

# Advance Unedited Version

Distr.  
GENERAL

A/HRC/12/34/Add.10  
24 September 2009

ENGLISH ONLY

HUMAN RIGHTS COUNCIL  
Twelfth session  
Agenda item 3

## **PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT**

**Report by 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**

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\* Late submission.

1. The Special Rapporteur, at the invitation of the Government, conducted an official mission to Australia from 17 to 28 August 2009. This preliminary report provides an overview of the Special Rapporteur's initial observations following the conclusion of the visit. His full report on the situation of indigenous peoples in Australia, with conclusions and recommendations, will be provided at a later date.

2. During the course of his 11-day visit, the Special Rapporteur met with Government authorities, representatives of indigenous communities and organisations, 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 and the indigenous individuals and organisations 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 taking 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 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—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 with demonstrations of strong and vibrant indigenous cultures and was inspired by the strength, resilience and vision of indigenous communities determined to move toward 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, and access to basic services.

5. Given these 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, and 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 organisations at the local, regional and national levels that have been working effectively to address the many problems that their communities face.

6. 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 of self-determination and 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 they are in fact required under Australia's international human rights obligations. However, any such measure must be devised and carried out with due regard of 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. It is the view of the Special Rapporteur that the Northern Territory Emergency Response does not meet these requirements. As currently configured and carried out, the Emergency Response is incompatible with Australia's obligations under the 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 incompatible with the Declaration on the Rights of Indigenous Peoples, to which Australia has affirmed its support.

9. The Special Rapporteur notes with satisfaction that a process to reform the Emergency Response is currently underway and that the Government has initiated consultations with indigenous groups in the Northern Territory in this connection. He expresses 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 in line with Australia's international obligations. Furthermore, the Special Rapporteur urges the Government to act swiftly to reinstate the protections of the Racial Discrimination Act in 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 to addressing indigenous disadvantage across the country, one that is compatible with the objective of the United Nations Declaration of securing for indigenous peoples, not just social and economic wellbeing, but also the integrity of indigenous communities and cultures, and their self-determination.

11. This 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 thus far, 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 will 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 these efforts need to be included in and supported by the Government response, both logistically and financially. In particular, it is essential to provide continued funding to programmes that have already demonstrated achievements.

13. The Special Rapporteur observed that there are a number of Government partnerships with local initiatives that appear to be succeeding, but he also heard many accounts of situations in which Government programmes fail to take into account existing local programmes already in place, hampering their ultimate success. In this connection, the Special Rapporteur is concerned about any initiatives that duplicate or replace the programmes of Aboriginals and Torres Strait Islanders already in place, or that undermine local decision-making through indigenous peoples' own institutions. In addition, international human rights norms, including those contained in the United Nations Declaration, 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. Further, adequate options and alternatives for socio-economic development and violence prevention programmes should be developed in full consultation with affected indigenous communities and organisations.

14. It is also necessary to ensure the meaningful, direct participation of Aboriginal and Torres Strait Islander peoples 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 development of a model for a new national indigenous representative body and emphasises 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 of the need for indigenous peoples themselves to continue to strengthen their own organisational 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 provide 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 about possible amendments to the Native Title Act and find solutions acceptable to all.

18. Finally, the Special Rapporteur reiterates the importance of the United Nations Declaration on the Rights of Indigenous Peoples for framing and evaluating 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 that affect Aboriginal and Torres Strait Islanders in light of the Declaration.

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