

DELEGATION REPORT

**ATTENDANCE AT THE 8TH SESSION OF
THE UNITED NATIONS PERMANENT
FORUM ON INDIGENOUS ISSUES**

18 29 MAY 2009

NEW YORK USA



**New South Wales
Aboriginal Land Council**

Produced by the New South Wales Aboriginal
Land Council.

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Photos: David Lee, NSWALC

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Introduction and Background

The NSW Aboriginal Land Council continues (NSWALC) to hold 'special consultative status' with the United Nations Economic and Social Council (ECOSOC) for the purpose of being able to consult with the UN through its various bodies and activities.

NSWALC participation in work of the UN and more particularly the Permanent Forum on Indigenous Issues is in line with a strategic decision by NSWALC to maintain a strategy of engagement in international advocacy. This has in the past been an important function of the former Aboriginal and Torres Strait Islander Commission (ATSIC). ATSIC's abolition left a void in the capacity of Aboriginal peoples to raise our issues at the international level. The development of networks through international engagement also assists NSWALC in the management of its broader statutory functions.

Our international work is not simply about being critical. It is also about being practical and innovative in our approaches to overcoming Aboriginal disadvantage and looking at the broader way in which the adoption of human rights standards can be applied in Australia.

While changes come about slowly at the international level there are always ongoing developments that can assist in the way we go about our work. The adoption of the Declaration on the Rights of Indigenous Peoples in September of last year by the UN General Assembly, for example, will now provide an international framework for the adoption and recognition of uniform international standards on the rights of the world's indigenous peoples. Much work still needs to be done to address how UN Member States respond to the declaration and how it might be applied domestically in places like Australia.

This year, much of the work of the UN Permanent Forum on Indigenous Issues (UNPFII), focused its activities on reporting and follow-up from business conducted in previous years but especially on matters concerning, the rights of women, economic and social development, the impact of climate change, and implementation of the Declaration on the Rights of Indigenous Peoples.

Members of the delegation that represented NSWALC at the 8th *session* of the Permanent Forum were:

- Councillor Patricia Laurie
- Mr David Lee, Executive Officer
- Aden Ridgeway (Consultant)
- Councillor Craig Cromelin
- Mr Jason Field, Manager, Land and Policy Unit

Given some of the changes to the Council since NSWALC re-engaged with the UN in more recent times, it was thought appropriate that considerable information about the Permanent Forum's role, functions, structure and other relevant issues, should be provided.

I trust you will find it both informative and interesting.


Councillor Patricia Laurie


Councillor Craig Cromelin

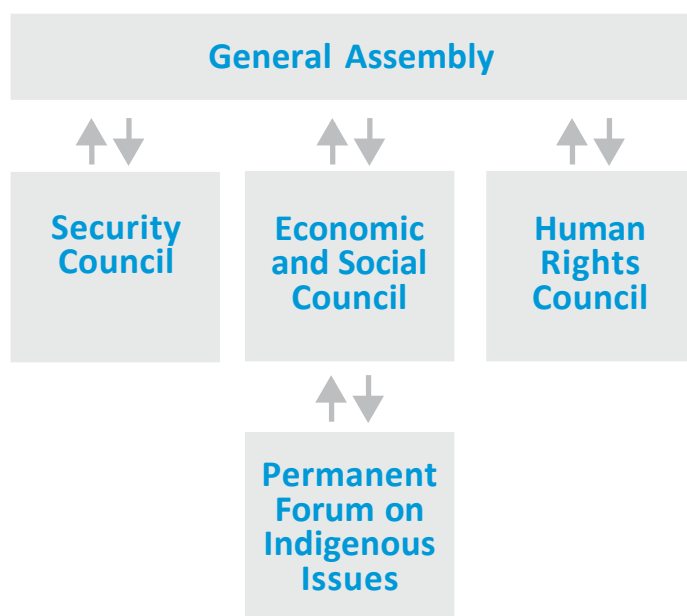
About the Permanent Forum on Indigenous Issues

On 28 July 2000, the United Nations Economic and Social Council passed a resolution (E/RES/2000/22) “to establish as a subsidiary organ of the Council a permanent forum on indigenous issues”¹. This resolution establishes, among other things, the Permanent Forum’s mandate, membership structure, rules of procedure and reporting requirements.

Mandate

The Permanent Forum is essentially “an advisory body to the Economic and Social Council”. It has been established for the purpose of discussing “indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights”. This mandate requires the Permanent Forum to:

- provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council
- raise awareness and promote the integration and coordination of activities related to Indigenous issues within the UN system
- prepare and disseminate information on indigenous issues.²



This diagram indicates the relationship that the Permanent Forum has with the key bodies within the UN system. Other key bodies not represented in this diagram include the Trusteeship Council, International Court of Justice and the Secretariat.

Membership

The Permanent Forum is made up of 16 members. While all members are appointed by the President of ECOSOC there are two separate nomination processes and regional representation structures that apply:

- eight of the members are nominated by governments and elected by ECOSOC;
- the other eight are appointed following the undertaking of a “broad” and “formal” process of consultations.

Members Nominated by Governments	Members Selected through Consultation with Indigenous Peoples
Africa	Africa
Asia	Asia
Eastern Europe	Central and South America and the Caribbean
Latin America and the Caribbean	The Arctic
Western Europe	North America
Other States	The Pacific
	Central and Eastern Europe and the Caucuses

Global Regional Representation of the Membership of the Permanent Forum on Indigenous Issues

The regions established for those members nominated by governments are based on the five regional groupings normally used at the United Nations. The regions for the Indigenous selected representatives are based on the seven socio-cultural regions that provide broad representation of the world’s Indigenous peoples.

The members are not paid for the work they undertake on behalf of the Permanent Forum. When undertaking work on behalf of the Permanent Forum the members are regarded as “UN Experts on mission” which provides them with the ‘functional privileges and immunities’ consistent with this legal status. Members of the Permanent Forum are elected for a three-year term, with the option of seeking election or re-appointment for an additional term.

Members of the Permanent Forum attend various meetings and participate in a number of other information gathering exercises throughout the year. Each year the members gather to hold meetings that include Indigenous peoples, government delegations and representatives of UN bodies and other international agencies from across the world. These meetings have been taking place in New York since 2002, however, the Permanent Forum does have the option of holding them in Geneva or any other place deemed appropriate.



Photo: Presentation of a Boomerang to the United Nations Permanent Forum on Indigenous Issues.

Portfolios and Office Holders

The current membership of the Permanent Forum, including their respective countries, offices and portfolios, are as follows:

Name	Country	Office and Portfolios
Ms. Victoria Tauli-Corpz	Igorot, Philippines	<i>Chairperson</i> ; Economic and Social Development; Culture and Methods of Work; Gender and Women's Issues; Communication
Mr. Eduardo Aguiar De Almeida	Brazil	Economic and Social Development; Environment; Data and Statistics
Mr. Hassan Id Balkassm	Morocco	Human Rights; Environment; Economic and Social Development; Communication
Mr. Yuri A. Boychenko	Russian Federation	Finance and Budget; Culture; Methods of Work; Data and Statistics
Prof. Michael Dodson	Australia	<i>Rapporteur</i> ; Human Rights; Youth and Children
Mr. William Langeveldt	South Africa	Environment and Traditional Knowledge; Human Rights
Ms. Merike Kokajev	Estonia	Human Rights; Women
Mr. Wilton Littlechild	Canada	Human Rights; Sport
Ms. Otilia Lux de Coti	Guatemala	Education; Culture
Mr. Aqqaluk Lynge	Inuit, Greenland	Environment and Traditional Knowledge; Human Rights ; Data and Statistics
Ms. Liliane Muzangi Mbella	Congo	Housing; Human Rights
Ms. Ida Nicolaisen	Denmark	Housing; Migration; Methods of Work; Youth Caucus
Ms. Nina Pacari Vega	Ecuador	Administration of Justice; Traditional Knowledge and Gender
Ms. Xiaomei Qin	China	Health; Environment
Mr. Pavel Sulyandziga	Udege, Russia	Environment and Traditional Knowledge; Economic and Social Development; Communication
Mr. Parshuram Tamang	Nepal	Economic and Social Development; Environment and Traditional Knowledge

Rules of Procedure

The rules of procedure for the Permanent Forum are established by the resolution that resulted in its creation and the *Rules of Procedure of the Economic and Social Council*. Some of the procedures that are set out include:

- which organisations can “participate” in meetings of the Permanent Forum;
- setting the number of working days for each annual session;
- the reporting requirements; and
- that the Permanent Forum must adopt its recommendations by consensus³.

Making Statements in Permanent Forum Sessions

One of the most challenging aspects of participating in Permanent Forum sessions is the very limited time available to representatives of non-government organisations (NGOs) to deliver their statements. Interventions are generally restricted to a time limit of 5-7 minutes. Subject to time and the number of people wanting to make interventions on a particular topic, the time made available can and is limited even further.

Representatives of NGOs are required to register their interest in making a statement to the Secretariat of the Permanent Forum. The Secretariat will then set the speakers list under that agenda item. The order of speakers is generally based on the number of organisations represented by a particular statement – the higher the number of organisation represented in a statement the more likely it will be at the top of the list. If the Chair calls on a speaker and that person does not immediately indicate their readiness the next speaker on the list will be called on to deliver their statement.

Permanent Forum members, representatives of Member States and representatives of other UN bodies do not have time restrictions placed on their statements to the same extent as NGOs. Permanent Forum members also have the capacity to make statements and ask questions “whenever they judge appropriate”⁴.

Inter-sessional Meetings and Workshops

Aside from the two-week sessions held annually, Permanent Forum members also participate in a range of other meetings and workshops that are organised around the world. Many of these meetings and workshops are coordinated through the Secretariat of the Permanent Forum. These inter-sessional meetings and workshops are often held as a result of a recommendation made by the Permanent Forum that such an event be organised.

Inter-Agency Support Group

The Inter-Agency Support Group (IASG) is a body that is made up of 27 United Nations and intergovernmental organisations.

Its role is to “support and promote the mandate of the UN Permanent Forum on Indigenous Issues”⁵ within the United Nations and intergovernmental systems. The IASG fulfills this role by analysing the recommendations made by the Permanent Forum “with a view to facilitating comprehensive and coordinated responses” to the Permanent Forum. Some of the organisations that make up the IASG include:

- International Labour Organisation (ILO)
- Secretariat for the Convention on Biological Diversity (SCBD)
- UN Department of Economic and Social Affairs (DESA)
- World Bank
- United Nations Educational, Scientific and Cultural Organisation (UNESCO)
- World Health Organisation (WHO)

Secretariat

The work of the Permanent Forum is supported by and coordinated through a Secretariat, whose office is based at the UN Headquarters in New York. It is located within the Division for Social Policy and Development of the UN Department of Economic and Social Affairs.

The primary functions of the Secretariat includes:

- preparing for annual sessions of the Permanent Forum;
- providing support to the Members of the UNPFII throughout the year;
- advocating for, facilitate and promote the coordination of implementation within the UN system of the recommendations that emerge from each annual session;
- promoting awareness of indigenous issues within the UN system, governments, and the broad public; and
- serving as a source of information and a coordination point for advocacy efforts that relate to the Permanent Forum’s mandate and the ongoing issues that arise concerning indigenous peoples.⁶

Eighth Session of the Permanent Forum

The eighth session of the Permanent Forum was held from 18 to 29 May 2009. There was no theme for the session, instead the Permanent Forum used the meeting as a time to report and follow-up on much of the business conducted in previous years. The issues, and the order in which they were discussed at the eighth session of the Permanent Forum can be found in the *Proposed organisation of work*⁷.

Previous Sessions of the Permanent Forum

Since May 2002, the Permanent Forum has held annual two-week sessions at the United Nations Headquarters in New York. Following each meeting a report containing a series of recommendations to the Economic and Social Council is produced. The Permanent Forum monitors the progress of implementing these recommendations through its ongoing work.

Throughout its previous sessions the Permanent Forum has considered a number of 'matters' as established directly in its mandate. It has also demonstrated a willingness to set the agenda – Permanent Forum can be regarded as the driving force behind the UN and other international agencies taking a more coordinated approach to working with Indigenous peoples.

Its work in the area of 'data collection' can also be seen as providing much needed leadership to bring about important changes in how nation states and international agencies view Indigenous issues and develop appropriate policy responses.

For its second session in 2003 the Permanent Forum adopted the practice of establishing a theme for each of its sessions. The themes for previous sessions are as follows:

- **2004** Indigenous children and youth
- **2005** Indigenous Women
- **2006** Millennium Development Goals and indigenous Peoples
- **2007** Land, Territories and Natural Resources
- **2008** Climate Change, bio-cultural diversity and livelihoods

Operating within its mandate the Permanent Forum has also demonstrated clear leadership within the UN system through its ability to bring about a greater level of cooperation among all agencies working on Indigenous related issues. As well as highlighting the critical issues facing Indigenous peoples across the world the Permanent Forum has been instrumental in bringing about structural and operational changes in the ways in which international agencies work for and with Indigenous peoples.

Inter-sessional Meetings and Workshops held prior to the Eighth Session

In the year leading up to the Eighth session of the Permanent Forum the following inter-sessional meetings and workshops were held. This list is by no means exhaustive but while other meetings were also held, these were seen as being crucial to the 8th session.

Meeting/Workshop	Date	Location	Documentation
Indigenous Peoples Organisations (IPO) Meeting	19-20 March 2009	Sydney, Australia	
International Expert Workshop on Indigenous Peoples Rights: Corporate Accountability and Extractive Industries	23-25 March 2009	Manilla, Phillipines	Report of the Expert Workshop on Indigenous Peoples Rights: Corporate Accountability and Extractive Industries
Indigenous Peoples' Global Summit on Climate Change	20-24 April 2009	Anchorage, Alaska	Anchorage Declaration

These issues incorporate a considerable component of the substantive work of the Permanent Forum. All issues were considered to varying degrees at the eighth session as part of the 'ongoing priorities and themes'. It is likely that these issues will retain their priority status within the Permanent Forum for the foreseeable future sessions.

