

## Mandate of the Special Rapporteur on the rights of indigenous peoples

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolution 33/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the Australian Government's decision to withhold funding necessary for the effective operation of the National Congress of Australia's First Peoples, despite the Government's initial support for its creation to act as the national representative body for indigenous peoples.**

According to the information received:

In December 2008, the Australian Government requested that the Aboriginal and Torres Strait Islander Social Justice Commissioner convene an independent Steering Committee of Aboriginal and Torres Strait Islander people to develop a preferred model for a National Representative Body for Aboriginal and Torres Strait Islander peoples.

The 2008 National Indigenous Reform Agreement by the Council of Australian Governments (COAG), in which national, state and territory Governments committed to work in partnership with Aboriginal and Torres Strait Islander peoples, and the National Integrated Strategy for Closing the Gap in Indigenous Disadvantage anticipated the creation of a national representative body to provide Aboriginal and Torres Strait Islander people with a voice in national affairs and which would constitute the primary mechanism for engaging on national indigenous policy issues.

Following consultations with indigenous peoples, in 2009 the Steering Committee proposed that a National Congress of Australia's First Peoples be created to fulfil the role of the National Representative Body for Aboriginal and Torres Strait Islander peoples. It was envisioned that the new representative body have a key role in advocating for the recognition and protection of the human rights of Aboriginal and Torres Strait Islander people and provide a mechanism to pursue the exercise of indigenous rights, including those recognised in the UN Declaration on the Rights of Indigenous Peoples.

As stated by the Steering Committee in its report on the creation of a New National Representative Body: 'Aboriginal and Torres Strait Islander peoples have profound understanding of the consequences of racism and marginalisation

and have essential insights and knowledge required to address the disadvantage which has resulted. The nation needs a body able to marshal this knowledge and contribute it to national policy and strategy'. The report furthermore stated that a new National Representative Body would enable the goals, aspirations, interests and values of Aboriginal and Torres Strait Islander peoples to be heard in national debate and enable the diversity of perspectives of Australia's first peoples to be recognised. Furthermore, it would also provide an important mechanism for indigenous peoples to partner with Government in designing and applying solutions to the social problems faced by indigenous peoples, such as poverty, inequality and injustice.<sup>1</sup>

The Steering Committee noted that it was of critical importance to ensure that in the initial phase the new National Representative Body be adequately funded and have a financial structure to be sustainable into the longer term. The Steering Committee underlined that 'the Government has special responsibilities in this regard and it is expected that it will make the overwhelming contribution in the initial period'.<sup>2</sup>

Specifically, the Steering Committee issued the following recommendations: that the Australian Government commit to provide recurrent funding for the National Representative Body's operations over the initial five years of operations from January 2011. It anticipated that there would be a need for a further five years of funding by Government, at a reduced rate as the National Congress gain access to consistent streams of independent funding. It furthermore recommended that the Australian Government commit to a substantial contribution over ten years into an Establishment Investment Fund for the National Representative Body to ensure its sustainability and financial viability into the future. The Steering Committee emphasised that 'the Australian Government has the primary responsibility for funding the National Representative Body in its foundation years'.<sup>3</sup>

In November 2009, the National Congress of Australia's First Peoples was announced to become the national indigenous representative body. The Australian Human Rights Commission stated that it was 'very proud to have assisted with the early creation of the National Congress' which it described as 'the new national representative voice for Aboriginal and Torres Strait Islander peoples'.<sup>4</sup> The National Congress was set up in April 2010 through the election of a Board with equal representation of men and women and the appointment of an Ethics Council.

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<sup>1</sup> Report of the Steering Committee for the creation of a new National Representative Body, 'Our future in our hands – Creating a sustainable National Representative Body for Aboriginal and Torres Strait Islander peoples', Australian National Human Rights Commission, 2009, p. 7-8

<sup>2</sup> Ibid. p. 4

<sup>3</sup> Ibid. p. 39

<sup>4</sup> AHRC public statement; <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/national-congress-australia-s>

The National Congress was reportedly given initial funding of \$29.2 million over four years, and was allocated another \$15 million in the 2013-14 Budget. However, within months of taking power the Liberal Government cut the Congress budget by \$15m in 2014, despite that the allocation of \$15m, which was to be disbursed over a three year period, had been committed to by the previous Labour Government.<sup>5</sup>

This decision allegedly debilitated the nascent National Congress at the precise moment at which it was in the process of establishing itself and rendered it incapable of functioning in accordance with its mandate. The National Congress was forced to draw on reserves which it had accumulated prior to the budget cut and undergo significant reductions in its staff numbers, from 40 people to five. Despite the impact these cuts had on the capacity of the National Congress to function in accordance with its mandate, the membership continued to grow demonstrating the widespread support for the organization among Aboriginal peoples. The membership consists of some 8400 individuals and 180 organisational members, representing upwards of 50,000 Aboriginal and Torres Strait Islander peoples.<sup>6</sup>

The 2014 report of the Aboriginal and Torres Strait Islander Social Justice Commissioner stressed the unique role, function and importance of Congress stating that:

‘The National Congress of Australia’s First Peoples (Congress) is closer to being a truly representative body of Aboriginal and Torres Strait Islander peoples [than any other existing body]. Congress involves an elected Board of six Directors and two Co-chairs directly elected by Congress. The National Congress comprises 120 delegates, elected to three Chambers, with membership from Aboriginal and Torres Strait Islander peak bodies and organisations and individual Aboriginal and Torres Strait Islander people.

