

End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia

Ladies and Gentlemen,

I would like to start by acknowledging the traditional owners of Australia, and pay my respects to their Elders, to their ancestors and the generations to come for they hold the memories, the traditions and future of Aboriginal and Torres Strait Islander peoples across the nation.

In my capacity as Special Rapporteur on the rights of indigenous peoples, I have visited Australia from 20 March to 3 April. I thank the Government for having invited me and for its good cooperation during the visit. During the fifteen day visit, I met high-level representatives of the Federal, State and Territory Governments, members of Parliament and the Senate, members of the Judiciary, the National Congress of Australia's First Peoples, the Australian Human Rights Commission and a broad range of Aboriginal and Torres Strait Islander organisations and representatives as well as civil society organisations working for their rights. I am also grateful for the continued support of the Office of the High Commissioner for Human Rights.

I held meetings in Western Australia, the Northern Territory, Queensland, the Australian Capital Territory, Victoria and New South Wales. I met first-hand with a number of indigenous communities, including in Broome, Darwin and the Torres Strait in order to hear directly from indigenous peoples about their concerns and priorities. I also visited two detention facilities, Bandyup Women's Prison in Perth and Cleveland Youth Detention Centre in Townsville, as well as the Children's Koori Court in Melbourne.

Among my priorities during the visit, I reviewed progress made in implementing recommendations made by my predecessor during his country visit to Australia in 2009. I have also considered the multitude of recommendations previously issued by human rights mechanisms on the need to address the rights of Aboriginal and Torres Strait Islanders, as well as the numerous recommendations made by for example Royal Commissions, the Australian Human Rights Commission, national and state inquiries, coroners' reports, etc. I find it disturbing that despite having been reiterated time and time again, many recommendations have not been implemented in practice.

I want to emphasise that during my visit I have been particularly impressed and inspired by the strength of spirit and commitment of Aboriginal and Torres Strait Islanders to develop innovative measures to support their own communities. The existence of indigenous led peak bodies in a wide range of areas provides valuable expertise. The Government could achieve significant progress in realising the rights of indigenous peoples if it consulted and worked much more closely with these



organisations. I have observed effective community led initiatives in a range of areas including public health, housing, education, child protection, conservation and administration of justice, which all have the potential of making immediate significant positive changes in the lives of Aboriginal and Torres Strait Islanders. The key and constructive role played by the national representative body for indigenous peoples, the National Congress of Australia's First Peoples, has been dismally disregarded by the Government. I regret that these organisations and initiatives remain unfunded or have had funding radically cut and urge the Government as a key priority to forge a new relationship with these organisations.

During the course of my visit, I have been provided with a large volume of information from Aboriginal and Torres Strait Islander organisations, civil society and Government representatives. Over the coming weeks, I will be reviewing this information in order to develop my report that I will present to the United Nations Human Rights Council in September. The purpose of the report is to assist Aboriginal and Torres Strait Islanders and the Government to find solutions to the ongoing challenges that indigenous peoples face in Australia. In advance of this report, I wish to provide some preliminary observations and recommendations based on what I have observed during my visit. These do not reflect the full range of issues brought to my attention, nor do they reflect all of the initiatives on the part of the Australian Government.

I would like to commence by noting some positive developments since my predecessor visited in 2009.

I was delighted to meet with the first ever female Aboriginal and Torres Strait Islander Social Justice Commissioner who has just taken over this important role today.

I was pleased to meet with the Joint Parliamentary Committee on human rights, which was set up in 2011 to review bills for human rights compliance. The Committee plays an important role in the protection of the rights of indigenous peoples. I urge the Committee to examine bills for compliance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and that the Government take into due account the recommendations of the Committee. I furthermore call on the Declaration to be specifically included in the definition of human rights in the Human Rights (Parliamentary Scrutiny) Act of 2011.

I was interested to meet with the ACT Aboriginal and Torres Strait Islander Elected Body which is currently the only such body in the country at the State/Territory level. The body meets on a regular basis with the ACT government to discuss policy and can also ask questions on budget. This model of engagement with indigenous communities should be strengthened and expanded to other states and territories.

