

Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, James Anaya, as he concludes his visit to Australia

Canberra/Geneva, 27 August 2009

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, I have 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.

Over the past 11 days, I have 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. I have visited a number of Indigenous communities in both remote and urban areas, and have collected information from several sources. I would like to express my appreciation for the support of the Government and to the Indigenous individuals and organisations that provided indispensable support in planning and coordinating the visit. I would also like to express my appreciation to the United Nations Information Centre.

While I must now take some time to review and analyse the substantial amount of information I have received, and to follow up with further exchanges of information with the Government, Indigenous peoples of Australia, and other sources, I would like to provide here a few preliminary observations.

During my time in Australia, I have been impressed with demonstrations of strong and vibrant Indigenous cultures and have been 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 and 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.

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. I would also like to stress that I have 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.

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.

I would like to stress 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.

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 my view, the Northern Territory Emergency Response is not. In my opinion, 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.

I note 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. I 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, I urge the Government to act swiftly to reinstate the protections of the Racial Discrimination Act in regard to the Indigenous peoples of the Northern Territory.

Beyond the matter of the Northern Territory Emergency Response, I am 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.

This approach must involve a real partnership between the Government and the Indigenous peoples of Australia, to move towards a future, as described by Prime Minister Rudd in his apology to Indigenous peoples last year, that is "based on mutual respect, mutual resolve and mutual responsibility," and that is also 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.

Given what I have learned thus far, it would seem to me 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 my visit, I have 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.

I did observe a number of Government partnerships with local initiatives that appear to be succeeding, but I 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, I am 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.

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, I welcome the initiative that is supported by the Government to move towards development of a model for a new national Indigenous representative body and emphasise that Indigenous participation in the development of this body is fundamental.

At the same time, I would like to echo the statements I have 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 I note the importance of restoring or building strong and healthy relationships within families and communities.

I would also note 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. I am pleased that the Government has expressed its willingness in this regard, and I urge it to provide a high priority to this initiative. As has been stressed to me by the Indigenous representatives with whom I have 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.

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. I also urge 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 finding solutions acceptable to all.

Finally, I would like to reiterate 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 Islanders Peoples. The Declaration expresses the global consensus on the rights of Indigenous peoples and corresponding state obligations on the basis of universal human rights. I recommend 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.