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Woer Au Kara Nis

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Summary

Australia denied Kaurareg Aboriginal peoples their natural justice and their inalienable right to self-determine their future when it decided that forced "integration with an independent State" was to be the legitimate form of self-government for its colonized and dependent populations. Kaurareg seek redress of this violation of their rights by being placed on the United Nations General Assembly's Non-Self-Governing Territory List.

1. Kaurareg Aboriginal peoples are a colonized and dependent population who still live on their own non-self-governing territory, taken from them by the British Crown in 1788. Since that time, on numerous occasions Kaurareg have been denied natural justice by Australia. The sum of those denials accrue to the abysmal outcomes measured against six ambitious targets of the *Closing the Gap*[1] initiative by Council of Australian Governments (COAG) to close the gap on disadvantage between Aboriginal people and the rest of Australia.

[1] Council of Australian Governments, Closing the Gap in Indigenous Disadvantage, accessed on 22 March 2015 and available at https://www.coag.gov.au/closing_the_gap_in_indigenous_disadvantage. The six targets are (1) to close the gap in life expectancy within a generation by 2031 (2) to halve the gap in mortality rates for Indigenous children under five, by 2018 (3) ensure access to early childhood education for all Indigenous four year olds in remote communities by 2013 (4) halve the gap in reading, writing and numeracy achievements for children by 2018 (5) halve the gap for Indigenous students in Year 12 (or equivalent) attainment rates by 2020; and (6) halve the gap in employment outcomes between Indigenous and other Australians by 2018. Despite these commitments and the efforts by national and sub-national governments, in February 2015 Prime Minister Tony Abbott reported in Parliament that "Much more work is indeed needed because this Seventh Closing the Gap Report is, in many respects, profoundly disappointing."

2. Kaurareg assert that disadvantage dispossession and marginalization is the direct outcome of Australia's unilateral decision for its colonized and dependent populations. That is, of forced "integration with an independent State". That decision, made without free prior and informed consent of its colonized and dependent populations is the only cogent and logical explanation for their disadvantage dispossession and marginalization, despite significant past and recurrent policy and program resources expended on *Closing the Gap* by successive administrations.

3. Resistance by Aboriginal peoples to forced integration is their resistance to the evils of colonization. It should not be mistaken as being ungrateful, as reverse-racism, or a preference for remaining in disadvantage dispossession and marginalization. Resistance is all they have left, borne out of profound sorrow despair and grief from their lands and seas being taken from them. The colonizer who possesses the knowledge that severance-with-intent of autochthonous peoples from their lands and seas creates disadvantage dispossession and marginalization, and continues to use that knowledge to support the practice of severance, is tantamount to considered genocide of those peoples. In light of mounting anthropological and archaeological evidence in the knowledge base of Australia, amassed from native title determinations, there can be no other explanation for continuing the intent and practice of severance.

4. Article 8 of the United Nations Declaration on the Rights of Indigenous Peoples is manifestly clear that "1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. 2. States shall provide effective mechanisms for prevention of, and redress for: (d) any form of forced assimilation or integration". It is clear that Australia's decision for its colonized and dependent populations to be subject to "integration with an independent State", without their knowledge and free prior and informed consent, is the equivalent of forced integration.

5. Being dependent on Australia, Kaurareg had real opportunity in 1946 to be lifted out of their misery when the UN Secretary General requested Member States to identify colonized or dependent populations inhabiting their territories or those occupying non-self-governing territories under their administration. Australia identified the territory of Papua in 1946, and later Cocos (Keeling) Islands in 1975. But Australia did not identify Kaurareg

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as a colonized and dependent population, despite Kaurareg approximating the description of a non-self-governing territory. A territory that had been annexed to the Colony of Queensland in 1879. Neither Kaurareg nor any of their neighbouring tribal groups were nominated to the Non-Self-Governing Territories List of the General Assembly. This was, and still is, a denial of our natural justice.

6. Kaurareg again had real opportunity to exercise self-determination when the UN General Assembly addressed the evils of colonization in resolution 1514 (XV) *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960. Concerned that the Declaration would require guidelines for colonized and dependent populations affected by the evils of colonization, the General Assembly turned their attention to addressing this critical requirement. It resulted in resolution 1541 (XV) and Annex *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter*, 15 December 1960. In light of Kaurareg's forced integration not being privy to nor having input to real solutions provided by these two resolutions to remedy our colonial distress, is a second denial of our natural justice.

7. Kaurareg were denied natural justice a third time in 1961 when the Secretary General appointed Australia as a member of the first *Special Committee of 24 on the Situation with regard to Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, General Assembly resolution 1654 (XVI) of 21 November 1961. As a member of the first *Special Committee* dealing with the implementation of the 1960 Declaration, and of oversighting member States obligations to Article 73e in the United Nations Charter. At that time Australia had real opportunity to remove forced integration but did not. It is very difficult for Kaurareg to believe Australia had no knowledge about its obligations to comply with the two decolonization resolutions.

