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AGENDA ITEM 5 - REVIEW OF DEVELOPMENTS

REPORT BY NAILSS TO THE WORKING GROUP ON INDIGENOUS PEOPLES

1993

Madam Chair,

We wish to inform you of current developments in Australia where fundamental principles of Self Determination and the respect for indigenous values and land are not being observed. This statement is amply demonstrated by the reactions and responses to the decision of the High Court of Australia in the Murray Island case referred to as Mabo.

As you are aware, last year, we gave a lengthy intervention analysing the high court^s decision which invalidated, retrospectively, Terra Nullius as a legal basis for the Crown^s acquisition of sovereignty and dominion over the peoples and territory of the continent of Australia.

However, as we pointed out last year, and reiterate this year, the high court substituted one racist doctrine for an equally racist but less obviously so, doctrine, being - the Doctrine of Discovery - as the legal foundation for the acquisition by the

British Crown.

Such an act, no matter how barbaric and untruthful in law and history, amounted to an act of State which is an expression of the so-called "Act of State" doctrine. This means that no domestic tribunal, including the high court of Australia, can challenge the validity of such an act of State.

The Mabo case purports to establish, at law, retrospectively, that;

1. Aboriginal and Islander People were "Peoples" per se

2. As "Peoples" we had limited rights to territories and lands. and

3. That the Crown, itself, could gain from crimes against humanity - contrary to the current and past concepts of International Law.

Despite this perversion of International and English Common Law the Mabo decision is the current high-water mark for the recognition of aboriginal rights.

However, the High Court ruling allowed for certain acts of Barbarism, genocide, and land theft to go unpunished, unrecognised and non-compensatable to those who are the survivors of these atrocities.

The High Court itself, curtailed the benefits of Native Title by its decision to allow acts of extinguishment and abandonment.

Annexed to this intervention, for the benefit of the Working Group is a comprehensive paper prepared by the Aboriginal Legal Service of New South Wales, analysing the judgement.

The after effect of Mabo, Mme Chair, has seen Aboriginal peoples subjected to the a vile orchestrated campaign of racial vilification.

The spokesperson for the Mining, Grazing and other interests of capital, along with the self-appointed commentators of talk-back radio and tabloid media are endeavouring to promote public hysteria and a supremacist line that Aboriginal peoples are going to steal everyone^s backyard.

None of these "commentators" seek to address the issues of justice and compensation.

Some of the specific comments are illuminating:

Tim Fischer - Leader of the National Party (the man who would be deputy Prime Minister in a conservative government) - has said

> "At no stage did Aboriginal civilisation develop substantial buildings, roadways, or even a wheeled cart as part of their different priorities and approach.
>
> I strongly make the point that rightly or wrongly dispossession of Aboriginal civilisation was always going to happen. White settlement of the Australian land mass

was inevitable."

A cruder form of social Darwinism you could not find.

Marshall Perron - Chief Minister of the Northern Territory - told a gathering of Australian-based foreign media correspondents;

> "Part of the problem is that Aboriginal people really are centuries behind us in their cultural attitudes.... and their aspirations in many respects. You wouldn^t get too many anthropologists denying that statement.
>
> You can^t allow kids to be covered in flies or eating a bone shared with a dog that is covered in scabs from one end to the other."

This is from a man whose government refuses to recognise the aspirations of Aboriginal peoples and who attempts to use any pretext to destroy Aboriginal sacred sites.

Hugh Morgan - the managing director of one of Australia^s largest mining companies - has said in a public lecture;

> "I believe that what is being put at risk now is the whole legal framework of property rights throughout the whole community."

These comments and vehement attack on the High Court of Australia were repeated as recently as yesterday.

The commentators who are preaching the policies of hate are selling the message that white Australia should feel threatened that they have much to fear.

It is ironic that those who preach law and order are now in the process of circumventing and challenging the authority of the highest court in Australia, when it has sought to recognise some limited and curtailed rights for an otherwise marginalised, powerless, captive and dispossessed group within Australian society.

Madam chair, the above comments are to be expected in an Australian society where racist and colonialist views are so ingrained within the psyche of the majority people.

What is more disturbing has been the reactions of governments and of government-created Aboriginal institutions to the decision.

Madam chair, the Prime Minister of Australia rightfully asserts that Aboriginal people are entitled to justice from the Mabo decision yet his government colludes with the government of Mr Perron, to override a Mabo-style claim at the site of a proposed mining venture at Macarthur River.

Once again the interest of foreign Capital were preferred to the rights of Indigenous peoples.

As of last week, Madam Chair, legislation was introduced in the Parliament of the State of Victoria - and it is foreshadowed

that the parliaments of Western Australia, Tasmania and others will follow - to validate all grants of land from 1975 to the present. (This is the period covered by the Racial Discrimination Act, which the High Court said must be taken into account when dealing with Native Title.)

