



United Nations Permanent Forum on Indigenous Issues

Eleventh Session

New York, 7- 18 May 2012.

Agenda Item 3: The Doctrine of Discovery: it's enduring impact on indigenous peoples and the right to redress for past conquests (Articles 28 & 37)

INTERVENTION by the New South Wales Aboriginal Land Council, delivered by Councillor for the North Coast Region, and member of the Bundjalung Peoples, Cr Tina Williams

Thank you Chairperson

The New South Wales Aboriginal Land Council respectfully makes the following recommendations to the Permanent Forum on Indigenous Issues to encourage States to provide for the enjoyment and sovereign rights of Indigenous nations around the world.

Recommendation 1: That the Permanent Forum encourages states to ensure that policies, regulations and laws that affect indigenous peoples comply with international conventions, including ILO Convention 169 through legislative or other measures, to enact the various Articles of the Declaration.

Recommendation 2: That the Permanent Forum conducts a dialogue with the Expert Mechanism on the Rights of Indigenous Peoples to **conduct a study on states compliance with and implementation of the Declaration** on the Rights of Indigenous Peoples at the domestic level.

Recommendation 3: That the Permanent Forum encourages states to develop with indigenous peoples a framework for **states to report annually to the General Assembly on the implementation of the Declaration** in legislation, policies and practices which provide safeguards to ensure that indigenous peoples human rights are given legal and practical effect.

Recommendation 4: That the Permanent Forum affirms that the lack of protection against racial discrimination in constitutional arrangements as a fundamental barrier for indigenous peoples to exercise their rights at the national level and develop a framework for remedial action for when states are in breach of their obligations under international instruments including the Declaration.

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The Doctrine of Discovery has been severely criticised as a fictional justification for European colonisation and subjugation of Indigenous peoples' lands around the world. On closer examination of the origins and foundations of the legal principle, the legality of the international construct was at the time designed only to serve European nations and relinquish Indigenous sovereign powers and independence.

The historical framework and parallels between Australia, New Zealand, Canada and the United States in the treatment of their Indigenous peoples', illustrates the pervasiveness of the Discovery Doctrines on the international scale as an esoteric testimonial of our histories.

The Doctrine was used by states to legitimise colonisation and dispossess Indigenous peoples from their lands. There was no requirement to recognise per-existing Indigenous laws, land and other possessions, nor seek consent or provide compensation for Indigenous dispossession. The ongoing marginalisation and Aboriginal peoples was given legal sanction and the most basic rights of citizenship and political inclusion was denied.¹

In Australia today, we see Indigenous peoples with epidemically low levels of freehold ownership of land and complicated and watered down native title rights. The content of the Doctrine in the Australian context can largely be attributed to the attitudes of the political elite and popular ideologies illustrated in the current domestic legal structures of Australia. This substantially limits Indigenous peoples pursuing justice and redress.

Our rights to exist as distinct peoples with distinct cultures, has been reinforced in a range of recommendations made to Governments including:

- Access to equity and provisions through legislative reform to ensure indigenous peoples can better access our sovereign rights;
- An increased commitment to supporting international instruments which protect indigenous peoples rights; and
- The promotion and advancement of indigenous rights through constitutional reform.

Ensuring that Indigenous peoples in Australia are able to exercise our rights and share equitably in the resources of the nation requires recognition of the special status of indigenous rights. Government rhetoric of doing what is in the best interests of Indigenous peoples continue to mask a unilateral top-down approach and policy agenda. Such entrenched approaches continue to undermine indigenous control over our lands without our free, prior and informed consent.

The Australian Government's endorsement of the Declaration represents an important acknowledgement of the commitment of the Government to work in line with the principles and obligations of international law. As one of the few remaining democratic nations without comprehensive rights protections,

¹ Chesterman, J. and B. Galligan. 1997. *Citizens without Rights: Aborigines and Australian Citizenship*. Cambridge: Cambridge University Press.

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compliance with international human rights obligations is crucial in order to address the serious disadvantage and discrimination experienced by many Indigenous Australians.

But there exists a yawning gap in Australia between the international human rights obligations voluntarily entered into by the Australian Government and their domestic expression. This exists in constitutional arrangements and through the law, as well as in policy and service delivery processes generally. National, state and territory legislation protects some human rights, but it can always be amended or suspended to limit or remove that protection.

The absence of such recognition renders Indigenous peoples invisible in Australia's key legal documents. Addressing this issue would be a powerful message of inclusion and lay a better foundation for partnership between Australian governments, the community and Indigenous peoples. Without reform, the Australian Constitution will continue to enable laws to be made that continue to discriminate against Indigenous peoples.

Reforming the Australian Constitution will begin to address the history of exclusion that Indigenous peoples have experienced and more holistically, will affirm the principles of equality and non-discrimination. Discriminatory provisions within the Australian Constitution are not in line with principles of social justice, equality and a 'fair go' which are espoused as being fundamental to Australian society.

Constitutional protection against racial discrimination would prevent further violations of the human rights of Indigenous peoples. The New South Wales Aboriginal Land Council sees such constitutional protection as integral if Indigenous peoples are to be able to exercise our right to participate in decision making that affects us in a meaningful way.

Thank you Chairperson and members.