When visiting the Torres Strait, I was impressed to see that the regional development plan developed by the Torres Strait Regional Authority is aligned with



the UNDRIP. This is an example of good practice which should be replicated across the country.

Self-determination and participation

When Australia officially endorsed the United Nations Declaration on the Rights of Indigenous Peoples in 2009, the Government stated its intent was to reset relations between Indigenous and non-Indigenous Australians and to build trust in order to work together to overcome the legacy of the past and shape the future together. Furthermore, in Australia's pledge as a candidate to the United Nations Human Rights Council 2018-2010, it committed to give practical effect to the United Nations Declaration on the Rights of Indigenous Peoples and the World Conference on Indigenous Peoples' Outcome Document.

Self-determination is a fundamental element of the Declaration whereby indigenous peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development (Art. 3 of UNDRIP) and have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions (Art. 4). The Declaration also sets out that indigenous peoples have the right to participate in decision-making in matters which affect their rights (Art. 18).

While Australia has adopted numerous policies aiming to address Aboriginal and Torres Strait socio-economic disadvantage, the failure to respect the right to self-determination and the right to full and effective participation in these is alarming. The compounded effect of these policies has contributed to the failure to deliver on the targets in the areas of health, education and employment in the Closing the Gap strategy and has contributed to aggravating the escalating incarceration and child removal rates of Aboriginal and Torres Strait Islanders.

Indigenous Advancement Strategy

The Indigenous Advancement Strategy initiated by the Government in 2014 entailed a radical cut of 534 million dollars to Aboriginal and Torres Strait Islander programmes and required competitive tender bids for organisations providing services to indigenous communities. The Strategy centralised programmes to the Department of the Prime Minister and Cabinet, and its implementation has been bureaucratic, rigid and wasted considerable resources on administration. As I have been travelling across the country, I have repeatedly been told about the dire consequences of the Indigenous Advancement Strategy.

The Government's Indigenous Advancement Strategy has effectively undermined the key role played by Aboriginal and Torres Strait organisations in providing services for their communities. Around 55% of the tenders were awarded to non-Indigenous organisations, which shifted implementation to mainstream organisations that are not run by Aboriginal and Torres Strait Islanders nor based in their communities. Aboriginal and Torres Strait Islander organisations were forced to close or drastically downsize and reduce the basic services they were providing to

their community in areas of health, housing and legal services. Non-indigenous organisations that fly in, fly out of communities have executed projects in culturally inappropriate ways and undermined capacity building in local indigenous led organisations.

The consequences of this strategy implementation has had a devastating impact on Aboriginal and Torres Strait Islander organisations and dented their trust in the Government. It runs contrary to the principles of self-determination and participation and the Government's publicly expressed commitment to do things *with* Aboriginal and Torres Strait Islander people, rather than do things to them. During my meeting with the Minister for Indigenous Affairs, he recognised the importance of indigenous led organisations being responsible for local programme implementation. I urge that this commitment be translated into practice as an utmost priority.

Even more disconcerting is that numerous representatives of different indigenous organisations have told me how the current policy climate has blocked their voice and of the reprisals levied against them in the form of exclusion from consultations on key policies and legislative proposals. I am deeply troubled by information indicating that funding cuts have specifically targeted organisations that undertake advocacy and legal services and that specific provisions have been inserted in funding agreements to impede advocacy work and stifle their freedom of expression.

Symbolically, the Government's explicit defunding since 2014 of the national representative body for indigenous peoples, the National Congress of Australia's First Peoples, runs counter to the Government's stated commitment to work with indigenous peoples. The establishment of the National Congress in 2010 followed extensive consultations among indigenous peoples and is in accordance with Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples. I also wish to recall that the Government publicly committed to supporting the National Congress in the context of the Universal Periodic Reviews of the Human Rights Council. Support for the National Congress is crucial to prove the Government's commitment to advancing the rights of Aboriginal and Torres Strait Islander and I call upon the immediate re-establishment of funding for the National Congress and that regular meetings between Congress and Government be held.

