

## **Observations on the State of Indigenous Human Rights in Australia**

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Human Rights Council

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**Cultural Survival** is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: [www.cs.org](http://www.cs.org)

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**The American Indian Law Clinic of the University of Colorado**, established in 1992 as one of the first of its kind, represents individuals, Indian Tribes and Tribal entities in a variety of settings involving federal Indian law and involving the law and legal systems in Indian Country, as well as work with the United Nations.

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## **I. Executive Summary**

1. The Australian government has repeatedly failed to protect the human rights of Indigenous Peoples by aggressively increasing the rates of incarceration of Indigenous people, not addressing consistent racial discrimination resulting in poor mental health and high rates of suicide and substance abuse, land rights violations, environment, and lack of constitutional recognition.

## **II. Background**

2. Australia is a party to the ICCPR, ICESCR, ICERD, CRC. After voting against the UN Declaration on the Rights of Indigenous Peoples in 2007, the country endorsed the Declaration in 2009. Australia is not a party of the ILO Convention 169.

3. Indigenous Peoples have been on the continent since time immemorial, establishing their appearance 50,000 years before the arrival of European settlers.<sup>i</sup> In 1788, an estimated 750,000 to 1,000,000 people lived in Australia in 500 nations. Indigenous Peoples were murdered, raped and enslaved. Over 20,000 Indigenous Australians died.<sup>ii</sup>

4. Indigenous children were forcibly removed from their families and communities by government, welfare or church authorities and placed into institutional care or with non-Indigenous foster families. The removal tactic was known as “Stolen Generations”, beginning in mid-1800’s until the 1970’s.<sup>iii</sup>

5. The Australian government has a long-standing history of violating the rights of Indigenous Peoples, particularly in the context of racial discrimination.

6. Today, the Aboriginal and Torres Strait Islander population is 798,400 or 3% of the Australian population.<sup>iv</sup> There are more than 400 Indigenous nations. New South Wales and Queensland have the largest Indigenous populations, Indigenous Peoples represent 30% of the Northern Territory population.

7. The Australian Federal Constitution of 1901 was explicitly discriminatory against Indigenous Peoples, by excluding “Indigenous Peoples natives” from population counts.<sup>v</sup> The exclusion reaches the possibility of the Federal Parliament to make laws on behalf of Indigenous Peoples in any State.<sup>vi</sup> In 1967, a referendum removed the exclusion, also allowing Federal States to legislate for

people of any race, the decision was supported by 90% majority of the electorate.<sup>vii</sup>

8. Aboriginal and Torres Strait Islanders are not recognized in the Federal Constitution. Victoria and Queensland had amended their State Constitutions giving recognition to Indigenous Peoples.<sup>viii</sup> Since 2010, the Australian government has tried to change the Constitution to recognize Aboriginal and Torres Strait Islanders by a referendum.

9. Australia is unique as the only Commonwealth country that never negotiated a treaty with Indigenous Peoples. The lack of a formal treaty suggests an ongoing denial of their existence and highlights the lack of engagement and relationship between Indigenous and non-Indigenous populations.

11. Despite a 2008 formal apology by the federal government to Indigenous Peoples, stark disparities and social disadvantages exist in Indigenous communities.

### **III. Past UPR Recommendations**

12. Several recommendations from the first and second cycle remain to be properly implemented:

a) *Strengthen measures to eliminate any form of racial discrimination through policies, laws and the constitution towards Indigenous Peoples. (France, Nigeria, Russian Federation).*

b) *Continue making efforts to reduce the imprisonment rates of Indigenous peoples in Australia and also protect their human rights and dignity while in custody. (Mexico, Uruguay).*

c) *Raise the age of criminal responsibility to 18 years and remove the reservation of article 37 (c) of the Convention on the Rights of the Child. (Estonia, Denmark, Iceland).*

d) *Continue making efforts to close the gaps between Indigenous and non-Indigenous populations, especially in the areas of health, housing and employment. (Italy, Colombia, New Zealand).*

e) *Protect Indigenous Peoples' rights to enjoy their economic, social and cultural rights while remaining in their ancestral lands.* (Mexico).

