

**United Nations Permanent Forum on Indigenous Issues
Tenth Session - New York
16-27 May 2011**

Agenda Item 8(b): Forced labour, international criminal law and the judicial defence of Indigenous peoples' rights, international regime on access and benefit sharing, and impacts of the global financial crisis on indigenous peoples

**JOINT INTERVENTION DELIVERED BY JOSIE GUY ON BEHALF OF THE
INDIGENOUS PEOPLES ORGANISATION (IPO) NETWORK OF AUSTRALIA:**

**Aboriginal Legal Rights Movement of South Australia (ALRM)
Aboriginal Legal Service Western Australia (ALSWA)
Aboriginal Medical Services Association of the Northern Territory (AMSANT)
Amnesty International Australia Australian Nuclear Free Alliance (ANFA)
Foundation for Aboriginal and Islander Research and Action (FAIRA)
Gugu Badhum Ltd.
National Aboriginal Community Controlled Health Organisation (NAACHO)
National Native Title Council (NNTC)
New South Wales Aboriginal Land Council
Urapuntja Aboriginal Corporation (Utopia Community)
Victorian Aboriginal Legal Service (VALS)
Yarkuwa Indigenous Knowledge Centre**

Thank you Madam Chairperson,

The Indigenous Peoples Organisation (IPO) of Australia is pleased to address you on these important issues. This intervention will focus on:

- the impact of the Global Financial Crisis (GFC) on indigenous peoples;
- forced labour;
- criminal law and the judicial defence of indigenous people's rights; and
- access and benefit sharing.

Each issue is separately addressed in the text of this intervention and further, more detailed papers, are attached on the issues of impacts of the GFC and forced labour.

Global Financial Crisis

Increasing Indigenous participation in the Australian economy is a significant challenge that still remains to be adequately addressed with Indigenous peoples lagging behind in benefiting from economic opportunities derived from the indigenous asset base. On the back of the Global Financial Crisis a number of issues have been exacerbated or freshly revealed that have once again seen the rights of Indigenous Peoples compromised.

In some instances where Indigenous Peoples have negotiated economic gain in forfeiture of access to traditional lands or native title rights those economic gains have become jeopardised as a result of the GFC. In many cases where the extractive industry is adversely affected by economic instability, it is indigenous jobs that are lost and land access agreements pushed aside.

This is but one example of the impact of the GFC, however, a valuable lesson is evident that can be applied across the board. Indigenous Peoples must have a strategy to ensure that Australia's Indigenous People are better equipped to endure turbulent

economic events. The State of Australia should be encouraged to coordinate programs to assist Indigenous peoples to participate in the economy. A significant challenge is to develop a long term, comprehensive strategy to develop locally based and effective Indigenous employment and training programs to build and skill the Indigenous workforce to meet labour demands.

Forced Labour

'Absolute poverty' in Aboriginal communities is real, confronting and unacceptable. Its history is embedded in the continuous theft and control of land and resources from the beginning of colonisation in 1788 through to today.

From 1848 through to the 1970's under government segregation and assimilation policies Indigenous people were forced to work for basic rations in menial tasks and conditions akin to slavery. Further, welfare payments were misappropriated by missions, pastoralists and home owners who had Indigenous Peoples work for them via trust and savings accounts. This misappropriation is known collectively as the 'Stolen Wages'. An Australian Senate Inquiry entitled "Unfinished Business: Indigenous Stolen Wages" in 2006 made a number of recommendations in relation to stolen wages including the establishment of compensation schemes. To date recommendations from the Senate Inquiry remain unimplemented.

Since 1975 the government introduced the Community Development Employment Program commonly known as CDEP. Again, Aboriginal people were forced to work outside the normal industrial relations system for a wage that was equivalent to unemployment benefits. Under the Northern Territory Emergency Response, commonly referred to as the 'NT Intervention', CDEP has been reformed and sees Indigenous people work for private housing consortiums and shire councils being paid half in money and half on ration card.

