

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Open-ended inter-sessional ad hoc working group
on a permanent forum for indigenous peoples
Geneva, 15-19 February 1999

STATEMENT OF THE
NATIONAL ABORIGINAL AND TORRES STRAIT ISLANDER LEGAL SERVICES
SECRETARIAT LIMITED
Australia

WGPF 99/OCE.AUS/3

The membership and participation of Indigenous Peoples in a Permanent Forum for Indigenous Peoples.

The National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS) recalls the proposal of the Indigenous Peoples' representatives attending the preparatory meeting for the Working Group in 1996 that **"it was essential that indigenous peoples should have similar access to the permanent forum as they enjoyed to the Working Group on Indigenous Populations"** (see UN document E/CN.4/Sub.2/1996/21 at paragraph 113, subparagraph 2 at page 32)

NAILSS further notes the statement of some of the indigenous speakers at the 14th session of the WGIP that **"the forum should consist of an equal number of members from indigenous peoples and Governments, on the basis of an equal geographical distribution"** and that **"independent experts could be additional members of the permanent forum"** (see report of the WGIP for 1996, paragraph 118 at page 33).

NAILSS submits for the development and discussion of this working group, the proposal that Governments should be encouraged to provide as representatives or members persons who are also indigenous persons.

We suggest that such a proposal would do much to recognise the importance of the International Decade of the World's Indigenous Peoples as emphasised in the General Assembly resolution GA 50/157 of 21 December 1995 in that the creation of a permanent forum with such criteria for membership would do much to remind Governments around the world of the importance of greater participation by indigenous peoples in their own domestic political systems of Government and Law during the International Decade.

NAILSS further suggests that the criteria for membership and participation of Indigenous Peoples in a permanent forum should be a matter for determination by the forum itself as a reflection of the traditional systems of identification of indigenous background implemented by the majority of Indigenous Peoples around the world

NAILSS further submits that membership and participation in such a forum ought be judged on the basis of the extent to which Governments and independent experts have worked to provide positive measures and outcomes for the improvement of the human rights and legal recognition of the interests of indigenous peoples with whom such Governments and experts regularly deal.

NAILSS recommends that Governments experiencing problems or who are unable to deal on an equal basis with indigenous peoples in their various regions might seek the assistance of a Permanent Forum for Indigenous Peoples (or the Commission on Human Rights in the interim until the creation of a Permanent Forum) in the development of programs of action and policies relevant to removal or reduction of such obstacles faced by such Governments to seek such assistance might be a valuable measure of the commitment of a Government to possible membership of permanent forum for indigenous peoples in the future.

TONY BOND

COMMISSION ON HUMAN RIGHTS
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The Location of a Permanent Forum for Indigenous Peoples within
the United Nations

The National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS) recalls the results of the first workshop on the establishment of a permanent forum for indigenous peoples.

In particular, we recall the support of the majority of participants for the proposal that a permanent forum should be established at the highest levels of the United Nations. That such support still exists is clearly demonstrated by statements made by members of various indigenous delegations thus far during these proceedings.

NAILSS recalls the support expressed by the representative of the Australian Government during the 14th Session of the WGIP when he stated **"that his Government supported the establishment of the permanent forum and that it should be linked to the Economic & Social Council at a suitably high level"**.

That indigenous peoples also supported the establishment of a permanent forum at a high level within the United Nations is demonstrated by the statement in the joint resolution of the Indigenous people's preparatory meeting for the WGIP in 1996 which said **"that the permanent forum should not be a replacement for the WGIP, it should be established at the highest level of the United Nations, as a subsidiary body of the Economic and Social Council or the general Assembly"**. This proposal was supported by many of the indigenous representatives at the 15th session of the WGIP held in 1998.

NAILSS recalls and repeats the proposal contained in the results of the Copenhagen workshop that the permanent forum might be located within the structure of the present Trusteeship Council, the work on provision of independence to former colonies is almost completed.

In conclusion, NAILSS commends the proposal created in the first workshop on the possible location of such a permanent forum for indigenous peoples within the United Nations to this working group for further development and discussion.

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Australia

Further Statement of NAILSS on the mandate and work of a
permanent forum for Indigenous peoples

The National Aboriginal and Islander Legal Services Secretariat (NAILSS) desires to propose that the permanent forum for Indigenous Peoples might adopt, as part of its early work, the development of coherent international standard setting instruments for the United Nations to consider and perhaps adopt in relation to the treatment and rights of Indigenous Peoples.

The work already under way in the Commission on Human Rights open-ended working group for the further elaboration of the text of the Draft Declaration on the Rights of Indigenous Peoples might be more readily assisted and progressed through the early establishment of a permanent forum for Indigenous Peoples where the draft declaration could be further studied and improved upon as soon as it is adopted by the United Nations system at CHR level and higher.

NAILSS has already proposed to a number of international bodies and to several agencies within the UN system, the introduction of possible new standard setting instruments to deal with the questions and issues arising from contact and conflict between Indigenous Peoples and the criminal justice system.

It can not be ignored that the primary source of many of the problems faced by Indigenous Peoples around the world, is the impact of the criminal justice system (often very alien or complex in nature) for those very peoples. Their own cultural belief or traditional justice systems are rapidly being undermined or destroyed by the tidal wave of the criminal justice system imposed by outside authorities.

Indigenous peoples often face death or long terms of imprisonment because of criminal justice systems that are far too complex for some non-indigenous people to understand or where the criminal justice systems are simply not structured to understand or are not capable of incorporating an opportunity to understand the value and belief system of Indigenous Peoples and their cultures.