
Introduction

This paper provides a background for viewing how Indigenous rights in the International arena have been adopted in the Australian context. It examines the effect of International bodies, such as the United Nations (UN) and the influence that political activists in Australia have had in raising fundamental human rights issues in the international arena. It assesses the importance of international recognition and argues that while it is necessary for Indigenous rights to be recognised in the international arena it is imperative that the same rights be acknowledged and granted in our own backyard. Finally it offers a pathway to achieving this through the application of the United Nations Declaration of the Rights of Indigenous Peoples-UNDRIP, 2007.

Background

Prior to the 1960s government legislation and policy sought to keep non-Indigenous Australian’s oblivious to issues concerning Indigenous people-an out of site out of mind approach. Those who did observe the stark reality of Indigenous Australians, perceived their situation to be one of the normal run of the mill mindset – a stereotyped view blaming the victim for their situation and one that is deeply entrenched in the general Australian and colonial psyche. In 1967, however, limited acknowledgement of the rights of Indigenous Australians was recognised at a national level, by an overwhelming yes vote of 92 percent at the May referendum. This granted Indigenous Australians full citizenship rights and made changes to those sections of the Australian Constitution that excluded Aboriginal people. By acknowledging Aborigines as full citizens they were supposedly entitled to the same liberties, freedoms and basic human rights that the majority of Australians enjoyed and often took for granted. Further examination of the Australia’s Human Rights record since then will throw more light on this question.

Following the overwhelming support that flowed from the referendum, the broader recognition of Indigenous based rights became an important International issue. The influence of struggles for Indigenous rights by other colonised nations spurred on the Australian Indigenous rights movement and assisted the rise in public awareness through such events as the Freedom Rides of the 1960s. This was an action initiated by Aboriginal activist and student, Charlie Perkins who organised a group of University students to partake in the ‘Freedom Ride’ (1965). They got a bus and set off on a journey into the back blocks of New South Wales, raising the issue of Aboriginal rights while visiting rural towns. This helped to expose students and supporters to the degree of racism and exclusion that existed towards Aboriginal people in regional Australia. The American civil rights movement of the 1960s and the appeal for fundamental human rights and racial equality by Martin Luther King strongly influenced this movement.

Prior to these achievements, there was some recognition of Indigenous based rights in the International arena following the introduction of the United Nations Human Rights Declaration UNHRD of 1948 and 1965. The 1965 convention was directed towards the elimination of all forms of racial discrimination which was promulgated in the United Nations Convention on the Elimination of Racial Discrimination, UNCERD. Up until the 1970s however these declarations
had limited effect on the Human rights of Indigenous Australians who were the victims of government imposed laws and policies, aimed at continuing the colonial paradigm of domination and control of Indigenous communities and their affairs.

**The United Nations and Indigenous Peoples Rights**

From the beginning of the 1970s The UN started to play a more important role in recognising Indigenous Rights. In 1982, the United Nations Human Rights Commission and the Economic and Social Council approved the establishment of a Working Group on Indigenous Populations, WGIP.

This Working Group was responsible for the draft *Declaration on the Rights of Indigenous Peoples* (1993) which articulated the International standards required for the treatment of Indigenous people. It prompted Australia to question its human rights record in reference to the treatment of Indigenous people and focused on areas of Indigenous self-determination, land rights and the right to political autonomy. In a remarkable outcome for Indigenous effort and perseverance, the UNDRIP was formerly adopted by the United Nations General Assembly during its 62nd session in New York City on 13 September 2007 with some nation states refusing to cooperate. I’ll come back to this shortly.

While the Declaration is not a legally binding instrument under international law, it is considered to be an important instrument in the elimination of human rights violations against the planet’s 370 million Indigenous people, and in assisting them to combat discrimination and marginalisation. Indigenous people represent almost one tenth of the world’s population. They live in over 70 countries, are the descendants of the original inhabitants in those countries who possess some of the oldest cultures in the world. Indeed, Indigenous Australians represent a culture that according to Archaeological evidence is estimated to be 60-120.000 yrs BP- before present.

Australia under the Howard Government (1996-2007) was one of four nation states that were against the UNDRIP when it was first adopted, 2007. The other three were New Zealand, Canada, and the United States. With the defeat of the Howard Government in 2007, however, the newly elected Labor Government under the leadership of Kevin Rudd endorsed the UNIDRIP. This rather surprising turnaround in political sway was described by the Aboriginal Human Rights Commissioner as a ‘watershed moment in Australia’s relationship with Indigenous people’. Fine sentiments one might say, that need further consideration in terms of what UNDRIP delivers in 21st Century Australian Human Rights record.