13. The Australian government continues to violate Indigenous rights with mass incarceration and custody, widespread discriminatory practices, failure to obtain Free, Prior and Informed Consent, and the continued lack of constitutional recognition of Aboriginal and Torres Strait Islanders.

#### **IV. Continuing Indigenous Human Rights Violations**

##### ***Mass Incarceration and Deaths in Custody***

14. The Aboriginal and Torres Strait Islander population accounts for 28% of the imprisoned population, but represent only 3% of the total Australian population.<sup>ix</sup> The proportion of adult prisoners who identified as Aboriginal and Torres Strait Islander ranged from 9% in Victoria (691 prisoners) to 84% (1,477 prisoners) in the Northern Territory.<sup>x</sup> Overrepresentation of Indigenous people in prison is concerning. The national average imprisonment rates for Indigenous Peoples is one of the world's highest racialized gaoling rate.<sup>xi</sup>

15. While in prison, Aboriginal and Torres Strait Islanders have no access to culturally appropriate legal services and translation services which violates Art. 2(3) and 27 of the ICCPR.<sup>xii</sup>

16. Two Royal Commissions have been investigating the overrepresentation of Indigenous Peoples in prison. The most important led to the report *Pathways To Justice—Incarceration Rate Of Indigenous Peoples And Torres Strait Islander Peoples* by the Australian Law Reform Commission released in March 2018. The report disclosed that Indigenous men are 14.7 times more likely to be imprisoned than non-Indigenous men. Indigenous women are 21.2 times more likely to be imprisoned than non-Indigenous women.<sup>xiii</sup>

17. The report addressed different issues on mass incarceration of men, women and juveniles, as well as legislative strategies and policies to reform the bail system, prison programs and parole, prison for fines and useful reinvestment justice strategies.<sup>xiv</sup> Current policing mechanisms are too punitive, disproportionately affecting Indigenous communities.<sup>xv</sup> The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has stated the need for police to treat both non-Indigenous and Indigenous populations equally, in order to address “the growing crisis of incarceration of Indigenous persons”.<sup>xvi</sup>

18. The former Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, noted that laws, policies, and prison for fine default are causes of the mass imprisonment rates, in addition to the lack of non-custodial mechanisms.<sup>xxvii</sup> The laws disproportionately impact Aboriginal and Torres Strait Islanders. The government has failed in implementing the recommendations of *Pathways to Justice* through comprehensive policies and engagement with Indigenous Peoples.<sup>xxviii</sup> Reluctance to apply the ALRC inquiry constitutes a violation of article 5 of CERD and articles 2 and 22 of UNDRIP.

19. High imprisonment rates and death rates of Aboriginal and Torres Strait Islander are directly proportional statistics. In August 2014, Ms. M, a 22-year-old Indigenous woman died while in custody in Western Australia.<sup>xxix</sup> She received inadequate medical care, dying within 48 hours of the arrest. Death in custody has been a problem for decades, as evidenced by the report of the Royal Commission into Indigenous Peoples Deaths, published in 1991. Since then, over 400 more Indigenous persons have died in custody.<sup>xxx</sup> In August 2018, the proportion of Aboriginal and Torres Strait Islander deaths linked to inadequate medical care in prison was 38.6%.<sup>xxxi</sup> After incarceration, Indigenous Peoples are more likely to die within days after being released than non-Indigenous people. Deaths related to alcohol abuse, poor health, and suicide convey a failure of adequate and equitable reintegration support for Indigenous people upon reentry.<sup>xxxii</sup>

