

Report of the Special Rapporteur, Ahmed Shaheed, on freedom of religion or belief to the 77th session of the UN General Assembly October on Indigenous Peoples and the right to freedom of religion or belief

Request from OHCHR:

The 2007 UN Declaration on the Rights of Indigenous Peoples articulates the rights of indigenous peoples, including in relation to their spiritual and religious traditions, customs, ceremonies, and ways of life. Despite the 15 years since the UN Declaration on the Rights of Indigenous People (UNDRIP), States and civil society continue to grapple with their legacies of conquest and colonisation of indigenous peoples. This report presents a timely and important opportunity to reflect on how to better respect, protect, and promote the right of freedom of religion or belief of indigenous peoples, providing recommendations to this end. The Special Rapporteur aims to provide robust evidence-based analysis of the trends of obstacles that indigenous peoples have faced in exercising the right to freedom of religion or belief – a phenomenon that is underexplored and little understood in international human rights law. The report will also focus on good practices by relevant stakeholders, including the positive contributions of indigenous peoples in advancing human rights globally.

Australia's response:

Australia has committed to establishing a First Nations foreign policy to be led by the Ambassador for First Nations Peoples. Australia's new First Nations foreign policy agenda will expand DFAT's pre-existing Indigenous engagement to encompass our foreign affairs and trade portfolio and will weave the voices, practices and experiences of Australia's First Nations people into all aspects of our diplomacy, strengthening connections between First Nations peoples and the world.

The First Nations foreign policy is a part of the Government's broader commitment to reconciliation in Australia, including our commitment to enshrining an Indigenous Voice to Parliament in our Constitution. Constitutional recognition will formally recognise the continued custodianship of Aboriginal and Torres Strait Islander peoples of Australia.

Australia's awareness and recognition of this history as a part of Australia's national narrative is growing. This year, Australia celebrated the 30th anniversary of the landmark *Mabo* decision that recognised the pre-existing laws and customs of the Aboriginal and Torres Strait Islander peoples of Australia. The recognition of native title by the High Court, reflects a deeper understanding of the relationship between the beliefs and customs of the First Nations Peoples of Australia and the legal system of Australia.

This year marks the first anniversary of the Indigenous Diplomacy Agenda (I.D.A) which was launched in 2021 to bring together Australia's efforts in foreign policy, trade, development and capability building to support the interests of Aboriginal and Torres Strait Islander peoples and those of First Nations peoples globally in our multilateral advocacy.

However, national efforts alone are not enough. The diverse and interconnected nature of the international development system demands that states take collective action to ensure that indigenous peoples, and their unique knowledge, traditions and experiences, are not excluded from

development efforts.¹ This is essential to achieve the goals of the 2030 Agenda, which is the agreed global framework for development.

Part 1: Engaging the human right to freedom of religion or belief:

There is no set definition of indigenous knowledge, worldviews, practice and beliefs although it has been reflected in international instruments as a form of intangible cultural heritage or as a system of laws and customs. Accordingly, there are multiple regimes of recognition in place that have differing definitions of Indigenous belief and practices. Australia does not seek to prescribe the diverse systems of spiritual and religious traditions, customs, ceremonies and ways of life of Indigenous peoples, we aim to create space for First Nations peoples to define these laws and customs on their own terms. This recognition is then protected under non-indigenous laws – including land rights legislation, heritage laws and the *Native Title Act 1993* (Cth). Formal recognition should not detract from the authority of First Nations under their own legal systems, encompassing Aboriginal and Torres Straits Islander traditional laws and customs, beliefs and practices.²

Australia has acted to protect the rights of indigenous peoples, by recognising international standards for the protection of universal human rights and fundamental freedoms through the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination and other standard-setting instruments such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. Australia supports the UN Declaration on the Rights of Indigenous Peoples, and, through a range of initiatives – including a commitment to constitutional recognition – continues to strengthen the rights of Indigenous Australians.³

Part 2: Mapping lived experiences of indigenous peoples

Australia has actively raised concerns about the participation of indigenous peoples in the UN and the mechanisms for the creation of a participation category for indigenous people in the Human Rights Council (HRC). Australia opposes mandatory state recognition for indigenous people seeking to speak at the UN (which goes against the established procedures for civil society organisations [CSOs] and could potentially erode the existing rules and norms for CSO participation in the UN).

