



Sovereign Union

First Nations Interim National Unity Government

Asserting Australia's First Nations Sovereignty into Governance

www.sovereignunion.mobi

27 September 2012

Your Excellency

Re: Opposition to Australia's application for a temporary position on the UN Security Council

The Sovereign Union of First Nations in Australia wishes to advise that Aboriginal Nations and Peoples in Australia object to any support for Australia to have a temporary position on the UN Security Council.

Our objections are founded on the following:

1. Australia is a colonial power

Australia's position as a nation state within the United Nations is not founded on a secure position of statehood, in fact, it is well established legal fact that Australia has its position within the UN by virtue of it being a signatory to the Treaty of Versailles and being a signatory to the founding documents of the United Nations, when it changed its position from the League of nations. The High Court in *Mabo v Queensland (No 2)* ["Mabo case"] [1992] HCA 23; (1992) 175 CLR 1 (3 June 1992)] clearly stated that Australia's tenure to statehood is a precarious skeletal framework. Australia remains a colonial state of the British, because the 1901 constitution remains an Act of the British Parliament and Australia's Head of State is a foreign ruler in the guise of Queen Elizabeth II, the ruling British monarch.

2. Australia in breach of UN Conventions

From 1999 Australia has been fighting against the Human Rights Committee's scrutiny of its treatment of Aboriginal Peoples. Australia is the only country in the world that has constitutional powers to pass laws for any race for whom it deems necessary. In this regard, the Australian government continues to use its powers to discriminate against its First Nations populations on the basis of race. In the past Australia has been found by these treaty bodies to have breached their international obligations and campaigned against the CERD when Australia was put on the early warning and urgent action procedure. Australia campaigned against the UN's treaty bodies' powers and authority by calling for a review of their functions, arguing that other nation states of the world should be monitored more closely than itself.

More recently, the UN CERD called for Australia to negotiate a treaty with its Aboriginal population. This call was influenced by submissions from the First Nations people in respect to the Northern Territory Emergency Response (NTER) legislation. The NTER law comes from Australia's military authority, as it has the powers to make emergency declarations under the rules and disciplines of war. In this regard, it should be noted that in order for the Australian government to establish such a piece of legislation it had to suspend the *Racial Discrimination Act 1975*. In 1998 Aboriginal people made complaints against the Liberal-Coalition government's Ten Point Plan to amend the *Native Title Act 1993*, as it was also necessary to suspend the *Racial Discrimination Act* in order to avoid paying compensation to Aboriginal Peoples for extinguishing their right to claim land under the Act.

The NTER is criminal by virtue of the fact that it suspends any and all human rights that Aboriginal Peoples/people may have and this is done while the United

Nations watch. The UN appears to have little to no power or will to alter this position by Australia.

3. Australia still has no effective law against genocide

Australia is a country that purports to see peaceful resolutions throughout the world and supports all endeavours to have tyrannical leaders brought to justice for the crimes committed against their own populations. This is in stark contrast to Australia's legal position within its own law. This is demonstrated that by the fact that in 1999 the full bench of the Federal Court [Nulyarimma v Thompson (includes two corrigenda dated 2 September 1999) [1999] FCA 1192 (1 September 1999)] and later the High Court ruled that there was no law against genocide on its own soil, nor does it have any effective remedies for crimes against humanity. Even worse is the fact that the counsel for the Prime Minister in the case argued that the Genocide Convention was deliberately not incorporated. The Weekend Express stated: "accused war criminals ... who have become Australian citizens, will not be effected ... because politicians fear that [incorporation] . . . will also open the way for the Aboriginal claims of genocide."

The legislation that Australia now has in respect of genocide have two restrictive elements: a/ Crimes against humanity and genocide only apply to its armed services abroad and b/ no legal action can be brought against perpetrators of genocide unless it is approved by the Attorney-general and there is no right of appeal if she/he refuses. [INTERNATIONAL CRIMINAL COURT (CONSEQUENTIAL AMENDMENTS) ACT 2002 – Section 268.121 – 268.122.]

