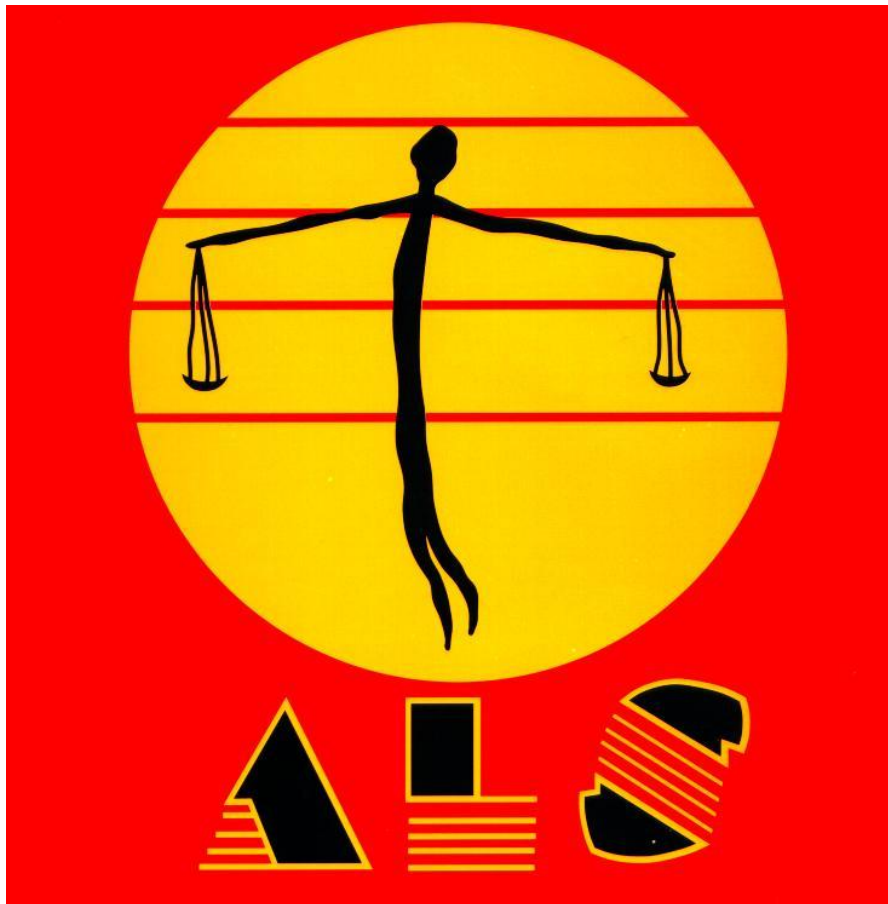


**ABORIGINAL LEGAL SERVICE OF WESTERN  
AUSTRALIA (INC.)**

**Submission to the Commonwealth  
Department of Foreign Affairs and Trade**

**Comments on the Concluding Observations of the  
UN Committee on Economic, Social and Cultural Rights**

**May 2010**



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- B) Intervention on the Dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs.
- C) Intervention on Forests.
- D) Intervention on the report of the expert group meeting on Indigenous youth and children in detention.
- E) Intervention on Indigenous Peoples and boarding schools.
- F) Intervention on the preliminary study on the impact on indigenous peoples of the international legal construct known as the 'doctrine of discovery', which has served as the foundation of the violation of their human rights.
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## **1. Introduction and scope of the submission**

The Aboriginal Legal Service of Western Australia (Inc.) (ALSWA) prepared this submission in response to the Australian Government Department of Foreign Affairs and Trade's (DFAT) invitation to the public to submit comments on the Concluding Observations of the United Nations Committee on Economic, Social and Cultural Rights (CESCR). The Concluding Observations were made in response to Australia's appearance before the CESCR in May 2009, regarding its fourth periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Concluding Observations can be found at:

UN Doc E/C.12/AUS/CO/4 12 June 2009

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/428/99/PDF/G0942899.pdf?OpenElement>

The Concluding Observations identify principle areas of concern in relation to Australia's compliance with its obligations under the ICESCR. It is not the intention of ALSWA to comment on each observation and recommendation made by the CESCR. A number of key issues raised by the CESCR relate directly to the human rights of Aboriginal peoples<sup>1</sup> that are worthy of comment by ALSWA.

This submission will begin by providing some brief information about ALSWA and the work it does, then address key issues of concern raised by the CESCR that relate to the work of ALSWA and the rights of Aboriginal peoples.

## **2. About ALSWA**

ALSWA is a community based organisation that was established in 1973. ALSWA aims to empower Aboriginal peoples and advance their interests and aspirations through a comprehensive range of legal and support services throughout WA.

ALSWA aims to:

- deliver a comprehensive range of culturally-matched and quality legal services to Aboriginal peoples throughout WA;
- provide leadership which contributes to participation, empowerment and recognition of Aboriginal peoples as the Indigenous peoples of Australia;

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<sup>1</sup> Aboriginal peoples refer to Aboriginal and Torres Strait Islander peoples.

- ensure that Government and Aboriginal peoples address the underlying issues that contribute to disadvantage on all social indicators, and implement the relevant recommendations arising from the Royal Commission Into Aboriginal Deaths in Custody; and
- create a positive and culturally-matched work environment by implementing efficient and effective practices and administration throughout ALSWA.

ALSWA uses the law and legal system to bring about social justice for Aboriginal peoples as a whole. ALSWA develops and uses strategies in areas of legal advice, legal representation, legal education, legal research, policy development and law reform.

ALSWA is a representative body with 16 executive officers<sup>2</sup> elected by Aboriginal peoples from their local regions to speak for them on law and justice issues. ALSWA provides legal advice and representation to Aboriginal peoples in a wide range of practice areas including criminal law, civil law, family law, and human rights law. ALSWA also provides support services to prisoners and incarcerated juveniles. Our services are available throughout WA via 17 regional and remote offices and one head office in Perth.

### **3. Principal Subjects of Concern**

ALSWA notes the comprehensive NGO Submission and Addendum to the CESCR titled 'Freedom Respect Equality Dignity: Action' dated April 2008 and May 2009.<sup>3</sup> ALSWA generally endorses the recommendations made in those reports and invites the Australian Government to examine each of these recommendations and identify a framework with timeframes for their implementation.

#### **3.1. Human Rights Framework**

The CESCR noted the Australian Government has failed to incorporate the ICESCR into domestic law, despite making these recommendations since 2000. It further noted the lack of legal framework for the protection of economic, social and cultural (ESC) rights in Australia at the Federal level, and lack of any effective mechanism to ensure coherence and compliance across all jurisdictions with respect to Australia's obligations under the ICESCR.

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<sup>2</sup> There are two Executive Officers for each of the former eight ATSIC regions (Metropolitan, Central Desert Region, Murchison/Gascoyne Region, Southern Region, Pilbara Region, Goldfields Region, West Kimberley Region and East Kimberley Region). They are elected by Aboriginal peoples every three years.

<sup>3</sup> Copies of the submissions can be found at the Human Rights Law Resource Centre (HRLRC) website: <http://www.hrlrc.org.au/our-work/law-reform/ngo-reports/#ICESCR>

ALSWA notes the Australian Government recently announced a new Human Rights Framework in response to the recommendations of the National Human Rights Consultation (Consultation). ALSWA welcomes the measures contained in the Framework however notes and expresses disappointment that such measures fall short of introducing a comprehensive, legally enforceable Human Rights Act.

ALSWA shares the concerns of the CESCR that the terms of reference of the Consultation failed to specifically call for the consideration ESC rights, and notes the complete absence of such rights in the new Human Rights Framework.

ALSWA recommends:

- 1) The Australian Government reaffirm its commitment to the interdependence and indivisibility of human rights in its Human Rights Framework.
- 2) The enactment of comprehensive legislation giving effect to Australia's human rights obligations at the Federal level through the introduction of a Human Rights Act guaranteeing judicial remedies for the protection of human rights, which includes ESC rights.
- 3) The Australian Government encourage state and territory governments that have not done so already, to demonstrate their commitment to human rights protection and promotion through the adoption of a Human Rights Act or Framework including at minimum, the same measures contained in the National Human Rights Framework.
- 4) The expansion of the Australian Human Rights Commission to receive, investigate and conciliate complaints alleging breaches of ESC rights.

### 3.2. **The rights of Aboriginal peoples**

ALSWA notes the CESCR specifically identified Aboriginal peoples in a number of areas of concern where ESC rights are being breached in Australia,<sup>4</sup> such as:

- racial discrimination through measures of the Northern Territory Intervention, which were adopted without sufficient and adequate consultation with Aboriginal peoples concerned;

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<sup>4</sup> ALSWA notes that some of these findings relate to other vulnerable and marginalised groups, however it is beyond the scope of our submission to include them in this discussion.

- high unemployment rates;
- universal coverage of social security system;
- high incidence of domestic violence;
- high poverty rates;
- high incidence of homelessness;
- negative impact of climate change;
- continuing high levels of ill-health;
- inadequate health services in prisons;
- difficult access to mental health services;
- disparities in access to the educational system, particularly in remote areas;
- lack of protection of ancestral land rights; and
- lack of protection of cultural and intellectual property, including languages.

The number and breadth of issues on this list is particularly concerning and highlights the need for a human rights framework directed specifically at improving the rights of Aboriginal peoples to be adopted as a matter of urgency.