20. Australian Indigenous women are 34% of the prison population, but make up just 2% of the Australian population.<sup>xxxiii</sup> They are 21.2 times more likely to be imprisoned than non-Indigenous women, representing the fastest-growing prison population.<sup>xxxiv</sup> Fine default laws also have an overall disproportionate impact on Indigenous women.<sup>xxxv</sup> The majority of the women and girls held in prison have experienced domestic violence and they also represent high levels of mental and cognitive disabilities, with an estimated 50% of the female prison population presenting any kind of disability.<sup>xxxvi</sup>

21. Mass imprisonment of Aboriginal and Torres Strait Islander women has significant consequences to their right to education, health, access to employment and domestic violence assistance. While in custody, Indigenous women often experience government removal of their children, which impacts future Indigenous generations.<sup>xxxvii</sup> The lack of support for women, children and families in general perpetuates racism and inequalities, creating the conditions to extend the mass imprisonment cycle.

22. Children as young as 10 years old are held in detention facilities for committing crimes. Indigenous children in Australia are 24 times more likely to be detained than non-Indigenous children.<sup>xxxviii</sup> Australia made a reservation on article 37 (c) of the CRC. The CRC Committee has previously recommended that Australia withdraw this reservation as

it is unnecessary, and has again reiterated its recommendation in their Concluding Observations to continue and strengthen its efforts for a full withdrawal of its reservation.

The punitive strategy on child prosecution has a direct impact on Indigenous people and their communities, when children are kept in prison for minor crimes instead of having access to rehabilitation programs. According to Amnesty International, by May 2019, 89 children were held in detention in the Brisbane City Watch House, a facility designed to hold adults for a short period of time.<sup>xxxix</sup>

23. Tauli-Corpuz noted that there are serious allegations of abuse, strip-searches, prolonged isolation and hooding committed against Indigenous children in custody.<sup>xxx</sup> In the Northern Territory over 95% of the youth detention population is Aboriginal and Torres Strait Islander. Concerns regarding the use of tear gas and solitary confinement in the Dale's Youth Detention Centre of the Northern Territory were raised in a joint report made by the Special Rapporteur on the Rights of Indigenous Peoples and the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment.<sup>xxxi</sup>

24. The impact of living in detention centers is particularly devastating to Indigenous children. Many of them spend their juvenile lives entering and leaving detention centers, perpetuating violence and crime patterns. In the Cleveland Youth Detention Center, some Indigenous youth are held in custody with convicted prisoners.<sup>xxxii</sup> Others share detention with adult prisoners. Aside from article 32 (c) of the CRC, Australia has also made reservations on article 10 (2) of the ICCPR, which provides for the segregation, save in exceptional circumstances, of accused persons from convicted ones. The reservations directly affect Indigenous youth held in prison, because of the high rate crimes related to them.

25. Amnesty International has called for an action plan, "Community is Everything," aiming to end the imprisonment inequality for Indigenous youth in Australia. The campaign goals are focused on strategies such as raising the age children can be in prison to at least 14 years old, looking for alternatives different from prison to Indigenous children from ages 10 to 13.<sup>xxxiii</sup> Amnesty International is pushing for adequate solutions for Indigenous kids, where judges aim for rehabilitation rather than imprisonment. One of the outcomes is the "Change the Record Campaign" supported by Amnesty International, ANTaR, National Aboriginal and Torres Strait Islander Legal Services, and the National Congress of Australian First People.<sup>xxxiv</sup>

***Racial Discrimination: The effect on mental health and substance abuse***

26. Racism ranges from public stereotyped portrayals of Indigenous people as violent criminals, welfare profiteers and poor parents, to discrimination in the justice system.

Institutional racism has been identified in the National Aboriginal and Torres Strait Islander Health Plan (2013-2023) and its implementation as a significant barrier in the delivery of health care, specifically mental health.<sup>xxxv</sup>

27. Improving health and social equity for Aboriginal and Torres Strait Islander people is one of Australia's most significant challenges. The legacy of colonization has made it difficult to build political architecture that ensures Indigenous Peoples are represented and respected.

