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# Independent Pacific Caucus WCIP Outcome document

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Draft Working Document

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## Introduction

The Independent Pacific WCIP Caucus has drafted the following Outcome Document as the group's contribution to the preparatory processes for the World Conference on Indigenous Peoples (WCIP).

The contributors to this Draft Outcome Document, wished to distinguish itself in the name of the document from the Sydney Pacific WCIP Outcome Document, of which most of the contributors to this Outcome document were prevented from contributing. The drafters of this Outcome document felt that the term 'Independent Pacific Outcome Document' was the best description, reflecting the desire of these original peoples and nations to assert their independence and sovereignty from occupying foreign Governments.

This Outcome Document has been developed through the internet, phone discussions and via skype meetings due to a failure to fund the Pacific Maui WCIP meeting, as agreed by the Pacific Caucus in October 2012, which would have enabled face to face discussion of the Document. While the Outcome Document has been developed over difficult circumstances due to the blocking of funding by one of the Global Coordinating Group Members, Mr Ghazali Ohorella, the Independent Pacific Working Group drafters, contributors and potential participants of the consultation meeting on the Outcome Document, continue to assert their right to meet and consult on this draft Outcome Document.

Despite the constraints imposed through an inability to consult face to face, to date, and that this has inhibited the quality of discussion possible and the Outcome document itself, those who have contributed to and approved this Outcome document were determined that their input, though compromised in quality, would not be prevented from contributing to the WCIP processes and the serious issues their communities face are reflected in this Outcome document.

The Original Peoples of the Pacific region that have contributed to this Outcome Document:

*Confirm* that the term 'Indigenous' as outlined in this Outcome Document relates to Original Sovereign Peoples who emanate from the ancestral lands, waterways and oceans of the Pacific region in perpetuity.

*Asserts* that the Indigenous peoples of the Pacific region do not forgo their sovereign rights to the lands, waterways and oceans of their ancestors, they are sovereign peoples whose lands are forcibly occupied by colonial powers.

*Affirms* that the term Indigenous does not refer to, or infer, Indigenous or 'native' rights that are less than our rights as peoples in international law and as recognized in the UN Charter on the rights of peoples to self determination. (or Kingdom constitutional rights for Hawai'i) .

*Confirm* that Indigenous people's right to self-determination is recognized, as other peoples, in various international instruments (the Universal Declaration of Human Rights, Article 1 of the Human Rights Covenants, and U.N. Resolution 1514).

*Confirm* that Indigenous rights are additional rights of entitlement and customary responsibilities, to human rights, as inherited from our fore fathers and mothers for generations in perpetuum who cared for these lands and waterways before us.

*Assert* that the term Indigenous is not defined or limited by State interpreted blood quantum definitions of entitlement, that seek through these genocidal practices to disinherit those of mixed ancestry due to the impact of occupying forces or peoples, from their traditional hereditary rights and culture.

*Affirm* that self determination for Indigenous peoples reflects that standard applied internationally equally and should not be interpreted as recognition of a different standard or measure of self determination, or to deem Indigenous Peoples as objects of international law and thus objects of the domestic jurisdiction of a particular colonizing state.

*Assert* that participation at the High Level Plenary WCIP should advance the rights of Indigenous Peoples as Peoples and Nations with rights equal to all other Peoples.

## **RECOMMENDATIONS**

1. The establishment of an international mechanism to have oversight as a monitoring body for redress and restitution of the ongoing violations of Indigenous rights to land and self determination as recommended in the International Treaty Study
2. We recommend that the institutions of Pacific Peoples be respected by United Nations member states and that the jurisdiction of legal jurisprudence be returned to the venue of Pacific Peoples in their countries.
3. We further recommend that the foreign state entities that have illegally dissolved sovereign Pacific entities be responsible for the cost of their restoration and supply all the necessary resources to return to pre-colonial functionality. .
4. We remind all states that are in breach of their treaties in the Pacific of their responsibilities and liabilities to restore local environments, remove unwanted military, pay restitution for injuries and illegal removal of resources.
5. We remind States of the obligations of foreign entities that they are bound to the legal outcomes of pacific sovereign courts and those proposed to be established and must agree to adhere to the same judicial process they demand of others in their own countries.
6. That mechanisms be established to monitor and enforce compliance and implementation of the Declaration Right of Indigenous Peoples.
7. A study of the ongoing impact of the terra nullius doctrine be established with capacity and to make recommendations to an International mechanism that could direct States on appropriate restitution and or reparation.

8. That a Pacific Peoples Council be established to deal with common issues such as recognition of sovereign status, global warming, control over multi-national incursions and industries. This Pacific Council is not to be confined to an economic agenda but reflect the holistic approach of Indigenous communities.
9. Ensure Pacific Nations and communities have access to IT technologies telecommunication network throughout the Pacific.
10. That Indigenous Peoples have an entity established within the United Nations General Assembly that reflects the concerns of Indigenous peoples.
11. The military be immediately removed from West Papua and other lands traditionally occupied by Indigenous peoples of the Pacific.

That Australia end all funding and training to the Indonesia Military and armed forces.

12. The Indonesian government allow foreign journalist to gain access into West Papua and also allowing foreign NGOs to have free access into West Papua.
13. Implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Indonesia immediately amend the Criminal Code to make an act as defined in the international Convention punishable by law.
14. Remove all military bases from the land, and have the land cleaned and restored to its optimal condition.
15. Establishment of a truth commission and human rights court for Papua, as required under the Special Autonomy law; and the political commitment to enter into a peaceful dialogue with Papuan stakeholders.
16. The Papuan local government implement reforms ensuring trials for those who committed crimes including those made by Indonesia's armed forces.
17. That all Pacific Governments take concrete steps to eradicate violence against women, including developing a comprehensive approach to prevent and respond to domestic violence, and a local mechanism based on law for the rehabilitation of victims.
18. An immediate reversal and moratorium to the alleged authority of U.N. General Assembly State members who have claims of occupation pending against them;
19. An immediate and absolute moratorium on the Trans Pacific Partnership and using first nations' land and resources as collateral for any monetary fund;
20. An immediate and absolute moratorium on dangerous or yet unproven chemical, biological or genetically modified organisms being used on disputed first nations' land, water and resources.
21. Development of Indigenous lands must be controlled by those Indigenous peoples with a customary connection, who recognize the true value of land as an economic base founded on food security and cultural connection.

22. Aid, loan programs and development by either national or foreign governments must not require the registration or leasing of customary lands in the Pacific region.
23. Australia and international aid programs must cease interference in and imposing capitalist development models that are detrimental to the interests of the Indigenous peoples.
24. Preventative measures must be instigated to protect Indigenous peoples from exploitation by multi-national and extractive or resource Industries and multi-national companies.
25. Pacific States need to review their judicial systems so its legislation and laws recognize the rights of the First nations peoples of the Pacific.
26. All multi-national companies must respect the rights of Indigenous peoples to control mining development, extractive industries and exploration. Substantial penalties and compensation to the customary owners needs to be imposed in cases where breaches occur to ensure compliance.
27. That a Pacific Human Rights Commission be established to deal with multi –national companies behavior on first nations peoples lands. This commission or court would be established on similar lines to the International Court of Justice and similar to Inter-American Commission on Human Rights and its Inter-American Court of Human Rights, and would ensure and recognize the standing of first nations peoples to bring their complaints before such bodies.
28. We call for the UN to convene an Expert Meeting on the issue of how to move away from destructive mining practices and become based entirely on truly renewable, non-polluting energy sources and to report to UNDP, UNEP, and other appropriate UN agencies with a responsibility for environmental and human rights protections.
29. An in-depth survey, study, investigation and monitoring of the methodology and the uses of various toxic chemicals used to extract gas from the coal seams. These studies should be totally independent of government and agencies, local, state, federal, commonwealth and independent of CSG "fracking" companies. They should be fully and comprehensively funded as well.
30. All foreign pressure to reopen the mine, especially from BCL that caused, aided and abetted war crimes against Bougainvilleans<sup>i</sup>, be stopped and enforced. If BCL continues to force the reopening of the mine then they are plainly threatening Bougainvilleans with another war<sup>ii</sup>.
31. Assemble an independent team of physicians who can review and ensure access to free health care. The financial burden of providing this health care to the original peoples of the Pacific should be shared by the previous colonial and occupying States of the Pacific nations.
32. That the Cuban medical approach be financially supported and replicated across the Pacific region, by previous colonial powers in the Pacific and by developed nations in the region, such as Australia and New Zealand. That a collaborative model be developed that financially contributes to the establishment and development of clinics, hospitals, medical equipment

and medicines and assist with the payment to Cuba of providing this medical expertise and training.

