

United Nations General Assembly Human Rights Council
Expert Mechanism on the Rights of Indigenous Peoples
Third Session, 12 – 16 July 2010

**Agenda Item 4: United Nations Declaration on the Rights of
Indigenous Peoples**

Speaker: Ms. Tammy Solonec

JOINT STATEMENT ON BEHALF OF

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

Thank you Chairman,

This intervention is made on behalf of the Indigenous Peoples Organisations of Australia present at this Forum.

We thank the Expert Mechanism for this opportunity to comment on the Declaration on the Rights of Indigenous peoples and some of the challenges with its implementation within Australia.

Adoption of the Declaration

It was disappointing that the four countries who originally voted against the Declaration, which were Australia, New Zealand, Canada and the USA, are all developed nations with similar histories of colonisation and oppression of Indigenous peoples. We are pleased that Australia and New Zealand have now signed the Declaration and welcome recent announcements of the Canadian and US Governments to move towards signing. However, we stress that qualified support is inconsistent with the legal content and spirit of the Declaration.

The Aboriginal and Torres Strait Islander peoples of Australia welcome the increased references to the Declaration within our national Parliament in Senate Committee Reports and in Parliamentary Debates. However, there is still a long way to go.

Australian Human Rights Framework

The Australian Government recently held one of its largest consultations in history about human rights. Whilst we are disappointed that a decision was made to not proceed with a Human Rights Act or constitutional entrenchment of human rights, we are pleased that a National Human Rights Framework was announced. Less pleasing, the Framework failed to recognise the rights of Indigenous peoples as the original custodians of the land, or introduce measures to effectively implement the rights set out in the Declaration.

In relation to the previous study on the right of Indigenous peoples to education, we are pleased that in conjunction with the announcement of the Framework, the Australian Government has made available two million dollars for non-governmental organisations (NGOs) to apply for funds to enable them to conduct human rights education. Unfortunately, these funds are to be divided between all NGOs throughout Australia and in regards to all human rights issues. Indigenous peoples therefore must compete for a share of these funds.

Some of our most oppressed and disadvantaged Indigenous peoples in Australia reside in remote communities. Given the tyranny of distance and diversity of Indigenous languages in Australia, the allocated funds are inadequate to enable us to inform our peoples about human rights or the Declaration. A separate budget and resource allocation for Indigenous human rights training, especially regarding the Declaration is needed.

We call on the Australia Government to amend the Framework so that it accords with the Declaration, including special reference to articles 3 and 18 about our rights to self-determination and to participate in decision-making processes, and so that specific funds be made available for Indigenous NGOs to educate our peoples about the Declaration.

National Indigenous Representative Body

The Australian Government has recently adopted a national representative body for Aboriginal and Torres Strait Islander peoples in order to provide a structure for consultation and engagement on issues affecting our peoples. Such a body allows for groups with limited resources and capacity to gain assistance in progressing issues of concern and to form a collective in order to negotiate common issues. It also sets the environment to allow for communication between the Government and the Aboriginal and Torres Strait Islander peoples on issues of national importance.

Whilst participation within the structure will provide benefits to Aboriginal and Torres Strait Islander peoples, we caution the government in promoting the representative body as the singular channel for open and frank dialogue between government and Indigenous peoples.

Australia is a nation with a diverse range of Indigenous peoples exercising their own rights to identity and self-determination as promoted in articles 3 and 33 of the Declaration, therefore encouragement of a single vehicle for consultation and engagement is inconsistent with article 19, which provides 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 which may affect them.”

We ask that governments respect the rights of groups exercising their own identity in accordance with their own customs and traditions, to be able to utilise the expressed mandate of the national representative body, as well as pursue alternative paths of engagement with the government. These distinct cultural groups should have the right to simultaneously engage within the mandated framework of the national representative body, and also use their own methods for lobbying and advocacy, if they can determine a benefit to themselves.

Benefit does not necessarily need to be an objective measure set or determined by government but should be a subjective measure, relevant to the community or group. In this way, States would recognise rights as provided for within the Universal Declaration on Human Rights, to enjoy their civil and political freedoms, as individuals operating within a collective.

International elevation of the Declaration

The Universal Declaration of Human Rights, although not a treaty, has become customary international law and a cornerstone of the Universal Bill of Rights. We would like to see an elevation of the Declaration of the Rights of Indigenous Peoples within the international community to customary law status, to ensure the rights of Indigenous peoples both individually and collectively are realised within all tiers and arms of government, and in all government policies, programs and practices.

It is misleading for States to refer to the Declaration as an aspirational document or that the rights contained in the Declaration are not already part of binding international laws. We remind states that under article 43, the rights recognised within the Declaration constitute the minimum standards for the survival, dignity and well-being of Indigenous peoples in the world.

We therefore recommend the Expert Mechanism:

- 1. undertake a comparative study on the lessons learned in educating Indigenous peoples on the Declaration, including examples of best practices and challenges;**
- 2. undertake measures to ensure that the Declaration is recognised as part of the international norm in human rights law; and**
- 3. encourage all States to adopt processes to allow for various channels for communication, consultation and engagement with its Indigenous peoples consistent with article 19 of the Declaration on the Rights of Indigenous Peoples.**

Thank you for the opportunity to deliver this intervention.