



Ngurupai

Kaurareg Aboriginal Land Trust

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Woer Au Kara Nis

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The Chair and Committee Members

Expert Mechanism on the Rights of Indigenous peoples (EMRIP)

Office of the High Commissioner for Human Rights (OHCHR)

Palais des Nations

CH-1211 Geneva 10

SWITZERLAND

By email: expertmechanism@ohchr.org

Dear Chair and Committee Members

Re: contribution from the Kaurareg Aboriginal Land Trust to the EMRIP study on the promotion and protection of the rights of Indigenous peoples with respect to cultural heritage

On behalf of our senior Kaurareg Elders and our community, and Kaurareg Aboriginal Land Trust (**Land Trust**) Committee, I am pleased to present to EMRIP our paper on this timely Study. The problems we face in Australia are what we believe to be residual evils of colonialism from long-past and forgotten decisions, upheld today by successive governments with well-meaning intent.

Changing the intent of governments to make a fresh-start with legitimate decolonization processes is the challenge we face. Our paper describes the unique obstacles confronting our peoples in a first world country, in respect of the right to promote and protect and enjoy our cultural heritage.

Turning from our homes to the homes of Indigenous peoples in other territories, Kaurareg cannot speak for another Indigenous peoples on their hopes and fears. But we can stand together and support their aspirations and efforts, wherever appropriate and achievable, for their inalienable right to promote and protect their cultural heritage and self-determine their future.

Yours faithfully

Willie Wigness
Committee Chair

Summary

Much consideration has been given by our senior Kaurareg Elders and leaders to providing EMRIP with information we believe is current, and historical, to circumstances of our cultural heritage. Essentially, we are unable to promote and protect our cultural heritage the way we normally would.

To explain why we are unable to promote and protect the way we normally would, we cannot avoid making reference to Australia's history of engineered colonial experiences. This is because those experiences represent visible threads of evidence that run unbroken from our colonial past. They connect our colonial past to our present day suffering.

We are concerned these engineered colonial experiences have created the precedence for Kaurareg that mean these threads may very well be seen in our future. A future where collateral damage from engineered colonial experiences translate to erosion and loss of our cultural heritage. Our current losses to this day are evidence of these threads. They all point to the evils of colonization.

In this context, if the colonizing powers of Australia and United Kingdom do not materially assist Kaurareg to legitimately decolonize, then we are in danger of losing the integrity, life, vigour and glory, of our cultural heritage to the inert-status of a socially engineered artefact.

For this and other reasons we present our paper to EMRIP with the hope that our right to promote and protect, to enjoy our cultural heritage, will be announced to the Human Rights Council in a manner that honours our ancestors and our living Elders. We also hope our paper contributes to a way forward that is mutually acceptable to all parties on this planet, by eradicating colonialism.

Statement 1 below is a statement of the difficulties Kaurareg face in promoting and protecting our cultural heritage. The details of our present difficulties for Statement 1, start from page 3.

Statement 2 is another statement of the difficulties Kaurareg face in promoting and protecting our cultural heritage. Our present difficulties for Statement 2, are summarized on page 15.

Statement 1:

1. Kaurareg peoples are a colonized and a dependent population, still living in their own non-self-governing territory, who have been denied:
 - a. natural justice for their inalienable right to exercise self-determination and to promote and protect their cultural heritage, and
 - b. natural justice to their inalienable right to freely choose a legitimate form of self-government in which to create their future

Statement 2:

2. Procedural fairness with free prior and informed consent under Australia's rule of law is a double-bind for Kaurareg because:
 - a. rule of law extinguishes Kergne lore if Kaurareg have no alternative other than choose the degree under which they will integrate with rule of law, while
 - b. integration under rule of law disintegrates Kergne lore, disempowers and disadvantages its peoples, and reduces their ability to promote and protect cultural heritage

Statement 1 Details:

1. *Kaurareg peoples are a colonized and a dependent population, still living in their own non-self-governing territory, who have been denied:*
 - a. *natural justice for their inalienable right to exercise self-determination and to promote and protect their cultural heritage, and*
 - b. *natural justice to their inalienable right to freely choose a legitimate form of self-government in which to create their future*

Background

1.1. It is important to note that Kaurareg's potential for promoting and protecting their cultural heritage, despite their rights in the United Nations Charter and instruments, was effectively arrested in 1946. To this day from that year, Kaurareg's ability to exercise their rights has been progressively reduced by the taxing of time resources and efforts to unravel Australia's systems of population management controls and techniques. These systems and techniques arise out of the decision by Australia in 1960 for dealing with its colonized and dependent populations, by deciding on their "integration with an independent State". Then, in the ensuing years following its decision, Australia engaged in "parallel decolonization techniques". These techniques are visible as parallel decolonization techniques when compared to the legitimate decolonization techniques undertaken by member States formally bound to the United Nations system of decolonization.

