

**COMMUNITY AID ABROAD
SUBMISSION TO THE COUNCIL FOR
ABORIGINAL RECONCILIATION
DRAFT NATIONAL STRATEGIES TO
ADVANCE RECONCILIATION.**

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Community Aid Abroad welcomes the opportunity to comment on the Council for Aboriginal Reconciliation's Draft National Strategies to Advance Reconciliation to be presented to the Australian Government in May 2000 as a major component of the Document for Reconciliation.

1. Introduction.

Community Aid Abroad works with indigenous peoples in approximately 21 countries, including Australia where we have run community development programs for many years. It is important to emphasise that Community Aid Abroad does not in this submission purport to represent the views of indigenous Australians. Instead, Community Aid Abroad's primary interest is in maintaining and enhancing the basic rights of indigenous peoples with whom we work - including indigenous Australians - and as such seeks in this submission to comment from this rights based perspective.

Community Aid Abroad takes a rights based approach to our work on poverty, injustice and suffering. This approach reflects our view that poverty and suffering are primarily caused and perpetuated by injustice between and within nations, resulting in the exploitation and oppression of marginalised peoples.

Our rights based approach to development further implies that States have obligations and citizens have rights, expressed through international covenants, agreements and commitments. These include the United Nations Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and more specific commitments made by Governments at a series of international conferences in the first half of the 1990's.

Given the breadth of our international experience, what is striking to Community Aid Abroad is the similarity of underlying problems that confront indigenous peoples; usually they are the most marginalised of the poor, have the least political power and, because of their prior ownership of land, find themselves in conflict with commercial interests wishing to exploit their natural resources. Indigenous communities, whether in Indonesia, India, Guatemala or Australia suffer because their law, their culture, their rights and their ownership of land have all been sacrificed for the economic interests of the dominant culture. Reluctance by dominant cultures to acknowledge often complex indigenous land ownership systems is nearly universal, and Australia is no exception.

It is Community Aid Abroad's view that the Australian Government's failure to adequately address a range of indigenous rights issues has created the single greatest barrier to the achievement of reconciliation by the centenary of federation in 2001. The following unresolved indigenous rights issues are of particular concern to Community Aid Abroad;

- The Australian Government's failure to respond to the United Nations Committee on the Elimination of Racial Discrimination decision that elements of the Native Title Amendment Act 1998 are inconsistent with Australia's obligations

under the United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD).

- The Commonwealth Government's failure to intervene to override the Northern Territory and Western Australian mandatory sentencing laws despite evidence to suggest this legislation is inconsistent with Australia's obligations under the United Nations Convention on the Rights of the Child and the recommendations of the Royal Commission into Aboriginal Deaths in Custody.
- The Australian Government's formal opposition to self determination for indigenous peoples as proposed in the United Nations Draft Declaration on the Rights of Indigenous peoples.
- The Australian Government's failure to offer a formal apology to and address compensation for victims of the Stolen Generation as proposed in the Bringing Them Home report.
- Continuing uncertainty over aspects of the Racial Discrimination Act 1975, particularly whether section 51(26) - which allows the Commonwealth to make laws with respect to any race for who it considers necessary to make special laws - can be used to discriminate against people of a particular race.
- The Australian Government's failure to intervene to overturn the Northern Territory Government decision to abolish bilingual education programs in Aboriginal communities, thereby denying those communities wishing to educate their children in an indigenous language as well as English the right to do so.
- The Australian Government's failure to propose recognition of prior indigenous ownership of Australia in the Commonwealth Constitution.

It is primarily due to the Australian Government's failure to address these and a wide range of other outstanding indigenous rights issues that Community Aid Abroad is regretfully of the view that meaningful reconciliation will not be achieved by the Centenary of Federation in 2001 and therefore within the lifetime of the Council for Aboriginal Reconciliation.

Accordingly, Community Aid Abroad congratulates the Council for Aboriginal Reconciliation for its recognition that reconciliation cannot be achieved within an arbitrary timeframe in the current Australian environment where so many indigenous rights issues remain unresolved.

Further, Community Aid Abroad broadly endorses the Council's proposed National Strategies to Advance Reconciliation as a considered and appropriate framework to present to the Australian Government for the advancement of reconciliation beyond the Centenary of Federation.

