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Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya

Addendum

Preliminary note on the situation of indigenous peoples in Australia

1. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people conducted an official mission to Australia, at the invitation of the Government, from 17 to 28 August 2009. In the present preliminary report, he provides an overview of his initial observations following the conclusion of the visit. A full report on the situation of indigenous peoples in Australia, with conclusions and recommendations, will be provided by the Special Rapporteur at a later date.

2. During his 11-day visit, the Special Rapporteur met with government authorities, representatives of indigenous communities and organizations and others, in Canberra, South Australia, Western Australia, the Northern Territory, Queensland and New South Wales. He visited a number of indigenous communities in both remote and urban areas, and collected information from several sources. The Special Rapporteur would like to express his appreciation for the support of the Government of Australia and the indigenous individuals and organizations that provided indispensable support in planning and coordinating the visit. He would also like to express his appreciation to the United Nations Information Centre.

3. The Government of Australia is to be commended for having taken significant steps to improve the human rights and socio-economic conditions of the Aboriginal and Torres Strait Islander peoples of Australia, as well as for its recent expression of support for the United Nations Declaration on the Rights of Indigenous Peoples and for its apology to the victims of the “stolen generation”. After several days in Australia listening and learning, however, the Special Rapporteur observed a need to develop new initiatives and reform existing ones — in consultation and in real partnership with indigenous peoples — in order

to conform with international standards requiring genuine respect for cultural integrity and self-determination.

4. During his time in Australia, the Special Rapporteur was impressed by the demonstrations of strong and vibrant indigenous cultures and was inspired by the strength, resilience and vision of indigenous communities determined to move towards a better future, despite having endured tremendous suffering at the hands of historical forces involving entrenched racism. It is clear that these historical forces continue to make their presence known today, manifesting themselves in serious disparities between indigenous and non-indigenous parts of society, including in terms of life expectancy, basic health, education, unemployment, incarceration, children placed under care and protection orders, as well as of access to basic services.

5. Given the above-mentioned disparities, the Government has developed and implemented a number of important initiatives in order to close the gap of indigenous disadvantage within a wide range of social and economic areas, with a stated emphasis on women and children; these programmes must continue to be improved and strengthened. The Special Rapporteur also stresses that he learned of numerous programmes in place by indigenous authorities and organizations, at the local, regional and national levels, that have been working effectively to address the many problems that their communities face.

6. Some aspects of the Government's initiatives to remedy situations of indigenous disadvantage, however, raise concerns. Of particular concern is the Northern Territory Emergency Response which, by the Government's own account, is an extraordinary measure, especially in its income management regime, imposition of compulsory leases and community-wide bans on alcohol consumption and pornography. These measures overtly discriminate against aboriginal peoples, infringe their right to self-determination and further stigmatize already stigmatized communities.

7. The Special Rapporteur stresses that affirmative measures by the Government to address the extreme disadvantage faced by indigenous peoples and issues of safety for children and women are not only justified, but indeed required under the international human rights obligations of Australia. However, any such measure must be devised and carried out with due regard for the rights of indigenous peoples to self-determination and to be free from racial discrimination and indignity.

8. In this connection, any special measure that infringes on the basic rights of indigenous peoples must be narrowly tailored, proportional and necessary to achieve the legitimate objectives being pursued. In the view of the Special Rapporteur, the Northern Territory Emergency Response does not meet these requirements. As currently configured and carried out, the Emergency Response is incompatible with the country's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, treaties to which Australia is a party, as well as with the Declaration on the Rights of Indigenous Peoples, for which Australia has affirmed its support.

9. The Special Rapporteur notes with satisfaction that a process to reform the Emergency Response is currently under way and that the Government has initiated consultations with indigenous groups in the Northern Territory in this connection. He expresses the hope that amendments to the Emergency Response will diminish or remove its discriminatory aspects and adequately take into account the rights of aboriginal peoples to self-determination and culture integrity, in order to bring this Government initiative into line with the international obligations of Australia. The Special Rapporteur also urges the Government to act swiftly to reinstate the protections of the Racial Discrimination Act with regard to the indigenous peoples of the Northern Territory.

10. Beyond the matter of the Northern Territory Emergency Response, the Special Rapporteur is concerned that there is a need to incorporate into Government programmes a more holistic approach when addressing indigenous disadvantage across the country, one that is compatible with the objective of the Declaration on the Rights of Indigenous People of securing for indigenous peoples not just social and economic well-being, but also the integrity of indigenous communities and cultures, and their self-determination.