1.2. This curious behaviour by Australia of "parallel decolonization techniques", of cherry-picking some obligations in the United Nations system of decolonization while ignoring others, can only be explained by the decision that Australia made for its colonized and dependent populations in 1960. This deliberate decision by Australia posits discretion for decolonizing practices and techniques wholly within the domain of the colonizer. That is, Australia's domain. From this domain, policies and programs pursuant to "integration with an independent State" are seen throughout the incumbency periods of successive national governments. They are recognized in policies and programs exercised by sub-national governments, also pursuant to "integration with an independent State". But, they are actualized in the pain and suffering of colonized and dependent populations, glaring and obvious to the most casual of observers since 1960.

1.3. To this day Australia maintains its course of "parallel decolonization techniques" in spite of the glaringly obvious pain and suffering of its colonized and dependent populations, caused by its decision for their "integration with an independent State". The *Closing the Gap* initiative agreed to by all Australian governments, for closing the widening gap between the quality of life for colonized and dependent populations and mainstream populations, as late as February 2015 was reported by the Prime Minister in Australia's Parliament House that "despite efforts of successive governments, we are not on track to achieve most of the targets..." pursued by *Closing the Gap*. The evils of colonization must stop. It can only be stopped by (1) unravelling Australia's systems of controls and techniques of population management for "integration with an independent State" and (2) of Kaurareg exercising its inalienable right to self-determine its future.

1.4. Kaurareg are a discrete autochthonous population who, despite the evils of colonization, still inhabit their non-self-governing territory and still practice their traditions and customs in the nation State of Australia. Australia generally refers to the Indigenous inhabitants of its mainland as being Aboriginal peoples. But in the territory it calls “Torres Strait”, Australia generally refers to the Indigenous inhabitants of the islands as Torres Strait Islanders. The region “Torres Strait” named after the Spanish explorer Luis de Torres, is an enduring British colonial construct whose governance and administration influence in the region continues to this day. However, a large part of that territory of islands is known as Kaurareg and its autochthonous peoples are known as Kaurareg. They are Aboriginal peoples, not Torres Strait Islanders. They still use the terms Aboriginal or Kaurareg peoples as their identifier and writing themselves back into the history of Australia is still very much a burdensome and tiring exercise.

1.5. Before the tenure to land in Australia was changed in 1992-1993 to include “radical native title”, and before Kaurareg were annexed to the Colony of Queensland in 1879, anthropological studies show that tribal populations who inhabited the islands before colonization were of Aboriginal and Papua New Guinean extraction. Many of these tribal populations today identify themselves as Torres Strait Islanders but are Aboriginal, or Papua New Guinean, or both. How the two blood-lines are mixed is determined by their interactions with each other, including intermarriage and long-held trade and barter activities across tribal borders. These tribal groups inhabit the region known as Torres Strait and each of those tribes have suffered a slow erosion of their customs and traditions, culture and heritage, from the evils of colonization.

1.6. In this paper for the EMRIP “Study on the promotion and protection of the rights of Indigenous peoples with respect to their cultural heritage” key specific dates are noted. The dates are the years when Kaurareg were denied natural justice. The details of Australia’s denial of their natural justice are listed under these dates. In spite of over 140 years of colonial hardship since their annexation, Kaurareg firmly believes solutions are still available under international law in the United Nations system of decolonization. The key specific dates are:

1879 when Kaurareg and their territory were annexed to the British Crown

1946 when the UN Secretary General invited Australia to identify colonized peoples

1960 when the General Assembly Declaration and Guidelines were established for decolonization

1961 when the UN Secretary General appointed Australia to the *Special Committee* on Decolonization

1967 when Australia changed its Constitution for reasons of discrimination and non-compliance

1990 when the first international decade for the eradication of colonialism (1990-2000) was established

1992 when the High Court of Australia reached its historic decision that “extinguished” *terra nullius*

2000 the second international decade for the eradication of colonialism (2001-2010) was established

2010 the third international decade for the eradication of colonialism (2011-2020) was established

