



United Nations Permanent Forum on Indigenous Issues

Eleventh Session

New York, 7- 18 May 2012.

Agenda Item 4a): Human Rights: Implementation of the Declaration on the Rights of Indigenous Peoples - '*Indigenous Representative Structures*'

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

Thank you Mister Chairperson

The New South Wales Aboriginal Land Council respectfully makes the following recommendations to the Permanent Forum on Indigenous:

Recommendation 1: That the Permanent Forum encourages all states to **comprehensively and faithfully implement all human rights obligations under the human rights treaties** to which they are a party and to bring key national legislation in line with international standards that require the 'prior informed consent' of Indigenous people.

Recommendation 2: That the Permanent Forum encourages Governments to continue to develop and seek ways to **implement formal legislative infrastructure** that protects the rights of Indigenous peoples to participate in decision-making and **that all policies be reviewed for consistency with the rights affirmed by the Declaration.**

Recommendation 3: That the Permanent Forum urge states to **recognise and develop mechanisms to support existing Indigenous representative bodies** to ensure existing representative bodies can participate in the development of government policy at all levels of decision-making.

Recommendation 4: That the Permanent Forum encourages all states to **endorse the principles of the Declaration** and develop a strong, enforceable accountability framework at national and state levels to guarantee the right to consultation and to obtain free, prior and informed consent from existing representative structures.

Recommendation 5: That the members of the Permanent Forum continue the work of the Expert Mechanism on the Rights of Indigenous peoples and **undertake a study** on the barriers that continue to exist for Indigenous peoples to **participate in decision-making processes**, in order to achieve the objectives of the Second International Decade of the World's Indigenous Peoples.

Recommendation 6: That the Permanent Forum encourages states to **review their current legislative and policy provisions** regarding racial discrimination against the benchmarks set out in the Declaration and human rights treaties to which it is party.

Recommendation 7: That the Permanent Forum encourage all States to move towards further amendments of their constitutional arrangements to protect Indigenous peoples rights under national legislation and for governments incorporate reporting and monitoring to ensure that measures comply with the standards set out in the Declaration.

Mister Chairperson,

The New South Wales Aboriginal Land Council contributes to this discussion in recognition of the Declaration as accepted and evolving human rights standards protecting Indigenous peoples.

The New South Wales Aboriginal Land Council supports 'the provisions of the Declaration relating to Indigenous peoples right to participate in decision-making and representative institutions. The Declaration affirms in Article 3 that 'Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'

The New South Wales Aboriginal Land Council supports mechanisms which provide all Indigenous peoples the power to shape their own representative structures, as a means for self-determining their own future.

Indigenous representative structures are important components to the Australian infrastructure and essential to the process of achieving practical reconciliation, self-determination, autonomy and self-sufficiency.

In Australia, Aboriginal peoples do not enjoy the same opportunities to sustainable economic and social development as other Australians. The absence of consistent Indigenous representative bodies in Australia has for several decades, deprived Aboriginal people of their right to participate in decision-making and the development of policies that affect us.

The Australian government with the agreement of all the major political parties in 2004 abolished the representative body of Australia's Indigenous peoples – the Aboriginal and Torres Strait Islander Commission. To this day, this action by Government remains a fundamental strain on the relationship between Indigenous peoples and the Australian Government.

Aboriginal peoples in Australia have strong democratic institutions, but these lack sufficient legislative protection. Indigenous institutions must be afforded greater protections in Australia, so that they cannot be created and dismantled at the whim of the Governments.

Aboriginal representative structures must be independently and equally recognised for their capacity to contribute to the direction of policies and programs. It is essential that governments develop effective mechanisms for appropriate engagement with Indigenous representative structures to make positive contributions to a broad range of policy agendas and initiatives.

At the national level there is currently a lack of transparent and rigorous processes for engagement with Indigenous representatives in determining the current policy settings and in holding governments accountable for their performance. There is a need for more work at the national level to develop appropriate and meaningful mechanisms to maximise Indigenous participation in the formulation of policies and programs.

National representative bodies that are not inclusive of all Aboriginal peoples interests and views, risk becoming instruments of top-down government policy, which are inconsistent in strengthening the broader rights agenda and concerns of Indigenous peoples. The recognition and enjoyment of rights concerning all Aboriginal and Torres Strait Islander peoples is required to give full effect to principles embedded in the Declaration including Articles 1, 2, 3, 19 and 23.

Representation exclusive to government appointed representatives, does not reflect the best interests of all Indigenous peoples and raises key concerns about the principles of representation and the structures which support it.

Government processes to effectively engage with Aboriginal representatives barely reach a threshold that could be appropriately characterised as consultative in nature. It is rare for government processes to reach a threshold that could be described as involving negotiation with Indigenous peoples, or involving the free, prior and informed consent of Indigenous peoples. The experience in Australia is that Indigenous peoples are not being adequately or appropriately consulted in setting the directions of government policy and programs.

NSWALC supports ways to ensure participation of Indigenous peoples in decision-making processes that work to safeguard and strengthen Indigenous peoples institutions.

Leadership and equal partnership is essential with Aboriginal people, as substantive decision makers in the development, design, implementation, monitoring and evaluation of all policies and laws that impact on Aboriginal communities and in order to meet targets of the Second International Decade of the World's Indigenous People.

Thank you Chairperson and members.