

UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

SEVENTEEN SESSION - NEW YORK

17 April 2018

INTERVENTION DELIVERED BY TERRY MASON ON BEHALF OF THE INDIGENOUS PEOPLES ORGANISATION OF AUSTRALIA.

Agenda Item 8: Discussion of theme "Indigenous Peoples' collective rights to lands, territories and resources"

---

Thank you Madam Chair, Honourable Members and Indigenous Brothers and Sisters, I am speaking on behalf of the Indigenous Peoples Organisation of Australia, a coalition of 250 Aboriginal and Torres Strait Islander organisations and Indigenous rights defenders. I am an Elder on its national Executive and an Awabakal man, of Australia.

In 1993, following the land mark decision in *Mabo v Queensland (No 2)* ("Mabo"), the Australian Parliament enacted the Native Title Act 1993 (Cth), which ruled that the determination of Terra Nullius, or no one's land, was false. In Mabo, the High Court found that upon 'settlement' of the Australian continent and the acquisition of sovereignty (applying the Doctrine of Discovery) the pre-existing rights and interests of the Indigenous peoples were transformed into those rights that could be recognised by the British common law. Those principles were embedded in to the Native Title Act.

Under the NTA some 337 determinations of native title have been made since 1993. Notwithstanding the volume of determinations, there remain serious concerns regarding the following aspects of the native title regime:

The reliance upon the notion that Australia was peaceably settled is racially discriminatory and infects the whole regime;

The rights recognised under the Native Title Act are racially discriminatory in that they do not provide any tenure or ownership of land, water or bio-resources.

The Racial Discrimination Act 1975 (Cth) was suspended in 1998 to enable amendments to the Native Title Act that discriminated against Indigenous People. Those discriminatory amendments continue to operate.

Indigenous Peoples' ability to benefit from developments on their lands are linked to their consent to those developments in a manner that is wholly inconsistent with the right to free, prior and informed consent to development and use of territories and resources.

The Native Title Act allows the deferral of the payment of compensation for acts affecting native title to a later date, whereas all other persons in Australia having interests in land are compensated at the time of the relevant act.

The NTA is inconsistent with the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") and the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP")

Proposed Resolution: That the UN Permanent Forum on Indigenous Issues requests Australia and all other nations to undertake an audit of their land rights legislation against ICERD and UNDRIP and report to the Forum on that audit within 12 months.

---