28. Racism and poor health are manifested in reduced and unequal access to employment, education, housing, medical care and social services. Racism against has proven increased exposure to risk factors like alcohol and drug abuse and dramatic rates of suicide in Indigenous communities.

29. While there are a number of programs tailored at suicide prevention and youth developmental health, such initiatives must be supported and replicated at a broader scale. Tauli-Corpuz recommended adopting a holistic approach to social and emotional well-being that recognizes the need for cultural connection, essential to achieving sustainable improvement in health indicators.<sup>xxxvi</sup> Tauli-Corpuz mentioned government programs like the Center of Best Practice in Aboriginal and Torres Strait Islander Suicide Prevention and the Aboriginal and Torres Strait Islander Suicide Evaluation Project have issued reports and implemented programs tailored at addressing, evaluating and implementing practices for mental health and suicide prevention.<sup>xxxvii</sup>

30. In March 2019, the Royal Australasian College of Physicians the Royal Australian and New Zealand College of Psychiatrists and the Indigenous-led National Aboriginal Community Controlled Health Organization called on the Prime Minister to make tackling Indigenous youth suicides a national priority. In response, the Prime Minister of Australia released a statement outlining goals and plans working with the Department and Minister for Health to drive a whole-of-government approach to suicide prevention, while ensuring prevention services reach Australians that need them.<sup>xxxviii</sup>

31. The Kimberly Aboriginal Law and Culture Centre said that one of the leading factors in the rapid rise of Aboriginal and Torres Strait Islander suicide rates is the lack of cultural recognition. "There is extensive research on the role of culture healing intergenerational trauma, and extensive research on the influence of intergenerational trauma on disproportionate suicide rates."<sup>xxxix</sup>

32. Despite these initiatives and recommendations, suicide remains the leading cause of death for Aboriginal and Torres Strait Islander people 15-24 years old, where it accounts

for 1 in 3 deaths.<sup>x1</sup> The suicide rates for people ages 15-19 are around four times the rate of non-Indigenous people.<sup>xli</sup>

### ***Aboriginal and Torres Strait Islander and the Impact of Covid-19***

33. Given the pattern of discrimination against Indigenous Peoples and the limited culturally sensitive health services, reports show that there are devastating impacts to communities.<sup>xlii</sup> These communities will be further impacted because of the pre-existing conditions that are already substantially higher than those of non-Indigenous populations. Because many Aboriginal and Torres Strait Islanders live in remote and rural areas, they become even more vulnerable.<sup>xliii</sup> According to the Australian Institute of Health and Welfare, around 50% of adult Aboriginal and Torres Strait Peoples live with one of the major chronic diseases such as cardiovascular disease, kidney disease or cancer.<sup>xliiv</sup> These risks are exacerbated since many Aboriginal and Torres Strait Islanders living in overcrowded housing.<sup>xliv</sup>

### ***Discrimination of Indigenous Women in access to health services***

34. Cultural beliefs, practices, and the needs of Indigenous women vary, both between and within culturally defined groups, and respect for the views and beliefs of individual women and of local communities is needed.<sup>xlvi</sup> It is imperative that health care professionals are aware of the current disparities between Indigenous and non-Indigenous Australians and understand that they have a vital role in closing the gap in women health outcomes. “Cultural respect is achieved when the health system is a safe environment for Aboriginal and Torres Strait Islander peoples and where cultural differences are respected.”<sup>xlvii</sup> Australian Indigenous women represent just 2% of the country’s female population.<sup>xlviii</sup> Many Aboriginal and Torres Strait Islander women suffer health problems due to the context of their lives, with significant impacts related to dispossession, forced family removal, racism, marginalization and exposure to violence.<sup>xlix</sup>

35. Cultural safety acknowledges that health consumers feel safest when health care providers have considered the systemic racism that has manifested itself in power relations, cultural differences and individual’s rights. Cultural safety is defined as “an understanding of how a person’s culture may inform their values, behaviors, beliefs and basic assumptions, recognizing that we are all shaped by our cultural background, which influences how we interpret the world around us, perceive ourselves and relate to other people.”<sup>1</sup>