I am aware that the Government, in a parallel move, established an Indigenous Advisory Council (IAC), which reports directly to the Prime Minister. However, this body is not representative of Aboriginal and Torres Strait Islander peoples as its membership is selective and appointed by the Prime Minister. I encourage the Government to ensure that the Indigenous Advisory Council meets regularly with the National Congress and the Social Justice Commissioner of the Australian Human Rights Commission.

Closing the Gap and health

The Closing the Gap targets on health, education and unemployment were agreed upon by the Council of Australian Governments (COAG) and enjoy bi-partisan



support. Each year since the National Apology 2008, the Prime Minister has delivered a Closing the Gap Statement in Parliament and tabled a report on progress. The most recent report released in February 2017 stated that only one of the seven targets, to halve the gap in Year 12 attainment rates, is on track. The Government will not meet targets to close or reduce the gap on the remaining six targets, including on life expectancy, infant mortality, education and employment. Aboriginal and Torres Strait Islander people continue to die 10 years younger than other Australians, with no major improvements being recorded.

Social and cultural determinants explain almost one third of the health gap between indigenous and non-indigenous people. Behavioral risk factors are said to be responsible for only 11% of the gap. In 2015, nearly 45 % of indigenous peoples reported having a disability or long-term health condition. Understanding the impacts of inter-generational trauma and racism are essential factors in order to effectively address the health situation of indigenous peoples.

During my visit, I was told about inequalities in the resources available for rural and remote service delivery and of cuts to community managed primary health care, which play an essential role for example in the prevention of chronic diseases.

The Government has taken steps to improve the health of indigenous peoples through the National Aboriginal and Torres Strait Islander Health Plan 2013-2023. In order for the next iteration of the implementation plan for the Health Plan to be successful, the Government must value and prioritise the leadership of Aboriginal and Torres Strait Islander people. The work force of Aboriginal medical professionals has expanded significantly in the past decade and has developed valuable expertise. Aboriginal Community Controlled Health Services have achieved remarkable success in delivering culturally appropriate services. Strengthened support for such Aboriginal and Torres Strait Islander led services is crucial in order to close the gap in relation to key health inequalities faced by indigenous peoples. In order to sustain the long-term impact of such initiatives, longer term funding agreements are necessary.

Aboriginal and Torres Strait Islanders told me about feelings of powerlessness, loss of culture and lack of control over their lives. Suicide rates among Aboriginal and Torres Strait Islander people are escalating at a shocking rate and are double that of non-Indigenous Australians. The current situation has been described as a suicide epidemic. While I was in the Kimberley, I learnt about youth developed and driven projects to prevent suicide among Aboriginal adolescents and strongly urge that such initiatives be supported and replicated. Adopting a holistic approach to social and emotional well-being, which recognises the need for cultural connection, is key to achieve sustainable improvement in health indicators. I encourage the Government to finalise and resource the National Plan for Aboriginal and Torres Strait Islander Mental Health and Social and Emotional Wellbeing.

I further note that there is a clear lack of adequate and culturally appropriate health services in detention facilities and I call on this situation to be ameliorated by the targeted recruitment of Aboriginal health professionals.

In order for the Closing the Gap targets to be achieved, they need to include a comprehensive approach and include specific targets to reduce of detention rates, child removal incidence and violence against women. I urge the COAG to recommit to the Closing the Gap targets, to agree on such additional targets and to commit to coordinated action through renewed national partnership arrangements between the Commonwealth and State jurisdictions. Progress should continue to be monitored on an annual basis by the Federal Parliament and by indigenous peoples themselves through community-based monitoring systems.

Income management

The application of compulsory income management was a key feature of the Northern Territory Intervention and its successor Stronger Futures legislation. The vast majority affected by these measures are Aboriginal and Torres Strait Islanders. I wish to recall that my predecessor raised significant criticism against the impact of the Northern Territory Intervention during his visit to Australia in 2009 and specifically of the Government's suspension of the Racial Discrimination Act, which removed legal protections for Aboriginal peoples in the Northern Territory.