Australian Preparatory Meeting

In preparation for attending the Permanent Forum the NSWALC delegates participated in a series of meetings held in Canberra and Sydney leading up to the 8th session in May, 2009. These meetings served to provide important background information on the Permanent Forum as well as facilitating the building of a network among the Aboriginal people and organisations who will be attending the eighth session. Importantly, the preparatory meeting also provided a useful opportunity for participants to discuss their views on certain issues for the purpose of attempting to find common ground for the development of joint submissions.

One of the biggest challenges with participating in the work of the Permanent Forum is that there are so many who want to raise their issues and ideas. This places great pressure on the Permanent Forum to be able to accommodate all of those who want to make interventions. To address this situation and provide for some fairness the Permanent Forum will place time restrictions on speakers and they also encourage delegates to present their interventions through joint statements, which are given priority over individual statements.

The organisations represented at this meeting included:

- Aboriginal Legal Rights Movement Inc.
- Australian Indigenous Doctors Association
- Australian Institute for Aboriginal and Torres Strait Islander Studies
- Foundation for Aboriginal and Islander Research Action
- Human Rights and Equal Opportunity Commission
- Jumbunna Indigenous House of Learning, UTS
- National Aboriginal Community Controlled Health Organisations
- National Indigenous Higher Education Network
- National Centre for Indigenous Studies, ANU
- National Network of Indigenous Women's Legal Services
- NSW Aboriginal Land Council
- Western Australian Aboriginal Legal Service.

As in previous years, representatives of the Department of Foreign Affairs and Trade, and the Attorney-Generals Department were also invited to attend some of the meeting.

The issues considered at the preparatory meeting were guided by the Provisional Agenda of the Eighth Session.

A copy of the report of this meeting can be obtained from the Strategic Policy and Planning Unit at the NSW Aboriginal Land Council.

Delegations and Caucuses

It is common for the representatives of Indigenous peoples organisations to come together through various national, geographic and socio-cultural networks. Gaining support for a certain view can be enhanced if it is shared among the members of such networks. They are also an important way through which views can be presented to the Permanent Forum.

Photo: Cr Patricia Laurie participating in an Australian Caucus Meeting inside the United Nations.



Australian Aboriginal Delegation

It has been noted that the Australian Aboriginal Delegation that attended the eighth session of the Permanent Forum was the largest ever. The organisations and people who attended as part of this delegation included:

Organisation	Delegate(s)
Foundation for Aboriginal Research Action (FAIRA)	Les Malezer
Aboriginal Legal Rights Movement (ALRM)	Neil Gillespie Sandy Miller
National Native Title Council	Brian Wyatt
Australian Indigenous Doctors Association – Menzies School of Health Research	Ngiare Brown
Human Rights and Equal Opportunity Commission (HREOC)	Tom Calma Darren Dick Katie Kiss
NSW Aboriginal Land Council	Cr Patricia Laurie Cr Craig Cromelin David Lee Jason Field Aden Ridgeway
World Council of Churches	Dina Saulo (Youth) Peter Smith
National Indigenous Higher Education Network	Peter Bucksin Roger Thomas Michael McDaniel

There were many others that also attended but not all names are included in this list. In addition, Oxfam provided financial support for the attendance of an Aboriginal and Torres Strait Islander delegation.

The Australian Aboriginal delegation would generally meet prior to the beginning of each day's meetings to share information about any developments that have arisen as well as consider drafts of joint statements. These meetings also provided an important forum for people who are less experienced in working with the United Nations to gain an understanding about the operations of this organisation and the protocols that are generally observed within the Permanent Forum.

Pacific Nations Indigenous Caucus

Throughout the two week meeting of the Permanent Forum members of the Australian Aboriginal Delegation were also included as part of the Pacific Nations Indigenous Caucus. This body exists alongside a number of others from across the world to provide people representing Indigenous NGOs the capacity to come together on a regional basis. The need for such regionalised caucuses arises because of the limited time available to make interventions.

The regional Indigenous caucuses also provide very important forums for Indigenous peoples and organisations to come together to seek redress on issues that affect them on a regional basis. This work not only takes place at each of the sessions of the Permanent Forum, but also at times outside of when that body meets.

Throughout the eighth session of the Permanent Forum the Pacific Nations Indigenous Caucus would meet on a regular basis in an attempt to reach a consensus on various issues with the aim of producing agreed joint statements. The Pacific Nation Indigenous Caucus also provided very useful networking and information sharing opportunities.

This group consisted of various Indigenous representatives from across the Pacific nations and islands including Australia, New Zealand, Hawaii, Fiji, West Papua and Maluku among others. The organisations represented on the Pacific Nations Indigenous Caucus for the eighth session of the Permanent Forum are as follows:

- Te Runanga O Te Rarawa – Aotearoa;
- Kamakakūokalani Centre for Hawaiian Studies;
- Na Koa Ikaika O Ka Lahui Hawaii;
- Pacific Concerns Resource Centre - Fiji;
- Aboriginal Legal Rights Movement
- Foundation for Aboriginal and Islander Research Action;
- Australian Indigenous Doctors Association
- Aotearoa Institute;
- Bangsa Adat Alifuru – Maluku ;
- FPCN West Papua;
- World Council of Churches – Australia;
- New South Wales Aboriginal Land Council;
- National Network of Indigenous Womens Legal Services – Australia;
- Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission;

During the eighth session of the Permanent Forum NSWALC assisted with some co-ordination activities to distribute information among those represented. This is a necessary function at the Permanent Forum, which assisted the NSWALC delegates in the building of networks and raising our awareness about ongoing issues and recent developments.

Any future role that NSWALC may play with respect to supporting the Pacific Nations Indigenous Caucus will be considered through the development of our international advocacy strategy.

Agenda

The agenda that was adopted by the Permanent Forum for the eighth session is the same as the provisional agenda⁸ that had been established. The items on the agenda included:

1. Election of officers.
2. Adoption of the agenda and organisation of work.
3. Follow-up to the recommendations of the Permanent Forum:
 - (a) Economic and social development;
 - (b) Indigenous women;
 - (c) Second International Decade of the World's Indigenous Peoples
4. Human Rights:
 - (a) Implementation of the United Nations Declaration on the Rights of Indigenous Peoples;
 - (b) Dialogue with the Special Rapporteur on situation of human rights and fundamental freedoms of indigenous peoples and other special rapporteurs.
5. Half-day discussion on the Arctic.
6. Comprehensive dialogue with six United Nations agencies and funds.
7. Future work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues.
8. Draft agenda for the ninth session of the Permanent Forum.
9. Adoption of the report of the Forum on its eighth session.

Implementation of the Recommendations of the Permanent Forum

From the previous sessions that have been held, the Permanent Forum produces hundreds of recommendations and given the number and scope of the recommendations that have been made thus far a major challenge facing the Permanent Forum is avoiding their duplication.

To assist with monitoring the progress of implementation of the recommendations the Secretariat of the Permanent Forum has established a data base. To further assist, the Permanent Forum has also adopted the practice of organising their recommendations into the following clusters:

- *Information and knowledge generation, management and dissemination;*
- *Increased and effective participation of indigenous peoples in various global, regional and national processes and mechanisms;*
- *Capacity-building and awareness-raising for indigenous peoples, personnel and governing bodies of United Nations agencies, programmes and funds and also of government officials and politicians;*
- *Development, popularization and dissemination of education and awareness-raising materials, toolkits and guidelines;*
- *Shifts in paradigms and approaches to development and in the formulation of conceptual frameworks, policies and guidelines, and setting up projects to reflect those shifts.⁹*

In addition to advocating for this clustered approach to their recommendations the Permanent Forum – mindful that the number could blow-out to unmanageable proportions through future sessions – has also proposed that there be a ‘rationalisation’ of the recommendations and a continuing of the practice of not repeating recommendations which have already been made.

The Permanent Forum at its Eighth Session also decided to adopt a new practice whereby every UN agencies and funds, would now report to the forum in groups as determined by the Permanent Forum. As such, this year no theme was adopted and instead much of the focus of the Permanent Forum was on reporting and follow-up.

Human Rights

The key human rights issue considered at the eighth session of the Permanent Forum concerned the adoption and implementation of the *Declaration on the Rights of Indigenous Peoples*. Following over twenty years of standard-setting within various bodies of the UN system, the Declaration was adopted by the General Assembly on 13th September, 2007. This is a most welcome outcome at the UN and finally towards the end of 2008, the Australian Government announced that it would endorse the Declaration, bringing it back into line with other countries throughout the world.

Indigenous Women

Consistent with its reporting on children and youth, the Permanent Forum affirmed its view that the Millennium Development Goals could “incorporate” the concerns of Indigenous peoples, particularly Indigenous women, into their framework. This was considered by the Permanent Forum to provide “an important human rights-based approach to the development agenda for achieving gender equality and the empowerment of women, including indigenous women”.¹⁰

Other recommendations made by the Permanent Forum with respect to Indigenous women sought to improve health outcomes in areas such as reproductive health and to give particular attention to the needs of elderly women. The Permanent Forum also saw the need to address the experiences of violence faced by Indigenous women in situations of armed conflict; and with combating the trafficking of Indigenous women.

In its statement the Australian Aboriginal Delegation expressed concern about the legal disadvantage faced by Indigenous women as demonstrated by a number of factors including gaining access to legal services and the alarming rates of child removal among Indigenous families. The delegation expressed in this statement its “strong view” that Indigenous customary law did not allow for violence against our women and children. It was further argued that the strengthening of customary law systems could actually serve to bring about more functional communities.

Photo: Cr Patricia Laurie, inside the United Nations Building, New York in front of portraits of Kofi Anan - the former Secretary-General of the United Nations - and Ban Ki-moon current Secretary-General of the United Nations.



Second International Decade of the World's Indigenous People

The Second International Decade of the World's Indigenous People (Second Decade) was established through the General Assembly resolution 59/174 of 20 December 2004. The goal of the Second Decade is “the further strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as development, by means of action-oriented programmes and specific projects, increased technical assistance and relevant standard-setting activities”¹¹.

The five objectives of the Second Decade are set out in the *Draft Programme of Action*.

They are:

- (i) Promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects;
- (ii) Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as peoples with collective rights or any other aspects of their lives, considering the principle of free, prior and informed consent;
- (iii) Redefining development policies that depart from a vision of equity and that are culturally appropriate, including respect for the cultural and linguistic diversity of indigenous peoples;
- (iv) Adopting targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth;
- (v) Developing strong monitoring mechanisms and embracing accountability at the international, regional and particularly the national level, regarding the implementation of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives.¹²

Five identified “areas of action” have also been developed for the Second Decade. They include culture, education, health, human rights and the environment.

It is also worth noting that at the opening of the fifth session of the Permanent Forum the former Secretary-General of the United Nations, Kofi Anan, (via video) called on “all States to work with indigenous peoples to translate the Programme into reality on the ground”. In his statement, the UN Under-Secretary for Economic and Social Affairs (and co-ordinator of the Second Decade), Mr José Antonio Ocampo welcomed the the Permanent Forum’s “new joint emphasis on implementing the Program of Action and achieving the MDGs for the world’s indigenous peoples”. In describing these initiatives as “bold”, he also indicated his personal commitment to “encouraging and facilitating the efforts of all stakeholders to make optimal use of the synergies between pursuing the Millennium Development Goals and the overarching goal of the Second Decade ...”

While there may be reason for not trusting the ability of frameworks such as the Second International Decade for supporting the development of Indigenous peoples it is worth noting that the establishment Permanent Forum was an objective of the First Decade¹³. The adoption of the *Declaration on the Rights of Indigenous Peoples* by the UN General Assembly will be an important contribution to the objectives of the Second Decade.

It is also interesting to note that the General Assembly resolution (60/142), which ‘adopts’ the Programme of Action for the Second International Decade, was passed without the need for a vote. What this means in terms of the Australian Government’s position on the Second Decade is not quite clear – there appears to be neither support or opposition.

Key Interventions

During the twenty meetings of its eighth session the Permanent Forum received hundreds of interventions. All interventions raise important issues and are worth reviewing. It is, however, not possible to list all interventions delivered at the Permanent Forum's fifth session. This report therefore focuses on those interventions considered of most relevance and interest to Indigenous peoples in Australia.

All statements presented to the eighth session of the Permanent Forum can be accessed from the DOCiP website: <http://www.docip.org/Permanent%20Forum/Statements.html>

Australian Aboriginal Delegation

NSWALC was represented in 11 interventions that were delivered to the 8th Session of the Permanent Forum. Eight of these statements were given as part of the Australian Aboriginal Delegation. NSWALC was also a joint presenter of wider Pacific Nations Indigenous Caucus interventions. NSWALC specific interventions were given as follows:

Cr Patricia Laurie Economic and Social Development

Cr Craig Cromelin Human Rights: Implementation of the Declaration

Mr David Lee Future Work of the Permanent Forum: Climate Change

Cr Craig Cromelin Future Work of the Permanent Forum: land tenure

The final statement was given on 26 May as part of a testimony to the Stolen Generations in honour of 'sorry day', which included a minute silence.

The statements delivered on behalf of the Australian Aboriginal Delegation included:

Agenda Item	Topic	Speaker
3(a)	Economic and Social Development	Cr Patricia Laurie
3(b)	Follow-up to the recommendations of the Permanent Forum - Indigenous Women	Dot Henry
3(c)	Second Decade of the Worlds Indigenous Peoples	Roger Thomas
4	Human Rights: Declaration on the Rights of Indigenous Peoples	Cr Craig Cromelin
6	Comprehensive Dialogue with six UN agencies and funds	Les Malezer Peter Buckskin
7	Future work of the Permanent Forum: climate change Future work of the Permanent Forum: Land Tenure Future work of the Permanent Forum: health	David Lee Cr Craig Cromelin Dr Ngiare Brown
	Joint Statement between the Australian Government and Australian Indigenous Peoples Organisations	Bernie Yates
	'Sorry Day' Statement	Troy Brickell

Side Events

Similar to previous sessions of the Permanent Forum, throughout the two-weeks of the eighth session a number of 'side events' were held. These events provide an opportunity for Indigenous peoples organisations and other NGO's to continue discussing their issues and strategies with other delegates.