8. As a member on the first *Special Committee* that oversaw implementation of the Declaration, and with access to decolonization information and data, Kaurareg believe Australia was in the ideal place to (a) continue enforcing its decision of forced "integration with an independent State" and (b) keep information about the requirements and obligations that such a decision

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demands, away from the Australian public arena. While Australia was in the ideal place to provide relief for its colonized and dependent populations it chose forced "integration with an independent State". Not being privy to these decisions or knowing the fate that befell Kaurareg peoples, is clearly a denial of our natural justice.

9. Kaurareg were denied natural justice a fourth time when Australia, who had already chosen forced "integration with an independent State" for colonized and dependent populations, ignored the binding requirements in the Annex 1541 (XV) and chose discrete "parallel decolonization techniques" instead. Kaurareg believes these parallel decolonization techniques provided cover for Australia to give the appearance of meeting some of the obligations in the Guidelines of 1541 (XV), while avoiding exposure to all the obligations for Member States to transmit information to the Secretary General. In other words, instead of engaging in legitimate techniques of decolonization as prescribed in the Annex to 1541 (XV), Australia chose to engage in parallel decolonization techniques. Techniques giving an appearance of redressing the evils of colonization without the need to disclose the decision of forced integration it made for its colonized and dependent populations.

10. In taking note of "parallel decolonization techniques" adopted by Australia, we see in Principle VIII of the Annex that *complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated* does not exist. It would be ludicrous in the extreme to advance the notion of complete equality between Aboriginal peoples and the rest of Australia. This is because data on government service provision, audits and reports of Australia's Productivity Commission, past and present policies and programs designed to overcome Indigenous disadvantage all point to the fact that *complete equality* between Australia's colonised and dependent populations and the mainstream population of Australia is, like *terra nullius*, a myth that has never seen the full light of day in Australia. There has never been *complete equality* between Aboriginal peoples and the rest of Australia since their colonization in 1788 and subsequent loss of land.

11. In taking note of "parallel decolonization techniques" adopted by Australia, when we examine sections of Principle VIII of the Annex *…equal status and rights of citizenship…* we see the reason why Australia pursued the 1967

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Referendum with such vigour. It points to Australia's absolute requirement to change certain sections of its Constitution, in order to comply with its obligations under international law pursuant to the legitimate form of self-government it chose for its colonized and dependent populations. That is, of "integration with an independent State". Before the 1967 Referendum, Section 51 (xxvi)[2] and Section 127[3] of the Australian Constitution were clearly seen to discriminate against Australian Indigenous peoples. Both sections were hard evidence in Australia's Constitution that Aboriginal peoples did not have the same *equal status and rights of citizenship* as all other Australians.

12. In taking note of "parallel decolonization techniques" adopted by Australia, with regard to Principle VIII of the Annex *equal guarantees of fundamental rights and freedoms without any distinction or discrimination*, Australia's *Racial Discrimination Act 1975* was its response to the *International Covenant on Civil and Political Rights* (ICCPR). But in spite of the intent of the *Racial Discrimination Act* discrimination is still endemic in Australia, "drawing oxygen" from Australia's decision of forced "integration with an independent State". Before the 1967 Referendum, discrimination against Aboriginal peoples was overt. Blatantly out in the open for all to see in Section 51 (xxvi) and Section 127 of its Constitution. But today, discrimination against colonized and dependent populations in respect of *equal guarantees of fundamental rights and freedoms* is masked by Australia's "parallel decolonization techniques".

13. In taking note of "parallel decolonization techniques" adopted by Australia, in relation to Principle VIII of the Annex *equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government*, Australia can point to instruments of legislation and policy since the 1967 Referendum that satisfy this section of Principle VIII of the Annex. These include enactment of the *Aboriginal & Torres Strait Islander Commission Act 1989* and the *Council for Aboriginal Reconciliation Act 1991* as evidence of their compliance in reporting to the United Nations. However, the reality is that "integration

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[2] Section 51 (xxvi): The Parliament shall, subject to this Constitution have power to make laws for the peace, order, and good government of the Commonwealth with respect to: (xxvi) The people of any race, other than the aboriginal people in any State, for whom it is necessary to make special laws.
[3] Section 27: In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives should not be counted.

with an independent State" has denied Kaurareg effective participation at all levels of the executive, legislative, and judicial organs of government. Tribal groups to the north and south of Kaurareg territory enjoy dedicated electorates with their own candidates. Kaurareg does not have the same rights and opportunities as their neighbours. Not having their own dedicated electorate seat and their own candidates for their own territory means Kaurareg do not participate in political and public life and still suffer discrimination on their own non-self-governing territory.