While the Racial Discrimination Act was reinstated in December 2010 and legislation was revised and renamed Stronger Futures in 2012, it continues to apply punitive measures. I was told that these stigmatise Aboriginal communities by subjecting them to compulsory income management, forced participation in work for the dole schemes that pay individuals far less than an average reward rate as well as fines and welfare reductions for parents whose children are truant in school. As part of the compulsory income management in the Northern Territory, welfare payments are partially quarantined and provided through a BasicsCard, which restricts people's purchases to specific stores and items. I was told by users of the Basicscard that it causes humiliation for example by forcing people to queue separately in shops.

The administrative costs of running the compulsory income management are very significant and I was informed that this has drained financial resources, which could have been better invested in improving housing conditions. While in Darwin, I visited Aboriginal town camps and was appalled by the dismal conditions in these, in particular the lack of basic sanitation services.

The Parliamentary Joint Committee on Human Rights in its 2016 Review of Stronger Futures measures has described compulsory income management as an 'intrusive measure that robs individuals of their autonomy and dignity and involves a significant interference into a person's private and family life'. While in the Northern Territory, I was told that these measures do little to assist in supporting self-esteem and a sense of self-worth. I urge the Government to act upon the Parliamentary Joint Committee on Human Rights recommendations in relation to the Stronger Futures measures.

In a parallel development, I note that voluntary income management has been introduced in eight 'Empowered Communities' where consultations have taken place and there has been specific requests from the community to introduce voluntary income management. However, unlike under the compulsory income management



scheme in the Northern Territory, local indigenous communities have actively participated in this policy design, the impact of which has yet to be assessed.

Legislation

Constitutional recognition

I commend the bi-partisan support for ensuring constitutional recognition of Aboriginal and Torres Strait Peoples and for the ongoing consultation process with indigenous representatives through a series of dialogue meetings across the country. I was fortunate to briefly take part in the consultation in Cairns. Constitutional recognition of indigenous peoples and their protection against racial discrimination are of fundamental importance. While recognising the complexities constitutional change entail, I do however note that this initiative has been pending since 2011 and urge the Government to use all available measures and renew efforts to ensure that the process advance and not linger in limbo.

During my visit, I was informed about the Victorian, South Australian and Northern Territory Governments' efforts to discuss a treaty with Aboriginal peoples. I encourage the Federal Government to explore the possibility of a national treaty with Aboriginal and Torres Strait Islander peoples.

Racial discrimination

As I have travelled across the country, I have found the prevalence of racism against Aboriginal and Torres Strait Islander Peoples deeply disturbing. This manifests itself in different ways, ranging from public stereotyped portrayals of them as violent criminals, welfare profiteers and poor parents and to discrimination in the administration of justice. Aboriginal doctors and patients told me about experiencing racism within the medical sector. Institutional racism has been identified in the Government's National Aboriginal and Torres Strait Islander Health Plan (2013-2023) and its implementation plan as a significant barrier in the delivery of health care. There are also more subtle elements of racism resulting from the failure to recognise the legacy of two centuries of systemic marginalisation. The mainstream education system contains inadequate components on Aboriginal and Torres Strait Islander history and the impact of colonisation. The non-recognition of the socio-economic exclusion and the inter-generational trauma of indigenous peoples sadly continues to undermine reconciliation efforts.

I furthermore regret that while I was conducting my official country visit, the Australian Government decided to pursue amendments to section 18C of the Racial Discrimination Act of 1975. I am disheartened by the fact that the Government chose to do this on the annual International Day for the Elimination of Racial Discrimination of 21 March. The proposed changes of the provisions involved removing the terms 'offend, insult, humiliate' and replacing them with the term 'harass' and would also have inserted the notion of the 'reasonable member of the Australian community' as the standard by which the acts would be judged, rather than by members of the

affected community. The process was undertaken without due consultation and notably indigenous organisations were not among those invited to comment ahead of the Senate debate on the draft bill. The draft bill was defeated in the Senate on Thursday night last week and I sincerely hope that this marks the end of the matter.

