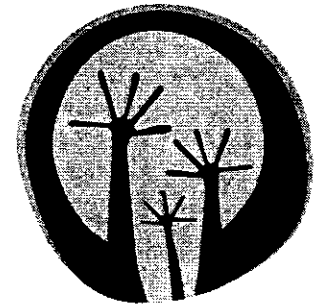


EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

Item 8: UN Declaration on the Rights of Indigenous Peoples

Statement by, Les Malezer, Co-Chair,
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Mr Chairperson

The adoption by the General Assembly of the WCIP Outcome Document has set in place a specific action plan to achieve the ends of the Declaration. This action plan addresses actions to be taken at the national or domestic levels, and at the international, or United Nations level.

At the domestic level States have made commitment to undertake certain challenges; such as to observe always the principle of free, prior and informed consent, and to work collaboratively with the Indigenous Peoples through their chosen representatives.

At the international level the United Nations has committed to review all of its efforts to achieve the ends of the Declaration.

I would like here to bring to attention of the Experts the Preambular Paragraph 20 of the Declaration that 'emphasises' that the United Nations 'has an important and continuing role to play in promoting and protecting the rights of indigenous peoples'.

And, need I remind you of a core obligation of the Members of the United Nations, as elaborated in Chapter 11 of the Charter, to accept '*as a sacred trust*' the obligation to promote to the utmost, ... the well-being of the inhabitants of the territories whose '*peoples*' have not yet attained a full measure of self-government '*and, to this end to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses*'?

The Outcome Document also has a built in mechanism to follow-up these actions, with a timeline to find accountable results from the Member States and the UN system on implementation of the Declaration. And it has a mechanism, in Operative Paragraph 40, for Secretary General in conjunction with the General Assembly to develop further recommendations and timelines to achieve the ends of the Declaration.

Mr Chairperson

I now turn attention to the matter that Australia will soon appear before the Universal Periodic Review of the Human Rights Council.

The National Congress of Australia's First Peoples has submitted our Shadow Report to that process and we take this opportunity to comment on the UPR process and whether it serves the interests and needs of Indigenous Peoples.

Being a peer review the UPR process calls upon Member States to examine the human rights performances of fellow Member States.

The UPR has its strengths but for Indigenous Peoples, whose rights have been historically denied by the States (or through the mechanisms of the States) and whose rights now remain completely dependent upon States, and regardless whether that dependency is at national or international (UN) levels, is the system inherently biased against Indigenous Peoples?

Reminding again, that the United Nations and the Member States have obligations to promote and advance the rights of all Peoples, is the UPR process adequate in its current form?

I leave that question to the Experts and, hopefully, Member States and the Human Rights Council.



However Congress proposes that all States when undergoing review through UPR, where they have any forms of control over the territories of the Indigenous Peoples, should now be required - consistent with the actions set out in the Outcome Document - to report on the arrangements for national action plans or strategies formed in cooperation with the indigenous peoples, through their own representative institutions, as set out in Operative Paragraph 8.

This fundamental information should be provided as part of the documentation submitted to the UPR by the OHCHR, and it should be a matter for scrutiny. There may be other suggestions from delegations or the Experts, and we leave it to your deliberations as the Expert Mechanism.

Mr Chairperson

I now refer to the situation in Australia in responding to the Outcome Document. We are grateful that the Australian government has opened doors to discuss the Outcome Document, and the pending UPR.

However there are two problems; the first being that Australia continues to lead any discussions with the statement that the Declaration is not 'a legally-binding instrument'. To us, that statement serves only one purpose, and that is to remove any semblance that a negotiation is in place and to remind us that we will be heard, and that is all.

EMRIP should provide advice that clarifies for Member States why obligations do exist to achieve the ends of the Declaration, and that advice should be endorsed and verified within the UN system. The Outcome Document, in itself, is one such endorsement.

The second problem is that Australia has not only refused to accept the National Congress of Australia's First Peoples, along with other national Indigenous advocacy bodies, as being national representatives chosen by the Aboriginal and Torres Strait Islander Peoples but has gone further by withdrawing and financial support for advocacy by the Aboriginal and Torres Strait Islander Peoples.

This includes withdrawal of the pledge made in 2013 to provide Congress with funding of \$15.0 m over a three-year period to facilitate our establishment and operations as a national representative body.

This might seem irrelevant or petty, but Australia gave the undertaking by during the first UPR process in 2011, to refer many of the recommendations addressing the rights of the Aboriginal and Torres Strait Islander Peoples to the role and responsibilities of Congress.

In Australia, during the past five years our rate of imprisonment has almost doubled to be 2,240 persons per 100,000 persons, compared to the non-Indigenous rate in Australia of 140 per 100,000.

Congress will follow the lead taken by our colleagues in Aotearoa, by reporting on the situation in Australia each year through the Expert Mechanism sessions.

In taking this approach we trust that EMRIP will have a clear mandate to receive reports on the implementation of the Declaration in general, and in particular on the national action plans and on the arrangements by the State for effective engagement and collaboration with the representatives chosen by the Indigenous Peoples.

Mr Chairperson, Congress presents these comments and proposals to the Experts in the expectation that some clear and purposeful recommendations will be achieved in the report of this session. We also take the step to table our Shadow Report on Australia and request that this document be given status as a CRP.

Thank you, Mr Chairperson.

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