33. That international aid in the region model its approach on the Cuban Medical Bilateral Agreement approaches based on a partnership of cooperation without imposing external requirements for 'aid' on Pacific Island nations.

### **Recommendations from the Strengthening Participation Section**

34. That a roster of participants at the UNPFII be circulated publicly with an acknowledgement or disclosure of any conflicts of interest as to policies and programs of the individual as to profits and/or employment with any occupying State.
35. That an ethics standard be established and where cases of blatant breach of ethics, such as deliberately misinforming the Caucus, can then be used as grounds for removal of individuals from formal positions of responsibility, where integrity of the position is an essential requirement.

## **Critical Issues Identified by the Pacific Region**

### **Sovereignty**

#### **Hawai'i**

Hawaii is still fighting to regain our Sovereignty. Hawaii was never legally Annexed to America, was never "conquered" and remains occupied by the United States of America, which the Pacific Command has acknowledged and also agreed that Hawaii was not Annexed to America. In as much as there was and still is no Treaty of Annexation. Therefore, the Hawaiian Kingdom, and its Constitutional Monarchy Hawaiian Kingdom Government has been quashed by its occupiers, but still exists, its law and Constitution are still in effect. It is the Laws the United States government, enforced with a strong military presence that are illegally operating in the Hawaiian Islands.

The majority of subjects of the Kingdom of Hawaii, as King Kamehameha III labelled us, are aborigines of Hawaii. In essence, we are "indigenous" to the Hawaiian Kingdom and not to the U.S.A. which is the belligerent occupier of our nation/state which is duly recognized by treaties with over 20 countries and had over 90 consuls and legations throughout the world and part of the Family of Nations, prior to the U.S. invasion, takeover, and occupation which it has continuously violated the law of neutrality and occupation. There is no treaty of annexation. Two, we experienced forced assimilation; broken treaties; neo-colonization; violations of human rights; stolen lands and resources; and other crimes experienced by other "indigenous" people in the Pacific. First nation peoples in the Pacific suffer under the infamous doctrines of Manifest Destiny spawned by the Papal Bulls dating as far back as 1095, and later:1452, 1455, and 1493.

Our desire is for the restoration of our independence, then we not only have to advocate that through the affirmation of our nationality, but also through the fortification of our society and those very things that comprise the foundation upon which we stand.

The Kingdom of Hawaiʻi existed before the UN as an independent nation state. Article 73 is illegal as it pertains to the Kingdom of Hawaiʻi, yet there are those that attempt to speak to be representative voice of the Kingdom of Hawaiʻi. Voices of truths contrary to the occupiers' continued control and pacification to the Kingdom subjects are systematically eliminated and subjects are prevented from participating in this discussion.

I believe, if left uncontested, those voices that speak for nation-within-a-nation status will be the representative voice of the Hawaiian Nation State and Kānaka Maoli to the international community. We cannot allow that to happen.

## Australia

The foundation of Australian is based on the myth of *terra nullius*. While the High Court in *Mabo v The State of Queensland*<sup>1</sup> confirmed the doctrine of terra nullius was a legal fiction that held no continuing place in the common law of Australia, the court went on to uphold the unlawful unethical and immoral foundation of the Australian state, in reaffirming the fiction of a lawful and peaceful settlement. The foundation was deemed an "act of state," and Australian settlement was to remain lawful, and with it the theft and murder of our peoples, lands, cultures, and our laws.

The doctrine of *terra nullius* was used to annihilate Indigenous Peoples, and this position has not been altered post-*Mabo* with the enactment of the *Native Title Act*. Instead these latter-day laws have entrenched the colonizers' position and quest for legitimacy.

*Mabo* provided the legislative framework for "native title" laws, to establish a process for First Nations Peoples or 'traditional owners' to enter into negotiations relating to their lands.

Native Title is a vulnerable form of title that is open to state extinguishment and enforces a seriously weakened position for first nations peoples, in its failure to recognize oral evidence from cultures that transmitted much of their knowledge orally and through complex cultural objects that record the history and landscapes in a way foreign to the positivist traditions of western legal systems.

Aboriginal peoples laws cannot be extinguished by an alien legal system because Aboriginal laws exist of their own being, an existence that is prior to invasion and that lives outside of Imperial legal systems. We affirm that the original sovereignty of First Nations Peoples of Australia remains intact, and we remain sovereign peoples who have never entered into consensual relations with any state or British Crown to surrender our international status as first nations peoples.

Attempts by the Australian state to alter that position have been unsuccessful, and within Australia, treaty debates are non-existent. Public perception is largely based on the mis-conception that the *Mabo* decision and *Native Title* legislation provide land rights, that reconciliation provides social justice, and the Rudd government apology: 'sorry' has ended and healed a long history of

assimilation and the attempted genocide of Indigenous Peoples. It is a misconception because native title is not land rights, reconciliation provides for no concrete shift in embedded colonial power relationships, and 'sorry' has not ended state interventionist policies which are assimilationist in their intent and effect.

Australian law does not provide for any Indigenous Rights protection or even human rights protection; the Australian Constitution instead embeds the principles which still support a largely racist White Australia foundation; a foundation based upon the genocide of Indigenous Peoples and the exclusion of non-white peoples.

There is controversy over the capacity for *Native Title* Indigenous Land Usage Agreements to provide for the consent of the traditional owners. This is largely due to conflict in many land settlement arrangements. A number of those arrangements have been contested, such as is currently occurring before the Federal Court before Justice Mansfield in the *Ramindjeri* Native Title Claim. While issues of environmental destruction of the vast Artesian Water basin as a result of the effects of the Roxby Downs Uranium Mine have been unsuccessfully contested the Indigenous Land Usage Agreement in the matter of *Buzzacott v State*.

Native Title Indigenous Land Usage Agreements are problematic for many reasons and should not be considered as a framework for obtaining consent, particularly in the Australian context and in the absence of any fair and equitable Treaty or other negotiations.

The ILUA agreements cannot be considered a constructive agreement as they do not provide for an equitable foundation between the state and Indigenous Peoples. They do not have the capacity to address the serious power imbalances and vulnerability of Indigenous Peoples in negotiations with the state and corporate power brokers.

In any negotiation there should be "non-negotiables", for example the principle of the extinguishment of so-called native title as a condition for the settlement of indigenous claims. If imposed by State negotiators the validity is seriously compromised by the effective use of duress. Native Title ILUA's are simply domestic arrangements which have no status as international agreements.

In the Treaty Report of 1999 it was recommended that the "process of negotiation and seeking consent inherent in treaty-making (in the broadest sense) is the most suitable way not only of securing an effective indigenous contribution to any effort towards the eventual recognition or restitution of our rights and freedoms, but also of establishing much needed practical mechanisms to facilitate the realization and implementation of our ancestral rights and those enshrined in national and international texts. It is thus the most appropriate way to approach conflict resolution of indigenous issues at all levels with indigenous free and educated consent."

The question by what lawful authority does the Australian state come into existence remains relevant in the period since the International Court of Justice advisory opinion in the *Western Sahara Case* and *Mabo No 2*, and the Australian High Court's rejection of *terra nullius* as a basis for lawful foundation. While the theory of *terra nullius* has been rejected the ongoing effect of its application to Australia remains embedded in Australian law. While *terra nullius* is repudiated in name the effect of *terra nullius* continues as a foundational principle upholding the 'act of state' doctrine as a legitimating principle for the foundation of the state.