11. The above-mentioned approach must involve a real partnership between the Government and the indigenous peoples of Australia, to move towards a future that is fully respectful of the rights of Aboriginal and Torres Strait Islander peoples to maintain their distinct cultural identities, languages and connections with traditional lands, and to be in control of their own destinies under conditions of equality.

12. Given what the Special Rapporteur has learned to date, it would seem that the objectives of the Closing the Gap campaign, the Emergency Response and other current initiatives and proposed efforts of the Government would be best achieved in partnership with indigenous peoples' own institutions and decision-making bodies, which are those that are most familiar with the local situations. It is worth stressing that, during his visit, the Special Rapporteur observed numerous successful indigenous programmes already in place to address issues of alcoholism, domestic violence, health, education and other areas of concern, in ways that are culturally appropriate and adapted to local needs, and that these efforts need to be included in and supported by the Government response, both logistically and financially. In particular, it is essential that funding for programmes that have already demonstrated achievements be continued.

13. The Special Rapporteur observed that, although there are a number of Government partnerships with local initiatives that appear to be succeeding, he also heard many accounts of situations in which Government programmes fail to take into account existing local programmes already in place, thereby hampering their ultimate success. In this connection, the Special Rapporteur is concerned about any initiative that duplicates or replaces the programmes of Aboriginals and Torres Strait Islanders already in place, or that undermines local decision-making through indigenous peoples' own institutions. In addition, international human rights norms, including those contained in the Declaration on the Rights of Indigenous People, affirmatively guarantee the right of indigenous peoples to participate fully at all levels of decision-making in matters which may affect their rights, lives and destinies, as well as to maintain and develop their own decision-making institutions and programmes. Furthermore, adequate options and alternatives for socio-economic development and violence-prevention programmes should be developed in full consultation with affected indigenous communities and organizations.

14. It is also necessary that the meaningful, direct participation of Aboriginal and Torres Strait Islander peoples is ensured in the design of programmes and policies at the national level, within a forum that is genuinely representative of the rights and interests of indigenous peoples. In this regard, the Special Rapporteur welcomes the initiative that is supported by the Government to move towards the development of a model for a new national indigenous representative body, and emphasizes that indigenous participation in the development of this body is fundamental.

15. At the same time, the Special Rapporteur echoes the statements he heard from indigenous leaders for the need for indigenous peoples themselves to continue to strengthen their own organizational and local governance capacity in order to meet the challenges faced by their communities and, in this connection, notes the importance of restoring or building strong and healthy relationships within families and communities.

16. The Special Rapporteur also notes a need to move deliberately to adopt genuine reconciliation measures, such as the proposed recognition of the rights of Aboriginal and

Torres Strait Islander peoples in a charter of rights, to be included in the Constitution. He is pleased that the Government has expressed its willingness in this regard, and urges it to provide a high priority to this initiative. As was stressed by the indigenous representatives with whom the Special Rapporteur met, constitutional recognition and protection of the rights of Aboriginal and Torres Strait Islander peoples would provide a measure of long-term security for these rights, and be an important building block for reconciliation and a future of harmonious relations between indigenous and non-indigenous parts of Australian society.

17. Furthermore, it is important to note that securing the rights of indigenous peoples to their lands is of central importance to indigenous peoples' socio-economic development, self-determination and cultural integrity. Continued efforts to resolve, clarify and strengthen the protection of indigenous lands and resources should be made. In this regard, Government initiatives to address the housing needs of indigenous peoples should avoid imposing leasing or other arrangements that would undermine indigenous peoples' control over their lands. The Special Rapporteur urges the Government to comply with the recommendations concerning indigenous lands and resources made by the treaty-monitoring bodies of the United Nations, including the recommendation of the Committee on the Elimination of Racial Discrimination, to advance in discussions with Aboriginal and Torres Strait Islanders on possible amendments to the Native Title Act and find solutions acceptable to all.

18. Finally, the Special Rapporteur reiterates the importance of the Declaration on the Rights of Indigenous Peoples in the framing and evaluation of legislation, policies and actions that affect the Aboriginal and Torres Strait Islander peoples. The Declaration expresses the global consensus on the rights of indigenous peoples and corresponding State obligations on the basis of universal human rights. The Special Rapporteur recommends that the Government undertake a comprehensive review of all its legislation, policies and programmes affecting Aboriginal and Torres Strait Islanders in the light of the Declaration.
