



Expert Mechanism on the Rights of Indigenous Peoples

Fifth Session

Geneva, 9 – 13th July 2012.

Study on the role of languages and culture in the promotion and protection of the rights and identity of Indigenous peoples

INTERVENTION by the New South Wales Aboriginal Land Council, delivered by Councillor for the North West Region, and member of the Gamilaraay Peoples, Councillor Anne Dennis.

Thank you Mr Chair,

Yaama Maliyaa. Anne Dennis ngayaa. Gamilaraay ngayaa. Australia-dhi ngayaa. Nginda ngayaa wingangay-lay-nha. Dhaymaarr ngayaa wingangay-lay-nha. Guuguu ngayaa wingangay-lay-nha.

The New South Wales Aboriginal Land Council respectfully makes the following recommendations to the Expert Mechanism on the Rights of Indigenous Peoples to encourage States to ensure the revitalisation and protection of Indigenous languages and cultures for Indigenous nations around the world.

1: That the Expert Mechanism encourages ALL States to ratify and fully implement into State laws and policies the rights enshrined in ILO 169, and the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (2003), and most importantly to embed the principles of these instruments within domestic legislation.

2: That the Expert Mechanism encourages ALL states to appropriately consult with Indigenous representative bodies on any legislation or policy relating to Indigenous culture and heritage introduced or implemented, and recognise Indigenous peoples in legislation as the rightful owners of Indigenous culture and heritage, and the only determinants of Indigenous culture and heritage

3: That the Expert Mechanism encourages ALL states to amend legislation to recognise Indigenous peoples as the rightful owners of Indigenous cultural heritage and to give proper acknowledgement of Indigenous languages, including legal recognition of the principle of 'free, prior and informed consent'.

4: That the Expert Mechanism, in accordance with obligations under the UN Declaration on the Rights of Indigenous Peoples and other international human rights instruments, **encourages ALL states to ensure legislative systems are established to preserve and enhance Indigenous cultural traditions** through effective Indigenous control mechanisms to deliver social justice to Indigenous peoples to redress the significant cultural, economic and social dispossession which Indigenous people continue to experience.

Mr Chairperson, the New South Wales Aboriginal Land Council applauds and supports this study on the role of language and culture in recognition of the Declaration and evolving human rights standards protecting Indigenous peoples. We particularly welcome the study by the Expert Mechanism on the recognition of the right to practice and revitalise language, which is crucial to maintaining Indigenous cultures as affirmed in Article 14 of the Declaration and we commend the Special Rapporteur's sustained efforts to strengthen best-practice measures when engaging with Indigenous peoples.

The New South Wales Aboriginal Land Council is concerned at the Australian Government's lack of engagement with Indigenous communities in developing tangible solutions and practical measures to maintain and revitalise Indigenous languages. The Australian Government must be genuine in its efforts to redress the social, cultural and political inequities Indigenous social, cultural and political inequity through recognition and acceptance of the positive value of Indigenous languages and cultures to the Australian nation.

In Australia, we have yet to see any concrete results in response to the extensive work of the Expert Mechanism in regard to procedures for implementation by States or a process for monitoring the impacts and results of the Mechanism's previous recommendations arising from its study on the right to education.

In April 2009, Australia endorsed the Declaration on the Rights of Indigenous People. The Declaration encourages Governments to carry out their obligations and responsibilities in engaging with Indigenous peoples at all levels of policy development.

In particular, Article 14 recognises the right of Indigenous people to determine their own education systems in their own languages. Stronger protection is offered by Article 14, which not only allows Indigenous people to run schools in our own languages, but requires State support for such initiatives. Language programs in schools must be recognised as an important part of effective strategies to maintain Indigenous languages.

Australia is also a signatory to the 2001 Universal Declaration on Cultural Diversity adopted by the 31st UNESCO General Conference. This Declaration recognises cultural rights, including the right to use one's mother tongue. This remains an important reminder to ensure that past injustices, particularly over territories and resources are remedied in the future.

Indigenous language revitalisation and maintenance are fundamental components in achieving social justice for Indigenous peoples and the New South Wales Aboriginal Land Council believes measures need to be implemented to preserve those languages still in use, and to develop and carry out programmes to revitalise Indigenous languages that are no longer widely used and in danger of being lost. These measures must include the implementation of bilingual and intercultural education for Indigenous peoples.

Greater efforts need to be made by the Australian Government to secure long-term community-based approaches to support this process of language revitalisation based on the core concepts of autonomy, participation, engagement and consultation.

Effective engagement with Indigenous communities regarding the practices needed to maintain or revive our languages requires genuine, ongoing, two-way dialogue between Indigenous peoples and Government. Respectful relationships must be fostered and continued through the implementation and evaluation of policy and program development. The knowledge and experience of Indigenous communities must be valued and prioritised, particularly in relation to what is needed by Indigenous peoples.

The Government of the State of New South Wales does have a formal language policy which aims to promote the revitalisation and advance the status of Indigenous languages.

However, the Federal Government's National Language Policy, although strong on intent in drawing attention to Indigenous languages, is exceptionally weak in the power of enforcement and is also vulnerable to contradictory government policy across different jurisdictions. This is demonstrated by the dismantling of bilingual education in the Northern Territory in 2008.

Moreover, policy will only be as effective as the practical steps that are taken to implement them, and without explicit protection in law, Indigenous peoples have no control over government policies that affect them. This means that decisions are left to those chosen to implement them and are open to interpretation.

Australia is not a signatory to the 2003 UNESCO Convention, but the development of the Convention does show that the international community is now focusing on intangible culture. This is particularly important for Indigenous peoples in Australia because culture is oral and performance based – the intangible is inter-connected with the tangible, and Aboriginal culture must be seen as a bundle of traditions, customs and practices. The right of free, prior and informed consent should underpin all mechanisms that support preserving Indigenous culture, recognising that culture and traditional Indigenous knowledge is a living and dynamic practice.

The New South Wales Aboriginal Land Council believes the maintenance and preservation of Indigenous languages must become a priority on the Government agenda. Policy needs to be balanced between strategies founded on the role of education in fostering social equity and founded on a holistic understanding of Indigenous peoples rights to maintain language and culture. The enriching process for Australia of having bilingual or multilingual speakers cannot be underestimated. Maintenance of Indigenous languages within the context of community and education programs must be provided with appropriate resources to maintain our languages and our rich culture and language.

Governments must ensure that all laws are based on international human rights principles as embedded in the Declaration and that Indigenous peoples are recognised in legislation as the rightful owners of Indigenous culture and heritage, and as such are the only determinants of Indigenous culture and heritage.

The New South Wales Aboriginal Land Council strongly encourages the Australian Government to work with Indigenous peoples to develop practical measures that recognise, record and protect local aspects of Indigenous cultures, heritage and languages, and enables bilingual education to be taught in schools and other educational institutions. In the absence of specific legislation which provides Indigenous people with rights to own and control their languages, appropriate policies should be put in place and resourced accordingly, addressing issues such as community ownership and group rights over Indigenous languages.

The New South Wales Aboriginal Land Council believes that a legislative framework should be established that addresses the need to preserve and enhance Indigenous cultural traditions through effective Indigenous control mechanisms and the need to deliver social justice to Indigenous peoples to redress the significant cultural, economic and social dispossession which Indigenous people continue to experience.

Furthermore, it is essential that there is transparency around the development and implementation of policies that respond to local needs and local knowledge. Governments need to introduce cultural flexibility into local governing structures and incorporate local Indigenous knowledge and tangible solutions consistent with the Declaration.

Thank you Mr Chair and members.