The side events provide a useful way to build a broader understanding of the issues affecting Indigenous peoples across the world. One benefit of the side events is that they offer unique ways for Indigenous peoples from across the world to engage in a dialogue with each other and representatives of the NGO's. Another benefit is that they are not restricted by the formalities of participating in the Permanent Forum meetings, thus allowing more time for the presenters to speak. One of the challenges, however, is that there is often a range more than one event of interest taking place at the same time.

A full list of the side events held during the eighth session of the Permanent Forum can be found at: http://www.un.org/esa/socdev/unpfii/en/eighth_session_side_events.html

NSWALC Side Event

The NSWALC Councillors and Staff conducted a side event at the 8th Session on the 27th May 2009.

The event was held to inform people of our Aboriginal Land Rights System in NSW and the roles and responsibilities of the NSWALC

The event was attended by approximately 30 people from different nations including Hawaii, North America, Phillipines, South America and Australia.

Councillor Craig Cromelin, Mr Jason Field and Mr David Lee presented different aspects of the Aboriginal Land Rights System and NSWALC. The side event was conducted for 1 hour and 30 minutes. Questions were fielded from the participants on a range of topics. It was encouraging the amount of support shown from the participants and the good stories that they had heard about the NSWALC.

The side event was a very useful tool in networking with other first nations people.

NSWALC distributed promotional material including fact sheets and flyers to the participants.

Future delegations should conduct side events with differing themes to compliment the themes of the UNPFII.



Photo: Cr Craig Cromelin (left) and Cr Patricia Laurie (right) make a presentation to Prof. James Anaya, the Special Rapporteur on the situation of human rights and Fundamental Freedoms of Indigenous People.



Australian Mission Reception

On Thursday 21 May 2009, the Australian Mission held a reception for the Indigenous Peoples Organisation Network of Australia. This provided an opportunity for all Aboriginal delegates attending the Eighth Session of the Permanent Forum (including those on the UNPFII Secretariat, Sonia Smallacombe and Mick Dodson) to meet the Australian representatives who work at the Australian Mission in New York, and to meet with the Government delegation. The Government delegation included Bernie Yates and Greg Roche of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Shirley McPherson of the Indigenous Land Corporation (ILC), Toshi Kris of the Torres Strait Regional Authority (TSRA), and two youth representatives from the Indigenous Leadership Program run by FaHCSIA.

Preparation for the Country Visit of the Special Rapporteur on the situation of human rights and Fundamental Freedoms of Indigenous People

The Indigenous Peoples Organisation Network of Australia met with James Anaya, the Special Rapporteur on the situation of human rights and Fundamental Freedoms of Indigenous People, on a number of occasions during the eighth session of the United Nations Permanent Forum on Indigenous Issues. These meetings were to discuss and make the necessary preparations for this Country Visit to Australia in August 2009. The IPO Organising Committee attended a number of meetings, and individual organisations were also provided with an opportunity to talk with James about issues of concern.

National Sorry Day 26 May 2009

The Indigenous Peoples Organisation Network provided a statement to the UNPFII to commemorate the Australian National Sorry Day. The statement is attached.

The National Sorry Day statement was delivered by Troy Brickell, whom was a Youth Delegate with the Oxfam Delegation.

IPO Response to the Government's announcement to compulsory acquire Alice Springs Town Camps

During the UNPFII, the IPO Network distributed a joint statement to the Australian media in response to the Australian Government announcement on 24 May 2009 that it would commence steps to compulsory acquire the Alice Springs Town Camps.

Key Outcomes and Future Work

A critical feature of the work of the Permanent Forum is that it is mostly ongoing as their role is essentially to monitor developments and provide advice through the United Nations system. So when we talk about the outcomes of the Permanent Forum's eighth session, we are referring to the key observations and recommendations that they have made.

The report of the Permanent Forum's eighth session presents the observations and recommendations of its members in two ways: as "Matters calling for action by the Economic and Social Council or brought to its attention"; and as "Matters brought to the attention of the Council". The first set of observations and recommendations are presented to the Economic and Social Council in the form of four "draft decisions", which relate to:

- a proposed international expert group meeting on the Convention on Biological Diversity international regime on access and benefit-sharing and indigenous peoples' human rights;
- the call for "indigenous issues" to be the subject of the coordination segment of the substantive session of 2007 of the Economic and Social Council;
- the venue and dates for the ninth session of the Permanent Forum on Indigenous Issues;
- the Provisional agenda and documentation for the ninth session of the Permanent Forum on Indigenous Issues.

Under 'Matters brought to the attention of the Council', the observations and recommendations made by the Permanent Forum were presented through the following themes:

- Special theme: the Millennium Development Goals and indigenous peoples: redefining the Goals;
- Indigenous women;
- Indigenous children and youth;
- Human rights;
- Data collection and disaggregation;
- Half-day discussion on Africa;
- Second International Decade of the World's Indigenous People;
- Future work of the Permanent Forum on Indigenous Issues.

All of the recommendations made by the Permanent Forum at its fifth session (as well as the previous sessions) are placed into a data base to assist with the monitoring of their implementation. The recommendations data base is maintained by the Secretariat of the Permanent Forum. It can be accessed, along with a copy of the final report, from the Permanent Forum's website: <http://www.un.org/esa/socdev/unpfii/>

Future Work of the Permanent Forum

The recommendations made in the report of the Permanent Forum's eighth session in relation to its future work generally cover the following areas:

- Maintaining and enhancing the existing functions of the Permanent Forum secretariat;
- Implementation and monitoring of the recommendations that have been made by the Permanent Forum;
- Development related activities;
- Working relationships and cooperation between the Permanent Forum and other UN bodies, international agencies and states;
- Expert and regional workshops to be held and to report to the ninth session of the Permanent Forum;
- Indigenous peoples and migration;
- Endorsement of the work of various international organisations and a call for a furthering of this work particularly in areas such as the appropriate application of "development indicators" and the convening of regional meetings.

9th Session – Indigenous Peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples

The ninth session of the Permanent Forum will again be held at the United Nations Headquarters, New York, USA, from 19-30 April, 2010. The provisional agenda and documentation for the ninth session of the Permanent Forum on Indigenous Issues is:

1. Election of officers.
2. Adoption of the agenda and organisation of work.
3. Discussion on the special theme for the year: "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples".
4. Human Rights:
 - (a) Implementation of the United Nations Declaration on the Rights of Indigenous Peoples;
 - (b) Dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs.
5. Half-day discussion on North America.
6. Comprehensive dialogue with six United Nations agencies and funds.
7. Future work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues.
8. Draft agenda for the tenth session of the Permanent Forum.
9. Adoption of the report of the Permanent Forum on its ninth session.



Engaging in the Work of the Permanent Forum

While the potential benefits can be considerable, it is important that Aboriginal people and organisations considering directly engaging in the work of the Permanent Forum understand and appreciate the related risk. One of the biggest risks is the possibility that the integrity to those who do engage will be undermined on the basis that it is not considered by many to be a constructive use of finite resources. The problem with such criticism, however, is that it simply assumes that resources would be better used elsewhere.

Given the lack of outcomes for Aboriginal people against the levels of public expenditure such criticisms can be easily defended. The fact that the Australian Government allocates considerable public money to also participate in meetings of the Permanent Forum gives rise to a question of the fairness of such criticism.

That is not to say that in some instances such criticism may not be justified. From our experience, after having attended numerous sessions of the Permanent Forum now, suggests that the key to avoiding such criticism is to ensure that your participation is 'constructive' and as much as possible 'consistent'.

Being constructive means looking at the broad opportunities associated with international engagement, such as the building of networks and effectively advising Aboriginal communities of any important developments. The best means of being constructive is to engage consistently. The systems are often so complex and the amount of work going on at the international level at any given times requires the development of a good working knowledge.

Consistency helps with achieving greater levels of efficiency and significantly improves the ability to link any international strategies and initiatives into the development and implementation of domestic Aboriginal affairs policy.

Key Challenges for International Engagement by Aboriginal People

The biggest challenge that faces any Aboriginal person or organisation when engaging in international advocacy is the costs that are associated. The United Nations has a funding program to support the participation of Indigenous peoples in its various forums¹⁴, however, these are highly competitive and the amounts available are not always reflective of the true costs associated with participating in these events.

Another key challenge for Aboriginal Australians is associated with the operating systems within the United Nations, particularly with respect to the rules of procedure for meetings. Meetings of the Permanent Forum can be described as being very structured and quite rigid. Those participating in this work need to appreciate this situation and have the capacity to adapt to those operating systems.

It is easy to assume when participating in events such as the Permanent Forum that Indigenous peoples participate on the same level as governments. While the Permanent Forum gives considerable regard to the views presented by Indigenous peoples its capacity to influence the governments of nation states. Diplomatic language may soften the tone of what the Australian government says, but it does not in any way soften their position, which can be quite frustrating.

It is most difficult to effectively engage in the work of the Permanent Forum without a reasonable understanding of the issues that they are working on. Developing this understanding requires considerable amounts of reading. This in turn requires an ability to understand the language and style that is used in UN documentation.

Need for ongoing dialogue outside of when Permanent Forum sessions are being held is also critical and this is particularly important with respect to the Pacific Nations Indigenous Caucus, where it should not be assumed that just because we are fighting for similar or the same causes, this does not mean that there is a natural consensus between Indigenous groups from different parts of the world, let alone from the same region.

While it may be expensive the best way to help overcome the challenges of participating in the work of the Permanent Forum is to actually have the experience of being there. By directly engaging in the work of the Permanent Forum we give ourselves the capacity to both inform and be informed about developments.

Photo: Members of the NSWALC delegation at the 8th session of the Permanent Forum. Front row from L-R: Mr David Lee, Executive Officer, Mr Jason Field, Manager, Land and Policy Unit Councillor Patricia Laurie. Back Row from L-R: Aden Ridgeway (Consultant) Councillor Craig Cromelin.



The Value of and Options for International Engagement

The experience of the NSW Aboriginal Land Council suggests there are considerable benefits that can be gained through direct engagement with UN bodies such as the Permanent Forum. The development of leadership capacity within community based organisations is just one. It is important, however, to rationalise the benefits of international engagement based on its high costs. While it may not be an ideal situation advancements in technology does enable some useful levels of participation and has the advantage of minimising some of the cost burden.

Irrespective of whatever strategic approach is developed for international engagement the need for effective collaboration is vitally important. Given the participation of Aboriginal Australians in various UN forums over the last twenty years we now have a number of people within our ranks who qualify as experts in these areas. Such people have been important to the NSW Aboriginal Land Council with respect to supporting our engagement and are a great resource in their own right.

Academic and research organisations can also provide excellent collaborators for Aboriginal people and organisations. They often bring with them a good working knowledge of the UN system, thus helping to achieve greater efficiency and effectiveness. They also often have good access to necessary infrastructure and bring with them an additional range of networks. One of the advantage of such collaborations is in their capacity to help get across the detail on any given issues.

There is no reason to expect that the Australian government's response to criticism by UN and other international bodies will result in a dramatic shift in domestic policy. Nonetheless, the moral obligation placed on the government by virtue of their role within the UN and acceptance of the key human rights instruments is a burden that is difficult to disregard.

But international engagement is not simply about exploiting opportunities to have a dig at the Australian government. It has to also be about how Aboriginal people and organisations can most effectively utilise the opportunities and developments that arise at the international level. In this way international engagement can and must add value to the domestic capacity of any organisation and person to support the advancement of Aboriginal Australians.



Photo: Cr Craig Cromelin,
networking with brothers from
North America.

Recommendations

That the Council;

1. Consider and nominate Councillors to attend the 9th Session of the United Nations Permanent Forum on Indigenous Issues from the 19th – 30th April 2010 to be held in New York.
2. Endorse those Councillors nominated to participate in preparatory meetings for the United Nations Permanent Forum on Indigenous Issues in partnership with the Indigenous Peoples Organisation.
3. Endorse the development of a NSWALC International Engagement Strategy.
4. Accept this report as the final report from the 8th Session of the United Nations Permanent Forum on Indigenous Issues.

Attachments

- A. NSWALC delivered Interventions
- B. Interventions of the Australian Aboriginal Caucus
- C. Opening Statement by the President of the United Nations General Assembly
- D. Statement by the Special Rapportuer on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples
- E. Draft Report from the UNPFII 2009

Endnotes

- ¹ United Nations High Commissioner for Human Rights, Establishment of a Permanent Forum on Indigenous Issues, Economic and Social Council Resolution 2000/22, par 1. [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.RES.2000.22.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.RES.2000.22.En?Opendocument)
- ² See ref. 1, par 2.
- ³ United Nations Permanent Forum on Indigenous Issues, A Resource Guide for Participants
- ⁴ *ibid*
- ⁵ <http://www.un.org/esa/socdev/unpfii/en/iasg.html>
- ⁶ <http://www.un.org/esa/socdev/unpfii/en/secretariat.html>
- ⁷ E/C.19/2006/L.1*
- ⁸
- ⁹ Permanent Forum on Indigenous Issues, Fifth session, Analysis and state of implementation of recommendations of the Permanent Forum on Indigenous Issues at its first to third sessions, 31 March 2006 (E/C.19/2006/9)
- ¹⁰ *Op. cit.*, par. 44
- ¹¹ Draft Programme of Action for the Second International Decade of the World's Indigenous People, Report of the Secretary-General, General Assembly, Sixtieth session, 18 August 2005 (A/60/270)
- ¹² See ref. ,
- ¹³ <http://www.unhcr.ch/indigenous/history.htm>
- ¹⁴ See the United Nations Voluntary Fund for Indigenous Populations. <http://www.ohchr.org/english/about/funds/indigenous/>

INTERVENTIONS PRESENTED BY NSWALC DELEGATION AT THE EIGHTH SESSION OF THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

Agenda Item 3(a): Economic and Social Development

Presented by: Patricia Laurie - New South Wales Aboriginal Land Council (NSWALC)

The Indigenous Australian delegation acknowledges the previous work of the United Nations Permanent Forum on Indigenous Issues concerning economic and social development and supports the conclusion recognising UN agencies and intergovernmental body's responses to the recommendations of the Forum in this regard. Governments have not followed on from the leadership provided by these UN agencies. In particular, we consider that the Australian Government's approach is not consistent with the principles outlined by the Forum in supporting social and economic development for Indigenous peoples.

