

**United Nations Permanent Forum on Indigenous Issues
Ninth Session - New York
19-30 April 2010**

Agenda Item 4(b): Dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs

JOINT INTERVENTION DELIVERED BY MS. TAMMY SOLONEC ON BEHALF OF:

National Native Title Council (NNTC)
Foundation for Aboriginal and Islander Research Action (FAIRA)
New South Wales Aboriginal Land Council (NSWALC)
National Indigenous Higher Education Network (NIHEN)
Aboriginal Legal Service Western Australia (ALSWA)
Aboriginal Legal Rights Movement (ALRM)
Bullana, The Poche Centre for Indigenous Health
National Aboriginal Community Controlled Health Organisation (NACCHO)
Indigenous Peoples Organisation Network Youth Delegation
Amnesty International Australia
Oxfam Australia
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

Thank you Mr Chairperson.

The Aboriginal and Torres Strait Islander organisations of Australia are pleased to address this intervention on the Special Rapporteur's recent visit to Australia. We thank Professor James Anaya for visiting many of our communities over a two-week period in August 2009. His visit and reports were well-received and gave much encouragement to Aboriginal and Torres Strait Islander peoples and organisations.

We would also like to acknowledge the Australian Government's revised policy position, in extending an open invitation to all of the United Nations special mechanisms including Special Rapporteurs.

The Rapporteur's Report on His Official Visit to Australia

The Rapporteur began his report by noting the historical injustices that have been perpetrated on the Indigenous peoples of Australia including acts of genocide and dispossession of lands, territories and resources which today continues to see Aboriginal and Torres Strait Islander peoples facing severe disadvantage and discrimination.

The Rapporteur expressed concern for the lack of effective participation processes for Aboriginal and Torres Strait Islander peoples in government and the need for a more integrated approach to addressing our historical disadvantage and oppression which promotes social and economic well being and advances our self-determination and cultures.

Concerns that Aboriginal and Torres Strait Islander peoples have held for years were supported and highlighted by the Rapporteur such as:

- Health, including the need to strengthen and expand existing culturally appropriate health services, in rural, remote and urban communities;
- Education, including the need for more Aboriginal and Torres Strait Islander children to be taught in their own languages;
- Employment and income, including concerns about welfare reform including compulsory income management and the reforms to the Community Development Employment Program;
- Housing, including the lack of housing and concerns about housing reform including the National Partnership Agreement on Remote Indigenous Housing, which is imposing 40 – 99 year leases on Aboriginal and Torres Strait Islander communities to allow government to manage the housing;
- Women, children and families – the lack of protections and appropriate services for our women and children in situations of family violence and dysfunction; and
- Administration of justice – he noted the alarmingly high levels of incarceration of our peoples, including women and juveniles and that the recommendations of the Royal Commission into Aboriginal Deaths in Custody have still not been fully implemented.

Concerns about cross cutting government programs including in regards to self determination, local self-governance, lack of participation in the design, delivery and oversight of programs, the need to support and build on Indigenous controlled initiatives and remote service delivery and homelands were also highlighted by the Rapporteur and reflect the concerns of Aboriginal and Torres Strait Islander peoples.

Northern Territory Emergency Response

An important annexure to the Rapporteur's report were his observations on the Northern Territory Emergency Response in Australia, also known as 'the Intervention'. This legislation deliberately removed protections granted by the Racial Discrimination Act in promoting the intervention as a 'special measure'. Community consultations were conducted in late 2009. The Australian Government then introduced a Bill to restore the Racial Discrimination Act to the intervention and redesign various measures. This was then the subject of a Parliamentary Committee.

The Rapporteur's comments about the intervention were released in advance to coincide with the Inquiry, however the expert opinion has been ignored. Unfortunately, the Parliamentary Committee investigating this legislation has given little consideration to the concerns of the Rapporteur, dismissing it as mere opinion. To date the Bill has not been passed in Parliament.

International human rights law makes it clear that legislative measures based on minimal evidence and enacted without our peoples' consent cannot be categorised as a 'special measure'.

Aboriginal and Torres Strait Islander People's Response

The Aboriginal and Torres Strait Islander peoples commend the report of the Rapporteur however we express our concern at the disregard to the report by the Governments of Australia. We seek a formal and public Government response to the

Rapporteurs report and the development of processes that ensure the active participation of Aboriginal and Torres Strait Islander peoples resolving the concerns and implementing the recommendations.

Government policy regarding our economic and social development must respect the integrity of our communities and cultures and our rights to self-determination. Our cultural development including languages, cultural heritage, knowledge and law relies on our connection to our traditional territories, and our abilities to control our own destinies with integrity, security and dignity.

We are pleased that the Special Rapporteur acknowledges the strength and vibrancy of our cultures and is inspired by the achievements and visions of our communities. As such we continue to pursue constitutional recognition and reform to guarantee our inherent rights as the First Peoples of Australia. Through constitutional recognition our rights can be truly protected and put beyond the untrustworthiness of Government.

Recommendations

- 1. That the Permanent Forum urge all States to commit to a process of responding to Country Reports by all Special Rapporteurs which includes the participation of Indigenous peoples to:**
 - **provide a written response to the Rapporteur's Report, submitted to the Human Rights Council, within six months, that outlines the State process for progressing the report; and**
 - **develop and then publically promote an implementation strategy to implement the response to the recommendations within 12 months;**
 - **provide annual updates to the Rapporteur's Report on the progress of the strategy until such time as the Rapporteur again visits that State or until that State undergoes a Universal Periodic Review.**
- 2. That the Permanent Forum present a draft resolution for ECOSOC urging all states with Indigenous peoples to review their legislation, policies and programs in accordance with the Declaration on the Rights of Indigenous Peoples and the Program of Action for the Second Decade of the World's Indigenous peoples.**