We note that ALSWA has prepared submissions on prison conditions and homelessness for recent state and federal inquiries on these issues. We refer you to consider the issues and recommendations made in those submissions:

- ALSWA submission to the WA Inquiry “Making our Prisons Work” (April 2010)  
[http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Evidence+Lookup+y+Com+ID\)/F00B3C1E35F6B9B04825771B0008E109/\\$file/MOP+Sub18\\_ALSWA+\(vA254460\).pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Evidence+Lookup+y+Com+ID)/F00B3C1E35F6B9B04825771B0008E109/$file/MOP+Sub18_ALSWA+(vA254460).pdf)
- ALSWA submission to the National Inquiry into the Homelessness Legislation (August 2009)  
<http://www.aph.gov.au/house/committee/fchy/homelessness/subs/sub073.pdf>

ALSWA recently participated in the United Nations Permanent Forum on Indigenous Issues (UNPFII) in New York. The delegation of Aboriginal and Torres Strait Islander peoples and organisations prepared interventions on a number of issues directly relevant to many of these issues. The interventions contain recommendations to the UNPFII to incorporate into its final report, which include relevant recommendations for the Australian Government to consider in its framework for improving the protection and promotion of the rights of Aboriginal peoples in Australia.

We attach the following interventions for your consideration:

- A) Intervention on the Special Theme of the UNPFII 2010, Indigenous peoples Development with Culture and Identity: Articles 3 and 32 of the UN Declaration on the Rights of Indigenous Peoples.
- B) Intervention on the Dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs.
- C) Intervention on Forests.
- D) Intervention on the report of the expert group meeting on Indigenous youth and children in detention.
- E) Intervention on Indigenous Peoples and boarding schools.
- F) Intervention on the preliminary study on the impact on indigenous peoples of the international legal construct known as the 'doctrine of discovery', which has served as the foundation of the violation of their human rights.
- G) Intervention on Indigenous Peoples and Corporations.
- H) Intervention on the study to determine whether climate change policies and projects adhere to the Standards in the Declaration on the Rights of Indigenous peoples.
- I) Intervention on the Impacts of the Global Economic Crisis on Indigenous Peoples.
- J) Intervention on the study on consideration and recognition of Mother Earth rights (Burden of Proof in Native Title).
- K) Intervention on the Consideration of issues relating to Beijing +10 - The Social Impact of Government Policies on Indigenous Women in Community.
- L) Intervention on Young Indigenous Women.

ALSWA notes the many ways in which the rights of Aboriginal peoples could be better protected and promoted to ensure Australia better complies with its obligations under the ICESCR.

ALSWA recommends:



- 5) The Australian Government review and implement the recommendations and proposals prepared by Aboriginal peoples and organisations to recent state and federal inquiries, and international UN forums that impact on the rights of Aboriginal peoples.
- 6) The Australian Government include the Declaration on the Rights of Indigenous Peoples (Declaration) in its new Human Rights Framework to ensure the following:
  - Education and training in the community and commonwealth public sector about the Declaration, including the provision of funding to NGOs and the Australian Human Rights Commission to develop and deliver educational programs;
  - Incorporate the Declaration into the new National Action Plan on Human Rights;
  - Bring together Aboriginal peoples and organisations for a specific NGO forum on the human rights of Aboriginal peoples;
  - Include the Declaration for consideration by the new Parliamentary Joint Committee on Human Rights, and for inclusion with human rights compatibility statements to provide greater scrutiny of legislation for compliance with the Declaration; and
  - Review legislation, policies and practices for compliance with the Declaration
- 7) The Australian Government recognise Aboriginal peoples as the first peoples of this country, provide redress for past policies of child removal and land dispossession, and better protect their traditional rights to land and culture as follows:<sup>5</sup>
  - initiate reform to recognise Aboriginal peoples in the Constitution, remove section 25 of the Constitution and replace it with a clause guaranteeing equality before the law, and amend section 51 (xxvi) to provide that special laws made on the basis of race can only be used to benefit such

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<sup>5</sup> These recommendations were drawn from the Australian Human Rights Commission, 'Taking Stock of Australia's Human Rights Record – Submission by the Australian Human Rights Commission under the Universal Periodic Review Process,' available at [http://www.hreoc.gov.au/upr/20100517\\_upr\\_submission.html](http://www.hreoc.gov.au/upr/20100517_upr_submission.html) at 19/05/10.

groups, and cannot be made to deprive them of their rights;

- the *Native Title Act 1993* (Cth) be reformed to address measures that have been found to be racially discriminatory;
- further steps be taken to provide reparations to Aboriginal and Torres Strait Islander communities for harm resulting from past child removal practices; and
- adopt measures to protect and promote the use of increasingly threatened Aboriginal languages, including through support for bilingual education.

### 3.3. **Optional Protocol**

ALSWA notes the Australian Government has not signed or ratified the Optional Protocol to ICESCR. ALSWA endorses the comprehensive submission prepared by the Human Rights Law Resource Centre<sup>6</sup> that outlines the benefits of ratification.

- 8) ALSWA recommends the Australian Government sign and ratify the Optional Protocol to the ICESCR.

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<sup>6</sup> HRLRC, 'Australia's Ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,' (July 2009) at <http://www.hrlrc.org.au/files/op-icescr-hrlrc-submission-to-government.pdf> accessed 19/05/10.

## **4. Conclusion**

This submission has demonstrated the ongoing work and commitment of ALSWA to protect and promote the rights of Aboriginal peoples, who as a group are recognised as requiring improved measures by the Australian Government to address inequalities and disadvantage Aboriginal peoples face in many aspects of life.

The Australian Government must reaffirm its commitment to the indivisibility and interdependence of all human rights and provide greater protection of ESC rights. ALSWA has recommended a range of ways to incorporate these rights into the new Human Rights Framework.

The Australian Government must play a leading role in adopting specific measures to protect and promote the rights of Aboriginal peoples. In particular the Australian Government needs to better incorporate the Declaration on the Rights of Indigenous Peoples into proposed legislation, policies and programs and raise awareness in the public sector about its operation and significance.

It is also time for the Australian Government to consider constitutional reform to send the strongest of messages to the Australian population that the Australian Government is serious about Australia being a fair and equal society, and providing sweeping reform to constitutionally enshrine equality at the highest platform of our legal system.

ALSWA appreciates the willingness of the Australian Government to invite the public to comment on the observations and recommendations made by the CESCR and hopes this will lead to more positive collaboration in addressing human rights issues in the future. Finally, ALSWA requests to be directly added to any database of NGOs for updates and inclusion in any ongoing future work in this area.

## 5. List of ALSWA Recommendations

ALSWA recommends:

- 1) The Australian Government reaffirm its commitment to the interdependence and indivisibility of human rights in its Human Rights Framework.
- 2) The enactment of comprehensive legislation giving effect to Australia's human rights obligations at the Federal level through the introduction of a Human Rights Act guaranteeing judicial remedies for the protection of human rights, which includes ESC rights.
- 3) The Australian Government encourage state and territory governments that have not done so already, to demonstrate their commitment to human rights protection and promotion through the adoption of a Human Rights Act or Framework including at minimum, the same measures contained in the National Human Rights Framework.
- 4) The expansion of the Australian Human Rights Commission to receive, investigate and conciliate complaints alleging breaches of ESC rights.
- 5) The Australian Government review and implement the recommendations and proposals prepared by Aboriginal peoples and organisations to recent state and federal inquiries, and international UN forums that impact on the rights of Aboriginal peoples.
- 6) The Australian Government include the Declaration on the Rights of Indigenous Peoples (Declaration) in its new Human Rights Framework to ensure the following:
  - Education and training in the community and commonwealth public sector on the Declaration, including the provision of funding to NGOs and the Australian Human Rights Commission to develop and deliver educational programs;
  - Incorporate the Declaration into the new National Action Plan on Human Rights;
  - Bring together Aboriginal peoples and organizations for a specific NGO forum on the human rights of Aboriginal peoples;
  - Include the Declaration for consideration by the new Parliamentary Joint Committee on Human Rights, and for inclusion with human rights

compatibility statements to provide greater scrutiny of legislation for compliance with the Declaration; and

- Review legislation, policies and practices for compliance with the Declaration

7) The Australian Government recognise Aboriginal peoples as the first peoples of this country, provide redress for past policies of child removal and better protect their traditional rights to land and culture as follows:<sup>7</sup>

- initiate reform to recognise Aboriginal peoples in the Constitution, remove section 25 of the Constitution and replace it with a clause guaranteeing equality before the law, and amend section 51 (xxvi) to provide that special laws made on the basis of race can only be used to benefit such groups, and cannot be made to deprive them of their rights;
- The *Native Title Act 1993* (Cth) be reformed to address measures that have been found to be racially discriminatory;
- provide reparations to Aboriginal and Torres Strait Islander communities for harm resulting from past child removal practices; and
- adopt measures to protect and promote the use of increasingly threatened Aboriginal languages, including through support for bilingual education.

8) ALSWA recommends the Australian Government sign and ratify the Optional Protocol to the ICESCR.

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<sup>7</sup> These recommendations were drawn from the Australian Human Rights Commission, 'Taking Stock of Australia's Human Rights Record – Submission by the Australian Human Rights Commission under the Universal Periodic Review Process,' DRAFT ONLY, available at [http://www.hreoc.gov.au/upr/20100517\\_upr\\_submission.html](http://www.hreoc.gov.au/upr/20100517_upr_submission.html) at 19/05/10.

