faith; to the letters and arts and charms which we have inherited from the best of times. [Pearson, Charles H. 1893, *National life and character: a forecast,* Macmillan, London.]

Further documents restricted the right to participate in the democratic process to British born subjects and/or their heirs and successors, dividing the population as 'citizens' and 'aliens'. In fact, it was not until 1948, after the UN was formed, that Australia legislated for the first time for an Australian citizenry. It must be emphasised that Aboriginal and Torres Strait Islander people were never part of the democratic process. In fact there were State legislative regimes that enslaved Aboriginal people to a State regime of assimilation and institutionalise genocide. This proposition is supported by the 1937 Commonwealth funded Aboriginal Welfare Conference held in Canberra on 21-23 April 1937, where the *Final Solution* for the 'Aboriginal problem' in Australia was designed and agreed upon – a policy of assimilation and genocide

Australia's participation in the formation of the modern United Nations was well attended by Australian representatives under the umbrella of the mother country England, as Australia did not have speaking rights in the first instance.

When the United Nations Charter was finally formalised the Commonwealth government of Australia deceived the international community by passing legislation in the Commonwealth parliament 'accepting' the UN Charter, but failed to legislate to ratify Australia's adherence to the terms of the UN Charter. This is borne out by the High Court case Bradley v Commonwealth ("Rhodesian Information Centre case") [1973] HCA 34; (1973) 128 CLR 557 (10 September 1973) and in the recent Queensland Supreme Court *Ngurampaa Ltd v Balonne Shire Council* [Ngurampaa Ltd v Balonne Shire Council & Anor [2014] QSC 146] when Philippede's J did not refute the submission from Balonne Shire Council's defence lawyer asserting that the international law of the Charter of the

United Nations does not apply to Australia.
[http://nationalunitygovernment.org/content/charter-united-nations-does-not-apply-australia-claims-qld-lawyer-euahlayi-rates-case]

The Sovereign Union further objects to Australia being given any consideration for a seat on the Human Rights Council as it creates anxiety within the Aboriginal community because of a number of other factors.

1. Prior to the second World War the Australian Prime Minister Sir Robert Menzies accompanied by an Australian delegation met with members of the Third Reich in Germany in 1938. On their return to Australia it was suggested that Australia should adopt the progressive policies of the Third Reich and had a lot to learn from Hitler. This proposal was put paid to by England and Germany going to war and Australia, being a Commonwealth Federation of British colonies, had to support the mother country because at this time all 'Australian citizens' were British subjects.

2. Australia's recent immigration policy [*Migration Act* 1958] is in fact based on xenophobia and racism. As Aboriginal people we know full well what it means to be an 'alien' within Australia, because, like the current refugees, we were confined to government mission stations and authorised church mission stations, where we did not have the rights of freedom of movement or association. This policy of exclusion from mainstream Australian society included a denial of right for Aboriginal children or adults to own real property and/or be beneficiaries of any of their non-Aboriginal ancestral rights to property through inheritance. These controlling laws were repealed and amended in the late 1960s and early to mid 1970s, but since this time successive governments have continually persisted with institutionalised racism which is clearly defined in their parliamentary acts and in the operations of the acts. Current Australian governments continue to deny basic fundamental Human Rights and freedoms to Aboriginal Peoples through their widespread institutionalised racism. Some of this has been documented in the UN Treaty bodies such as CERD.

3. The fact that Australia can pass legislation in the national parliament to suspend the 1975 *Racial Discrimination* Act from applying to the racist legislation the *Native Title Act* as amended in 1998 and the Northern Territory Emergency Response] that denies due process to Aboriginal people is not a shining light for someone with an ambition to sit on the international Human Rights Council or any UN Committees and make judgements on the actions of other UN Member States.

4. Australia is a western democratic country that defies and denies public scrutiny of its internal race relations so much so that in March 2000 denied the American Special Rapporteur for the CERD, Gay McDougall, by refusing her an entry permit into Australia. Gay McDougall had also questioned: If the Racial Discrimination Act was overridden, did that amount to a repudiation of the State party's obligations under the Convention? We argue Australia is in breach of its obligations under the ICERD.
[CERD/C/SSR.1393 29 March 2000, p. 10.]

5. When the CERD criticised Australia in 1998, 1999 & 2000 Prime Minister John Howard's Liberal National party government for the Ten Point Plan amendments and their impact on Aboriginal Rights and Native Title, Australia chose to take an aggressive approach towards the CERD and the Human Rights Commission by demanding that the UN should review its association with NGOs and recommended the curtailing of NGO influence in the scrutiny of various countries' human rights violations and the denial of various ethnic racial minorities in their participation in the mainstream economy and political processes. At this time Australia was placed on the CERD's early warning and urgent action list, an alert to pending

genocide, which is a grave indictment on Australia's international human rights standing.

