

**Agenda Item 4: Implementation of the UN Declaration on the Rights of Indigenous Peoples**

**JOINT STATEMENT ON BEHALF OF THE NATIONAL NATIVE TITLE COUNCIL OF AUSTRALIA AND SUPPORTED BY THE INDIGENOUS PEOPLES ORGANISATIONS OF AUSTRALIA.**

**Supported by the New South Wales Land Council, and the Indigenous Peoples Organisations of Australia.**

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Thank you Mr Chairman

This intervention is made on behalf of a number of Aboriginal and Torres Strait Islander organisations from Australia, present at this Forum.

In a joint letter to the Delegate of the Government of Australia Indigenous delegates present here at the third session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) voiced our expectation in that the Australian Government would assist the work of the Expert Mechanism. Furthermore we are also keen to learn how the Australian Government is looking to implement the Declaration of the Rights of Indigenous Peoples.

We also have concern at a practical level where as on 7 January this year the Australian Government submitted its combined Fifteenth, Sixteenth and Seventeenth Periodic Reports under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination. This combined report includes responses to concluding observations of the Committee on the Elimination of Racial Discrimination on the situation in Australia under the Convention.

We are disappointed to also report that the Australian Government has still not satisfactorily addressed the concerns of CERD, and we particularly wish to highlight today the lack of improvements to Australia's native title system that has been a focus of CERD's concluding observations.

The current native title system in Australia has been condemned as unjust for a number of legitimate reasons, and the legal complexities of it have brought it into disrepute among Indigenous people and non-Indigenous people alike.

One of the main concerns, as raised by the Committee, is the high standard of proof required for the Courts to demonstrate continuous observance and acknowledgement of the laws and customs of Indigenous people, resulting in Traditional Owners not being able to obtain recognition of their relationship with their traditional lands.

A traditional owner group that has revitalized their traditions in recent years cannot be recognized as native title holders under Australian law *unless* those traditions have been observed, substantially without interruption, since the assertion of British sovereignty.

As suggested at the ninth session of the UN Permanent Forum on Indigenous Issues in April 2010, Australia's Indigenous peoples continue to call on the Australian Government to

develop a framework for the implementation of the Declaration on the Rights of Indigenous Peoples and to amend the *Native Title Act* so that some elements of the burden of proof are lifted from traditional owners. This might be achieved, for example, by the engagement of Indigenous people in Australia to address concern on their land, territories and waters and by reversing the onus of proof so that the State (or other respondent parties to a claim) bears the burden of rebutting a presumption of continuity, and by requiring the State to detail its acts of dispossession.

Mr Chairperson, CERD recommended to the Australian Government in 2005 that it review the requirement of such a high standard of proof, bearing in mind the nature of the relationship of indigenous peoples to their land. This recommendation has not been followed through by the State of Australia.

And finally Mr Chairman

**We recommend that this forum encourage the State of Australia to unequivocally engage with Indigenous people to address and take action to implement the Declaration of the Rights of Indigenous Peoples including addressing the discriminatory aspects of the *Native Title Act* in particular the requirement for a high standard of proof being placed on Traditional Owners.**

**Thank you**