**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2009**

**Agenda Item 3:** Discussion of the special theme for the year “Indigenous Peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples”

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**JOINT INTERVENTION DELIVERED BY LES MALEZER ON BEHALF OF THE  
INDIGENOUS PEOPLES ORGANISATIONS OF AUSTRALIA INCLUDING:**

National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for indigenous Health  
National Aboriginal Community Controlled Health Organisation  
(NACCHO)  
Indigenous Peoples Organisation Youth Delegation  
Office of the Aboriginal and Torres Strait Islander Social Commissioner

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Mr Chairperson

As this is the first intervention on behalf of the Aboriginal Peoples and Torres Strait Islander Peoples delegations from Australia we take this opportunity to pay our respects to the Indigenous Peoples in whose territories we now meet, and to bring greetings from our Peoples to the other Indigenous Peoples of the world, the UN organisations and officials and to the State members of the United Nations.

We also take the opportunity to congratulate you Mr Chairperson on your election to preside over this session and to express our gratitude to Ms Victoria Tauli-Corpuz for her many years of leadership for this important UN organisation, and especially during the critical period of the conception of the Declaration on the Rights of Indigenous Peoples.

**Mr Chairperson**

It is very disappointing that the 2010 UN report, ‘The State of the World’s Indigenous Peoples’, reveals not nearly enough is being done to support the development – the economic, social, cultural and political development - of Indigenous Peoples.

We are disappointed that States, in particular, are not responding adequately to Articles 38 and 39 of the Declaration, to cooperate with Indigenous Peoples taking appropriate measures, including legislative measures and by providing the financial and technical support to the Indigenous Peoples which is so necessary for the achievement of our rights under the Declaration.

## Mr Chairperson

Victoria Tauli-Corpuz has presented a paper, document CRP.4, which suggests a more sustainable world can be achieved by ensuring cultural, identity and environmental sustainability is given equal attention as economic development.

*“I further argue that Indigenous Peoples should be key players in bringing about a more sustainable world as they are the ones who have proven that they can live within the limits set by the earth and thus they can lead by example. Many Indigenous Peoples still continue to live by the wisdom and values passed on to them by their ancestors and it is because of this that they still live in territories where the ecosystems are not totally damaged.”*

Victoria Tauli-Corpuz, The Human Development Framework and Indigenous Peoples' Self-determined Development or Development with Culture and Identity, UN Document, E/C.19/2010/CRP.4

We are able to strongly agree with that position but we hold that economic development should, more correctly, express the economic value and significance of culture, identity or environment. However our argument is completely lost when individuals, corporations and States can only talk about “economic gain” – as such gain can only occur when such riches (culture, identity and environment) are transformed without giving value to the losses.

As has been witnessed over many centuries, Indigenous Peoples have successfully managed our territories and cultures and it is only in very recent times that the global community has come to appreciate the importance and sustainability of our civilizations, laws and practices.

Western Europe has almost lost its natural environment but continues to advance the industrial model of development, relying heavily upon the resources in other parts of the world. Elsewhere, in colonial and post-colonial countries, there is the impetus to emulate western Europe and to trade the environment, culture and identity to feed the greed for economic gain, or to emulate western Europe in an ex situ setting.

In Australia, for example, not only is the State vigorously competing to emulate western greed, it is attempting to force upon the Aboriginal Peoples and the Torres Strait Islander Peoples the creed that ‘economic gain’ is not only good and desirable, but also that it is absolutely necessary for human wellbeing.

Government is not guided by any notion of Indigenous well-being, and certainly unable to grasp the significance of land, language, social connection and cultural practices to the Aboriginal Peoples and Torres Strait Islander Peoples.

Despite the horrifying reputation of genocide, the Australian Government apparently remains oblivious to the significance, meaning and relevance of Articles 7 & 8 of the Declaration, viz.

*“Indigenous Peoples have the collective right to live in freedom, peace and security as distinct Peoples and shall not be subjected to any act of genocide [and] States shall provide effective mechanisms for prevention of, and redress for ... (a)ny action which has the aim or effect of depriving them of their integrity as distinct Peoples, or*

*of their cultural values or ethnic identities ... [or] (a)ny form of propaganda designed to promote or incite racial or ethnic discrimination directed against them."*

Articles 7 & 8, UN Declaration on the Rights of Indigenous Peoples

Even in the situation of global crisis over climate change and global financial collapses States such as Australia simply act to remove Indigenous Peoples interests from the emergency responses and focus upon the remedies suited to the accepted wisdom of the western world.

Mr Chairperson

We were most pleased the Australian Government announced its support for the Declaration in April of last year but we are dissatisfied with the lack of engagement and progress since that time to ensure that our right to development, within the structure of self-determination, was realised.

Our delegations are deeply disappointed that the Australian Government has misused the situation since the announcement to continue and expand its officious and meddling administration of the lives of the Aboriginal and Torres Strait Islander population.

The government has given no affirmation of our identity as Peoples, choosing instead to orchestrate or otherwise fuel in mainstream media a national crisis of irresponsibility, drunkenness, violence, depravity and neglect.

While preventing our collective interest to act as Peoples, the Government has overridden our right to development with two explicit official policy positions that have driven the Government's agenda for the current administration.

These policies are 'Closing the Gap' and 'Northern Territory Emergency Response'.

The Northern Territory Emergency Response, is a policy of intervention by government affecting the lives of Aboriginal people that is only lawful because the national law preventing racial discrimination has been suspended.

The Racial Discrimination Act 1975 was shelved four years ago, to legitimise the Australian Government plans to control the spending of individual Aboriginal families on welfare.

The policy is based purely upon race, and Aboriginal people and non-Aboriginal people who are in exactly the same financial positions are treated in completely different ways.

As part of the intervention the Government has conveniently discounted community-controlled organisations, programs and decision-making, choosing instead to substitute the existing community services with more expensive, inefficient and wasteful government agencies.

Our identity and capacity as Peoples is completely crippled by this policy of government, because the people concerned are unable to undertake decision-making as established in Articles 18 & 19 of the Declaration, are unable to act autonomously or under self-government as set out in Article 4 of the Declaration and



are unable to undertake development as provided in Articles 3, 32 and also in Articles 5, 11, 12, 13, 20, 23, 25, 26, 29, and 31.

The 'Closing the Gap' policy is a targeted program to overcome disadvantage faced by the Aboriginal and Torres Strait Islander population in the areas of education, health (including life expectancy), and employment.

This policy, which dominates the government's agenda, gives no recognition to our identity as Peoples and is devoid of any assistance, as proposed in Articles 38 & 39 for technical or financial assistance to the Aboriginal Peoples and Torres Strait Islander Peoples.

The 'Closing the Gap' policy identifies 'economic development' as a policy objective of the Government but in actuality the policy is to halve the gap in unemployment rates between Indigenous and non-Indigenous people by the Year 2018, so the government does not have an economic development policy relating the Aboriginal Peoples and Torres Strait Islander Peoples.

In an official government report, called 'Options for the Future of Indigenous Australia', the Government gives an unequivocal message that development as 'Indigenous Peoples' is completely unsupported.

This report was released in 2009 after the Government issued a statement of support for the Declaration.

In response to the suggestion that the Economic Development target include a target relating to business ownership, the official response is included under a section headed 'Ideas With No Further Action At This Time'.

"Disagree. The Prime Minister will report to Parliament on the first working day of every parliamentary year on the progress in closing the gap between Indigenous and non-Indigenous Australians. Indigenous employment is the best overall measure of Indigenous economic development."

Mr Chairperson

The Aboriginal and Torres Strait Islander delegations end this intervention with the conclusion that the Government of Australia is opposed to the development of the Aboriginal Peoples and Torres Strait Islander Peoples, as shown in its official policies and actions, and does not recognise our identity as Aboriginal Peoples and Torres Strait Islander Peoples.

We call upon the Government of Australia to make it clear:

1. why it is participating in this forum with the appearance that it supports self-determination of Indigenous Peoples, and
2. what action will it take over the next 12 months to recognise our identity as Peoples with the right of self-determination, and
3. what action will it to take, in the spirit of Articles 38 & 39 in particular, to provide financial and technical support for our development with culture and identity.

## **Recommendations**

## **Mr Chairperson**

In conclusion we support the following recommendations:

- 1. The Permanent Forum on Indigenous Issues recommend States consider document CRP.4 and in particular give attention to the conclusions and recommendations provided in that document.**
- 2. The development of Indigenous Peoples' indicators of sustainability and wellbeing be continued towards the establishment of headline indicators to measure and examine the goals and aspirations of Indigenous Peoples and the piloting of these in several countries. (as recommended in Para 30 of E/C.19/2010/14)**
- 3. The International Council on Mining and Metals be asked to provide a list of 10 projects that they recommend as good practice and to invite members of the Permanent Forum to visit project sites. (as recommended in Para 52 of E/C.19/2010/14)**
- 4. If the United Nations publication 'State of the World's Indigenous Peoples' is again produced for 2011 that States be requested to provide information for a section on 'Development with Culture and Identity'.**

**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2010**

**Agenda Item 4(b): Dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs**

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**JOINT INTERVENTION DELIVERED BY MS. TAMMY SOLONEC ON BEHALF OF:**

National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for Indigenous Health  
National Aboriginal Community Controlled Health Organisation (NACCHO)  
Indigenous Peoples Organisation Network Youth Delegation  
Amnesty International Australia  
Oxfam Australia  
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

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Thank you Mr Chairperson.

The Aboriginal and Torres Strait Islander organisations of Australia are pleased to address this intervention on the Special Rapporteur's recent visit to Australia. We thank Professor James Anaya for visiting many of our communities over a two-week period in August 2009. His visit and reports were well-received and gave much encouragement to Aboriginal and Torres Strait Islander peoples and organisations.

