



Expert Mechanism on the Rights of Indigenous Peoples

Fifth Session

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Implementation of the *United Nations Declaration on the Rights of Indigenous Peoples.*

INTERVENTION by the New South Wales Aboriginal Land Council, Clare McHugh, member of the Gamilaraay and Dhungutti Peoples.

Thank you Chairperson,

The New South Wales Aboriginal Land Council is pleased to contribute to the Expert Mechanism's discussion on the United Nations Declaration on the Rights of Indigenous Peoples, as the accepted and evolving human rights standards protecting Indigenous peoples human rights around the world. We support mechanisms which provide for the recognition of the rights of Australia's First Peoples, and for securing economic, social, cultural and political development, as a means for self-determination.

In addition, we welcome the study by the Expert Mechanism on the recognition of the right to practice and revitalise languages, critical to maintaining Indigenous languages and cultures as affirmed in Article 14 of the Declaration and commend the Special Rapporteur's sustained efforts to strengthen best-practice measures between Indigenous peoples and States.

In the five years since its adoption, the Declaration remains an important reminder to ensure that past injustices, particularly over territories and resources are remedied in the future. We encourage the Expert Mechanism to continue its valuable support to States in preparing for, and implementing the Declaration.

The New South Wales Aboriginal Land Council is concerned with the Australian Government's efforts in regards to one fundamental right of the Declaration, that which can also be seen as central to the *International Convention on the Elimination of All Forms of Racial Discrimination* – the right of Indigenous peoples to live free from discrimination.

Despite Australia's belated endorsement of the Declaration, the Australian Government has continued to show passivity in its implementation, in law and in policy, of the rights promoted in the Declaration. Issues raised from non state actors including Indigenous Peoples during Australia's appearance at the Universal Periodic Review reflect real concerns

and issues on the ground in Australia and demonstrates Australia's lack of concrete strategies developed in partnership with Indigenous people to remove disadvantage from our communities.

While the Declaration does not have the status of a binding treaty in international law, implementation of its principles into government policy and decision-making is a matter of conformity with recognised international norms, and to date there has been no comprehensive framework in Australia to ensure clear monitoring and evaluation to enact these strategies.

The Declaration's provisions are substantially informed by basic human rights standards and couched in the unmistakable language of rights. All states have an obligation to respect the freedom of Indigenous peoples to participate freely in cultural life, to assert our cultural identity and to express ourselves culturally in the way we choose.

The New South Wales Aboriginal Land Council continues to be concerned at Australia's lack of legal protection of human rights for Indigenous peoples, which remain limited to a selection of common law principles and statutory rights, primarily in the form of anti-discrimination laws. Australia's human rights-based claims remain limited to those freedoms protected under common law, statutes, and the few rights and liberties that are expressed, or have been found to be implied, in the text of the Australian Constitution. Furthermore, instead of providing protection for the country's First Peoples, the Australian Constitution enables the Parliament to take discriminatory actions in the form of the 'race power'. The discriminatory use of the race power continues to detrimentally affect the rights of Aboriginal peoples in respect to protecting our culture and heritage as well as the fundamental right to live free from discrimination.

The New South Wales Aboriginal Land Council recognizes that new and innovative solutions are necessary in relation to the development of measures to address the long-standing disadvantage experienced by Aboriginal Australians. We know this because the past and recent efforts by Governments in Australia to respond to the disadvantage experienced by the First Peoples of Australia, have largely failed to lift Indigenous Australians from experiencing third world conditions within a first world country.

Developments in Indigenous Australian policy, particularly in respect of the Northern Territory, indicate that Australia continues to be in breach with its international obligations. This is a result of failing to ensure that policies and programs are non-discriminatory on the basis of race, and failing to provide adequate consultation rights about significant matters directly affecting Indigenous people. The 'Stronger Futures' legislation, which extends the Federal Government's key Intervention policies for a further 10 years, defies the aspirations of some Aboriginal people in the Northern Territory and does not redress ongoing concerns of non-compliance with Australia's international human rights obligations.