In *Mabo No 2* Justice Brennan J was careful to ensure that while rejecting *terra nullius* there would be no possibility of leaving the foundation of the Australian state unraveled of its colonial foundation:

*...this Court is not free to adopt rules that accord with contemporary notions of justice and human rights if their adoption would fracture the skeleton of principle which gives the body of our law its*



*shape and internal consistency... The peace and order of Australian society is built on the legal system. It can be modified to bring it into conformity with contemporary notions of justice and human rights, but it cannot be destroyed.*<sup>2</sup>

While *terra nullius* in name has been rejected the underlying principle of foundation remains unchallenged in Australian law, even though the Charter of the Organization of American States and Article 2.4 of the Charter of the United Nations provides that contemporary international law rejects the notion that rights are secured via unethical means.

#### **Recommendations:**

1. A study of the ongoing impact of the terra nullius doctrine be established with capacity make recommendations to States on appropriate restitution and or reparation.
2. The establishment of an international mechanism to have oversight as a monitoring body for redress and restitution of the ongoing violations of Indigenous rights to land and self determination as recommended in the International Treaty Study.

## **Demilitarization**

### **West Papua**

Indonesia's occupation in West Papua has brought a painful impact to its indigenous people. 1<sup>st</sup> of May 2013 marked the 50 years of annexation in which are translated as 50 years of Human Rights Abuses towards Indigenous West Papuans. Military brutality is an example of Human Right Abuses and Australia plays a significant role in which they fund and train the counter-terrorism squad, Detachment 88. Mako Tabuni (Late KNPB vice chairman) was shot to dead in June 2012 by Australia funded and trained, Detachment 88 which creates unending grief and pain in the family and relative, especially women. That is why West Papuan women are often ask ***"Why does God create our womb?", "Why does God allow us to give birth to the children that will be killed eventually?"***.

In West Papua more than 500,000 people have lost their lives at the hand of the Indonesian forces. The Asian Human Rights Commission (AHRC) has recorded thousands of cases of arbitrarily arrest and torture of civilians, based on claims of rebel activity, from the Indonesian forces. Torture is used in a widespread way by the police and military against indigenous Papuans, notably on persons suspected of supporting independence movements. Such suspicions are often leveled arbitrarily against members of the indigenous community and result in stigmatisation.

According to the law on military courts, members of the military that commit crimes against civilians, such as extrajudicial killings or torture, can only be held accountable by military justice systems. Military courts are not open to the public, are notorious for only giving lenient punishments, and show a clear lack of impartiality.

Torture is frequently used by the Police and the Military to force confessions, intimidate or to obtain information. The infliction of severe pain by public officials is prohibited in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Indonesia decided to ratify the Convention in 1998 and make it thus fully applicable into its legal and institutional system. However, this promise from 1998 has never been kept. After 13 years, the government and parliament have failed to take even the basic key steps to end torture.

An elite counter-terrorism unit trained and supplied by Australia has been acting as a death squad in Indonesia's troubled West Papua region. The group, known as Detachment 88, receives training, supplies and extensive operational support from the Australian Federal Police, and law enforcement by officials from the US and the UK. There is also growing evidence the squad is involved in torture and extra-judicial killings as part of efforts by Indonesian authorities to crush the separatist movement in West Papua.

On June 14, 2012 popular independence leader Mako Tabuni was gunned down as he fled from police on a quiet street in the Papuan capital. The men who killed Mr Tabuni, who was deputy chairman of the National Committee for West Papua (KNPB), were allegedly part of Detachment 88. The unit is known for being ruthless, often killing suspects, and their anti-terrorism mandate is now creeping into other areas like policing West Papuan separatists. In December 2010, Detachment 88 killed militant Papuan activist Kelly Kwalik. Mr Kwalik was a leader from the Free Papua Movement (OPM), *"Mako Tabuni was a good man." "His way of fighting back was by doing interviews and press conferences, it was gentle."*

The activist's death is just one of many examples of Detachment 88 operating with impunity. A leaked video surfaced last year showing Indonesian police after they had reclaimed a remote airstrip from militant separatists. The trophy video, taken on a mobile phone by the police, identifies Detachment 88 officers, who are often embedded with other units, and dead Papuans lying on the ground, including pictures of teenagers tied up with ropes.

The Australian Government and American government are actors of violence in West Papua through the training and funding of Detachment 88. "Because they find them, they train them and then with the gun they kill people, they kill us like animals." The Australian Federal Police (AFP) provides capacity building assistance in support of the Indonesian National Police (INP), including Detachment 88

## **Recommendation**

1. The military be immediately removed from West Papua.
2. That Australia put to an end all funding and training to the Indonesia Military and armed forces.
3. The Indonesian government allow foreign journalist to gain access into West Papua and also allow foreign NGOs to have free access into West Papua.
4. Implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment .Indonesia and immediately amend the Criminal Code to make an act as defined in the international Convention punishable by law.

## **Hawai'i**

Our fight for the American military to de-occupy Hawaii. With the recent threat from Korea, it is evident that we are, along with Guam, a target for an attack by North Korea. The reason is because Hawaii is the largest military base in the world. There are a lot of security and other delicate papers the Pacific Command, therefore, making Hawaii a perfect target.

The military is also destroying sacred lands in the Hawaii Islands; using depleted uranium in the practice of live ammunition. Their constant bombing at Pohakoloa, Big Island, not only serves as a constant reminder of

military force available to be used against the Kingdom of Hawai'i, but also poses severe, life threatening health issues for the subjects of the Kingdom.

## **Recommendation**

1. Remove all military bases from the land, and have the land cleaned and restored to its optimal condition. If a military presence by the United States is deemed necessary and appropriate for the Hawaiian Islands, these bases can be contained to marine vessels.

## **Women**

### **Papua New Guinea**

Papuan women have been suffering terrible violence both outside and inside their homes for the past 40 years. The Indonesian military and police forces has committed a wide range of human rights abuses, including murder, rape, torture, and kidnapping, often in secret and rarely with any consequences.

Papua was granted "special autonomy" status in 2001, with legislation to establish a human rights court and a truth and reconciliation commission "to clarify the history" of Papua. To date, none of these provisions for justice have been established, while atrocities committed against the Indigenous Peoples continue. Indonesian military presence remains strong in Papua, and the number of Indonesian settlers from other islands is quickly outgrowing the number of indigenous Papuans.

In May 2009, 19 Indigenous women and 3 men from 11 organizations across Papua worked for more than a year collecting stories from 261 Indigenous women survivors of violence. Cases of rape by the military have continued to take place after reformation (1998) and special autonomy (2001). In fact, we found cases where women victims of human rights violations later become victims of domestic violence due to the stigma they experience as victims. The crimes by the military and police that we documented included killings and disappearances (8 cases), attempted killings and shootings (5), illegal detention (18), assault (21), torture (9), sexual torture (6), rape (52), attempted rape (2), sexual slavery (5), sexual exploitation (9), forced contraception or abortion (4), and displacement (24). And those were just among the women who gave testimony.

Indigenous women experience violence in the context of the political conflict in Papua, where we are displaced during military action, often becoming victims of rape, abuse, and other human rights violations. At the same time, Indigenous women are reporting high rates of domestic violence perpetrated by their husbands or partners, while receiving little protection from police or state agencies.

The central government maintains a security approach that overuses violence, with impunity for perpetrators of human rights violations, including gender-based violations. There is discrimination against women in the Papuan Indigenous culture which leads to a tolerance towards violence against women. The continued conflict over natural resources, the political situation, and local-to-national-level struggle for power, with a quarter of the country operating under a matriarchal land ownership system that is seen as a barrier to resource based economic development and has created a context that leads to an increase in incidents of violence against women, both in the public and private realms.

