

**United Nations Expert Mechanism on the Rights of Indigenous People
Third Session
Geneva, 12-16 July 2010**

Agenda Item 4: Report on the compliance with the UN Declaration on the Rights of Indigenous Peoples of Government programs on Remote Indigenous Housing in Australia.

Intervention from: Sydney Newcastle Regional Aboriginal Land Council

Delivered by: Roy Ah-See, Councillor for the Sydney/Newcastle Region

Mister Chair,

I firstly would like to acknowledge the traditional owners of the Country we are meeting on today.

I would also like to take this opportunity to congratulate you on your election to the Chair of this forum.

Indigenous communities of across Australia face a severe housing crisis whether they live in urban, in rural or in remote areas.

The Council of Australian Governments, Australia's peak inter-governmental forum, has acknowledged the state of Indigenous housing across remote Australia to be the most visible and enduring evidence of the failure of governments to address Indigenous disadvantage.

In 2006, the United Nations Special Rapporteur on Adequate Housing was "particularly disturbed," by the adverse housing conditions he observed in Indigenous communities in Australia.

He described it as a "humanitarian tragedy."

Sadly, NSWALC must report, little has changed.

The Special Rapporteur observed that a lack of affordable housing, overcrowding, significant levels of poverty, lack of appropriate support services, a lack of culturally appropriate housing and underlying discrimination were all factors contributing to a severe housing crisis.

Mister Chairman, he also found the absence of adequate and comprehensive participation processes for Indigenous communities in decision making to be the "most disturbing" element of the crisis.

This remains the case today.

Since 2007, Australian Government funding for addressing Indigenous disadvantage has been identified through the negotiation and adoption of National Partnership Agreements between the National, State and Territory Governments.

These Agreements have been entered into by the Council of Australian Governments (COAG) and are aimed at driving policies for "Closing the Gap" in disadvantage between Indigenous and non-Indigenous Australians.

One of the five National Partnership Agreements, which was entered into by COAG in November 2008, relates to Remote Indigenous Housing.

The main aim of that Agreement is to:

Reform responsibilities between the Commonwealth, the States and the Northern Territory in the provision of housing for Indigenous people in remote communities and to address overcrowding, homelessness, poor housing conditions and severe housing shortage in remote Indigenous communities.

The Commonwealth Government has committed to providing an additional \$1.94 billion over ten years to fund improvements to 26 remote communities under the Indigenous Housing Agreement which commenced on January 1, 2009.

This Commonwealth Government funding, however, is conditional on what it terms "secure land tenure being settled."

The Commonwealth Government has set out three requirements that determine whether secure land tenure has been settled.

They are:

- The Government must have access to, and control of, the land on which construction will proceed for a minimum period of 40 years.
- Tenure arrangements must support the implementation of tenancy management reforms including the use of individual tenancy management agreements between a State Housing Authority and the tenant without requiring further consent from the underlying land owner. This capacity must also permit replacement of the housing service provider if required; and
- Native title issues must also have been resolved, in that any applicable process required under the Native Title Act has been conducted.

NSWALC, and other peak Indigenous representative organisations, have profound concerns about the Indigenous Housing Agreement.

While any additional funding for remote Indigenous housing is welcome, no Indigenous representatives are a party to the Agreement.

In other words, the most significant agreement regarding the provision of housing for Indigenous people in Australia does not involve the participation of any Indigenous people or communities.

The result of this absence is that many of the provisions of the Agreement are not appropriate for our communities.

Consequently, many of the measures designed to improve Indigenous housing in remote communities do not have the support of the affected communities.

Mister Chairman, our lack of involvement raises serious and particular concerns on the adherence of such an Agreement to the standards and principles contained in the UN Declaration on the Rights of Indigenous Peoples regarding self-determination and participation, the duty to consult and to obtain free, prior and informed consent.

It renders meaningless the Australian Government's formal acknowledgement for the UN Declaration on the Rights of Indigenous Peoples in April last year.

The Agreement is being invoked contrary to both the spirit and letter of the principles and standards set out in the UN Declaration.

Sadly, this is reflected both in the manner in which the Agreement was entered into and the terms and conditions it seeks to impose in return for much needed housing.

The Indigenous Housing Agreement effectively shifts the duty and responsibility of government to provide basic services and infrastructure as a fundamental right.

It now seeks to extend that right to be conditional upon Indigenous people surrendering other fundamental, and hard won rights.

It further tilts the enormous power imbalance between Indigenous people and Australian Governments.

The conditional nature of the funding is forcing Indigenous people, and their representative organisations, to negotiate the provision of desperately needed housing under duress.

The requirement for Indigenous communities to grant leases to the Commonwealth Government for at least 40 years raises serious concerns about fundamental land rights for Indigenous people.

The forced suspension of Indigenous land rights violates the specific rights contained in the Declaration to protect Indigenous peoples' ownership, development, control and use of communal lands, territories and resources.

This is compounded by the fact that the Agreement also requires State and Territory Governments, rather than Indigenous organisations, to assume responsibility for the provision of basic community services.

The Commonwealth Government has never provided an adequate explanation or, more importantly, justification for these measures which represent a significant shift in its policies from those it promoted to Indigenous people before it assumed Government.

The policies are also at odds with its own stated aims under its Closing the Gap commitments to strengthen Indigenous leadership and governance and increase economic and social participation as the basis for any sustainable improvement in socio-economic outcomes.

Mister Chairman,

In order to comply with the Declaration stated aim under its Closing the Gap commitments to strengthen Indigenous leadership and governance and increase economic and social participation as the basis for any sustainable improvement in socio-economic outcomes, it is recommended that:

- The Australian Government must, at very least, the provisions of the Declaration on the Rights of Indigenous Peoples be immediately enshrined in the Indigenous Housing Agreement, which should support local Indigenous decision making and empowerment, and build Indigenous capacity for self governance, and

To effectively put its publicly expressed endorsement for the Declaration into meaningful action, it is recommended that,

- The Australian Government must ensure the compatibility of all government policies and practices with the human rights standards contained in the UN Declaration on the Rights of Indigenous Peoples'.