While recognising the need to balance the right to freedom of expression with the protection against racial discrimination, I must underline that the debate on this issue is hugely damaging for the trust indigenous peoples have in Government and sends the wrong signal to the public and the media that racial vilification is permissible.

Human Rights Act

Australia needs a more comprehensive human rights legislative framework which would also provide stronger protection for the rights of indigenous peoples. In view of the ongoing difficulties in harmonising international human rights obligations in Federal and State/Territory legislation, I urge consideration to be given to the inclusion of a comprehensive bill of human rights within the Federal Constitution and to the elaboration of a Human Rights Act which includes due recognition of the provisions in the United Nations Declaration on the Rights of Indigenous Peoples.

I note as positive that developments at State and Territory level are leading the way, notably through the Human Rights Act 2004 (ACT) and the Charter of Human Rights and Responsibilities Act 2006 (Victoria). I was encouraged to hear that the ACT Human Rights Act was recently amended to insert a specific provision to protect the cultural rights of Aboriginal and Torres Strait Islanders.

Incarceration and the administration of justice

One main focus of my mission has been on justice and detention issues. The incredibly high rate of incarceration of Aboriginal and Torres Strait Islanders, including women and children, is a major human rights concern. The figures are simply astounding. While Aboriginal and Torres Strait Islanders make up only 3% of the total population, they constitute 27% of the prison population, and much more in some prisons. The proportion of Aboriginal and Torres Strait Islanders continues to rise and is expected to reach 50% of the prison population by 2020. The reasons for the overrepresentation of Aboriginal and Torres Strait Islanders in Australian prisons are manifold. Imprisonment is the end result of years of dispossession, discrimination and trauma faced by Aboriginal and Torres Strait Islanders populations over the generations.

While the historical and socio-economic determinants cannot be ignored, current laws and policies have also contributed to the increase in the incarceration of Aboriginal and Torres Strait Islanders. Even though they are not specifically targeted at these populations, they have had a disproportionate impact on them. For instance, paperless arrests laws in the Northern Territory, which allow the police to detain a person for several hours if they have committed or are suspected to have committed



a minor offence, have led to a dramatic increase in the number of Aboriginals in police custody. Bail laws and policies have become more restrictive in most States and Territories of Australia and have led to a significant increase in the number of Aboriginal and Torres Strait Islanders held on remand. Mandatory sentencing laws also need to be reviewed. The current inquiry by the Australian Law Reform Commission into the incarceration of Aboriginals and Torres Strait Islander peoples should help identify laws which need to be amended to reduce such incarceration.

I am also concerned that funding for legal services for Aboriginals and Torres Strait Islanders has been reduced over the last few years and may face further cuts. The reduced funding has had and will continue to have a major impact on Aboriginal and Torres Strait Islander peoples who have higher rates of unmet legal needs. High quality and culturally competent legal assistance services are critical to ensure access to justice for Aboriginal and Torres Strait Islanders and to reduce imprisonment. I therefore recommend that all cuts to Aboriginal and Torres Straits Islander legal services, including those which will take effect later this year, be immediately reversed.

Since the 1991 Royal Commission into Aboriginal Deaths in Custody, the number of such deaths has not declined. Some are caused by the negligence of those supposed to care for persons in custody. This was the case for Ms. Dhu who died in police custody in Western Australia in August 2014. I met with the Coroner's Court of Western Australia which conducted an inquest into her death and made some important recommendations which should be implemented as a matter of priority in order to prevent similar deaths in custody. Since the State Coroner does not examine issues of civil or criminal liability, it is still important to investigate such matters, including in this case. More generally, I strongly urge the Government to support the adoption of Custody Notification Services throughout the country, as they are currently only available in New South Wales and the Australian Capital Territory.