**Recommendations:**

1. Establishment of a truth commission and human rights court for Papua, as required under the Special Autonomy law; and the political commitment to enter into a peaceful dialogue with Papuan stakeholders
2. The Papuan local government implement reforms ensuring trials for those who committed crimes, were made to Indonesia's armed forces.
3. The Papuan local government, legislative body, and the Papuan Indigenous People's Council take concrete steps to eradicate violence against women, including developing a comprehensive approach to prevent and respond to domestic violence, and a local mechanism based on law for the rehabilitation of victims.

**Land and Water Rights**

The Kingdom of Hawai'i had a civilized and working land system, which has been dismembered by its occupier, the United States. Land patents were issued with allodial title, ensuring security to the subjects and their heirs for generations to come. However, the State of Hawaii has re-defined land rights to serve its financial purpose, allotting some land for Native Hawaiians who meet a criteria of blood quantum. This problematic system creates a finite determination of land rights and redefines the heirs and beneficiaries of the land based on blood quantum.

In addition, the land delegated to Native Hawaiians, known as Hawaiian Homestead Lands is now being considered to remedy a severe homeless problem in Hawaii, usurping those Kanaka Maoli who have been on a waiting list, some for many decades.

Water is a life source for our communities but it is being controlled, diverted and polluted by occupying States, creating scarcity to the first nations and imposing financial burdens upon them to access this God-given resource.

**Kānaka Maoli Definition of Territory and Resource Management**

The various peoples of this moana nui (great ocean) can agree upon, while many countries define their boundaries by land -- in essence, they are countries of land with smaller bodies of water. But Hawai'i and the many other countries of moana nui are countries of ocean with smaller bodies of land.

The world vies for control over the vast regions of the ocean -- and under their control, its resources have been overtaxed and polluted. That large-scale destruction could certainly be impeded and future damage could be mitigated/averted if that control was transferred to the care of the indigenous/native/first peoples who had lived in these waters for thousands of years. Not to mention, it would be a great economic boom for these nations.

We, as subjects of the Kingdom of Hawai'i, oppose the Trans Pacific Partnership, and Pacific banks which fund occupying governments for the purpose of development of the land and uncompensated taking of the resources without input from first nation peoples.

The taking of land contrary to first nation protocols in the Pacific breeds multiple and serious problems for first nations. Occupying States, most of which are members of the General Assembly of the United Nations, claim authority to enter into treaties and negotiations to use the land and resources as collateral for State and United Nations' agendas. We oppose the Pacific wide unauthorized and illegal authority to negotiate treaties and policies for the taking of first peoples' land and resources under the auspices of Agenda 21 programs, World Heritage areas, protected habitat areas. These programs are controlled by governments other than the first nations' allodial title holders and care takers of these lands/resources.

A specific and dangerous example is land leased to companies who produce genetically modified foods and other activities that pollute the environment, but profit the occupying States. In the Hawai'i Islands, Monsanto and other companies experiment with their crops because of the isolation of the islands; if there is a serious danger with any crop, it is self-contained on the islands, safely removed from larger populations of the United States of America. .

Another example is secretive aero-chemical spraying over Pacific Island nations.

#### **Recommendations:**

1. An immediate reversal and moratorium to the alleged authority of U.N. General Assembly State members who have claims of occupation pending against them;
2. An immediate and absolute moratorium on the Trans Pacific Partnership and using first nations' land and resources as collateral for any monetary fund;
3. An immediate and absolute moratorium on dangerous or yet unproven chemical, biological or genetically modified organisms being used on disputed first nations' land, water and resources.

## **Melanesia**

Across Melanesia, as opposed to other countries such as Australia, very little land has historically been either registered or alienated. The vast majority of land remains under customary title, controlled by clans and families. This status is recognized by the constitutions of Papua New Guinea, the Solomon Islands, Vanuatu and Timor Leste. Customary land enjoys special protection under Papuan New Guinea, Vanuatu and Solomon Island law. It cannot be sold, leased, mortgaged or disposed of except in accordance with custom.

These families use their customary lands for combined subsistence and cash crop operations, which can often generate more value than those with paid jobs. These communities maintain control over their lands in perpetuity and have a high level of food security and have weathered the financial crisis without impact.

However the current push by both national and foreign Governments, with strong financial backing from multi-national corporations and donors, for customary land reform and land registration in PNG and other Melanesian Islands is facilitating a foreign agenda that is resulting in the loss of land and threat to the very existence of local communities.

Australia's approach to land and development is closely tied to strategies for economic growth and a regional free trade agreement known as PACER Plus, where customary land is seen as a barrier to the free market capitalist model. Through its AusAid program Australia has been implicated in pressuring Governments to release these customary lands to development and multi-national interests at the expense of the original peoples of the lands. Australia has emphasized land development in the region and donor programs that are at odds with Indigenous communities interests in supporting and strengthening their customary systems of land and the traditional economy. The promotion of registered lands has a clear agenda of opening up Pacific lands for economic development for investors, at the expense of the local Indigenous peoples.

Registering lands also opens them up to leasing, initially enticing as it brings in cash, the land owners however find they have to compensate the leaseholder for any improvements or value add to the land at the end of a lease. With low financial incomes these leases effectively revert to the leaseholder, with the customary owner losing title.

For customary lands to access Australian and other international and national loan funds they are required to register their lands. With over 90 percent of land owner businesses failing, the banks then foreclose on registered lands and are able to break up these lands and to sell. Given the high level of illiteracy many people don't understand formal land titles and are often exploited in mineral rich resource development areas.

## **Recommendations**

1. Development of Indigenous lands must be controlled by those Indigenous peoples who recognize the true value of land as an economic base founded on food security and cultural connection.
2. Aid, loan programs and development by either national or foreign governments must not require the registration or leasing of customary lands.
3. Protective measures must be instigated to protect Indigenous peoples from exploitation by multi-national and extractive or resource Industries and multi-national companies.
4. Australia and international aid programs must cease interference in and imposing capitalist development models that are detrimental to the interests of the Indigenous peoples.

## **Control Over Land Management, Extractive Industries &**

### **Deforestation**

### **Papua New Guinea and Extractive Industries**

Extractive industries are testing new technologies in Deep Sea Mining in Papua New Guinea (PNG). Multi-national companies involved in extractive industries are pursuing exploration and mining processes in the lands and deep sea's belonging to the original peoples of PNG without consideration of the Indigenous peoples rights. Extractive industries and resources corporations have no respect for Indigenous communities and their land and water rights.

The Government and corporate industries need direction from the United Nations. Multi-national companies are asserting undue influence on small island nation states. The laws of Pacific States need to recognize the Indigenous people's rights to their traditional lands, waterways and the Ocean. Pacific States need up to date with current international obligations such as the Declaration on the Rights of Indigenous Peoples. Laws need to recognise traditional people's rights to their lands and waterways, oceans and right to protect it from environmental damage.

### **Recommendations:**

- 1) Pacific States need to review their judicial systems so its legislation and laws recognize the rights of the traditional peoples of the Pacific.
- 2) All multi-national companies must respect the rights of Indigenous peoples to control the right to mining, extractive industries and exploration.
- 3) That a Pacific Human Rights Commission be established to deal with multi –national companies. This commission or court would be established on similar lines to the International Court of Justice and similar to Inter-American Commission on Human Rights and its Inter-American Court of Human Rights.

### **Bougainville Mining**

Mining by Bougainville Copper Limited (BCL) [majority owned by Rio Tinto] in Bougainville is dangerous and has caused a tragic war with no justice<sup>iii</sup>. That is why it is so important for BCL to stop pushing to reopen the mine and causing the potential of another crisis which is what they are still doing with support from AusAID<sup>iv</sup>.

### **Recommendation:**

All foreign pressure to reopen the mine, especially from BCL that caused, aided and abetted war crimes against Bougainvilleans<sup>v</sup>, be stopped and enforced. If BCL continues to force the reopening of the mine then they are plainly threatening Bougainvilleans with another war<sup>vi</sup>.

## **Deforestation**

### **Hawaiian Islands**

De-forestation is a tool used to provide tax generating revenue to the occupying State of Hawai'i and the United States Government. The need for tax revenues are infinite, but the land and resources are finite. Once removed or developed, the restoration of the land and resources is nearly impossible.

