

**Expert Mechanism on the Rights of Indigenous Peoples
Sixth Session – Geneva
8-12 July 2013**

Item 6: United Nations Declaration on the Rights of Indigenous Peoples

**Joint Statement prepared by National Congress of Australia's First Peoples,
delivered by Dea Delaney-Thiele on behalf of the Indigenous Peoples
Organisation Network of Australia:**

1. National Native Title Council
2. National Aboriginal and Torres Strait Islander Legal Services
3. New South Wales Aboriginal Land Council
4. Aboriginal Medical Service Western Sydney
5. National Aboriginal & Torres Strait Islander Women's Alliance
6. National Congress of Australia's First Peoples
7. Aboriginal and Torres Strait Islander Social Justice Commissioner

Thank you Mr/ Madam Chairperson

As representative members of the Indigenous Peoples Organisation Network of Australia, we are pleased to present this statement on the *United Nations Declaration on the Rights of Indigenous Peoples*.

It is heartening to see from the responses to the EMRIP Questionnaire on the implementation of the Declaration the efforts being taken by some States and Indigenous Peoples to give full effect to the Declaration. However we also note that the challenges identified in the EMRIP Final Summary of Responses¹ are significant and more work needs to be done to overcome them.

Two significant challenges to implementing the Declaration are:

1. the lack of agreement and clarity by States about the status of Indigenous Peoples as 'Peoples' with a right of self-determination; and
2. the lack of a common understanding of the legal status of the Declaration and the key principles that underpin it.

These challenges exist in Australia and this is reflected in the Australian Government's response to the questionnaire where they declare that 'the principles of the Declaration are consistent with their *Closing the Gap* policy, rather than their policy being consistent with the international standards enshrined in the Declaration. This was further

¹ United Nations General Assembly, *Final Summary of responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples*, Report of the Expert Mechanism on the Rights of Indigenous Peoples, Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, Sixth Session, 8-12 July 2013, A/HRC/EMRIP/2013/3, p15.

demonstrated most recently at the 12th Session of United Nations Permanent Forum on Indigenous Issues when the United States of America confirmed their view that ‘the Declaration is a non-binding, aspirational document’ and that ‘self-determination, as expressed in the Declaration, is different from self-determination in international law’².

If we are to truly honour the intent of the Declaration, UN mechanisms established for the purpose of promoting the rights of Indigenous Peoples need to be working closely with UN Treaty Body Committee’s, States and Indigenous Peoples to ensure that clarity concerning the status of Indigenous Peoples is secured and clearly articulated.

We believe that clarity regarding the legal status of Indigenous Peoples will result in relationships between Indigenous Peoples and States that are based on a more equitable distribution of power and that enable Indigenous Peoples to determine our development priorities, negotiate equitable outcomes, access and exercise our rights, give meaningful effect to decisions made by Indigenous Peoples, and be in control of our political, social, cultural and economic development.

In terms of addressing the second challenge, as part of the Australian National Human Rights Framework, the Australian Parliament have established a new Parliamentary Joint Committee on Human Rights to provide greater scrutiny of legislation for compliance with Australia’s international human rights obligations. Each new Bill introduced into Parliament is accompanied by a statement of compatibility with our international human rights obligations, and while some government agencies are referencing the Declaration others are not. However, the Committee have endorsed the Declaration as a key standard against which to measure the rights of Aboriginal and Torres Strait Islander peoples and they are referencing the Declaration in their assessments and reports. The Committee notes that ‘the Declaration is nonetheless an influential and authoritative source of guidance that should be drawn on in policy-making and the development of legislation’.³

Since completing the EMRIP Questionnaire, we note that the Australian Government have committed to working with the National Congress of Australia’s First Peoples and the Australian Human Rights Commission to ‘increase awareness of, and encourage dialogue about the Declaration’.⁴

The National Congress of Australia’s First Peoples has partnered with the Australian Human Rights Commission to progress a national implementation strategy for the Declaration. Development of the National Implementation Strategy will involve a series of national dialogue meetings with Aboriginal and Torres Strait Islander communities and representatives from government, business and non-government organisations. The dialogue meetings not only culminate in the development of a National

2 United States of America, Statement on Permanent Forum on Indigenous Issues (PFI) Agenda Item 7(a), presented by L Shestack Phipps, Adviser for Economic and Social Affairs, New York, NY, May 22, 2013, p2.

