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United Nations  
Economic and Social Council  
Permanent Forum on Indigenous Issues  
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**Item 4(d): Human Rights**

**Intervention by Les Malezer  
Foundation for Aboriginal and Islander Research Action**

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Mr Chairman, there are many issues that need to be considered under the Item of Human Rights. These include:

- the future of the Working Group on Indigenous Peoples and the relative human rights role of the Permanent Forum;
- the International Decade on the World's Indigenous Peoples;
- the Draft Declaration on the Rights of Indigenous Peoples;
- global programs to promote and protect human rights for Indigenous Peoples;
- examining the work of UN agencies and instruments on human rights; and
- human rights abuses against Indigenous Peoples;

We must consider how the role of the Permanent Forum may be affected if the Working Group on Indigenous Peoples (WGIP) is ended. Some States say that the mandate of the Working Group is duplicated in the Permanent Forum, yet we know that the Permanent Forum is an advisory body to ECOSOC and has its focus upon forming recommendations for international agencies. The Permanent Forum is not a complaints mechanism for human rights.

The Permanent Forum has already adopted the position that the WGIP should be continued and that its work is not duplication. We strongly urge therefore that Permanent Forum make all appropriate representations to the next substantive session of ECOSOC, which will be considering the review of all mechanisms, regarding the continuation of the WGIP.

Last session we listed a number of functions carried out by the Working Group that the Permanent Forum cannot duplicate.

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FOUNDATION FOR ABORIGINAL AND ISLANDER RESEARCH ACTION  
PO Box 8402, Woolloongabba, Qld, 4102, AUSTRALIA  
Telephone: +61 7 33914677; Facsimile: +61 7 33914551  
[les.malezer@faira.org.au](mailto:les.malezer@faira.org.au)

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The WGIP allows up to thirty hours discussion in forum per session for dealing with human rights issues. In its current work mode the Permanent Forum allows between three and seven hours per session. The human rights concerns of the WGIP are directed to the Sub-Commission on the Promotion and Protection of Human Rights and perhaps onwards to the Commission on Human Rights. The Chairman of the Commission on Human Rights this year stated that the work of the CHR goes beyond the formal session and includes the active negotiations and lobbying between States and Civil Society occurring outside the formal meeting. This dynamic human-rights environment also includes the Special Rapporteurs, the High Commissioner for Human Rights, and the human rights treaty bodies.

The Permanent Forum cannot duplicate that human rights system.

It can ask those human rights agencies to report and it can even provide input into their work but it will not substitute for the access and inputs provided through the WGIP. The WGIP is much closer to the human rights complaint mechanisms and seems to have greater capacity to be a conduit for Indigenous complaints about human rights abuses. Representatives of Indigenous Peoples have been able to challenge acts of discrimination and oppression, particularly by States. The focus of the participants is upon their own human rights situation rather than the generic operations of international agencies.

States do not seem to be as accountable for their own human rights records to the Permanent Forum as they are in the environment of the WGIP, Sub-Commission and Commission. In the sessions of the Permanent Forum the States can, and should, cooperate with the Indigenous delegations to affect outcomes from international agencies, yet they seem to be less transparent or accountable before the Indigenous delegations regarding their own actions. Is this a case of States 'running with the foxes and hunting with the hounds'.

We know that States, when challenged in regards to the rights of Indigenous Peoples, are apt to move to the position of representing and advocating non-Indigenous interests. We cite for example the approach of the Australian Government to the Australian common law rights of Aboriginal Peoples and Torres Strait Islander Peoples, and the current political debate and trend in New Zealand over the rights of the Maori. This is just one of the many reasons why States should endeavour to actively engage in dialogue with the Indigenous Peoples during the sessions of the Permanent Forum and the WGIP. States should not be encouraged or allowed to stand in the shadows of the international agencies.