For example, past and current employment and enterprise development strategies fail to adequately engage Indigenous Australians to provide meaningful and lasting economic and social benefits for Indigenous Australians because those strategies are largely based around mainstream ideologies.

For Australians, generally high levels of employment ensure that people are able to enjoy a high standard of living. The assumption that mainstream employment strategies are transferrable to the Indigenous context is not only misleading, but it helps to compound the debilitation of Indigenous people and their right to access parity with the rest of Australia. Other areas of social and economic development, such as investment in and control of infrastructure and enterprise development including ecotourism and the utilisation and development of natural resources, are not readily supported by governments.

Government policy must recognise and incorporate the primary role that Indigenous peoples have to play as a core part of general business activity and overall national wealth creation. For example, through caring for country.

In spite of both extensive and considered advice from the Permanent Forum and other UN agencies, governments in Australia continue to disregard people driven approaches to addressing Indigenous disadvantage. While the ongoing push for practical outcomes - as is the approach of the Australian government - is seen as a means of resolving Indigenous disadvantage too often such policy approaches disrupts and undermines the exercise and enjoyment of human rights by Indigenous Australians.

International frameworks such as the Millennium Development Goals are not supported by Governments in the Australian context, however they offer guidance based on the principle of respecting human rights.

Government policy and programmes need to address among other things social justice and reconciliation; community development and empowerment; and culturally appropriate therapies.

Many nation states, including Australia, have a history of assimilationist policies and the control by government of all aspects of the lives of Indigenous peoples, for example through the forced removal of Indigenous children from their families.

While governments have acknowledged the harm caused historically by such policies they appear to not have learned from those experiences. Whilst we recognise that the safety and protection of children must be the main priority, government interventions in this regard must be in accordance with human rights principles.

While children are not being forcibly removed as they were previously, contemporary government policy retains the intention of assimilating Indigenous peoples.

Recommendations:

We therefore recommend that:

1. The UN Permanent Forum on Indigenous Issues encourage the Interagency Support Group on Indigenous Issues to consider developing an international research agenda that reviews the economic, social and health impacts of past and current assimilationist strategies and policies approaches.
2. The UN Permanent Forum on Indigenous Issues encourages States to adopt employment policies and economic and social development strategies are consistent with:
 - a. the Articles of the relevant ILO Conventions
 - b. the Declaration on the Rights of Indigenous Peoples
 - c. The findings and advice of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.
3. The UN Permanent Forum on Indigenous Issues encourage States to recognise the need for health investment in order for Indigenous peoples to contribute to the economic and social development of their own communities and more broadly to national economies.

Agenda Item 7: Future Work of the Permanent Forum including issues of the Economic and Social Council and emerging issues: climate change and land tenure.

Presented by: David Lee – New South Wales Aboriginal Land Council (NSWALC)

Thank you Madam Chair

This intervention is made on behalf of a number of Aboriginal and Torres Strait Islander organisations from Australia, present at this Forum.

Extractive industries are placing increasing pressure on Indigenous peoples to gain access to traditional lands. States should consult and cooperate in good faith with Indigenous peoples in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources. This is clearly stated under Article 32 of the UN Declaration on the Rights of Indigenous Peoples.

In Australia's north-west, this right has recently been put at risk with the State Government threatening to compulsorily acquire land if the Traditional Owners didn't reach an agreement on a suitable site for the development of an industrial hub. Traditional Owners have recently given conditional approval to the proposed site, however such a coercive approach by the State Government rides roughshod over the rights of Indigenous peoples and seriously contravenes the principles under the UN Declaration.

It is imperative that traditional peoples have full recognition of their cultural rights on land, that they participate fully and effectively in decision-making and consultation processes and have free prior and informed consent for development projects.

Madam Chair

Climate change has caught the attention of the international community and fora such as this are providing us with the opportunity to ensure Indigenous voices are heard and acknowledged. For Indigenous peoples across the globe, climate change raises unique challenges that will have a direct impact on our culture and traditional lands.

Indigenous peoples of Australia have strong connections to country and caring for that country comes with a high cultural responsibility. As such, our communities are deeply concerned about degradation to the natural environment whether it is from regional development, extractive industries, or climate change.

Like many small island states Indigenous peoples of Australia face the loss of their lands or territories due to submersion or inundation. Australia's Indigenous people can also expect more injuries, deaths, post-traumatic stress disorders, and infectious disease outbreaks as a result of more frequent or intense extreme events, including storms, cyclones, floods, droughts and bushfires.

Climate change will also have a significant impact on Australia's scarce water resources, which is compounded by the increasing development on traditional lands by extractive industries. The growing demand on our water supplies will have a severe impact on our traditions, culture and livelihoods and we need to maintain focus on the importance of preserving cultural traditions associated with water for future generations.

The Indigenous People's Global Summit on Climate Change, held recently in Alaska, resulted in the Anchorage Declaration, a document that calls for action on the current climate crisis.

It is well known that Indigenous people are and will be most affected by climate change, yet we have contributed least to its impacts. It is time for this to change and the most appropriate vehicle for change is the United Nations Declaration on the Rights of Indigenous Peoples. Our rights as set out in the Declaration must be upheld in all decision-making and activities related to climate change. Indigenous peoples must be part of the debate and we must take a greater role in the solutions.

As the Anchorage Declaration states, when specific programs and projects affect our lands, territories, environment and natural resources, our right to free, prior and informed consent, including the right to say 'no' must be recognised and respected.

Madam Chair, it is critical that States such as Australia adopt aggressive strategies to minimise the effects of climate change. Under the right to self-determination and the principles of free, prior and informed consent, it is essential that indigenous peoples are centrally involved in decision making to ensure the sustainable management of our land and the future for our children.

Recommendations:

We recommend that:

1. this forum encourage all States to implement the UN Declaration on the Rights of Indigenous Peoples and to promote and protect the rights of Indigenous peoples with regard to extractive industries.
2. this forum add its support to the Anchorage Declaration so that a strong Indigenous voice is heard at the 15th meeting of the parties to the Kyoto Protocol in Copenhagen in 2009.

Thank you

Agenda Item 7: Future Work of the Permanent Forum including issues of the Economic and Social Council and emerging issues: land tenure.

Presented by: Craig Cromelin – statement on behalf of the New South Wales Aboriginal Land Council (NSWALC)

Thank you Madam Chair

We begin this statement with an offering of the New South Wales Aboriginal Land Council's support for the intent of the joint statement delivered by the representative of the Australian government last Thursday. It is our sincere hope that our statement today can also provide an "important step in building trust and moving forward to a new future".

Notwithstanding our support the New South Wales Aboriginal Land Council would like to use this opportunity to raise our concern regarding the Australian government's proposal to link the provision of housing services with existing land tenure arrangements. We do so mindful that this is one issue on which we may not agree, but knowing that we can engage in a discussion in an "open and respectful way".

The statutory recognition of land rights in the State of New South Wales is one of the most positive developments in the colonial history of Australia. As the preamble to the Aboriginal Land Rights Act states: "It is fitting to acknowledge the importance which land has for Aborigines and the need of Aborigines for land". The very same preamble also acknowledges that the land rights system was established in New South Wales as a means of compensating Aboriginal people for the dispossession of our lands.

While land rights is a critical element in providing social and economic development for Aboriginal people in New South Wales such objectives cannot arise at the expense of surrendering our hard fought rights to land. Put simply, the New South Wales Aboriginal Land Council cannot and will not accept a need to alter the land tenure arrangements under our system in exchange for the provision of housing services to our people, which is a fundamental human right.

The current proposal put forward by the Australian government is that in New South Wales it will provide funding to support Aboriginal housing over 5 years in exchange for the leasing of our lands back to the Australian government for 40 years. It should be noted that this arrangement will not apply to all Aboriginal people and communities across New South Wales. It will only apply to people and communities in remote areas, thus requiring that Aboriginal people and communities in urban and rural areas only have access to the services provided through the mainstream social housing system.

Such a proposal is not only an affront to the members of the land rights system, it contradicts the rationale for the Aboriginal Housing Act, which is also currently in operation in New South Wales.

It should also be noted that should the Australian government implement this proposal it will be in conflict with articles 37 and 38 of the Declaration on the Rights of Indigenous Peoples. We therefore call on the Australian government, "in the spirit of re-setting the relationship between Indigenous and non-Indigenous Australians and building trust", to affirm their commitment to these articles of the Declaration. Alternatively, the Australian government must, in the same spirit and as an act of good faith, clearly outline all of their qualifications with respect to the Declaration.

Mindful that this statement will be considered to be too negative, we remind those who support policies of the Australian government that the New South Wales Aboriginal Land Council has made a substantial and practical contribution to improving the living conditions of our people. In this regard we highlight the \$200 million partnership agreement between our organisation and the New South

Wales government to improve the provision of water and sewerage services to more than 60 discrete Aboriginal communities across the State.

This partnership, established in April 2008, will see the New South Wales Aboriginal Land Council spend \$100 million of our own funds over a 20 year period.

Madam Chairperson, this partnership agreement is one of a number of constructive arrangements through which the New South Wales Aboriginal Land Council is seeking to be engaged with governments of all persuasion in our State. We are particularly concerned about the need to work more closely with local and shire governments so that we can more effectively take up the challenge of providing services to all of their constituents irrespective of the land tenure arrangements. We consider that local and shire governments in New South Wales are often quick to claim unpaid rates, but tend to move a bit slower in ensuring that discrete Aboriginal communities receive the services to which they are entitled and pay for.

In conclusion, we reaffirm our position that housing and land tenure are separate issues. To combine these issues in the name of Aboriginal economic and social development is not only overtly aggressive, it is counter-productive and will not provide governments with the assurances they are seeking with respect to tenancy and asset management.

We call on all levels of government to move forward with us by helping to build the capacity required within Aboriginal organizations to more effectively perform their asset and tenancy management responsibilities. Developing strategies and programs to support Aboriginal organisations with the management of their housing functions will provide much more substantial outcomes than simply acquiring our land through a coercive policy framework.

Madam Chairperson, it is our recommendation that the Permanent Forum adopts land tenure and its association with economic and social development for Indigenous peoples as the theme for its ninth session in 2010.

Agenda Item 7: Future Work of the Permanent Forum including issues of the Economic and Social Council and emerging issues: land tenure.

Presented by: Craig Cromelin – statement on behalf of the New South Wales Aboriginal Land Council (NSWALC)

Thank you Madam Chairperson,

The Aboriginal and Torres Strait Islander Organisations of Australia would like to acknowledge the work of the Permanent Forum for your continued expertise and leadership in promoting awareness about the human rights situation facing Indigenous peoples throughout the world. Through the adoption of the Declaration on the Rights of Indigenous peoples by the General Assembly we now have an international framework that directly relates to the overall advancement of our rights, interests and aspirations.

The Declaration adds substantive value to the intellectual infrastructure required to promote awareness and advance the exercise and enjoyment of human rights by Indigenous peoples and should be viewed as crucial development in the history of the United Nations.

The Australia Government's signing onto the Declaration marks an important transformation in the attitudes that have existed regarding the recognition of Indigenous Australians collective rights. The Australian Government's support of the Declaration is a practical contribution to our domestic reconciliation process.

While signing onto the Declaration is a positive initiative the Aboriginal and Torres Strait Islander Organisations of Australia are concerned about the ambiguous nature of the Australian Government's support. Of particular concern to us are the government's qualifications on the articles concerning the rights to self-determination; free, prior and informed consent; and natural resources.

We respectfully accept the need to interpret the operational articles of the Declaration in accordance with article 46. In doing so, however, we cannot tolerate the denial of our rights particularly where internationally accepted and domestically adopted standards are set aside in the name of our advancement.

The recent establishment of a national consultative process for the potential development of a charter of human rights in Australia is another positive initiative of the Australian Government. It is the position of the Aboriginal and Torres Strait Islander Peoples Organisations of Australia that a statutory charter of rights needs to be established and must annex all international human rights instruments that have been signed onto including the Declaration on the Rights of Indigenous Peoples. While there is no certainty that a Charter of Rights will ever be adopted in Australia the Government should be applauded creating a process through which its citizens can engage in a dialogue on this issue.

The critical challenge now facing Indigenous peoples and nation states is the setting of benchmarks which can be used as a practical measurement on the extent of the enjoyment of the rights contained in the Declaration. This requires a commitment by and the collaboration of all actors in this debate, facilitated by the ongoing leadership that is being provided by the Permanent Forum.

Such benchmarks should not be seen by Governments simply as a means through which they can be criticised for not meeting their obligations. Benchmarks can and should be seen as adding value to development and implementation of future government policy.

An important first step in the implementation of the Declaration at both the international and domestic level will require consideration of how to achieve best practice in the way UN Agencies and Government as a modern day euphemism for consultation with Indigenous peoples it is difficult to imagine that our respective relationships will improve.

Indigenous Peoples claim to having a collective right to self-determination is not simply about taking a belligerent stand against Governments for the invasion and colonisation of our land and territories. It is based on our understanding that we are best placed to make the decisions that affect our lives and the future of our peoples.

This also presents a critical challenge for Indigenous peoples. If we maintain that we possess the right to collective self-determination, then we should exercise it to the extent that we are able. If we are going to simply ask for State recognition of the right to self-determination we are in essence undermining the exercise and enjoyment of the very right that we claim to have. While we must take the initiative we still require guidance from bodies such as the Permanent Forum on how the right to self-determination can be exercised at the domestic level.

It is worth noting the words of the Permanent Forum's Rapporteur many years ago, that self determination is "the pillar upon which all other rights rest."

A critical element of the Declaration that also requires further elaboration concerns Indigenous peoples right to development. All too often Indigenous peoples suffer ongoing and further violations of our human rights in the name of development, either for ourselves or the citizens of the State generally.

Frameworks such as the Millennium Development Goals have limited application for some Indigenous peoples across the globe. In spite of this situation such frameworks must be evaluated for their capacity to become better aligned with the standards established by the Declaration and other relevant instruments such ILO Convention 169.