Following are Community Aid Abroad's more specific comments on each of the Council's four proposed National Strategies to Advance Reconciliation.

2. The Draft National Strategy to Promote Recognition of Aboriginal and Torres Strait Islander Rights.

Community Aid Abroad welcomes the Council's recognition that there remain significant areas of difference within Australia yet to be reconciled and that the recognition of Aboriginal and Torres Strait Islander rights is an area of particular concern.

Given our rights based development approach and philosophy, Community Aid Abroad believes that the proposed National Strategy to Promote Recognition of Aboriginal and Torres Strait Islander Rights should be afforded the highest priority of the Council's four proposed National Strategies. This is because in many instances progressing the Council's National Strategies for Economic Independence, Addressing Aboriginal Disadvantage and Sustaining the Reconciliation Process will be dependent on the satisfactory resolution of a range of outstanding indigenous rights issues.

As outlined above, Community Aid Abroad believes that much of the "unfinished business" relating to indigenous rights referred to in the Council's draft strategy is a direct result of the low priority afforded to indigenous rights issues by the current Australian Government.

Whilst a Federal Government policy focus on overcoming Aboriginal disadvantage in the areas of health, housing, education and employment is both valid and important, current Government policy has largely treated advancement in these areas as mutually exclusive to indigenous rights issues, failing to recognise that advances in indigenous health, housing, employment and education are inexorably linked to advances in the achievement of indigenous rights.

The Federal Government's handling of two recent policy issues in the Northern Territory - the abolition of bilingual education programs in Aboriginal communities and mandatory sentencing of juveniles - illustrates this point. In both instances Community Aid Abroad believes actions by the Northern Territory Government have placed Australia in a position where domestic policy and legislation are inconsistent with our international obligations under the United Nations Convention on the Rights of the Child. In both instances it is also clear that denial of such rights to indigenous youth is unlikely to lead to better education, employment or health outcomes. In both instances however the Federal Government has failed to use its powers to intervene in these matters.

A further impediment to the achievement of reconciliation by 2001 is the fact that formal Government portfolio responsibility for reconciliation now sits outside the Aboriginal and Torres Strait Islander Affairs portfolio. This structural arrangement for Government handling of reconciliation issues further reinforces Community Aid Abroad's impression that the Federal Government views reconciliation as something which can be

meaningfully pursued in isolation from the advancement of indigenous rights. Community Aid Abroad does not share this view.

Whilst there remain numerous unresolved indigenous rights issues, Community Aid Abroad draws the Council's attention to two issues - the Native Title Amendment Act 1998 and the United Nations Draft Declaration on the Rights of Indigenous Peoples - both of which we believe to be of sufficient importance to be highlighted for resolution in the text of the Council's Strategy to Promote Recognition of Aboriginal and Torres Strait Islander Rights.

Resolution of Native Title.

On two occasions during 1999 the United Nations Committee on the Elimination of Racial Discrimination found that the Australian Government's 1998 amendments to the Native Title Act 1993 are inconsistent with Australia's obligations under the United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Accordingly, the Committee requested the Australian Government to immediately suspend the Native Title Amendment Act 1998 and re-open negotiations with Aboriginal people with a view to finding solutions which comply with Australia's international obligations. The Committee's request that the Australian Government suspend implementation of the 1998 amendments due to inconsistencies with Articles 2 and 5 of the United Nations Convention on the Elimination of All Forms of Racial Discrimination has not been adopted by the Australian Government.

Further, the four particular provisions of the 1998 amendments which the Committee found to discriminate against indigenous title-holders - namely the Act's 'validation' provisions, the 'confirmation of extinguishment' provisions, the primary production upgrade provisions and restrictions concerning the right of indigenous title holders to negotiate non-indigenous land uses - remain in place in the Act.

Community Aid Abroad's international experience of these matters has shown clearly and repeatedly that reconciliation of dominant cultures with indigenous peoples cannot be realised without addressing the fundamental issues of concern to indigenous peoples, which almost always include recognition of rights to land.