36. According to the Australian Department of Health, the government has noted that there is a disproportionate burden of adverse perinatal outcomes for Aboriginal and Torres Strait Islander mothers and their babies compared to non-Indigenous mothers and infants. The substandard medical care and the lack of access to sufficient medical care that is culturally sensitive have continued to have devastating impacts on Indigenous

communities. These disparities include increased maternal mortality, preterm birth, low birth weight and perinatal deaths.<sup>li</sup> The maternal death in Aboriginal and Torres Strait Islander women was 13.8 per 100,000 compared with 6.6 per 100,000 for non-Indigenous women.<sup>lii</sup> Research shows that there are still very few Aboriginal midwives and doctors and that culturally appropriate care is imperative to closing the gap that exists between maternal and child death rates of Indigenous women.<sup>liiii</sup>

### ***Land Rights and the Environment***

37. Aboriginal and Torres Strait Islanders continuously face land rights violations. Under Australian Native Title laws, Indigenous communities must demonstrate cultural continuity to be granted legal rights of their traditional lands. This is problematic and shows that the broader colonial ideology is still present, where Indigenous Peoples are expected to conform to a static concept of Indigeneity, defined by the government.

38. Aboriginal and Torres Strait Islander populations are not provided equal social and economic services because of the systemic racism against them. Moreover, they are not given the possibility to develop their own territories, use their own natural resources in sustainable ways and ways which are relevant for them. Tauli-Corpuz noted that Australia has a complex system with multiple and overlapping legal regimes applicable to native title claims and land rights.<sup>liv</sup> This, coupled with the few Indigenous legal professionals with expertise on land rights claims, continues to disadvantage communities seeking to exercise their land rights.<sup>lv</sup>

39. In March 2019, the Australian High Court agreed to compensating the Ngaliwurru and Nungali Peoples A\$2.9m for the loss of 1.26km of land in a town in the Northern Territory of Australia.<sup>lvi</sup> This ruling only covers compensation claims for other uses such as mining, agriculture or public works since 1975.<sup>lvii</sup> This case helped establish how Indigenous title claims and title compensation should be assessed. In December 2019, Indigenous groups filed lawsuits suing state government for billions of dollars in compensation for loss of ancestral lands. Court documents show that the Bigambul and Kooma Aboriginal peoples are each claiming A\$25bn in compensation from Queensland for economic and cultural damages to land on which they were legally granted title.<sup>lviii</sup>

### ***Free, Prior and Informed Consent***

39. The legislative and administrative mechanisms that allow for the extraction of natural resources from Indigenous territories should conform to international standards, including

those requiring adequate consultation with the affected Indigenous communities. In her last report, Tauli-Corpuz recommended that the Australian government align state practices with UNDRIP. It is important to note that Declaration does not contain norms requiring proof of continuous occupation of land and recent government approval of a coal mine is a step in the wrong direction.

40. Indigenous Peoples right to FPIC has been ignored by the Australian government prioritizing potential economic gains. Undermining Indigenous decision-making and governance structure, Australia has approved the Adani Carmichael coal mine located on the land of the Wangan and Jagalingou. To enable the mining project to proceed, the Queensland government extinguished native title, despite persistent protests from the communities, including a request to CERD in 2017 by the Wangan and Jagalingou Traditional Owners Council.<sup>lix</sup> By marginalizing and bypassing the communities' own procedures and representative institutions, the government has failed to conduct good-faith consultation towards implementation of FPIC.

41. In June 2019, the Australian government approved the Adani Coal Mine project, despite the consistent protests of the Wangan and Jagalingou Peoples and the international community. The approval of this project was done without their FPIC.

