



United Nations Permanent Forum on Indigenous Issues

16th Session General Assembly, New York 24 April - 5 May, 2017

Item 8: Implementation on the United Nations Declaration on the Rights of Indigenous Peoples

INTERVENTION by the New South Wales Aboriginal Land Council, delivered by Councillor for the Sydney/Newcastle Region, and member of the Wiradjuri Peoples, Councillor Roy Ah-See

Thank you Madam Chairperson.

The New South Wales Aboriginal Land Council is pleased to contribute to the 16th session of the UN Permanent Forum on Indigenous Issues in recognition of the 10 years since the adoption of the Declaration and we pay our respect to the Elders and Ancestors of these lands and of the world's Indigenous Peoples.

The New South Wales Aboriginal Land Council respectfully makes the following recommendations to the Permanent Forum:

- **That the Permanent Forum encourage all states to recognise in legislation Indigenous peoples as the rightful owners of their culture and heritage, and that laws must include enforceable rights that recognise and protect Indigenous peoples cultural and intellectual property rights in line with Article 31 of the Declaration.**
- **That the Permanent Forum urge all states, to recognise in laws and policies Indigenous peoples genuine decision-making powers and to ensure States' legislation adheres to the Declaration, and abides by these international standards in relation to the protection of their rights, based on comprehensive and meaningful consultation on laws and administrative measures that affect them.**

And that the Permanent Forum **establish an effective body capable of implementing and monitoring states' compliance** with the Declaration.

The adoption of the Declaration in 2007 represented a major accomplishment, yet there continues to be a growing divide between the international commitments of member states regarding Indigenous Peoples. Considering the criticism Australia has received on the international stage regarding its treatment of Indigenous peoples, the Australian Government must honour its commitment enshrined in the Declaration and work proactively to incorporate its aims into domestic policy and legislation. Implementation of the Declaration would improve engagement between Governments and Indigenous peoples in Australia, and would provide a framework for the future recognition and protection of the civil, political, economic, social and cultural rights of Indigenous peoples, particularly the right to self-determination. This would strengthen human rights protection for Indigenous peoples, and to help bring Australia into line with the emerging norms of international law under the Declaration.

Furthermore, given that Australia intends to run for a seat on the United Nations Human Rights Council for the period of 2018-2020¹ and in light of the recent Universal Periodic Reviews undertaken by the Human Rights Council into Australia's human rights record,² it would be prudent for the Australian Government to move from rhetoric to action, to implement the Declaration into all government decisions and policies that affect the rights of Indigenous peoples in Australia.

The right to free prior and informed consent is not protected under Australian legislation. No legislation has been developed to incorporate the Declaration into domestic law either, even though since 2009 the Australian Government confirmed publicly its commitment to the Declaration, and further affirmed through its acceptance of a number of recommendations from Australia's second Universal Periodic Review while supporting the Outcome Document of the World Conference on Indigenous Peoples. Unfortunately, the situation for Indigenous peoples in Australia has seen little progress in many areas since the adoption of the Declaration. Laws do **not** affirm the rights **nor** meet the requisites of self-determination as set out in the Declaration and the Australian Government still **fails** to commit to removing discriminatory aspects in the Australian Constitution.

By supporting the Declaration, the Australian Government **claims** to be committed to ensure that Indigenous people's rights and concerns are integrated into policies and programs. **However**, the implementation of the Declaration through legislation and policy has **not** extended to the full recognition of Indigenous culture and heritage rights specified in these instruments.³ Without comprehensive legislative measures, the law as it currently stands offers a reactive approach which **fails** to seek out ways of actively protecting Indigenous Australian's culture and heritage, and falls short of conferring ownership and control of culture and heritage on Indigenous peoples of

¹ http://theconversation.com/australias-bid-for-the-un-human-rights-council-48385#comment_798544

² <http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession23.aspx>

³ Chapman, T. (2008). 'Corroboree Shield: A comparative historical analysis of (the lack of) International, National and State level Indigenous cultural heritage protection', 5 *Macquarie Journal of International and Comparative Environmental Law*, pp 81-96,

Australia.⁴ There remains **no** recognized right in current legislation for Indigenous Australian's to decide what happens with their culture and heritage, and largely there are **no** requirements to seek consent for commercial developments which negatively impact on traditional lands and areas of cultural significance.

In 2015 the Australian Government accepted a number of recommendations through Australia's second Universal Periodic Review, including the recommendation to take concrete measures to ensure the implementation and promotion of the Declaration. Acknowledging the ten years since its implementation, it is **crucial** to ensure that this translates into meaningful and effective action, and to monitor how states are achieving improved outcomes for Indigenous peoples in realising the ends of the Declaration.

⁴ NSWALC Submission to the NSW Government: Reforming Aboriginal Culture and Heritage laws in NSW p. 36.