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**Statement by the
Aboriginal and Torres Strait Islander Social Justice Commissioner
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Australian Human Rights Commission
to the
Expert Mechanism on the Rights of Indigenous Peoples
11-15 July 2011, Geneva**

Item 5: The Declaration on the Rights of Indigenous Peoples

Mister Chair

I make this statement in my capacity as the Aboriginal and Torres Strait Islander Social Justice Commissioner on behalf of the Australian Human Rights Commission (the Commission), Australia's National Human Rights Institution (NHRI).

I commend the work of EMRIP on the Declaration, and also commend the work of the Office of the High Commissioner for Human Rights and the Asia Pacific Forum with whom we are currently working to develop a training toolkit for NHRIs on the Declaration.

NHRIs are required to protect and promote all human rights of all persons. However, because Indigenous peoples represent some of the most marginalised and vulnerable peoples in the world, there are strong arguments for NHRIs to pay particular attention to Indigenous peoples' human rights.

NHRIs are uniquely placed, to operate as a conduit between the international human rights standards and the on-the-ground reality experienced by indigenous peoples. Consequently, NHRIs have a key strategic role to play in States giving full effect to the standards contained in the Declaration.

In December 2010, my Office launched an initial suite of community education materials on the Declaration. These materials were funded by the Christensen Fund and Oxfam Australia and have been widely distributed to Aboriginal and Torres Strait Islander organisations and communities, with reprinting costs being met by the Australian Government.

When I return to Australia, I will launch the next installment to the materials, a short documentary on the Declaration and its application in an Australian context, and will work to produce an interactive website.

Mr Chair, the Australian Human Rights Commission will make these materials available other States and Indigenous peoples to assist them give full effect to the Declaration.

While these materials are raising awareness and increasing understanding in Aboriginal and Torres Strait Islander communities, little work has been done within Government in this regard.

Mister Chair

Firstly, let me acknowledge the work that the Australian Government is currently doing to develop a National Human Rights Framework in Australia and the significant work that is required to be done to educate the Australian Public Service about human rights, and secure support for the Framework at all levels of Government.

I also acknowledge that the Australian Government has committed support for the establishment of the National Congress of Australia's First Peoples¹; and the Australian Government is currently undertaking a process, which has bipartisan political support, to recognise Aboriginal and Torres Strait Islander peoples in the Australian Constitution.²

These are welcome initiatives, however, the Australian Government should be applying a holistic and coordinated approach to giving full effect to the Declaration.

In 2009, the Minister for Indigenous Affairs, confirmed that 'Australia's existing international obligations are mirrored in the Declaration'. More recent statements made by the government on one hand assert that their laws, policies, and programs are consistent with the Declaration,³ while on the other hand, they assert that the Declaration is not legally binding, and as such the Government has no legal obligation to its implementation.⁴ It is my concern that Governments are using this status of the Declaration to avoid their responsibility to implement human rights as they apply to Indigenous Peoples.

I am also concerned that the Declaration contains a number of rights and principles that governments are finding difficult to understand and implement, particularly the right to self-determination and the principle of free, prior and informed consent. There is a need for detailed practical guidance at the international level to inform States on the content of these crucial rights and principles. This lack of understanding about what 'implementation' of the Declaration looks like is impeding action.

In addition to increased international guidance on the Declaration, holistic and targeted action plans at the domestic level are required to give full effect to the Declaration.

This proposed approach is particularly relevant for the Australian Government as it designs and develops its National Human Rights Framework which includes the development of a National Action Plan on Human Rights. Unfortunately, as it currently stands the National Human Rights Framework does not explicitly acknowledge that the Declaration will guide how the Framework or Action Plan will be implemented as it relates to Aboriginal and Torres Strait Islander peoples

¹ See National Congress Of Australia's First Peoples, <http://nationalcongress.com.au/> (viewed 4 July 2011).

² See You Me Unity, <http://www.youmeunity.org.au/> (viewed 4 July 2011).

³ Attorney General's Department, Australia's Universal Periodic Review, see http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_InternationalHumanRights_UniversalPeriodicReview

⁴ Australian Government, Australian Government and Non-Government organisation Forum on human rights, Canberra, 22 June 2011, Background Paper.

My Office is currently advocating that the Australian Government enter into a process with Aboriginal and Torres Strait Islander peoples to negotiate and develop an action plan to give full effect to the Declaration in Australia, including convening a number of dialogue meetings with Aboriginal and Torres Strait Islander peoples organisations and government officials to develop agreed positions on the Declaration and the content of the Action Plan. It is envisaged that this process will culminate in a National Summit for the sign off and agreement to the Action Plan.

While the Australian Government have indicated that they broadly support the concept of a National Summit, they are yet to formally commit to the process.

Recommendations

1. That EMRIP and the Human Rights Council urge all States to commit to giving full effect to the Declaration by using it to guide them in the protection, promotion and realization of all human rights as they apply to Indigenous people's
2. That EMRIP work closely with the Human Rights Council, the Special Rapporteur on the Rights of Indigenous Peoples and the United Nations Permanent Forum on Indigenous Issues to develop detailed practical guidance to States in the development of strategies and action plans that give full effect to the Declaration at national, regional and local levels.
3. That EMRIP and the Human Rights Council urge all States to enter formal dialogues with Indigenous peoples and their representatives to develop agreed understandings on the core principles of the Declaration, in particular, the principles of free, prior, and informed consent, and self-determination; and negotiate appropriate mechanisms for their realization
4. That EMRIP and the Human Rights Council urge all States to develop holistic and targeted action plans to give full effect to the Declaration.