1879, Kaurareg denied natural justice the first time

1.7. Kaurareg were denied natural justice the first time in 1879, when the Crown took their lands and seas and annexed them to the Colony of Queensland. But the seeds for Kaurareg's pain and suffering from the evils of colonization, were germinated almost 100 years earlier when the British explorer Captain James Cook changed the location where he would claim Australia for the Crown. From the western side of Queensland's Cape York to Possession Island in Kaurareg territory. On sighting fires along the western side of Cape York that spoke of the land being inhabited, Cook retreated to Possession Island in Kaurareg territory to lay his claim. That claim took place without Kaurareg consent, when Kaurareg were gathering seasonal-food from other islands in their territory. With no fires on Possession Island to betray human presence, Cook was able to claim *terra nullius* over the land mass known as Australia. In the years that followed, in not knowing about this false claim by the Crown to their territory, with no knowledge of its alien rule of law, being forced off their lands and growing fatalities from resistance, Kaurareg could not defend their territorial integrity. Not being assisted by Australia to redress this falsity and deceit is a denial of our natural justice.

1946, Kaurareg denied natural justice the second time

1.8. Kaurareg were denied natural justice a second time in 1946 when the UN Secretary General asked member States to identify colonized or dependent populations inhabiting territories under their administration or occupying non-self-governing territories. Australia responded by identifying the territory of Papua in 1946, and later Cocos (Keeling) Islands in 1975. Australia did not identify Kaurareg as a colonized and dependent population, despite Kaurareg adequately fitting the description of a non-self-governing territory annexed in 1879 to the Colony of Queensland. Non-self-governing territories identified by member States to the Secretary-General went on to populate the General Assembly List of Non-Self-Governing Territories, numbering 74 in General Assembly resolution 66 (I) on 14 December 1946. Neither Kaurareg nor any of their neighbouring tribal groups were nominated to the Non-Self-Governing Territories List. This is a denial of our natural justice.

1960, Kaurareg denied natural justice the third time

1.9. Kaurareg were denied natural justice a third time in 1960 when the United Nations responded to the growing threat and problems created by the evils of colonization. In General Assembly resolution 1514 (XV) of 14 December 1960 the *Declaration on the Granting of Independence to Colonial Countries and Peoples* became the formal decolonization instrument with which to address the problems for populations living in non-self-governing territories. The Declaration upgraded human rights from a principle in the United Nations Charter to an inalienable right of self-determination in the Declaration. Concerned that the Declaration would require real support and guidelines for colonized and dependent populations affected by the evils of colonization, the General Assembly turned their attention to addressing this critical requirement. Not being privy, nor having input, to the solution that remedies our colonial distress is a denial of our natural justice.

1.10. General Assembly resolution 1541 (XV) on 15 December 1960 established the *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*. In particular, and of relevance to this paper, the General Assembly established an Annex to 1541 (XV) which explicitly identified three legitimate forms of self-government for colonized and dependent populations inhabiting non-self-governing territories. The Principles in the Annex explicitly prescribe the processes for administering States to adopt, for assisting colonized and dependent populations to make their own choices for their own form of legitimate self-government. One of those legitimate forms of self-government is “integration with an independent State”.

1.11. Because Australia in 1946 had not identified Kaurareg nor any of its neighbouring tribal groups except for Papua as being colonized and dependent populations, they were not eligible for placement on the General Assembly List of Non-Self-Governing Territories. This means that Kaurareg was denied the opportunity to exercise its inalienable right to self-determine its future. It was not eligible to be assisted by Australia to fully inform its own population for that purpose. And it was not eligible to choose a legitimate form of self-government of its own prior free and informed consent. But Australia made the informed choice for “integration with an independent State” for Kaurareg and its neighbouring tribal groups, and has enforced that choice through successive governments, policies and programs since its decision. By not being privy, nor having input, to the solution that remedies our colonial distress is a denial of our natural justice.

1961, Kaurareg denied natural justice the fourth time

1.12. Kaurareg were denied natural justice a fourth time in 1961 when Australia was appointed by the Secretary General 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*, as a result of 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 overseeing member States obligations to Article 73e in the United Nations Charter, it is very difficult for Kaurareg to believe Australia had no knowledge about the requirements to comply with the two decolonisation resolutions. Particularly in relation to compliance of its own Constitution with Principle VIII of the Annex to 1541 (XV). Australia took up this matter of compliance in 1967.

1.13. As a member on the first *Special Committee* that oversaw implementation of the Declaration, and with access to decolonization information and data, Australia was in the ideal place for it to:

- a. enforce its decision for “integration with an independent State” for Aboriginal peoples by having its decision accepted and endorsed by the UN systems of decolonization and then acceptance by the General Assembly, and
- b. keep information about the requirements and obligations that such a decision demands, away from the Australian public arena.