One example of deforestation for financial gain is a proposed, new geothermal energy plant on the Moke Ke Keawe (Big Island). The sight of the plant sits on land originally held by allodial title to Kanaka Maoli, has been severed from them to conform to the occupying State's land title system. The State then claims ownership of this significantly important cultural area and is sacrificing it to its profit and that of corporate interests without input from or recognition of the holders and caretakers of the land.

Further, geothermal energy invalidates cultural religious philosophies of the Kanaka Maoli by penetrating the volcano and surgically removing the life force of Tutu Pele, the guardian of the volcano and land in Hawai'i. This creates a systematic dismissal of values and beliefs held by the Kanaka Maoli. To accomplish the geothermal goal, the occupying State amends or creates new "law" to authorize its agenda, and employs individual "cultural experts" to give the appearance of satisfying the "indigenous" approval for State agendas.

### **Hawai'i- Genetically Modified Crops**

Hawai'i is the genetic engineering experimental capital of the world. Thousands of acres of our arable Agricultural Lands are currently being used to test GMO seed crops that do not produce food for our people. The giant agricultural corporation Monsanto is a leading advocate and farmer of GMO crops, that has brought the GMO issue to the forefront of agriculture, farming and land use concerns in the state.

The Hawaii peoples are descendants of Haloa, a common ancestor of the people who is personified by the Taro plant. The genetic modification of the taro, is an unnatural interruption of the genealogy of the Hawaiian people and a desecration of spiritual connection to the ancestral lineage pertinent to taro. In fact, all sacred medicinal and food plants of the archipelago of Hawaii are being desecrated in the same way, especially due to the fact that GMO experimental crop viruses are proven scientifically to be air-born.

GMO taro:

- Undermines the genetic integrity of taro, sacred to the Hawaiian people;
- Threatens the taro market and livelihood of taro farmers. Taro production yields over 6 million pounds annually valued at \$3.3 million.
- Threatens the biodiversity of the taro plant;
- Could cause new, unexpected problems in taro cultivation;



- Could contaminate traditional varieties of taro and take away taro farmers' ability to choose what they grow in their lo'i; and
- Overlooks the wealth of traditional knowledge about growing taro that has been passed down through generations and generations.

## **Australia - Coal Seam Gas Fracking**

My name is Lyle Joseph Michael Davis descendant of Brierly from Twofold Bay Eden and Piety from Broulee on my fathers side on my mothers side I am of the Andy family from Camden, Picton area of the Yuin Nation. I am a traditional custodian of the Yuin Nation of Australia, located on the south coast of New South Wales. The Yuin Nation covers an area from Lake Tyers in the south to The Hawkesbury River in the north, The Nepean River is part of the landmark border extending down through Goulburn through Canberra, down through Bomballa and Cooma over the Victorian border then tapering off out to the north east Gippsland coast using Lake Tyers landmarks as border lines. Within this area there lies 13 countries, because of 13 sisters.

My major concern is the Coal Seam Gas (CSG) "fracking" industry being introduced into Australia, particularly into The Yuin Nation. Because of protocols and procedures that are in place I can speak only on Yuin country, given that I am a direct descendant from the 1st peoples of the Yuin Nation on my mother's ancestral lineage. It concerns me that the CSG "fracking" industry intend to drill for CSG in the Illawarra Escarpment. In this a documented special protected area. In the Escarpment from the coast, within the Illawarra, back to the Nepean River there are many significant and sacred sites. They are significant areas used for tool making, camping, rock carving, rock painting and midden sites. From the Picton Road to the Princes Highway and down to the Bulli Pass is the walking track used by my mothers, mothers, mothers, mothers, way back to their ancestors, for thousands of years, back to the Dreamtime.

This walking track goes down to Sandon Point on the coast of the Illawarra. At Sandon Point, we, the Yuin People have set up the Sandon Point Aboriginal Tent Embassy, established for 13 years in protection of the skeletal remains of a clever man. We know his status of being a clever man because of the manner in which he was placed in his burial site, he was in perfect condition with the exception of one missing tooth, this tooth would have been removed during initiation ceremony, also in place were his implements in which he would have used to perform his sacred decision making ceremonies. This skeleton has been carbon dated to be at least 20,000 years old. The dating of this our ancestor determines the ages of the sites between the coast back to the Nepean River. The CSG "fracking" extraction method causes geological plate strata to move thus causing earth quakes, these earth movements can and will destroy our connection to our past, these rock carvings, rock paintings, tool making, midden and camping sites are our ancient photos and ancient antiquities, our connections to our ancient 1st peoples of this, our Yuin Nation of Australia's tens if not hundreds of thousands of years, past.

Also the impact on the environment is a serious concern. It is up in this escarpment area that the ecosystem for rivers such as the Nepean, Hawkesbury, Georges, Cook and Parramatta Rivers begins. There are also creeks and rivulets that run off the escarpment into pristine wetlands, Lake Illawarra and the Tasman Sea. It is known that the toxicity of the cocktail mixture of multiple chemicals which escape and seep up through the ground into the water ways does contaminate the systems and therefore bring them to become void of life. As these creeks, streams and rivulets run down off the

escarpment they take with them these highly contaminated, toxic waters with them, causing all this vastly huge ecological system to become lifeless. The Hawkesbury and Georges river ways are worldwide renowned for their oyster industries, the Georges River oyster industry used to supply the Queen and her Monarchy with oysters not to mention the overall oyster market on a worldwide basis. The oyster industry is one of a plethora which will be rendered absolutely useless. Botany Bay itself in the south eastern corner is a unique highly significant ecosystem. With rare bird species found nowhere else on this planet.

Sydney Harbour begins up in the escarpment, just recently on their annual migration heading north then on their return to the Great Southern Oceans, the whales came in through the heads of Sydney Harbour purely because it is at the moment safe to do so, it would be a crime against the Tasman Sea and its inhabitants to allow this heinous "fracking" type of contamination to go ahead. Lake Illawarra is known for its prawning, the best of their species are to be fished out of its waters. It is also well renowned for its recreational sailing regattas. People cannot swim, wade, submerge themselves or fish recreationally or professionally in these types of contaminated waters. The run-off into the water catchment area is our, the Sydney Basin's drinking water Warragamba and Warranora Dams, approximately 5,000,000 people drink, bathe and use these water catchments for domestic uses also.

The native fauna is put at grave risk from this grossly heinous "fracking" industry also along with the native flora. The soil becomes so impacted upon by salination that it causes the soil to become uninhabitable by any species of native flora therefore turning it into a desert wasteland. The native fauna feed off the native flora and need to drink of the water, which when contaminated causes long agonising drawn out certain death, of which there is no cure. Once the water is contaminated that is the end of it, at this point there is "NO" means of decontamination, this begs the question, "Just how long has the government known about this grossly diabolical CSG "fracking" industry?"

The air that we the people, fauna and flora breathe is not without risk either. In the south western area of Queensland, Australia, there has been an independent research survey completed by a very concerned General Practitioner. The findings are diabolical, heinous and downright scary. Babies through to the elderly are suffering from nose bleeds, migraine headaches and other associated medical issues from breathing the contaminated air. Animals, birds, fowls and reptiles, introduced domestic and native species all are suffering agonising, painful deaths just from breathing contaminated air, of which there is no cure. Once the water and soil is contaminated there is no means of rectifying it through decontamination. There is no safe way for this unsustainable industry brought onto the shores of this once island paradise to use "fracking" as a means of extracting CSG from the coal seams. Mining, logging, fishing and development in general have not got the potential to bring this country to its knees in such a speedily manner in which CSG "fracking" does.

### **Recommendation**

An in-depth survey, study, investigation and monitoring of the methodology and the uses of various toxic chemicals used to extract gas from the coal seams. These studies should be totally independent of government and agencies, local, state, federal, commonwealth and independent of CSG "fracking" companies. They should be fully and comprehensively funded as well.

