

**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
12 – 16 July 2010, Geneva**

Item 4: United Nations Declaration on the Rights of Indigenous Peoples

Thank you Mister Chair

I make this statement in my capacity as Aboriginal and Torres Strait Islander Social Justice Commissioner on behalf of the Australian Human Rights Commission, Australia's National Human Rights Commission. Our Commission is established in compliance with the Paris 'Principles Relating to the Status and Functions of National Institutions for the Promotion and Protection of Human Rights' in accordance with General Assembly Resolution 48/134 of 1993.

National Human Rights Institutions play an important role as a conduit between developments at the international level and domestic legal frameworks, and will be crucial in working with our national governments and our Indigenous communities to progress efforts to fully implement the *UN Declaration on the Rights of Indigenous Peoples* (the Declaration). In particular, the right to participate in decision-making can be assisted by broadening the scope of human rights covered by National Human Rights Institutions to include the Declaration on the Rights of Indigenous Peoples.

In my capacity as the Social Justice Commissioner, I am charged with reporting to the Australian Parliament on the human rights issues facing Aboriginal and Torres Strait Islander peoples. I also monitor domestic compliance with human rights standards as they apply to Indigenous peoples.

My five year term as Social Justice Commissioner began in February this year and I hope to work towards seeing an established framework to ensure the protection of Aboriginal and Torres Strait Islander people's human rights. The overarching element of this framework is the full implementation of the Declaration.

As an international instrument, the Declaration provides a blueprint for Indigenous peoples and Governments around the world, based on the principles of self-determination and participation, to respect the rights and roles of Indigenous peoples within society. The rights in the Declaration are covered in the seven core instruments under which States have legally binding obligations. As such it forms the predominant source of international human rights law that articulates Australia's obligations for the promotion and protection of Aboriginal and Torres Strait Islander peoples and elaborates on existing international human rights norms and principles as they apply to indigenous peoples.

Mister Chair

The Australian Government has committed to resetting the relationship between the Government and Aboriginal and Torres Strait Islander peoples. We acknowledge the

efforts of the current government to lay the foundation upon which Aboriginal and Torres Strait Islander peoples can increase their participation in decision-making and effective engagement in Australian society. This includes:

- the Apology to the Stolen Generations in 2008
- support for the establishment of the National Congress of Australia's First Peoples, the National Healing Foundation, and the National Aboriginal and Torres Strait Islander Women's Alliance
- the largest investment of funding in Indigenous Health in Australia's history, and the Government reversed its opposition for the Declaration on the Rights of Indigenous peoples.

The Commission welcomed the Australian Government's formal endorsement of the Declaration in April 2009. Since that time the Declaration has become increasingly prominent in Australia's legal and policy landscape, with references to the Declaration being made in parliament¹, parliamentary committee reports², court decisions³ and in policies developed by Indigenous NGOs⁴.

However, the Australian Government have not yet made any concerted effort to develop a national implementation strategy for the Declaration. Simply making a statement of support for the Declaration will not ensure the protection and exercise of Indigenous people's human rights.

Elevating the Declaration to the same status of the Universal Declaration on Human Rights would ensure that the rights of Indigenous peoples are explicitly considered in the development of domestic laws and policy. This would also give meaning to Australia's formal position that it supports the Declaration.

The next step is for the government to work with Aboriginal and Torres Strait Islander peoples to develop a national implementation strategy that is committed to by all tiers and arms of government and ensures the full implementation of the Declaration in Australia. A number of approaches have been made by Indigenous Peoples Organisations of Australia, and the Australian Human Rights Commission to encourage the government to work with us in this regard.

The study on Indigenous Peoples and the right to participate in decision making provides significant guidance for governments in developing such plans and highlights the need to ensure that Indigenous peoples are included and are central to such development.

¹ Commonwealth, *Parliamentary Debates*, House of Representatives (8 February 2010) p 97 (The Hon Tony Abbot, Leader of the Opposition).

² Legal and Constitutional Affairs Committee, Parliament of Australia, *Native Title Amendment Bill (No.2) 2009 [Provisions]* (2010), para 357.

