

An Assembly of First Nations and a Treaty



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Introduction



- ❧ Background
- ❧ Treaty
 - ❧ What form
 - ❧ What Content
- ❧ An Assembly of Nations
 - ❧ What form
 - ❧ How should it be established

Background



- ❧ We have grievances which can only be solved by some form of just final settlement.

- ❧ We should all aspire to
 - ❧ Ownership of our lands;
 - ❧ Planning control;
 - ❧ Self determination;
 - ❧ Economic independence;
 - ❧ Full compensation.

Background



- ❧ Warren Mundine – individual treaties with every nation
- ❧ John Pilger – *Utopia* - single treaty
- ❧ ATSIC treaty campaign - @ 2000-2005

Treaty



- ❧ What Form
- ❧ Two types
 - ❧ National Framework Treaty
 - ❧ First Nations Treaties

Treaty



- ❧ National Framework Treaty
- ❧ **Negotiated** by the Executive Council of an Assembly of Nations
- ❧ **Parties** – Federal and State/Territory Governments and the Assembly of Nations, and ratified by individual First Nations wishing to negotiate within the Framework.

Treaty



- ❧ National Framework Treaty – Potential Content
- ❧ **Recognition as First Nations**
 - ❧ Unlawfulness of purported acquisition of sovereignty
 - ❧ Recognition of continued first nations sovereignty
- ❧ **Self-determination**
 - ❧ Recognition that the highest levels of self determination should be recognised

Treaty



- ❧ National Framework Treaty – possible content
- ❧ **Compensation**
 - ❧ for past unlawful dispossession, genocide, slavery and oppression;
- ❧ **National Land Reform**
 - ❧ to provide for mechanism for return of lands – eg, completion of use (mining, dams, public infrastructure) and acquisition of lands by government;

Treaty



- ❧ National Framework Treaty – possible content
- ❧ **Guaranteed representation in Parliament;**
- ❧ **Tax Free Status;**
- ❧ **Dual Citizen status;**
- ❧ **Guaranteed access to welfare benefits;**
- ❧ **Guaranteed equality of social outcomes;**
- ❧ **First Nations Building Fund; and**
- ❧ **First Nations treaty negotiation framework incl. funding, resources, access to information. Etc**
- ❧ **Standing to seek binding decisions from the ICJ.**

Treaty



- ❧ Individual First Nations Treaties
- ❧ **Negotiated** between First Nation and the Commonwealth and State/Territory Governments.
- ❧ **Parties** – Individual First Nation and relevant governments.

Treaty



- ❧ First Nations Treaty – possible content
- ❧ **Recognition** as sovereign First Nation;
- ❧ **Self-determination** – appropriate to each First nation taking into account population, location, extent of impact;
- ❧ **Compensation** – for past unlawful dispossession, genocide, slavery and oppression;

Treaty



- œ First Nations Treaty – possible content
- œ **Land Justice** – through National Land Reform to deliver significant land holdings to each group in the highest form of tenure.
- œ Confirmation of Framework Treaty Benefits – eg
Tax Free Status; Dual Citizen status; Guaranteed access to welfare benefits; Guaranteed equality of social outcomes; First Nations Building Fund;

Treaty



Summary

- ❧ A National Framework Treaty and First Nation Treaties can only be achieved through First Nations control of the process.
- ❧ The current state of affairs exists because the industry and business sectors have more influence over government than we do.
- ❧ Internationally, the absence of treaties is an anomaly.
- ❧ Our real power to engage with the Governments and bring international scrutiny to our relationships is in collectivisation.

Assembly of Nations



Background

- ❧ We have never had a forum for the collective voice of first nations.
- ❧ In 2013 National Native Title Conference – mandate from the floor of the conference to develop a small working party, communicate with a contact list, and bring results back for consideration.

Assembly of First Nations



Background continued

- ∞ A small working party was established – co-ordinated by Mick Gooda and included – Congress representatives – NNTC representative – Robynne Quiggin
- ∞ Mark McMillan attended one meeting by phone.
- ∞ A short paper was prepared by Mick Gooda and his staff.

Assembly of First Nations



Background continued

- ❧ Then the Federal election occurred and Congress funding was slashed.
- ❧ Much of my initial proposal depended upon on Congress supporting a broad regional assembly and nation building program.
- ❧ That is now unlikely to be possible.
- ❧ The proposal has been refined.

Assembly of First Nations



What Form?

