

Expert Mechanism on the Rights of Indigenous Peoples
Fourth Session
Geneva, 11 July – 15 July 2011

Agenda Item 5: United Nations Declaration on the Rights of Indigenous Peoples

Speaker: Sandra Miller

JOINT STATEMENT ON BEHALF OF:

**Aboriginal Legal Service of Western Australia (ALSWA)
Aboriginal Legal Rights Movement of South Australia (ALRM)
Foundation for Aboriginal and Islander Research Action (FAIRA)
National Native Title Council
Aboriginal and Torres Strait Islander Social Justice Commissioner**

Thank you Chairman,

This intervention is made on behalf of Aboriginal and Torres Strait Islander organisations represented at this Forum from the network of Indigenous Peoples Organisations of Australia.

We acknowledge the positive steps being taken by some States, Indigenous Peoples and increasingly through the work of National Human Rights Institutions to promote the Declaration on the Rights of Indigenous Peoples.

We welcome the resolution of the 15th session of the Human Rights Council calling upon States to pursue the objectives of the Declaration in consultation and cooperation with Indigenous Peoples.

We also note the many instances during the Universal Periodic Review procedure of the Human Rights Council where States have been called upon to implement the Declaration.

However, we are concerned that there is also a lack of meaningful implementation of the Declaration on the Rights of Indigenous Peoples by some States such as Australia. These States are failing to understand and commit to comprehensive implementation of the Declaration. Australia for example considers that it is implementing the spirit of the Declaration without any participation from or authorisation by Indigenous Peoples themselves.

We are unable to accept that ad hoc policies regarding Indigenous Peoples are 'in the spirit' of the Declaration. We also do not accept that the Declaration is merely 'aspirational' and not a standard to be actively and uncompromisingly pursued.

The preamble of the Declaration makes it abundantly clear that Indigenous Peoples have suffered from historic injustices as a result of colonization and dispossession of their lands, territories and resources. Implementation of the Declaration is an important step forward for the recognition, promotion and protection of the rights and freedoms of Indigenous Peoples.

The Program of Action for the Second Decade of the World's Indigenous Peoples urges States to launch a review of national legislation with the full and effective participation of Indigenous experts. The Program of Action also calls on States to develop national legislation for the protection and promotion of human rights, including a means of monitoring and guaranteeing those rights.

Ad hoc policies created and implemented without the involvement of the Indigenous Peoples are not enough.

Laws and policies created by States without the intention to comply with the standards of the Declaration, or meaningful participation and free, prior and informed consent by Indigenous Peoples cannot be regarded to be 'in the spirit of the Declaration'.

Without any treaty body monitoring implementation of the Declaration, it is up to the States to work with Indigenous Peoples to give practical meaning to their support for the Declaration by taking immediate steps in full consultation and collaboration with Indigenous Peoples to fulfil their obligations to protect, respect and promote the rights of Indigenous Peoples in accordance with article 42 of the Declaration.

We believe that actions taken by the States to implement the Declaration should be specifically and clearly identified in the National Human Rights Action Plans and that these plans be available to the United Nations and treaty bodies in accordance with the already accepted procedures.

Finally we note the complementary role of increased legal protection of the rights of Indigenous Peoples contained in ILO Convention 169 and urge States to ratify and implement its comprehensive provisions.

We therefore recommend the Expert Mechanism advise the Human Rights Council to urge that States:

- 1. incorporate the Declaration on the Rights of Indigenous Peoples into all aspects of national human rights frameworks, policies, procedures and legislation;**
- 2. develop Action Plans for the full implementation of the Declaration on the Rights of Indigenous Peoples in partnership with Indigenous Peoples and organisations in accordance with Article 42 of the Declaration;**
- 3. register the Action Plans with the Office of the High Commissioner for Human Rights to facilitate monitoring by the UN mechanisms;**
- 4. ratify, if they have not already done so, ILO Convention 169 and ensure that the Convention is incorporated into domestic law; and**
- 5. commission the national human rights institutions to promote and monitor the implementation of the Declaration on the Rights of Indigenous Peoples and ILO Convention 169.**

We thank the Expert Mechanism for the opportunity to present this intervention.