Under the proposed legislation, compensation is severely limited, with there being no provision for the loss of mineral and petroleum resources. The Bill only provides for a a statutory period of 15 years.

In introducing the Bill, the Victorian Premier, Jeff Kennett, stated quite specifically that the purpose of the Bill was to reassure investors in the State - no mention was made of the rights of Aboriginal people.

As of 27 July 1993, the Federal cabinet made certain decisions in relation to Mabo - as of yet the draft legislation has not been introduced.

These decisions are;

1. To validate all grants of land from 1975 to the present

2. In respect of future grants, compensation to be paid to Native Title land owners is limited to the maximum of an ordinary freehold titleholder, with special compensation to be paid if it can be proven that there is a "special attachment" to the land by the Native Titleholders.

3. Native Titleholders have a limited right to negotiate with developers over the use of their land, and if there is no agreement then the matter is to be referred to a planned National Native Title Tribunal for arbitration. This has been misleadingly labelled a "limited Right of Veto". However, any decision by this tribunal can be overridden by joint Commonwealth government and State governments on the basis of National Interest.

4. Provision is also made for the revival of Native Title upon the expiration of mining leases when native Title has been established.

Madam Chair, the press reports of the federal cabinet decision are encouraging but also gives rise to major concern.

It is encouraging that for the first time in white Australian history, that any compensation is to be paid to Aboriginal people for the use of their land and resources by those who treat land as a purely capital asset.

The compensation component is a little more generous than that provided in the Victorian draft legislation, yet it retains the Victorian example of no compensation for loss of mineral and petroleum interest.

This legislation will provide limited benefit for the small number of aboriginal and Islander people who will be able to establish their claim of Native Title under the vague guidelines

outlined in Mabo. This benefit will accrue to possibly, at the highest, 15 per cent of the total Aboriginal and Islander population.

For the other 85 per cent, the Commonwealth government does not propose to provide compensation or equivalent lands for past injustices and continuing theft.

It also must be stressed that the federal cabinet decision is a statement of intent and final judgement must be reserved until the legislation has been produced and passed by both houses of Parliament. Further, the decision has emerged primarily as a unilateral action by the government with limited consultation and not as the result of any meaningful negotiation with <u>all</u> Aboriginal people.

Having anticipated the Commonwealth and State government responses, a number of Aboriginal and Islander nations, tribes and people have instructed the New South Wales Aboriginal Legal Service to institute broad ranging writs on their behalf.

These claims have been lodged on behalf of individual people in their capacity as representatives of their tribes after community meetings of the tribes.

The writs cover a number of important issues which arise directly and indirectly out of the Mabo High Court decision. They include;

1. A denial of the assertion of sovereignty claimed by the

British Crown at the time of invasion and a denial of the legitimacy of the title of its successors.

2. A claim that the method and manner of acquiring title to Aboriginal and Islander land involved policies and practices of genocide, ethnocide and other crimes against humanity. In accordance with principles of international human rights law, there can be no benefit accrued to the perpetrators of such acts.

Neither of the above were litigated in Mabo and the High Court's comments in relation to the issue of sovereignty was Obiter Dicta and therefore was not considered.

3. The challenge to the validity of certain Acts of State governments on the basis that they contravene the provisions of the Racial Discrimination Act.

Amongst those acts challenged are the 1990 amendments to the New South Wales Land Rights Act, involving the transfer of Aboriginal land and property without consent and without compensation.

4. Specific Mabo-style claims have been made in all the applications in an effort to broaden and more accurately define the concepts laid down by the High Court.

The reaction to these writs has been the hysterical comments outlined above.

Such comments were expected and reflect their racist and colonialist views of the white majority.

Far more disturbing and damaging to the legitimate aspirations of Aboriginal and Islander people have been the public comments made by officials of the aboriginal bureaucracy . These ill-informed comments have condemned the writs on such frivolous grounds that they threaten to jeopardise so-called "legitimate" Mabo claims.

In an effort to reinforce their position as self-appointed substitute for the High Court of Australia and to placate their political masters, ATSIC officials, including the Commonwealth appointed Chair, in her intervention at this Working group described the claims as "extravagent and unrealistic". Whilst its elected Vice-chair, have stated that no funds will be provided by ATSIC to enable these plaintiffs to proceed with their application before the High Court.

These statements were made prior to the full writs being filed and such actions are contrary to the statutory and moral obligations of ATSIC. The role of ATSIC was created to serve the Aboriginal community and not to act as a "watchdog" for its white political masters.

Madam Chair, the Mabo decision is a starting point for the articulation of aboriginal and Islander rights and not the end.