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**United Nations Permanent Forum on Indigenous Issues
Eighth Session
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Agenda Item 4(a) Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

JOINT INTERVENTION DELIVERED BY CRAIG CROMELIN ON BEHALF OF:

**National Native Title Council (NNTC)
Foundation for Aboriginal and Islander Research Action (FAIRA)
Marninwarntikura Women's Resource Centre
New South Wales Aboriginal Land Council (NSWALC)
Human Rights and Equal Opportunity Commission (HREOC)
National Indigenous Higher Education Network (NIHEN)
Aboriginal and Torres Strait Islander Women's Legal and Advocacy
Service Aboriginal Corporation (ATSIWLAS)
Aboriginal Legal Rights Movement (ALRM)
Bullana, The Poche Centre for Indigenous Health
National Indigenous Youth Movement of Australia (NIYMA)
Aboriginal Legal Service of Western Australia Inc
National Aboriginal Community Controlled Health Organisation
(NACCHO)
Indigenous Peoples Organisation Network Youth Delegation**

Thank you Madam Chairperson,

The Aboriginal and Torres Strait Islander organisations of Australia would like to acknowledge the work of the Permanent Forum for your continued expertise and leadership in promoting awareness about the human rights situation facing Indigenous peoples throughout the world. Through the adoption of the Declaration on the Rights of Indigenous peoples by the General Assembly we now have an international framework that directly relates to the overall advancement of our rights, interests and aspirations.

The Declaration adds substantive value to the intellectual infrastructure required to promote awareness and advance the exercise and enjoyment of human rights by Indigenous peoples and should be viewed as a crucial development in the history of the United Nations.

The Australian Government's support of the Declaration marks an important transformation in the attitudes that have existed regarding the recognition of Indigenous Australians collective rights. The Australian government's support of the Declaration is a practical contribution to our domestic reconciliation process.

We commend the Australian government for their statement that the right of self-determination in article 3 is to be applied consistently with its binding legal obligations in the ICCPR and ICESCR. We note that in giving their support for the Declaration the government has stated that "Australia's existing obligations under international human rights treaties are mirrored in the Declaration's fundamental principles".

While supporting the Declaration is a positive initiative the Aboriginal and Torres Strait Islander Organisations of Australia are concerned about the ambiguous nature of the Australian government's support. In particular we note that the government's interpretation of free, prior and informed consent is inconsistent with existing international law.

The recent establishment of a national consultative process for the potential development of a charter of human rights in Australia is another positive initiative of the Australian government. It is the position of the Aboriginal and Torres Strait Islander Peoples Organisations of Australia that a statutory charter of rights needs to be established and must annex all international human rights instruments that have been signed onto including the Declaration on the Rights of Indigenous Peoples. While there is no certainty that a Charter of Rights will ever be adopted in Australia the government should be applauded creating a process through which its citizens can engage in a dialogue on this issue.

The critical challenge now facing Indigenous peoples and nation states is the setting of benchmarks which can be used as a practical measurement on the extent of the enjoyment of the rights contained in the Declaration. This requires a commitment by and the collaboration of all actors in this debate, facilitated by the ongoing leadership that is being provided by the Permanent Forum.

Such benchmarks should not be seen by governments simply as a means through which they can be criticised for not meeting their obligations. Benchmarks can and should be seen as adding value to development and implementation of future government policy.

An important first step in the implementation of the Declaration at both the international and domestic level will require consideration of how to achieve best practice in the way UN agencies and governments engage with Indigenous peoples. If engagement is simply used by UN agencies and governments as a modern day euphemism for consultation with Indigenous peoples it is difficult to imagine that our respective relationships will improve.

Indigenous peoples claim to having a collective right to self-determination is not simply about taking a belligerent stand against governments for the invasion and colonisation of

our lands and territories. It is based on our understanding that we are best placed to make the decisions that affect our lives and the future of our peoples.

This also presents a critical challenge for Indigenous peoples. If we maintain that we possess the right to collective self-determination, then we should exercise it to the extent that we are able. If we are going to simply ask for State recognition of the right to self-determination we are in essence undermining the exercise and enjoyment of the very right that we claim to have. While we must take the initiative, we still require guidance from bodies such as the Permanent Forum on how the right to self-determination can be exercised at the domestic level.

It is worth noting the words of the Permanent Forum's Rapporteur many years ago, that self-determination is "the pillar upon which all other rights rest".

A critical element of the Declaration that also requires further elaboration concerns Indigenous peoples' right to development. All too often Indigenous peoples suffer ongoing and further violations of our human rights in the name of development, either for ourselves or the citizens of the State generally.

Frameworks such as the Millennium Development Goals have limited application for some Indigenous peoples across the globe. In spite of this situation such frameworks must be evaluated for their capacity to become better aligned with the standards established by the Declaration and other relevant instruments such as ILO Convention 169.

Indigenous peoples' engagement with modern technology does not mean that we have been or desire to be assimilated. Equally, recognition of our rights as Indigenous peoples must not be assessed on the basis of remaining our static in a globalising world. We cannot forgo the traditions and customs that have been handed to us by our ancestors, but nor can we be quarantined from the opportunities that arise through the development of new technologies and more efficient practices.

Madam Chairperson, the Aboriginal and Torres Strait Islander Organisations of Australia recommend that:

- 1. The Permanent Forum, with the support of the Inter-Agency Support Group undertake an international consultative process with Indigenous peoples on the proposed concept of 'DRIplomacy'. That is, to consider ways in which instruments such as the Declaration can be used to develop more effective models of 'engagement' with Indigenous peoples.**
- 2. The Permanent Forum supports a study to elaborate on article 3 of the Declaration.**

- 3. The Permanent Forum engages with the United Nations Development Programme and the International Parliamentarians Union to elaborate on models to guide Indigenous peoples on the exercise our rights to development under article 23.**