



MASINGALE ASSOCIATION Incorporated

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25th December 2010

Hon. Julia Gillard MP.
Prime Minister of Australia,
House of Representatives,
Parliament House,
Canberra,
Australia

[This Letter was sent to the Australian Prime Minister. For the last ten (10) years Mr. Peter Sawabbarri has been fighting for his people's (and other Western Province people's) pre-sovereignty rights as original owners of the Torres Strait Islands and Seas. He has pending Court proceedings in the Federal Court of Australia to claim back his people's rights. This letter is in response to recent Federal Senate Foreign Affairs Committee Inquiry Report into the Torres Strait recommending closure of the border to PNG traditional owners of the Torres Strait. Mr. Sawabbarri is yet to receive Ms. Gillard's response.]

Dear Prime Minister Gillard,

SENATE COMMITTEE REPORT ON TORRES STRAIT: BRIDGE AND BORDER.

I refer to the above Report by your Federal Senate Foreign Affairs, Defense and Trade References Committee dated November 2010 on the Torres Strait Border and related issues.

I am the Chairman of the Masingale Association Inc, representing the Masingara Village, a coastal village of Western Province of Papua New Guinea. Masingara, by some historical aberration is a non-Treaty village, not that the non-Treaty status matters, as I will point out to you. There are over 20,000 people in our and adjacent non-Treaty villages that ought to qualify as Treaty villagers but have been deliberately omitted.

We filed our Submission dated 29th October 2009 to the above Committee and subsequently appeared and made verbal submissions before the Committee. Our submissions are now a matter of public record in the Federal Senate Hansard.

The purpose of my letter to you is to invite your government, all Members of the Australian House of Representatives and the Senate, as intelligent people, to disregard the above Report as superficial only, that does not address the most important underlying problem with the PNG border. It is our view that this Committee was intended to come up with the raw material and the justification necessary for a restrictive policy and laws in the Torres Strait to shut out our people from the area. That is obvious from the way the Report is written. However, it fundamentally fails to address the core issue underlying the Treaty between PNG and Australia.

The Senate Committee omitted to mention in its Report the fundamental issue raised by my Masingale people's specific submission that we consider the Torres Strait Border (and the Treaty giving effect to it) as illegal for want of consultation and consent, and has over the years worked a harsh and oppressive effect on us.

The Report deals only with the following pre-determined goals:

1. How best to shut out PNG Citizens from traveling to Torres Strait for health or other reasons;
2. How best to quarantine Australia from the commonly perceived disease bearing and trouble making PNG nationals;
3. The need to use Ausaid to develop Western Province to build some health facilities so that Australia can use that as the basis to shut out PNG citizens from Western Province altogether from visiting the Torres Strait for health and related purposes;
4. Set up strict controls on the PNG Border to control the border from a Policing, bio-security, quarantine and customs perspectives;
5. Set up a government apparatus in Torres Strait that supports regulates and enforces the above initiatives.

This Report discloses a superficial treatment of the issues, and therefore is not a fair basis for future policy or legislation. It does not address fundamental background contributing factors which include:

1. The people of Western Province, including my village, are portrayed as trouble making and disease bearing burden on the coffers of the Queensland government, costing an average of \$4 million per annum in medical bills. Whilst I am not in a position to verify that figure, the \$4 million mentioned is, if true, only a drop in the ocean of what the Australian government and its people benefit from our traditional lands seas and resources in the Torres Strait. Annually, Commercial Fishermen and other commercial activity in our traditional lands and sea generate over one hundred times the said \$4 million. We are yet to be paid a fair royalty or a bounty by the Australian Federal or Queensland governments for the many years of oppression and deprivation we have suffered.
2. The Report is critical of the lack of Health facilities and doctors in Daru and all the outlying areas of Western Province. There are four (4) contributing factors to this that the Report misses completely.

(a) Firstly the lack of infrastructure in Daru and throughout PNG is because Australia deliberately granted independence to a country that didn't have developed infrastructure or trained and experienced manpower to run and manage a public health system. To run the health system for the whole country we had less than ten (10) trained national doctors in 1975, if that, let alone health administrators. Unlike the British in India, Australia deliberately left PNG a young

nation without the basic infrastructure and skilled and trained manpower to run a country successfully. We have achieved so much by ourselves by the grace of God, and yet we have so far to go. This was a fundamental let down of a country by your predecessors. Without making any excuses for ourselves, Australia has to take some responsibility for the general State of PNG today. The Senate Committee has overlooked this. There is no basis for critical analysis when it ought to be obvious Australia did not properly fulfill the clear UN Mandates to it concerning the welfare and wellbeing of the then Territories of Papua and New Guinea after WWII. The state of health services in Daru must therefore be seen in proper historical context and perspective.