1.14. In another example of Australia's decision for integration not following principles in the Annex to 1541 (XV) is the fact that the choice it made for Kaurareg without their consent was kept hidden and quiet. Had it been announced, it would have highlighted the fact that Australia had chosen to acknowledge and deal with its colonized and dependent populations as a race of people. As a discrete population, rather than as a nation of peoples. As a member of the *Special Committee* Australia was able to avoid publicly announcing to its citizens and the United Nations, about the decision to make changes to management techniques for its colonized and dependent populations. That is, from management techniques for assimilation before the fact legitimate forms of self-government became available to colonized and dependent populations, to management techniques for integration of those populations after the fact. Importantly Australia also avoided the obligations to which it would have been subject, of transmitting information to the Secretary-General as prescribed by Article 73e of the United Nations Charter. Not being privy to what fate befell us is a denial of our natural justice.

1967, Kaurareg denied natural justice the fifth time

1.15. Kaurareg were denied natural justice a fifth time when Australia in 1960, despite choosing "integration with an independent State" for colonized and dependent populations, ignored the binding requirements of Annex to 1541 (XV) to employ instead certain "parallel decolonization techniques". These parallel decolonization techniques provided cover to Australia to ensure it met some of the obligations in the Guidelines of 1541 (XV), pursuant to requirements resulting from its choice of integration for Kaurareg, but without having exposure to the obligations for transmitting information to the Secretary General.

1.16. The background to this is the Constitution of Australia took effect from 01 January 1901, and Australia became an independent nation. But its colonized and dependent populations were later to be found "hidden away" from scrutiny to census-identity, in Section 51 (xxvi) and Section 127 of Australia's Constitution. As a result of the historic 1967 Referendum, Aboriginal peoples were "brought out of hiding" when parts of Section 51 and all of Section 127 were removed. These changes to the Constitution of Australia were incumbent on Australia as member State of the United Nations in order for it to comply with 1541 (XV), in particular, with Principles VIII and IX of the Annex to 1541 (XV).

1.17. In Principle VIII to the Annex, sub-components pointing to the architecture of this fifth denial of natural justice are identified by italics in alpha fields *(a)* *(b)* *(c)* etc. which reads:

Principle VIII

Integration with an independent State should be on the basis of *(a) complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated*. The peoples of both territories should have *(b) equal status and rights of citizenship* and *(c) equal guarantees of fundamental rights and freedoms without any distinction or discrimination*; both should have

(d) equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.

1.18. In taking note of “parallel decolonization techniques” adopted by Australia, we see in sub-component *(a) complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated* that it would be highly ludicrous to advance the notion of complete equality between Aboriginal peoples and the rest of Australia. This is because consistent historical data on government service provision, reports from the Productivity Commission, policies to overcome Indigenous disadvantage and today in Closing the Gap, all point to the fact that *complete equality* between Australia’s colonised and dependent populations and the mainstream population of the colonisers 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.

1.19. In taking note of “parallel decolonization techniques” adopted by Australia, when we examine sub-component *(b) equal status and rights of citizenship* we see certain reasons why Australia pursued the 1967 Referendum with such vigour. All of these reasons point to Australia’s absolute requirement to change certain sections of its Constitution, in order for it to comply with its obligations for international law pursuant to legitimate self-government standards. Before the 1967 Referendum, Section 51 (xxvi) of the Australian Constitution was seen to discriminate against Australian Indigenous peoples. This was because Australia’s national government could not exercise its constitutional powers of making special laws for Aboriginal peoples, in any of the sub-national governments of its Australian States.

1.20. In taking note of “parallel decolonization techniques” adopted by Australia, on further examination of sub-component *(b) equal status and rights of citizenship* we see Section 127 of the Australian Constitution not “reckoning” Aboriginal peoples along with all other Australian citizens nor of them being counted as part of “the numbers of the people of the Commonwealth”. This omission of Aboriginal peoples from Australia’s Constitution effectively meant Australia was practicing discrimination against its colonised and dependent populations. Both Section 51 (xxvi) and Section 127 were hard evidence in Australia’s Constitution that Aboriginal peoples did not have the same *equal status and rights of citizenship* as did all other Australians. And as a result of their omission, they were being discriminated against. Australia as the responsible party had no choice but to change its Constitution in order to comply with international law in the decolonization resolutions.

