



United Nations Permanent Forum on Indigenous Issues

13th Eleventh Session - New York

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Agenda Item 4(b): Dialogue with the Special Rapporteur on the rights of indigenous peoples

Statement delivered by: Katie Kiss, on behalf of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission

Thank you Mr/Madam Chair

Firstly, the Australian Human Rights Commission is pleased to congratulate Ms Victoria Tauli-Corpuz, on her appointment to the mandate of Special Rapporteur on the rights of indigenous peoples. We also take this opportunity to thank Professor James Anaya

The Australian Human Rights Commission is pleased to make this statement as part of the dialogue with the Special Rapporteur on the rights of Indigenous peoples.

We recommend that the Permanent Forum through ECOSOC:

1. Encourage all States to extend a standing invitation to the Special Rapporteur on the Rights of Indigenous peoples.
2. Encourage all States to take note of the observations and recommendations made by the Special Rapporteur on the rights of indigenous peoples in his thematic reports, such as his 'Analysis of duty of States to consult with indigenous peoples on matters affecting them' (A/HRC/12/34), and to incorporate his findings into State practice as it relates to Indigenous peoples.
3. Advocate that the Special Rapporteur on the rights of Indigenous peoples is appropriately resourced and supported to fulfil the mandate.
4. To keep a watching brief on all States' compliance with CERD and protections against the harms of racial vilification.

The Commission is Australia's National Human Rights Institution. The role of the Aboriginal and Torres Strait Islander Social Justice Commissioner is a statutory position within the Commission which was established to monitor the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander peoples in Australia. The Commission looks forward to being able to assist you to 'examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of Indigenous peoples'¹ during your term in this important role and continuing the positive working relationship that has been previously experienced.

As you are aware, during his term Professor James Anaya conducted the first country visit by a Special Rapporteur on the rights of Indigenous peoples to Australia in August 2009, and tabled his report at the 15th Session of the Human Rights Council in September 2010. Professor Anaya's visit was the result of the Australian Government extending a standing invitation to UN Special Procedures mandate holders. We commend the Government for this action, encourage the current government to continue to engage constructively with all relevant Special Rapporteurs, and encourage all States to extend a standing invitation to the Special Rapporteur on the rights of Indigenous peoples, if they have not already done so.

In 2010 the Permanent Forum recommended that States provide a written response to the Human Rights Council in relation to country visits by the Special Rapporteur. Given its importance, the Commission urges States, as a demonstration of good faith to Indigenous peoples, to formally respond to each of the recommendations in the Special Rapporteur's country report relevant to them. As it is five years since the Rapporteur's visit it would also be a show of good faith for the Australian Government to provide an incoming brief to the Special Rapporteur on their progress on the recommendations made to date.

We note that in addition to conducting country visits, the mandate of the Special Rapporteur on the rights of Indigenous peoples includes:

- the promotion of the Declaration on the Rights of Indigenous Peoples
- the ability to receive complaints or communications and to formulate recommendations and proposals on appropriate measures regarding alleged violations of the rights of Indigenous peoples
- the ability to conduct thematic studies on the protection of the rights of Indigenous peoples including in close cooperation with other special procedures and subsidiary organs of the Human Rights Councils such as EMRIP and treaty bodies that promote good practice.

The Permanent Forum, in their 'Study on an optional protocol to the United Nations Declaration on the rights of Indigenous peoples focusing on a voluntary mechanism', are concerned that there is a current lack of capacity for existing Indigenous focused mechanisms including the Special Rapporteur on the rights of Indigenous peoples, to review, monitor, and report on the implementation of the Declaration. This is a significant concern given the Declaration is the key international document outlining the rights of Indigenous peoples and a core element of the mandate. We encourage the United Nations through the Human Rights Council to ensure that appropriate resources, support and capacity is provided to the role of the Special Rapporteur on the rights of Indigenous peoples, as well as other relevant human rights mechanisms and bodies to enable them to effectively undertake their responsibilities.

Finally Mr/Madam Chair,

A key issue in Australia is proposed changes to Australia's racial vilification laws. On 25 March 2014, Australia's Attorney-General released an 'exposure draft' of the proposed new legislation. This exposure draft, the Freedom of Speech (Repeal of s 18C) Bill 2014, has not been introduced into the Federal Parliament but has been released publicly for consultation. The Federal Government asked for submissions from interested people and organisations on the proposed changes by 30 April 2014.

The Federal Government's proposed changes substantially weaken the existing protections against racist hate speech. Most public racial vilification is likely to be covered by the extremely broad 'public discussion' exemption, even if it incites racial hatred or causes racial humiliation or fear of physical

harm on the grounds of race. The proposed exemption is so broad, and the new protection is so narrow, that the combined changes would almost completely remove the existing Federal racial vilification protections. This is of great concern to Aboriginal and Torres Strait Islander peoples in Australia whose experiences of racial vilification and discrimination are well documented.

Given the significant effects of racism on Indigenous peoples generally, we ask that the Special Rapporteur on the rights of Indigenous peoples work collaboratively with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to monitor States compliance with CERD and protections against the harms of racial vilification.

Thank you Mr/Madam Chair

¹ Human Rights Council, *Resolution adopted by the Human Rights Council, 15/14, Human rights and indigenous peoples: mandate of the Special Rapporteur on the rights of indigenous peoples*, United Nations General Assembly, Fifteenth session, Agenda item 3, Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development.