



Brief for the Australian Delegation

to the

Thirteenth Meeting of the Joint Advisory Council

on the

Implementation of the Torres Strait Treaty

Cairns

6 - 7 November 2003

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AUSTRALIAN DELEGATION TO THE 13TH TORRES STRAIT TREATY

AGENDA

s 22(1)(a)(ii)

Agenda Item 4: People Movement in the Treaty Area

s 22(1)(a)(ii)

4.6 Review of PNG Treaty Village list

(PNG/AUS)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

4.6 Review of PNG Treaty Village list

Handling Note: PNG to lead on this item.

Objective

To secure agreement on a balanced process for assessing claims from PNG villages within the Treaty area which were not included on a 2000 Treaty Village Free Movement List, and which consider they have grounds for being included.

Talking Points

Australia remains committed to honouring its obligations under the Treaty, including those under Article 11, relating to Free Movement, and under Article 16, relating to entry and departure arrangements for traditional inhabitants in and in the vicinity of the Protected Zone.

We recognise that the Treaty Village List agreed in 2000 left open the possibility of later additions or amendments, provided these are agreed by the Parties.

We see the first responsibility for making any concrete suggestions regarding possible additions to the PNG list of villages as resting with PNG, and we would look to responding constructively to any such suggestion.

Any amendments or additions to the Treaty Village List would however have implications not only on the PNG side but also for Australian island communities and the Local, State and Commonwealth Government agencies which have responsibility for providing services to those communities.

There would therefore need to be a measured and comprehensive program of consultation both with Australian traditional inhabitants and with relevant government service providers.

Australian Traditional Inhabitant representatives will have a central role in discussions about any possible additions and we would therefore suggest the Traditional Inhabitants Meeting (TIM), or perhaps an extraordinary meeting of the TIM, as an appropriate start point for discussion.

To assist assessment of villages' claims, we would suggest their story be fully and clearly presented. Given logistics difficulties, we would also see advantage in ensuring that any village in the designated Treaty zone which believes it has a strong claim be given the opportunity to present their case during this process. If not, there is a risk that any amendments to the Treaty village list could be seen as incomplete or lacking fairness.

Background

The Treaty is precise in specifying international territorial boundaries and the extent of the Protected Zone. The Treaty however does not delineate northern and southern boundaries for the area deemed to be "in the vicinity of the Protected Zone" for Treaty purposes, including eligibility to practice free movement.

At a meeting in Port Moresby in May 1984, Australian and PNG Officials recognised there were practical difficulties in attempting to specify by name those villages which would be eligible to exercise free movement. One difficulty is that associated villages or hamlets, or nearby garden areas or transit routes may not be covered.

At the May 1984 discussions, officials agreed instead to geographic lines within which free movement could occur. The parallel of latitude 9° S was agreed as the

general northern line of Treaty demarcation. It was left open for this and the other agreed geographic parameters to be later reviewed. In practice these lines have continued to define the outer area of Treaty jurisdiction. s 33(a)(iii)

There was later interest in arriving at an agreed list of villages eligible for free movement. In 2000, Australia accepted PNG's nomination of a list of 13 villages as being those for which the free movement provisions of the Treaty would apply.

- Villages agreed were: Sui, Parama, Katatai, Kadawa, Ture Ture, Old Mawatta, Mabaduan, Sigabaduru, Buzi/Ber, Tais, Mari, Jarai and Bula.

s 33(a)(iii)

Pages 7 to 9 exempt under s 33(a)(iii)

Brief for the Australian Delegation
to the
Fourteenth Meeting of the
Joint Advisory Council
on the
Implementation of the Torres Strait Treaty

Alotau

16-17 November 2004

Contents and Agenda

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s 22(1)(a)(ii)				

s 22(1)(a)(ii)

4.5 Review of PNG Treaty Village List

Handling Note: PNG delegation to lead, Australian delegation to respond (DFAT)

Objective

To advise PNG that Australia will continue to support a balanced process for assessing claims from PNG villages within the Treaty area which were not included on a 2000 Treaty Village Free Movement List, but that Australia's consideration of a formal request to expand the number of villages on the list would require detailed assessments of the risks and resource implications.

Talking Points

Australia remains committed to honouring its obligations under the Treaty.

Recognise that the Treaty Village List agreed in 2000 left open the possibility of further additions or amendments, provided these were agreed by the parties.

Next step in the process is for PNG to agree on and submit a formal proposal to Australia outlining proposed additions to the PNG Treaty Village List agreed in 2000
s 33(a)(iii)

the recently completed report by anthropologist Kevin Murphy, which sets out the claims of a number communities, may assist PNG make an assessment

the report was prepared for the benefit and use of parties in both Australia and PNG. The report cost \$40,000 + GST. Australian government agencies (TSRA and DFAT) have contributed \$30,000 to the total cost of the report

s 33(a)(iii)

- Need to emphasise that once a formal proposal to expand the number of PNG treaty villages is put to the Australian Government, Australia will need to conduct

careful and detailed assessments of the risks and resource implications of expanding the Treaty Village List – and this will take time.

Any additions to the Treaty Village List would have implications for Australian island communities and the Local, State and Commonwealth Government agencies that have responsibility for providing services to those communities

would need to be a comprehensive program of consultation both with Australian traditional inhabitants and with relevant Australian government service providers.

Background

The Treaty is precise in specifying international territorial boundaries and the extent of the Protected Zone. The Treaty however does not delineate northern and southern boundaries for the area deemed to be “in the vicinity of the Protected Zone” for Treaty purposes, including eligibility to practice free movement.

At a meeting in Port Moresby in May 1984, Australian and PNG Officials recognised there were practical difficulties in attempting to specify by name those villages which would be eligible to exercise free movement. One difficulty is that associated villages or hamlets, or nearby garden areas or transit routes may not be covered.