1.21. In taking note of “parallel decolonization techniques” adopted by Australia, in relation to sub-component *(c) equal guarantees of fundamental rights and freedoms without any distinction or discrimination* Australia’s *Racial Discrimination Act* was promulgated in 1975 as its response to the *International Covenant on Civil and Political Rights* (ICCPR). However, in spite of the intent of the *Racial Discrimination Act* discrimination is still endemic in Australia, cleverly masked inside Australia’s decision for “integration with an independent State”. Before the 1967 Referendum, what was clearly 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 *(c) equal guarantees of fundamental rights and freedoms* is cleverly masked by layers of governance and administration. Layers of policies and programs pursuant to upholding its decision to integrate its colonized and dependent populations, and layers of “parallel decolonization techniques” that hide Australia’s international obligations to legitimately decolonize.

1.22. In taking note of “parallel decolonization techniques” adopted by Australia, in relation to sub-component *(d) equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government* since the 1967 Referendum Australia can point to instruments of legislation and policy. These include its enactment of the *Aboriginal & Torres Strait Islander Commission Act 1989* and *Council for Aboriginal Reconciliation Act 1991* as evidence to satisfy its reporting requirements to the United Nations. However, the reality is that despite Australia reporting to the United Nations on progress for its colonized and dependent populations, these populations do not possess an economic base with which to pursue people-centred and infrastructure-centred development. Development of this type and intensity requires land as its economic base but their land had been stolen from them when Cook claimed it for the Crown, using *terra nullius* as the grounds for colonization. Although this deceitful act has been exposed and *terra nullius* extinguished as the grounds for colonization, and despite the change of land tenure since the 1992 High Court decision on Mabo to now include radical title, Australia has not given back to the relevant colonized and dependent populations the lands it took by deceit and violence.

1.23. In taking note of “parallel decolonization techniques” adopted by Australia, to a second sub-component of *(d)* for Kaurareg to this day, their *effective participation at all levels in the executive, legislative and judicial organs of government* is non-existent. Colonial structures put in place in Kaurareg territory by successive national and sub-national governments remain, and elected representatives from other tribal groups sit on decision making seats, but not Kaurareg. While Kaurareg’s neighbouring tribal groups have their own dedicated electorates corresponding to their territory and they vote for their own candidate, Kaurareg does not enjoy the same. While Kaurareg’s neighbouring tribal groups enjoy common suffrage for their own territory, Kaurareg does not enjoy the same suffrage. And while Kaurareg’s neighbouring tribal groups enjoy voting for their own candidates to electorates corresponding to Kaurareg territory, Kaurareg competes against their neighbouring tribal groups candidates in electorates on Kaurareg’s own territory. In not having their own dedicated electorate seat and their own candidates for their own territory, Kaurareg do not participate in political and public life and they still suffer discrimination on their own non-self-governing territory.

1.24. In the following Principle IX to the Annex into its sub-components, (a) contains two sub-components while (b) contains three. These sub-components point to the architecture of this fifth denial of natural justice identified in italics by alpha fields *(a)(i)*, *(a)(ii)*, *(b)(i)*, *(b)(ii)*, **and (b)(iii)** that reads:

Principle IX

Integration should have come about in the following circumstances:

The integrating territory *(a)i* should have attained an advanced stage of self-government with free political institutions, so that *(a)ii* its peoples would have the capacity to make a responsible choice through informed and democratic processes;

The *(b)i* 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, *(b)ii* their wishes having been expressed through informed and democratic processes, *(b)iii* impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.

1.25. Accounting again for the “parallel decolonization techniques” adopted by Australia, in relation to sub-component *(a)(i)* 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*. That changed in 2005 when these *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 closer to sub-national government control. The highest form of integration with an independent State that there is in Australia are the sovereign States of Australia in an arrangement of “integration with an independent State” i.e. States federated in the Commonwealth of Australia. The lowest forms of integration include, for example, what *Aboriginal Community Councils* once were. But despite Kaurareg’s local proximity to *Aboriginal Community Councils* and DOGIT land, Kaurareg have never been part of *Aboriginal Community Councils* nor been part of DOGIT communities since their annexation to the Colony of Queensland in 1879.