It is our submission that Australia has a long way to go in its ability have a legitimate position on the UN Security Council, because, if it were to meet a criteria of satisfaction in respect to its confirmation of its nationhood and meeting the required obligations – the UN should have established criteria for its nation states to comply with its treatment of its population where the people can feel free of any discriminatory practices against them, based on race, creed, or religious belief.

In conclusion, it must be acknowledged by the UN Australia continues to flounder in its attempt to locate satisfactory solutions to its classified illegal immigrants policy and the boat people problem who seek asylum from political and religious persecution within their own countries.

Sincerely

Michael Anderson, Chair
Interim National Unity Government
Sovereign Union of First Nations and Peoples in Australia
and Leader of the Euahlayi Nation

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ATTACHMENTS:

1. Letter to UN Secretary-General, Ban Ki-Moon dated 27 February 2012
2. Letter to Navi Pillay, UN High Commissioner for Human Rights dated 24 May 2011

ATTACHMENT 1.

Mr Ban Ki-moon
UN Secretary-General
United Nations
New York

27 February 2012

Your Excellency,

I am corresponding with you on behalf of the National Unity Government, known as the Sovereign Union of the Aboriginal Nations and Peoples in Australia (SUANPA).

For two hundred and twenty five years our country has been occupied by the British and ruled by all their successors in title.

From the original instructions to the invading Captain Arthur Phillip, the British advised in 1788 that upon their landing an invasion of the land mass, then referred to as New Holland and *Terra Australis* he was to apply the 'rules and disciplines of war' from the outset. The historical records clearly show that former Dutch and British explorers were well aware that this new-found land was indeed peopled.

Australian historical records and despatches from various governors to the British Admiralty, during the early years of occupation, tell of constant undeclared warfare. Clearly the 19th century documents and those of well into the 20th century, show that the various Australian colonies ignored the British Admiralty's instructions for Aboriginal Peoples' rights to occupy, possess and use their lands and resources as their customary usages had done so previously. Instead, the colonies developed policies and strategies to exterminate our race. If you require evidence of these facts we can produce them at your request.

It is said in law, that in order to prove genocide, it is obligatory for those making the allegations to prove that the State had planned or condoned any practices that lead to the genocide of a particular race or ethnic group in whole or in part, or by condoning private armies or vigilante groups. Should your office require this information, it can also be produced.

Within the last twelve months I have come upon legislation from the British parliament dated 1875 called the *Pacific Islanders Protection Act 1875*. This UK Parliamentary Act was an amendment to the 1872 *Pacific Islanders Protection Act* that was popularly referred to as the anti-blackbirding Act, or words to that effect.

The 1875 amendment refers to the 1872 Act as being the principle Act, and in the principle Act the terms and definitions described unambiguously and unequivocally the specific locations and landmasses that these Acts related to. Under the terms and definitions of the principle 1872 Act it included and applied to the colonial states at the time of Queensland, New Zealand, New South Wales, Victoria, Tasmania, South Australia and Western Australia. It must be noted that the current Northern Territory was part of the South Australian colony at this time.

In December 2011, I had the occasion to travel to London to look at the Votes and Proceedings and Bills in respect of the 1875 *Pacific Islanders Protection Act* in the Office of Parliamentary Counsel in Whitehall. I must admit that I was surprised that the rights of Aboriginal Peoples in Australia were not part of those debates. However, in August 1875 when the *Pacific Islanders Protection Amendment Act 1875* was concluded in the Parliament, the Act included Sections 7 and 10, which read:

7. Saving of rights of tribes. – Nothing herein or in any such Order in Council contained shall extend or be construed to extend to invest Her Majesty with any claim or title whatsoever to dominion or sovereignty over any such islands or places as aforesaid, or to derogate from the rights of the tribes or people inhabiting such islands or places, or of chiefs or rulers thereof, to such sovereignty or dominion, and a copy of every such Order in Council shall be laid before each House of Parliament within thirty days after the issue thereof, unless Parliament shall not then be in session, in which case a copy shall be laid before each House of Parliament within thirty days after the commencement of the next ensuing session. [2243]

...