At the May 1984 discussions, officials agreed instead to geographic lines within which free movement could occur. The parallel of latitude 9° S was agreed as the general northern line of Treaty demarcation. It was left open for this and the other agreed geographic parameters to be later reviewed. In practice these lines have continued to define the outer area of Treaty jurisdiction s 33(a)(iii)

There was later interest in arriving at an agreed list of villages eligible for free movement. In 2000, Australia accepted PNG’s nomination of a list of 13 villages as being those for which the free movement provisions of the Treaty would apply.

The thirteen Western Province villages recognised by the governments of Australia and PNG as having rights under the TST are listed below (Table 1). The majority of these villages are situated on the coast, with the exception of Sui (located on the west bank of the Fly River estuary) and Tais (located several kilometres inland from the Torres Strait coast).

Table 1: Existing Torres Strait Treaty Villages

1. Bula	2. Mari	3. Jarai
4. Tais	5. Buji/Ber	6. Sigabaduru
7. Mabadauan	8. Old Mawatta	9. Tureture
10. Kadawa	11. Katatai	12. Parama
13. Sui		

s 33(a)(iii)

Pages 14 to 19 exempt under s 33(a)(iii)



Australian Government

Department of Foreign Affairs and Trade

**Brief for the Australian Delegation
to the
Fifteenth Meeting of the
Joint Advisory Council
on the
Implementation of the Torres Strait Treaty**

Thursday Island

22 – 23 November
Thursday Island

Contents and Agenda
Joint Advisory Council Meeting
22 – 23 November
Thursday Island, Australia
Working Agenda

s 22(1)(a)(ii)

4.	Traditional Movement in the Treaty Area			
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s 22(1)(a)(ii)

4.3	Review of PNG Treaty Village List	PNG/Aus	DFAI	30
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s 22(1)(a)(ii)

Agenda Item 4.3

Review of PNG Treaty Village List

(Handling Note: Invite PNG s 33(a)(iii) to lead, Australia (*Chair*) to respond)

Originating Agency: DFAT

Objective

To advise delegates that Australia will continue to support a balanced process for assessing claims from PNG villages within the Treaty area which were not included on the 2000 Treaty Village Free Movement List.

To advise that Australia's consideration of a formal request to expand the number of villages on the list would require detailed assessments of the risks and resource implications for Australia.

s 33(a)(iii)

Talking Points

- . Australia remains committed to honouring its obligations under the Treaty.
- . Recognise that the Treaty Village List, agreed in 2000, left open the possibility of further additions or amendments, provided these were agreed by the Parties.
- . Next step in the process is for PNG to agree on and submit a formal proposal to Australia, outlining proposed additions to the PNG Treaty Village List agreed in 2000
 - the recently completed report by anthropologist Kevin Murphy, which sets out the claims of a number communities, may assist PNG make an assessment

s 33(a)(iii)

s 33(a)(iii)

- Once a formal proposal to expand the number of PNG treaty villages is put to the Australian Government, Australia will need to conduct careful and detailed assessments of the risks and resource implications of expanding the Treaty Village List – and this will take time.
- Any additions to the Treaty Village List would have implications for Australian island communities and the Local, State and Commonwealth Government agencies that have responsibility for providing services to those communities
 - would need to be a comprehensive program of consultation both with Australian traditional inhabitants and with relevant Australian government service providers.

Background

The Treaty is precise in specifying international territorial boundaries and the extent of the Protected Zone. The Treaty however does not delineate northern and southern boundaries for the area deemed to be “in the vicinity of the Protected Zone” for Treaty purposes, including eligibility to practice free movement.

At a meeting in Port Moresby in May 1984, Australian and PNG Officials recognised there were practical difficulties in attempting to specify by name those villages which would be eligible to exercise free movement. One difficulty is that associated villages or hamlets, or nearby garden areas or transit routes may not be covered.

At the May 1984 discussions, officials agreed instead to geographic lines within which free movement could occur. The parallel of latitude 9° S was agreed as the general northern line of Treaty demarcation. It was left open for this and the other agreed geographic parameters to be reviewed later. In practice these lines have continued to define the outer area of Treaty jurisdiction. Two PNG villages, Sui and Sewerimabu, which both lie north of 9° S, were specifically nominated as being eligible for free movement.

There was later interest in arriving at an agreed list of villages eligible for free movement. In 2000, Australia accepted PNG’s nomination of a list of 13 villages as being those for which the free movement provisions of the Treaty would apply.

The thirteen Western Province villages recognised by Australia and PNG as having rights under the TST are listed below (Table 1). The majority of these villages are situated on the coast, with the exception of Sui (located on the west bank of the Fly River estuary) and Tais (located several kilometres inland from the Torres Strait coast).

Table 1: Existing Torres Strait Treaty Villages

1. Bula	2. Mari	3. Jarai
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7. Mabadauan	8. Old Mawatta	9. Tureture
10. Kadawa	11. Katatai	12. Parama
13. Sui		

s 33(a)(iii)

s 33(a)(iii)

The Way Forward

It is expected that, (following receipt of a PNG proposal) an exchange of letters will be required for any amendment to the official list of PNG Treaty Villages. However, before any decision is made it will be necessary to consult widely across the Australian Government and with Australian traditional inhabitant communities.

s 33(a)(iii)

Pages 26 to 29 exempt under s 33(a)(iii)

Title: Torres Strait Treaty: Issues raised with TSTLO by TSRA Executive Members
MRN: s 47E(d) 25/08/2005 06:36:00 PM ZE10
To: Canberra
Cc: RR : Port Moresby
From: Thursday Island
From File:
EDRMS
Files:
References:
Response: Routine, Information Only

Summary

We met with the Executive Board of the Torres Strait Regional Authority (TSRA) to brief the members on outcomes from the recently completed Traditional Inhabitants (25 to 26 July) and Treaty Liaison (27 to 28 July) Meetings (TIM and TLM respectively). Members were particularly interested in s 33(a)(iii)