1.26. In taking note of “parallel decolonization techniques” adopted by Australia, in relation to sub-component *(a)(ii)* there is a contingency where *its peoples would have the capacity to make a responsible choice through informed and democratic processes* clearly connects it to sub-component *(a)(i)*. That is, *the integrating territory should have attained an advanced stage of self-government with free political institutions, so that* pursuant to sub-component *(a)(ii)* *its peoples would have the capacity to make a responsible choice through informed and democratic processes*. In other words, the successful outcome from sub-component *(a)(i)* of having *attained an advanced stage of self-government with free political institutions* provides the platform for the capacity in sub-component *(a)(ii)* where *its peoples would have the capacity to make a responsible choice through informed and democratic processes*. The contingency is that sub-component *(a)(ii)* could never have force if sub-component *(a)(i)* only succeeds in part. Therefore, sub-component *(a)(i)* must first succeed in whole.

1.27. In taking note of “parallel decolonization techniques” adopted by Australia, in relation to sub-component *(b)(i) 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 for a member State obliged to transmit information under Article 73e to commence its obligations after it accepts being subject to 1541 (XV). But this is not what happened with Aboriginal peoples in Australia. Today, no Aboriginal person can remember having freely expressed their wishes by *a responsible choice through informed and democratic processes* or of having acted with full knowledge for the change in their status, such as are described in sub-component *(a)(ii)*. There is no memory of a choice to effectively move away from assimilation before the 1960 Decolonization Declaration, to integration after the 1960 Decolonization Declaration. Nor is there memory since 1960 of having attained to the requirements and contingencies of sub-components *(a)(i)* and *(a)(ii)*. It has never happened.

1.28. In taking note of “parallel decolonization techniques” adopted by Australia, in relation to sub-component *(b)(ii) their wishes having been expressed through informed and democratic processes* no Aboriginal person since 1960 can remember having expressed their wishes for integration through informed and democratic processes. No voting took place, by responsible choice or not, because colonized and dependent peoples could not vote. It was not after all until 1962, when colonized and dependent peoples were enfranchised to vote by the *Commonwealth Electoral Act*. Since the 1967 Referendum, the only opportunity that Aboriginal peoples had of voting in any way remotely described in sub-component *(b)(ii)* was in national elections for the *Aboriginal & Torres Strait Islander Commission*, a way forward that was decommissioned in the mid-2000s. The direct consequence of this is that colonized and dependent populations lost their national voice, they could not attain to *an advanced stage of self-government with free political institutions*, and their quality of life with conditions of dependency continued to decline.

1.29. In taking note of “parallel decolonization techniques” adopted by Australia, in relation to sub-component *(b)(iii) impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes*, but apart from the elections for the *Aboriginal & Torres Strait Islander Commission* which is the closest approximation that can 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. In fact, there has been no impartially conducted voting based on universal adult suffrage where Aboriginal peoples nation-wide have, with full knowledge of the change in their status, freely expressed their wishes through informed and democratic processes to be integrated with Australia. It has never happened. Not having input to legitimate decolonization solutions nor being part of the planning that led to solutions, but forced instead 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.

1990, Kaurareg denied natural justice the sixth time

1.30. Kaurareg peoples were denied natural justice a sixth time in 1990 when the General Assembly passed resolution 43/47 on 22 November 1988, declaring the decade 1990-2000 as the *International Decade for the Eradication of Colonialism*. From that resolution, all the member States of the United Nations were required within the decade to dismantle colonialism within their countries. Accounting again for Australia's "parallel decolonization techniques", we see its response in this decade was to establish the *Aboriginal & Torres Strait Islander Commission* in 1990 and the *Council for Aboriginal Reconciliation* in 1991. Some Aboriginal leaders believe the *Commission* and the *Council* were both engineered by Australia pursuant to "parallel decolonization techniques", so as to address *some* of the requirements prescribed in the Annex to 1541 (XV) in order to avoid exposure to *all* of the obligations in 1541 (XV).

1.31. As a result of Australia's "parallel decolonization techniques", the opportunity for Kaurareg to engage in real decolonization techniques with Australia in the 1990-2000 International Decade for the Eradication of Colonialism, and of reinstating their inalienable right to self-determine, was lost to an onslaught of engineered policies and programs designed for the entrainment of Kaurareg to Australia's choice of "integration with an independent State". These policies and programs were engineered to effect specific outcomes the like of which Kaurareg believe are the underlying causes for ongoing disadvantage and marginalization, and the continuing decline in quality of life and conditions of dependency. Not having knowledge about, or input to formation of, the solutions for our colonial plight is a denial of Kaurareg's natural justice.