10. Proclamation of Act. – This Act shall be proclaimed in each Australasian colony by the governor thereof within six weeks after a copy of it has been received by such governor, and shall take effect in the said colony from the day of the proclamation. [2246]

Having located these sections, I then had discussions with a Member of the House of Commons, Mr Jeremy Corbyn, MP at his Parliamentary office. I asked Mr. Corbyn, how was it that these two sections had been included. He responded to wit: Her Majesty Queen Victoria, through the exercise of her prerogative rights made two Orders in Council: the first being section 7 and the second being section 10. Mr Corbyn then added that, when such an Order in Council is given by the English Monarch, it becomes absolute law within the British legal jurisdiction, which included all the colonies of England at the time and thereafter.

It is important now to refer you to a court case dated 1842 before the full bench of the Supreme Court in New South Wales, *R v Murrell and Bummaree* (1836) 1 Legge 72; [1836] NSW Sup C 35.

Briefly, an Aboriginal man was brought before the court for killing another member of his own tribe under his Law. He challenged the jurisdiction and said he was not a subject of the British king and therefore not subject to the jurisdiction of the court. The court concluded that given that the British instructions were to offer protection of British law to Aboriginal people, then he must be subject to British law. The defence counsel then put it to the court on Jack Congo Murrell's behalf that if he was indeed a British subject then the colonial state had a legal obligation to compensate him financially for the land they had confiscated from him as a result of the invasion. Interestingly the court held that;

Although it was granted, that on first taking possession of the Colony, the Natives were recognized as free and independent, yet the various tribes were found not to occupy that position in the scale of nations as to strength or government which would entitle to sovereignty. [*Sydney Herald* 5 May 1836]

It is from this conclusion that until 1993 Australia was considered a country settled by 'peaceful' means because it was classified as *terra nullius*, a legal concept that has now been overturned by *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1 (3 June 1992)

In respect to the High Court *Mabo (No.2)* case, it should be noted that the High Court perused the *Pacific Islanders Protection Acts* and concluded that, on the question of the continuing sovereignty of Aboriginal people it was not within the High Court's jurisdiction to form any view and make conclusions. As Aboriginal Peoples we do understand this reasoning because the High Court is established by the settler state to deal with their laws governing their people. The conundrum that we now find ourselves in is the fact that the British from 1875 onwards did not claim sovereignty or dominion over the peoples, our place the rulers and chiefs. This was then and continues now to remain the British law in respect to Aboriginal people.

From the 26 January 2012 it has now been re-asserted that Aboriginal people are sovereign and independent people of this country and we are now finalising the development of a National Unity Government to exercise our sovereign and independent rights as Nations and Peoples.

During this development phase we do understand and acknowledge that it will be viewed and taken as a serious affront to the existing invader nation state of Australia, in respect to territorial integrity. Having said this however, the Australian state has been deceitful and dishonest in its treatment of our Peoples and as a consequence of our Old Peoples' lack of understanding of the English language and their methods of government, we have been denied all those rights which we have always held and that had been confirmed since 1875. No doubt the Australian state will now use, by sheer weight of numbers and superior force, through their local police organisations and military, to suppress any Aboriginal efforts to gain our legal rights. In respect to this we will be travelling to England in the coming months to hold talks with the English government in an effort to have them honour their own law pre and post Federation of the Australian state.

We are appealing to the United Nations, through you as the Secretary-General to provide us with protection and support to establish our National Unity Government (SUANPA) and to achieve its desired goals. We are freely exercise our right to organise ourselves so that we can reach a point that will enable us to govern ourselves in our own right, once again.

We also understand the need to have urgent meetings with the Australian state as they occupy the same landmass and rely on the same natural resources for their own economic stability, but we cannot hold these meetings until we first organise at a national level. We do know that each of the Australian states at present are rejecting our efforts by banning our gatherings in and on public places, and referring these gatherings as protests, thereby causing civil unrest. But it is our submission that it is they, with the dominant and governing numbers, who are exercising superior force to prevent us from holding gatherings and using their police to break up our groups and move us on.