6. Australia has ratified and brought into law within Australia the 1993 *Convention on Biodiversity* but ignores Article 8J:

> (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices;

Instead Australia approves mining companies' Environmental Impact Statements and permits major mining operation on Aboriginal Lands without Aboriginal Peoples' free prior and informed consent. There is no free prior and informed Aboriginal consent to desecration of sacred ground. Moreover, all Australian laws defy the terms of the Hague Convention, which Australia has ratified, regarding cultural destruction and history of our Peoples.

The Commonwealth government imported international law into the *Aboriginal and Torres Strait Islanders Act* 2005, No. 150 1989 as amended where it is legislated to establish *a Torres Strait Regional Authority, an Indigenous Land Corporation and a corporation to be known as Indigenous Business Australia, and for related purposes*:

> ... AND WHEREAS it is the intention of the people of Australia to make provision for rectification, by such measures as are agreed by the Parliament from time to time, including the measures referred to in this Act, of the consequences of past injustices and to ensure that Aboriginal persons and Torres Strait Islanders receive that full recognition within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire;
>
> AND WHEREAS the Parliament seeks to enable Aboriginal persons and Torres Strait Islanders to increase their economic status, promote their social well-being and improve the provision of community services;
>
> ... AND WHEREAS the Australian Government has acted to protect the rights of all of its citizens, and in particular its indigenous peoples, by recognising international standards for the protection of universal human rights and fundamental freedoms through:
>
> > (a) the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination and other standard-setting instruments such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights; and
> > (b) the acceptance of the Universal Declaration of Human Rights:

The reality we now have as Aboriginal people is that there are very few Aboriginal people in Australia who have been made aware that these international rights have become part of the common law system of Australia, thus impairing any notion of Aboriginal and/or Torres Islander Peoples demanding these rights to be initiated within Australia, so that they become an action in Australian law as opposed to them being aspirational.

Australia should not be permitted to take a seat on any international Human Rights committee or Council for these reasons. We will let the evidence in the submissions that the Commission on Human Rights and now the Human Rights Council have received from Aboriginal people since the 1980s speak for itself in respect of the gross Human Rights violations by the Australian Government and their colonial State parties.

Australia - the deceitful rogue State

Australia does not seem to learn from any actions of gross violations of Human Rights throughout the world, nor do they look back on their own history, which is why they continue to perpetrate the gross violations of Human rights against Aboriginal people, rather than initiating a program of reparation. The laws and initiatives that they float in the international community are extremely deceitful bordering on lies. The legislative aims and objectives appear to be very progressive and innovative, but the operations on the ground are so restrictive as to deem most actions totally ineffective and do not work for Aboriginal people in their communities. The Close the Gap reports provide a small insight into the defects that exist.

[https://www.dpmc.gov.au/sites/default/files/publications/Closing_the_Gap_2015_Report_0.pdf]
[for Closiing the Gap 2015 Report see: http://closingthegap.dpmc.gov.au]

This is compounded by the fact that the *Racial Discrimination Act* 1975 restricts independent reporting to the Human Rights organs within the UN because all reports to the UN are scrutinised by the Commonwealth government prior to lodgement in the UN. The Human Rights Commission in Australia is also restricted in its reporting ability and the reports have to be scrutinised by the Attorney-Generals department.

For fifty years Australia has been a signatory to the Genocide Convention, but will not enact it in its own backyard. Yet Australia will still condemn and penalise others for their atrocities but *will not* own up to atrocities against the First Nations and Peoples of this land.

> 'I have concluded that no offense of genocide is known to the domestic law of Australia.'

stated Justice Crispin in his ACT Supreme Court judgment on 18 December 1998 *Nulyarimma v Thompson*.

> [In the matter of an application for a writ of mandamus directed to Phillip R Thompson Ex parte Wadjularbinna Nulyarimma, Isobel Coe, Billy Craigie and Robbie Thorpe (Applicants), Tom Trevorrow, Irene Watson, Kevin Buzzacott and Michael J Anderson (Intervenors) [1998] ACTSC 136 (18 December 1998)]

Australia has had fifty years to enact the Genocide Convention as domestic legislation. The signing of this important treaty is a farce, and appears to be done only for show to ease the international pressure on Australia.

We draw your attention to the fact that Australia still does not have an effective law against genocide. Australia has still not fully imported the Genocide Convention into domestic law. Parts of the Genocide Convention were imported into domestic law by way of the *International Criminal Court Consequential Amendments Act* 2002, but only the Attorney-General can begin a genocide case and if he/she refuses there is no right of appeal and no reasons need to be given. [268.121 – 268.122]. This is contrary to the intent of the long-standing Genocide Convention, which Australia was the third country to sign.