**We call upon all States to support the Draft Declaration on the Rights of the Indigenous Peoples, keeping the integrity of the articles as drafted by the WGIP and endorsed by the Sub-Commission. We urge that the Working Group conclude its work at the earliest opportunity to ensure that Indigenous Peoples have the opportunity to overcome long-term discrimination with the assistance and guidance of an appropriate international standard on the rights of Indigenous Peoples.**

**We call upon all States to issue open invitations to the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples, to cooperative with the Special Rapporteur, and to provide assistance for open and robust communications between the Special Rapporteur and the Indigenous Peoples.**

**We urge the Permanent Forum to repeat and elaborate its Recommendation No 86 of its Report on the Second Session of the Permanent Forum on Indigenous Issues, calling upon country-specific and thematic rapporteurs to pay special attention to the situation of Indigenous Peoples.**

**We call upon the ECOSOC to support the ongoing role of the Working Group on Indigenous Peoples and encourage States to contribute to the resolution of human rights abuses against Indigenous Peoples by contributing to the resources of the United Nations, particularly through the Voluntary Fund for Indigenous Peoples, and actively participating in the WGIP sessions and Indigenous Peoples items of the Sub-Commission and Commission on Human Rights.**

**We call upon ECOSOC to support a second Decade on the World's Indigenous Peoples with the specific intention to continue the program of action and increase participation by international agencies and States in achieving the goal of the Decade. We ask that an international panel of Indigenous Persons be appointed to plan and oversee the implementation of the program of action for the Decade.**

We wish to highlight the continuing and escalating hostility of the Australian Government to the rights of the Aboriginal Peoples and Torres Strait Islander Peoples.

The Australian Government has been in breach of the International Convention on the Elimination of All Forms of Racial Discrimination since 1998 when it implemented the Native Title Act Amendment Act 1998. The Committee on the Elimination of Racial Discrimination (CERD) affirmed this breach in its findings on three occasions in 1999 and 2000. The Australian Government continues its racial discrimination against the Aboriginal Peoples and Torres Strait Islander Peoples.

In Year 2001, the centenary of the Australian nation, the Australian Government turned its back on the Council of Reconciliation report and recommendations for reconciliation between non-Indigenous populations and the Indigenous Peoples, announcing its policy of 'practical reconciliation', terminology for mainstream welfare programs and policies.

The Aboriginal and Torres Strait Islander Commissioner, in the Year 2003 Report, examines government accountability for Reconciliation and states that 'of particular concern is the fact that the disparities that exist between Indigenous and non-Indigenous Australians have remained substantially the same, or have widened over the past five and ten years'. The Report says that Indigenous Peoples in Australia 'also presently endure health standards worse than those in some so-called *third world* countries'. Regarding government accountability the Commissioner's Report says 'there remains an absence of an appropriate national commitment to redressing Indigenous disadvantage, sufficiently rigorous monitoring and evaluation mechanisms, and benchmarks with both short term and longer term targets agreed with Indigenous Peoples'.

- The Aboriginal Peoples and Torres Strait Islander Peoples continue to be the most marginalised and disadvantaged group in Australia.
- Aboriginal life expectancy is 20 years lower than for other Australians. For Aboriginal males the life expectancy, at 56 years, is lower than for populations in Myanmar, Papua New Guinea and Cambodia. Indigenous Peoples in Australia live between 8 years and 13 years less than Indigenous Peoples in Canada, New Zealand and the USA.
- The rate of low birth-weight Aboriginal babies has increased in the late 1990s. The rate of low-birth weight is greater than in developing countries such as Ethiopia, Senegal, Tanzania, Zimbabwe, Indonesia, and Lebanon. Low birth-weight is related to life-long health disorders such as coronary heart diseases, type 2 diabetes, central obesity and hypertension.
- Infant mortality is three to four times higher for Aboriginal peoples than for the Australian population, and again is significantly higher than Indigenous populations in Canada, New Zealand and USA.
- In education, less than 17% of Aboriginal people have completed year 12 or equivalent, compared to 40% for the non-indigenous population, and non-indigenous people are four times (for graduate diploma) to seven times (for postgraduate degree) more likely to obtain tertiary qualifications.