1992, Kaurareg denied natural justice the seventh time

1.32. Kaurareg were denied natural justice for the seventh time, when native title was proudly announced as a significant victory for Aboriginal peoples but feared at the same time as a land grab by easily persuaded land owners. It soon proved to be a hollow victory. In the historic decision by the High Court of Australia in 1992, *terra nullius* as the grounds on which Cook stole Aboriginal territory was "extinguished". The rejection of *terra nullius* by the High Court meant Australia was forced to recognise that Aboriginal ownership of land survived the claim of sovereignty by the Crown. But the degree to which ownership survived and is recognized as surviving, continues to this day to be a bitter source of dissent. Kaurareg have invested time and effort in playing the native title game, in the full knowledge that native title has been engineered to be permeated and informed by metrics whose express purpose is to entrain Kaurareg to "integration with an independent State". Native title does not mean the land belongs to Kaurareg. The land is possessed instead by the sovereign State of Queensland.

1.33. Aboriginal lore, customs and traditions, are the basis for Kaurareg's ownership of land and seas in their territory. Kaurareg's Kergne lore, customs and traditions, are the metrics with which Kaurareg exist that are understood and respected by those of their neighbouring tribal groups who also still practice lore customs and traditions. For those neighbouring tribal groups who don't practice lore customs and traditions,

Australia's rule of law is often found to be their metric. Torres Strait is often claimed to be their identity and is often accompanied by evidence of their bi-cultural conflict. Aboriginal peoples have never given away their lands and seas. And while recognition brings some relief, Australia imposes its rule of law on Kaurareg, for Kaurareg to prove their ownership of lands and seas. Native title was attractive in 1992 but it no longer has the same taste of victory. For a brief period of about one year, between the decision of the court that extinguished the myth of *terra nullius* up to the enactment of the *Native Title Act 1993*, the critical question of "who owns Australia?" was not substantively asked nor tested.

1.34. Australia moved quickly and engaged certain Aboriginal leaders to assist in the development and formation of the *Native Title Act*. It is assumed the leaders could not have known then, the despair native title would cause in the years after its enactment. Native title is rigorously challenged by Australia on the basis of today's metrics for "integration with an independent State". Many Aboriginal people feel betrayed by Australia's dismissive dominance and sovereignty. Native title has turned out not to be the saviour that many believed it would be. And while native title continues to track down a predestined path of "integration with an independent State" Kaurareg do not believe it will eventually be the saviour that its few adherents hope jurisprudence will prove it to be. Kaurareg do not invest their hope in native title. Instead, they invest their hope in the United Nations system of decolonization. Until their hopes are realized, Kaurareg will continue to be denied natural justice.

2000, Kaurareg denied natural justice the eighth time

1.35. In taking note of "parallel decolonization techniques" adopted by Australia, despite member States in 1990 seeking through their *Special Committee* to prepare the world for entry into the twenty-first century free from the evils of colonisation, it did not happen. Kaurareg peoples were denied natural justice an eighth time as the onslaught of policies and programs designed for the entrainment of Kaurareg to Australia's choice for their "integration with an independent State" continued unabated. Colonialism world-wide was back then, and still is, alive and flourishing. Determined to complete their work, the *Special Committee* successfully passed its resolve to declare 2001-2010 as the *Second International Decade for the Eradication of Colonialism*, through General Assembly resolution 55/146 on 08 December 2000.

1.36. For a second decade, member States of the United Nations were faced with the obligations of meeting requirements for dismantling colonialism in their countries. Some Kaurareg activists believe that Mutual Responsibility and Shared Resource Agreements, predicated on the platform of political plurality, are two examples of many on a raft of informed responses by Australia to the second international decade 2001-2010. Australia's validation for Mutual Responsibility and Shared Resource Agreements is found in its *Overcoming Indigenous Disadvantage Report 2003*, a report coordinated by Australia's Productivity Commission. It is believed to be the key blueprint for national and sub-national Australian governments to demonstrate to the world they are genuinely dismantling colonialism. It was not a genuine example for dismantling colonialism. It was not successful.

1.37. Mutual Responsibility and Shared Resource Agreements can be seen as mechanisms designed to perform two key functions. The first is to satisfy requirements for decolonisation at the international level, by demonstrating that Australia's obligations in the second international decade are genuinely about dismantling colonialism. And the second function is to satisfy requirements at the national and sub-national levels of implementing and entrenching, substantiating and maintaining, the illegitimate form of self-government imposed on Aboriginal peoples since the 1960 Declaration. For as long as Australia's decision continues to be imposed on Kaurareg for "integration with an independent State" they will continue to be denied their natural justice.