We met with the Executive Board of the Torres Strait Regional Authority (TSRA) to brief the members on outcomes from the recently completed Traditional Inhabitants (25 to 26 July) and Treaty Liaison (27 to 28 July) Meetings (TIM and TLM respectively). Members were particularly interested in s 22(1)(a)(ii)

he treaty aspirant process.

s 22(1)(a)(ii)

s 22(1)(a)(ii)

The Treaty Aspirant Process

8. We raised with the Executive the issue of the treaty aspirant process. By way of background, we provided a brief on the outcomes of the 2004 Joint Advisory Council meeting in Alotau, including Australia's request to PNG to provide a formal proposal on the matter, for due consideration. We also noted the discussions on the matter at the recent TIM, TLM and during Treaty Awareness Visits to Western Province s 47E(d)

Members requested that they be kept up-to-date on the issue, particularly noting concerns that full consultations be undertaken with Australian Protected Zone communities prior to any formal response being made to PNG on the matter. We undertook to continue to brief members as developments occurred.

s 33(a)(iii)

Comment

s 22(1)(a)(ii)

s 33(a)(iii)

We will continue to involve the TSRA and Protected Zone communities, at all levels, as appropriate, in all issues arising under the Treaty process. Our preference is to work collaboratively, on a whole-of-Government level s 33(a)(iii)

text ends

Sent by: s 22(1)(a)(ii)

**Prepared
by:**

Approved s 22(1)(a) TSTLO

by:

Topics: HUMAN RIGHTS/Indigenous, IMMIGRATION & ENTRY CONTROL/General

▼ New Distribution

Title: Torres Strait Treaty: Treaty Awareness Visit: Central Villages
MRN: s 22(1)(a)(ii) 01/09/2005 05:07:51 PM ZE10
To: Canberra
Cc: RR : Port Moresby
From: Thursday Island
From File:
EDRMS
Files:
References:
Response: Routine, Information Only

Comments:

s 22(1)(a)(ii)

Summary

We recently completed a Treaty Awareness Visits Program (TAVP) visit to central villages in Western Province PNG (17 - 23 August, inclusive). The itinerary included consultations with several treaty villages (Old Mawatta, Mabadauan) s 33(a)(iii)
s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 33(a)(iii)

Free Movement and Treaty Aspirations

5. Several (aspirant) villages expressed frustration at what they consider to be a continued denial of their rights to undertake free movement into the Torres Strait. s 47E(d) (PBLO) advised the villagers that this was a PNG issue, and that the PNG National and Western Provincial governments were still discussing how best to deal with it. When directly approached by interlocutors, we outlined the outcomes from the 2004 Joint Advisory Council meeting whereby the PNG government undertook to provide a full proposal to Australia, outlining the claims of the aspirant villages, and providing recommendations for our consideration. We emphasised that we had not yet received any formal proposal and that if/when we did, it would need to be carefully considered by all stakeholders, including at all levels of the Australian Government, and by Australian traditional inhabitants. We did not expect any change to the current arrangements in the near term.

s 33(a)(iii)

s 22(1)(a)(ii)

text ends

Sent by: s 22(1)(a)(ii)

**Prepared
by:**

**Approved
by:**

Topics: HUMAN RIGHTS/Indigenous, LEGAL/International Instruments

▼ New Distribution

Pages 38 to 40 exempt under s 33(b)

- In 1984, before the ratification of the Treaty in February 1985, Australia asked PNG for a list of villages from which traditional inhabitants would be entitled to undertake free movement under the Treaty. PNG then forwarded the list to Australia. In the intervening years it seemed that neither country appeared to have that list on file.
- Part 4 of the Torres Strait Treaty (1985) establishes the Protected Zone. The principal purpose of establishing the Protected Zone is to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement.
- In June 1999 it was agreed to revise the list of PNG villages for record purposes. The objective was to eliminate the likelihood of confusion or conflict over which villages are covered by the Treaty.
- Formal notes were exchanged between PNG and Australia in 2000, restricting the administrative definition of the meaning of traditional inhabitants to the following 13 villages:

Sui
Parama
Katatai
Kadawa
Tureture
Old Mawatta
Mabdauan
Sigabaduru
Buzi/Ber
Tias
Mari
Jarai
Bula

- It was expressly noted at the time that “the identification of these villages should not exclude the application of free movement provisions to traditional inhabitants of additional villages, if at some point in the future their inclusion is deemed appropriate by the traditional inhabitants of Australia and Papua New Guinea” (DFAT 2000). There were residents of numerous other villages who had previously exercised the rights conferred on traditional inhabitants who were suddenly prohibited from doing so any longer. Representatives of these people have been actively seeking to be re-included as traditional inhabitants.
- DFAT’s response to aspirant villages (August 2001): Masingara village and others were asked to raise their concerns with their own Department of Foreign Affairs, rather than the Australian Government. DFAT explained how the right to free movement under the Treaty was determined, noting in particular that they would need to establish traditional ties with the Torres Strait Islands. After the PNG Government accepted the validity of their claims, it would formally seek the views of the Australian Government and Torres Strait Traditional Inhabitants.

- At the 2003 Traditional Inhabitants Meeting 29-30 May, a presentation was made by a representative of the Masingle Association (established to advance the interests of Masingara village and a number of other villages located along the Binaturi River and around Wipim). The Masingle Association petitioned for Masingara to be included in the Treaty arrangements. Torres Strait Island Chairpersons unanimously agreed non-included villages in the Treaty area, particularly those which previously enjoyed free movement rights, should have their story documented and passed through the relevant Torres Strait islands they had ties with for cross checking. The intention being that those confirmed be included for recognition into Treaty village status.