## **Control Over Hazardous Materials**

### **Aboriginal Peoples lands – Australian imposed Uranium Waste Dump**

The proposed national radioactive waste dump at Muckaty (located in the Northern Territory of Australia) is being resisted by the sovereign peoples also known as the traditional owners.

The National Radioactive Waste Management Act (NRWMA) 2010 which passed federal parliament in 2012, names Muckaty as the only site to be further pursued. This legislation suspends key environmental and Aboriginal Heritage legislation (Environmental Protection and Biodiversity Conservation Act and the Aboriginal and Torres Strait Islander Heritage Protection Act 1984) during the site selection phase and overrides any state or territory legislation that may hinder construction or operation of the facility.

Muckaty is located on land designated 'Aboriginal Land' under the Aboriginal Land Rights Act (NT). The NRWMA however retains clauses from previous legislation that site nominations on Aboriginal Land are still considered legally valid even if they do not meet requirements of Traditional Owner consultation and consent.

In 2006 the Northern Land Council, a statutory body representing Aboriginal First Nations Peoples and also known as the Traditional Owners in its region, nominated a site on the Muckaty Land Trust for assessment as the site for the location of a uranium waste dump. Since then Aboriginal Traditional Owners from the Muckaty area have launched a federal court challenge against the nomination, arguing there was insufficient 'consultation' prior to the nomination being made and lack of consent to the proposal. Both the federal government and Northern Land Council are defendants in the case. Throughout the process there has been very limited opportunity for Aboriginal traditional owners to ask questions or present objections to the proposal and process. A process that will impact upon the lives and lands of the First Nations Peoples of the region for the long term future.

The Australian government has entered into a number of conventions and treaties relevant to radioactive waste management and the use of Aboriginal Lands. The NRWMA is inconsistent with many of these responsibilities and obligations, including support given by the Labor government for the United Nations Declaration on the Rights of Indigenous Peoples.(UNDRIP)The State claim of power to grant permits for mining, and the exploitation of our lands is founded on the myth of an 'Act of State' powers that are historically sourced in the doctrine of terra nullius. That is, the idea the land belonged to no one and that the presence of Aboriginal Peoples was excluded due to the colonial perception of the inferiority of Aboriginal peoples. Terra Nullius is a colonial myth that has ongoing impact and in particular in relation to the exploitation of Aboriginal Peoples lands, resources and knowledge.

Article 29 of the UNDRIP is particularly relevant: *States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.*

*'We are not happy about other people making decisions on what to do and having their say on our land. It won't just hurt our country but everyone's land around us. We have always said no', Janet Thompson, Muckaty.*

*"All along we have said we don't want this dump on our land but we have been ignored. [Former Resources Minister] Martin Ferguson has avoided us and ignored our letters but he knows very well how we feel. He has been arrogant and secretive and he thinks he has gotten away with his plan but in fact he has a big fight on his hands. We won't be letting that dump go ahead on our land because our duty is to look after that special place for future generations and that's exactly what we plan to do"*

Dianne Stokes

*"All the Elders who first went through the Muckaty Land Claim fought hard to get the land back. The stories the Elders put in the Land Claim book should stay like that and never be changed, just like our dreamings never change. NLC is separating us just for the money. They don't care about our dreamings"* Pamela Brown

*"That year 1993 when that Muckaty station was handed over, we danced with the Milwayi group. I am the right one fighting for them because my great grandfather and my mother are Traditional Owners for that area. When we heard about this nuclear waste everybody said "No, we don't want it in our land."* Bunny Nabarula

#### **Recommendation:**

We call for the UN convene an Expert Meeting on the issue of how to move away from destructive mining practices and become based entirely on truly renewable, non-polluting energy sources and to report to UNDP, UNEP, and other appropriate UN agencies with a responsibility for environmental and human rights protections.

### **Medical Genocide**

Occupying states control the medical system in occupied nations. In Hawai'i, medical genocide and lack of independent accountability or oversight for medical malpractice and malfeasance creates a hostile and life threatening environment for first nation peoples. With extreme vulnerability to environmental poisons and disease, an inordinate number of aboriginal and indigenous people are becoming ill and dying. Medical genocide is a tool of extermination which creates little suspicion when an aborigine becomes ill and ultimately dies.

The controlled medical system of occupying States and lack of equal medical care or the ability to employ physicians who are not employed by or controlled by the occupying States' protocols creates a form of genocide and alienates for original people. In order to obtain appropriate medical

care, many are forced to flee their land and country, never to be able to return. Many are faced with the choice: stay and die, or leave and live.

### **Recommendation**

1. Assemble an independent team of physicians who can review and ensure access to free health care. The financial burden of providing this health care to the original peoples of the Pacific should be shared by the previous colonial and occupying States of the Pacific nations.

## **Cuban Medical Cooperation in the South Pacific – An Example of Best Practice**

Cuban medical internationalism from Timor Leste to other South Pacific nations bilateral medical agreements provide a lesson in capacity-building and aid for developed nations to employ in their own programmes. The Cuban approach to healthcare is radically different, Cuba's low-technology and low-resourced medical model, based on the development of human capital, is dynamic, creative, efficient and effective. Most important of all, it is independent and sustainable, rejecting all traditional "aid" models, replacing them with a totally different system of cooperation. Cuban medical aid or the less paternalistic term "cooperation" is unique in that it "regards cooperation as a matter of solidarity between peoples, not of financial flows or financial leverage", a significant difference from the approach used by most developed nations.

One of the most significant aspects of Cuban medical internationalism is that Cuba has more medical personnel serving in developing countries than all G8 countries combined, and more than Doctors without Borders and the World Health Organization, with over 38,000 medical personnel serving abroad.

The Cuban medical model is unique in that it targets the most vulnerable populations. Focusing on rural and marginalized populations that sets it apart from the dominant Flexnerian medical education model's adaptation by Western nations. Indeed rural and marginalized populations are often overlooked and underserved in developed and developing nations.

The Cuban model focuses on access to healthcare and education as of paramount importance. By contrast, most western models of healthcare are curative-focused and often utilize large quantities of resources and technology. Preventive health access measures take a broader look than curative measures by going beyond the assessment of the individual patient's health, and instead examine the healthcare needs of the community as a whole in an effort to put in place public health policies to create a healthier environment.

In the case of South Pacific nations, Cuban scholarships at ELAM have been utilized in order to prepare and train personnel to transform the national health systems, initially in Timor Leste but ultimately in the entire region. This is seen in Timor Leste, where 700 Timorese accepted a Cuban government scholarship to study medicine. Following their training in Cuba and locally, within a decade the host countries' medical personnel will eventually take the place of their Cuban counterparts, including Cuban medical professors.

In choosing students from impoverished backgrounds this selection process helps the students to return to serve their marginalized communities, instead of merely pursuing a career for profit. In exchange for a non-binding pledge to practice in underserved areas, students receive a full scholarship with a small monthly stipend, graduating debt-free.

The institutional ethic values success as a graduate's ability to serve the indigent, based upon the Cuban view

of health as a right rather than a commodity. These doctors are placed in the local medical system but are most often directed to vulnerable and underserved populations where the local medical system and private practice are unable or unwilling to serve. Thus, most of the Cuban medical teams begin their work in rural and marginalized areas.

The initial focus of Cuba's medical cooperation in the region was Timor Leste. At the time of independence in 2002, the country had just 47 physicians serving a population of almost 1,150,000. This poor patient-to-physician ratio was relieved by the arrival of the first 16 Cuban doctors in February 2004, by 2008 more than 2.7 million consultations had taken place, and an estimated 11,400 lives had been saved because of their medical interventions. This number has grown since 2010, when two out of every three doctors in the country (162 out of 243) are from Cuba. In 2006, the Cuban medical response to a devastating earthquake in Java resulted in requests for Cuban doctors to remain. The medical team of 135 Cubans saw up to 1,000 patients a day at 2 field hospitals during the first 2 months after the earthquake. Within this crucial period the Cuban medical team treated 47,000 patients, immunized 2,000 people against tetanus, and performed 900 operations.