Accordingly, Community Aid Abroad believes that reconciliation will not be achievable until such time as the Australian Government further amends the Native Title Amendment Act 1998 such that the Act is no longer inconsistent with Australia's obligations under the United Nations Convention on the Elimination of Racial Discrimination.

The Draft Declaration on the Rights of Indigenous Peoples.

As a leading development agency working with indigenous peoples in many countries around the world, Community Aid Abroad has been alarmed at the recent position taken

by the Australian Government on the United Nations Draft Declaration on the Rights of Indigenous Peoples (DDRIP).

Of particular concern to Community Aid Abroad and many of our counterparts around the world was the tone of the speech made by the Minister for Aboriginal and Torres Strait Islander Affairs to the 17th session of the United Nations Working Group on Indigenous Populations in Geneva, Switzerland on 29 July 1999. In a speech further demonstrating the Federal Government's determination to downgrade indigenous rights issues, Minister Herron attacked the UN Declaration as a 'distraction from the real issues' and signalled Australia's rejection of the 'politics of symbolism'.

The Minister's speech followed the Australian Government's 1998 attempts to remove the phrase 'self determination' from the Draft Declaration and to have this replaced with the term 'self empowerment', on the basis that self determination raised questions about breaking up existing nation states. Indigenous Australians were rightly angered at this statement, arguing that Australia's indigenous organisations have never called for a separate nation state.

Community Aid Abroad believes that this attempt to draw a distinction between self determination and self empowerment indicates a lack of understanding of development processes. Most credible non-government development organisations have long understood that effective social and economic development of poor and disenfranchised communities requires self empowerment. In practise this means a development process whereby a community acquires the skills, knowledge and power to achieve sustainable change for the benefit of the whole community.

What we also know is that self empowerment leads to political awareness and action and, ultimately, a desire for self determination. In the case of indigenous peoples the world over, self empowerment has led to communities demanding their rights, particularly over land. They point out that their land has often been taken without compensation and handed over to loggers, miners and plantation owners who destroy their livelihood.

In most countries, indigenous peoples are marginalised minority groups who can never achieve political power. For them self determination is about many things - the right to their culture, customs, law and beliefs. It is also the right to determine their own future, but like most dominant cultures we continue to prevent indigenous people from doing so. Self determination is a fundamental principle of international law, contained in the first Articles of the United Nations International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It is the right of all peoples to control their destiny and to make decisions about their own development. Indigenous peoples want nothing more than for this right to apply equally to them.

Accordingly, Community Aid Abroad believes that reconciliation will not be achievable until such time as the Australian Government formally accepts the concept of self

determination for indigenous peoples as reflected in the United Nations Draft Declaration on the Rights of Indigenous Peoples.

Constitutional and Legislative Matters.

Community Aid Abroad welcomes the Council's proposal to establish a framework agreement to ensure the progressive resolution of the wide range of unresolved indigenous rights issues and that creating the structures and frameworks for addressing this "unfinished business" in relation to indigenous rights is the key to whether reconciliation is advanced beyond 2001.

It is imperative that this negotiation process be protected in legislation and conducted according to principles agreed to by both Government and Aboriginal and Torres Strait Islander peoples. As well as assisting the negotiation of all outstanding indigenous rights issues, the legislation should have the capacity to facilitate negotiation of new issues identified for negotiation in the future.

Community Aid Abroad agrees with the Council's assertion that the Mabo decision does not fulfil the full potential for recognition of the status of Australia's indigenous peoples as the first Australians. Accordingly, Community Aid Abroad supports the Council's proposal for a referendum which seeks to prepare a new preamble to the Constitution which recognises Aboriginal and Torres Strait Islander peoples as the original owners of Australia and acknowledges their history of dispossession since colonisation.

We draw the Council's attention to our views on the use of the terms 'original ownership' and 'custodianship' in the proposed Declaration of Reconciliation and other Council documentation. Community Aid Abroad strongly believes that traditional or original ownership best describes the reality of indigenous peoples relationships to land in the Australian context, has a legal basis and is consistent with indigenous Australians not formally ceding sovereignty over their lands. Whilst references to 'custodianship' may be appropriate in particular indigenous contexts, the term has no clear definition, implies something less than ownership to many indigenous and non indigenous Australians and has no legal basis. Accordingly, Community Aid Abroad disagrees with the Council's use of this term and urges the Council to consistently use the term traditional or original ownership to describe the reality of indigenous peoples relationships to land in the Australian context.