The PNG Traditional Inhabitants Committee reserved their position on the presentation made by representatives of the Masingle Association. They foresaw complications if additional villages were granted free movement rights.

It was noted that villages within the Treaty area but not on the list were already accessing the outer islands health centres for urgent medical treatment. Their formal inclusion was therefore unlikely to add major additional demands on Australian health services in the Torres Strait, beyond the current trend.

s 33(a)(iii)

SENATE INQUIRY SUBMISSION

TO: Parliament of the Commonwealth of Australia, Senate.

ATTENTION: The Chairman, Senate Committee on Foreign Affairs, Defense and Trade.

MATTER: Inquiry into Matters Relating to The Torres Strait Region Pursuant to Senate Referral Dated 14th September 2009.

SUBMISSION DATE: 30th October 2009

REPORTING DATE: 26th February 2009

SUBMISSION FROM: **Mr Peter Niwia Sawabarri** (Traditional name- *Naga Ome Niwia*),
Firstly, on behalf of the Masaingle people of Masingara Village, Western Province, Papua New Guinea, as Chairman of the Masaingle Association, an entity incorporated under the laws of Papua New Guinea, representing the interests of the Masaingle people. (Association Elections were independently conducted by the Electoral Commission of Papua New Guinea).
Secondly, in his capacity as a Traditional Leader and member of the Masaingle people.

ADDRESS FOR SERVICE.

Mr Peter Niwia Sawabarri,
Chairman,
Masaingle Association Inc,
P.O. Box 6146, BOROKO, NCD,
Papua New Guinea.

Telephone- +675 76905566

INTRODUCTION:

1. Prior to 1606, and prior to the Declaration of Sovereignty of the Indigenous Aborigine owned continent of Australia on behalf of the Queen of England, and prior to arrival of Europeans and the official annexation of the sea territory and islands of the area known as the Torres Strait by the colony of Queensland in 1879, this area belonged to my people. The Torres Strait, named after the Spanish explorer *Captain Luis Baez de Torres* in 1606, is that sea area and group of Islands located between Northern Australia (Cape York) and Papua New Guinea. This area (*refer paragraph 2 below*) belonged to my Binc speaking people. At no point in time in history, to this present moment, have we parted with the possession of this area.

2. Although my people come from the mainland of what is now Papua New Guinea ("PNG"), we have always been seafaring people. We were the original inhabitants of the main islands of Boigu, Dauan, Saibai, Mabuag, Badu, Moa, Tudu, Zagai, Sassié, Yam (*Iamma*), Poruma, Rennel, Stephen (*Ugar*), Darnley (*Erub*), Yorke (*Masig*) and Murray (*Mer*) Islands. This list is indicative only and is not exhaustive, as we have rights over the whole *Torres Strait Regional Sea Claim* area which consists in part of the islands, reefs, the islets, cays, shoals and sand banks as far south as Ului and Warral, as far west as Deliverance and as far east as Mer. The Masaingale are traditionally connected to the area that extends from Masingara in Papua New Guinea east to Bristow Island south east taking in and past Campbell, Dalrymple, Keats and Darnley Islands then continuing south to Murray Island, then heading south west to include Poll, Mt Earnest, Moa, Barney Islands, Browne, Clarke and Badu Islands, then continuing northwest to take in Boigu, Aubusi and Mata Kawa Islands, then continuing to follow closely the Papua New Guinea coastline back to Masingara- taking in Saibai, Kaumag and Dauan and Sogeri, Marakawa Islands, and Gimini Reef and taking in the waters in and around Saibai, Kaumeg, Dauan, Turnagain (Buru), Numar Reef, Nicholls Cay, Bass Reef, Beka Reef, Two Brothers Passage, Kai Reef, Orman Reef, Malay Passage, Billy Passage, Jim Passage, Arnold Passage, Galar Reef, Anui Reef, Bellvue Islands, Ngil Reef, Widui Island, Alphas Island, Warakulku Tabab Island, Talab Island, Pulu Islet, Mips Islet, Kanutnab Island, Napoleon Passage, Sebur Islet, Passage Islet, Basilisk Bank, Alligator Passage, North Island, Farewell Islets, then north of Badu (Mulgrave) Island, Sarbi (Bond) Islet, Providence Shoal, Hastings Reef, Cape Islet, Morylyan Reef, Gabba Island, Basilisk Passage, Tudu Island, Canal Mauvais, Warrior Reefs, Rennel (Mauar) Island, Smith Cay, Cabbikane Islet, Masig Islet, Masig Community, Kodall Islet, Yorke Islands, Marsden Islet, Keats (Homogar) Islet, Dalrymple Islet, Campbell (Tappoea) Islet, Pearce Cay, Moon Passage, Kokope Reef, Auwamaza Reef and Paraki Reef.

3. We took from the land as we needed and had extensive knowledge of the flora and fauna of each island, including as to where to find water and which islands had it and which didn't. The Masaingale cultivated and maintained gardens on Badu, Moa, Yam and Murray Islands for food production. The reefs, islets and coral cays were our fishing and hunting grounds, and at times we took shelter from storms or slept in their sheltered

waters at night during voyages. We had traditional technology to build large dual outrigger ocean going canoes with steering rudder and three sails. Warrior Reef ("Tabeyani"), Zergei Reef, Giminil Reef ("Doromaza") and Auwamza Reef ("Bulminkiti") are all shallow submerged reefs important to the transition to manhood ceremony and initiation using the outrigger sailing canoes. At sea we could chase down dugong for hours with our sailing canoes swiftly turning with effortless maneuverability with our simple but effective traditional rudder system we developed. We navigated by sight and our knowledge of the stars, the ocean currents and the winds. We had extensive knowledge of the land and sea marks of the Torres Strait and its various reef systems. We had knowledge of extended family and blood lines throughout the Islands. Our oral history tells us how to sail from one island to another and the land and sea marks to look for. This complex and yet complete body of knowledge was passed down through generations, dynamically impressed upon the each new generation through visitations, trading expeditions, hunting expeditions, songs, story telling and other mediums going back generations to since time immemorial.

