

Response to Observations of the Committee on Economic, Social and Cultural Rights: Australia. 01/09/2000.

In its Concluding Observations (E/C.12/1/Add.50.), the Committee acknowledges the goal of a good standard of living for all, including the economic casualties of our society. Reconciliation has since been moved from the public agenda, and indigenous representation dismantled, and culturally sensitive policy replaced with mainstreaming and assimilation attempts of the past.

Countless Aboriginals have been jailed for violation of property rights. But where land rights have been achieved, such rights were smashed by the rule of statute law which prohibited Aboriginals from using the land. Yet an integral part to basic human rights is the right to life, access to land that sustains such life, and the social conditions that allow life to flourish in civil society.

Policies of successive governments to control Aboriginal life have ended in failure, evidenced by increased poverty and its social concomitants, such as ill-health, unemployment, and poor housing. Perhaps the starkest example is the death of a fifteen-year old child in 1997. His mandatory sentence imposed for the theft of goods to the value of less than \$20 ended when he was found hanging in his prison cell.

But a better future is possible. Since 1985, the Harvard Project on American Indian Economic Development has closely monitored economic prosperity in over several hundred Indian reservations. The findings demonstrate that indigenous communities are better off under conditions of self government, when such sovereignty can be exercised by indigenous people within their own culture.

The American experience can be applied to the Australian context, and give credence to the notion that Aboriginals would be much better off if they had their own treaty. The following examples show that relying on government policy is definitely not a way forward.

Role of the government

Straight from the top

As opposition leader in the mid-1980s, John Howard was so vocal about his anti Aboriginal and anti Asian sentiments, that members of his own conservative party distanced themselves from his views. One decade later, he became Prime Minister. Pauline Hanson, independent member for Oxley, also won office in 1996. Her policy essentially consisted of dismantling multiculturalism, giving only temporary protection to refugees, and of cutting financial entitlements to Aboriginals. Nine years later, Pauline Hanson was in

jail for electoral fraud. John Howard had mainstreamed Hanson's major points into the public policy of his government.

Although John Howard became prime minister under the auspice of helping Australian "battlers" and of protecting traditional family values, he did not reveal many policy details during the election campaign. But he did say that "there will never ever be a GST" (Goods and Services Tax). Almost immediately after he secured office, Howard brought in the GST. In practice, the GST means less income tax and collecting lost revenue from all retail consumers, including low income earners who had previously been tax-exempt.

As John Howard defended his electoral back flip, Australia learned the difference between prime ministerial promises and core promises. He fervently rejected accusations that he had lied to the electorate. The leader of the nation did not lie. He re-framed the truth according to the expediency of changing circumstance.

His family concerns never included Aboriginal families, or the families who arrived in refugee boats, or those who were struggling under his economic pollices. in the lead-up to the 2004 election campaign, John Howard made it clear that the "battlers" whose interests he sought to protect earned at least \$50,000 per annum. Most lived in marginal electoral seats.

On ministerial behest

The destructive effect of the European settlement on Australia's indigenous population is well documented. But the ripples of this shameful history continue to set the scene for dividing Australia along racial lines. In 1996, the portfolio of Aboriginal Affairs became annexed to the ministerial portfolio of Immigration and Multicultural Affairs. Since the Tampa election campaign in 2001, and the anti refugee policy changes that followed, public vigilance established a potential link between national security concerns and heightened suspicion toward people that come under the auspices of DIMIA. The ongoing linkage of Aboriginal affairs with this department also points to conceptualising of Aboriginality as something that does not belong to Australia, as something the dominant culture must guard against.

It therefore should come as no surprise that the same Minster, who resorts to military means to turn away unarmed refugee boats at high sea, does nothing to defend South Australian Aboriginals, and their lands, from the sceptre of contamination by atomic waste products. Rather than defending people who come under the rule of the DIMIA Minster, successive incumbents have used the authority of their office to pass legislation and implement policies to the detriment of those they are meant to govern with fairness and decency.

