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UN Human Rights Standards and Indigenous Australians

In June 2006, after two decades of consultation with Indigenous peoples and negotiation with delegates from around the world, the United Nations Human Rights Council passed the *UN Declaration on the Rights of Indigenous People*. This document will go before the UN for adoption in late 2006 and outlines fundamental responsibilities that national governments have towards Indigenous peoples. Amnesty International has described it as a 'critical turning point in global efforts to support the human rights of Indigenous peoples' *(AmnestyUsa.org, 30/7/06.)* Here we examine some recent developments in Indigenous Affairs in Australia against the human rights standards set by the UN.

Self-determination

The declaration is based on the principle of self-determination: the idea that Indigenous peoples maintain their sovereignty and independence from colonising powers. As a crucial part of self-determination, the declaration outlines Indigenous peoples' rights to self-government. Article 33 states that 'Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.'

In 2004 the Federal Government dismantled the Aboriginal and Torres Strait Islander Commission (ATSIC), a body of representatives elected directly by Aboriginal communities. Prime Minister John Howard stated that 'we believe very strongly that the experiment in separate representation, elected representation, for indigenous people has been a failure.' *(SMH, 16/4/04)* Alternatively, Dr. William Jones, a Worimi man and the ATSIC Social Justice Commissioner claimed that 'the abolition of the nationally elected representative Indigenous body will ensure that the government will only have to deal with Indigenous people without any reference to the stated aspirations and goals of Indigenous peoples.' *(HREOC, 16/4/06)* While ATSIC was replaced by the National Indigenous Council (NIC), comprising of Aboriginal people appointed by the government, Jackie Huggins, the Indigenous co-chairperson of Reconciliation Australia has argued that in the absence of ATSIC there now exists a 'void in the voice of Aboriginal people at a national level.' *(SMH, 1/06/06)* The government claimed it was acting in the interests of 'better outcomes for the first Australians' *(SMH, 28/05/04)*. However the lack of a national body of elected Indigenous representatives infringes the principles of self-determination and Indigenous peoples' human rights.

The Rights of Indigenous Children

The UN declaration sets guidelines for governments to ensure Indigenous children, like all children, are protected from abuse. It also establishes safeguards against the actions of governments, recognising that historically, colonising governments have been key *perpetrators* of Indigenous child abuse. Article 22 demands that governments work in close partnership with Indigenous peoples to protect children against violence and discrimination. Article 7 states that Indigenous children should never be forcibly removed from their families while Article 18 demands that Indigenous peoples have the right to participate in matters involving the rights of their children.

In Australia recently, widespread public recognition of the alarming level of sexual abuse experienced by Indigenous children in some communities has surfaced again. In 1999 an Aboriginal and Torres Strait Islander Women's Task Force on Violence in Queensland produced a comprehensive report detailing such violence and called for urgent action from governments and the wider community. Setting out a comprehensive set of solutions for the 'immense task ahead,' the report aimed to give 'Indigenous women living in violent and dysfunctional environments voices to facilitate change.' However little government action has followed, leaving the authors wondering 'Is anybody

listening?' *(The Aboriginal and Torres Strait Islander Women's Task Force* on Violence Report, 1999: 220)

In the wake of the media focus on sexual abuse the government failed to consult the available wealth of Indigenous expertise about the abuses suffered by their children. Instead, Federal Health Minister Tony Abbott issued calls for a 'new form of paternalism.' *(AM, 21/6/06)* While an intergovernmental summit was held in Canberra in July 2006 to address the issue, Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner criticised the Federal Government for leaving Indigenous leaders out of a process to determine the future of their own children. *(The Australian, 28/7/06.)* Dr Mukesh Haikerwal, the president of the Australian Medical Association expressed disappointment at the 'predictable outcomes based on the Summit's limited attendance and narrow focus on law and order issues.' *(AMA, 27/06/06)*

Indigenous leaders have continued to argue that levels of abuse are indicative of continuing dysfunction and years of policy neglect. The Australian Federal Government falls dismally short of protecting these children from violence. Further by excluding Indigenous communities from decision-making about their own children, the policy directions taken continue the processes of colonisation, compounding human rights abuses against Indigenous children.

Land Rights

The declaration identifies land rights as a crucial component of the livelihood of first peoples of territories who have not conceded their ownership of land. Article 25 & 26 enshrines Indigenous peoples rights to occupy their land and resources according to Indigenous cultural practices while Article 28 demands rights to restitution or compensation for land that has been taken without the consent of Indigenous communities. In addition, Article 32 outlines that prior to making decisions that will affect Indigenous peoples' lands and territories, 'States shall consult and cooperate in good faith with the Indigenous people concerned through their own representative institutions in order to obtain their free and informed consent.'

In August, 2006, a series of amendments to the *NT Aboriginal Land Rights Act 1976* (ALRA) were passed in Federal parliament in Australia without consultation with the Aboriginal people affected. These amendments weaken the power of communities in the Northern Territory (NT) to veto mining exploration on their land while giving governments greater power to decide how royalties paid for mining on Aboriginal land can be used by Aboriginal communities. Significantly, Land Councils, the organisations responsible for negotiating with mining companies and governments on behalf of Aboriginal people are no longer eligible for funding from these royalties. Instead, mining royalties may be directed to providing basic services like health and education that are normally provided by the state. Furthermore with the view to encourage Aboriginal people to replace communal land ownership with private home ownership Aboriginal people will be encouraged to lease their land to individuals, businesses and governments on 99-year-leases.

While the government has suggested that these changes will ensure that funds are to ensure benefit to the whole community, critics have suggested that the changes will place pressure on Indigenous communities to sell their land to secure funding for schools and health care *(Altman, NewMatilda.org, 21/7/06.)* James Ensor, director of public policy at Oxfam condemned the amendments, suggesting that 'basic services such as education and health care are the right of all Australians and should not be used as bargaining chips to pressure traditional land owners to hand over their land on 99-year leases.' *(Oxfam.org.au 16/8/06)*

These significant changes to Indigenous land rights significantly weaken land rights while threatening the economic viability of Indigenous decision-making structures. The amendments to the ALRA deny Aboriginal communities their inalienable rights to land and violate a key component of human rights of Indigenous people set out by the UN.

The current policies of the Federal Government, sadly, seem to be continuing the devastating processes of colonisation. W. G. Sanders from the Centre for Aboriginal Economic Policy Research (CAEPR) has argued, in the 21st century, the continuation of colonisation in Australia is out of step with international efforts to 'de-colonise': A process that builds respectful partnerships between governments and Indigenous peoples. *(Howard Decade Conference, 3/3/06)* The *UN Declaration on the Rights of Indigenous People* confirms that Australia's Government is also out of step with international law.

Just Action

- Download the UN Declaration from the ERC website
- Keep up to date with developments in Indigenous Affairs by reading the National Indigenous Times.
- Write to your local member of Parliament to urge governments to adopt the *UN International Declaration of the Rights of Indigenous people*.
- Discuss the Human Rights of Indigenous Peoples in classrooms, with your colleagues, church groups, reconciliation groups and your family.
- Get involved with ReconciliAction (reconciliaction.org.au) or AnTAR (antar.org.au)

Full references on the ERC website

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