

Submission by the Society for Threatened Peoples



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Universal Periodic Review

Australia

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Society for Threatened Peoples (STP) is an international human rights organisation which campaigns with and on behalf of threatened and persecuted ethnic and religious minorities, nationalities and indigenous peoples. We stand side by side with the victims of crimes against humanity, identifying the individual perpetrators of such crimes and their accomplices by name. And we have no hesitation in speaking out when victims become perpetrators. Because the principle that inspires all our activities is expressed in the slogan "Not Turning a Blind Eye".

Australia should follow the obligations resulting from the ratification of the United Nations Declaration on the Rights of Indigenous Peoples (UN Resolution 61/295 – UNDRIP)

1. The Question of sovereignty

In 2009 - two years after the UN General Assembly in New York City adopted the United Nations Declaration on the Rights of Indigenous Peoples (UN-Resolution 61/295 – UNDRIP) on September 17, 2007 - Australia joined the Declaration. As a declaration UNDRIP is not binding international law. Nevertheless, all signatories are requested to adapt their legislation to the provisions of the Declaration. Australia seems to be far from meeting this goal.

Article 3 of the UNDRIP says: *Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

In Australia the structure of self-determination, the Aboriginal and Torres Strait Islander Commission ATSIC, was annihilated without any serious replacement in 2005. Today the government communicates with the Indigenous peoples through a body called National Congress of Australia's First Peoples. The founding committee wound up its work in April 2010 as a company when the first Board of the National Congress was appointed and the company was incorporated. Moreover in September 2013 the Prime Minister's Indigenous Advisory Council was established with an equal share of indigenous and non-indigenous members who again are appointed by the government and not elected by the Aboriginal peoples.

Article 18 of UNDRIP says: *Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.*

At present Aboriginal peoples in Australia are not able to take advantage of this right. Moreover, some of the Indigenous groups are asking for the recognition of their sovereignty and for a treaty with Australia to determine their relationships with the Australian nation already since decades. As early as 1998 the Yolngu people from Arnhem Land submitted to the Prime Minister at that time John Howard the Miwatj Petitionⁱⁱ, which a. o. asks for the recognition of the Dhulmu-mulka Bathi (Title Deeds or Native Title) which establishes the legal tenure for each of the traditional clan estates; recognition of the Ngärra/Traditional Parliament [and] of the Aboriginal Madayin system of law. In 2008 Prime Minister at that time Kevin Rudd received the Yirrkala Petition, which was asking for a „serious constitutional reform“ⁱⁱⁱ in favour of Aboriginal self-determination. Both petitions were not discussed in parliament.

Many Aboriginal people neither acknowledge the National Congress nor the Indigenous Advisory Council. On November 27 and 28 2014 about 200 Elders and speakers representing several Indigenous peoples came together in Alice Springs on the occasion of the Freedom Summit. They represent Aboriginal peoples who do not feel represented by the National Congress. In accordance with their own rules and regulations they elected 20 delegates who worked out a Communiqué, saying a. o. :

All sovereign power and authority within the Territories of the United Tribes of our Lands are hereby declared to reside entirely and exclusively in the hereditary Elders and in the Heads of the Tribes. In our collective capacities we declare that we will not permit any legislative authority separate from ourselves to exist on our Lands, nor any function of the colonial governments to be exercised within the said Territories, unless authorised by the appropriate people or persons appointed by us.iv

Australia is asked to respect the Aboriginal peoples' right to self-determination entering into a dialogue with Aboriginal representatives by clearing the way for the establishment of freely elected sovereign Aboriginal bodies.

2. Land rights

Article 8, 2b of the UNDRIP mentions that *States shall provide effective mechanisms for prevention of and redress for any action which has the aim or effect of dispossessing them (i.e. the Indigenous peoples; STP) of their lands, territories or resources.*

In contrast, the Northern Territory governments and the Federal governments over the years tried hard to get access to land that according to the *Aboriginal Land Rights (Northern Territory) Act^v* of 1976 belongs to Aboriginal peoples. Aboriginal communities in the Northern Territory are de facto dispossessed of their land with so called 99-year township leases. According to the Minister for Indigenous Affairs, Nigel Scullion, the leases are aiming at the betterment of the economic situation in those communities. But Ian Viner, former Minister for Aboriginal Affairs (1975 – 1978) analyses: *No one can really imagine that in 99 years time the Commonwealth will, or could, return to the people absolute ownership of traditional land which had been alienated by these 99-year leases.^{vi}*

Yolgnu Elder Rev. Dr. Djiniyini Gondarra criticizes that there was not enough time given to the Aboriginal communities to prepare for and to be part of these consultations. Moreover, important Indigenous representatives were not even invited by the government.^{vii} This is a clear violation of the principle of free prior informed consent as it is laid down in the UNDRIP. Accordingly, Rev. Dr.

Djinyini Gondarra emphasizes, that a 99-year lease is regarded by most aboriginal people as „effective surrender of title“.

Moreover, in Western Australia there are plans to close up to 150 smaller Aboriginal communities who are regarded as being unprofitable by the government. This is in contradiction to Article 10 of UNDRIP, which states, that “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.“

The Federal Government wants to stop its financial support for outback-settlements, i.e. *Remote communities, Homelands or Outstations*, and to transfer this responsibility to the States, who might not be able or willing to meet the financial needs. Therefore, if this should become true, many people will have to leave these settlements, where schools, medical supply etc. will not be provided any longer. They will be forced to move to so called Growth Towns with the enormous risk of being confronted with alcoholism, health problems etc.