We would also like to acknowledge the Australian Government's revised policy position, in extending an open invitation to all of the United Nations special mechanisms including Special Rapporteurs.

**The Rapporteur's Report on His Official Visit to Australia**

The Rapporteur began his report by noting the historical injustices that have been perpetrated on the Indigenous peoples of Australia including acts of genocide and dispossession of lands, territories and resources which today continues to see Aboriginal and Torres Strait Islander peoples facing severe disadvantage and discrimination.

The Rapporteur expressed concern for the lack of effective participation processes for Aboriginal and Torres Strait Islander peoples in government and the need for a more integrated approach to addressing our historical disadvantage and oppression which promotes social and economic well being and advances our self-determination and cultures.

Concerns that Aboriginal and Torres Strait Islander peoples have held for years were supported and highlighted by the Rapporteur such as:

- Health, including the need to strengthen and expand existing culturally appropriate health services, in rural, remote and urban communities;
- Education, including the need for more Aboriginal and Torres Strait Islander children to be taught in their own languages;
- Employment and income, including concerns about welfare reform including compulsory income management and the reforms to the Community Development Employment Program;
- Housing, including the lack of housing and concerns about housing reform including the National Partnership Agreement on Remote Indigenous Housing, which is imposing 40 – 99 year leases on Aboriginal and Torres Strait Islander communities to allow government to manage the housing;
- Women, children and families – the lack of protections and appropriate services for our women and children in situations of family violence and dysfunction; and
- Administration of justice – he noted the alarmingly high levels of incarceration of our peoples, including women and juveniles and that the recommendations of the Royal Commission into Aboriginal Deaths in Custody have still not been fully implemented.

Concerns about cross cutting government programs including in regards to self determination, local self-governance, lack of participation in the design, delivery and oversight of programs, the need to support an build on Indigenous controlled initiatives and remote service delivery and homelands were also highlighted by the Rapporteur and reflect the concerns of Aboriginal and Torres Strait Islander peoples.

### **Northern Territory Emergency Response**

An important annexure to the Rapporteur's report were his observations on the Northern Territory Emergency Response in Australia, also known as 'the Intervention'. This legislation deliberately removed protections granted by the Racial Discrimination Act in promoting the intervention as a 'special measure'. Community consultations were conducted in late 2009. The Australian Government then introduced a Bill to restore the Racial Discrimination Act to the intervention and redesign various measures. This was then the subject of a Parliamentary Committee.

The Rapporteur's comments about the intervention were released in advance to coincide with the Inquiry, however the expert opinion has been ignored. Unfortunately, the Parliamentary Committee investigating this legislation has given little consideration to the concerns of the Rapporteur, dismissing it as mere opinion. To date the Bill has not been passed in Parliament.

International human rights law makes it clear that legislative measures based on minimal evidence and enacted without our peoples' consent cannot be categorised as a 'special measure'.

### **Aboriginal and Torres Strait Islander People's Response**

The Aboriginal and Torres Strait Islander peoples commend the report of the Rapporteur however we express our concern at the disregard to the report by the Governments of Australia. We seek a formal and public Government response to the

Rapporteurs report and the development of processes that ensure the active participation of Aboriginal and Torres Strait Islander peoples resolving the concerns and implementing the recommendations.

Government policy regarding our economic and social development must respect the integrity of our communities and cultures and our rights to self-determination. Our cultural development including languages, cultural heritage, knowledge and law relies on our connection to our traditional territories, and our abilities to control our own destinies with integrity, security and dignity.

We are pleased that the Special Rapporteur acknowledges the strength and vibrancy of our cultures and is inspired by the achievements and visions of our communities. As such we continue to pursue constitutional recognition and reform to guarantee our inherent rights as the First Peoples of Australia. Through constitutional recognition our rights can be truly protected and put beyond the untrustworthiness of Government.

## **Recommendations**

- 1. That the Permanent Forum urge all States to commit to a process of responding to Country Reports by all Special Rapporteurs which includes the participation of Indigenous peoples to:**
  - **provide a written response to the Rapporteur's Report, submitted to the Human Rights Council, within six months, that outlines the State process for progressing the report; and**
  - **develop and then publically promote an implementation strategy to implement the response to the recommendations within 12 months;**
  - **provide annual updates to the Rapporteur's Report on the progress of the strategy until such time as the Rapporteur again visits that State or until that State undergoes a Universal Periodic Review.**
  
- 2. That the Permanent Forum present a draft resolution for ECOSOC urging all states with Indigenous peoples to review their legislation, policies and programs in accordance with the Declaration on the Rights of Indigenous Peoples and the Program of Action for the Second Decade of the World's Indigenous peoples.**

**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2010**

**Agenda Item 7: Half Day Discussion on Forests**

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**JOINT INTERVENTION DELIVERED BY AZURE PEACOCK ON BEHALF THE  
INDIGENOUS PEOPLES' ORGANISATIONS OF AUSTRALIA, INCLUDING:**

National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for Indigenous Health  
National Aboriginal Community Controlled Health Organisation  
(NACCHO)  
Indigenous Peoples Organisation Network Youth Delegation  
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

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Mr Chairperson,

Forests are an integral part of Indigenous life the world over. In Australia forests are rich sources of our cultural economy, where Indigenous peoples still occupy land and utilise the abundant resources for food, medicinal, spiritual, cultural, social and economic purposes.

Within the Indigenous estate, large areas are forests and include important hand-back and joint management arrangements, Native Title determinations, Indigenous protected areas and land council holdings.

The affinity and connection to forests, which Indigenous peoples hold is becoming increasingly recognised in international legal instruments as the pressure on forests through deforestation and climate change increases. These opposing forces add to the recognition of Indigenous rights in forestry through international and national law and through corporate and other approaches.

Much of the forested areas are still unsustainably logged and stressed by lack of water through poor water management, urban sprawl or mining and other development.

Furthermore, Indigenous peoples are increasingly participating in Forest management to deliver environmental services without appropriate resources and the proper rights to forested land and the resources contained within.

## **Recommendations:**

1. That the Permanent Forum urge all States to fully implement the Declaration on the Rights of Indigenous Peoples and review existing legislative and administrative measures.
2. That the Permanent Forum urge all States to fully protect Indigenous knowledge and cultural heritage within forests including fully adopting the Akwe: Kon Guidelines.
3. That the Permanent Forum urge all States to ensure that Indigenous peoples are able to fully participate in monitoring and reporting on all forested sites including RAMSAR sites and other sites that are internationally significant.
4. That the Permanent Forum urge all States to comply with Articles 27 and 28 of the Declaration by ensuring that concrete measures are taken to immediately restore Indigenous peoples rights to their lands, territories and resources.
5. That the Permanent Forum urge all States to review unsustainable logging and mining and other extraction activities where Indigenous peoples' rights to lands, territories and resources exist, and ensure that rights to free, prior and informed consent are exercised.
6. That the Permanent Forum urge all States to ensure that the adequate supply of water to natural forests is maintained and able to sustain the eco-systems and cultural economy, including 'cultural flows'.
7. That the Permanent Forum urge all States to fully protect the cultural and intellectual property of traditional knowledge systems including access and benefit sharing, particularly those that rely on knowledge of traditional medicinal and food sources and other resources within forests.

**Report of the Aboriginal and Torres Strait Islander Peoples Organisations of  
Australia to the United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2010**

**Agenda Item 7: Half day discussion on Forests**

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**JOINT REPORT SUBMITTED ON BEHALF OF THE INDIGENOUS PEOPLES'  
ORGANISATIONS OF AUSTRALIA INCLUDING:**

National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for Indigenous Health  
National Aboriginal Community Controlled Health Organisation  
(NACCHO)  
Indigenous Peoples' Organisation Network Youth Delegation  
Australian Human Rights Commission (AHRC)  
The Office of the Aboriginal and Torres Strait Islander Commissioner

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**Half day discussion on Indigenous Peoples and Forests**

**Background Report**

**Protecting Indigenous Rights to Forests: International Instruments**

Forests are estimated to cover 12% of the planet, many of which are the traditional lands and territories of Indigenous peoples who have developed ways of life and traditional knowledge associated with their forest environments and which are an important source for the livelihood, culture and spirituality of Indigenous peoples.

Aboriginal and Torres Strait Islander peoples in Australia have a significant interest in forestry, from a social and cultural point of view, but also from an economic perspective. The rights of Indigenous peoples associated with forestry are not limited to social and cultural rights, but encompass economic and environmental rights.

International law and custom increasingly recognise the rights of Indigenous peoples to their lands and territories, resources, cultural heritage, rights to participate in decision making and rights to development.

The recent adoption of the *Declaration on the Rights of Indigenous Peoples (the Declaration)*, though not legally enforceable, is the centre-piece of Indigenous rights and provides useful guidance. Other relevant treaties include the *International Covenant on Civil and Political Rights (ICCPR)*, the *Convention on Biological Diversity (CBD)*, and the *International Labour Convention 169 (ILO 169)*.



It is incumbent upon Governments to domestically implement these instruments, which provide useful guidance to certification bodies to promote best practice. These instruments provide guidance for the process of developing and negotiating certification standards and management plans.

### *Land Rights and Resource Rights*

Of central importance is the right of Indigenous peoples to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. This extends to the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

In order to maintain spiritual relationships with their traditional lands and territories, and to uphold responsibilities to future generations, the rights of Aboriginal and Torres Strait Islander peoples to own, control and manage their lands, territories and resources must be realised in accordance with Article 26 of the Declaration. Articles 27 and 28 are particularly relevant in Australia. Concrete measures must be taken to implement a due process to recognise, restore and adjudicate those rights.