2010, Kaurareg denied natural justice the ninth time

1.38. On 10 December 2010 in General Assembly resolution 65/119, the decade 2011-2020 was declared the *Third International Decade on the Eradication of Colonialism*. On the fiftieth anniversary of the historical 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples* and despite the efforts of member States, the evils of colonization were still evident. If events and circumstances of the past two international decades are any measure, where Australia has consistently pursued avoiding disclosure of the choice it made for Kaurareg of "integration with an independent State" and enforces engineered metrics through population management controls and techniques, it is likely this third international decade will silently by-pass Kaurareg.

1.39. Today, Kaurareg and other colonized and dependent populations struggle to have Australia hear their requests for bringing back decision making control, in a background volume of self-congratulations. But the annual report on *Closing the Gap* reveals shocking statistics yet again, with the current admission by the Prime Minister that "despite efforts of successive governments, we are not on track to achieve most of the targets" in 2015 and beyond. Academic studies, contrary to mainstream discussions of bringing in greater social controls, point to the enduring resistance by colonized and dependent populations against Australia's efforts to "make them like us". It is increasingly apparent that colonized and dependent populations do not want "to be like them". They are much happier being themselves, and they want to remain that way.

1.40. Despite the "parallel decolonization techniques" adopted by Australia with metrics engineered to "integration with an independent State", it is unlikely that Kaurareg will ever cede defeat. It is unlikely that Kaurareg will tolerate the insidious and mind-numbing onslaught of policies and programs incremental march for bringing Kaurareg under Australia's rule of law. It is unlikely that Australia will materially assist Kaurareg to freely choose their own form of legitimate self-government with dedicated assistance that tracks down the obligations pathway in Article 73e of the United Nations Charter. But this is the hope of Kaurareg. One of many colonized and dependent populations in Australia, a first world nation by any measure, who do not enjoy the same quality of life and conditions. It will require Australia and Kaurareg unravelling the systems of controls and techniques for population management, perfected by Australia, and placing Kaurareg on the General Assembly List of Non-Self-Governing Territory. Until that happens, Kaurareg will continue to be denied natural justice.

Statement 2 Details:

2. *Procedural fairness with free prior and informed consent under Australia's rule of law is a double-bind for Kaurareg because:*
 - a. *if Kaurareg have no alternative other than choose the degree under which they will integrate with Australia, then Australia's rule of law will extinguish Kaurareg's Kergne lore*
 - b. *integration under Australia's rule of law will disempower and disadvantage Kaurareg's peoples, and incrementally reduce their ability to promote and protect their cultural heritage*

1.41. The definition of “free prior and informed consent” that Kaurareg embraces 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 be disconnected from the right of discretion that Kaurareg possesses for giving or denying its *consent* in the manner it chooses”. Consent given or denied for random events or unexpected circumstances have a different protocol and definition under Kaurareg lore. And where deliberative development is concerned, free prior and informed consent tracks down pretty much a similar definition. One such definition includes that free prior and informed consent is pitched as being the highest standard possible, to be applied wherever Indigenous peoples face decision making for projects that affects their control over the quality of their lives and their environment. Kaurareg concurs.

1.42. As this Statement 2 indicates, procedural fairness and the exercise of free prior and formed consent is a double-bind for Kaurareg. This is because of the decision Australia made for Kaurareg in 1960 for their “integration with an independent State”. For Kaurareg to exercise decision making under their Kergne lore, their customs and traditions, it requires in the first instance possessing the sole discretion of authority over the lands and seas to which they are its autochthonous peoples. Despite the 1788 claim of *terra nullius* by Cook over Australia that was “extinguished” by the 1992 decision of the High Court of Australia, Australia has not given back the territory it took from Kaurareg. Instead, Australia has replaced Kaurareg’s authority over its territory with the “right” to choose the degree to which it integrates under Australia’s rule of law. This is enforcement of the illegitimate decision Australia made for Kaurareg, for their “integration with an independent State”.

1.43. Any decision that Kaurareg makes is made within the constructs of the domain of integration created for it. Where the last say over their decision in terms of the discretion for yes or no, including the final say over how Kaurareg promotes and protects its cultural heritage, is held by Australia. Not by Kaurareg. For Kaurareg to choose the degree to which it integrates is the degree to which their lore is injured and harmed by the metrics of Australia’s rule of law. But doing nothing is the same as passively watching their cultural heritage lose its integrity its life vigour and glory to the inert status of a socially engineered artefact. This is the double-bind facing Kaurareg. How can EMRIP and the Human Rights Council materially assist Kaurareg to decolonize? That is the question our senior Elders and community, and Land Trust Committee ask.