



Expert Mechanism on the Rights of Indigenous Peoples

9th Session Palais de Nations, Geneva, 11-15 July, 2016

Agenda item 9: Follow-up on thematic studies and advice

Access to justice in the promotion and protection of the rights of indigenous peoples

INTERVENTION by the New South Wales Aboriginal Land Council, delivered by delivered by the Councillor for the Wiradjuri Region, and member of the Ngiyampaa and Wiradjuri Peoples, Councillor Craig Cromelin

Thank you Mister / Madam Chairperson

Indigenous peoples in Australia are one of the most incarcerated people in the world and continue to suffer significant disadvantage in the enjoyment of their human rights.

Indigenous incarceration rates have risen rapidly to unprecedented levels, with imprisonment of Indigenous peoples increasing by over 57 per cent since the year 2000. The imprisonment rate of Indigenous peoples remains 15 times higher than the rate for non-Indigenous Australians and one in four deaths in custody in Australia is an Indigenous person.¹ The substantial over-representation of Indigenous young people in the juvenile justice system also persists, with little achieved by Governments to reduce the disproportionate over-representation. Aboriginal women are the fastest growing prisoner demographic in Australia.

During Australia's most recent review under the Universal Periodic Review in 2015, Australia failed to address the serious widespread concerns raised by the international community on the over-imprisonment of Indigenous peoples, particularly children and youth.² Unfortunately, Australia has only noted or will not further consider a range of UPR recommendations in an approach which seems incoherent with the pillars of Australia's Human Rights Council candidacy for 2018.

Despite the recommendation by the UN that Australia abolish mandatory sentencing, due in part to the discriminatory impact on Indigenous Australians³, Indigenous peoples continue to

1Law Council of Australia 'Value of a justice reinvestment approach to criminal justice in Australia' (2013) <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-2700-/2704%20-%20Value%20of%20a%20justice%20reinvestment%20approach%20to%20criminal%20justice%20in%20Australia.pdf>

2Report of the NGO Working Group <http://hrc.org.au/wp-content/uploads/2015/04/Final-UPR-Submission-for-website.pdf>

3United Nations Committee Against Torture, Concluding Observations of the Committee against Torture: Australia, 23 December 2014, CAT/C/AUS/CO/4-5, Recommendation 12 at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAUS%2fCO%2f4-5&Lang=en

experience a disproportionate impact of mandatory sentencing laws; coupled with limited access to legal assistance, Indigenous peoples confront serious obstacles to access and participate meaningfully in the justice system in Australia. This has been exacerbated by funding cuts of more than \$600 million over five years to Indigenous people's organizations which continues to stifle advocacy and self-determination.

Under Australia's National Framework, the Government holds special responsibility to ensure the legal needs of Indigenous peoples are being met. This should include accepting recommendations to reinstate adequate funding to legal aid and action to address the continued over-representation of Indigenous peoples and to address Indigenous law and justice outcomes.

This year marks the 25th anniversary of the Royal Commission into Aboriginal Deaths in Custody which first highlighted the high rates of incarceration of Indigenous young people and adults.⁴ Unfortunately those recommendations are as relevant today as they were twenty-five years ago, and many of the recommendations remain unfulfilled and the problems identified have become progressively worse since the last EMRIP review.

The high imprisonment rates of Indigenous peoples in Australia has been the subject of repeated recommendations by a number of UN human rights bodies, including the UN Human Rights Committee, Committee on Economic, Social and Cultural Rights and the Committee against Torture. It is essential that the Australian Government address these recommendations, and those made by a number of national inquiries, including the Royal Commission.

RECOMMENDATIONS:

The New South Wales Aboriginal Land Council respectfully makes the following recommendations to the Expert Mechanism on the Rights of Indigenous Peoples:

- The New South Wales Aboriginal Land Council urges the Expert Mechanism to encourage all states to formally engage with Indigenous representative bodies to **develop a National Plan at all levels of government to reduce Indigenous imprisonment rates and prioritize Indigenous criminal justice initiatives.**
- The New South Wales Aboriginal Land Council urges the Expert Mechanism to encourage all states to provide **adequate resources to improve access to culturally appropriate legal services** including funding of legal aid commissions, community legal services and specialist legal services for Indigenous peoples in order to ensure adequate legal representation for Indigenous peoples.
- The New South Wales Aboriginal Land Council urges the Expert Mechanism to encourage all states to formally engage with Indigenous representative bodies to **develop strategies for justice reinvestment which are underpinned by a focus on the protection and**

⁴Royal Commission into Aboriginal Deaths in Custody Recommendations <http://www.alrm.org.au/information/General%20Information/Royal%20Commission%20into%20Aboriginal%20Deaths%20in%20Custody.pdf>

promotion of economic, social and cultural rights in order to address the underlying social and economic determinants of crime.

- The New South Wales Aboriginal Land Council urges the Expert Mechanism to encourage all states to **implement policies that promote the review of policing practices in order to minimise and avoid discriminatory interaction with the criminal justice system**, this includes improved policing accountability measures, investment in rehabilitation, justice re-investment and culturally appropriate programs.
- The New South Wales Aboriginal Land Council urges the Expert Mechanism to encourage all states to **adopt strategies for prevention, early intervention and diversion of Indigenous peoples from the criminal justice system** based on long-term funding to allow for appropriate evaluation.