Community Aid Abroad supports the Council's proposal for the establishment of a legislated Bill of Rights for all Australians which will include measures to prohibit racial discrimination. Equally important however are the Council's proposed amendments to Sections 25 and 51(26) of the Commonwealth Constitution.

Although both these sections of the Constitution were intended to discourage discrimination, both leave open the possibility for allowing the Commonwealth to discriminate on the basis of race.

Section 25 of the Constitution - which leaves open the possibility for States to exclude people from voting on the grounds of race - should be removed from the Constitution. Section 51(26) - which allows the Commonwealth to make laws with respect to any race for who it considers necessary to make special laws - can be used to discriminate against people of a particular race. Community Aid Abroad agrees with the Council's proposal that this section be amended to enable the Commonwealth to legislate for the benefit of a particular race.

Self Determination.

Community Aid Abroad welcomes the Council's specific reference to self determination in the draft National Strategy to promote recognition of Aboriginal and Torres Strait Islander rights and advises that the Council's analysis of self determination is consistent with that of Community Aid Abroad.

However, as mentioned previously in this submission, Community Aid Abroad is disappointed that the Council does not directly address the issue of self determination in the context of the current Federal Government's opposition to the use of the term self determination in the United Nations Draft Declaration on the Rights of Indigenous Peoples.

Accordingly, Community Aid Abroad urges the Council to include an additional action point in this section of the strategy calling for the Federal Government to accept use of the term self determination as proposed in the United Nations Draft Declaration on the Rights of Indigenous Peoples.

Community Aid Abroad supports the Council's proposals for Governments to examine options to address the lack of indigenous representation in parliaments and for local governments and political parties to develop strategies to support the nomination of indigenous people to stand for election.

Community Education and Awareness.

The Council has rightly pointed out that many Australians have a poor understanding of human rights and indigenous peoples rights in particular. Particularly poorly understood is the concept of applying special measures to improve the rights or living standards of indigenous Australians.

Community Aid Abroad supports the recommendation for non Government organisations to work in close co-operation with agencies such as the Human Rights and Equal Opportunity Commission and indigenous peoples in the development of community education projects promoting community understanding of indigenous rights and their relationship to broader human rights.

Cultures and Heritage.

Community Aid Abroad is disappointed that the Council fails to recommend that the Australian Government specifically address the decision of the United Nations Committee on the Elimination of Racial Discrimination that elements of the Native Title Amendment Act 1998 are inconsistent with Australia's obligations under the United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD).

In addition, Community Aid Abroad is disappointed that the Council fails to specifically address the recent Reeves Review of the Aboriginal Land Rights (Northern Territory) Act 1976. Whilst the Council rightly acknowledges this legislation as Australia's most comprehensive land rights legislation in the text of the draft National Strategy, the Council fails to note that the Reeves review proposes dramatically curtailing the rights of traditional owners under the Act and that the review is widely regarded as having manifestly failed to represent the views of Aboriginal people of the Northern Territory.

Community Aid Abroad urges the Council to recommend that the Commonwealth Government reject the Reeves Review in its entirety and commence negotiations with indigenous stakeholders with a view to agreeing a mutually acceptable methodology and process for reviewing the effectiveness of the Aboriginal Land Rights (Northern Territory) Act 1976.

Community Aid Abroad partially supports the Council's recommendations with respect to State and Territory Governments developing programs to enable bilingual education programs to be taught in schools. Community Aid Abroad would prefer this recommendation to be reworked such that those Aboriginal communities wishing to educate their children in indigenous language as well as English should have the right to do so. It is clear that for a range of reasons some Aboriginal communities do not favour bilingual education and the wording of the Council's draft recommendation could be interpreted as recommending mandatory bilingual education.

Community Aid Abroad supports the Council's recommendations with respect to traditional law and in particular the Council's proposal that Governments agree to negotiate with indigenous people within a framework agreement to amend relevant laws to reflect the rights of indigenous Australians to live in accordance with their customs, consistent with all international human rights instruments, and to ensure that Australian laws will not impose unnecessary restrictions upon the exercise of those rights.