The importance of conserving the productive capacity of lands is articulated in Article 29 of the Declaration, hence the need for forestry activities to be conducted in a sustainable manner.

### *Self-Determination and Engagement and Participation in Decision-Making*

The right to participate in decision-making is a key element of the *Declaration on the Rights of Indigenous Peoples* and the ICCPR.

Indigenous peoples have the right to self-determination which is the right to “determine and develop priorities and strategies for the development or use of their lands or territories and other resources” (Article 32 of the Declaration, and Article 1 of the ICCPR, ICESCR). Central to the exercise of the right to self-determination is participation and engagement in decision making.

Article 18 of the Declaration states 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.”

Article 19 states that

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

ILO 169 was adopted in 1989, though not by Australia, and promotes two basic principles:

1. Respect for the cultures, lifestyles and traditional institutions of the Indigenous peoples.
2. Effective consultation and participation of these peoples in the decisions that affect them.

Indigenous peoples shall decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.

Decision making should be through the representative institutions of Indigenous peoples whenever consideration is being given to legislative or administrative measures which may affect them directly.

Though not formally ratified, the United Nations' *Forest Principles: Non-Legally Binding Authoritative Statement of Principles For a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests*<sup>[6]</sup> (Forest Principles) highlights the importance of participation of Indigenous peoples in the "development, implementation and planning of national forest policies which should recognise and support the identity, culture and the rights of Indigenous people and their communities."

The Forest Principles encourage the promotion of appropriate conditions that enable Indigenous peoples to "have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organisation, as well as adequate levels of livelihood and well-being."

The Forest Principles recommend capacity building measures be developed and Indigenous knowledge be promoted.

Appropriate Indigenous capacity and local knowledge regarding the conservation and sustainable development of forests should, through institutional and financial support and in collaboration with the people in the local communities concerned, be recognised, respected, recorded, developed and, as appropriate, introduced in the implementation of program. Benefits arising from the utilisation of indigenous knowledge should therefore be equitably shared with such people.

### *Protecting Aboriginal Cultural Heritage*

Rights associated with Aboriginal cultural heritage are articulated in a range of international treaties such as the Declaration, ICCPR and ICESCR. We also remind the Permanent Forum that the Convention on Biological Diversity (CBD) recommends States follow the *Akwe: Kon Guidelines* when dealing with Indigenous peoples' rights to protect their traditional knowledge and cultural heritage.

The extent to which Australian governments protect Aboriginal cultural heritage is inconsistent between jurisdictions. The Indigenous Peoples' Organisations of Australia are of the opinion that the Australian Government must have primary responsibility for minimum standards with regard to the protection of Indigenous peoples' rights to cultural heritage protection in accordance with their international obligations.

The Declaration contains important provisions articulating the rights of Indigenous peoples concerning cultural heritage. While the Australian Government declined to endorse this Declaration when it was adopted (and in fact voted against the Declaration), the current Australian Government has indicated that it supports the Declaration. Accordingly, the Declaration should form part of the decision-making framework with respect to the extent of protection that should be accorded to sites and objects of significance to Indigenous persons and communities.

Relevantly, the Declaration states at Article 11 that:

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12:

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

The ICESCR requires recognition of the right of everyone to "take part in cultural life, that is, ethnic, religious or linguistic minorities should not be denied the right, in community with other members of their group to 'enjoy their own culture". The preservation, protection and access to cultural heritage is critical to ensure that Aboriginal and Torres Strait Islander peoples take part in 'cultural life', central to the continuation of Indigenous customs and traditions. However, the Australian Government is yet to ratify the UNESCO *Convention for the Safeguarding of the Intangible Cultural Heritage* 2003.

Another relevant consideration is the protection of Aboriginal cultural heritage that requires consideration of the nationally and internationally recognised principle of Intergenerational Equity, a cornerstone of the concept of 'ecologically sustainable development'.

The principle of intergenerational equity is that "the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations". The basis of intergenerational equity includes the 'conservation of access' principle under which each generation should give its members equitable rights of access to the legacy of past generations and should conserve this access for future generations.<sup>[5]</sup>

The issue of intergenerational equity is an important one in the context of protecting and preserving Aboriginal cultural heritage. By applying the principles of ecologically sustainable development, and hence, intergenerational equity, the detailed provisions of certification standards should include the protection of cultural heritage, to ensure access to and enjoyment of that heritage for future generations.

Measures for consideration of Aboriginal cultural heritage in impact assessment are encompassed in the *Akwe: Kon Voluntary Guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities* (Akwe: Kon Guidelines) which were developed by parties to the CBD, which Australia has ratified. These guidelines must therefore be regarded as the minimum benchmark by the Australian Government.

### **Recommendations:**

1. That the Permanent Forum urge all States to fully implement the Declaration on the Rights of Indigenous Peoples and review existing legislative and administrative measures.
2. That the Permanent Forum urge all States to fully protect Indigenous knowledge and cultural heritage within forests including fully adopting the Akwe: Kon Guidelines.
3. That the Permanent Forum urge all States to ensure that Indigenous peoples are able to fully participate in monitoring and reporting on all forested sites including RAMSAR sites and other sites that are internationally significant.
4. That the Permanent Forum urge all States to comply with Articles 27 and 28 of the Declaration by ensuring that concrete measures are taken to immediately restore Indigenous peoples rights to their lands, territories and resources.
5. That the Permanent Forum urge all States to review unsustainable logging and mining and other extraction activities where Indigenous peoples' rights to lands, territories and resources exist, and ensure that rights to free, prior and informed consent are exercised.

6. That the Permanent Forum urge all States to ensure that the adequate supply of water to natural forests is maintained and able to sustain the eco-systems and cultural economy, including 'cultural flows'.
7. That the Permanent Forum urge all States to fully protect the cultural and intellectual property of traditional knowledge systems including access and benefit sharing, particularly those that rely on knowledge of traditional medicinal and food sources and other resources within forests.

**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2010**

**Indigenous Peoples Organisations of Australia**

**Agenda Item 7: Intervention on the report of the expert group meeting  
on Indigenous youth and children in detention**

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**JOINT INTERVENTION DELIVERED BY Sandra Creamer ON BEHALF OF:**

Indigenous Peoples Organisation Network Youth Delegation  
National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for Indigenous Health  
National Aboriginal Community Controlled Health Organisation (NACCHO)  
Amnesty International Australia  
Oxfam Australia  
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

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Mister Chairperson, this Intervention is presented on behalf of the Indigenous Peoples Organisations of Australia present at this forum.

The human rights and fundamental freedoms of Aboriginal and Torres Strait Islander children and youth in Australia and Indigenous children and youth around the world are severely threatened by alarmingly high rates of incarceration that are continuing to rise.

The International Expert Group Meeting on this issue has acknowledged the 'multifaceted, inter-related and mutually-reinforcing' human rights considerations relating to Indigenous children in state custody.

We note the Declaration on the Rights of Indigenous Peoples (Declaration) and Convention on the Rights of the Child (CROC) and together reaffirm that Indigenous children and youth enjoy all the human rights and freedoms recognised in international law, and especially recognise the social and cultural needs of children in Indigenous communities.

The International Expert Group Meeting noted the legacy of historical abuse and impact of past government policies and removal programs are a major contributing factor to this situation. The increasing rates of incarceration indicate that measures currently adopted by States are failing to address the unique situation of Indigenous children and youth in contemporary society.

The special place of Indigenous children and youth as leaders of tomorrow and bearers of Indigenous cultures require the international communities' urgent attention to identify and formulate methods to overturn this situation.

Indigenous children and youth often face disadvantage and marginalisation from birth until adulthood characterised by:

- intergenerational poverty;
- overcrowding in poor housing conditions;
- low levels of literacy and numeracy;
- low quality of health, well-being and life expectancy;
- welfare dependency;
- social marginalisation;
- poor and unsuitable service delivery by governments;
- inadequate resources, funding and support for culturally appropriate Indigenous owned and controlled services; and
- over-policing, targeting and discrimination by police and law enforcement authorities.

Programs need to address these multi-faceted and inter-related considerations to overcome disadvantage, marginalisation and the structural impediments and barriers in justice systems that all impact on the high involvement of Indigenous children and youth in detention and custody.

The Declaration, CROC and other international instruments can be better utilised and incorporated into measures identified to address this situation, with a particular focus on working with local communities to address local needs and increasing the participation of Indigenous children and youth in decision-making processes.

A particular framework proving successful in mainstream communities in the United States of America and the United Kingdom is 'justice reinvestment,' which is a localised criminal justice policy approach diverting a portion of funds for imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested in programs and services in communities where these issues are most acute in order to address the underlying causes and prevent crime in those communities. Justice reinvestment still retains incarceration as a measure for dangerous and serious offenders, but actively shifts the culture away from imprisonment and starts providing community wide services that prevent offending.

Justice reinvestment was recently recommended by the departing Aboriginal and Torres Strait Islander Social Justice Commissioner of Australia, and is supported by the Indigenous Peoples Organisations of Australia present at this forum.