Between 2006 and 2008 ties with Kiribati, Nauru, Vanuatu, Tuvalu and the Solomon Islands followed. By 2010, 33 Cuban health personnel work in Pacific Island Countries and 177 Pacific Island students are studying medicine in Cuba in 2010 with the most extensive engagement in Kiribati, the Solomon Islands, Tuvalu and Vanuatu. The 33 Cuban medical personnel found on the Solomon Islands (10), Kiribati (16), Tuvalu (5) and Vanuatu (2) account for a quarter of the 120 combined medical workers found there. Perhaps more important is the potential role of local medical graduates, since 2009 there were 50 from the Solomon Islands, 20 from Kiribati, 10 from Tuvalu, 7 from Nauru, and 17 from Vanuatu by 2010 there were 177 Pacific Island students studying medicine in 2012.

When Cuba sent eleven doctors to the island of Nauru in September 2004, it provided 78 percent of all doctors in Nauru, an increase of 367 percent. In Tuvalu the original three doctors who arrived in October 2008 "attended 3,496 patients [and] saved fifty-three lives" by the following February. In addition they delivered 76 babies, including the first 11 caesarian sections, and undertook 47 major surgical operations, the first ever to take place on small South Pacific islands. In 2007 in Kiribati the arrival of 10 Cuban doctors had reduced the child mortality rate by 80%, from 50 in every 1,000 to 9.9.

Prior to 2007, the Solomon Islands had approximately 10,000 patients for every doctor. With 80% of the population in rural areas amongst its 350 islands, medical accessibility has clearly been a challenge for this nation of 500,000. As part of the Solomon Islands bilateral agreement with Cuba, 10 Cuban doctors arrived in May 2007, improving the doctor-patient ratio to 1 to 3,300. The cost of employing Cuban doctors is also much less than recruiting doctors on the international market. The local government pays approximately \$300 a month as an allowance to the Cuban doctors, as well as their return airfare with an undisclosed retainer paid to the Cuban government. This is much cheaper than other doctors who were earning \$170,000 per year or to bring in doctors from the international market which cost \$400,000 each per year.

It is significant that other developed countries are also beginning to understand some of the core lessons found in the Cuban internationalist program. The Australian government had previously overlooked Cuba's significant medical cooperation with Australia's South Pacific neighbors. However, more recently, the Australian government has taken notice that Cuban internationalism is a major contribution to solving complex medical issues, and medical personnel shortages within the region. In 2011 Australia's Parliamentary Secretary for Pacific Island Affairs, Richard Marles, said the Australian Government wants to look at ways in

which they can “leverage the Cuban [medical] expertise against our presence in the South Pacific to do something really important” since “they are engaged in developing assistance for the same reasons we are... [to help] the developing world”. OECD countries and other donors are also taking notice by funding Cuban medical missions. Germany supports programs using Cuban doctors in Honduras and Niger; Japan does the same in Guatemala; and South Africa supports Cuban activities in Mali. Norway also provides substantial funding for Cuba’s extensive medical cooperation program in Haiti.

### **Recommendation:**

1. That the Cuban medical approach be financially supported and replicated across the Pacific region, by previous colonial powers in the Pacific and by developed nations in the region, such as Australia and New Zealand. That a collaborative model be developed that financially contributes to the establishment and development of clinics, hospitals, medical equipment and medicines and assist with the payment to Cuba of providing this medical expertise and training.
2. That international aid in the region model its approach on the Cuban Medical Bilateral Agreement approaches based on a partnership of cooperation without imposing external requirements for ‘aid’ on Pacific Island nations.

## **STRENGTHENING PARTICIPATION**

### **Full Participation**

The full, equitable and effective participation, of Indigenous Peoples as a minimum requirement should include as follows:

Participation must include the capacity of “Peoples and Nations with having rights equal to all other Peoples,” with “the inalienable right of and to self-determination as expressed in various international instruments (the Universal Declaration of Human Rights, Article 1 of the Human Rights Covenants, and U.N. Resolution 1514).”

Indigenous Peoples should expect to enjoy the same participatory standards that are enjoyed by UN member states.

Anything short of those above standards and expectations would exclude Indigenous Peoples right and capacity to participate, and is no more than the reduced opportunity of for example consultation.

The term ‘consultation’ of Indigenous Peoples is not the same as participation. This is a unilateral power relationship that excludes Indigenous Peoples right and opportunity to participate as equals. Consultation does not enable the processes of Indigenous Peoples right to free and informed consent. Consultation is a term that has been applied to Indigenous Peoples in situations that do not consider the rights of Indigenous Peoples as subjects of international law, but rather as subjugated domestic subjects of the state.

Equitable participation would support the implementation of the provisions of the UN Declaration on the Rights of Indigenous Peoples that advance the rights and protections of Indigenous Peoples and Nations.”

Indigenous Peoples have the equal right to all other peoples to self determination as referenced in Article 1 of the Human Rights Covenants and UN Resolution 1514.

Indigenous Peoples will advance our inherent right and position as one that must protect and advance the inalienable and fundamental rights we have as Indigenous Peoples and Nations, including the right to participate fully and equally as Peoples and Nations. The UNDRIP should be read so as to incorporate this interpretation of self determination as contained in the Universal Declaration of Human Rights and the UN Resolution of 1514.

A lesser or subsidiary role for Indigenous Peoples as compared to states in any phase of this High Level Plenary Meeting would constitute a violation of the very rights which it purports to affirm. Real participation is not the same as consultation or the mere presence of Aboriginal People in the room.

In as much as the United Nations was born as a collaboration of Member States and Nations, many of whom are the perpetrators of occupation, imperialism and manifest destiny, it is vital to strengthen equitable Indigenous participation at UN and in all of its mechanisms both and including the UNPFII and the General Assembly. The voices of the people of the land are being silenced by agents of these States, claiming to speak for them and claiming represent first nations’ interests. As described in the opening paragraphs in the Pacific Caucus, funds are withheld, names of individuals omitted from the email lists for information about upcoming events, funding and participation. This does not constitute full and equitable participation as enjoyed by member states. It has been experienced that some first nation people submit a resume to be included and approved by agents of the occupying governments with approval and consensus being withheld due to lack of education, lack of sophistication, imposing blood quantum requirements, which the authors of this paper strongly oppose.

Therefore, in order to strengthen aboriginal and indigenous participation at the UNPFII, it is a minimum requirement that this Caucus and the UNPFII address and make policy to:

- Assert community participation and address the domination of larger regional nations
- Support participation of community members
- Address domination of individuals aligned with occupying Governments
- Address influence of individuals closely aligned to corporations
- Address consensus used as a veto
- Need for of structural process to address issues of impasse
- Need for strengthened Rapporteur UNPFII position. Currently there is a requirement for permission of States before investigations can occur. This obligation fails in a duty to represent and enable Indigenous peoples to voice their concerns regarding breaches to their human and Indigenous rights. The Rapporteur position needs to be vested with the capacity to undertake full and prompt investigations.



- Need for full investigative capacity in belligerent and uncooperative countries
- Need for independent assessment of complaints
- Need for capacity to enforce compliance of States
- Additional Rapporteur position for the Pacific

### **Obstacles to participation**

Full participatory rights are essential to the survival of Aboriginal Peoples lives and connections to country. Where those rights are denied full participation will not occur and will be absent from any future outcomes. For example in 2005 the Australian government announced three Commonwealth Department of Defense sites in the Northern Territory would be assessed for location of Australia's first purpose built national radioactive waste facility. There was no consultation let alone full participation with affected Aboriginal peoples, representative bodies, local communities or the Northern Territory government. Many First Nations Peoples first heard the news via media reports.

Objections have been forwarded from contributors to this Outcome document regarding the over-reach of academics and government reps' participation as advisors and observers and its apparent willingness to have state agencies recognize (hence control) the various issues of occupation.

Concern has also been expressed at the limitation of participation to those who know the computer, are familiar with the process, etc., which rules many community decision makers out.