Ms. Dhu was in police custody for fine defaulting. In Western Australia, a growing number of Aboriginal women find themselves unable to pay fines and are taken into custody as result. I visited Bandyup prison, a women's prison in Perth, where the proportion of Aboriginal women has reached 48% of all detainees. I was particularly concerned to hear that some of the Aboriginal women have nowhere to live when they come out of prison. As a result of incarceration, many women also struggle to keep ties with and to regain custody of their children. The laws on fine defaulting are another example of legislation having a disproportionate impact on Aboriginal women. More generally, the rate of incarceration of Aboriginal women and girls is growing fast across the country. As mentioned by the Special Rapporteur on violence against women, its causes and consequences during her recent visit to Australia, many of these women are victims of domestic violence and sexual abuse. Such dimension should therefore be addressed as part of efforts to reduce rates of imprisonment of Aboriginal women and girls.



Even more disconcerting is the alarming rate of incarceration of Aboriginal and Torres Strait Islander youth. I visited Cleveland Youth Detention Centre in Townsville, Queensland, where Aboriginal and Torres Strait Islander children constitute 95% of the children detained there. Many of the children had already served several sentences at the same Detention Centre. Many had also been going from care into detention. I was concerned to hear that there were still children aged 17 being held in adult prisons, although preparations are being made to transfer them to Cleveland later this year. I strongly encourage Australia to withdraw its reservation to the Convention on the Rights of the Child and ensure that no children are held together with adults.

Across Australia, there are far too many Aboriginal and Torres Strait Islander children in detention. These children have committed offences. Nevertheless, these are mostly relatively minor and I was informed by several sources, including judges, that in the majority of instances the initial offences were non-violent. It is completely inappropriate to detain these children in punitive, rather than rehabilitative, conditions. They are essentially being punished for being poor and in most cases, prison will only aggravate the cycle of violence, poverty and crime. I found meeting young children, some only twelve years old, in detention the most disturbing element of my visit.

As already recommended by the Committee on the Rights of the Child, I urge Australia to increase the age of criminal responsibility. Children should be detained only as a last resort, which is not the case today for Aboriginal and Torres Strait Islander children. Detention of Aboriginal and Torres Strait Islander children has become so prevalent in certain communities that some parents see it as an achievement that none of their children has been taken into custody so far. Much more should be done to ensure that the detention of children remains the exception, rather than the norm.

If Aboriginal and Torres Strait Islander children are detained, they should be treated with respect and dignity. As demonstrated by the ongoing work of the Royal Commission into youth detention in the Northern Territory, there have been serious abuses committed against Aboriginal children in custody. In this regard, I welcome the Government's recent announcement that Australia will ratify before the end of this year the Optional Protocol to the Convention against Torture (OPCAT), which requires the establishment of a national system of independent and regular monitoring of all places of detention. I visited the Office of the Inspector of Custodial Services in Western Australia which offers a good model and should be replicated in other states and territories, with an added mandate to cover police detention.

In both Bandyup prison and Cleveland Youth Detention Centre, I noted that those on pretrial detention were held together with convicted persons, which raises serious concerns under Article 10 (2) of the International Covenant on Civil and Political Rights.



In light of the high proportion of Aboriginal and Torres Strait Islanders in police custody and prisons, I recommend that more efforts be made to recruit Aboriginal and Torres Strait Islander staff. In addition, police and prison staff should be trained in cultural sensitivity.

The focus urgently needs to move away from detention and punishment towards rehabilitation.

Furthermore, locking up people costs vast amounts of money to tax payers. For instance, I was told that detaining a young person costs between 170,000 and 200,000 AUD per year. Such funds should be allocated towards prevention and reintegration. In this regard, I understand that there have been a number of local diversion initiatives, often referred to as justice reinvestment programs, designed to address the causes of crime in specific communities. I visited Redfern's 'Clean Slate Without Prejudice Program' which is run by an Aboriginal organisation in collaboration with the police and has contributed to a significant drop in the inner-Sydney suburb's crime rate over the last few years. I encourage the Government to conduct a comprehensive assessment of existing initiatives and replicate, while adapting these community led initiatives to local conditions, in targeted areas throughout the country.

I also note the recent report 'Prison to Work', endorsed by COAG in December 2016, which provides valuable proposals for reintegration and places emphasis on the need for enhanced and culturally appropriate services, notably in the areas of employment, housing and welfare, following prison release in order to reduce recidivism. I encourage the Federal and State/Territory Governments to take concrete action and allocate funding to follow-up on these recommendations.

