

United Nations Permanent Forum on Indigenous Issues  
Eleventh Session – New York  
7-18 May 2012

**AGENDA ITEM 3:** Study on national constitutions and the United Nations Declaration on the Rights of Indigenous Peoples with a view to assessing the nature and the extent of the inclusion of indigenous peoples' human rights in national constitutions, with reference to the rights affirmed in the Declaration

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**Intervention delivered by Jody Broun on behalf of the National Congress of Australia's First Peoples**

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The National Congress of Australia's First Peoples recommends that the Permanent Forum:

1. Note the many recommendations made by United Nations bodies and mechanisms for all relevant States to review their constitutions and legal frameworks to account for the rights of Indigenous Peoples;
2. Affirm the right of Indigenous Peoples to self-determination a right *erga omnes*, and as such call upon States to act with purpose to establish Indigenous Peoples right to self-determination, along with other rights contained in the Declaration on the Rights of Indigenous Peoples, in constitutional documents;
3. Encourage States who have already undertaken some legislative or charter reforms to recognise Indigenous Peoples, but not yet incorporated the UN Declaration on the Rights of Indigenous Peoples into their constitutional documents, to take the further steps necessary to achieve full recognition of the rights of the Indigenous Peoples;
4. Remind States that a federal system of government does not relieve the State from its responsibility to meet international human rights obligations in relation to the rights of Indigenous Peoples;
5. Further remind States that the charter documents must guarantee the Indigenous Peoples protection from racial discrimination by the States including restitution and remedy for past injustices; and
6. Study the Chapter XI of the UN Charter to clarify if Indigenous Peoples in certain contemporary situations can be deemed "peoples in non self-governing territories" and therefore be dealt with under this Chapter of the UN Charter;

Thank you Mr Chairperson

The National Congress of Australia's First Peoples welcomes the opportunity to address the Forum on the important issue of Constitutional recognition of Indigenous Peoples.

Congress supports the statement delivered by the Indigenous People's Organisations Network of Australia.

As a national representative body Congress participated last year on the *Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islanders Peoples*. This panel presented a consensus report to the Australian Government in January this year for a referendum to be held to change the Constitution of Australia.

Congress strongly supports the recommendations that were made in that report.

Four significant proposals were recommended and were presented as a complete package to recognise the Aboriginal and Torres Strait peoples and to ensure tangible benefits and protections.

The proposals are to:

- Repeal the section allowing state governments to target racial groups and exclude them from voting;
- Change the existing power to make laws for any race of people to a power to make laws for Aboriginal and Torres Strait Islander peoples providing those laws are concrete or special measures for our benefit. This is achieved by preambular statements which support recognition, respect and acknowledgement of Aboriginal and Torres Strait Islander peoples' cultures, languages and heritage and our relationship to our lands and waters;
- Add a provision to prohibit discrimination on the basis of race, colour or ethnic origin; and
- Recognise Aboriginal and Torres Strait Islander languages as a unique part of Australian heritage.

It is fundamental that these recommended changes to the constitution are more than symbolic; they must ensure that our status and rights as First Peoples, including sovereign rights, are not diminished or impaired by the changes.

Regretfully, research revealed during our examination that there exists insufficient electoral support across the population of Australia to insert a statement of the rights of Indigenous Peoples into the Constitution.

The Government of Australia is currently considering this report and we are awaiting the Government's response to these important proposals for change.

Considering that the current constitutional review will not result in the affirmation of the rights of Indigenous Peoples in the Constitution, Congress believes there are viable alternatives to achieve the base protection of Aboriginal and Torres Strait Islander peoples' rights.

For example, Indigenous peoples rights can be acknowledged and guaranteed through bills of rights, legislation or mutually agreed treaties.

For a large population of Indigenous Peoples, Congress knows the proper recognition of existing treaties would often be to the great benefit of the Indigenous Peoples.

The Declaration of the Rights of Indigenous Peoples is a strong platform to ensure the rights of Indigenous peoples are recognised and protected. However it is the States' responsibility to ensure the rights in the Declaration are entrenched in the constitution and laws of all relevant States.

ENDS

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