We would like to draw your attention to the fact that we gather on public lands and similar locations in an effort to avoid conflict, but it is the nation state, which is taking offense. It comes as an absolute surprise for us that the Australian states, both Federal State and Territory, are unable to understand and accept that it is from their own political and legal genesis that is, the British and their parliaments and the laws which underpin their society, that gives us our legal right. I reiterate, the source of our authority to assert our sovereign rights and dominion over our lands and natural resources as free and independent Peoples is recognised by the same source of power.

I now wish to reiterate my call that the United Nations, under international law, must invoke upon the Australian state their obligations to refrain from the use of force and to engage fully with us as the National Unity Government to have fully realised those guarantees that are entrenched with the attached UN General Assembly resolutions

Should the United Nations find this too difficult and confronting, then we ask that the United Nations refer this matter to the international Court of Justice for their Advisory Opinion.

In the document we attach we outline the basis of our sovereignty movement and the UN's international moral and legal obligations to ensure a peaceful transition.

Sincerely,

Michael Anderson

BACKGROUND:

THE RIGHT OF SELF-DETERMINATION

The Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 Dec 1960 states:

The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of co-operation and world peace...all peoples have an inalienable right to complete freedom, the exercise of their Sovereignty, and the integrity of their national territory. ¹

The prohibition on the use of force to deny self-determination was first declared in the UN General Assembly resolution 2160 (XXI), 30 November 1966, 98-2-8:

...forcible action...which deprives peoples under foreign domination of their right to self-determination [external or internal] ...constitutes a violation of the Charter.

After the second world war, the United Nation's urgent quest for world peace are in the name of:

We the peoples of the United Nations...²

and

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. In no case may a people be deprived of its own means of subsistence...

is the first article of the International Covenant on Civil and Political Rights (ICCPR)³ and of the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴

It is understood that force may be used to defend against denial of self-determination, but this was not stated clearly until 1970 in the Declaration on Friendly Relations that established the principles of equal rights and self-determination of peoples:

Every State has the duty to refrain from forcible action which deprives peoples...of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter.

But the 1970 Declaration on Friendly Relations advocates forms of government beyond those detailed in Principles VII-IX of United Nations General Assembly Resolution 1541.⁵

In UN General Assembly resolution 2625 (XXV) 24 October 1970 called:

The Declaration on Principles of International Law concerning friendly relations and co-operation among States in accordance with the charter of the United Nations (A 8082)

is the principle of equal rights and self-determination of peoples:

¹ UN General Assembly Resolution 1514 [xv]

² UN Charter

³ UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force in Australia 23 March 1976

⁴ UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force in Australia on 3 January 1976.

⁵.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying the responsibilities and entrusted to it by the Charter regarding the implementation of the principle announced in order;

...

(b) to bring about a speedy end to colonialism, having due regard to the free and expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

...

The establishment of a sovereign and independent State, the free association or integration with an independent state or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

...

The territory of a colony or other Non-Self Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self Governing Territory have exercised their right to self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any actions which dismember or impair, totally or in part, the territorial integrity or political unity of sovereign independent States conducting themselves in compliance with the principles of equal rights and self-determination of peoples as described above, and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

On 30 November 1995, the United Nations Economic and Social Council appears satisfied that First Nations Peoples' concerns are adequately dealt with by Article 1 of the Charter of the United Nations. That is;

...The development of friendly relations among nations based on respect of the principle of equal rights and self-determination of peoples.

To permit the Australian Government's submission to have any legitimacy at all, when they say:

...Australia considers that self-determination encompasses the continuing right of peoples to decide how they should be governed.'⁶

is of great concern and this position of the Australian government cannot be left to stand for them to deny our rights as Peoples, based on the existing resolutions of the United Nations, as cited.

⁶ [Statement by Mr. Bill Barker on Behalf of the Australian Delegation. Nov. 21, 1995]

There was enormous difficulty in the Working Group of the Commission of Human Rights to Elaborate a Draft Declaration on the Rights of Indigenous Peoples for Article Three, the right to self-determination, to be endorsed by the UN nation states. In fact Australia was a key country opposing the inclusion of Article Three, supported by the other members of the CANZUS alliance, Canada, New Zealand and the United States of America.

During the laborious drafting process, we protested:

Are we not the *Free Peoples* of the world, or does the United Nations view First Nations Peoples as a different and lesser class of Peoples?