4. We freely sailed between the Islands to visit relatives, attended traditional extended family and tribal gatherings, feasts, funerals, weddings, sacred ceremonies, and exchange of goods such as canoes, drums, stone tools, cassowary and other feathers, drum skins, pottery, dugong hunting harpoons, bows and arrows, baskets, food etc; as and when we felt like it. We stayed on the Islands for as long as we pleased. We had intermarriages with some of the Islanders and participated in ceremonies, and over time settled on the islands. We were one complete society.
5. The Kiwai people were headhunters, originally from Kiwai Island at the mouth of the Fly River, as recently as the late 1800s began migrating from their Island, and settled in villages east and west of Masaingle territory on the mainland, and on certain Islands of the Torres Strait. The Gizra and Gizra speaking tribes, who share a common border with the Masaingle also claim traditional interests in the Torres Strait. The Kaurareg people were dominant in the area south of Ullui and Warral, although we have direct relations with them and some of the people of Cape York mainland, especially to the western parts where our people visited, hunted crocodiles, gardened and traded along bloodlines. We were the first people to "discover" or "colonize" the Australian continent, contrary to popular belief in the Dutch or Captain Cook's feats, and dare I say millions of Australians have been misled as to their true history. Perhaps this Senate Committee can correct that slight historical anomaly.
6. My people speak the Bine language and we are the original inhabitants of the Torres Strait sea area, inclusive of and inter-connecting with the surrounding the Islands in the area outlined in paragraph 2.
7. Our rights and interests in this area (*see paragraph 2*) includes the right of ownership and of access, to own use and enjoy the waters and lands, to enter and remain on the waters and lands, to pass across the waters to attend to Islands for purposes of food production, trade and ceremony, to take various resources from the sea and the lands, to take sufficient resources from the seas and reefs as needed to sustain a livelihood, to have

a share of the resources taken by others from the said area, to engage in trade and commerce using the resources of the said area, to protect resources of importance and the habitat of those resources for the sake of sustaining future generations, to protect places of traditional importance, to sustain a livelihood through trading in the area and particularly trading in the resources of the said area, and to conduct traditional ceremonies periodically and as required in specified parts of the area. At no time in history have we contracted out, diluted or waived these rights.

8. Almost all the Islands have Bine names, given by my ancestors when they sailed and settled there. They are still known by our language names today even though European maps have European names. These Islands still speak Bine dialects and Bine derived Creole that is indicative of their underlying origins; but evidencing the changes these Islands have gone through with migration and Australian domination. Forensic Linguists and ethnographers can trace most of the current indigenous inhabitants of Torres Strait Islands (other than recent Kiwai immigrants) to their traditional stock or source village and my people on the mainland coastal villages of Papua New Guinea. This work may be made more challenging by the fact that Torres Strait Islands now have five (5) main groups of people, namely; the indigenous Melanesian who are in the majority, the descendants of South sea Islander missionaries who came with the London Missionary Society Missionaries, the descendants of Malay and Japanese pearl divers and traders, the Aborigines & Kaurareg off Cape York and then all other persons of mixed European and other parentage.

It must be noted that the Kiwai, who dominate most of the Torres Strait Islands today are a recent occurrence due to Missionaries and Colonial government favor, further fortified by the unfortunate mistake in granting their villages almost exclusive Treaty Village status by the Australian government.

9. Almost all authoritative anthropological and archaeological publications, books and reports done on the Torres Strait since European settlement of Australian mainland (which in the main are the works of AW Murray (1876), W Wyatt Gill(1876), Samuel McFarlane(1888), Professor Jeremy Beckett, Professor Colin Scott, Kevin Murphy, R.E. Johannes, JW McFarlane, G. Landtman, Ian McNiven, David R Moore, Dr Alfred Cort Haddon and Others(*The Cambridge (University) Anthropological Expedition to Torres Straits, 1898*), Anita Herle, Sandra Rouse, Elizabeth Edwards, Anna Shnukal, Professor Henrika Kuklick, James Urry, Dr Basil Sansom, Dr Lee Sackett, David Lawrence, N Sharpe, Dr Lawrence Goldman, Allen & Corris etc) all evidence and or confirm the following fundamental and central truths:

A. The original inhabitants of the Torres Strait Islands and the people from mainland PNG coastal villages (such as the Masaingle) are one and the same people, one community, one society, speaking one original language, singing the same songs, dancing the same dances and sharing in one cosmology.

B. The people maintained cohesion of their society by frequent sea travel, bringing gifts for their kin on the islands or to the mainland, as the case may be, and even traded goods

in the traditional *Saikatura* trade, participated in traditional feasts and other ceremonies. *(Until very recently, in 1985, when the Torres Strait Treaty came into force and Australia completely restricted movement of the people, my people were continuing to meet for feasts, trading and other ceremonies as they had done for centuries before. The meetings have been limited or abandoned due to the extremely strict and difficult regulatory regime of the Australian government).*

C. The islands, sea area, reefs, cays, sand banks, and the resources thereon and therein have always belonged to the people of this single society, spread and variously located geographically throughout the Islands of the Torres Strait and the Papuan Coast. *(The Islands, reefs and other land marks all bear names in the Bine language of my people. There was no other power or dominion exercising ownership, custodianship or stewardship over these islands except this single society. The original people of this society are the Masaingle people. The oral history handed down by our fathers explains why and how we came to move to and from and to settle on these islands thousands of years ago).*

D. The original inhabitants of the Torres Strait Islands came from Papua. *(This is consistent with what the Masaingle know and pass on as part of their oral history and folklore from one generation to the next).* The language, customs, dances, ceremonies etc all reflect those of the source people, the Masaingle from the Binaturi River estuarine area of Western Province, Papua New Guinea.