(b) Secondly over 85% of the wealth of this nation in our mineral and hydrocarbon projects get carted out of this country through your country. The policies and laws that allow this to happen have been perpetuated by Australian Advisors and World Bank consultants in both mining and petroleum sectors. Your government obviously approve of such arrangements. You have never rolled out an Ausaid program to change this equation. Your country has passively allowed the inequitable and unjust benefits equitation to persist to your benefit and our detriment. You are content to use Aid as a tool to assuage this flight of capital opening up deep chasms of underdevelopment and disparity in our country.

(c) Thirdly in respect of Ok Tedi Copper-Gold Mine, with the tacit approval of the Australian Federal Government, with your (BHP) stooges on the board, controlling hundreds of millions of US Dollars of dividends of our money from our mine, your government (through your ex-Canberra types) control how that money is spent. They keep all the money in Singapore and London and fly around forever talking about projects and transparency with all expenses paid and they on huge salaries, bonuses and allowances, in Western Province BHP as operator of Ok Tedi has left over US\$400 billion worth of environmental damage and degradation that I and my children have to live with every day. To add insult to injury PNG Sustainable Development Program Limited, the company set up to control the Ok Tedi profits has done nothing, nil, zero to impact the health care of the people. They are happy to sit in air-conditioned offices in Port Moresby, Singapore or London or jet around in lavish lifestyle while my people die of basic health care. It is no wonder that we paddle our canoes or banana boats to Saibai for basic health care needs. Yet it is with the tacit nod of the Australian government that BHP "The Big Australian" has set these oppressive arrangements up to our continual detriment.

(d) Fourthly our people come to the Torres Strait mainly because that is their place. That is where we have always gone and been. We have family and relations there. These are our seas, our reefs, our shoals, our cays, our islands, our hunting and fishing grounds. That is where our spirits soar and our souls sing. You have to understand that this is where we naturally belong and our lives have been oriented for thousands of years around the seasons in this area. Your forefathers arrived here only yesterday. You cannot do what the Report recommends without granting us our rights. You must respect our rights as traditional owners and custodians of the area who have a right to be there, sick or not sick.

3. The Federal and Queensland governments convene periodic Treaty Liaison Meetings and Traditional Inhabitants Meetings involving Islanders, PNG Parties, and Treaty Villages. They are usually a non-event. The Federal government always controls and drives the agenda and there is no substantial input by other Parties, including the PNG government. You might as well put a room full of zombies in rocking chairs. That is the reason why certain villages that should have been Treaty villages have been left out, because the Federal government while masterminding and controlling the Treaty processes is completely out of step with our traditional rights in the area.

4. The Bensbach, Fly, Gogodala (Bamu), Gulf and other people of the Papuan coastline have certain traditional affinity and rights with the sea, islands, cays and reefs in the Torres Strait areas within the current Australian territorial/protected zone. For example certain Gulf Province people have traditional rights over an area that is known as

Ramble Cay, and the surrounding waters. The current border and the way it has been drawn and regulated has shut these people out of their traditional areas.

We pointed out in our Senate submission that prior to the arrival of Captain Luis Baez de Torres in 1606, prior to the arrival of the Dutch, prior to Captain Cook's great grandfather's conception of his grand mother, we were the original people of the Torres Strait. We were there prior to the arrival of convicts in Australia. We were there prior to Australia being declared a Sovereign State. We were certainly there before the LMS Missionaries arrived on Darnley Island with South Sea Islander teachers whose descendants now permeate the Torres Strait and parts of PNG.

The South Sea Islanders (Fijians, Nue, Tongans and Sarams) and ancestors are not original people of the Torres Strait. They have no rights as original people to the land and the sea under Melanesian Customary Law. We know how property rights devolve under Melanesian custom. They have permissive user and occupancy rights only. They cannot derive permanent rights. They cannot speak for the original people. We were there first and these are our Islands. We have occupied these Islands for over 60,000 years. We are spoken of by early anthropologists, including those from Cambridge University (Hudson Cox's Expedition in 1898) as one people of the Torres Strait, and one society, which included all the Torres Strait islands and the Trans Fly villages of the Papuan Coast.

Almost all the Islands of the Torres Strait have traditional names on your modern maps. Those traditional names are in my Bine language. My people have relatives and Bine people living all throughout the islands. My people are spread out from the Islands of Badu's the west, lands in the middle all the way to Mer on the Eastern fringes. Today some even call themselves Saibagal people, Yorke Islanders or Darnley Islanders, but if you shift through their fire places, the first coals are from fires my people made. In fact, the Meriam people of Murray Island are a subclan of Dariem clan of my Masingara village. Masig is an Island named after our people. We share the very same DNA and the same blood line that flows through my vein flows through theirs. These Islander peoples are direct descendants of Bine people or other Trans-Fly peoples of the Papuan Coast. Their methods of cultivation of food crops and the fish traps on Mer, for instance, come directly from our people. We are one society. We are not two separate peoples as your government tries to make out today. We are not two separate people (of PNG and of the Torres Strait) as the Senate Committee Report seeks to make out or as the descendants of Southsea Islanders and mixed race people in Torres Strait assert. That is a lie that has been created by the artificial boundary line in the sea. We are one and the same people.