### **Recommendations**

1. That the Permanent Forum urge States to divert Indigenous children and youth away from detention and custody as a matter of priority, using detention only as a matter of last resort.
2. That the Permanent Forum urge States to engage and consult with Indigenous peoples and organisations to identify causal factors and strategies to overcome the disproportionately high level of involvement and overrepresentation by Indigenous children and youth in the justice system.
3. That the Permanent Forum urge States to provide resources to empower Indigenous organisations where possible, to implement culturally appropriate programs that prevent, intervene, divert and rehabilitate Indigenous youth in the justice system through counselling, mediation, employment, education, and cultural and family reconnections.
4. That the Permanent Forum encourage discussion and input from States and Indigenous peoples and organisations about best practice models, such as justice reinvestment, and consider how to encourage a framework for broader application beyond local settings.
5. That the Permanent Forum work to identify mechanisms for increasing accessibility and participation for Indigenous children and youth in the UN system to highlight their issues and concerns directly with the international community, including consideration of international complaint mechanisms.

Finally, please note that a more comprehensive report on these issues has been provided to the Permanent Forum for its consideration.

Thank you Mr Chairman.



**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2010**

**Indigenous Australian Youth delegation supported by Australian  
Indigenous delegation**

**Agenda Item 7: Intervention on Indigenous Peoples and boarding  
schools**

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**JOINT INTERVENTION DELIVERED BY Kathryn Stone ON BEHALF OF:**

Indigenous Peoples Organisation Network Youth Delegation  
National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for Indigenous Health  
National Aboriginal Community Controlled Health Organisation (NACCHO)  
Amnesty (International) Australia  
Oxfam Australia  
Australian Human Rights Commission (AHRC)  
Representatives of the Yarrabah Community

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The Australian Youth Delegation would like to acknowledge and thank the Onodaga Nation, the Traditional Owners of the land on which we are meeting today. We would also like to acknowledge and pay our respects to their ancestors.

The Indigenous Australian Youth delegation would like to acknowledge the Australian Government's recent commitment to improving the educational outcomes for Aboriginal and Torres Strait Islander peoples.

As human rights are universal and indivisible, Indigenous young people should not be expected to forego their rights to self determination and cultural integrity in order to realise their right to a basic education.

In many Indigenous Australian communities, to gain an education, young people are faced with the stark choice of either moving from their traditional lands to attend boarding schools, or staying on traditional lands in order to practice their culture without access to a formal education. We believe that always as a first

option, Indigenous young people should be able to access the highest standard of education where they live.

We, as the youth delegation believe that any form of education must incorporate our culture, cultural responsibilities and unique identity as the oldest surviving culture in known history into the curriculum. We fully endorse Mr Dodson's previous comments at this session of the forum, relating to the importance of bilingual education.

Whilst we acknowledge that some improvements have been made in the areas of education, there is an urgent need for improvements in the development and retention of a cultural education.

There is also a pressing need for education providers to participate in mandatory cultural awareness training as education is a social institution and has incredible power to act either as an agent of assimilation or affirmation of Indigenous identity.

The Bringing them Home report, commissioned by the Australian Government and compiled by the Australian Human Rights and Equal Opportunity Commission (as they were then known, now the Australian Human Rights Commission) illustrated and provided evidence of the damage and ongoing inter-generational trauma caused by assimilationist policies including the removal of children from their families and the denial of cultural practices.

In 2008 the Australian Government apologised to the Stolen Generations and pledged to learn from past mistakes of these policies. As such, current education policies should reflect this pledge, and ensure education delivered to Indigenous Australians is grounded in personal development through culture and identity.

In some instances, the provision of scholarships and incentives to Indigenous children and young people to attend schooling away from their traditional lands and communities, are well-meaning, yet misguided attempts to provide access to education. In this sense, children and young people are often set up to fail in a new and overwhelming environment without foundational education and adequate academic, personal and pastoral support to thrive and to make the most of this learning experience.

More often than not education providers fail to provide an environment where our students can feel culturally secure and to be safe to learn as Indigenous young people.

In document E/C.19/2010/11, there is evidence which demonstrates Indigenous Australian young people who are moved off their country to attend schools are less likely to undertake post secondary education, twice as likely to be arrested and convicted of an offence, and twice as likely to use intravenous drugs.

Australian Governments should ensure that schools regardless of location are resourced equitably. This would ensure that Aboriginal and Torres Strait Islander families no matter where they live have choices in schooling to maintain their cultural integrity.

**Recommendations:**

- 1. That the Permanent Forum urge States to recognise and take into account the negative impact of policies of assimilation on the education of Indigenous youth in the formulation of their policies on Indigenous education. States must ensure that assimilation as a public policy is never repeated.**
- 2. That the Permanent Forum urge States to ensure that educational policies are consistent with Article 14 of the Declaration which emphasises the importance of education and culture to Indigenous peoples.**
- 3. That the Permanent Forum urge States to distribute resources equitably to ensure that our people have access to education regardless of location or the size of our communities.**
- 4. That the Permanent Forum encourage States to develop national benchmarks on educational standards, taking into account the importance and diversity of indigenous peoples' culture and its centrality in the educational experience.**

**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2010**

**Intervention of the Indigenous Peoples Organisations of Australia**

**Agenda Item 7: Preliminary study on the impact on indigenous peoples of the international legal construct known as the ‘doctrine of discovery’, which has served as the foundation of the violation of their human rights**

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**JOINT INTERVENTION DELIVERED BY Ms. Tammy Solonec ON BEHALF OF:**

National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for Indigenous Health  
National Aboriginal Community Controlled Health Organisation (NACCHO)  
Indigenous Peoples Organisation Network Youth Delegation  
Amnesty Australia  
Oxfam Australia  
The Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

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Thank you Mr Chairperson.

This intervention on the Doctrine of Discovery is delivered on behalf of the Indigenous Peoples Organisations of Australia present at this forum.

The Doctrine of Discovery has a shameful history in international law and in the domestic law of the United States (US). The Doctrine is akin to the Doctrine of Terra Nullius applied in Australia. Both have a history of entrenched racism. The Doctrines have been used to rationalise the dispossession of Indigenous peoples from their lands and waters and to justify non-recognition of their political sovereignty. This has resulted in a disgraceful history of dispossession, degradation and genocide.

The Doctrine of Discovery was first adopted into US law in 1823 to justify the taking of Indian lands in the US Supreme Court case of *Johnson v. McIntosh*, where it was observed that Christian European nations had assumed "ultimate dominion" over the lands of America during the Age of Discovery. Under the Doctrine, the Indians lost their rights to complete sovereignty, as independent nations and only retained a right of occupancy in their lands.

In Australia, a similar story played out with the Doctrine of Terra Nullius, which is Latin for 'land belonging to no one'. Some say that rather than *terra nullius* meaning vacant or empty land, which it clearly was not, that it was interpreted as being an absence of 'civilized' society.

The first Australian mention of the Doctrine of Terra Nullius was in 1835, when the New South Wales Governor implemented the Doctrine and proclaimed that Aboriginal peoples could not sell, assign or acquire land, other than through distribution by the Crown. Although this explicit use of the term was used this early on in British settlement to refuse Aboriginal ownership of land and to continue taking land, it was not endorsed by the Privy Council in England until 1889 in *Cooper v Stuart*.

The main difference between the Doctrine of Terra Nullius as it was used in Australia and the Doctrine of Discovery as used in the US, was religion. In the US, the term "unoccupied lands" was used to refer to "the lands in America which, when discovered, were 'occupied by Indians' but 'unoccupied' by Christians." The Indians were considered heathens because they lacked Christianity.

In Australia, it wasn't that the Aboriginal peoples were considered lesser humans because they lacked Christianity, it was that they were not considered human at all. In Australia, Aboriginal peoples were provided for under State Flora and Fauna legislation, without being referred to as human.

Regardless of the justification, the Doctrines had the same result, which was to significantly reduce the ability of Indigenous peoples' to own their land or acquire other land. This is recent history for Australia, with the Doctrine only being repudiated by the Australian High Court in 1992 in the famous *Mabo* decision.

Like the Doctrine of Discovery, the legacy of the legal fiction of terra nullius lives on. In Australia today, we see Aboriginal peoples with epidemically low levels of freehold ownership and complicated and watered down native title rights.

**Recommendations:**

In that regard, we recommend that the Permanent Forum conduct and coordinate a comprehensive review of the Doctrines of Discovery and Terra Nullius and other similar doctrines around the world that have been used as a legal basis to dispossess Indigenous peoples of their lands.

We further recommend that the study consider current laws which perpetuate the doctrines, such as the law of inheritance and make recommendations as to how their impact may be unraveled, including through compensation and reparation schemes.

Thank you Chairman.

**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2010**

**Indigenous Peoples Organisations of Australia**

**Agenda Item 7: INDIGENOUS PEOPLES AND CORPORATIONS**

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**JOINT INTERVENTION DELIVERED BY Amana Groom ON BEHALF OF:**

Indigenous Peoples Organisation Network Youth Delegation  
National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for Indigenous Health  
National Aboriginal Community Controlled Health Organisation (NACCHO)  
Amnesty International Australia  
Oxfam Australia  
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

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Thank you Mr Chairperson,

Indigenous communities in Australia are under increasing pressure from States and industry (more so extractive industries) to gain access to traditional lands, particularly in resource rich regions. With economic development and in particular heavy mining activity comes the need for increased corporate social responsibility protections and initiatives. Some major companies in Australia are setting high standards for maintaining a good corporate citizen reputation. However, many others are not.

Indigenous Peoples in Australia note the move by the Canadian State to appoint a Corporate Social Responsibility Counsellor with a specific mandate to review the corporate social responsibility practices of Canadian extractive sector companies operating outside Canada. This is a positive initiative.

Whilst some corporations in the extractive industry offers limited benefits to Indigenous communities by way of employment, training and business development, there are a large number that see the native title component of the Australian approvals process as a mere box ticking exercise.

This means that rather than engage fully and effectively with traditional owners about exercise to land they merely undertake the minimal compliance necessary to satisfy bureaucratic red tape.