TORRES STRAIT REGIONAL SEAS CLAIM (No QUD 6040 of 2001)

10. This is a case where Messrs. Leo Akiba & George Myc on behalf of the Torres Strait Regional Sea Claim Group as Applicant started off claiming exclusive ownership over the area designated in the attached map. The State Of Queensland and Others are Respondents to this claim.

11. I have represented the interests of the Masaingle people in demonstrating and providing numerous Affidavit evidence and video evidence to the Federal Court of Australia of the Masaingle peoples' customary rights, use and relationship with the seas, islands, reefs, cays, sand bars etc. In these proceedings we were required to provide evidence of traditional *USE* of these islands, the sea, the reefs, the cays etc. The Gizra tribe of mainland Papuan Coast also provided evidence in similar terms. Our evidence in this narrow context and other Expert Reports are available for the Senate Committee to avail itself of if it so pleases as it is already in the public domain. We plead same here irrespective of outcome of the Sea Claim. Whilst we submitted our evidence under the rubric of Native Title legislation of Australia, we do not submit nor are we and our rights subject to the general (200 years old) introduced law of Australia where absolute customary ownership of land and sea rights and marine tenure from time immemorial is not recognized and upheld at the outset.

12. The issue of *OWNERSHIP* was not the subject and focus of the evidence we were required to provide in all the Affidavits. As a community of seafaring Bine speaking people, spread from the mainland main villages and throughout the Isles of Torres Strait, the seas, reefs, sand bars, cays and Islands and the resources, including the dugong and the turtle, were our absolute and exclusive possession and domain. Anthropological and archaeological evidence was adduced to support the specific and narrow issue of "USE" to rebut the Applicants' claim of "exclusive use".

13. Whilst most of what western anthropologists, archaeologists and other social scientists have recorded is faithful to the truth of their observations, they are, however, the products of their society. Their value systems and cultural cognitive perspectives can miss many of the underlying traditional and cultural meanings and nuances of land and sea tenure, of spiritual connectivity of a people with certain land and sea areas, of ownership and custodianship in customary law context, of ceremonies and their place in the cosmology of the society they find us in. Even the concept of society and its possible existence without a state or sovereign, without a central regulating force, but in a dynamic spiritual and relational sense, is quite outside western preconception, yet normal to us. Their geo-political orientation (eg; of Australia and PNG as two separate countries) tends to color their perspectives, leading to treating the Melanesian inhabitants of Torres Strait as a separate people to the Masaingle on coastal Papua, whilst at the same time they are prepared to describe us as one society and one people because they cannot get away from the fact that we are Melanesians. They think in polemics and talk about each of the islands as separate discrete groups and yet again some of them cannot completely comprehend that we are one complete society of inclusive people of Melanesian descent.

14. The learned anthropologists clearly suffer from their inability to reconcile their present observations to the knowledge of oral history predating the time of first contact. Yet we have kept that body of knowledge and their meanings, the songs, the rituals, the dances steps, and the rhythm of the drums, the fishing rites, the sea craft and the canoe and its pathways. They see the sea in tyrannical terms as a separating element, when we see it as the very essence of us. When we gaze at the sea, we see and know the well-worn pathways beyond the horizon that lead from one island of Masaingle people to another. They see the sea as a body of water when we see it as our garden, our life, our past and our future.

15. Clearly we are not Chinese, we are not Red Indians, we are not Eskimos and we are certainly not Aborigine. We are Melanesians, and the Torres Strait has been our home well before the arrival of Europeans, in as much as the Masaingle villages on the Papuan Coast have also been our home. It is a pity that the system is set up, and we have been reduced to dance as in a Shakespearean circus, using some white man's ideas and what he recently wrote (or reviewed) to prove to other white men that the black man may be correct about the truth about himself, where he comes from and what he owns, after all. In these things we will stand unyielding, and yet, granted Australia's past record with Indigenous peoples, we are aware that we may well be standing condemned by the ignorance of the learned.

16. As we were one society, one people, speaking mainly Bine language from Masaingile, the current Islander's *Torres Strait Regional Seas Claim* to the claimed areas are similar to, runs parallel with and consistent with my people's rights, noting that my people includes the Bine speaking ancestors of the Torres Strait Islander claimants. We were the original people in the Torres Strait.

EFFECT OF PNG - AUSTRALIA BORDER (TORRES STRAIT) TREATY

17. Upon granting of Independence to Papua New Guinea, and more specifically, upon the Treaty coming into force in 1985, our freedom to travel, interact, visit our relatives and extended family, maintain our customary contact and obligations, maintain our community and society, maintain our dominance over the seas, the reefs and the cays was lost. Our rights (as detailed in paragraph 7 herein) were taken away from us.

Notwithstanding treaty provisions that allow traditional border crossers access; those provisions are not worth the paper they are written on. The document is ambiguous and has not been properly constructed. It is impractical to enforce without causing grave miscarriage of justice. It is a draconian document that does more harm than good. In practice the Australian Customs and Immigration constantly breach the intended spirit of the Treaty. The document does not allow us to maintain our tenure over our seas, islands, reefs, marine resources etc. The enforcement of the treaty is prohibitive rather than facilitating. It is an evil document. It is a tool of great oppression. We cannot go dugong or turtle hunting as we used to do, whether in dinghies or dug out canoes. The Australian government has taken away our sea tenure rights, it has taken away our rights to maintain tenure over islands, reefs, cays and sandbanks, and it has destroyed our community or society. It has taken away the rights of generations of our young people to learn sea craft and to be initiated in the customary ways in the reefs now falling within the Australian side. It has taken away our young people's right to learn the legends, songs, the seaman skills that go hand in hand in actually sailing the Islands of Torres Strait and maintaining our sea tenure. The Australian government has passed laws that interferes with and destroyed our traditional way of life.