The Treaty that Australia drew up and caused Papua New Guinea's young and naive leadership (who did not know much about the Law of the Sea, the rules and lines of demarcation) to sign in 1974, properly viewed, is a unilateral imposition by Australia on the Trans Fly villages of the Papuan Coast. The original documents approving the border demarcation were signed by Leaders of the then Territories of Papua and New Guinea, who were nevertheless servants and agents of the Commonwealth of Australia. The Treaty fails to recognize and provide for, and thereby deprives my people of our ownership and user rights of the Islands, the sea, the sea bed and the marine resources. They are not diluted rights described in the Treaty as traditional rights; they are absolute rights that are not subject to any other rights. Our rights in the Torres Strait are equal to our absolute ownership rights of our village lands on the mainland. The original Torres Strait people living on Badu, Iama, Masig, Puruma, Erub, Waraber and Mer, for instance, also have property rights on the mainland.

Australia occupied a position of trust in the administration of the then territories of Papua & New Guinea. We were Trust Territories of the United Nations. My fathers trusted Australia to do the right thing. The United Nations trusted Australia to do the right thing by its specific mandates. Since 1975, we could not travel and maintain our land and sea tenure in the Islands. We totally ceased the traditional Saikatura trading activities since 1985 with the Treaty came to full effect with stricter border controls from the Australian side. This border has now become a harsh line of deprivation, oppression, injustice and of breach of human rights. It has taken away our property and marine rights without our consent, without prompt just and adequate compensation. We had a food garden, as it were, and this line by stealth became a big fence around our garden that has kept us out, and we cannot harvest our

food or enjoy our garden anymore. We are sea farming people and it has choked the life out of us. Now the Senate is coming up with new layers of regulation to further restrict and deprive us of our connection to and continuity of our land and sea tenure in the Torres Strait.

Prime Minister, sitting on this side of that artificial line, we have witnessed the way the Australian Labor Party has summoned the courage to correct historical wrongs, to bring healing to your land, in that landmark apology that former Prime Minister Howard issued as Deputy Prime Minister standing alongside him in support) have made to the indigenous people of Australia. That I believe has marked a great moment in human history. Equally, in our lifetime we have witnessed the fall of the Iron Curtain, the Berlin Wall and the Apartheid government of South Africa. These were all human artifices of oppression and injustice.

Today I write to you as leader of my people. We acknowledge that you are the first Female Prime Minister of Australia, not only a monumental achievement for all Australian women, but a beacon of light and empowering role model for all Melanesian and Pacific women who have and continue to suffer under the dark clouds of cultural and social oppression and subjugation. I am appealing to you because unlike most men-folk who only see things through the prism of logic, nature has granted our mothers in addition, the sense of deeper knowing and feeling. You have been specially gifted to serve your country, which includes the Torres Strait area at present. I am sure you are proud of your Welsh heritage as I am of my Melanesian heritage. Those Islands of Torres Strait and the sea area have been my people's territory from the hand of God. Whilst the world cannot deny the verdict of 60,000 years of Melanesian history, anthropology, archaeology, DNA, customs and culture, or my uncle Eddie Koker Mabo's place in your country's brief history and folklore, you as a fine leader of your people, have before you a great opportunity today to address this historical wrong.

Today, I do not seek to become a Treaty village. I do not want a bag of Ausaid money. I want this monumental historical wrong and imbalance corrected in a way that restores justice, pride and dignity to my people and their way of life. This is the cry of my people.

Let me also make it very clear that we do not perceive the current border demarcation was the doing of the Papua New Guinea government in 1975, the national public servants or the political leadership of PNG.

We are fully aware of the way Canberra unilaterally imposed this border. We are also aware of the way the public servants in Canberra have been setting and manipulating the agenda on the Torres Strait Border and fisheries issues over the years. The moment has come for us not to complain or dither about what bureaucrats have done or failed to do. What we have brought to your attention calls for decisive political leadership.

We look forward to hearing from you.

Yours faithfully

Peter Niwā Sawabbarri

Chairman- Masingale Association Inc.
[Masingale people of Masingara Village,
Western Province.]

Copy: Hon. Sam Abal MP
Acting Prime Minister of Papua New Guinea.

Copy: Hon. Don Polye MP
Minister For Foreign Affairs & Trade of
Papua New Guinea.

Copy: Hon. Kevin Rudd MP
Federal Minister For Foreign Affairs of Australia.

Copy: Hon. Tony Abbott MP
Federal Leader of Opposition of Australia

Copy: Hon. John Key MP
Prime Minister of New Zealand.

Copy: Hon. Comm. Josia Voreqe Bainimarama
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Prime Minister of Solomon Islands.