Access and benefit sharing

Again, Indigenous people's land in some areas of Australia are rich in natural resources and is attractive to extractive industries and commercial enterprises. Indigenous people's lands continue to be exploited by governments and commercial interest and Indigenous people continue not to benefit or be consulted in the process. Despite the UN *Convention on Biological Diversity* having been ratified by the Australian Government it is not evident in all areas that the sustainable use and equitable benefit sharing of biodiversity is enjoyed by Indigenous people where natural resources are exploited on Indigenous land. Where Indigenous lands contain natural resources we urge the Australian Government to implement a scheme that ensures Indigenous people have:

- The right to participate in the use, management and conservation of natural resources;
- The right to be consulted before natural resources on their lands are exploited;
- The right to study the effects of such exploitation and exploration;
- The right to benefit in the profits made from the exploitation and use of natural resources; and
- The right to be compensated by government for any damages caused by such activities.

Criminal law and the judicial defence of Indigenous Peoples rights

Previous Australian Governments have enforced a policy specifically targeted at Indigenous People that saw the removal of Indigenous children from their family and community constructs and placed into institutions where cultural practice, beliefs and language were stripped. The Indigenous children subject to this policy are commonly known as the 'Stolen Generations'. The removal of children and the theft of culture has manifested itself in trans-generational trauma exposing new generations of Indigenous youth to dysfunctional family units, an early exposure to violence, alcohol, illicit substances and the risk of further removal from the family unit by modern welfare agencies. Although the High Court has found that the government policy of removal was intended to be made in the best interests of Indigenous people, the practical effect was that it was in breach of the United Nations Genocide Convention as it blatantly enforced:

- the removal and transfer of children of a racial group in a manner calculated to bring about a group's physical destruction in whole or in part;
- actions likely to cause serious mental harm to members of a racial or ethnic group; and
- the deliberate infliction on a racial group of conditions of life calculated to bring about its physical destruction in whole or in part.

It is fortunate that Indigenous Australians are a strong and resilient people, however, the effects of these policies are still felt by countless Indigenous people particularly where those families are unable to find their family groups and the their connection to culture has been damaged beyond repair. Actions must be taken to redress the damage caused by these policies.

Recommendations

The Indigenous Peoples Organisation Network of Australia recommends that the Permanent Forum:

1. conduct, or recommend to the Special Rapporteur on the Rights of Indigenous Peoples, or other UN Special Mechanism conduct, a thematic study on the recognition of Indigenous Peoples in the national constitutions of Member States, to be presented at the Permanent Forum in 2013;
2. urge all states to develop comprehensive strategies to encourage strong participation of Indigenous peoples in local economies;
3. urge the all states to ensure Indigenous peoples' rights to self-determination as set out under the UN Declaration on the Rights of Indigenous Peoples are protected in strategies designed to improve Indigenous economic independence;
4. urge all States to establish a restorative justice process similar to the South African Truth and Reconciliation Commission to address the historical and contemporary injustices against Indigenous peoples, including forced labour;
5. urge all States to establish National Compensation Tribunals for stolen generations and wages of Indigenous peoples;
6. urge all States to disaggregate all information and data pertaining to Indigenous Peoples in order to develop more meaningful and effective policies that impact on Indigenous Peoples,
7. That all States include within the scope of forced labour definition and related

responses the impact of 'covert or systemic forced labour' whereby States impose draconian penalties that compel Indigenous peoples into employment that is menial, is contracted to a welfare benefit, is in the guise of mutual responsibility and obligation, short term, requires hard manual labour, does not build the capacity of the person or community, has no future prospects, duplicates or facilitates the abrogation of the State to deliver vital services and basic human rights and is undignified' ;

8. urge all states to adequately fund and resource Indigenous people to establish and run services that assist in dealing with the trans-generational trauma inflicted upon Indigenous peoples as a result of previous government removal policies including specific counselling and family support services; and
9. urge all states to implement legislative protection for Indigenous people's rights to access and benefit sharing including a compensation fund for indigenous peoples where damage has occurred due to exploitation of natural resources.