Is it not the Charter of the United Nations to insure that Human Rights and Freedoms are extended to all Peoples to be observed and adhered to and consistent with the enunciated Article 1 of the Covenant on Economic, Social and Cultural Rights;

...All peoples have the right of self-determination by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development...

Because of the continuing Australian deceit and denial as to our inherent rights, it is no wonder that the Australian Governments during the drafting process remained by seeking to prevent being extended to the Aboriginal Peoples.

But the United Nations is an association of member nation states, which each recognise each other's sovereignty. Their common denominator is that the majority acquired their power and status through military might and the genocide of First Nations Peoples, with whom they came into contact with during the colonial imperial expansion. Unfortunately, we, the tribal Peoples of the Earth, residing within the UN nation states' boundaries, are having to appeal to the nation state that over ran over Peoples and lands.

There can be no doubt that our appeals to the United Nations will be fraught with constant opposition, because as First Nations Peoples our appeals do, in fact, impact upon the territorial integrity and political unity of those nation states. There can be no doubt that the United Nations will have to formulate new policies and procedures in respect to the UN Nation states to commence a process of true and meaningful internal colonization by following the principles cited in the resolutions herein.

The UN Special Rapporteur, the late Professor Alfonso Martinez, also harboured no doubts concerning the much-debated issue of the right to self-determination: First Nations Peoples, like all Peoples of the Earth, are entitled to this inalienable right.⁷

Self-determination is not restricted to full independence. There is a continuum of freedoms available and a range of choices. It is the right of the People concerned to *choose* which form of self-government, autonomy or independence they aspire to. It can also be an evolving process so that freedoms are gained in incremental stages.

As Professor Rudolfo Stavenhagen concludes:

⁷ Martinez, M.A. 1999, *Study on treaties, agreements and other constructive arrangements between States and Indigenous populations, [sic = peoples]*, Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and Protection of Minorities, UN Doc E/CN.4/Sub.2/1999/20, 22 June 1999 para 256.

...the denial of self-determination is essentially incompatible with true democracy. Only if peoples' right to self-determination is respected can a democratic society flourish...⁸

As recently * as April 2000 the UN Commission on Human Rights re-stated the underlying principle for world peace and good order in Resolution 2000/62:

...a democratic and equitable international order requires, inter alia the realization of the following rights:

- (a) The right of all peoples to self-determination, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural development...⁹

In the preceding Resolution 2000/40 the UN Commission on Human Rights emphasised that:

...political platforms ...based on racism...or doctrines of racial superiority and related discrimination must be condemned as incompatible with democracy...and that racial discrimination condoned by government policies violates human rights...

Thus international law acknowledges that there is also a creative process at work and in this way it is the right of First Nations Peoples to determine their own political status, even if this form of government has not been previously recognised by the United Nations. In fact, this is getting close to the crux of the issue because First Nations Peoples already have ancient systems of government, Law/Lore and economy handed down through time, but it was the colonising powers who denied the existence of this sacred process and, instead, subjugated and denigrated the First Nations Peoples.

But now the Earth, our Mother, is stirring and First Nations Peoples across the globe are feeling a new sense of empowerment and the diverse cultures and peoples are re-energising, rising up in defense of our Mother Earth; knowing that unless this happens our Earth is finished. It is the combined energies of First Nations Peoples with non-Aboriginal supporters who can break the shackles of trans-national corporate globalisation, militarism, nuclear cycle and state sovereignty. First Nations Peoples are having to find ways of re-expressing the 'Voice of the People', which for too long has been silenced by the dominant powers and an obstructionist media outlets. Destruction of the Earth and genocide against First Nations Peoples have become accepted norms by dominant populations living in denial of the reality which surrounds them.

With establishment of the World Trade Organization through Free Trade Agreements and the corporatizing of governments, the territorial integrity, which nation states so desperately cherish and protect is now compromised. It is important to understand that Aboriginal Peoples, like the remainder of the nation state's population have never been consulted by the governments, to gain the peoples' free, prior and informed consent to have their country's territorial integrity compromised in the name of commerce and trade. This act by governments and those who participate in it is treasonous and a fraud against its population.