18. Our way, with its rules kept everything in an ecological and environmental fine balance, whilst it (the Queensland State Government) has licensed commercial fishermen with modern technology and huge boats with huge nets that destroy and clean sweep harvest our marine resources in a way that is harmful to the sea and overall stocks. Our way takes only as needed to sustain a people. The Australian government's way of subjugation and commercial greed has totally destroyed our seas, reefs and decimated our fish stocks without even paying us any compensation or royalty. The current treaty arrangements between PNG and Australia also do not benefit us.

19. Today, we can no longer carry out the traditional *saikatura* trade that maintained contact with relatives that is critical to maintaining our identity as one people and society. The wrongful declaration of mainly Kiwai villages as Treaty Villages has resulted in large influx of Kiwai people into the Torres Strait to the disadvantage of the Masaingile.

The treaty provisions and definitions of, for example, 'treaty village', 'traditional inhabitants', 'traditional activities' and 'adjacent coastal areas', among others, are vague, ambiguous, and have been misinterpreted and misapplied in such a way that the whole treaty in its present form has become unlawful and untenable. The Treaty and its regime of definition of territorial sea boundary (including part of the outer limit boundary of those islands deemed Australian) coupled with protected zone boundary line, and the very concept of protected zone is an abomination and serious impediment to the Masai people maintaining our ownership over our lands and sea area (as defined in paragraph 2) and deriving our livelihood therefrom.

20. The Australian Customs & Immigration officials vigorously and rigidly enforce the entry rights at the territorial border invariably resulting in jailing of our people for entering or fishing in our own traditional reefs or cays. In some cases we have been denied entry and anchorage of our canoes or dinghies on our own islands like Saibai, Dauan, Boigu and other nearby Islands. There have been cases where sick people have been denied entry for medical treatment resulting in deaths. Relatives seeking to enter for purposes of celebrations, reunions, funerals, weddings, trading or other legitimate purposes are frequently refused entry. Our dinghies and canoes without food, fuel and provisioning are often refused entry, thus causing immense hardship and endangering lives at sea. We have been treated like thieves on our own traditional territories by people that have arrived recently and by governments that were set up only yesterday. (The granting of Treaty Village status to Kiwai villages, who are not original people of the Torres Strait, has added to the insult).

21. The above are not isolated occurrences I am referring to. They occur almost every month; and especially around Christmas and New Year period. The worst part of this sad state of affairs is that we cannot maintain a cohesive society anymore with such heavy handed regulatory interference by the Australian government. The imposition of the territorial boundary line has divided and isolated our people. It has caused us irreparable damage. With the treaty based regime of boundaries drawn so close to our shores, my people are being suffocated and strangled with our life force rapidly drained out of us. This territorial sea boundary, in particular, has worked an unreasonable, harsh and oppressive effect on me and my people. It is an evil line of evil design, repugnant to the accepted principles of human decency and democracy. It, I believe, has been all along a consistently deliberate and calculated design of the Australian government to dispossess us of our rights to our territory without any care about us as a people, our property and our way of life as a seafaring society.

TREATY LACKED CONSENT & CONSULTATION

22. Prior to the granting of Self Government and Independence to the Territories of Papua & New Guinea, Papua was a British Protectorate and subsequently a trust territory of Australia, and we were Australian subjects. We qualified to become Australian citizens. Some of us even carried Australian passports. Upon Independence and the

unilateral drawing of the border line by Australia, those of my people working in Australia or staying on Torres Strait Islands became Australian citizens. Those of us remaining on the mainland automatically became PNG citizens, we were told.

23. When the border line was designed and drawn by Australia prior to Independence, it did not consult my people or explain its effects to my people on both sides of the line. We never consented to become Papua New Guinean, and those of our people in the Torres Strait never consented to become Australian. We never consented to cease becoming Australian citizens. The Border Treaty, formalizing Australia's scheme or regime of boundaries, was also designed by Australia and was executed in much the same way without our consultation or consent. Our society was rudely interrupted and rendered asunder by the deliberate actions of the Australian government. In so doing it unlawfully dispossessed us of our land and sea tenure, and wrongfully granted access to other persons to harvest our sea resources. The Masainglc people have suffered great loss for several decades as a result of the Australian Government's deliberate actions, including the unilaterally drawn territorial sea boundary line, taking away from us our territories.

24. The current territorial sea boundary line between Australia and PNG is largely a result of a unilateral decision made by Australia and imposed on the then Territories of Papua and New Guinea at Independence. There was no consultation, no debate, and no discussion. Australia took advantage of a young and, with respect, relatively naive leadership of a very new country. The young leadership's political and technical advisors were Australian. At the Torres Strait proposed sea border there was no consultation or awareness campaign with the affected people. There was no referendum or act of free choice for my people on both sides of the proposed arbitrary territorial border line drawn by Australia.

25. There was no compensation paid for the consequential immense loss, deprivation, suffering and inconvenience occasioned by the territorial border line, which loss continues to this very day.

26. The so called Treaty Villages representatives brought to Sydney to observe the 1978 signing of the Border Treaty largely consisted of Kiwai Island settlers who are not the original people of Torres Strait. Kiwai Islanders from the Fly River estuarine are latterly arrivals. They settled on the Papuan coastline east and west of Masainglc, and then on to some of the Torres Strait islands during the colonial period, well after the Bine speaking people have long established habitation and ownership in the Straits. The Masainglc were deliberately left out from participation by one Sir Ebia Olewale. Sir Ebia Olewale, former Deputy Prime Minister of Papua New Guinea wanting to politically cultivate the Kiwai numbers for his own political gain, advanced the Kiwai villages, whilst our villages and numbers in the Torres Strait were of little political use to him. Further, Sir Ebia's people from Kunini have had long traditional affiliations with the Kiwai. We have had no formal representation to put our views on the border issues. We have now done so through the *Torres Strait Regional Seas Claim* case and through this opportunity directly to the Senate and the political leadership of Australia.