- Aboriginal unemployment, including Aboriginal people on the 'work for the dole' scheme, is 44%, compared to approximately 7% for non-Indigenous people. For Aboriginal people aged between 15 and 24 years the unemployment rate is as high as 60%.
- The household income for Aboriginal people is 62% of the rate of income for non-Indigenous people, and the median gross weekly individual income is 60% of the income of non-indigenous people.
- Indigenous people are 5.6 times more likely to live in overcrowded homes than non-indigenous people, and 19 times more likely in the remote areas of Australia.
- Of the 213 discrete Aboriginal communities with populations of 50 or more persons, nearly half, or 46%, were not connected to town water. Half of these discrete communities did not have their water quality tested, or had failed the testing, in the previous 12 months. 48% of these communities had overflows or leakages from the sewerage system.
- Although governments of Australia have used Aboriginal drunkenness as an excuse to discriminate in law and actions against the Aboriginal Peoples, surveys show that 56% of Aboriginals do not drink alcohol compared with 38% of the Australian population and 10% consume alcohol at high-risk levels compared to 11% of non-Indigenous people.
- In the decade from 1990 to 1999, 115 indigenous people died in jail. This represents 18% of all deaths in custody. The figure has since risen to 20% of all deaths in custody, with 14 indigenous deaths in Year 2002.
- A study in Western Australia in 2001 revealed that indigenous people are seven times more likely to be a victim of assault (13 times for indigenous women), seven times more likely to be a victim of homicide and 3.2 times likely to be a victim of sexual assault.
- Indigenous people are only 2.4% of the total population in Australia, yet in 1991 Aboriginal people made up to 14% of the prison population. This rate of imprisonment has risen to 20% by 1999. Nationally the indigenous rate of imprisonment is 16 times the non-indigenous rate.
- Indigenous women are incarcerated at a rate which is 19.3 times that of non-indigenous women.
- On 30 June 2002, there were 4,494 indigenous prisoners in Australia, and 4,264 indigenous children on care and protection orders. This represents a rate of 1,806 indigenous adults and 2050 children per 100,000 population, compared with 148 adults and 350 children per 100,000 for the total population.
- Since 1997, indigenous juveniles, being 4% of the total juvenile population, have constituted 42% of all juveniles in detention. By 2002 indigenous juveniles were detained at almost 19 times the rate of non-indigenous juveniles.
- A study in Queensland in September 2002 revealed that 89% of indigenous juveniles who had been on supervised orders in 1994/95 had progressed to the adult criminal justice system and that 71% had served at least one term of imprisonment. The study concludes that over time the probability of these juveniles progressing into the adult corrections system will approach 100%.
- Indigenous children in Western Australia were eight times more likely to be the subject of a substantiation with 50% of those substantiations likely to be a substantiation of neglect.

In 2003 the Australian Government rescinded the budget of the Aboriginal and Torres Strait Islander Commission available for Indigenous programs. Almost all national Indigenous organisations have since been de-funded by the government, including those four organisations which hold ECOSOC-NGO status to the United Nations. Many Indigenous organisations have lost their funding and suffered a major upheaval of their services, despite government assurances that would not happen. We understand that \$20 million that would have otherwise gone to Indigenous Peoples organisations has not been and will not be released this year.

These actions by the government, are contrary to the rights described in the Draft Declaration on the Rights of Indigenous Peoples. We have identified that at least eighteen rights articulated in the Draft declaration are breached. These include the right to autonomy or self-government, the right to free and informed consent, and the right to determine, develop and administer social and economic programs.

In 2004 the Australian Government has announced that it will abolish the Aboriginal and Torres Strait Islander Commission (ATSIC). This is a blatant, intended attack on the right to self-determination. The government proposes to select Aboriginal and Torres Strait Islander individuals to advise it on policy

The government of Australia has never contributed to the Voluntary Fund for Indigenous Peoples and has only once provided a small grant, of \$5,000, to the fund for the International Decade of the World's Indigenous Peoples.

Despite its atrocious record in recent years, with policies hostile to the rights of Indigenous Peoples, and its defiant refusal to end racially-discriminatory laws, the Australian Government has actively partaken in the sessions of the Working Group on the Draft Declaration on the Rights of Indigenous Peoples, and has acted to significantly alter the five draft articles relating to land rights and development.