- ❧ The form which is appropriate is the United Nation structure.
- ❧ As an assembly of First Nations, all First Nations should be permitted membership of the Assembly, regardless of whether native title has been determined or not.
- ❧ Each First Nation would be entitled to have a set number of delegates attend the General Assembly.

Assembly of First Nations



What form?

- ❧ The Assembly of Nations would be represented between Assemblies by an Executive Council which is supported by a Secretariat.
- ❧ The decisions, treaties, compacts, declarations of the Assembly would be determined by majority decision but only binding on those nations who ratified the document.

Assembly of First Nations



Draft Interim Charter of the Assembly of First Nations

- ❧ The purpose of presenting the draft is to give people something tangible to think about.
- ❧ It has been fashioned after UN documents.
- ❧ It is “interim” until a final document is negotiated, drafted and adopted by the General Assembly.

Interim Charter of the Assembly of First Nations



- ☞ *AFFIRMING* the First Nations of the lands and waters now known as Australia existed prior to the purported annexation by the British in 1788 and 1825; and

- ☞ *AFFIRMING* the First Nations have continued to exist; and

- ☞ *RECOGNISING* the First Nations are governed by legal systems adapted over time and having their origins rooted in the spiritual and ancestral connections with their lands and waters; and

- ☞ *RECOGNISING* that the First Nations did not cede sovereignty of their lands and waters to the British or any other foreign entity and that their lands and waters were not “discovered” nor “settled” by the British or any other foreign entity; and

Interim Charter of the Assembly of First Nations



RECOGNISING that the First Nations agree to form an Assembly to promote, advocate and develop mechanisms

- ☞ for formal national and international recognition of each First Nation and its citizens; and
- ☞ the just and equitable settlement of historical and present day grievances each First Nation has with the Commonwealth of Australia and the relevant State or States and Territories; and
- ☞ for ongoing dialogue and engagement between the First Nations, and between the First Nations and all levels of the Australian government and industry.

Interim Charter of the Assembly of First Nations



**We the attendees at the National Native Title
Conference on the lands of the Gumbaynggirr
Nation on June , 2014 declare that an Assembly
of First Nations is established.**

Interim Charter of the Assembly of First Nations



Part I - Membership

1. Membership of the Assembly of First Nations is open to all First Nations.

1. Members of the Assembly of First Nations shall participate in the business of the Assembly of First Nations in accordance with this Interim Charter of First Nations and any subsequent Charter of First Nations.

1. Requests for recognition as a member of the Assembly of First Nations shall be in writing to the Assembly of First Nations Secretariat and accompanied by confirmation of adoption of a resolution by the First Nation that it:
 - a. Wishes to be recognised as a member of the Assembly of First Nations;

 - b. Will participate in the Assembly of First Nations in accordance with the Interim Charter of the Assembly of First Nations and any subsequently adopted Charter of First Nations;

 - c. Nominates a contact person.

Interim Charter of the Assembly of First Nations



Part I – Membership cont'd

4. Requests for membership shall be determined by the Assembly of First Nations Steering Committee, and confirmed at the first General Assembly by the Assembly of First Nations.

5. A First Nation may withdraw its membership of the Assembly of First Nations at any time by giving notice in writing to the Assembly of First Nations Secretariat.

Interim Charter of the Assembly of First Nations



Part II – Purpose of the Interim Charter

6. The purpose of this interim Charter is be to:

- i. Provide for membership for the Assembly of First Nations;
- ii. Guide the Assembly of First Nations in the preparation and adoption of a Charter of the Assembly of First Nations; and
- iii. Set out the interim guiding principles and purpose of Assembly of First Nations.

Interim Charter of the Assembly of First Nations



Part III - Guiding Principles of the Assembly of First Nations

7. The independence, autonomy and sovereign status of each First Nation is confirmed and at all times remains paramount.

8. Neither membership of the Assembly of First Nations nor adoption or ratification of any resolution of the Assembly of First Nations undermines, diminishes or interferes with the independence, autonomy and sovereign status of each First Nation.

Interim Charter of the Assembly of First Nations



Part III - Guiding Principles of the Assembly of First Nations cont'd

9. Each First Nation has in common with each other First Nation:
 - a. Legal systems and law which is sourced in spiritual and ancestral connections with their lands and waters; and
 - b. The experience of the laws and policies of the various British colonies now comprising the States and Territories, and the Commonwealth of Australia, which permitted the unlawful seizure and disposal of lands, waters and resources of the First Nations, genocidal practices against and imprisonment of the citizens of the First Nations, and slavery and other atrocities and inhumane treatment in a systemic and largely uniform manner throughout the States and Territories that now comprise Australia and present day laws and policies which continue to permit inequitable and unjust treatment of the First Nations and their citizens.