3 Parliamentary Joint Committee on Human Rights, Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011, Stronger Futures in the Northern Territory Act 2012 and related legislation, Eleventh Report of 2013, June 2013, pp14-16.

4 Joint Statement by the Australian Government and the Human Rights Commission, *Agenda Item 7: Implementation of the Declaration on the Rights of Indigenous Peoples*, United Nations Permanent Forum on Indigenous Issues Twelfth Session, New York, 20-31 May 2013, p2.

Implementation Strategy for the Declaration; but they will also develop a common understanding on the meaning of key foundational principles including self-determination; participation in decision-making and free, prior and informed consent; respect for and protection of culture; and equality and non-discrimination. This project will take place between August 2013 and December 2014, and coincide with Australia's next appearance before the United Nations Universal Periodic Review (early-mid 2015).

Working with Indigenous Peoples to develop common understandings on key principles of the Declaration will also assist to develop practical implementation strategies locally which will address the concern raised by some States that there is a lack of information on how to implement the Declaration. However, as stated above, more guidance and clarity is required from key UN Committee's and Mechanisms.

With regard to providing training and education about the Declaration, members of the Indigenous Peoples Organisations' Network of Australia participate regularly as human rights trainers in the Diplomacy Training Program based in the Law Faculty at the University of New South Wales. The Declaration has been incorporated as a key focus of this training. The Diplomacy Training Program, NGO's and Aboriginal and Torres Strait Islander human rights advocates provide training and education on the Declaration in Indigenous communities across Australia, giving particular consideration to local issues to reflect the relevance of the Declaration in their quest for self-determination and the day to day experience of Indigenous Peoples.

Finally we note that the EMRIP Final Summary of Responses highlights the need to 'ensure consistency across states due to constitutional division of legislative powers between federal and state government'.⁵ This point is particularly relevant in the Australian context where all State and Territory Governments come together with the Federal Government to form the Coalition of Australian Governments (COAG). Despite this coalition, there is inconsistency across all jurisdictions and with Federal laws and policies on key policy areas, particularly those relating to the rights and interests of Indigenous peoples. Further in order for the Federal Government to progress the ratification of international human rights treaties, all State and Territory Governments must be consulted. The views of State and Territory Governments in Australia could become a significant barrier to the ratification of ILO Convention 169, a key human rights treaty that specifically recognises the rights of Indigenous peoples.

⁵ United Nations General Assembly, *Final Summary of responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples*, Report of the Expert Mechanism on the Rights of Indigenous Peoples, Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, Sixth Session, 8-12 July 2013, A/HRC/EMRIP/2013/3, p15.

Recommendations

The Indigenous Peoples Organisations' Network of Australia provides the following recommendations:

- 1. That the Human Rights Council recommend that EMRIP conduct a study on the status of Indigenous Peoples as a 'Peoples' with a right of self-determination as equal to all others and confirmed within the Declaration on the Rights of Indigenous Peoples.**
- 2. That the EMRIP endorse the Alta Declaration and reaffirm the following recommendations:**
 - 1. States provide legal recognition to Indigenous Peoples as Indigenous Peoples, where so demanded by the Peoples concerned consistent with the provisions of the Declaration that affirm the inherent rights of Indigenous Peoples; and**
 - 2. Encourage the Human Rights Council to include a specific requirement to report on the Implementation of the Declaration on the Rights of Indigenous Peoples during the Universal Periodic Review process.**
 - 3. That the Human Rights Council encourage States to develop national implementation strategies that include but are not limited to constitutional, legislative and policy responses that are developed, implemented and evaluated in partnership with Indigenous Peoples consistent with Articles 18 and 19 of the Declaration; and promote the self-determination of, and support sustainable development for Indigenous Peoples.**