There is scientific proof, that Aboriginal people are less affected by alcohol problems, diabetes, kidney complaints or other illnesses when living on territory belonging to them.^{viii} Therefore, Australia should stop the 99-year lease program and see to it that Aboriginal people can safely stay in their communities including remote communities, homelands and outstations in the future.

3. Stronger Futures-Laws/Income Management

Laws introduced in the course of the *Northern Territory Emergency Response (NTER)* in 2007 allegedly as reaction to mistreatment of children in Aboriginal communities are in contrast to Article 2, 3 and 4 of the UNDRIP. Far reaching effects were caused by the rules regarding *Income Management*. As a consequence of this law Aboriginal people in the Northern Territory are not entitled any longer to dispose of 70 % of their funds. There is no proof „that such measures would be either effective or desired by those subject to them“^{ix}.

In his 2009 report James Anaya, then *Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, concluded, that the NTER-laws “overtly discriminate against aboriginal peoples, infringe their right of self-determination and stigmatize already stigmatized communities“.^x

In 2010 the law of income management was expanded to all persons receiving income support and was applied not only to the Northern Territory but to all parts of Australia. The *Stronger Futures in the Northern Territory Six-Monthly Progress Report* gave proof in May 2014 that Stronger Future Law “is strong on inputs, but poor on results“^{xi}. As well the *National Partnership Agreement on Stronger Futures in the Northern Territory*^{xii} was agreed upon by the Australian Commonwealth and the Northern Territory; i.e. Aboriginal people are not a party to the Agreement. The government unilaterally decides about how to combat the discrimination of the Aboriginal people. This again is in contrast to articles 3 und 4 of UNDRIP.

As a consequence, the principle of free prior informed consent should be regarded as the guideline for Australia’s basic understanding towards the Aboriginal peoples.

4. Aboriginal Deaths in Custody

While representing only 2,5 % of the entire population, Aboriginal people amount to 26 % of all prisoners.^{xiii} Accordingly the numbers of deaths in custody are alarmingly high. As early as 1991 this

tragic phenomenon was investigated in the *Inquiry of the Royal Commission into Aboriginal Deaths in Custody*^{xiv}. The most recent report published by the *Australian Institute of Criminology (AIC)* in May 2013 shows, that the numbers of deaths in custody after a drop in 2006 are rising again and reached 83 deaths in 2011. The main reasons are *“the generally low status of the Indigenous community in Australia, both in socioeconomic terms and in terms of patterns of discrimination”*^{xv}. The report concludes, that *“until such time as the underlying factors that contribute to the comparative disadvantage experienced by Indigenous Australians are addressed, such as education, employment, housing, health and life opportunities, Indigenous people will continue to be over-represented in the criminal justice system”*.^{xvi}

Moreover, the mandatory sentencing laws in Western Australia give cause to high numbers of prisoners among the Aboriginal population. Adopted in 1996 the law routinely proclaims custodial sentences for petty crimes as soon as they are repeated for the third time. As a consequence there was a rise in 50 % of custodial sentences. Mainly young male Aboriginal people are affected by Mandatory Sentencing, which is regarded as indirect discrimination.^{xvii} Mandatory Sentencing is in force as well in the Northern Territory since 2013.

Australia should urgently address factors as education, employment, housing, health and life opportunities of Aboriginal Australians in order to overcome the living conditions causing young male Aboriginal people to come into conflict with the law.

ⁱ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

ⁱⁱ http://www.yolngunations.org/uploads/1/7/2/5/17257560/1998_galiwinkumiwatj_petition.pdf

ⁱⁱⁱ http://www.yolngunations.org/uploads/1/7/2/5/17257560/2008_yirrkala_petition.pdf

^{iv} <http://nationalunitygovernment.org/communiqu%C3%A9-freedom-summit>

^v <http://www.comlaw.gov.au/Details/C2013C00556>

^{vi} http://www.concernedaustralians.com.au/media/Ian_Viner_Plan_to_undermine_Land_Rights_Act.pdf

^{vii} http://www.concernedaustralians.com.au/media/Statement_Djinyini_Gondarra_6_Nov_2013.pdf

^{viii} <https://www.mja.com.au/journal/2009/190/10/healthy-country-healthy-people-relationship-between-indigenous-health-status-and>

^{ix} www.austlii.edu.au/au/journals/ILB/2013/12.pdf

^x <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=53&LangID=E>

^{xi} <http://www.indigenous.gov.au/minister-sculion-stronger-futures-report-shows-need-for-change>

^{xii}

http://www.federalfinancialrelations.gov.au/content/npa/community_services/stronger_future_NT/National_Partnership.pdf

^{xiii} <http://www.aic.gov.au/publications/current%20series/mr/1-20/20.html>

^{xiv} <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>

^{xv} <http://www.aic.gov.au/publications/current%20series/mr/1-20/20.html> (S. 5)

xvi <http://www.aic.gov.au/publications/current%20series/mr/1-20/20.html> (S. 5)

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http://www.aph.gov.au/~media/wopapub/senate/committee/legcon_cte/completed_inquiries/2002_04/hra_mandsent/submissions/sub89_pdf.ashx