⁸ Stavenhagen, R. 1966, 'Self-Determination: Right or demon?' in D. Clark & R. Williamson, (eds)., *Self-Determination: International Perspectives*, St Martin's Press, New York, 1, p. 8.

⁹ *Promotion of the right to a democratic and equitable international order*, E/CN.4/RES/2000/62, 27 April 2001, para. 3.

For each of the nation states to argue that the First Nations Peoples' claim of right through self-determination is a threat to their territorial integrity is an hypocrisy of monumental proportions.

ATTACHMENT 2

Navanethem Pillay

UN High Commissioner for Human Rights

Palais Wilson

52 rue des Paquis

CH-1201 Geneva

Switzerland

24 May 2011

ETHNOCIDE: A CRIME EQUAL TO GENOCIDE

Submission by Michael Anderson,

Leader of the Euahlayi Nation

Co-founder of the 1972 Aboriginal Embassy in Canberra

and Convenor of the New Way Summit

Continuing Sovereignty:

In 1999 a submission was made to the United Nations entitled *Australia-The Concealed Colony*. It was compiled by senior researchers Frank Coningham, Geoffrey Skelton and Ian Henke with research assistance from the University of Lausanne, the Sorbonne (Paris), the Humbolt University (Berlin), Trinity College Dublin, University of La Sapienza (Rome), the Complutense de Madrid, Universities of Oxford and Cambridge, University of Ghent (Belgium) and major American universities of Stanford, Cornell, Berkeley and Harvard.

Australia-The Concealed Colony was tabled in the UN explaining that Australia was not a Legal Nation by comparison to other countries and that Australia was only classified as an Independent State by virtue of the fact that it is a Signatory to the UN charter and the Treaty of Versailles.

Since all law throughout the world law is about absolutism and certainty not ambiguity, it is a requirement of the UN to ensure that its Member States are in fact *bone fide*. Failure to do so is negligence and against the principles of the UN.

Aboriginal Nations and Peoples have never accepted British rule in Australia and this is evidenced by the violent discourse in Australia since British invasion in 1788.

Whilst British Crown has consistently requested, both as a prerogative exercise and written as an instruction to Governors and governments, Aborigines were to be treated as British subjects and afforded the protection of British law this did not usurp our Peoples' sovereignty.

It is important to have cognisance of the fact that being treated as British subjects and

afforded protection of British law in no way compromises the continuing sovereignty of Aboriginal Nations and Peoples in Australia.

Another aspect of the continuing sovereignty of Aboriginal Peoples is the fact that Australian governments recognise it. This is evidenced by the fact that when dealing with Aboriginal people all policies and regimes have been directed towards Aboriginal People as a distinct race where special measures have been adopted. Furthermore past Legislation at State and Commonwealth levels have been, at the first instance, about protecting a race of People from the vigilante 'Settlers' who sought to clear the land of Aboriginal Inhabitants.

These laws make Australia the only Country in the world where laws were put in place to protect one race of people from another.

In order to afford protection for Aboriginal People it was necessary to set up government Mission Stations where the authorities, not only attempted to "smooth the dying pillow for a dying race" as it was first thought, but the same Mission Stations, both church and government, became prison institutions where the people had no right of freedom of movement or freedom of association and their personal and social welfare was totally dependent upon government appropriated aid.

The most unfortunate thing about these institutions was once you and your family were committed there was never a release date. It wasn't until much pressure came to bear from foreign countries, who through various UN Committees sought to be informed on the welfare and well-being of Australia's Aboriginal Inhabitants, that change began. One such country was Ghana in the 1940s.

It is important for the UN and other countries to know that, in respect of Aboriginal Cultural Heritage. There now exists within Australia laws in every State and territory that vest ownership of our cultural heritage to white bureaucrats and Ministers of the Parliaments.

Land title

In Australia the government has interfered with due process and natural justice through the creation of the Native Title Act 1993 and its Amendments through which the government imposed its will upon the independent arbiters of law by interfering with the common law process when determining Aboriginal Peoples' continuing association with land. Instead of now dealing with the common law rights of Aboriginal Peoples with respect to their Traditional Lands, the government codified and established criteria on how Aboriginal people are expected to prove their continuing association with Country.