It is incumbent on the States like Australia to encourage and expect companies to meet high standards of corporate social responsibility. There are many resource projects already under way in Australia which have a down flow effect for other small businesses and many more are in the planning and construction phases. This will mean increased expectations on more timely and trouble-free access to land, bringing both tribulations as well as potential economic benefits to traditional owners. It is imperative that these industries maintain high standards in dealing with communities. Corporate social responsibility is about mitigating as much as possible the negative impacts of development projects on local communities and this includes engaging with local communities, particularly traditional owners. Engagement with traditional owners and free, prior and informed consent should form part of the development process.

The key to social responsibility is engagement and being inclusive of Indigenous peoples needs and aspirations as well as recognising their own social, economic and cultural responsibilities for community and caring for country.

Traditional owners in Australia call on the State of Australia to develop accountability systems on industry best practices of the highest standards to ensure maximum Corporate Social Responsibility standards are developed and maintained by the not only the extractive industry but also other areas as well. This position should also ensure the same standards are maintained by Australian industry companies (particularly extractive industries) operating outside Australia.

#### **Recommendations:**

- 1. That the Permanent Forum develop a mechanism on Corporate Social Responsibility within the United Nations framework that meets human rights standards to encourage States to implement and protect the social, economic and cultural rights of Indigenous peoples.**



**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2010**

**Indigenous Peoples Organisations of Australia**

**Agenda Item 7:     STUDY TO DETERMINE WHETHER CLIMATE CHANGE  
POLICIES AND PROJECTS ADHERE TO THE  
STANDARDS IN THE DECLARATION ON THE RIGHTS  
OF INDIGENOUS PEOPLES**

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**JOINT INTERVENTION DELIVERED BY Rebecca McGrath ON BEHALF OF:**

Indigenous Peoples Organisation Network Youth Delegation  
National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for Indigenous Health  
National Aboriginal Community Controlled Health Organisation (NACCHO)  
Amnesty International Australia  
Oxfam Australia  
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

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Thank you Mr Chairperson,

Climate change remains a constant concern and challenge for Australia's Indigenous peoples. Rising sea levels threaten small island states in the north of Australia, the Torres Strait Islands, and any repatriation off traditional country due to submersion or inundation could have a detrimental impact on the health and well being of Indigenous Peoples.

The special relationship that Indigenous peoples have with their lands means that their capacity to adapt to new environments is more complex and being unable to access traditional homelands due to forced retreat strategies will impact heavily on health and wellbeing.

The Anchorage Declaration, signed by many Indigenous organisations and individuals, represents the position of the world's Indigenous peoples and we call on States to acknowledge and support the Anchorage Declaration.

Many developed nations, including Australia, have been assessing the viability of introducing financial trading schemes for the trading of carbon in the global markets. Any scheme that is introduced could have the capacity to provide potential economic benefit for Indigenous communities. To ensure that Indigenous communities participate fully and gain the best possible advantage from trading schemes it is incumbent on States to undertake extensive research so that evidence based initiatives can be successfully implemented.

Engagement of Indigenous peoples is critical to the development of initiatives to combat climate change. It is essential that Indigenous peoples continue to receive support to participate in relevant international fora, in particular the UN Framework Convention on Climate Change and the Convention on Biological Diversity.

The Indigenous Peoples Organisations of Australia demand that the implementation of any climate change scheme or initiative recognise the rights of indigenous peoples and must be in accordance with the UN Declaration on the Rights of Indigenous Peoples. This includes our right of free, prior and informed consent, and the recognition of our contributions towards resolving the climate change crisis.

**Recommendations:**

- 1. That the Permanent Forum urge States to acknowledge and support the Anchorage Declaration;**
- 2. That the Permanent Forum urge States to ensure the full participation of Indigenous Peoples in initiatives to combat climate change; and**
- 3. That Indigenous peoples are continued to supported to participate in International fora under the UN Framework Convention on Climate Change.**

**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2010**

**Indigenous Peoples Organisations of Australia**

**Agenda Item 7:     IMPACTS OF THE GLOBAL ECONOMIC CRISIS OF  
INDIGENOUS PEOPLES**

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**JOINT INTERVENTION DELIVERED BY David Lee ON BEHALF OF:**

Indigenous Peoples Organisation Network Youth Delegation  
National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for Indigenous Health  
National Aboriginal Community Controlled Health Organisation (NACCHO)  
Amnesty International Australia  
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

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Thank you Mr Chairperson,

We have seen the fall out of the global financial crisis around the world. Thankfully, Australia appears to have been spared the worst of it, however we should take lessons from what occurred in 2008.

Traditional owners in Australia, particularly those who have entered into negotiated arrangements with extractive industries, were left exposed to losing significant economic benefits as well as their traditional rights to land. Through agreements with major resource companies, many traditional owners trade their native title rights in exchange for local employment, training and business opportunities and resource companies have access to land. This has become best practice and Indigenous peoples are gaining benefits from Australia's resource boom. During the economic downturn, however some of these companies had to scale back or in some instances, defer the commencement of their projects.

The recent economic downturn has reminded Indigenous peoples that agreements negotiated in good faith are vulnerable to fluctuations in the global financial market and they are therefore at risk of losing opportunities to participate fully in the economy.

Australia's Aboriginal and Torres Strait Islander peoples cannot afford to lose their traditional rights to land for no determinable benefit. What we need to ensure in this economic turbulence is that States do not put in place regulatory mechanisms that will be detrimental to Indigenous peoples' capacity to negotiate economic opportunity.

In the Kimberley region of Australia, the development of an industrial hub for the processing of Liquefied Natural Gas is currently being negotiated. This includes the agreement of local Traditional Owners over native title rights and interests to the site, which includes the opportunity to provide significant financial benefits to local Indigenous communities. However, the Government's determination to ensure its economic growth in order to protect against any possible future financial crisis may force the State to introduce regulatory schemes that could reduce the participation of Indigenous peoples.

Under Article 3, the United Nations Declaration on the Rights of Indigenous Peoples protects the rights of Indigenous Peoples to freely pursue their economic, social and cultural development. This needs to be recognised and upheld.

It is imperative that traditional peoples have full recognition of their cultural rights on land; participate fully and effectively in decision-making and consultation processes and have free prior and informed consent for projects.

**Recommendations:**

- 1. That the Permanent Forum urge States to ensure that the rights of Indigenous Peoples to freely pursue their economic, social and cultural development is protected; and**
- 2. That the Permanent Forum urge States to increase the participation of Indigenous peoples in pursuing economic opportunity.**

**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2010**

**Indigenous Peoples Organisations of Australia**

**Agenda Item 7: STUDY ON CONSIDERATION AND RECOGNITION OF  
MOTHER EARTH RIGHTS**

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**JOINT INTERVENTION DELIVERED BY Brian Wyatt ON BEHALF OF:**

Indigenous Peoples Organisation Network Youth Delegation  
National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for Indigenous Health  
National Aboriginal Community Controlled Health Organisation (NACCHO)  
Amnesty International Australia  
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

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Thank you Mr Chairperson,

The Australian Native Title Act was proclaimed in 1993 following the Mabo decision in the High Court of Australia. After 16 years of operation the process for traditional owners to prove connection to country remains one of the major hardships for Indigenous communities.

Native Title representative bodies in Australia have been pushing for amendments to the Native Title Act that will relieve the crushing burden of proof that is required under the Act. Many native title practitioners in Australia are also calling for changes to the system, including our Chief Justice, the highest office in Australia's judicial system. In fact, that same Chief Justice recently likened the native title process to that of Sisyphus, a Greek God doomed eternally to roll a large rock to the top of a hill only to have it roll back down again.

We continue to call on the Australian Government to change the Native Title Act so that some elements of the burden of proof are lifted from traditional owners and their families. This could be satisfied by introducing a rebuttable presumption of continuity, reversing the onus of proof so that the State (or other respondent parties to a claim) bears the burden of rebutting such a presumption.

Given that in many instances (particularly in remote locations) there is little foundation for significant dispute over native title applicants' continuous connection to their traditional lands, the adoption of a rebuttable presumption should help reduce the resource burden on the native title system, helping facilitate the expeditious resolution of native title claims. Moreover, by reversing the onus of proof, the evidential burden is placed more appropriately on the State, which, by virtue of its 'corporate memory', is in a better position to elucidate on how it colonised or asserted its sovereignty over a claim area. This has the additional benefit of placing responsibility for investigating connection and extinguishment in the lap of the one entity; potentially leading to a more comprehensive understanding of the evidence in a given case.

Importantly, the burden placed on the State by virtue of such a presumption may also result in positive behavioural changes; with the State having little incentive to expend resources in difficult disputes over continuity and connection or to assert, for example, that continuity had effectively been broken because of actions that in our modern human rights climate would be considered abhorrent (e.g., genocide or other breaches of international human rights law). In this respect, the introduction of a rebuttable presumption may act as a significant catalyst for change, facilitating a shift in the way negotiations are conducted and in the quality and quantity of positive outcomes for claimants.

A rebuttable presumption would also have a significant impact on the negotiation process. With State Governments being required to rebut continuity and justify extinguishment with the associated costs involved they may be more inclined to negotiate earlier and more openly with the aim of spending less on the process and more on possible opportunities for Traditional Owners.

Mr Chair, from the perspective of traditional owners, the experience of trying to prove their continuous connection to traditional lands directly affects their identity as Indigenous peoples with the constant threat of being denied their individual history. After over 200 years of dispossession from their country, it is a travesty that our political system allows the continuation of such an unjust system.