Australia is committed to reviewing our initiatives to support First Nations cultural practices. For example, the National Agreement on Closing the Gap assesses 17 national socio-economic targets across areas such as First Nations languages, through which community-led Indigenous language centres have been provided additional funding of AUD22.8 million over four years. Australia's support for Aboriginal and Torres Strait Islander languages represents a structural change in how language and culture – and the knowledge and belief structures underpinning them – can be supported to help achieve Australia's broader policy objectives to strengthen health, education, employment, justice, and wellbeing outcomes for First Nations peoples.

Australia recognises that indigenous peoples can experience disproportionate rates of poverty and marginalisation. Social, economic, and political power imbalances, as well as diversity in spoken languages may prevent indigenous peoples from accessing the benefits of development.

Australia has applied an indigenous peoples safeguards policy for our aid program since 2017. We require that engagement with indigenous peoples occurs throughout the program cycle – from the

¹ [Due diligence for the inclusion of indigenous peoples | Case Studies on Leaving No One Behind : A companion volume to the Development Co-operation Report 2018 | OECD iLibrary \(oecd-ilibrary.org\)](#)

² *Mabo v Queensland (No 2)* (1992) 175 CLR 1

³ Hon Linda Burney '[Speech delivered at the AIATSIS Summit](#)' 3 June 2022.

earliest stages and require that all indigenous voices are heard, including women and girls. Australia also drives priority issues such as gender equality and social inclusion, particularly for people with disability, indigenous peoples and LGBTI persons. Our intervention and collaboration with likeminded states has led to measurable progress in more inclusive language within the UN human rights system and commitments.

Australia recognises the importance of First Nations cultural practice as a foundation for spiritual rights. Language is integral to maintaining the identity, sustainability, vitality, and strength of people and cultures across the globe. Australia is actively participating in the International Decade of Indigenous Languages and will embed a best-practice approach for the Australian Government to work in partnership with First Nations peoples. The establishment of the Ngurra Cultural Precinct in Canberra – comprising a Knowledge and Cultures Centre will provide a new focus for cultural and heritage protection and practice. Ngurra will also include a National Resting Place for the care of unprovenanced ancestral remains and associated cultural material returned to Australia from overseas collections.

Part 3: Good practices

Australia is actively undertaking its own reconciliation pathway and will fully implement the Uluru Statement from the Heart, known as *Voice, Treaty, and Truth*. The Uluru Statement calls for structural and constitutional reforms to improve the lives of Aboriginal and Torres Strait Islander peoples and is based on the creation of two new institutions: an Indigenous Voice to parliament and a Makarrata Commission to oversee treaty-making and truth-telling. This work builds on the intentions of the Australia's *Native Title Act 1993*: 'to ensure that Aboriginal peoples and Torres Strait Islanders receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire.'

Australia notes that Indigenous peoples are best placed to make determinations of significance and importance with respect to their cultural beliefs and practices, and accordingly, should be supported with funding and through governance arrangements in order to do so. The global situation of indigenous peoples is relevant to all States. Australia continues to advocate for a space for First Nations peoples to be heard, including developing and maintaining a rules-based international order, where no one is left behind.

Australia aims to strengthen its heritage protection laws – the foundation for Indigenous cultural and spiritual practices.⁴ A national engagement process has been established to modernise Aboriginal and Torres Strait Islander cultural heritage protections. It has been drafted jointly between the First Nations Heritage Protection Alliance and the Australian Government as part of a co-design partnership. It is intended to inform participants about past reviews and reports and current legislative arrangements for First Nations cultural heritage protection. These mechanisms will safeguard critical cultural sites that are interlinked with First Nations cultural practices.

⁴ See further Commonwealth of Australia '[A way forward: final report into the destruction of Indigenous heritage sites at Juukan Gorge](#)' *Joint Standing Committee on Northern Australia*, October 2021.