By doing this the courts are required to rule on peoples' access where by Traditional Owners have to demonstrate the exercise of their Customary Practices while living in modern Australia, and all the while knowing that 60% of the Aboriginal population were rounded by Australian Government authorities and removed from their lands under Government Policies. The fact that our people, in many areas, had no right of freedom of movement made it impossible for Aboriginal Peoples of the southeast states to ever have sufficient customary association with their country and all lands were granted to non-Aboriginal farmers and other landholders. The majority of Aboriginal People who were removed under Government Legislation have not had the ability to return to their homelands since the removal of mission control in 1969 for New South Wales and Queensland in 1977.

In modern Australia we continue to have Government Policies that suppress any ability of Aboriginal People to be self-determining. This can be established by an independent study of all laws relating to Aboriginal advancement within Australia.

It goes without saying that the Northern Territory National Emergency Response is a

Martial Law type of rule that governs Aboriginal People in a way that dictates all forms of development, social interaction and economic progress for Aboriginal People in the Northern Territory. Similarly, other States do not fare much better as statistics show that approx 70% of the Aboriginal population is 100% welfare dependent. In this regard Aboriginal People have little ability to work their way out of the impoverished conditions they find themselves in, added to the fact that royalties are controlled by the Australian Government not the people.

Education and vocational training

The Australian Government is constantly promoting the theme of education and employment, but these are very ambitious objectives when one looks at the current state of educational programs in this country. The Australian history Curriculum within the schools does not include government policies towards Aboriginal People and the subsequent effect the policies had on our people, such as Government Mission and Station life. The Australian Education Curriculum does not include why the Government chose to remove children under the 'Stolen Generation' regime, nor do they explain why Aboriginal people were imprisoned onto Government and Church Mission Stations. They certainly do not include any topics which deal with the violent confrontations with the free 'settlers' and the British militia during the colonial times, whereas massacres are becoming well documented in various recent publications.

In relation to the low achievement rate of Aboriginal People in the Education System, the Australian Government continues to ignore the fact that many Aboriginal People are rejecting the Education System, because it has little or no relevance to their current status in life. This is reflected in low school attendance, absenteeism and the high juvenile crime rate. This converts to civil disobedience in the community where Aboriginal People see themselves as outsiders and not belonging.

Ethnocide

Fly-in observations of the Aboriginal situation in Australia cannot do justice to the deeply rooted problems that Aboriginal Nations and Peoples confront daily. In order to understand the dilemmas of Aboriginal People it is absolutely imperative that complete and in-depth studies are conducted on the entrenched racism that is so deeply rooted in the psyche of Australian politics. This racism is reflected in all policies directed at Aboriginal Peoples' advancement, which is completely underpinned by the governments' objective for the eventual total assimilation of Aboriginal People. This can only mean ethnocide. Ethnocide is a notion that even the UN refuses to acknowledge. But in order to do justice for Aboriginal People, the main thing the UN can do for us is to make Ethnocide a crime equal to Genocide and ratified by every Nation throughout the world to prevent Australia from refusing to become a party to that convention. There can be no excuse for Ethnocide, just as there is no excuse in law for murder and Genocide.

Treaty negotiations

Attached is an earlier paper entitled: *That Word – Treaty*. It is important to understand how in Aboriginal society one nation cannot speak for another, whilst it is a practice used in Australia to break up Aboriginal unity.

This is confirmed when we trace back to a letter from the then Minister for Aboriginal Affairs, Mr Baume, written to the National Aboriginal Conference (NAC) in July 1981 that Aboriginal people cannot be permitted to develop like American Indians with self determination This is the reason why the treaty process was shut down.

Australia does acknowledge, however, that it has never gained the Sovereignty of Aboriginal Peoples and their Nations and in the Mabo case the High Court concedes that

the question of Aboriginal Sovereignty belongs to another jurisdiction, i.e. the International Court of Justice.

Nevertheless, the Indigenous Affairs Minister, Jenny Macklin, says she is open to a push for recognition of Indigenous Australians in the Constitution, but she has ruled out a treaty.