Interim Charter of the Assembly of First Nations



Part III - Guiding Principles of the Assembly of First Nations cont'd

10. The similarities of the legal systems of the First Nations and the similarities each First Nation's experience of invasion and colonisation founds a broad platform for collective and unified advocacy for, and the development of mechanisms to facilitate:
 - a. Formal national and international recognition of each First Nation and its citizens;
 - b. The just and equitable settlement of historical and present day grievances each First Nation has with the Commonwealth of Australia and the relevant State or States, and or Territories;
 - c. Agreed mechanisms for ongoing dialogue and engagement between the First Nations and all levels of government; and
 - d. Such other matters as the Assembly of First Nations may agree upon.

Interim Charter of the Assembly of First Nations



Part IV – Purpose of the Assembly of First Nations

11. The purpose of the Assembly of First Nations is to:

- a. Advocate on behalf the members of the Assembly of First Nations as directed;
- b. Develop and facilitate the development and implementation of mechanisms to achieve the aspirations of the members of the Assembly of First Nations and the purposes set out in the Charter of the Assembly of First Nations;
- c. Through the Assembly of First Nations Secretariat, guide and facilitate the first and subsequent sittings of the Assembly of First Nations.

Interim Charter of the Assembly of First Nations



Part IV – Purpose of the Assembly of First Nations

12. The purpose of the Assembly of First Nations is to:

a. Advocate on behalf the members of the Assembly of First Nations as directed;

b. Develop and facilitate the development and implementation of mechanisms to achieve the aspirations of the members of the Assembly of First Nations and the purposes set out in the Charter of the Assembly of First Nations;

13. Through the Assembly of First Nations Secretariat, guide and facilitate the first and subsequent sittings of the Assembly of First Nations.

Interim Charter of the Assembly of First Nations



Part IV – Purpose of the Assembly of First Nations cont'd

14. The business at the first General Assembly shall include:

- a. Confirmation of membership and delegates;
- b. Consideration and adoption of the Charter of the Assembly of First Nations;
- c. Appointment of an executive council; and
- d. Such other business as recommended by the Assembly of First Nations Steering Committee.

Interim Charter of the Assembly of First Nations



Part IV – Purpose of the Assembly of First Nations cont'd

15. Adoption of the Charter of the Assembly First Nations shall be determined by majority vote.

16. All other resolutions, declarations, treaties and conventions shall require a majority vote to pass but only be binding upon or representative of the First Nations who ratify such resolutions, declarations, treaties and conventions.

Interim Charter of the Assembly of First Nations



Part VI – Assembly of First Nations Steering Committee

17. Until the first General Assembly of First Nations and appointment of the Executive Council, there shall be an Assembly of First Nations Steering Committee (“the Steering Committee”).

18. The Steering Committee shall consist of people nominated from the floor of the meeting at which the Assembly of First Nations is established.

Interim Charter of the Assembly of First Nations



Part VI – Assembly of First Nations Steering Committee cont'd

19. The role of the Steering Committee is to:

a. Identify and secure interim funding to:

- i. Establish a secretariat;
- ii. Develop a draft Charter of First Nations; and
- iii. Convene the first General Assembly of First Nations.

b. Subject to funding, to:

- i. Establish a secretariat;
- ii. Develop a draft Charter of First Nations; and
- iii. Convene the first General Assembly of First Nations.

c. Communicate with the members

Interim Charter of the Assembly of First Nations



Part VI – Assembly of First Nations Steering Committee cont'd

20. The Steering Committee shall meet as often as necessary and convenient to fulfill its roles and functions.

Options for Action



1. Have a meeting at this conference of all interested First Nations' People and:
 - i. Adopt the interim Charter;
 - ii. Establish the Assembly;
 - iii. Appoint a steering committee.

2. Establish the Steering Committee at this conference, who will then go and adopt the interim charter, circulate it to PBC's for comment, further refine, and then send for adoption by each First Nation. Once adopted by a threshold number, establish the Assembly and call for members.

Options for Action



3. Establish a steering committee to negotiate with Congress for an amendment to the Congress constitution to allow for a first nations chamber.

My preference is Option 1 or 2 – on the basis that the primary consideration is representation of First Nations. The creation of an independent Assembly will not stop alignment between the Assembly and Congress. The Assembly and Congress should not be seen as being in competition with each other but complementing each other.