### **Recommendations:**

- 1. That the Permanent Forum seek a response from the State of Australia on amending the Native Title Act to shift the burden of proving connection to country from native title applicants to other respondent parties to claims.**

**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2010**

**Agenda Item 7: Consideration of issues relating to Beijing +10 - The Social Impact of Government Policies on Indigenous Women in Community**

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**JOINT INTERVENTION DELIVERED BY ELVERINA JOHNSON ON BEHALF OF THE INDIGENOUS PEOPLES ORGANISATIONS OF AUSTRALIA INCLUDING:**

National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for indigenous Health  
National Aboriginal Community Controlled Health Organisation (NACCHO)  
Indigenous Peoples Organisation Network Youth Delegation  
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner  
Yarrabah Women's Group

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Mr Chairperson

I stand before you today as a proud Aboriginal woman and a member of the Indigenous Peoples Organisations of Australia represented at this Permanent Forum on Indigenous Issues. I present this intervention on behalf of Indigenous women in Australia to highlight the concerns that continue to adversely impact on our emotional and social wellbeing.

The Beijing Platform for Action recognises that women face barriers to full equity and advancement because of such factors as poverty, health, violence and human rights. It could be said that women from all cultural and social backgrounds share similar experiences that pertain to a history of gender inequality and cultural discrimination, and this is also the case for Aboriginal and Torres Strait Islander women across Australia.

The experiences of Indigenous women in Australia are compounded by a history of social and cultural disempowerment, marginalisation and oppression as a result of colonial manifestations that are yet to be addressed.

I now take this opportunity to report on a number of specific examples of barriers and issues of concern:

- The recent removal of the Community Development and Employment Program (CDEP) has created immense stress and depression amongst our communities, and has hampered any improvement to the unemployment rates of Indigenous peoples and contributed to the ongoing social and financial impoverishment of our families, particularly the women and children.
- The alcohol reform strategies engaged by government together with the Alcohol Management Plan (AMP) designed purportedly to address the impact of alcohol related offences in Indigenous communities, has done little to quell the level of violence and violence related offences said to be associated with the alcohol consumption within Indigenous communities. It could be said that the AMP and the Alcohol Reform Strategies have exacerbated rather than decreased the concerns associated with alcohol in our communities. Little has been done to address the underlying issues that have been highlighted by our people in numerous reports to Government agencies. Governments have readily implemented punitive strategies to address alcohol related offences with little, if any, attention having been given to the establishment of policies, and the development of services designed to offer much needed rehabilitation and detoxification programs in our communities.
- The income management component of welfare reform in Far North Queensland Australia is known as the Family Income Management Scheme (FIMS). This scheme has brought scorn upon the Australian Government, not only from within our communities but also from representatives associated with the United Nations and other global entities. Under the provision of FIMS already impoverished Indigenous families are forced to have their income managed if they do not comply with Government policies around school attendance and child hygiene. Disturbingly the Government, yet again, are quick to impose severe punitive measures to deal with the social concerns. Little attention or regard has been given to addressing the absence of infrastructure and services urgently required to assist our families within those communities. Our people need access to the appropriate resources to comply with the mandatory stipulations imposed by Government.
- The current level of social dysfunction in our communities has resulted in a cultural and social assault on Indigenous families in Australia including the abhorrent government processes that facilitate the removal of children from our communities. It is of concern that this barbaric practice continues to occur at an unacceptable rate. It is questionable that this callous and cruel policy has been actively administrated and pursued across generations of our families, often without rhyme, reason or circumstance that would justify such an act. It is not uncommon for Indigenous children to be removed from their homes based on nothing other than discriminatory policies, unsubstantiated allegations and the involvement of Departmental officers who are extremely young, inexperienced and culturally inept.

We believe Mister Chair, that this and other social practices being experienced by our families contravenes the most basic of human rights. Rather than protecting the well being of our women and children as is often claimed, it exposes them to circumstances and situations where they are unsafe and highly vulnerable to systemic and social violence and abuse.



We as Indigenous women are the experts on these issues that affect our families. We should be included in the decision making process by all levels of government on those issues that affect us as women and our families.

The establishment of the newly formed National Aboriginal & Torres Strait Islander Women's Alliance (NATSIWA) which is funded by Government will in part address this serious social and political anomaly. The role of the NATSIWA is to advocate on behalf of Australian Aboriginal and Torres Strait Islander women and advise Government of key issues affecting our women. However there is still a long way to go before our women and families achieve parity with their non Indigenous counterparts across a wide range of social indicators.

This type of Indigenous Women's organisation would be beneficial to other Indigenous women in member States of the UN. We would welcome any opportunity to liaise and engage with such women should the opportunity be made available as we are committed to working with the Permanent Forum to address issues as they impact on the self determination and progression of Indigenous populations both in Australia and across the globe.

### **Recommendations**

**We the Indigenous Peoples Organisation represented here at this Forum recommend that:**

- 1. the United Nations Permanent Forum on Indigenous Issues strongly encourage Indigenous women to be active and prominent in the identification and resolution of key issues of concern associated with the human rights and development of Indigenous Peoples.**
- 2. the United Nations Permanent Forum on Indigenous Issues call upon Indigenous women to be equally represented and central in the decision-making procedures for the identification, design and implementation of programs, policies and laws as they pertain to Indigenous families and communities.**
- 3. the United Nations Permanent Forum on Indigenous Issues call upon States to respect the important role of Indigenous women in family, community and societal well-being, and to ensure adequate financial and technical assistance is available to Indigenous Peoples for the effective representation and participation of Indigenous women in decision-making at community and national levels, including through Indigenous women's organisations and institutions.**

Thank you Mister Chairperson

**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2009**

**Indigenous Australian Youth delegation supported by Australian  
Indigenous delegation**

**Agenda Item 7: Intervention on Young Indigenous Women**

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**JOINT INTERVENTION DELIVERED BY Leah Pitt ON BEHALF OF:**

Indigenous Peoples Organisation Network Youth Delegation  
National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for Indigenous Health  
National Aboriginal Community Controlled Health Organisation (NACCHO)  
Amnesty (International) Australia  
Oxfam Australia/Australian Human Rights Commission (AHRC)  
Representatives of the Yarrabah Community

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Thank you Mr Chairperson,

The Australian youth delegation recognise and acknowledge the Traditional Custodians of the land on which we meet and are honoured to pay our respects to the Elders both past and present.

We welcome the New Zealand Government's recent endorsement of the Declaration on the Rights of Indigenous Peoples and acknowledge the United States Government consideration of support for the Declaration.

During this forum we have heard about the many critical issues facing Indigenous peoples all over the world including the continued disadvantages in education, economic development, political status and social inequality.

However, a critical issue that requires further consideration is how Indigenous women and men experience this disadvantage differently. For example, Australian Indigenous men have a lower life expectancy and higher incarceration rates than women. It is a terrible reality that Indigenous men are deprived of life and freedom at such a young age and that high numbers of Indigenous women are forced to carry a

heavy burden in raising children alone, providing for practical community needs, nurturing Elders and sustaining culture.

The disadvantage experienced by Indigenous women and men is further complicated by the fact that youth account for a majority of the Indigenous population. In 2008, almost half of the Indigenous population was aged less than 20 years and a further 16% were aged between 20 and 30 years. Just 3% of the Indigenous population were aged 65 years and over. This is attributed to the dramatic difference in life expectancy rates between Indigenous and non-Indigenous people in Australia. There is also a high proportion of young Torres Strait Islander adults, with only 10% over the age of 55 years. Overall, the median age of Indigenous people in Australia is 21 years.

Despite the critical nature of this burden, it is unacceptable that Indigenous women have little representation and formal input into decision-making processes. The lack of substantial support for representation by Indigenous women in leadership has resulted in the development of policies that fail to effectively support Indigenous women or address these critical issues.

While there has been an increase in the number of Indigenous women in Indigenous organisations, boards and councils, Indigenous leadership is still dominated by men. Serious effort needs to be given to the advancement of women at higher levels in pursuit of true equality. In this regard, we commend the decision to make the National Congress of Australia's First Peoples gender balanced.

Mr Chairperson, Indigenous women looked forward to educational advancement and qualifications that promised to offer choices and improve our future. However, the experience of Indigenous women is that it has become another task to undertake whilst juggling multiple roles as mothers and caregivers to large family units. For these reasons there needs to be a specific look at Indigenous women's issues.

Indigenous people continue to work against negative media representation. The media's focus on problems that exist within our communities, perpetuate the misconceptions that this is what all Indigenous people are like. Such stereotyping has negative impacts on our sense of culture and identity.

Mr Chairperson, it is a concern that Indigenous women in a so called “civilised and “developed” country, continue to be subjected to sexual assault and domestic violence. Indigenous women often fear reporting abuse because of such stereotypes and instead of having their rights realised can become disempowered.

### **Recommendations**

- **The UNPFII strongly urge states to take note of the age of Indigenous populations and take appropriate measures to ensure that young Indigenous women’s views are represented.**
- **The UNPFII take appropriate measures to ensure that young Indigenous women are represented at the highest levels in leadership roles both within the Permanent Forum; and encourage representation of young Indigenous women throughout the United Nations Departments and Agencies.**
- **The Special Rapportuer for Indigenous Women and the Australian Government commence a dialogue in relation to a future visit of the Special Rapportuer for Indigenous Women to provide a report on the women’s health issues, particularly in relation to antenatal health.**
- **The UNPFII urge states to ensure gender equity in parliament, committees and Chairperson and rapporteur roles.**