Indigenous peoples' engagement with modern technology does not mean that we have been or desire to be assimilated. Equally, recognition of our rights as Indigenous peoples must not be assessed on the basis of remaining our static in a globalising world. We cannot forgo the traditions and customs that have been handed to us by our ancestors, but nor can we be quarantined from the opportunities that arise through the development of new technologies and more efficient practices.

Madam Chairperson, the Aboriginal and Torres Strait Islander Organisations of Australia recommend that:

1. The Permanent Forum, with the support of the Inter-Agency Support Group undertake an international consultative process with Indigenous peoples on the proposed concept of 'DRIPloMACy'. That is, to consider ways in which instruments such as the Declaration can be used to develop more effective models of 'engagement' with Indigenous peoples.
2. The Permanent Forum recommends that the Human Rights Council, through its Expert Mechanism undertakes a study to elaborate on how article 3 of the Declaration can be implemented in accordance with article 46.
3. The Permanent Forum engages with the United Nations Development Programme to elaborate on how Indigenous peoples can exercise our right under article 23, while not limiting the rights contained in our articles of the Declaration.

INDIGENOUS PEOPLES' ORGANISATION OF AUSTRALIA HUMAN RIGHTS NETWORK INTERVENTIONS AND REPORTS SUBMITTED TO THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES EIGHTH SESSION, 18 – 29 MAY 2009 NEW YORK

Agenda Item 3(a): Economic and Social Development

Presented by: Patricia Laurie - New South Wales Aboriginal Land Council (NSWALC)

The Indigenous Australian delegation acknowledges the previous work of the United Nations Permanent Forum on Indigenous Issues concerning economic and social development and supports the conclusion recognising UN agencies and intergovernmental body's responses to the recommendations of the Forum in this regard. Governments have not followed on from the leadership provided by these UN agencies. In particular, we consider that the Australian Government's approach is not consistent with the principles outlined by the Forum in supporting social and economic development for Indigenous peoples.

For example, past and current employment and enterprise development strategies fail to adequately engage Indigenous Australians to provide meaningful and lasting economic and social benefits for Indigenous Australians because those strategies are largely based around mainstream ideologies.

For Australians, generally high levels of employment ensure that people are able to enjoy a high standard of living. The assumption that mainstream employment strategies are transferrable to the Indigenous context is not only misleading, but it helps to compound the debilitation of Indigenous people and their right to access parity with the rest of Australia. Other areas of social and economic development, such as investment in and control of infrastructure and enterprise development including ecotourism and the utilisation and development of natural resources, are not readily supported by governments.

Government policy must recognise and incorporate the primary role that Indigenous peoples have to play as a core part of general business activity and overall national wealth creation. For example, through caring for country.

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Government policy and programmes need to address among other things social justice and reconciliation; community development and empowerment; and culturally appropriate therapies.

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Recommendations:

We therefore recommend that:

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 - b. the Declaration on the Rights of Indigenous Peoples
 - c. The findings and advice of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.
3. The UN Permanent Forum on Indigenous Issues encourage States to recognise the need for health investment in order for Indigenous peoples to contribute to the economic and social development of their own communities and more broadly to national economies.

Agenda Item 3(a): Economic and Social Development

Presented by: Azure Peacock - Indigenous Peoples Organisation Network Youth Delegation

The Australian Youth delegation would like to take this opportunity to acknowledge the Traditional Custodians on the land on which we meet today. As well as pay our respects to our elders both present and past.

The Australian Youth delegation acknowledges the Australian Government's recent decision to fully support the Declaration of the Rights of Indigenous People. We believe that this shows the Government's continued support in closing the Gap towards Australian Indigenous issues.

In 1967 96% of Australian citizens voted 'Yes' in The Referendum. This historic win gave Indigenous people the right to be counted as citizens of our own country, which meant Indigenous People have the ability to vote and to have Indigenous policy made by the Commonwealth government.

However four decades later and countless promises by past Governments, it appears the solution for the advancement of Indigenous Affairs in Australia is through reactive imposed responses such as the Northern Territory intervention, alcohol management plans and welfare reform. Indigenous Youth today are faced with inheriting the ongoing fight for justice as did our mothers and fathers. This is the legacy left to us by those who fought hard for the basic dignity of just being recognised as Citizens of our Country. While the Referendum remains one of the greatest accomplishments of Australian Indigenous history, and the Australian government's historic Apology to our Stolen Generations has finally been given, the fight for justice does not end there, as our path to equality still has many bumps in the road. We the Indigenous Youth of Australia pledge to keep alive the visions of our ancestors while incorporating the dreams of young Indigenous people of our country.

Although the Australian Youth delegation recognises our current Governments' 10 point plan in closing the gap on Indigenous disadvantage, it is hard to remain optimistic considering previous governments' failed attempts at resolving long term problems with short term solutions. Extensive resources have been exhausted over many years on consultation, advisory bodies and reports outlining the social and economic disadvantage across all social indicators and areas of inequality. Yet the question remains "When does consultation end and real affirmative action with real outcomes begin?" We personally cannot afford to wait another 40 years to witness any real change. Based on the statistics of Indigenous life expectancy, we will unfortunately not be around.

Here, in 2009, the Indigenous Youth of Australia will no longer accept living in third world conditions in a country as wealthy and developed as Australia. Nor will we accept the poor quality of education being delivered in Indigenous communities, whereby, Indigenous children continue to achieve well below their non-Indigenous peers in literacy and numeracy. An alarmingly high number of Indigenous students entering secondary education only have the ability to read at a much lower primary school. It is then no surprise that the secondary school retention rate for Indigenous students is 30% less than non-Indigenous students.

In 2009 the Indigenous youth of Australia, will not accept the life expectancy for Indigenous men and women to be 17 years less than non-Indigenous Australians. Cases of cancer, diabetes and renal failure being reported in our Indigenous communities are increasing each year. Our babies are more likely to suffer from malnutrition and low birth weight, and infant death mortality is still twice as high to non-Indigenous children.

In 2009 the Indigenous Youth of Australia, will not accept the high unemployment rate and welfare dependency in our communities. At present, 16 per cent of our Indigenous people are listed as unemployed in Australia, although, this does not include the high number of Indigenous people registered on Government funded programs such as the Community Development Employment Program.

Essentially, Indigenous people are still classified as unemployed, however, for the past twenty years, Community Development Employment Program participants have worked for their welfare payment in employment areas which are supposedly to assist learning and developing of new skills.

The Community Development Employment Program has been viewed as discriminatory because Indigenous people living on communities are obligated to work in menial positions at below minimal wages, and although they will work a normal working day no benefits such as sick or holiday pay are given nor the right to superannuation.

This is a program that does not empower Indigenous people in employment, but merely continues the policies of past Government to exploit Indigenous Australians and benefit from cheap labor- Furthermore, Community Development Employment Program is counted as employment, this enables the Government to manipulate the data – increasing the actual statistics on Indigenous people engaged in real employment

In 2009 the Indigenous Youth of Australia, will not except the higher number of Indigenous youth that are over-represented in the juvenile justice system. In the state of New South Wales alone, approximately 57% of young people in Juvenile Justice system are Indigenous. In some rural and regional centre's the Indigenous youth statistic borders 75% and over. The factors relating to this over-representation are complex and cross many social, economic and government policy and service delivery areas.

As Indigenous peoples of Australia we make up around 2.5% of the total population of 21 million. Of that 2.5%, around 1% of that population is said to be under the age of 35. The median age according to the Human Rights Commission of Indigenous people in Australia is 20 years old. We have a very young population and the incarceration rates of our young people is truly a predicament that our nation needs to address and take in further consideration of.

Recommendations

We the Australian Youth Delegation submit the following recommendations:

1. We recommend that the UN Permanent Forum on Indigenous Issues ensure that all States, and non Government organisations are held accountable for the insufficient level of service delivery, including by all levels of government within a State, to Indigenous communities, to ensure that specific, relevant, evidence based action is taken to eliminate areas of long-standing disadvantage including funding, transparency, and the quality of service.
2. As stated in Article 28 of the Convention of the Rights of the Child, we recommend that the UN Permanent Forum on Indigenous Issues encourage States to ensure access to the appropriate curriculum level education in Indigenous schools within remote communities so that Education levels are on par with urban areas, and that there is an intensive program of action developed to increase the literacy and numeracy of Indigenous children and youth.

3. We further recommend that the UN Permanent Forum on Indigenous Issues encourage States to develop programs that are in line with Article 30 of the Convention of the Rights of the Child and Article 28 of the International Labor Organization, to ensure that Indigenous/cultural studies and bi-lingual programs are included and implemented in school curriculum that includes an accurate portrayal of Indigenous history. Indigenous studies should be a mandatory component in all state curriculum to develop respect and understanding of Indigenous culture at an early age and to ensure that Indigenous cultures and languages are maintained, continued valued and protected.
4. In line with Article 24 of the Declaration of the Rights of Indigenous Peoples, (Indigenous people should have access to all social and health services without discrimination.) We recommend that the UN Permanent Forum on Indigenous Issues urge all States to provide adequate health centers to communities which will focus on a holistic approach to culture, health, and well being. Adequate funding to health services would include funding that is focused on preventative measures, as well as primary health care, and education programs that inform Indigenous youth about the importance of healthy lifestyle choices.
5. We finally recommend that UN Permanent Forum on Indigenous Issues encourage States to provide further adequate funding and resource allocation to the appropriate institutions for further study and implementation of programs suitable for Indigenous young people to break the cycle of reoffending.

Agenda Item 3(b): Follow Up to the Recommendations of the Permanent Forum – Indigenous Women

Presented by: Dot Henry – Western Australia

Madam Chairperson, Indigenous women across the globe continue to suffer multiple violations affecting their physical, emotional, social well being and enjoyment of basic human rights. The nature and extent of these violations is often compounded by the discrimination suffered due to the intersection of ethnicity/race and gender.

Australian Indigenous women's denial of justice is mirrored by the history of injustice experienced by Indigenous populations worldwide. In most, if not all countries that have been colonised this social disadvantage began as a result of the racism that was brought by the colonising nation. This racism continues today in many States and the worst offender of racism is Government itself.

Indigenous women have been denied an existence comparable to that enjoyed by their non Indigenous counterparts, especially in relation to the disproportionate rates to which we suffer:

- violence
- poverty
- entering the criminal justice system
- poor health and
- lack of political standing/participation in the broader society

It is acknowledged that in many States three fundamental services are denied to Indigenous women:

1. *Social and Family Violence Prevention Legal Services - these services may have differing names in various countries throughout the world. In Australia, they are generally provided to assist Indigenous women escape family violence and access redress through the legal system by means of a discreet Indigenous women's legal service. Services must be offered in a culturally inclusive and accessible manner focusing on:*
 - *Intervention in the cycle of social and family violence and sexual assault, promoting changes in behaviour of individuals and the community;*
 - *Lowering or eliminating the prevalence of social and family violence in Indigenous communities, and*
 - *Being accessible and culturally appropriate and victim sensitive to Indigenous women.*

Whilst any approach by the UNPFII must be based on the human rights principle of non-discrimination, it must be based upon recognition that formal protection of those significantly disadvantaged such as Indigenous women should have approaches that ensure specifically focused access to services and justice.

2. Legal Aid - accessing legal aid is a basic human right however in many States this is denied to Indigenous women because they have no collective voice to express their concerns about disadvantage. Funding for Indigenous legal aid is well below mainstream legal aid or even non-existent in many States. This has resulted in appalling incarceration rates for Indigenous peoples as a percentage of the main non-Indigenous population.

In Australia Indigenous legal aid has remained static since 1996 whilst non-Indigenous legal aid has increased over 120% for the same period. Indigenous service providers world wide are disadvantaged like those in Australia. Indigenous women's incarceration is significantly disproportionate to their percentage of the general population.

Indigenous women find non-Indigenous service providers including legal aid, unwelcoming and Governments have a responsibility to ensure these Indigenous service providers are resourced properly in compliance with the UN Declaration on Human Rights, CERD, CEDAW and now the Declaration on the Rights of Indigenous Peoples.

- 3. Aid to Members of Indigenous peoples forcibly removed from families and communities due to racial or genocide policies of Government - in many States genocide policies were introduced to breed out the Indigenous populations. States did this through deliberate policies of removal of children from their families and communities and placed these children in white foster care or adoption agencies. The removal of these children by Government Policy denied basic human rights to Indigenous peoples and in particular our women who were abused by foster parents and adoption agencies. They were placed into a life of servitude and a denial of basic human dignity and robbed of their Indigenous heritage and culture. States have a fiduciary duty of care of these children of which 50% were girl child. Numerous courts throughout the world have found such policies and practices of removal of Indigenous children a breach of basic human rights and should therefore compensate these Indigenous women appropriately. Many Nations, and sadly including Australia, continue to deny access to justice for these Indigenous peoples by refusing to fund access to justice legal cases, or to pay appropriate compensation in contravention of the Covenant on Civil and Political Rights Article 2(3)(1).*

The above three examples of denying access to justice for Indigenous women denies them of their basic rights to access to services and suitable compensation for the harm caused by forced removal.

Recommendations:

We the Australian Caucus members recommend that this UN Permanent Forum on Indigenous Issues support the following:

- 1. All States must cease policies and practices that deny Indigenous women access to services including social and family violence prevention, legal aid and compensation for past wrongs committed by the State.*
- 2. All States must fund Indigenous specific services to assist Indigenous women to access social and family violence prevention legal services, legal aid and compensation schemes for those Indigenous women forcibly removed from family and community.*
- 3. All States should implement suitable compensation schemes for Indigenous women forcibly removed from family and community. These schemes should be developed in partnership with Indigenous organisations such as Indigenous Women's advocacy groups.*

Agenda Item 3(b): Follow Up to the Recommendations of the Permanent Forum – Indigenous Women

Presented by: Melissa Saunders - Indigenous Peoples Organisation Network Youth Delegation

Thank you Madam Chair

The Australian Indigenous Youth delegation wish to recognise and acknowledge the traditional custodians of the land on which we meet and are honoured to pay our respects to the Elders both past and present.