An ongoing legacy

Desecration by the waters

Once the government decided to build a bridge to Hindmarsh Island, the Narringjerry had no chance. A Royal Commission “found” that their claims that the building of such bridge would desecrate their culture and their spiritual beliefs were nothing but lies and fabrication. One year later, fundamental flaws of the investigation were exposed. By then, it was too late because the bridge had been built.

The last documented onslaught occurred in 2003. Developers found the land at an ancient burial grounds attractive. Despite repeated warnings, and to the horror of the Narringjerry people, bulldozers moved into the neighbourhood and unearthed the bones of the old people.

Something good may have come from this unprovoked assault, and may pave the way for good neighbour relationships in future. Alexandrina Council offered an unreserved apology for disregarding expert on-site local Narringjerry knowledge. This change in attitude may hold the key to reconciliation that contains the conceptual foundation for a treaty that operates to the benefit of all in South Australia.

Poisoning the lands

Maralinga, the site of nuclear explosions in the 1950s, has been declared safe. Yet it remains a prohibited area. Despite these long-term and unknown dangerous effects on people and on the environment, the government actively fosters the depositing of radioactive waste in the desert of South Australia. Kupa Piti Kungka Tjuta women from Kokatha, Antikarinya and Yankunytjatjara countries have been fighting to prevent their homeland from being converted into a radioactive rubbish tip.

Research findings by the Department of Education, Science and Training cite “evidence” that such poison will be safely deposited. Yet nobody proposes to place such deadly time bomb near a city. Kistler Aerospace Corporation launched a construction site near Woomera in 1998. Nuclear contact shall be refined to outback lands, as the South Australian government is spending money to “educate” people to accept nuclear waste. The wheels of profit must keep turning, regardless of the effects on land and people. In May 2003, the Federal Government made available \$25 mill for the construction of a nuclear rubbish dump, and predicted an annual turnover of \$200,000. One year later, research “findings” predict that the site near Woomera is the safest in the whole of Australia. Similar plans to dump nuclear rubbish near Mildura in Victoria have been met with massive community opposition.

Judicial racism

Australia’s founding fathers wrote statute law to ensure that only white voices could be heard. Although it seemed imperative at times to attract more

people, the White Australia policy ensured that this invitation was not extended to non-Caucasians. So deeply entrenched was the commitment to keep Australia white, that Australia's own non-white nationals were not even visible in population numbers. Although Aboriginals were the inhabitants since time immemorial, they did not have citizen's rights under the Westminster system until 1967. To confer such rights would have been unconstitutional and hence illegal at that time, until after the overwhelming majority of white citizens condemned such discrimination by way of a referendum. As a result, this aspect of the Constitution has been changed. But even to this day, Aboriginals have no legal guarantee of even their basic human right of survival.

In a recent genocide case, evidence given by Aboriginals was largely disregarded, in favour of written evidence by government officials of two hundred years ago. Environmental destruction which made survival impossible, and the removal of children from their social groups in a deliberate attempt to breed out Aboriginality and thereby destroy the race, did not amount to genocide in a court of law. One judge observed that even if the genocide claim had been substantiated in court, it would not lead to prosecution, because genocide was not a crime in common law. The government reframed human rights abuses by as legitimate policy at the time. Those who thought differently were accused of presenting a "black armband" view of history, and deliberately seeking to put successive governments in a bad light.

The Howard government moved away from a rights based approach toward collectively providing health, welfare, and education. The emerging perception was that basic human rights were equivalent to passive welfare dependency. As Michael Dodson argued repeatedly, justice means equality in law, not receiving of physical aid. In advancing this argument, he tackles the judicial racism that dates back to the 1901 Constitution, which allows the government to pass specific laws for the members of any race.

Breeding out of Aboriginality by public policy

Basic health for some

The abolition of self determination

Looking to the future

Although the basis for human rights lies in the law and morality of a society, some people are better protected than others. Aborigines, who until 1967 had no status in law, still do not have a treaty. A treaty would allow self-governing within the indigenous jurisdictions.

Apart from a treaty, this could include something on compensation and also economic contracts, the stuff that Noel Pearson is talking about.