Congress aims to be representative of a diverse cross section of Indigenous polity, including participation from groups organising around and those affected by, for example, stolen generations, land claims and issues specific to youth and women. This kind of representation might be viewed as ‘issue based’ representation as opposed to ‘Nation based’ representation; there is not a guarantee that every Nation will have a delegate at Congress. Congress is needed so that individual voices are heard and for strong advocacy on particular issues, led by organisations working on those issues and by individuals affected by them.’<sup>7</sup>

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<sup>5</sup> Social Justice and Native Title Report 2014 Aboriginal and Torres Strait Islander Social Justice Commissioner Report 2014, p. 20

<sup>6</sup> Social Justice and Native Title Report 2014 Aboriginal and Torres Strait Islander Social Justice Commissioner Report 2014, p. 25

<sup>7</sup> Ibid. p. 154, 32

The report furthermore noted that the Prime Minister had not met with the Co-Chairs of Congress at all since the election. In a parallel development, the Liberal Government created an Indigenous Advisory Council (IAC), which reports directly to the Prime Minister. This body is not representative of Aboriginal and Torres Strait Islander peoples as its membership is selective and appointed by the Prime Minister following consultation with the Minister for Indigenous Affairs.

In May 2016, the Minister for Indigenous Affairs reportedly made a public statement indicating that the Government has no intention of providing further funding for the National Congress of Australia's First Peoples.<sup>8</sup>

While I do not wish to prejudge the accuracy of these allegations, I am concerned over the Australian Government's decision to withhold funding necessary for the effective operation of the National Congress of Australia's First Peoples.

In this context, I wish to recall that in the Special Rapporteur's report on his country visit to Australia in August 2009, my predecessor noted that 'the Government has taken important steps to support a new national representative body, the National Congress of Australia's First Peoples, which is expected to be established and fully operational by January 2011' and that the Government had 'reported that the National Congress of Australia's First Peoples will play a key role in advancing constitutional recognition of Aboriginal and Torres Strait Islander peoples'.<sup>9</sup>

I furthermore wish to recall that in the context of the first Universal Periodic Review in 2011, the Australian Government committed to providing funding in support of the establishment and early operation of the National Congress of Australia's First Peoples<sup>10</sup> and in the second Universal Periodic Review renewed its commitment by accepting to 'continue to support indigenous institutions that bring cohesion to communities, such as the National Congress of the First Peoples of Australia'.<sup>11</sup>

I wish to draw the attention of your Excellency's Government to the Universal Declaration on the Rights of Indigenous Peoples (UNDRIP) which affirms in Article 18 that indigenous peoples have the right 'to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions'. It also affirms in article 39 that indigenous peoples have the right 'to have access to financial ... assistance from States ... for the enjoyment of the rights contained in this Declaration'. The Government of Australia gave its official support to UNDRIP in 2009 and declared its intention seek 'a new era of relations

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<sup>8</sup> 'No more funding for Congress says Minister'; <http://nationalcongress.com.au/no-more-funding-for-congress-says-minister/>

<sup>9</sup> Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Report on country visit to Australia 2009, UN Doc A/HRC/15/37/Add.4, paras. 13, 14

<sup>10</sup> UPR First Cycle 2011, recommendation 86.106

<sup>11</sup> UPR Second Cycle 2015, recommendation 136.87

between states and Indigenous peoples grounded in good faith, goodwill and mutual respect’.

In addition, in the World Conference on Indigenous Peoples (WCIP) Outcome document adopted by the UN General Assembly in September 2014, UN Member States committed ‘to take, in consultation and cooperation with indigenous peoples, appropriate measures at the national level, including legislative, policy and administrative measures, to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples [and] to cooperate with indigenous peoples, through their own representative institutions, to develop and implement national action plans, strategies, or other measures, where relevant, to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples’.<sup>12</sup>

In this regard, I wish to note that the National Congress of Australia's First Peoples was established with the support of the Australian Government with the understanding that the Congress was a structure chosen by the Aboriginal peoples consistent with the provisions of the UNDRIP, in particular Article 18. The establishment of the Congress was also consistent with the aforementioned paragraphs of the WCIP Outcome document, which embody commitments by the UN Member States to develop national strategies and actions in coordination with a national indigenous peoples’ representative body.

In light of the Government’s prior commitment made to support the creation of a representative body to advocate for the rights of Aboriginal and Torres Strait Islander people and its significance as a mechanism to pursue the exercise of indigenous peoples’ rights, including those recognised in the UN Declaration on the Rights of Indigenous Peoples, I urge the Government to reconsider its decision to defund the National Congress.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the following matters:

1. In view of the Australian Government’s endorsement of UNDRIP and the support provided by the Australian Government for the initial creation of the National Congress of Australia’s First Peoples as the national representative body for indigenous peoples in Australia, please indicate on what grounds the Australian Government cut the entire forward funding for the National Congress in 2014?
2. What steps has the current Australian Government taken towards implementing Article 18 of UNDRIP and, more specifically, its commitments made during my predecessor’s visit and also in the context of the Universal Periodic Reviews to provide adequate support to the

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<sup>12</sup> World Conference on Indigenous Peoples Outcome Document, UN Doc A/RES/69/2. paras.7 & 8

National Congress of Australia's First Peoples to enable it to act as the national representative body for indigenous people?

3. In light of the role which the National Congress is playing in relation to representing Aboriginal peoples and its significant potential in this regard if adequately funded, will the Australian Government consider revising its 2014 decision to cut the funding of the National Congress of Australia's First Peoples?
4. Does the Australian Government have any proposals in relation to longer term approaches to funding that could be put in place to guarantee the sustainability of the National Congress into the future?
5. Please indicate the modalities whereby the Australian Government interacts and meets, and with what frequency, with the National Congress of Australia's First Peoples?

I would appreciate receiving a response within 60 days.

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 my highest consideration.

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