The Australian Indigenous Youth delegation acknowledges and endorses the Australian Government's recent decision to fully support the Declaration of the Rights of Indigenous Peoples. This demonstrates respect for our people and we now encourage the Government to continue to go forward with the recognition of Indigenous peoples' rights by taking direct measures to give effect to this declaration.

Australia still has a long way to go before our Indigenous people can enjoy all their rights as first peoples of the land and we urge Government and all states to now walk the talk by taking on their full responsibilities, consulting with Indigenous people and together taking action to enable true quality of life on all levels for its first nations peoples.

The Indigenous Youth of Australia that are 25 year and under make up 60% of the Indigenous population and of that 50% are under the age of 18. Indigenous youth carry with them the burdens of colonisation, past and present discriminatory policies that have led to the dispossession of culture, traditional lands, language and the forced removal of children. This contributes to the disruption of Indigenous women's connection to their family, their country and their culture.

Like all Indigenous nations the Australian Indigenous youth play an integral role in the continuation of cultural knowledge, language and the passing on of these to future generations. Furthermore, the very foundations on which Indigenous communities are built rely on the strength of Indigenous women.

The challenge for young Indigenous women is the demands placed on them to maintain their identity in an Indigenous and non-Indigenous society. The non-Indigenous society continue to adopt a somewhat assimilationist attitude involving ideas that often discourage young Indigenous women from understanding and living out their Indigenous identity. This internal struggle to preserve our identity in a cross-cultural world exacerbates other external pressures that contribute to women's quality of life including health, maternal well-being, education, employment, housing, safety and social justice. The inadequate provisions of essential services to young Indigenous women mean that we do not have the social and economic freedom that the non-Indigenous population enjoy.

Madam chair, there are many issues that continue to affect young Indigenous women, in particular the relationship between Indigenous women and the juvenile justice system needs to be highlighted. The incarceration rates of Indigenous women under the age of 17 years is currently 13 times higher than the rate for non-Indigenous women. There are many consequences to incarceration, such as mental health issues, loss of identity and culture and increased numbers of children entering into foster care.

Indigenous women are more likely to have children at a young age, be sole parents, have reduced employment opportunities, less income and fewer educational qualifications.

Attachment B

We continue to have increased rates of all Sexually Transmitted Infections and blood borne viruses particularly hepatitis B, C and HIV/AIDS. This is due to lack of access to culturally appropriate health services, lack of access to safe sex equipment and incompleteness of education making it difficult to access sexual health information and family planning options, which also impacts morbidity and fertility.

We must have the right and respect to express healthy sexual identity in our culture as Indigenous women.

Government and non-government organisations need to implement strategies to address social stigmas relating to Indigenous women's identity and promote positive contribution to society. It is imperative that our young Indigenous women value themselves, have the ability to make healthy lifestyle choices and have strong, positive role models.

The empowerment of young leaders will ensure Indigenous people maintain a strong identity and have an ongoing voice in decisions that impact them.

Recommendations

We the Australian youth delegation, make the following recommendations:

1. The World Health Organisation, UNAIDS, the Special Rapporteur on the Right to Health and all States to promote collection of culturally appropriate comprehensive and identified data and the provision of desegregated data capturing the issues effecting young Indigenous peoples relating to sexual health, healthy life choices and self perception.
2. The United Nations Permanent Forum on Indigenous Issues encourage all States to appropriately resource Young Indigenous women's health initiatives to create a holistic approach with a focus on mental and emotional well being, sexual and reproductive right.
3. We urge all States to implement their duties under Article 18 of the Declaration of the Rights of Indigenous Peoples to enable youth to participate in decision making in matters that effect their rights through the establishment of national Indigenous advocacy bodies that represent the voices and interests of Indigenous women.

Agenda Item 3(c): Second International Decade of the World's Indigenous People**Presented by: Roger Thomas - National Indigenous Higher Education Network (NIHEN)**

Thank you Madam Chair.

This intervention made on behalf of a number of Aboriginal and Torres Strait Islander organisations from Australia, relates to the 2nd International Decade.

We begin, by noting that the midterm assessment of the Decade in 2010 will provide a useful benchmark to assess the overall as well as specific successes and shortcomings of the decade to date (E/C.19/2009/9, [24]).

We, note that the Declaration on the Rights of Indigenous Peoples' has reinvigorated the Decade and reharnessed the United Nation's gaze upon the rights of Indigenous peoples'. We applaud the Permanent Forum for their adoption of the Declaration as its legal framework and its work in promoting the Declaration throughout the United Nations.

We applaud the Australian Government on their recent statement of support of the Declaration. We urge the Government to adopt the Declaration as its framework and implement it as a guideline to conduct relations with Indigenous peoples of Australia. We also urge the Government and the Forum to take this opportunity to encourage those States that are yet to endorse the Declaration to do so.

The Declaration provides a focal point to assess the Australian Government's 'report card' on the Programme of Action for the Decade as we near the midterm assessment. Recent steps, in addition to the very significant support of the Declaration have evidenced that Australia is actively pursuing the objectives of the Decade. Developments of note include:

- the Statement of Intent in the Close the Gap Campaign which has committed to a long-term, measurable and targeted health campaign for Indigenous Australians. Importantly this is consistent with the Millennium Development Goals (MDG) 4-6. The Statement of Intent also, commendably commits to seeking the full participation of Indigenous peoples in addressing health needs
- Close the Gap health commitments – The governments of Australia have committed 1.6 Billion to a National Partnership to Close the Gap for Indigenous Health Outcomes in addition to substantial commitments in relation to child and maternal health and service delivery. This commitment has included the adoption of six measurable targets for closing the gap between Indigenous and non-Indigenous Australians (COAG *Communiqué 29 November 2008*; for further details see Social Justice Report 2008 from page 223).
- the steps taken to advance the establishment of a new National Indigenous Representative Body. The Body itself is important to realise the participation of Indigenous peoples in the decisions that affect their lives. This is consistent with the Declaration (particularly Articles 18-24) and the second objective of the 2nd Decade. Importantly, the preparatory process in establishing this body has been conducted with comprehensive consultation and control by Indigenous peoples.

For these achievements the Australian Government is to be congratulated.

Notwithstanding these advancements we still have a number of concerns. The continued suspension of the Racial Discrimination Act in the Northern Territory as a consequence of the Emergency Response is unacceptable. The Australian Government has committed to introducing legislation to rectify this situation during the Spring session of Parliament although there is no guarantee such legislation will be passed. Similarly, our Constitution does not prevent discriminatory action occurring in the future. Every day the Act is suspended further violations of

Indigenous peoples' rights are occurring. This need to restore the Act was highlighted as a major concern by the Review of the Emergency Response, as was the absence of and subsequent need for consultation regarding such policies. The suspension of the Act is in contradiction to the positive developments occurring in Australia. We note that the CERD in its early- warning procedure (Letter from Chairperson of CERD to Permanent Mission of Australia to UN, 13 March 2009), the Human Rights Committee (CCPR/C/AUS/CO/5, [14]) have all expressed concerns about the Emergency Response in its recent consideration of Australia.

We further reiterate our intervention from the 7th session, urging the Forum to call on States to adopt a national strategy or plan of action for the 2nd Decade. The implementation of these objectives and the MDG's into domestic legislation or policy is strongly recommended.

Finally, we note that the impact on the 2nd Decade's Trust Fund is being undermined by limited resources (E/C.19/2009/9, [19], E/C.19/2008/13, [104]). We understand the global financial crisis is impacting on budgets across the globe. However we believe that the most vulnerable people will suffer most from this crisis. We therefore, call upon the Forum to remind States and UN Agencies of the important work achieved by the fund and urge them to contribute to it.

Recommendations

We therefore recommend that:

1. The Forum call on States to implement the Declaration on the Rights of Indigenous Peoples into domestic legalisation as the guideline or framework to conduct relations with its Indigenous peoples. It further urges States that have not adopted the Declaration to do so.
2. The Forum urge the Australian Government to reinstate the Racial Discrimination Act and make the Emergency Response compliant with human rights standards.
3. The Forum call on States to implement a national strategy to address the objectives of the 2nd Decade and the MDG's.
4. The Forum reiterates its call on States and UN Agencies to contribute to the 2nd Decade Trust Fund.

Agenda Item 4: Human Rights – (a) Implementation of the United Nations Declaration on the Rights of Indigenous Peoples, in particular article 42; and (b) the dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs

Presented by: Craig Cromelin – New South Wales Aboriginal Land Council (NSWALC)

Thank you Madam Chairperson,

The Aboriginal and Torres Strait Islander Organisations of Australia would like to acknowledge the work of the Permanent Forum for your continued expertise and leadership in promoting awareness about the human rights situation facing Indigenous peoples throughout the world. Through the adoption of the Declaration on the Rights of Indigenous peoples by the General Assembly we now have an international framework that directly relates to the overall advancement of our rights, interests and aspirations.

The Declaration adds substantive value to the intellectual infrastructure required to promote awareness and advance the exercise and enjoyment of human rights by Indigenous peoples and should be viewed as crucial development in the history of the United Nations.

The Australia Government's signing onto the Declaration marks an important transformation in the attitudes that have existed regarding the recognition of Indigenous Australians collective rights. The Australian Government's support of the Declaration is a practical contribution to our domestic reconciliation process.

While signing onto the Declaration is a positive initiative the Aboriginal and Torres Strait Islander Organisations of Australia are concerned about the ambiguous nature of the Australian Government's support. Of particular concern to us are the government's qualifications on the articles concerning the rights to self-determination; free, prior and informed consent; and natural resources.

We respectfully accept the need to interpret the operational articles of the Declaration in accordance with article 46. In doing so, however, we cannot tolerate the denial of our rights particularly where internationally accepted and domestically adopted standards are set aside in the name of our advancement.

The recent establishment of a national consultative process for the potential development of a charter of human rights in Australia is another positive initiative of the Australian Government. It is the position of the Aboriginal and Torres Strait Islander Peoples Organisations of Australia that a statutory charter of rights needs to be established and must annex all international human rights instruments that have been signed onto including the Declaration on the Rights of Indigenous Peoples. While there is no certainty that a Charter of Rights will ever be adopted in Australia the Government should be applauded creating a process through which its citizens can engage in a dialogue on this issue.

The critical challenge now facing Indigenous peoples and nation states is the setting of benchmarks which can be used as a practical measurement on the extent of the enjoyment of the rights contained in the Declaration. This requires a commitment by and the collaboration of all actors in this debate, facilitated by the ongoing leadership that is being provided by the Permanent Forum.

Such benchmarks should not be seen by Governments simply as a means through which they can be criticised for not meeting their obligations. Benchmarks can and should be seen as adding value to development and implementation of future government policy.

An important first step in the implementation of the Declaration at both the international and domestic level will require consideration of how to achieve best practice in the way UN Agencies and Government as a modern day euphemism for consultation with Indigenous peoples it is difficult to imagine that our respective relationships will improve.

Indigenous Peoples claim to having a collective right to self-determination is not simply about taking a belligerent stand against Governments for the invasion and colonisation of our land and territories. It is based on our understanding that we are best placed to make the decisions that affect our lives and the future of our peoples.

This also presents a critical challenge for Indigenous peoples. If we maintain that we possess the right to collective self-determination, then we should exercise it to the extent that we are able. If we are going to simply ask for State recognition of the right to self-determination we are in essence undermining the exercise and enjoyment of the very right that we claim to have. While we must take the initiative we still require guidance from bodies such as the Permanent Forum on how the right to self-determination can be exercised at the domestic level.

It is worth noting the words of the Permanent Forum's Rapporteur many years ago, that self determination is "the pillar upon which all other rights rest."

A critical element of the Declaration that also requires further elaboration concerns Indigenous peoples right to development. All too often Indigenous peoples suffer ongoing and further violations of our human rights in the name of development, either for ourselves or the citizens of the State generally.

Frameworks such as the Millennium Development Goals have limited application for some Indigenous peoples across the globe. In spite of this situation such frameworks must be evaluated for their capacity to become better aligned with the standards established by the Declaration and other relevant instruments such ILO Convention 169.

Indigenous peoples' engagement with modern technology does not mean that we have been or desire to be assimilated. Equally, recognition of our rights as Indigenous peoples must not be assessed on the basis of remaining our static in a globalising world. We cannot forgo the traditions and customs that have been handed to us by our ancestors, but nor can we be quarantined from the opportunities that arise through the development of new technologies and more efficient practices.

Madam Chairperson, the Aboriginal and Torres Strait Islander Organisations of Australia recommend that:

1. The Permanent Forum, with the support of the Inter-Agency Support Group undertake an international consultative process with Indigenous peoples on the proposed concept of 'DRIPLOMACY'. That is, to consider ways in which instruments such as the Declaration can be used to develop more effective models of 'engagement' with Indigenous peoples.
2. The Permanent Forum recommends that the Human Rights Council, through its Expert Mechanism undertakes a study to elaborate on how article 3 of the Declaration can be implemented in accordance with article 46.
3. The Permanent Forum engages with the United Nations Development Programme to elaborate on how Indigenous peoples can exercise our right under article 23, while not limiting the rights contained in our articles of the Declaration.

Agenda Item 6: Comprehensive dialogue with six United Nations agencies and funds

Presented by: Les Malezer – Foundation for Aboriginal and Islander Research Action (FAIRA)

1. Office of the United Nations High Commissioner for Human Rights (OHCHR):

We would like to begin by congratulating the Office of the High Commissioner for Human Rights for the long-term support given to the Indigenous Peoples of the world.

The Office has to the best of its capacity assisted the development of Indigenous mechanisms and Indigenous representation in the UN system. It is now imperative that the office give attention to the priority to mainstreaming and embedding Indigenous interests in the Office structure and staffing.

- **Can Indigenous persons be appointed to senior positions specifically relating to Indigenous Peoples?**
- **Shouldn't Indigenous persons also hold a cross-section of the positions generally available in the OHCHR, with the stipulation that such appointments be outside the regional quotas applying to UN positions?**
- **Why is it not possible to have an autonomous structure of an Indigenous Peoples Unit in OHCHR, rather than the current Indigenous Peoples and Minorities Unit?**

The Human Rights Committee apparently refuses to consider the right of Indigenous Peoples to self-determination under Article 1 of the Covenant.