³ *Aurukun Shire Council & Anor v. CEO Office of Liquor and Gaming and Racing in the Department of Treasury* [2010] QCA 37 (1 March 2010), para 33.

⁴ Northern Australian Indigenous Land and Sea Management Alliance, *A Policy Statement on Northern Australian Indigenous Water Rights*, (2009) at http://www.nailsma.org.au/projects/water_policy.html (viewed 26 March 2010); Goldfields Land and Sea Council, *Mining Policy: Our Land is Our Future*, (2008) at <http://www.glc.com.au/> (viewed 26 March 2010).

A national implementation strategy will also go towards achieving a central tenant of the Declaration, namely the re-setting of relationships between indigenous peoples and the broader community but more particularly governments. The Declaration provides the normative guidance for actions to ensure this relationship is effective, cooperative, and based on mutual respect. The Declaration in affirming indigenous peoples collective rights to self-determination and the right to participate in decision-making through the principle of free, prior and informed consent, should be used to guide the development of institutional structures, arrangements and processes needed for indigenous peoples to be able to effectively engage in a relationship based on mutual respect. Any doubt to this is made clear in the preamble. The General Assembly commented that it is:

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance the harmonious and cooperative relations between the State and indigenous peoples.⁵

Mister Chair

The Australian Government is also to be commended for its revised policy position in extending an open invitation to all of the United Nations special procedures. In August 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Australia on an official visit. In March 2010 the Special Rapporteur released his report on the 'Situation of Indigenous Peoples in Australia' (UN DocA/HRC/15) it will be discussed later this year at the 15th session of the Human Rights Council. This report provides a real opportunity for the Australian Government and Indigenous peoples in Australia to reflect on how the rights of Indigenous peoples in Australia could be better implemented, protected and realised in Australia.

The Special Rapporteur's mandate to promote and elaborate on the rights contained in the UN Declaration on the Rights of Indigenous Peoples (Human Rights Council Resolution 6/12 and UN Doc A/HRC/9/9) is an important role in realising the rights of Indigenous peoples. The report is especially valuable for the Australian Government as its recommendations provide a clearly articulated process to 'take appropriate measures... to achieve the ends of the Declaration' (Article 38). The technical and practical guidance provided by the report should form the key reference point for the Australian Government to ensure it meets its human rights obligations as they apply to Aboriginal peoples and Torres Strait Islanders in Australia.

The Australian Human Rights Commission also appreciates the analysis in the *Progress Report on the Study on Indigenous Peoples and the Right to Participate in Decision-Making* on the significance of ILO 169. Australia has not yet ratified this important Convention. Many of the rights contained within the Declaration are confirmed in ILO 169. The Report confirms that ILO 169 provides the general legal framework for effective consultation and participation of Indigenous peoples, as well recognising Indigenous peoples rights to exercise control over our economic, social and cultural development, particularly with regard to our lands and natural resources. In order for the Australian Government to give full effect to the Declaration, the

⁵ United Nations Declaration on the Rights of Indigenous Peoples, GA Resolution 61/295, UN Doc: A/61/L.67 (2007), preambular para 18.

government should commit to ratifying the International Labour Organisation Convention 169 as a priority.

Recommendations

The Australian Human Rights Commission recommends that:

1. The Expert Mechanism prepare a draft resolution for the Human Rights Council calling on states to work in consultation with their indigenous peoples to develop an action plan for the implementation of the Declaration.
2. That the Expert Mechanism prepare a draft resolution for the Human Rights Council to elevate the Declaration to the same status of the Universal Declaration on Human Rights to ensure that the rights of Indigenous peoples are explicitly considered in the development of domestic laws and policy.
3. The Expert Mechanism include in its report the important role of National Human Rights Institutions and that the Declaration is formally incorporated into the mandate of NHRI's.
4. The Expert Mechanism prepare a draft resolution for the Human Rights Council to broaden the scope of human rights covered by National Human Rights Institutions to include the Declaration on the Rights of Indigenous Peoples.
5. That the Expert Mechanism prepare a draft resolution for the Human Rights Council to encourage all States who have not yet ratified International Labour Organisation Convention 169, to do so as a priority.