In conclusion, Australia is perpetrating gross violations of Human Rights against First Nations and Peoples; does not have an effective law against genocide and has no right to a seat on the Human Rights Council.

Sincerely

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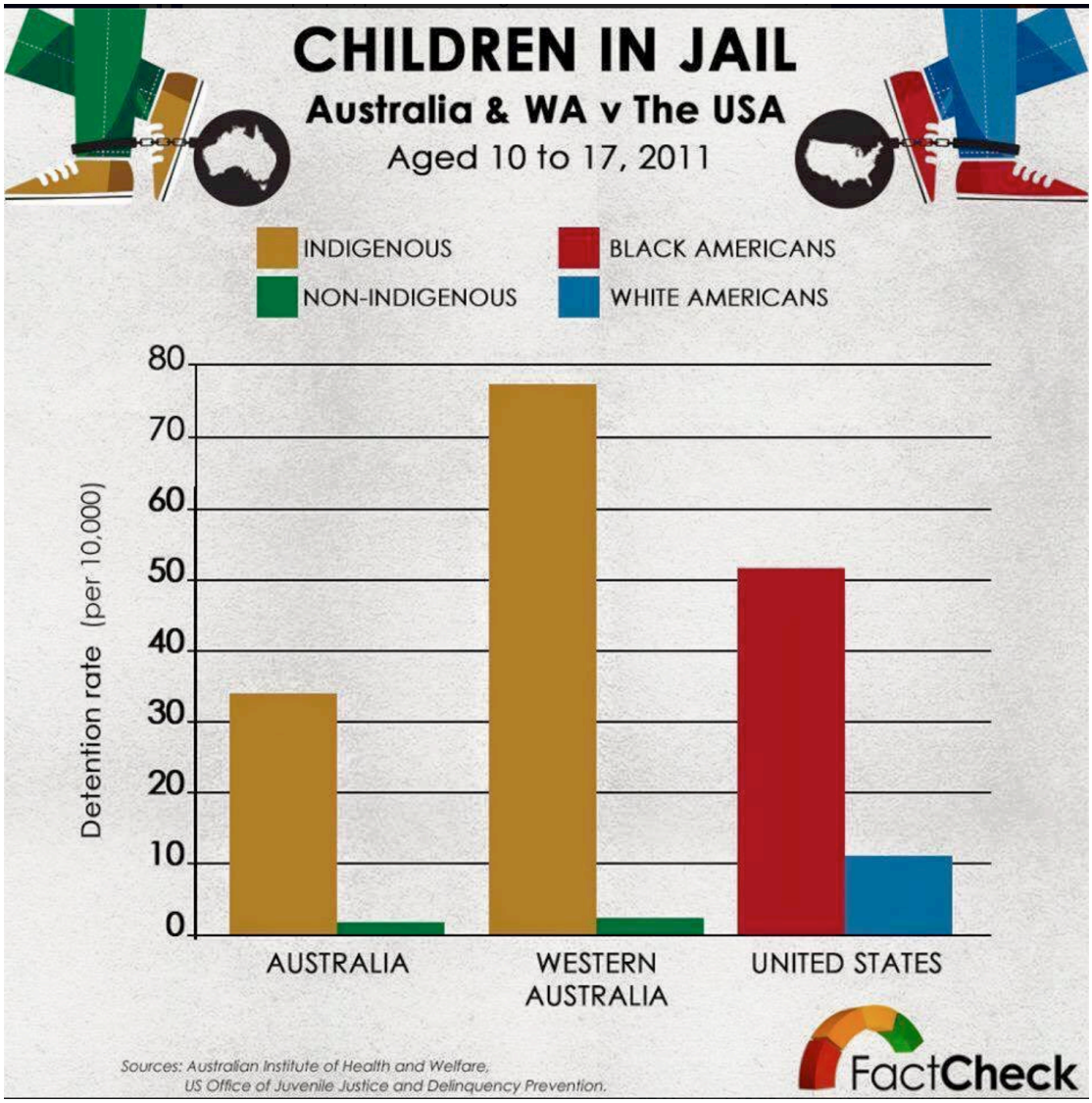
BACKGROUND:

An example of overt racism:



Australian government's and legal position that the UN Charter does not apply to Australia:

It has come to light that the Commonwealth Government of Australia has been deceiving the United Nations, and the international community in general, by purporting to have committed Australia as a Nation State to the 1945 Charter of the United Nations, without any encumbrances. The Euahlayi People express alarm and concern that a matter of such significance has been ignored by the United Nations.