STATUS OF TREATY BASED BORDER LINE.

27. The legal status of the Torres Strait Treaty between PNG and Australia is highly questionable. We submit its key provisions are unlawful.
28. This Treaty, to the extent that it gives effect to a regime of boundary lines, and in particular the territorial sea boundary line, that has been unilaterally and arbitrarily drawn and enforced by Australia that dispossess and deprives us of our rights to our cultural heritage, our way of life, our society, our property (namely our seas, our Islands, our reefs, cays, sand banks, food and other resources thereon) is a breach and continuous breach of our Common Law and Statutory rights legally recognized both in Australia and Papua New Guinea. The treaty is absolutely unconscionable.
29. Taking all the above into account, to the extent that the border line operates in a farcical, unreasonable, harsh and oppressive manner, it is unconstitutional in Papua New Guinea, and therefore, in my humble submission is unlawful, and therefore invalid.
30. Furthermore, the pre-independence unilateral imposition of the regime of boundaries, and especially the territorial boundary line, on an unsuspecting young country (being United Nation's Trust Territories held by Australia under certain formal mandates) with relatively young, trusting and unsophisticated leadership (that had too much on its plate dealing with issues of how to rule a young undeveloped country) put a greater onus on Australia to be fair, just and equitable in its dealings. Australia's dealings with its subjects and their property at and leading up to independence, in rushing of independence, failing to consult with my Masaingale people and other affected coastal villages (of Western Province), and its failure to fully disclose to the young leadership of a new fledgling country the full implications of the territorial sea boundary, was a very serious breach of trust, breach of good faith and possible breach of United Nation's formal mandates, resulting in an absolutely unconscionable bargain. Australia stands guilty of breach of fiduciary duties, breach of trust, breach of good faith and possibly of unconscionable conduct.
31. Australia also breached its own laws it passed in the then Territories of Papua and New Guinea dealing with natives and their property rights when it drew the border line. At a time in history, prior to the arrival of Europeans and other people, the Masaingale, the original people, held our sea tenure and our customary rights in the Torres Strait absolutely. We do not recognize any other power of ownership. We hold these since time immemorial, and have not consented for or negotiated them with any power, person or principality. We do not recognize the validity of the Border Treaty and believe it is a trespass on our lands, seas, reefs, cays and our way of life to the extent it purports to create a protected zone and restrict our rights without our consent. We believe it is an unlawful imposition and all other imposts past, present or future contemplated, pursuant to this is equally unlawful.

OUR PETITION

32. We therefore humbly petition the Australian Government through this Senate Committee, in view of the aforesaid:
- A. That the current Border Treaty between Papua New Guinea and Australia, and especially Australia's unilaterally conceived regime of boundaries, be disbanded immediately and satisfactory interim arrangements be put in place with our full consultation.
 - B. That the territorial boundary line of Australia should be moved southward, closer to Cape York Peninsular, in line with the southern most base line of the *Torres Strait Regional Sea Claim* claimed area, to enable expression of our full and absolute rights to our territories (*described in paragraph 2*) being restored to us.
 - C. That fair, equitable and just compensation be paid to the Masainge people for the unlawful and unjust deprivation of our rights and freedoms as outlined (*herein and as in paragraph 7*) for all the years that we have suffered from our freedom of movement being restricted, and our marine and other resources being taken without our consent and without recompense, and for trespass and continuing trespass upon our rights and our territories.
 - D. That all future extractive activities, commercial or otherwise, that infringes upon or breaches our rights (*as outlined herein and particularly in paragraph 7*) commencing from the date of receipt of this submission by the Senate of the government and people of Australia, in the Torres Strait areas (*outlined in Paragraph 2*) must cease immediately until our petition herein is dealt with to our satisfaction. Activities- include any access to the areas for commercial or other purposes. Other purposes- mean purposes other than normal administrative, humanitarian, health and educational purposes.
 - E. Australia, (and its various State governments, their agents and representatives) will be deemed to have been fully and formally notified of our rights and interests herein and of this injunction. It behooves this Senate Committee to give necessary notices to affected persons and authorities, including the PNG government.
 - F. That a system of participatory development of resources and conservation be set up in a fully consultative framework in relation to resources in our territories and minimum participation arrangements be agreed to in recognition of our ownership. This new system must not and cannot be administered by Australia granted its record of failed Indigenous policies and failing regional Aid policies.
 - G. That a Special Partnership arrangement be agreed to between us (or our nominee) and the Australian Government for agreed remuneration wherein we become strategic partners independently contracting to it security and surveillance

services in terms of border security and related services at the new borders. This co-operation must be set up under commercial rules. It cannot be part of Ausaid or any Aid Program. We totally and absolutely reject any form of financial aid from Australia in respect of our territories.

- H. We are available, with reasonable notice, to attend any meetings, including Senate hearings to further clarify any issues that may rise from this submission, although we are not subject to the jurisdiction of the Senate, and as such our attendance will only be possible if it is convenient. We recommend Masingara village as the most convenient location for any meetings or Senate hearings. *(In this respect, on behalf of my people, I extend an invitation to the Committee to visit my village).*
- I. We reserve our rights to take all other actions as necessary to enforce our rights granted to us by God, the supreme creator of all things and all men.

This is the cry and prayer of my people.

Mr Peter Niwja Sawabbari

Chairman, Masaingle Association Inc.
 Traditional Leader and Member of Masaingle.

Endorsed By: Mr Giwe Buie
 Member of Masaingle.

Endorsed By Mr Gibson Buie
 Member of Masaingle.

DATED THIS 29th DAY OF OCTOBER 2009.

-This Submission may be made public -Contact details as per front cover page.

Pages 56 to 107 exempt under s 33(a)(iii)