"This process is about recognising indigenous people within the Australian Constitution. It is not about a treaty," she told *The Australian*. [see www.wgar.info]

This is despite the fact that in August 2010 the Committee for the Elimination of Racial Discrimination (CERD) recommended treaty negotiations:

15. ... Drawing the attention of the State party to the Committee's general recommendation 23 (1997) on the rights of indigenous peoples, the Committee reiterates its recommendation that the State party increase efforts to ensure a meaningful reconciliation with Indigenous peoples and that any measures to amend the Australian Constitution include the recognition of Aboriginal and Torres Strait Islanders as First Nations Peoples. In this regard, the Committee recommends that the State party consider the negotiation of a treaty agreement to build a constructive and sustained relationship with Indigenous peoples. The Committee also recommends that the State party provide the National Congress of Australia's First Peoples with the adequate resources to become fully operational by January 2011 and support its development.

[Emphasis added -CERD/C/AUS/CO/15-17/CRP.1]

The Federal Government's proposal to recognise Aboriginal People in the Constitution must not usurp our continuing Sovereignty. The only resolution of the Constitutional issue is by way of negotiated Sovereign Treaties under the supervision of the international community.

The Aboriginal Tent Embassy, on behalf of Aboriginal Sovereign Nations, officially declared our existing Sovereignty in 1992. This notice was first handed to the then Minister for Aboriginal Affairs, Mr. Robert Tickner, on the 28 January 1992.

If Australia is a Democracy then the Government must ensure Democratic Principles when dealing with Aboriginal Peoples.

In 1973 a body of Aboriginal People under the 'Whitlam' Government consulted nationally with Aboriginal Peoples. This was known as the 'National Aboriginal Consultative Committee, NACC, which evolved into the National Aboriginal Conference (N.A.C.).

Elders and people worked out that if you want proper representation there are 46 linguistic groups that cover the 500 Aboriginal Nations.

'National Aboriginal Consultative Committee' was elected by Aboriginal people in which 48 000 Aboriginal people voted. On the first ever Aboriginal Electoral Roll, which was developed in six months, there were around 68 000 Aboriginal People, which meant about 70% of the Aboriginal population voted. The NACC received \$1 million for this as opposed to the current National Congress of Australia's First Peoples' 2000 membership of which only 600 voted despite receiving \$29 million dollars over 3 years.

This recent Congress clearly has no clear representation of the holistic Aboriginal Community and is just as unrepresentative as the handpicked "Expert Panel on Constitutional Recognition of Indigenous Australians" chosen by Government.

It is worth noting that those persons who are seeking to be elected for the 'National Congress of Australia's First Peoples' are vetted first by an ethics committee and then have to be approved of by the Minister of Aboriginal affairs.

So much for democratic principles: Aboriginal People do not even get a chance to choose their own representatives.

The government's hand-picked Indigenous people on this "Expert Panel on Constitutional Recognition of Indigenous Australians" must publicly acknowledge that they do not represent the various Aboriginal Nations across this country. Having said this they must personally accept all responsibilities for any deceptive language that complies with the usurpation of Aboriginal Sovereignty. They would be better served to ensure the Australian Government bona fides of statehood and make moves to have treaties negotiated with Aboriginal Nations in a move to ensure Australia becomes a republic in the future.

The second attachment is *Aboriginal Sovereignty, Justice, the Law and Land* by Kevin Gilbert (1933-1993) which elucidates the veracity of Aboriginal Nations and Peoples claim to continuing sovereignty in Australia.

[Now available on <http://sovereignunion.mobi/content/su-document-download-library>]

No effective law against Genocide

Finally, we wish to draw your attention to the fact that 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.

We are requesting that the UN Human Rights Commission strongly recommends that the Australian government imports fully the Genocide Convention into domestic law.

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24 May 2011

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Attachments: [Now available on <http://sovereignunion.mobi/content/su-document-download-library>]

Anderson, Michael, 2010, *That Word - Treaty*

Gilbert Kevin, 1987, *Aboriginal Sovereignty, Justice the Law and Land*