### ***Land Management, Brush-Fires, and Climate Change***

42. In 1999, Australia passed the Environment Protection and Biodiversity Conservation Act in which the act states its object is to “to recognize the role of Indigenous Peoples in the conservation and ecologically sustainable use of Australia’s biodiversity; and to promote the use of Indigenous Peoples’ knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge.”<sup>lix</sup> Regretfully, the Australian government has been slow to adopt these goals.

43. In her 2017 report, Tauli-Corpuz noted that she was encouraged by government-funded Indigenous Rangers Programme, which supports Indigenous Peoples’ connection to their lands, encourages cultural knowledge transfer, provides skilled employment and simultaneously contributes to conservation. Recent conditions due to country-wide brush fires and climate change have had substantial impacts to the progress of Indigenous land rights.

44. In the wake of the devastating fires, recent reports have recognized and acknowledged the positive impacts Indigenous Peoples have on the environment. Long before European colonization, the Aboriginal and Torres Strait Islanders of Australia were already practicing land management and fire risk mitigation through their specific knowledge of the local ecosystems.<sup>lxi</sup> Indigenous holistic approaches to controlling fires

involves the understanding that everything is interconnected: from living beings to living plants, to the weather and long standing spiritual connections to the land.<sup>lxii</sup> Aboriginal and Torres Strait Islander communities believe that the bonds between species are not only functional, but emotional. By incorporating traditional land management knowledge with Western practices, the government can create avenues of opportunities to engage with Indigenous communities to protect and preserve biodiversity.<sup>lxiii</sup>

45. According to Tauli-Corpuz' 2016 report on Conservation and Indigenous Peoples, she stated that in Australia, Indigenous Peoples effectively manage or co-manage protected areas, through dynamic and sustainable partnerships which seek to redress past exclusion policies.<sup>lxiv</sup> In her report, Tauli-Corpuz noted that countries where Indigenous Peoples remain marginalized and their collective land rights are ignored have the least sustainable and successful outcomes in terms of land conservation policy.<sup>lxv</sup>

### ***Constitutional Recognition***

46. Aboriginal and Torres Strait Islander are not recognized in the Australian Constitution as the first inhabitants of the continent. Despite the multiple recommendations made in the last UPR to amend the Constitution, the process is still pending. Constitutional recognition is an important step in the reconciliation of the Australian population, and the exaltation of Indigenous Peoples culture and history. An ongoing process of a constitutional referendum in Australia, which needs the majority vote for population and at least 4 out of 6 States, has proven challenging.

47. The Referendum Council made a report on 30 June 2017, highlighting the necessary steps to engage in a successful referendum in harmony with Indigenous Peoples' concerns. Prime Minister Malcolm Turnbull supported the recommendations. The outcome of the referendum is still uncertain because it is not secure that the constitutional reforms will be able to render the Constitution "fully compatible with the obligation to respect and ensure equal rights of Indigenous Peoples", in light of article 27 of the ICCPR. In 2019, the government started a countdown to hold the referendum after three years, as announced by the Ministry for Indigenous Australia.<sup>lxvi</sup>

### ***Indigenous Languages***

48. There are approximately 250 Aboriginal and Torres Strait Islander languages in Australia.<sup>lxvii</sup> In 2012, roughly 120 of these languages are still spoken and of these, 13 are considered spoken among all age groups.<sup>lxviii</sup> Today, Djambarrpuyngu language from the Arnhem Land is most spoken, with 4.264 speakers by the 2016 census.<sup>lxix</sup> Indigenous languages have begun to rapidly decline have gone silent in some Indigenous

communities. According to Tauli-Corpuz, Aboriginal languages are considered a barrier for education, therefore, bilingual education is not properly taught in remote communities.<sup>lxx</sup>

49. Many Indigenous people are relearning their ancestral languages, with the support of Federal governments and academic institutions. University of Adelaide is teaching Kaurna language, Australian National University and University of Sydney are teaching Charles Sturt University is teaching Wiradjuri language. Indigenous languages are often not spoken by children within the community. The importance of rehabilitating Indigenous languages is often undermined by the pressure of learning English to access services for non-English speakers.<sup>lxxi</sup>

50. In 2019, the Australian government released an Action Plan as part of the country's commitment to revitalizing and promoting Aboriginal and Torres Strait Islander languages.<sup>lxxii</sup> This action plan was developed to compliment the UN General Assembly's 2019 declaration of the Year of Indigenous Languages and to raise awareness of the crucial role languages play in people's daily lives.