Another justice initiative which I visited and was impressed with is the Children's Koorie Court in Melbourne. The Children's Koorie Court involves the participation of Elders and Respected Persons from the Koorie community in the court process and aims to reduce imprisonment and recidivism. The results are so far encouraging and I strongly recommend the use of such process to be extended to other jurisdictions.

High rates of incarceration have plagued many Aboriginals and Torres Strait Islander communities; it was even described to me as a tsunami affecting indigenous peoples with devastating consequences for concerned individuals and communities. The Federal Government has recognised that incarceration is a national concern by requesting in October 2016 that the Australian Law Reform Commission conduct an inquiry into incarceration rates of Aboriginal and Torres Strait Islander peoples. However, as long as the issue of over-representation of indigenous peoples in custody is not addressed in practice and continuously monitored, there will only be limited progress in closing the gap in the areas of health, education and employment. I therefore strongly recommend the inclusion of targets on justice in the Closing the Gap strategy and the development and implementation of a national plan of action to address these issues.



Child removal

A particular concern that arose during my visit was child removal practices. The prolonged impacts of intergenerational trauma from the Stolen Generation, dispossession and entrenched poverty continue to inform Aboriginal and Torres Strait Islanders' experiences of child protection interventions. In 1996, the year of the 'Bringing Them Home' Report, Aboriginal and Torres Strait Islander children constituted 20% of children in out of home care. In 2016, this figure increased to 35% with Aboriginal and Torres Strait Islander children nearly ten times more likely to be in out of home care. Aboriginal children are also seven times more likely than non-Indigenous children to be in contact with the child protection system or to be subject to abuse or neglect.

The Aboriginal and Torres Strait Islander Child Placement Principle was first implemented in 1983 with the purpose of enhancing and preserving Aboriginal children's sense of identity through the prevention of out-of-home care, reunification of children with their families, ensuring culturally connected placements, and enabling the participation of Aboriginal and Torres Strait Islander families and communities in child protection decision making. Despite the existence of this Principle, the incidence of indigenous children in out of home care is rapidly increasing and has reached critical levels. With only 66 per cent of Aboriginal and Torres Strait Islander children with child protection measures being placed within their family, kin and community in 2016, Australia has failed to comply with these elements.

Greater engagement with the Aboriginal and Torres Strait Islander family and community in decision making processes around child protection is crucial. I recommend that community-led early intervention programs which invest in families be prioritised and supported in order to prevent children from being in contact with the child protection system in the first place.

Given that the number of Aboriginal and Torres Strait Islander children in out of home care is predicted to triple by 2035, further measures must be put in place. I recommend that an Aboriginal Children's Commissioner be established in each State and Territory and a national coordinating entity be set up. I call on the Government to develop a national strategy to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.

Stolen generations and reparation

This year marks the 30th anniversary of the 'Bringing Them Home, the Stolen Children' report which concluded that the forced removal of Aboriginal and Torres Strait Islander children was genocidal and constituted a crime against humanity for which reparation is due under international law. In this regard, I welcome the ongoing Stolen Generations Reparations schemes in New South Wales, South Australia and the reparations already paid in Tasmania. I wish to reiterate the recommendation of the Human Rights Committee that a comprehensive national mechanism be adopted

to ensure that adequate reparation, including compensation, is provided to the victims of the Stolen Generations policies.

Violence against women

Aboriginal and Torres Strait Islander women endure unacceptable levels of disadvantage that has been informed by a historical context of intersecting, systemic forms of discrimination. Discrimination against Aboriginal and Torres Strait Islander women exists on the grounds of gender, race and class and is structurally and institutionally entrenched. This discrimination coupled with the lack of culturally appropriate measures to address the issue, fosters a disturbing pattern of violence against Aboriginal and Torres Strait Islander women. I was informed that Aboriginal and Torres Strait Islander women are reportedly 10 times more likely to die of violent assault; and 34 times more likely to be hospitalised as a result of violence-related assault compared to non-indigenous women.