### **Recommendation**

1. Those participants not familiar with the technology and/or process & politics have the right to participate by appointing a representative or assistant of their choosing with funds available for the principal and any agent to attend.
2. That a roster of participants be circulated publicly with an acknowledgement or disclosure of any conflicts of interest as to policies and programs of the individual as to profits and/or employment with any occupying State.
3. That an ethics standard be established and where cases of blatant breach of ethics, such as deliberately misinforming the Caucus be used as grounds for removal from formal positions of responsibility.

### **Ways and Means to Enforce Indigenous People's Rights**

#### **Proposal for an International Court of Remedy for Original Peoples**

Where do Original People go to fix what is wrong with their communities? How have they found themselves alienated from their own lands and environment? Where do they turn? The courts, laid out for Original Peoples and explained to them as "impartial" have been anything but balanced in their rulings. Why did Original Peoples find themselves characterized as *backwards*? Who constructed these courts and on what basis have they been empanelled? What we find is Original People are invisible people in these courts, not because their rights do not have a living quality, but because the courts refuse to see them. There is no substantive difference between the Original institutions of civil society that functioned in the Pacific before European contact and the new courts of imperialism installed by force. The inability of western people to credit *savages* with

functioning civil governments does not remove their existence. The difference between Anglo European legal systems and that of Original Peoples may not be so exotic, as injury may be fairly universal. Precedence created by Papal Bulls and doctrines favoring one kind of title over another or one kind of right over another has been largely based on European creations of race.

If we look at the question of Original people's land tenure, is it that the Original land title looks so different from western instruments? Or does the *human* possessing the title appear somehow strange to the viewer? Is it human that is *strange* to western claimants who wished to dispose of property, free of costs from the actual owners. As demonstrated in the defendant's filing in *Damon V. Hawaii 1904*, the Royal Patent Grants of the Hawaiians were: "*something anomalous or monstrous*". This is the concept that was applied to Original title and we could assert is now translated into the term *Native title*. This new version of a *defective* title has been very successful in continuing alienation of Original Peoples lands. The language that is applied by imperialism, as in *Native title* does not have to be accepted by Original Peoples. We will discover what the American Supreme court justice Oliver Wendell Holmes thinks of this "*anomalous and monstrous*" proposition, as we explore the question of land rights.

Hawai'i's title history, which predates their occupation, reveals a notable difference in its formation and standing. Hawaiian title was formed under an Allodial mandate specifically intended to protect against seizure of its title grants by one of the many military powers coveting the Hawaiian islands. Hawaiians held a convention to quiet land title in 1848, the Great Mahele. The Mahele should have adequately preserved title interest in courts of their treaty nations which accepted Hawaiian Royal Patent Land Grants.

It is hard to find a comparable case to the American usurpation of Hawaiian vested interests, but looking into the history of the United States, we see examples that can speak to the prior rights issues. We see the US legal precedence that French and Spanish law governed land grants in Louisiana after the 1803 purchase by American. Yet, all efforts of the new Louisiana legislature to repeal those "ancient" laws have failed to this day. How then do we assess the presence of the ancient laws of the Original Peoples that was also in practice in Louisiana,? Were these ancient laws successfully repealed? Is this legal view worldwide? For instance, does the treaty of Waitangi in Aotearoa still have complete legal force today? Can it be construed equally by both signatory parties?

When we search the record of the institutions that created the US courts, for instance, do we see an impartial view of the Original Peoples of North America? We simply do not find a full reputation of prior rulings based on racism, theories of superiority or manifest destiny. In fact, the recent *United States V. Jicarilla Apache Nation* decision is firmly built upon doctrines of empire to aid American imperialism historically and shows how they are still applied today. I will describe why the decision in *Jicarilla* is liberating and how to begin to assemble new precedence in law through our own jurisdictions.

Are there any magic words to unlock the door to human rights for all peoples? Possibly, but nowhere else in our experience do words appear to possess such a magical effect then in courts of law. Often, Original People enter a court with clear facts that require positive outcomes, but rulings become completely turned upside down, contrary to logic. They need not invent new thinking as much as return to inherent civil constructions that served them well in the past.

Can a constitution be oral, commonly held as community knowledge? I believe we must conflate the precedence of legal process in any form that people come together and apply it as foundational, especially practices refined over thousands of years. To begin to address solutions, Original People must start with leveling the playing field and in that effort, we must start agreeing that all rights stem from being Human. Original Peoples must reject the “special rights” imposed upon them by governments which continue to create oppressive policies by way of occupation or political intervention. Governments established by imperialism avoid acceptance that Original Peoples have “human rights, endowed by their creator,” exactly the same as all peoples who inhabit the earth. To accept the prescription of human rights to Original Peoples has legal implications for imperialist nations that would undermine claims of legitimate interest in their possessions.

Original People are often persuaded that special descriptions would be more powerful at maintaining their identity and compensating them for their injuries; that this separation would then lead to swift and more effective changes in their status. Original People do not realize that this is an intended glass firewall held firmly in place by foreign nations, which continues to keep them from possessing the rights they seek. Original People can see their rights through this glass wall, know what those rights are, experience others effectively using these rights, but are, themselves, completely unable to possess them.

In addressing extraterritorial jurisdiction and how Original Peoples can construe borders as they were traditionally laid out. Even if we adopt western descriptions of what Professor Kal Raustiala calls “legal spatiality” in his paper “The Geography of Justice,” can it be applied universally? Professor Raustiala posits that the soil itself is critical to determining what constitutional rights a person holds. I interpret it also to infer what Constitution governs those rights of humans living a certain place, an idea that collides with assertions of extraterritorial sovereignty. Who makes the determination of spatial sovereignty? Do guns take precedence over clearly defined rights? *Original Peoples* can themselves, exercise the universal understanding of the limits of legal reach. In the case of Hawai'i, their Constitution was well known to Americans prior to and at the time of occupation. After occupation, the Americans adopted the Fundamental Laws of the Hawaiian Kingdom as the legal basis for their provisional government and “state.” Yet, Hawaiians cannot easily recognize or access the very rights they have always held.

In the wider Pacific, various imperialistic constructions of rights were imposed and applied to Pacific peoples, all of which contain limitations. In Aotearoa, the interpretation of the Treaty of Waitangi is enforced and implemented by non Maori people. Although this treaty appears to be favorable to Maori rights then seen in Australia with Aboriginal people, it still results in a massive land grab and never ending attempt to squash real sovereignty. In the case of sovereign Nauru, its history of almost total destruction of its *Pleasant Island* by its literal removal as a result of phosphate mining begun in its German possession and continued under Australian trusteeship. The continued degradation of the Nauruan people is still controlled by Australia and its hold on the islands economics. The United States and Australia use Nauru as a dumping ground for unwanted asylum seekers, having economically forced a prison camp on that country. The Nauruan government rightfully seeks removal to a replacement island and Clark island was offered by Australia for such purpose, but outrageously without autonomy. Whether we address Chileans new designs on Rapa Nui or the continued seizure of Pacific possessions like Wake Island or a forced military presence, true sovereignty for all nations in the Pacific does not exist.

Dehumanization and violence are the two factors that dominate the status Original nations today. I believe no amount of analysis of western jurisprudence will fix this problem. The action of Original people taking control of their lives, perhaps by the creation of their own judiciary, will make a difference.

The simple remedy is the removal of all applications that Pacific peoples are less than human and the complete end to legal applications that find foundation in these doctrines. It is this western assertion of dehumanization, combined with the willingness to employ unprovoked violence, that is continuing western title in the Pacific today. The only real accords today between Original Peoples and the militarized powers, is by threat and use of violence. Violent threats should be expressed in Original communities as they are and the militarized world represented by organizations like the United Nations should clarify this state of being by rejecting any euphemisms. Accepting this may be the only way to begin positive change and insisting on the unconditional removal of threats of violence by the military presence in the Pacific, must be a mandate. Law of Nations, International Law or subscriptions to Universal Human Rights, demand the changes to these policies and requires an absolute repudiation of these doctrines by the Global community.

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vi