

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the rights of indigenous peoples

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolutions 19/6, 24/5, and 24/9.

In this connection, we would like to bring to the attention of your Excellency's Government information that we have received concerning **the Federal Government's discontinuing of funding for basic services in remote aboriginal communities, which may affect more than 100 such communities in the state of Western Australia.**

According to the information received, for two years the Federal Government has been transitioning the responsibility for funding essential services in remote aboriginal communities to the states. The premier of Western Australia recently announced that once federal funding ends in July, the state will discontinue funding basic services to between 100 and 150 of the 275 remote communities in Western Australia.

The Western Australian Government has indicated that it is not economically viable to continue supporting these remote communities, given their low population and the high costs in providing them with basic services, including power, water, schools and health services. The Prime Minister of Australia stressed that aboriginal peoples living in remote areas had made a "lifestyle choice" and that it should not be up to the taxpayers of Australia to financially support such choice.

An estimated 12,113 people live in the 275 remote communities in the state of Western Australia, which range in size from a handful to several hundred residents.

Concern is expressed that the Western Australian Government has provided very little information about how these decisions will be implemented, and whether the

affected aboriginal people will be involved in decision-making and what alternatives will be provided to those affected. The communities that will be affected have not been named. Concerns have been raised that ending support to basic services in these communities will cause great distress to those resident in these locations and severely negatively impact their lives, cultures, heritage and well-being.

In connection with the above alleged facts and concerns, please refer to the Reference to international law Annex attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate whether your Government has undertaken an impact assessment on the rights of Aboriginal peoples of the decision to terminate support to basic services, in particular their rights to water, housing, education as well as their cultural rights?
3. What communities will be affected and in accordance with what criteria?
4. What alternatives will be provided to those affected and are there plans, for example, to address and cater for the needs of those that will come into towns and cities following the termination of basic services in their communities?
5. How will the Government ensure that the human rights of indigenous peoples will be safeguarded during this process? In particular, how does the Government intend to comply with article 10 of the Declaration regarding the requirement of obtaining the consent of indigenous peoples prior to their removal from their traditional lands and territories?

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Farida Shaheed
Special Rapporteur in the field of cultural rights

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Government to the Declaration on the Rights of Indigenous Peoples, which has been endorsed by your Government. Recognizing the centrality of the traditional lands of indigenous peoples to their lives and cultures, article 10 of the Declaration affirms that “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

We would also like to reiterate the observations made by predecessor of the Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya, following his visit to Australia in 2010. On the issue of remote communities, Professor Anaya noted that “[w]hile there are complexities involved in delivering services such as health, schooling, employment and housing to remote areas, special efforts are required to ensure that indigenous peoples living in these areas [...] can enjoy the same social and economic rights as other segments of the Australian population, without having to sacrifice important aspects of their cultures and ways of life” (A/HRC/15/37.Add.4, para. 66). The former Special Rapporteur also described the social benefits of homelands, including in terms of better health outcomes and substance abuse rehabilitation.

We would also like to draw the attention of your Excellency’s Government to article 15 paragraph 1 (a) of the International Covenant on Economic, Social, and Cultural Rights, to which Australia is a party, relating to the right of everyone to take part in cultural life. The Committee on Economic, Social and Cultural Rights, in its 2009 General Comment 21 on the right to take part in cultural life (E/C.12/GC/21), stressed that States parties should take measures to guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life, which may be strongly communal or which can only be expressed and enjoyed as a community by indigenous peoples. The strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity. States parties must therefore take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources (para. 36). Furthermore, States parties must also respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life (para. 49 d). States parties have a core minimum obligation to allow and

encourage the participation of indigenous peoples in the design and implementation of laws and policies that affect them (para. 55 e).

We would highlight that the Special Rapporteur on the rights to freedom of peaceful assembly and of association, in report A/HRC/26/29, noted that indigenous peoples are a group at risk based on their level of marginalization in the exercise of the rights to freedom of peaceful assembly and of association (para. 10). Moreover, the expert noted that various international law instruments articulate principles that States should adopt in order to achieve non-discrimination and equality, such as the Declaration on the Rights of Indigenous Peoples, which notes, in Article 15, that States should combat prejudice, eliminate discrimination and promote tolerance, understanding and good relations among indigenous peoples and all other segments of society. International human rights instruments, that protect the rights of particular groups, recognize directly or indirectly the rights to freedom of peaceful assembly and of association for those groups. In that regard the Special Rapporteur notes that Declaration on the Rights of Indigenous Peoples, entitles, inter alia, to the right to participate fully in the political, economic, social and cultural life of the State, and to determine their own identity in accordance with their customs and traditions.