



United Nations Permanent Forum on Indigenous Issues

17th Session New York, 16 - 27 April, 2018

Item 8: Indigenous peoples' collective rights to lands, territories and resources with reference to the United Nations Declaration on the Rights of Indigenous Peoples.

INTERVENTION by the New South Wales Aboriginal Land Council, delivered by Councillor for the Sydney/Newcastle Region, and member of the Wiradjuri people, Chairman Roy Ah-See

Thank you, Madam Chair,

We pay our respects to the Elders and Ancestors, past and present, and extend our appreciation to Indigenous experts and participants at this session. I am a Proud Aboriginal man of the Wiradjuri Nation. I am also proud to be one of nine Aboriginal elected representatives to the Council of the NSW Aboriginal Land Council Australia. I am Chairman of our Council and I am here today with my Deputy Chair, Ms Anne Dennis a proud Gamilaraay woman and our CEO, James Christian also a Wiradjuri Man. We are an Aboriginal elected representative body that has over 23,000 individual members, that works for over 230,000 Aboriginal people in the Australian State of NSW. We are financially and politically independent of government.

In recognising the unique status of Indigenous peoples' collective rights to lands and territories, we recommend that the Permanent Forum actively encourage all Member Countries, particularly Australia to re-double their efforts:

- to **respect our requests when we have applied the principals of Free, Prior and Informed consent and ensure direct participation of Indigenous peoples in all matters that impact our people and our lands, including the laws of our Parliament. This is required if we are to deliver the Vision and what the Declaration demands.**
- to **make full and just reparations for discriminatory policies based on the principles of self-determination** as recognised under Articles 3, 26, 27 & 28 of the Declaration. Sadly, the reality is today across our Nation, governments of all political persuasions are at different stages of their relationship with Indigenous peoples and indeed the implementation of the Declaration.
- to **establish strong and effective legal protections including compensatory mechanisms** to remedy discriminatory government policies and practices, and protect Indigenous cultural heritage in accordance with international obligations.

Earlier this year our Council formally requested dialogue with the State Government of New South Wales in Australia to enter Treaty discussions. The government has refused to work with us in relation to Treaty.

In recognising the circumstances in Australia in relation to the collective rights of Indigenous peoples to lands, territories and resources, we strongly recommend that the Permanent Forum encourage the State Government of New South Wales in Australia:

- **partner with Indigenous representative organisations and Indigenous peoples to develop a framework for Treaty or Treaties** based on the Declaration; and
- to negotiate a Treaty or Treaties with Indigenous peoples to make **full and just reparations for dispossession and discriminatory policies based on the principles of self-determination** as recognised in Articles 3, 26, 27 & 28 of the Declaration.

The New South Wales Aboriginal Land Council Australia acknowledges the significance of the Declaration on the Rights of Indigenous Peoples has the potential to be an effective mechanism

to recognise and promote the rights of Indigenous peoples to our lands, territories and resources.

Madam Chair, sadly Australia has not fully implemented the Declaration into domestic law, nor has Australia adopted a number of universal instruments that enshrine these rights, including – International Labor Organisation Convention (No. 169).

In Australia, Indigenous peoples have suffered immensely at the hands of successive Governments. We have been forcibly dispossessed, oppressed and we are fighting to reacquire our lands.

At the same time, non-Indigenous peoples have been given immense opportunities to lease, purchase, inherit, and exploit our mother lands and resources, to the detriment of Indigenous peoples and our land. Despite International Conventions guaranteeing Indigenous peoples collective rights to retain our identity, autonomy, cultural values and livelihoods, there are few examples where these principles have been effectively implemented in Australia.

In Australia, there are very few mechanisms that provide for compensation for dispossession and oppression, as a basis for protecting the fundamental rights of Indigenous peoples. There has been belated recognition of Indigenous land rights, following many generations of Aboriginal activism, and after more than 230 years of colonial land dealings, in the Australian State of New South Wales. Aboriginal Land rights laws in the State of NSW, Australia established a mechanism to recover lands and compensation for our cultural loss and dispossession.

The Aboriginal Land Rights system in NSW is unique. We have fought hard to reacquire some of our land. Yet, this legislative framework exists at the benevolence of the Parliament and it remains vulnerable to amendment or abolition without further safeguard. The *Aboriginal Land Rights Act 1983* is a strong example of good practice resolving issues of ownership and control over natural resources between States and Indigenous peoples.

Our Council has over 33,000 outstanding Aboriginal land claims that could take over 90 years to determine. This is unacceptable.

Madam Chair, forum members, member states and delegates, without proper Constitutional recognition and protections, strong human rights legislation or a Treaty or Treaties, our rights exist at the benevolence of Government.

We must move beyond reliance upon the benevolence of our colonisers; to meet Governments as equals and enshrine our rights in a Treaty or Treaties that reflects the Declaration and what is inherently ours.

Despite Indigenous leaders gathering in Central Australia in 2017 and committing to the Uluru Statement from the Heart, the Australian Government swiftly dismissed important elements of the Statement from the Heart, including a Voice in Government. The Statement of the Heart is an example of Aboriginal people following the principle of Free, Prior and Informed consent. This rejection from Government has had a real and detrimental impact.

Madam Chair, Aboriginal people are proud, determined and resilient people. Some Australian States pursuing treaty processes, however the Government of New South Wales has to date rejected the partnership proposal from the New South Wales Aboriginal Land Council to jointly develop a process to explore a treaty or treaties. Our Council is committed to pursuing a treaty or treaties in New

South Wales. We have made this commitment to our people to pursue negotiations with Government.

New South Wales has the largest population of Aboriginal people in Australia and was the first site of invasion and dispossession of our peoples.

We are pleased to note that the Australian State of Victoria will soon make laws for treaty and truth telling, and similar processes are underway in the Australian states of Queensland and South Australia.

The Australian and New South Wales Government must show leadership and partner with Aboriginal representative organisations and Aboriginal peoples, as equals, and commit to fully implement the declaration and where sought by Indigenous people, negotiate Treaty or Treaties.

Madam Chair, we contend that the rights of the Declaration provide a fit for purpose framework to guide both the development and content of a Treaty or Treaties.

In conclusion, at a time when the protection of economic, social and cultural rights has never been more important, the New South Wales

Aboriginal Land Council calls on the Australian and New South Wales Governments:

- to fully enact comprehensive legislation that addresses all prohibited grounds of discrimination, promotes substantive equality, and provides effective remedies against systemic discrimination; and
- to **partner with Aboriginal representative organisations and Aboriginal peoples to develop a framework for Treaty or Treaties** based on the Declaration; and
- to negotiate a Treaty or Treaties with Indigenous peoples to make **full and just reparations for dispossession and discriminatory policies based on the principles of self-determination** as recognised in Articles 3, 26, 27 & 28 of the Declaration.

Madam Chair, we support the core importance of Indigenous peoples' collective rights to their lands, territories and resources as expressed in Article 25 and 26 and of the Declaration.

Thank you, Madam Chair.