Also the Committee on Economic, Social and Cultural Rights prefers to identify any Indigenous rights under Article 15 pertaining to cultural life, but ignores the right of Indigenous Peoples to self determination under Article 1. Appointments to these two bodies should ensure there is not a bias in the committees against Indigenous Peoples. We hope there will be Indigenous experts appointed to pending vacancies.

- **What can be done to encourage the Treaty Bodies to recognise Indigenous Peoples' right to self-determination?**

The Human Rights Council sits for 12 weeks a year. Indigenous Peoples delegations are unable to participate in mainstream agenda items, or the UPR procedures, without further attention to their capacity needs.

- **Will the OHCHR direct financial resources to the establishment and maintenance of an Indigenous Permanent Office in Geneva to assist Indigenous delegations?**

2. United Nations Development Programme (UNDP)

The United Nations Development Programme does not have country programs in Australia, nor support the Aboriginal and Torres Strait Islander peoples in our human development. We note that UNDP are on the ground in 166 countries.

Our Aboriginal and Torres Strait Islander people, like Indigenous Peoples anywhere and everywhere in the world, suffer the most extreme political, social, economic and culture disadvantages of any group in Australian society. Statistically we have a lower standard of living than populations in neighbouring Asia and Pacific States.

Even the most basic needs for education on our human rights as Indigenous Peoples are not being met. We do not have organizations or capacity to advocate for our human development.

Moreover, we are in need of assistance to ensure that services and programs provided by government are framed by principles of development under a human rights approach.

- **We ask why we are not able to access or benefit from the programs and services of the UNDP?**

3. Department of Economic and Social Affairs of the Secretariat (DESA)

- **We ask what new or additional actions is DESA taking in response to the adoption of the Declaration on the Rights of Indigenous Peoples, in respect to Article 42 of the Declaration which calls upon DESA, inter alia, to promote respect for and full application of the provisions of the Declaration and follow up the effectiveness of the Declaration? In particular, has DESA taken note of Articles 26, 29, 31 and 32?**
- **Specifically, apart from the mid-term review of the progress made since 2005, how will DESA promote the program of action for the 2nd Decade of the World's Indigenous Peoples, noting the Declaration has been adopted in 2007?**
- **Have governments contributed more towards the Voluntary Fund for the Second Decade and how can they be urged to contribute further?**
- **What initiatives have been undertaken in the Pacific Region, and Australia, to promote and implement the Declaration and the Plan of Action for the Second Decade?**

We welcome the Department's policies to increase participation by Indigenous Peoples, as peoples, in all areas of DESA's mandates, include Sustainable Development, Forest and Climate Change.

- **What actions and strategies have been and are being implemented in that regard, noting that in CSD in particular there is limited participation by Indigenous Peoples?**
- **Should the role of existing Voluntary Funds be revised?**
- **Does DESA have strategies to increase the employment of Indigenous Peoples in the Department both in mainstream and specialised positions, and what success has been achieved in those strategies?**

Agenda Item 6: Comprehensive dialogue with six United Nations agencies and funds
Presenter: Mr Peter Buckskin - Statement on behalf of the National Indigenous Higher Education Network (NIHEN), Australia.

Thank you Madam Chair

As Indigenous Australians, we represent the oldest living civilisation on the planet.

The National Indigenous Higher Education Network (NIHEN) of Australia would like to acknowledge the traditional owners of the place upon which we meet today. We pay our respects to the wisdom of the elders past and present.

NIHEN will make a short statement in this session and has provided a report on Indigenous education issues specifically related to Australia for the benefit of forum members.

We commend the members of the forum for including a comprehensive dialogue with UN agencies in this session's agenda. The impact of education on Indigenous peoples has been raised by many speakers at this and previous forums.

While Indigenous participation within western education has increased over the last twenty years, in reality many Indigenous populations continue to be faced with systemic and social barriers experienced by previous generations. Despite the claims made by governments that they have adopted more inclusive and culturally respectful practices within education systems, the broader societal approach to Indigenous education has continued to be a numbers game.

While increasing access and participation in education is important, equally important is the need for transformative change within the education system itself.

The pursuit of quantifiable progress alone fails to recognise Indigenous people as contributors in the education process. It also fails to build upon respectful inclusion of Indigenous knowledge and knowledge systems.

The inclusion of Indigenous histories and epistemologies within western education continue to be advocated, yet there is a reluctance to acknowledge Indigenous educators and Indigenous education frameworks.

It is of paramount importance that a more culturally inclusive process is adopted if barriers that have historically excluded Indigenous people are to be overcome.

For our men this is critical. For our women this is even more critical, as women tend to make up a high percentage of Indigenous enrolments in our education system where racism is entrenched.

Education systems have not yet recognised the tension between the needs and aspirations of Indigenous people in the provision of post compulsory education. Many of the historical barriers continue to divert Indigenous people away from a tertiary education towards vocational roles.

The challenge for the Australian education system is to recognise the cultural capital all citizens bring to the process of education thereby realising the collective potential. Indigenous Australians must be integral to this process.

The engagement of Indigenous peoples within the education system has been based on accommodation and conformity. This is in direct opposition to the transformative process which is much needed.

Indigenous people continue to be rated against benchmarks imposed by education systems, rather than responsibility for failures resting with governments that fail to adequately prepare and support non-indigenous teachers.

While there has been an increase in the number of advocates calling for change in relation to Indigenous education, many of the negative interrelated factors that influence Indigenous peoples' progression and retention remain.

Despite recent commitment made by political leaders to find a new way forward, the Australian government is yet to adopt more inclusive policies and practices that engage and respect the unique position of Indigenous Australians.

While this need is pertinent across all levels of social policy, it is particularly important within education.

A shroud of poverty is evident in the lives of a large percentage of the Indigenous populations. In order to lift this shroud, successful progression through education, particularly post compulsory education, is an imperative goal.

Further education for Indigenous Australians can only be achieved when education systems include Indigenous worldviews, perspectives and knowledges in the education of all Australians.

True success will be measured on the ability of Indigenous peoples to overcome educational hurdles constructed and maintained by western meritocracy.

The systemic disparity that has formed the basis of Indigenous education, will not be overturned until the voices of Indigenous learners, teachers, administrators, parents, communities and policy makers are able to appropriately influence much need transformation within the development and delivery of curriculum across all levels of education. This must be mirrored by practices and policies that promote change in the way Indigenous people are included in research, engagement and other areas of education, where many injustices continue to be evident. The accomplishment of these goals can be the only indicators of true social, systemic, cultural and political success.

Members of the permanent forum are uniquely placed to seek from UN agencies and nation states specific details related to the positioning and support for Indigenous education. Specifically, we seek the members of permanent forum to urge all UN agencies and bodies to support the education of Indigenous peoples everywhere.

NIHEN makes the following recommendations.

Recommendations

NIHEN asks members of the Permanent Forum to:

1. Urge nation states to implement their commitment to the principles of Indigenous sovereignty and social justice by ensuring Indigenous peoples are able to exercise their right to education without conditions, encumbrances or suspension of other rights guaranteed by the Declaration of Human Rights and the Declaration of the Rights of Indigenous Peoples
2. Invite UNESCO to report specifically on Indigenous peoples' access to and participation in Higher Education at a future session of the forum
3. Direct the United Nations University, Institute of Advanced Studies' Traditional Knowledge Initiative to establish greater links with Indigenous people currently working in higher education within the Pacific.

Agenda Item 7: Future Work of the Permanent Forum including issues of the Economic and Social Council and emerging issues: climate change and land tenure.
Presented by: David Lee – New South Wales Aboriginal Land Council (NSWALC)

Introduction

Thank you Madam Chair

This intervention is made on behalf of a number of Aboriginal and Torres Strait Islander organisations from Australia, present at this Forum.

Extractive industries are placing increasing pressure on Indigenous peoples to gain access to traditional lands. States should consult and cooperate in good faith with Indigenous peoples in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources. This is clearly stated under Article 32 of the UN Declaration on the Rights of Indigenous Peoples.

In Australia's north-west, this right has recently been put at risk with the State Government threatening to compulsorily acquire land if the Traditional Owners didn't reach an agreement on a suitable site for the development of an industrial hub. Traditional Owners have recently given conditional approval to the proposed site, however such a coercive approach by the State Government rides roughshod over the rights of Indigenous peoples and seriously contravenes the principles under the UN Declaration.

It is imperative that traditional peoples have full recognition of their cultural rights on land, that they participate fully and effectively in decision-making and consultation processes and have free prior and informed consent for development projects.

Madam Chair

Climate change has caught the attention of the international community and fora such as this are providing us with the opportunity to ensure Indigenous voices are heard and acknowledged. For Indigenous peoples across the globe, climate change raises unique challenges that will have a direct impact on our culture and traditional lands.

Indigenous peoples of Australia have strong connections to country and caring for that country comes with a high cultural responsibility. As such, our communities are deeply concerned about degradation to the natural environment whether it is from regional development, extractive industries, or climate change.

Like many small island states Indigenous peoples of Australia face the loss of their lands or territories due to submersion or inundation. Australia's Indigenous people can also expect more injuries, deaths, post-traumatic stress disorders, and infectious disease outbreaks as a result of more frequent or intense extreme events, including storms, cyclones, floods, droughts and bushfires.

Climate change will also have a significant impact on Australia's scarce water resources, which is compounded by the increasing development on traditional lands by extractive industries.

The growing demand on our water supplies will have a severe impact on our traditions, culture and livelihoods and we need to maintain focus on the importance of preserving cultural traditions associated with water for future generations.

The Indigenous People's Global Summit on Climate Change, held recently in Alaska, resulted in the Anchorage Declaration, a document that calls for action on the current climate crisis. It is well known that Indigenous people are and will be most affected by climate change, yet we have contributed least to its impacts. It is time for this to change and the most appropriate vehicle for change is the United Nations Declaration on the Rights of Indigenous Peoples. Our rights as set out in the Declaration must be upheld in all decision-making and activities related to climate change. Indigenous peoples must be part of the debate and we must take a greater role in the solutions.

As the Anchorage Declaration states, when specific programs and projects affect our lands, territories, environment and natural resources, our right to free, prior and informed consent, including the right to say 'no' must be recognised and respected.

Madam Chair, it is critical that States such as Australia adopt aggressive strategies to minimise the effects of climate change. Under the right to self-determination and the principles of free, prior and informed consent, it is essential that indigenous peoples are centrally involved in decision making to ensure the sustainable management of our land and the future for our children.

Recommendations:

We recommend that:

1. this forum encourage all States to implement the UN Declaration on the Rights of Indigenous Peoples and to promote and protect the rights of Indigenous peoples with regard to extractive industries.
2. this forum add its support to the Anchorage Declaration so that a strong Indigenous voice is heard at the 15th meeting of the parties to the Kyoto Protocol in Copenhagen in 2009.

Thank you

Agenda Item 7: Future Work of the Permanent Forum including issues of the Economic and Social Council and emerging issues: land tenure.

Presented by: Craig Cromelin – statement on behalf of the New South Wales Aboriginal Land Council (NSWALC)

Thank you Madam Chair

We begin this statement with an offering of the New South Wales Aboriginal Land Council's support for the intent of the joint statement delivered by the representative of the Australian government last Thursday. It is our sincere hope that our statement today can also provide an "important step in building trust and moving forward to a new future".

Notwithstanding our support the New South Wales Aboriginal Land Council would like to use this opportunity to raise our concern regarding the Australian government's proposal to link the provision of housing services with existing land tenure arrangements. We do so mindful that this is one issue on which we may not agree, but knowing that we can engage in a discussion in an "open and respectful way".

The statutory recognition of land rights in the State of New South Wales is one of the most positive developments in the colonial history of Australia. As the preamble to the Aboriginal Land Rights Act states: "It is fitting to acknowledge the importance which land has for Aborigines and the need of Aborigines for land". The very same preamble also acknowledges that the land rights system was established in New South Wales as a means of compensating Aboriginal people for the dispossession of our lands.

While land rights is a critical element in providing social and economic development for Aboriginal people in New South Wales such objectives cannot arise at the expense of surrendering our hard fought rights to land. Put simply, the New South Wales Aboriginal Land Council cannot and will not accept a need to alter the land tenure arrangements under our system in exchange for the provision of housing services to our people, which is a fundamental human right.

The current proposal put forward by the Australian government is that in New South Wales it will provide funding to support Aboriginal housing over 5 years in exchange for the leasing of our lands back to the Australian government for 40 years. It should be noted that this arrangement will not apply to all Aboriginal people and communities across New South Wales. It will only apply to people and communities in remote areas, thus requiring that Aboriginal people and communities in urban and rural areas only have access to the services provided through the mainstream social housing system.

Such a proposal is not only an affront to the members of the land rights system, it contradicts the rationale for the Aboriginal Housing Act, which is also currently in operation in New South Wales.

It should also be noted that should the Australian government implement this proposal it will be in conflict with articles 37 and 38 of the Declaration on the Rights of Indigenous Peoples. We therefore call on the Australian government, "in the spirit of re-setting the relationship between Indigenous and non-Indigenous Australians and building trust", to affirm their commitment to these articles of the Declaration. Alternatively, the Australian government must, in the same spirit and as an act of good faith, clearly outline all of their qualifications with respect to the Declaration.

Mindful that this statement will be considered to be too negative, we remind those who support policies of the Australian government that the New South Wales Aboriginal Land Council has made a substantial and practical contribution to improving the living conditions of our people. In this

regard we highlight the \$200 million partnership agreement between our organisation and the New South Wales government to improve the provision of water and sewerage services to more than 60 discrete Aboriginal communities across the State.

This partnership, established in April 2008, will see the New South Wales Aboriginal Land Council spend \$100 million of our own funds over a 20 year period.

Madam Chairperson, this partnership agreement is one of a number of constructive arrangements through which the New South Wales Aboriginal Land Council is seeking to be engaged with governments of all persuasion in our State.

We are particularly concerned about the need to work more closely with local and shire governments so that we can more effectively take up the challenge of providing services to all of their constituents irrespective of the land tenure arrangements. We consider that local and shire governments in New South Wales are often quick to claim unpaid rates, but tend to move a bit slower in ensuring that discrete Aboriginal communities receive the services to which they are entitled and pay for.