These statistics are not reflective of the actual numbers due to high underreporting rates, estimated at 90%. Underreporting is related to the issue of distrust of the current system; highlighting the importance of Aboriginal Community led programs where women can regain trust and seek out culturally safe service provision. In this regard, I am troubled by information indicating that some Aboriginal Family Violence Prevention Legal Services have to turn away 30 to 40 % of women seeking assistance due to lack of resources. I recommend that additional financial support to these legal services be provided.

Family violence is an intersectional concern that overlaps with homelessness, poverty, incarceration, health and removal of children. If not tackled comprehensively, family violence will remain cyclical and undermine efforts to address related issues.

Last year, the Government launched the Third Action Plan to reduce family violence which lists among its priorities Aboriginal and Torres Strait Islander women and their children. I concur with the Special Rapporteur on violence against women that a specific National Action Plan on violence against Aboriginal and Torres Strait Islander women is need and should be developed in close consultation with indigenous women and other relevant stakeholders.

Land rights and native title

As with other indigenous peoples around the world, land rights are central to the cultural identity, survival and economic development of Aboriginal and Torres Strait Islanders. This year marks the 25th anniversary of the landmark *Mabo* decision which held that the common law of Australia recognizes native titles held by indigenous peoples to their traditional lands. The decision led to the adoption of the Native Title Act of 1993 which sets out the processes for determining native title rights and dealings on native title lands. Since then, there has been significant progress in determining native titles. The rights and interests of Aboriginals and Torres Strait Islanders in land are formally recognised over around 40 per cent of the land area of

the country. A further 27 per cent of Australia is subject to native title claims, processes which are extremely protracted.

In order to succeed, Native Title claimants must prove that they have an uninterrupted connection to the area being claimed, and that they have continued to practice their traditional laws and customs, an extraordinary challenge in the context of Australia's historical forced removal and dispossession policies. I furthermore note the complex system with multiple and overlapping legal regimes applicable to native title claims at Federal and State level and reiterate my predecessor's call for a comprehensive review of such laws, with a view to align them to UNDRIP, which does not contain norms requiring proof of continuous occupation of land.

Aboriginal and Torres Strait Islanders have been negotiating Indigenous Land Use Agreements (ILUAs) for years in order to, for instance, resolve native title claims or benefit from development activities carried out on their lands. While some ILUAs are controversial, others are not and have brought important economic benefits for indigenous communities.

The recent *McGlade* decision on 2 February 2017 has created some uncertainty by requiring that in order to be valid, ILUAs should be signed by all native title claimants. The Government has reacted, just a few days after the decision, by proposing to reform the Native Title Act. If passed, the new legislation would sustain existing agreements which have already been negotiated and registered, even though they were not signed by all native title claimants.

In this regard, I would like to recall that the principle of free, informed and prior consent does not require the consent of all. Having said that, there are many different types of agreement being negotiated and some agreements can have far reaching consequences on native title rights and even lead to the surrender of all native title (as in the *McGlade* case). I believe that native title law reform is too important to be rushed through, as seems to be the case, and should be subject to proper consultations with all concerned stakeholders.

I was encouraged to hear about the joint management of protected areas for conservation in several parts of the country, including in the Kimberley area which I visited. The creation and joint management of these protected areas allow traditional owners to continue to enjoy their customary practices, while providing conservation as well as direct employment opportunities for Aboriginal people.

During my visit, I was informed about successful native title claimants wishing to declare their lands protected areas but are facing administrative obstacles in doing so. I encourage the authorities to take steps to facilitate the extension of protected areas when requested by Aboriginal and Torres Strait Islander Peoples.

The Redfern statement

The Redfern Statement was elaborated and launched in June 2016 by Aboriginal and Torres Strait Islander peak organisations from all sectors. It lays out six key priority



areas and recommendations and covers issues ranging from engagement, health, justice, violence prevention, disability, children and families and calls for a new dialogue with the Government to address some of the major challenges facing Aboriginal and Torres Strait Islander peoples.

I urge the Government to use this momentum to reset the relationship with the First Nations of Australia and in a collaborative manner construct a new joint pathway to the future.