In the matter of *Ngurapmpaa v Balonne Shire Council* in Supreme Court of Queensland [1330/14], Balonne Shire Council's defence lawyer asserted that the international law of the Charter of the United Nations does not apply to Australia. The case involves the basis of right of the Balonne Shire Council to charge Euahlayi People land rates on land that has been returned as redress for past dispossession. I have subpoenaed the documents for Balonne Shire Council to prove how Euahlayi Allodial title to land was transferred to the Crown's land tenure system.

On 30 April 2014 Mr M. P.Amerena, of King and Company Solicitors, Counsel for the Balonne Shire Council stated in his outline of argument at paragraph 30:

> *In any event, the Charter of the United Nations does not have force of law in Australia; see Bradley v The Commonwealth and Joosse v ASIC. See also Minister for Foreign Affairs v Magno. In short, the content of the Charter has not been carried into effect within Australia by appropriate legislation. The better view is that what is now s.5 of the Charter of the United Nations Act 1945 serves only for the purposes of international law, to ratify Australia's participation in the United Nations.*

The Commonwealth of Australia's Charter of the United Nations Act 1945, as amended in 2010, appears to bring the international law into domestic law. Section 5 states clearly:

> *Part 2—Approval of Charter*
> *5 Approval*
> *The Charter of the United Nations (a copy of which is set out in the Schedule) is approved.*

But in the case law that the Balonne Shire relies upon, *Bradley v Commonwealth* ("Rhodesia Information Centre case") [1973] HCA 34; (1973) 128 CLR 557 (10 September 1973), Chief Justice Barwick along with Justices Gibbs and Stephen stated the rationale for the decision *(ratio decidendi)* which is binding on lower courts. The Commonwealth Law Report summary states:

Barwick CJ with Gibbs and Stephen JJ held that Section 3 of the Charter of the United Nations Act 1945 did not make the Charter binding on persons within Australia as part of the municipal law and neither the Charter nor the Resolution of the Security Council had been carried into effect by legislation in Australia. Hence they could not be relied upon to justify executive acts or resist an injunction to restrain an excess of executive power.
(**NB**: Section 3 is now Section 5)

Alarmingly, this assertion permits a dictatorial tyranny to rule in Australia.

The judgment of Chief Justice Barwick and Justice Gibbs refers to section 3 of the UN Charter when in fact it is now Section 5 which states that the UN Charter is "approved":

> The Parliament has passed the Charter of the United Nations Act 1945 (Cth), s. 3 of which provides that "The Charter of the United Nations (a copy of which is set out in the Schedule to this Act) is approved". That provision does not make the Charter itself binding on individuals within Australia as part of the law of the Commonwealth …

Section 3 of the *Charter of the United Nations Act* 1945 was no doubt an effective provision for the purposes of international law, but it does not reveal any intention to make the Charter binding upon persons within Australia as part of the municipal law of this country, and it does not have that effect.

This conundrum is further expressed in the Federal Court case *Minister for Foreign Affairs v Magno* 1992, which focuses on the demountable shed placed by East Timorese on the lawns of the Indonesian Embassy in Canberra after the Dili massacre in 1991. Gerardo Magno challenged the validity of amendment 'SR No. 7' (Statutory Regulation No. 7) to the *Diplomatic Privileges and Immunity Regulations* purportedly signed by the Governor-General Bill Hayden1 on 15 January 1992.
In this case Justice Gummow compares the binding nature on Australian domestic law of the *Vienna Convention on the Law of Treaties* as opposed to the UN Charter. Again s. 3 should read s.

5:

> *Secondly, not all legislative approval of treaties or other obligations entered into by the Executive renders the treaty binding upon individuals within Australia as part of the law of the Commonwealth, or creates justiciable rights for individuals. An example is s. 3 (sic) of Charter of the United Nations Act 1945. This simply states that the Charter is "approved", something insufficient to render the Charter binding on individuals in Australia: Bradley v The Commonwealth [1973] HCA 34; (1973) 128 CLR 557 at 582, Koowarta supra at 224. See also Dietrich v The Queen supra pp 66-67. The legislation with which this appeal is concerned is not within this class, because s. 7 states that certain provisions of the Convention "have the force of law" in Australia.*

We recall UN General Assembly Resolution 56/83 12 December 2001, Responsibility of States for internationally wrongful acts:

Article 12 Existence of a breach of an international obligation
There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.

The United Nations is obligated to ensure that all UN Member States adhere to and respect international law, and in particular meet their obligations arising from the signing and ratification of international treaties.

(**NB**. Statutory Rule No. 7 (SR 7) was in fact never signed by the Governor-General on 15 January 1992. Instead a rubber stamp 'BILL HAYDEN' was used)

More: http://nationalunitygovernment.org/content/charter-united-nations-does-not-apply-australia-claims-qld-lawyer-euahlayi-rates-case