51. The promotion and use of languages has been shown to contribute to improvements in the health and wellbeing of Australians, educational outcomes, environmental science and management, political and social involvement, and economic prosperity.<sup>lxxiii</sup> Experts have asserted that by 2050 Australia's Indigenous language might not exist in the country.<sup>lxxiv lxxv</sup>

#### **IV. Questions**

1. What steps is Australia going to take to ensure the basic human rights of Aboriginal and Torres Strait Islanders?
2. How will Australia incorporate Aboriginal and Torres Strait Islander rights in large scale national projects, justice reform, and conservation efforts?
3. What amends will be made to the Australian Constitution to ensure fully Constitutional recognition of Aboriginal and Torres Strait Islanders?

#### **V. Recommendations**

We urge states to make the following recommendations to Australia:

1. Ratify the ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries.
2. Take steps to develop a domestic framework for the implementation of Free, Prior and Informed Consent.

3. Immediately halt all operations and development at the Adani Carmichael coal mine until a process of FPIC has been carried out with the Wangan and Jagalingou communities.
4. Implement the Recommendations of the Special Rapporteur on the Rights of Indigenous Peoples, made on the Country Report A/HRC/36/46/Add. Of August 2017.
5. Implement the Australian Law Reform Commission Inquiry “Pathways to Justice on the Incarceration of Indigenous Peoples”.
6. Review policies and incarceration for unpaid fines and other minor crimes, which has been proved to have a disproportionate impact on Indigenous women.
7. Guarantee the implementation of a culturally appropriate criminal system, that includes translation services and medical care to prisoners.
8. Withdraw the reservation on article 37 (c) of the Convention on the Rights of the Child, and article 10 (2) of the International Covenant on Civil and Political Rights.
9. Raise the minimum age of criminal responsibility. Utilize rehabilitation mechanisms in the first contact of Indigenous children and youth with the criminal system, aiming for justice reinvestment and preventive policies. Prohibit the use of isolation cells, physical abuse and other forms of abuse by prison officers.
10. Recognize Indigenous Peoples, their inherent rights to culture and equality before the law in the Australian Constitution, ensuring continued deep consultation with Indigenous Peoples in this process at every stage.
11. Ensure Indigenous Peoples have access to culturally appropriate healthcare, with special attention to maternal and infant healthcare.
12. Step up funding and resources for the Indigenous Rangers Programme, which supports Indigenous Peoples’ connection to their lands, encourages cultural knowledge transfer, provides skilled employment and simultaneously contributes to conservation.
13. Ensure that any government funded conservation work respects and supports the rights of Indigenous Peoples to their lands and work to enhance Indigenous sovereignty in land management and sustainable conservation.
14. Working closely with Indigenous Peoples, deepen the 2019 Action Plan for the Year of Indigenous Languages to reflect a plan for International Decade of Indigenous Languages (2022-2032), ensuring sufficient resources are allocated for this effort.

## End Notes

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<sup>i</sup> AUSTRALIA.Gov.AU., *Our People*, available at <https://www.australia.gov.au/about-australia/our-country/our-people>

<sup>ii</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies, *First encounters and frontier conflict*, available at <https://aiatsis.gov.au/explore/articles/first-encounters-and-frontier-conflict>

<sup>iii</sup> *Id. Stolen Generations*, <https://aiatsis.gov.au/research/finding-your-family/before-you-start/stolen-generations>

<sup>iv</sup> Australian Bureau of Statistics, Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2006 to 2031, Nov. 7, 2019. <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/3238.0Main%20Features402006%20to%202031?opendocument&tabname=Summary&prodno=3238.0&issue=2006%20to%202031&num=&view=>

<sup>v</sup> Section 127, Australian Federal Constitution 1901.