Government actions will continue to fail to address Indigenous peoples disadvantage unless communities are empowered, are active decision-makers and participants in the design and implementation of measures concerning our own communities. It would be appropriate to remind the Australian Government that measures that violate the human rights of targeted groups are more likely to work in ways that undermine the overall well-being of our communities in the short and longer term.

The New South Wales Aboriginal Land Council has concerns that measures that control Indigenous communities through the Government's use of compulsory "income management" are in breach of Australia's obligations under a number of international human rights standards. The roll out of income management across Australia indirectly discriminates against Indigenous peoples and undermines their right to self-determination and fundamental rights to social security.

The New South Wales Aboriginal Land Council strongly believes that laws, policies, programs and protocols should be consistent with the standards contained within the Declaration, if sustainable and long-term outcomes for Indigenous peoples are to be achieved. Government policies and programs must be underpinned by the truism that only local people know what is best for their community. Furthermore, all Governments need to implement strategies to better engage the broader public and educate non-Indigenous sectors about the Declaration on the Rights of Indigenous People.

The efforts of the Australian Government to implement the rights, principles and obligations into laws, policies, and most significantly practical measures need to be based on clear understandings of free, prior and informed consent and criteria for effective and meaningful consultation. National goals such as Reconciliation and the National Apology mean little more than lip service if they are not underpinned by a set of arrangements that guarantee a relationship of mutual respect, equality and partnership.

All states should adopt preventative and corrective policies conducive to the elimination of all forms of discriminatory practices. They must be designed with the full and effective participation of Indigenous peoples and be culturally sensitive, following the standards of the Declaration. Particularly relevant to this are Article 3 on self-determination, including cultural development, Article 33 on the right to determine one's own identity, and Article 34 and Article 46 in relation to individual and group cultural rights.

The principles of non-discrimination and equality must guide States actions in its obligations regarding the cultural rights of Indigenous peoples. The Australian Government must establish comprehensive strategies to action the Declaration into domestic policies for Indigenous peoples to realise the full enjoyment of our cultural rights.

The New South Wales Aboriginal Land Council respectfully makes the following recommendations to the Expert Mechanism to encourage States to provide for the full enjoyment of rights for Indigenous peoples around the world.

RECOMMENDATION 1: The New South Wales Aboriginal Land Council urges the Expert Mechanism to encourage ALL states to set clear strategies through legislative measures, to fully implement the Declaration into domestic laws, policies and most importantly practical measures, and to include clear monitoring and evaluation tools to measure the effectiveness of these strategies.

RECOMMENDATION 2: The New South Wales Aboriginal Land Council urges the Expert Mechanism to encourage the Australian Government to uphold its obligations to the Declaration, by removing compulsory income management of social security benefits, and reminding the State of its obligation to administer social security benefits in a way that:

- a) Recognises the principle of human dignity and the right to non-discrimination,
- b) Ensures that the eligibility conditions for unemployment benefits are reasonable and proportionate, and
- c) Ensures that the benefit must not be provided in a form that is onerous or undignified.

RECOMMENDATION 3: In accordance with Australia's obligations under the Declaration and other international human rights instruments, the New South Wales Aboriginal Land Council urges the Expert Mechanism to encourage the Australian Government to fully endorse recommendations made to it during the Universal Periodic Review and ensure their early and full implementation as a sign of a respectful and inclusive relationship with Indigenous Australians.

RECOMMENDATION 4: That the Expert Mechanism reiterate to ALL State signatories to the Declaration the obligation to recognise and protect the rights of Indigenous peoples to live free from discrimination and to give full and effective participation of Indigenous peoples as decision-makers in relation to the development of laws and policies which affect our rights, in accordance with article 18 of the United Nations Declaration on the Rights of Indigenous Peoples.

Thank you Chairperson and members.