



United Nations Expert Mechanism on the
Rights of Indigenous Peoples

12th Session Geneva, 15 - 19 July, 2019



Item 5: Intersessional activities and follow up to thematic studies and advice.

INTERVENTION by the New South Wales Aboriginal Land Council and First People's Disability Network, delivered by Mr. James Christian, NSWALC CEO and member of the Wiradjuri Nation.

On behalf of the NSW Aboriginal Land Council and the First People's Disability Network, I am pleased to contribute to the 12th session of the United Nations Expert Mechanism on the Rights of Indigenous Peoples and pay my respects to the Elders and Ancestors of the world's Indigenous peoples.

With reference to Articles 21 and 22 of the Declaration, we make the following recommendation:

- That EMRIP, in partnership with the Special Rapporteur on the Rights of Indigenous Peoples, States and relevant non-government organization's host an Expert Forum to discuss the increasing criminalization of Indigenous people with a disability.

Expert Members, I note and commend your previous work in highlighting the systemic racism and ableism impacting Indigenous people with a disability. In calling for an EMRIP hosted Expert Forum, we seek to build on and deepen this work.

As noted in the EMRIP follow up study on Access to Justice "indigenous persons with disabilities are disproportionately at risk of experiencing all forms of violence and neglect, compounded by discrimination based on race, gender, identity and sexual orientation, and ...high rates of incarceration"¹.

We draw attention to some concerning and interrelated facts:

- In Australia, Indigenous people are more than twice as likely to be living with a disability than non-Indigenous Australians, and are five times more likely to experience mental illness; and
- In Australia, people with cognitive and psychiatric impairment can be detained indefinitely. This is in breach of Article 9 of the International Convention on Civil and Political Rights which prohibits arbitrary detention.

¹ Follow-up Study on access to justice with a focus on restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities (A/HRC/27/65)

- In Australia, there Indigenous peoples with cognitive disabilities are overrepresented in the criminal justice system. There is a lack co-ordinated policy and service response on this most pressing human rights issue.

It is often the case that Indigenous people with cognitive disabilities enter the criminal justice system in the absence of alternative pathways, and once entering have sustained engagement in the criminal justice system.

Cognitive impairment for Indigenous peoples in the Australian criminal justice system is generally either not recognised or poorly understood. For many Indigenous people, diagnosis of their cognitive impairment comes with assessment on entry to prison. However, such a diagnosis rarely leads to appropriate services or support while in prison. Subsequent interventions tend to continue to foreground offending behaviour rather than complex social disadvantage or disability, mental health or alcohol and other drug support needs, leading to further, sustained engagement in the criminal justice system.

This phenomenon is horrifyingly demonstrated by a recent case in Australia where an Indigenous child with a cognitive disability and experiencing severe mental health distress was kept completely naked for days inside an adult maximum-security police “watch house” after being deemed a suicide risk². An outrageous breach of a child’s human rights and egregious set of circumstances that highlights the need for further consideration and advocacy regarding the rights of Indigenous persons with disabilities.

We strongly urge the Expert Mechanism to immediately apply its methods of work to study the rights of Indigenous people with disabilities, including that EMRIP, in partnership with the Special Rapporteur on the Rights of Indigenous Peoples, States and relevant non-government organisations host an Expert Forum to discuss the increasing criminalization of Indigenous people with a disability.

² <https://www.abc.net.au/news/2019-06-18/boy-held-completely-naked-in-prison-watch-house-for-days/11207734>