



COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Working Group on Indigenous Populations
Twenty-Third Session
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Item 4a: Review of Developments pertaining to the promotion and protection of the rights of indigenous peoples, including their human rights and fundamental freedoms – General Debate

**Intervention by Les Malezer
Foundation for Aboriginal and Islander Research Action**

Mr Chairperson,

This Working Group is already aware that on three occasions, in 1999 and 2000, the Committee on the Elimination of Racial Discrimination (CERD) found that Australia was in breach of the race discrimination Convention, because it enacted legislation which extinguished or otherwise impaired traditional Aboriginal title to land.

This serious breach of human rights by Australia has gone unnoticed and unaddressed by the United Nations' human rights system since the determinations by CERD. Consequently no action has been taken to address this breach of human rights and to alleviate the enormous burden upon the Aboriginal Peoples and Torres Strait Islander Peoples to exercise ownership and custody of their traditional lands, and to guarantee the survival of our children and descendants through our social cultural and economic development.

Mr Chairperson, the CERD requested that the Australian Government suspend its racist land laws and negotiate with our peoples for a satisfactory settlement. It noted at the time that the government was due to report again at the end of 2000, and therefore CERD awaited the next report of the Australian government. However, in a deliberate snub of the UN human rights system, the Australian Government chose to not appear again before the Committee until March 2005, four years after its appointment with the CERD committee.

CERD this year again confirmed in its Concluding Observations that the native title laws are racially discriminatory. It went further to express concern that the legal system, relying upon the discriminatory laws, was making it impossible for Aboriginal people to prove traditional title to land. The Committee expressed concern in other areas, including the fact that Australia did not have an entrenched guarantee against racial discrimination, and was alarmed by the pending abolition of the Aboriginal and Torres Strait Islander Commission.

The Committee has asked Australia to appear again before it, next year, to explain what it has done to improve our land rights situation. We have not had any response from the Australian Government which seems to be refusing to have dialogue with Indigenous Peoples or NGOs in Australia on this issue. To us, this means the government intends to continue to ignore the requirements of the International Convention on the Elimination of All Forms of Racial Discrimination. This action amounts to a form of torture against the traditional owners of the land, who continue to be oppressed, denied their dignity and kept in a state of powerlessness.

Mr Chairperson, the Aboriginal and Torres Strait Islander Commission in Australia was abolished this year. This Working Group is very familiar with the Aboriginal and Torres Strait Islander Commission and recognises that this Commission, established in 1990 by the Australian Government out of commitment to the concept of self-determination, in recognition of the past injustices to the Aboriginal peoples and in respect of Australia's obligations to the international human rights laws. Established under national legislation, ATSIC consisted over over 400 elected representatives on 35 regional councils, and a national board of 17 commissioners elected from the regional councils. The commission had statutory responsibility to protect the cultural heritage of Indigenous Peoples, the role to advise government on policies and legislation, and the capacity to dispense national programs for the social and economic development of Indigenous Peoples.

What did ATSIC do wrong? Mr Chairperson, ATSIC offended the newly elected government of ~~Australia~~ Australia by its very existence. The government immediately acted to remove \$450 million from the ATSIC budget and endeavoured to force ATSIC to operate under government direction rather than in accordance with self-determination.

When the government introduced the racist native title laws in 1998 ATSIC opposed those laws. The government only succeeded in implementing those laws by one vote, in a very contentious parliamentary debate. To prevent any legal challenge to the racist laws the government suspended the operation of the Racial Discrimination Act. So ATSIC took the complaint to the United Nations, in the form of the human rights treaty body, CERD. ATSIC also continued to support Aboriginal NGOs to participate in UN meetings including the WGIP and the Permanent Forum on Indigenous Issues. These are the reasons why ATSIC was abolished. As you can see, Mr Chairperson, our organisation is the only Indigenous organisation from Australia now participating in these meetings. We do so without any support and in defiance of the Australian Government.

Mr Chairperson, our organisation, along with ATSIC representatives, referred our concerns earlier this year to the Special Representative on Human Rights Defenders. We are not yet aware of the outcome. We hope that the situation will be addressed, through the appropriate UN mechanisms, but we are concerned that the UN is now too-highly politicised regarding human rights issues, and no country seems prepared to stand up for Indigenous Peoples. It is apparently not acceptable for a government to stand against racism directed towards the Indigenous Peoples and their lands, even though the International Convention on the Elimination of All Forms of Racial Discrimination is designed, under Articles 11, 12 & 13, for States – not NGOs - to bring forward and resolve complaints of racism by other States.

Further, it has been disappointing for us to discover that, despite the expert papers of this Working Group and the Sub Commission, there has been no resolution – not one resolution in twenty years - recognising the relationship between Indigenous Peoples and lands, by the Commission on Human Rights, the Economic and Social Council or the General Assembly. It is necessary, and it is time, for this oversight to be corrected.

Thank you, Mr Chairperson.