



## Expert Mechanism on the Rights of Indigenous Peoples

9<sup>th</sup> Session Palais des Nations, Geneva 11-15 July, 2016

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### Item 8: Implementation on the United Nations Declaration on the Rights of Indigenous Peoples

INTERVENTION by the New South Wales Aboriginal Land Council, delivered by Councillor for the Wiradjuri Region, and member of the Ngiyampaa and Wiradjuri Peoples, Councillor Craig Cromelin

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Thank you Mister / Madam Chairperson

Australia's commitment to the UN Declaration on the Rights of Indigenous Peoples has been made clear since 2010, and further affirmed through its acceptance of a number of recommendations through Australia's second Universal Periodic Review in 2015 and support for the Outcome Document of the World Conference on Indigenous Peoples. It is crucial to ensure that this translates into meaningful and effective action, and to monitor how it is achieving improved outcomes for Indigenous peoples. Furthermore, it is crucial that implementation is carried out by states in consultation and cooperation with Indigenous peoples.

By supporting the Declaration, the Australian Government has articulated its dedication to ensure that Indigenous people's rights and concerns are integrated into policies and programs. However the implementation of the Declaration through legislation and policy has not extended to the full recognition of Indigenous culture and heritage rights specified in these instruments.<sup>1</sup> Without comprehensive legislative measures, the law as it currently stands offers a reactive approach which fails to seek out ways of actively protecting Indigenous Australian's culture and heritage, and falls short of conferring ownership and control of culture and heritage on Indigenous peoples of Australia.<sup>2</sup> There remains no recognized right in current legislation for Indigenous Australian's to decide what happens with their culture and heritage, and largely there are no requirements to seek consent for commercial developments which will negatively impact on traditional lands and areas of cultural significance.

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<sup>1</sup> Chapman, T. (2008). 'Corroboree Shield: A comparative historical analysis of (the lack of) International, National and State level Indigenous cultural heritage protection', 5 *Macquarie Journal of International and Comparative Environmental Law*, pp 81-96,

<sup>2</sup> NSWALC Submission to the NSW Government: Reforming Aboriginal Culture and Heritage laws in NSW p. 36.

Considering the criticism Australia has received on the international stage regarding its treatment of Indigenous peoples, the Australian Government must honour its commitment enshrined in the Declaration and work proactively to incorporate its aims into domestic policy and legislation. Endorsement of the Declaration would improve engagement between Governments and Indigenous Australian's and would provide a framework for the future recognition and protection of the civil, political, economic, social and cultural rights of Indigenous peoples, particularly the right to self-determination. This would further allow for the potential to strengthen human rights protection for Indigenous peoples, and to help bring Australia into line with the emerging norms of international law under the Declaration.

Given that Australia has announced its intention to run for seat on the United Nations Human Rights Council for the period of 2018-2020<sup>3</sup> and in light of the recent Universal Periodic Review undertaken by the Human Rights Council into Australia's human rights record,<sup>4</sup> it would be prudent for the Australian Government to take steps to integrate the aims of the Declaration into all government decisions and policies that affect the rights of Indigenous Australian's in relation to their traditional lands.

#### **RECOMMENDATIONS:**

**The New South Wales Aboriginal Land Council respectfully makes the following recommendations to the Expert Mechanism on the Rights of Indigenous Peoples:**

- The New South Wales Aboriginal Land Council urges the Expert Mechanism to encourage all states to **recognise in legislation Indigenous peoples as the rightful owners of their culture and heritage**, and that laws must include **enforceable rights that recognise and protect Indigenous peoples cultural and intellectual property rights** in line with Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples.
- The New South Wales Aboriginal Land Council urges the Expert Mechanism to encourage all states, to **recognise in laws and policies Indigenous peoples genuine decision-making powers in relation to the protection of their culture and heritage**, based on comprehensive and meaningful consultation on laws and administrative measures that affect them.

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<sup>3</sup> [http://theconversation.com/australias-bid-for-the-un-human-rights-council-48385#comment\\_798544](http://theconversation.com/australias-bid-for-the-un-human-rights-council-48385#comment_798544)

<sup>4</sup> <http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession23.aspx>