<sup>vi</sup> Section 51 (xxvi), Australian Federal Constitution 1901.

<sup>vii</sup> Ready 4 Recognition, *A Guide to the Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples in Australia*, <http://ready4recognition.weblogs.anu.edu.au/files/2013/06/R4R-Info-Booklet.pdf>

<sup>viii</sup> See section 3 of Constitution (preamble) Amendment Act 2010 Queensland and Constitution (Recognition of Indigenous Peoples People) Act 2004 (Victoria).

<sup>ix</sup> Report of the Special Rapporteur on the rights of Indigenous Peoples on her visit to Australia. (A/HRC/36/46/Add.2) August 8, 2017.

<sup>x</sup> Australian Bureau of Statistics - Imprisonment rates by 30, June 2018.

<sup>xi</sup> Gerry Georgatos, *The Shocking truth of Australia's Indigenous incarcerated*, Independent Australia, May 1, 2018, <https://independentaustralia.net/australia/australia-display/-the-shocking-truth-of-australias-Indigenous-incarcerated,11451>

<sup>xii</sup> International Covenant on Civil and Political Rights – Human Rights Committee (CCPR/C/AUS/CO/6) December 1, 2017.

<sup>xiii</sup> Australian Government – Australian Law Reform Commission, *Report: Pathways to Justice – Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, March 27, 2018. <https://www.alrc.gov.au/news/report-pathways-to-justice-incarceration-rate-of-Indigenous-Peoples-and-torres-strait-islander-peoples/>

<sup>xiv</sup> Australian Government – Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Summary Report*, Dec. 1, 2017. [https://www.alrc.gov.au/wp-content/uploads/2019/08/summary\\_report\\_133\\_amended.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/summary_report_133_amended.pdf)

<sup>xv</sup> Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia (A/HRC/35/41/Add.2) June 9, 2017. ¶ 46 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/159/89/PDF/G1715989.pdf?OpenElement>

<sup>xvi</sup> *Id.* at ¶ 47

<sup>xvii</sup> Report of the Special Rapporteur on the rights of Indigenous Peoples on her visit to Australia. (A/HRC/36/46/Add.2) August 8, 2017.

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<sup>xviii</sup> International Covenant on Civil and Political Rights – Human Rights Committee (CCPR/C/AUS/CO/6) December 1, 2017.

<sup>xix</sup> The name was changed out of respect for the victim and their family.

<sup>xx</sup> The Guardian, *Deaths inside: Indigenous Australian deaths in custody 2019*, Aug. 24, 2019. <https://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-Indigenous-australian-deaths-in-custody>

<sup>xxi</sup> Lorena Allam, Calla Wahlquist, Nick Evershed, *Indigenous deaths in custody worsen in year of tracking by Deaths Inside project*, Aug. 22, 2019. <https://www.theguardian.com/australia-news/2019/aug/23/Indigenous-deaths-in-custody-worsen-over-year-of-tracking-by-deaths-inside-project>

<sup>xxii</sup> After Incarceration a “Yes, we jail too many Indigenous Australians – but what happens next is worse. Even more worrying than the incarceration rate is the number of people who die within days of being released. Feb 21, 2017. <https://www.theguardian.com/australia-news/2017/feb/22/yes-we-jail-too-many-Indigenous-australians-but-what-happens-next-is-worse>

<sup>xxiii</sup> AUSTRALIAN HUMAN RIGHTS COMMISSION, *Imprisonment rates of Indigenous women a national shame*, May 2, 2018. <https://www.humanrights.gov.au/about/news/imprisonment-rates-Indigenous-women-national-shame>

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