Social Justice.

Community Aid Abroad broadly supports the objectives of the social justice component of the draft National Strategy to Promote Recognition of Aboriginal and Torres Strait Islander Rights.

Community Aid Abroad is however disappointed that the Council has not given greater prominence to recommendation D within this section of the Strategy - that "all levels of Government take responsibility to ensure that their policies and practices comply with

international human rights instruments". This pivotal recommendation affects far more than just the mandatory sentencing issue - it has implications across a range of current indigenous rights issues where domestic law and/or policy may be inconsistent with Australia's international human rights obligations.

Community Aid Abroad supports the Council's recommendations for the Commonwealth Government to review mandatory sentencing laws and for community education about the use of special measures as an appropriate way to address inequality between indigenous and non indigenous Australians consistent with the intent of the Racial Discrimination Act 1975.

3. The Draft National Strategy for Economic Independence.

Although Community Aid Abroad broadly supports the objectives and actions outlined in the Council's proposed National Strategy for Economic Independence, we are concerned that the strategy as drafted entirely fails to acknowledge the linkages between the achievement of indigenous rights - particularly rights to land - and the achievement of indigenous economic independence.

As highlighted previously, Community Aid Abroad believes the proposed National Strategy to Promote Recognition of Aboriginal and Torres Strait Islander Rights should be afforded the highest priority of the Council's four proposed National Strategies. Advancing the Council's National Strategies for Economic Independence, Addressing Aboriginal Disadvantage and Sustaining the Reconciliation Process will in many instances be dependent on the satisfactory resolution of a range of outstanding indigenous rights issues.

Satisfactory resolution of indigenous rights issues particularly in relation to land and natural resources will lay an important framework for indigenous economic independence.

Community Aid Abroad draws the Council's attention to the current situation in the Northern Territory where many indigenous communities are in the process of building an economic base around land claimed successfully under the Aboriginal Land Rights (Northern Territory) Act 1976. Numerous Aboriginal enterprises and employment opportunities are developing in the pastoral, tourism and mining industries as both a direct and indirect result of the exercise of indigenous rights to land under the Act.

Income generated from the operations of the mining industry on Aboriginal lands is building a capital base for indigenous communities, many indigenous pastoral enterprises are accessing overseas export markets - particularly in South East Asia - for live cattle exports and domestic and international interest in indigenous tourism on Aboriginal lands continues to grow. Aboriginal people are negotiating training and employment programs with mining companies seeking to access Aboriginal lands for exploration and mining activities and there are now many instances of joint venture arrangements for businesses operating on Aboriginal lands. The linchpin to much of this

economic activity has been the achievement of indigenous rights to land under the Aboriginal Land Rights (Northern Territory) Act 1976.

Accordingly, Community Aid Abroad strongly urges the Council to amend the draft National Strategy for Economic Independence to better reflect the linkages between the resolution of outstanding unresolved indigenous rights issues and the achievement of economic independence.

4. The Draft National Strategy to Sustain the Reconciliation Process.

Since its inception the Council for Aboriginal Reconciliation has been successful in promoting reconciliation at a community level across Australia through a range of successful initiatives. As Community Aid Abroad agrees with the Council's view that the process of reconciliation will be far from complete when the Council for Aboriginal Reconciliation ceases operation on 1 January 2001, it is crucial that such initiatives continue beyond the Council's term and that these initiatives be linked to the advancement of indigenous rights.

There remains great community interest in and commitment to reconciliation and the advancement of indigenous rights, as evidenced by the success of organisations such as Australians for Native Title and Reconciliation and activities including learning circles and the Sea of Hands.

It is Community Aid Abroad's view that the Australian Government's failure to adequately address a range of indigenous rights issues has created the single greatest barrier to the achievement of reconciliation by the centenary of federation in 2001 and that meaningful reconciliation will not be achieved until these indigenous rights issues are resolved.

Accordingly, Community Aid Abroad believes that the most significant action identified by the Council in this draft strategy is the recommendation that the reconciliation process be protected in law through Commonwealth, State and Territory Parliaments passing formal motions of support for the Document for Reconciliation which include measures to include provisions about agreements in legislation.