**We call for the Australian Government to immediately comply with the International Convention on the Elimination of All Forms of Racial Discrimination, by withdrawing the Native Title Act Amendment Act 1998, and entering into discussions with the Aboriginal Peoples and Torres Strait Islander Peoples regarding the suitable arrangement for future co-existence on Indigenous and non-indigenous titles to land. The Permanent Forum should note the contents of this recommendation, which were initially proposed in the determinations by CERD, and call the resolution to the attention of the ECOSOC.**

**We call upon the Australian Government to issue open invitations to the human rights rapporteurs and other experts to examine the situation of Indigenous Peoples in Australia.**

**We call upon the government of Australia to enter into negotiations with representatives of the Indigenous Peoples of Australia in order to establish a treaty or bill of rights that guarantees the right of Indigenous Peoples to continued existence as Indigenous Peoples, with the right to self-determination.**

We bring to the attention of the Permanent Forum the situation in New Zealand where the judicial systems have recognised that Maori may hold, under common or custom law, continuing and traditional rights over foreshores and seabeds of New Zealand. The New Zealand government is giving consideration to implementation of legislation which gives statutory recognition of these rights.

We express our concern that sections of the New Zealand non-Indigenous population advocate that the government discriminate against the legal entitlements of Maori, on the basis that these are traditional entitlements of Maori as the Indigenous Peoples of Aotorea; and

We express our desire that the government of New Zealand exercise its international responsibilities, as a signatory to the human rights treaties, to eliminate racial discrimination and to eliminate discrimination against the civil and political rights, and economic, social and cultural rights of Maori; and

We recommend the government of New Zealand comply with the many United Nations and international resolutions and decisions which require States to educate and inform the populations of the human rights standards and programs required to ensure that all nations and peoples protect the human rights of individuals and peoples; and

We ask the New Zealand government to undertake immediate robust dialogue with experts and officials of the United Nations and to utilise those experts in New Zealand as part of the education and awareness programs for non-discrimination.

We call to the attention of the Permanent Forum that the situation in New Zealand is similar in most aspects to the unfair public debate and government campaign in Australia, to establish legislation which engenders racial discrimination against the Aboriginal Peoples and Torres Strait Islander Peoples; and

We contend that these situations in Australia and New Zealand have the characteristics of a future trend where the rights of Indigenous Peoples are established in international standards, gradually recognised in domestic laws of nations, and fully or partially extinguished by statutes created by the parliaments under pressures of the majority of citizens, regardless of the human rights obligations; and

We contend that the parliaments are remaining static in addressing Indigenous rights through political actions and subsequently that the States failure to address the issues of human rights and justice are becoming more likely to be surpassed by unbiased, unfettered and responsive judiciary systems; and

We regard this as a very serious phenomenon likely to lead to an increase in the level of racial discrimination against Indigenous Peoples; and

We are concerned that political parties and parliaments are unprepared and therefore unable to resist or counter widespread ignorance of human rights or deep-felt hostility, that can in turn adversely affect the policies and legislation of the States; and

We are concerned that States can be prone to adopt official political propaganda that increases hostility against the Indigenous Peoples and lead to impunity and worsening social conditions for Indigenous Peoples.

We call upon the Permanent Forum to draft a resolution for ECOSOC's consideration and which identifies the risk of modern laws created to quash Indigenous rights as they emerge in law, and which urges States to increase their efforts to eliminate racial discrimination through public awareness to overcome ignorance and counter racial vilification, non-discriminatory laws which can recognise and protect customary rights, and an independent judiciary capable of protecting Indigenous rights from discrimination.

We also call upon the members of the Permanent Forum to invite the government of New Zealand to discuss its intentions to avoid racial discrimination in its proposed legislation, and to consider invitations to United Nations officials, human rights agencies or human rights experts to offer their services to the New Zealand government, the Australian government and any other State in similar situations, or likely to face similar situations in the near future. .