

Expert Mechanism on the Rights of Indigenous Peoples
Third Session
Geneva, 12 July – 16 July 2010

Agenda Item 3: Study on Indigenous peoples and the right to participate in decision-making

Speaker: Ms. Tammy Solonec

JOINT STATEMENT ON BEHALF OF

**Aboriginal Legal Service of Western Australia (ALSWA)
Aboriginal Legal Rights Movement of South Australia (ALRMS)
Victorian Aboriginal Legal Service (VALS)
New South Wales Aboriginal Land Council (NSWALC)
National Aboriginal Community Controlled Health Organisations (NACCHO)
Gugu Badhun
National Native Title Council (NNTC)
Foundation for Aboriginal and Islander Research Action (FAIRA)**

Thank you Chairman,

This intervention is made on behalf of Australian Aboriginal and Torres Strait Islander organisations present at this Forum, and specifically the Aboriginal Legal Service of Western Australia (ALSWA), the Aboriginal Legal Rights Movement of South Australia (ALRMS) and the Victorian Aboriginal Legal Service (VALS).

We thank those involved in contributing to the progress report, which provides a useful tool for us to advocate for and formalise our participation processes in Australia.

Our legal services represent Aboriginal and Torres Strait Islander peoples in criminal, civil, family and human rights law and also advocates publically for our peoples using the media, submissions and community legal education. The legal services are now beginning to use international mechanisms such as this Forum because the Australian Government continues to make laws that directly affect or have a disproportionate impact upon our peoples, without our free, prior and informed consent. Law and justice examples which disproportionately affect us but which we are not consulted about include motor vehicle licensing, mandatory sentencing, move on laws, application of bail legislation and imposition of onerous bail conditions, curfew and stop and search laws and increased penalties including fines.

As a disadvantaged minority group within our country, our concerns about the disproportionate impact of laws and systems are often not considered. This is evidenced by the fact that despite there being numerous reports and recommendations about our peoples in regards to law and justice, such as the Royal Commission into Aboriginal Deaths in Custody released in 1991, Aboriginal and Torres Strait Islander peoples' incarceration rates and contact with the justice system in general continues to rise.

Aboriginal Housing is another example of the Australian Government's non-compliance with our rights to participate. In 2006, the Special Rapporteur on the right to adequate housing visited Australia and commented that there was a disturbing absence of adequate and comprehensive participation processes for our communities in decision-making forums. He went on to recommend the establishment of decision-making processes and institutions that are representative of all communities, and allow for appropriate self-determination.

Despite his recommendation, no processes were established and this year, the National Partnership Agreement on Remote Housing, a radical overhaul requiring remote communities to hand control of housing to the Government as well as signing 40 year leases on their land in order to obtain housing assistance, is being forced upon communities swiftly and with limited consultation.

Similarly, the Northern Territory Emergency Response, which involved the blanket application of income management across Aboriginal communities in the Northern Territory, amongst other changes, commenced and continues to operate without consultation or consent.

The Aboriginal Legal Services of Australia advocate on broad issues such as housing and income management due to the lack of formal advocacy bodies in these areas.

As noted in the report, it is important that laws which have lasting impacts on Indigenous peoples are formulated with proper consultation and within timeframes that enable them to be explained in languages and ways that Indigenous peoples understand and can fully consider. The lack of national interpreter services for Indigenous languages in Australia exacerbates this situation.

Recently, the Australian Government held an inquiry into parliamentary scrutiny of bills. We support such scrutiny, especially in relation to international human rights obligations and believe this will assist in reducing laws that disproportionately affect our peoples. We recommend such scrutiny processes be incorporated into the report.

However, due to the poor representation of Aboriginal and Torres Strait Islander peoples within Australian Parliaments as a result of historical, structural and social obstacles, any such scrutiny will not involve our active participation.

There are no reserved seats for Indigenous peoples in Australian parliaments and Indigenous political parties that have formed in the past and those which are now beginning to form, face numerous hurdles which are often difficult to overcome.

We also have low participation in the judicial and executive arms of government although programs designed to increase representation such as Indigenous pre-law programs, lawyers committees and public service recruitment schemes are assisting. Further work is needed however, to ensure that our politicians, lawyers and bureaucrats move into influential positions of leadership.

We support the calls of the Special Rapporteur on the human rights and fundamental freedoms as noted in the Secretariat's contribution, of Indigenous people for targeted programs both horizontally through parliament, the executive and the judiciary, and vertically at local, state and national levels.

However, a challenge to the realisation of these programs which is not adequately addressed by the report is that our peoples, like most Indigenous peoples the world over, suffer from intergenerational trauma, poverty and disadvantage. Unless concerted efforts are made by States to assist Indigenous peoples both individually and collectively to heal, increase self-esteem and build wealth, then ongoing and effective participation will continue to be difficult.

Finally, in Australia there is a lack of recourse available to our peoples and Australians generally for breaches of human rights, including our right to participate in decision making, in the absence of a Human Rights Act or constitutional protection of human rights. The question of whether or not to develop a Human Rights Act was recently considered in Australia. Despite one of the largest consultations in Australian history where an overwhelming percentage of submissions received indicated a preference for human rights legislation, the Australian Government decided against such protections.

Although disappointing, we note that legislation can be overridden by the whim of governments and it would be preferable for constitutional entrenchment of such rights. In this regard, we note that the report refers to constitutional reform and urge for reform to guarantee effective Indigenous participation vertically and horizontally and which recognises Indigenous peoples' special status as traditional owners.

Given this analysis, we recommend the Expert Mechanism advise the Human Rights Council to urge that States:

- 1. initiate constitutional reform to ensure freedom from discrimination, equality before the law, dedicated seats in Parliament for Indigenous peoples, and preambular recognition of Indigenous peoples as traditional owners;**
- 2. adopt parliamentary scrutiny of bills processes for all legislation to critically analyse and determine the disproportionate impact on Indigenous peoples including the inequitable distribution of funding and compliance with international human rights obligations, including the Declaration of the Rights of Indigenous Peoples;**
- 3. immediately resource the development of national interpreter services for Indigenous languages; and**
- 4. adopt measures to build the capacity of Indigenous individuals and groups to actively participate in government both horizontally and vertically, including measures to assist in overcoming poverty, disadvantage and trauma.**

We thank the Expert Mechanism for the opportunity to present this intervention.