



United Nations Permanent Forum on Indigenous Peoples 18<sup>th</sup>  
Session New York, 22 April - 3 May, 2019

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**Item 9:** Discussion of the theme “Traditional knowledge: Generation, transmission and protection”.

INTERVENTION by the New South Wales Aboriginal Land Council, delivered by Councilor Craig Cromelin for the Wiradjuri Region, and member of the Wiradjuri Peoples.

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Thank you Madame Chair,

With reference to **Articles 11<sup>1</sup> and 31<sup>2</sup>** of the Declaration, the New South Wales Aboriginal Land Council makes the following recommendations to the Permanent Forum encouraging States to:

- Establish legal frameworks to protect our Indigenous Traditional Knowledges and our ownership of our cultural and intellectual property rights. Frameworks that are based on *free, prior and informed consent*, reflect the diversity of our own cultural definitions of knowledge and expression, and ensure that we are the beneficiaries of Our Traditional Knowledges;
- Establish compensatory mechanisms for Indigenous persons and Nations who have had their Traditional Knowledges and Cultural Expressions exploited without their free, prior and informed consent as a result of inadequate legal protections; and
- Embed the principles of Indigenous data sovereignty within national strategies, policies and practices.

While we are using the terminology of “Traditional Knowledge” and “Traditional Cultural Expressions”, we are not suggesting that our cultures and knowledges are ‘static and frozen in time’; this is not the case. Our Cultures and Knowledge Systems are dynamic, living and evolving, much like us as a People.

In Australia, there is no legal regime designed to protect Our Knowledges and Cultural Expressions from exploitation and misuse. This lack of protection is acutely felt by our artists and performers, song men and women and those of us who work tirelessly to reclaim our languages. It leads to the commercialization of our intellectual property without

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<sup>1</sup> Right to practise and revitalize cultural traditions and customs.

<sup>2</sup> Right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions.

restitution or benefit sharing. It has left our knowledges and languages open to harm and demonstrates the need for national approaches and specific protections<sup>3</sup>.

International regimes related to Intellectual property, must recognize our rights regarding Our Traditional Knowledges and Cultural Expressions and must not prevent States from establishing protections.

Madam Chair, it is not enough to just fix what is broken or harmed, without restitution. Indigenous peoples must be compensated for the damage and harm that has occurred to our knowledge systems and cultural expressions. We advocate for restitution by compensatory mechanisms and for the return of knowledge and information removed and stolen from us by colonial institutions such as museums, universities and government databases. Full and just restitution involves the returned of such knowledge to its rightful place; with us.

We also strongly advocate for the incorporation of Indigenous Data Sovereignty within future work on Indigenous knowledges and expressions. Indigenous Data Sovereignty involves ownership and control of information that is often collected about us, from us, and often used against us by States to create a narrative of dysfunction and deficit.

Indigenous Data Sovereignty is led by Indigenous practitioners, and seeks to give effect to the rights of Our peoples to own and control Our information and the purposes for which it is used. It aligns with the Declaration and human rights based approach to Indigenous Knowledges.

Thank you.

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<sup>3</sup> Janke, T., & Sentina, M. (2018). Indigenous Knowledge: Issues for Protection and Management; Arts Law Centre of Australia (2012), Indigenous Knowledge Consultation, Available: [https://www.ipaustralia.gov.au/sites/g/files/net856/ff/submission\\_-\\_arts\\_law\\_centre\\_of\\_australia.pdf](https://www.ipaustralia.gov.au/sites/g/files/net856/ff/submission_-_arts_law_centre_of_australia.pdf)