14. In taking note of "parallel decolonization techniques" adopted by Australia, with regard to Principle IX of the Annex *should have attained an advanced stage of self-government with free political institutions* the closest that Aboriginal peoples had for *an advanced stage of self-government with free political institutions* are the by-gone *Aboriginal Community Councils*. The self-government changed in 2005 when *Aboriginal Community Councils* and the residents of their Deeds of Grant in Trust (DOGIT) remote communities, moved away from a "community services" regulatory environment to a "local government" regulatory environment, bringing them closer into the orbit of sub-national government control. Despite Kaurareg's electorate proximity to *Aboriginal Community Councils* and DOGIT lands, Kaurareg have never experienced self-government as an *Aboriginal Community Council* nor have they been part of any DOGIT communities since their annexation to the Colony of Queensland in 1879. This is because of their forced removal, three times, from their own territory.

15. In taking note of "parallel decolonization techniques" adopted by Australia, with regard to Principle IX of the Annex *integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status*, the normal course of events would be the member State obliged to transmit information under Article 73e commences its obligations after it accepts being subject to 1541 (XV). But Aboriginal peoples in Australia did not express any such wish freely or by coercion for forced integration. Today, no Aboriginal person can remember their freely expressed wishes by *a responsible choice through informed and democratic processes* or of having acted with full knowledge of the change in their status, such as are described in Principle IX of the Annex. There is no Indigenous-wide or residual memory of a choice to move from assimilation before the 1960 Decolonization Declaration, to integration after the 1960

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Decolonization Declaration. Nor is there any memory since 1960 of having attained to the requirements and contingencies of *the capacity to make a responsible choice through informed and democratic processes*. None have ever happened.

16. In taking note of "parallel decolonization techniques" adopted by Australia, with regard to Principle IX of the Annex *impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes*, apart from nation-wide elections for the *Aboriginal & Torres Strait Islander Commission* being the closest approximation to uphold the remotest of arguments that Aboriginal peoples voted on a decision for "integration with an independent State", there is no event in Australia's history where an Aboriginal person can remember voting on "integration with an independent State" with their free prior and informed consent. There has been no impartially conducted voting based on universal adult suffrage. It has never happened. Not having input to legitimate decolonization solutions, nor being part of the planning that lead to solutions but forced to deal with "parallel decolonization techniques" while not knowing why these techniques were forced on us is, we believe, a deceitful and treacherous act and a denial of our natural justice.

17. Our daily existence of forced integration is not compatible with freedom to pursue our inalienable rights. Any pursuit of our rights faces constraints of rule-of-law, policies, and population management techniques, pursuant to forced integration. It is not possible for Kaurareg peoples to freely exercise their inalienable right to self-determine their future when the considerable weight and gravity of forced "integration with an independent State" militates against them. As a direct consequence, it is not possible for Kaurareg to freely pursue the rights articulated in the Declaration on the Rights of Indigenous Peoples when the decision for the enjoyment of a legitimate form of self-government has already been made for them. All that is now left, as far as choice granted by Australia is concerned, is the degree to which Kaurareg chooses to be integrated. Our senior Elders and our leaders believe forced integration to be a denial of our natural justice and restriction to the right of free prior and informed consent. The definition of free prior and informed consent that Kaurareg subscribe to is "*consent* should be obtained by *free* means and exercised by Kaurareg *prior* to the occurrence of the event or circumstance, while being *informed* cannot

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be disconnected from the right of discretion that Kaurareg possesses for giving or denying its *consent* in the manner it so chooses”.

18. Kaurareg challenges Australia to do the right thing by its colonized and dependent populations, to undo the evils of colonization by granting them the right to choose the legitimate form of self-government they aspire to on the basis of their free prior and informed consent. With forced integration the prime objective of Australian decision makers, billions of $AU have already been misspent on Indigenous disadvantage and the blame is falling on the side of the disadvantaged. With the third International Decade on the Eradication of Colonialism already halfway through, Australia should waste no time on changing the past illegitimate decision for “integration with an independent State”.

19. Kaurareg are fiercely protective of their territory and are a local resource wasted by policy oversight, where Australians from other parts of Australia are brought in to defend Kaurareg territory. Kaurareg seek the return of decision making control they once enjoyed before colonization, over the quality of their lives and their environment. They will not get that right while Australia continues to deny them natural justice and impedes their inalienable right to self-determine their future by continuing to impose forced integration on our peoples. Kaurareg seek the support of United Nations Member States in our challenge to Australia. We do not seek to “…dismember or impair, totally or in part, the territorial integrity or political unity[4]…” of Australia. But we do seek the return of decision making control that we once enjoyed.

20. Our region sits between the three international countries of Australia, Papua New Guinea, and Papua Province Indonesia. Kaurareg are literally on the front-door step to the Indian Ocean, the South China Sea, and beyond. A critically strategic area with dangers to Australia where we are routinely overlooked for having any meaningful role to protect our borders. Our people fought in conflicts to protect Australia and we have no hesitation in joining the effort to protect our territory. But we cannot do that with one hand tied behind our back from forced “integration with an independent

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[4] Article 46 (1) of the United Nations Declaration on the Rights of Indigenous Peoples.

State”. Kaurareg openly requests that Australia set us free from the evils of colonization and to work with us so we can protect our territory.

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