While this may be seen as a positive achievement for Australia-Indigenous relations there are some outstanding issues that need to be addressed in relation to the quality of Australia’s Human Rights track record. If Australia is to incorporate the articles of the UNDRIP into Australian law, it needs to address the outstanding concerns raised by the United Nations committees. In March 1999 CERD brought down highly damaging findings against the Australian Government -
its first report critical of a Western country. The Committee found that the 1998 Native Title amendments to the Native Title Act, 1992 in which the Racial Discrimination Act was suspended, was discriminatory, because it put limitations on the rights of Indigenous people to enjoy their rights to land which did not apply to other citizens. Moreover, it called on Australia to suspend the amendments and to enter into full consultations with Indigenous people about a way forward. No suspension of the amendments was made and it was the Native Title holders that had to bear the brunt of the amendments which reduced their inherent rights and interests in land to a lesser title to that enjoyed by general freehold title holders.

**Further Criticisms of Australia’s Human Rights Record, 2009-2012**

A decade on from these damaging findings Australia was again called to account by the UN Committee for CERD in 2009 and 2012. Of immediate concern is the winding back of the Racial Discrimination Act, 1975, to make amendments to the native title act, 1998 and for the passing of the Northern Territory Intervention laws, 2009. Both actions are inconsistent with the State party’s obligations under the UNCERD. The Human Rights Committee was particularly concerned at the negative impact of the measures on Indigenous people and their right self determination and the equality provisions of the Declaration. Other concerns raised by the Human Rights Committee was Australia’s failure to establish a national Indigenous representative body, the insufficient consultation with Indigenous people in decisions affecting their rights, and the failure to grant reparations to the Stolen Generation who were taken from their parents under the forced removal policies of the 19th and 20th Century.

Australia’s intransigence and failure to deliver on these rather damning reports is further exacerbated by the more recent report (2012) of the UN Committee on the Rights of the Child to which Australia is a signatory. The United Nations Committee found that there was ‘serious and widespread’ racial discrimination faced by Indigenous youth who are severely overrepresented in the juvenile justice and protection system. The report noted that ‘Aboriginal Australians are severely over-represented in prison, with a particularly serious overrepresentation of Aboriginal women often resulting in their children being subject to ad-hoc and insecure placement in alternative care’. The report also noted the lack of comprehensive laws on children’s rights and urged the Australian Government, as such an affluent country, to consider enacting laws that would deal with the "fragmentation and inconsistencies" in how children's rights were handled across states and territories (The Age Newspaper, Australia, 25, June, 2012).

Constant and negative reports like those from the UN imply that Australia is way behind the eight ball in the delivery and restoration of rights to its Indigenous people. This is attributed to the hard line stance adopted by successive Australian governments, who have refused to acknowledge and to address the inequalities and discrimination experienced by Indigenous Australians. The ongoing United Nations reports further highlight the importance that Indigenous peoples understand that their rights are recognised in the international arena and for the UN to maintain contact with Indigenous communities in order to have an ongoing understanding of the problems and the flagrant violations of human rights that Indigenous people experience.
Conclusion

Recognition of Indigenous rights on both a national and international platform is an evolving process, particularly when Australia is compared to other countries, such as Canada and America. The continuing efforts of those who attempt to highlight, in the international arena, the different ways in which Indigenous Australians are discriminated against in their own country, has been achieved through political pressure, the power of the voice, the spear of the pen, collective support from other Indigenous groups, NGOs and media attention.

International bodies, which oversee the treatment of Indigenous people worldwide, remain vitally important, as they have the ability to oversee, regulate and pressure government to adhere to human rights doctrine. However, while the Indigenous movement in Australia can be accelerated by the support of bodies outside Australia it is fundamental that it is from within Australia that these changes begin. Australia as a member of the UN has a responsibility to adhere to its policies—the treatment of its Indigenous people being no exception.

Finally I would just like to touch on another example of the evolving nature of Human Rights discourse and the achievements of political activism in the international arena, by including a recent International Indigenous Peoples Summit that I attended in Japan, 2008. The Summit included Indigenous peoples from all over the world and was headed by the Chairperson of the United Nations Permanent Forum on Indigenous Populations, Victoria Tauli-Corpuz of the Philippines.

‘The Nibutani Declaration’ Japan 2008

The World Indigenous Peoples Summit was held in the traditional lands of the Ainu Indigenous peoples of Hokkaido Japan. The summit passed the ‘Nibutani Declaration on Indigenous Peoples Rights’ 2008 and called on the Australian, New Zealand, Canadian and United States Governments to adopt the UN Declaration on the Rights of Indigenous Peoples, 2007.

Support for the adoption of the UNDRIP was overwhelmingly endorsed by the grand gathering at the end of the summit which was held in the Hokkaido Convention Centre. Signatories to the resolutions came from representatives of over 600 participants from Ainu Mosir (Hokkaido), Uchinanchu (Okinawa), the United States, Canada, Hawai’i, Guam, Australia, Bangladesh, the Philippines, Norway, Mexico, Guatemala, Nicaragua, Taiwan, and Aotearoa (New Zealand).

If Australia is to improve its credibility as a key player in the United Nations forum and its treatment of its Traditional Owners, it will need to deal with those outstanding issues raised by the United Nations Human Rights Committee. A good starting point would be to incorporate the articles of the UNDRIP into Australian law as part of the reconciliation process.

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