In conclusion, we reaffirm our position that housing and land tenure are separate issues. To combine these issues in the name of Aboriginal economic and social development is not only overtly aggressive, it is counter-productive and will not provide governments with the assurances they are seeking with respect to tenancy and asset management.

We call on all levels of government to move forward with us by helping to build the capacity required within Aboriginal organizations to more effectively perform their asset and tenancy management responsibilities.

Developing strategies and programs to support Aboriginal organisations with the management of their housing functions will provide much more substantial outcomes than simply acquiring our land through a coercive policy framework.

Madam Chairperson, it is our recommendation that the Permanent Forum adopts land tenure and its association with economic and social development for Indigenous peoples as the theme for its ninth session in 2010.

REPORTS SUBMITTED TO THE EIGHTH SESSION OF THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

In addition to the intervention submitted to the Forum on agenda item 3(b): Indigenous women, the Indigenous Peoples Organisations Network of Australia also provided a more detailed report on the issues facing Indigenous women in Australia.

Agenda Item 3 (b): Indigenous Women

Madam Chairperson, this report is presented on behalf of the Australian Caucus of Indigenous Peoples Organisations.

Indigenous women continue to survive and nurture their families and communities despite the *multiple violations affecting their physical, emotional and social well being.*

The most insidious violations experienced by Indigenous women in Australia stem from a history of policies and practices imposed by successive Governments that have ignored and undermined maternal, cultural, social, political, economic and basic human rights.

All levels of Government in Australia have been called upon to address the unresolved injustices that have contributed to the erosion of the foundations of families and gender roles.

Indigenous women continue to strive for an existence comparable to that enjoyed by other Australians, particularly in the areas of:

- Reducing the incidence of violence
- Increasing opportunities to overcome poverty
- Reducing recidivism and re-victimisation by the criminal justice system
- Improving educational outcomes at all levels
- Raising adequate standard of housing
- Gaining health equality and
- Strengthening the voices of Indigenous women in political decision making

Reducing the incidence of violence

There has been an increasing tendency to refer to violence in Indigenous communities as family violence which can manifest through broad kinship relationships. It is hoped that broadening the common understandings of violence in Indigenous communities will promote a holistic response by communities and Governments.

In asserting the indivisibility of human rights, our men and women have called on Governments to develop a more holistic approach to what constitutes violence and what causes violence within Indigenous communities. Access to adequate education, essential services and culturally appropriate justice has been central to the concerns that have been raised in holding the State to account for the incidence of violence in Indigenous communities.

However, as a result of the use of the term “family violence” Governments appear to have perpetuated the myth that all Indigenous men are perpetrators of family violence and that the only type of aggression that Indigenous women and children experience is within the family unit. This is

a notion that Indigenous women are fighting strenuously to refute. There are many perpetrators of violence and intimidation within Indigenous communities that involve non-Indigenous actors. Non-Indigenous individuals and those acting on behalf of the State use excessive force such as police and uninvited personnel from the military in some communities.

In asserting the universality of our human rights, Indigenous men and women advocate “zero tolerance” toward violence within their communities. According to true customary law obligations, inflicting violence against women, men and children is unacceptable. Many Indigenous women are referring to violence within their communities as “social violence”, therefore reflecting the need to encourage a more holistic approach adopted by Government to address the multiple levels of violence that Indigenous women and their families experience.

Faced with the ongoing contradictions between political rhetoric and their reality, many Indigenous women are fearful of the imposition of policies that act to undermine their emotional and social wellbeing. Ironically, at a time when Australia, as a nation, has declared its support for reconciliation, Indigenous women are being denied basic rights that are afforded to all other Australians.

As reported last year, the Australian Government has taken control of remote Indigenous communities in the Northern Territory using the guise of protecting Indigenous women and children to legitimise these “special measures”. These racially based measures required the suspension of the Racial Discrimination Act.

Despite calls from many Australians, the Australian Human Rights Commission and the United Nations Human Rights Committee, and the Committee on the Elimination of Racial Discrimination, the Australian Government has not reinstated the Racial Discrimination Act or changed the policies that racially discriminate against Indigenous people.

Despite the Australian Government’s recent endorsement of the Declaration of the Rights of Indigenous Peoples, there is much to be done in “closing the gap”. These race based laws have resulted in unprecedented levels of poverty and disadvantage within Indigenous communities, culminating in an increasing presence of trauma and other stress related illnesses.

Increasing opportunities to overcome poverty

The impoverishment of many Indigenous communities has come about as a result of families being denied the right to create for themselves an economic base. The ability of Indigenous women to create an economic base is integrally linked to our gendered and collective rights as Indigenous people to care for and develop our lands and natural resources.

The inherited poverty experienced by many Indigenous women has resulted from a history of slavery, servitude, unemployment, lack of access to education or the right to access wages that were often withheld without their permission by Government policies that sanctioned these practices.

It is appalling that even indigenous women from many affluent countries (including Australia) report such endemic levels of poverty.

The suffrage of indigenous women in particular, is directly correlated to these historical injustices. The additional discrimination due to class further compounds the marginalisation already suffered by indigenous women due to race and gender. The ongoing pressures they continue to experience as mothers, partners and, in many cases, the primary care giver of children is a direct result of the removal of vital social capital which is integral to a healthy and sustainable family and community environment.

This situation is further exacerbated and used against Indigenous women to legitimise the ongoing practice of children being removed from their family by the State. In Australia for example, Indigenous children are placed in out-of-home care by the government at a rate that is six times higher than the rate for other children.

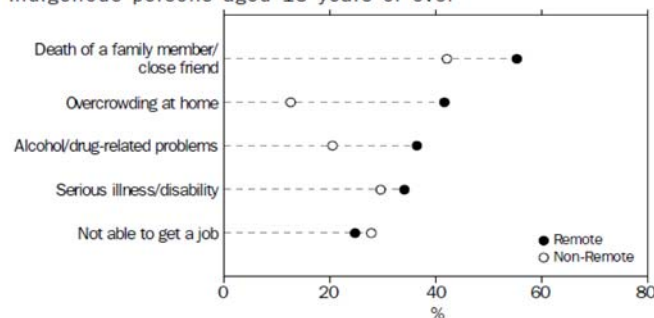
The right to be a mother and to exist without unjustified and unwarranted interference by Governments is perhaps the most serious form of injustice experienced by Indigenous women.

Reducing recidivism and re-victimisation by the criminal justice system

Indigenous women across the world are over represented in incarceration. The endemic levels of poverty and social disadvantage experienced by Indigenous communities, the generations of trauma and discrimination experienced by Indigenous families, are all contributing factors to the rates of Indigenous women's incarceration as the graph below shows. In Australia the incarceration rate for Indigenous women is 20 times the rate of other women.

Selected reported stressors (a) in the past 12 months, Indigenous persons aged 15 years or over.

SELECTED REPORTED STRESSORS (a) IN THE PAST 12 MONTHS, Indigenous persons aged 15 years or over



(a) Respondents may have reported more than one type of stressor.

Source: Australian Bureau of Statistics, 4714.0 - National Aboriginal and Torres Strait Islander Social Survey, 2002

Despite the concerning statistics, there has been limited research conducted into the needs of Indigenous women in the criminal justice system.

The gendered analysis of research and statistics regarding Indigenous people is an important resource that is lacking for Indigenous people everywhere. This lack of specific information on gender issues has rendered Indigenous women invisible. The invisibility of Indigenous women's needs has led to policies and services for Indigenous women failing to properly represent or respond to their needs.

This is certainly the case in Australia when it comes to effective laws and policies for Indigenous women and their contact with the criminal justice system. Indigenous women in Australia are sentenced for violent crimes at a significantly higher rate than the rest of the female population. Indigenous women are also victims of violence at an alarming rate higher than the rest of the Australian population. The recidivism rates of Indigenous women are also of serious concern.

It is clear that the criminal justice system currently does not respond appropriately to underlying causes of Indigenous female criminal behaviour or Indigenous female victimisation. The criminal justice system is not responding to Indigenous women's distinct issues from either side of the system; that is, Indigenous women as offenders or as victims of crimes.

Indigenous people have identified a need to provide ways of accessing justice that do not follow western concepts. Once again Indigenous people have made calls for a more holistic approach to be adopted. We need ways to address offending behaviour that recognises and incorporates our cultural values in dispute resolution, at the same time addressing the underlying grief and trauma experienced by many Indigenous women, their families and communities.

Many people are seeking therapeutic justice models as well as restorative justice models to be put in place in Indigenous communities. These models will only be effective if Indigenous women are involved in their formulation.

Gaining health equality

The Permanent Forum has previously called for the increased and effective participation of Indigenous women in health and educational programmes. The inclusion of Indigenous women's perspectives in State and international bodies on health issues are vital, particularly issues of reproductive health.

Indigenous women are taking up the fight against uncontrolled alcohol abuse to halt the crisis of violence within their communities and have highlighted that a more insidious consequence of uncontrolled alcohol abuse is Foetal Alcohol Spectrum Disorder (FASD). FASD is considered to be the leading cause of intellectual disabilities in the world and it is 100% preventable. This situation places enormous pressure on the ability of the community to function now but particularly in the future. Further, as FASD affects memory, Indigenous cultural leaders are alarmed at how this epidemic will affect the oral transmission of their cultural knowledge, songs and ceremony, therefore threatening our existence as a unique and ancient culture.

In Australia, there are few if any, state services to respond to FASD. Individuals are primarily cared for at home by mothers, grandmothers and great grandmothers, extended families and communities.

Indigenous women call upon all states to recognise FASD as a primary reproductive health issue for all women, including Indigenous women, to adopt internationally developed prevention strategies and to support lifelong service delivery response for people affected by FASD.

Access & Participation

Whilst we acknowledge that the United Nations has passed the Declaration on the Rights of Indigenous Peoples, and we note Australia's support for the Declaration, Article 22 calls for particular attention to the rights and needs of Indigenous women and calls on Governments to adopt measures to protect Indigenous women and children from violence and discrimination. The participation of Indigenous women in the pursuit of these objectives is essential to any success in their achievement.

In Australia, successive Governments have failed to address the rights of Indigenous women to access justice for themselves and their children. It is concerning to note that despite the readiness of Indigenous women to work alongside Governments to develop policies to address these issues, there continues to be a reliance upon archaic remedies which have shown to be ineffective in creating solutions.

The propensity of Government to demonstrate a narrow understanding of the disadvantage experienced by Indigenous women is exemplified by their inability to instigate suitable policies and programs to address these issues. Despite the existence of international instruments such as, the Universal Declaration of Human Rights and the Declaration on Rights of Indigenous Peoples, Indigenous women continue to be denied basic maternal, cultural and social rights that are enjoyed by non Indigenous women.

It is our view that Australian states should appropriately fund Indigenous Women's state and national advocacy bodies to ensure that the rights, interests and voices of Indigenous women are heard.

In many Australian states various tiers of Governments continue to argue over responsibility in funding services to Indigenous women. This demarcation of responsibilities between Governments results in failing to properly fund services and thereby denying access to Indigenous women and their children which further compounds their social disadvantage.

Access to justice through specialised legal aid services for Indigenous Peoples continues to be denied. These services must be located in city, rural and remote regions throughout all Australian states.

In Australia, Aboriginal and Torres Strait Islander Women's Legal Services and Family Violence Prevention Legal Services provide assistance to Indigenous women.

Many Australian states acknowledge that urban Indigenous populations also require family violence, family and civil law services and locate Social and Family Violence Prevention Legal Services accordingly. However the notion that urban Indigenous victims of family violence have access to justice through mainstream services is erroneous. This view is ill conceived and fails to acknowledge that mainstream services are failing to ensure that services are known to Indigenous people, and are culturally safe and welcoming.

A very high proportion of Indigenous populations live in urban areas, and Indigenous women victims of family violence in urban areas do not have access to justice. It is also acknowledged by many States that services play an important role in ensuring Indigenous communities are taking a stand against family violence, but they refuse to fund such services in urban areas also means that there is a lack of critical leadership in urban services provision.

1. Legal Aid - accessing legal aid is a basic human right however in many States this is denied to Indigenous women because they have no collective voice to express their concerns about disadvantage. Funding for Indigenous legal aid is well below mainstream legal aid or even non-existent in many States. This has resulted in appalling incarceration rates for Indigenous peoples as a percentage of the main non-indigenous population. For example, in Australia the incarceration rate for Indigenous women is 20 times the rate of other women. Indigenous Peoples in Australia only make up 2% of the population; this one statistic is internationally unacceptable yet Australian Governments fail to address this appalling situation due to a demarcation over which tier of Government is responsible for funding.

In Australia, Indigenous legal aid has remained static since 1996 whilst non-indigenous legal aid has increased over 120% for the same period. Indigenous service providers world wide are disadvantaged like those in Australia.

Indigenous women find non-Indigenous service providers including legal aid unwelcoming, and Governments have a responsibility to ensure these Indigenous service providers are resourced properly in compliance with the UN Declaration on Human Rights, CERD, CEDAW and now the Declaration on the Rights of Indigenous Peoples.

2. Aid to Members of Indigenous peoples forcibly removed from families and communities due to racial and genocidal policies and practices of past Governments. The removal of these children by Government Policy denied basic human rights to Indigenous peoples and in particular those who were abused by foster parents and adoption agencies. They were placed into a life of servitude and a denial of basic human dignity and robbed of their Indigenous heritage and culture. States have a fiduciary duty of care of these children of which 50% were girl child. Numerous courts throughout the world have found such policies and practices of removal of Indigenous children a breach of basic human rights and should therefore compensate these Indigenous people appropriately. Many Nations, and sadly including Australia, continue to deny access to justice for these Indigenous peoples by refusing to fund access to justice legal cases, or to pay appropriate compensation in contravention of the Covenant on Civil and Political Rights Article 2(3)(1).

The above examples of denial of access to justice for Indigenous women, their families and communities prevent them from exercising their basic human rights to suitable compensation for the harm caused by forcible removal.

Recommendations

We the Australian Caucus members recommend that this United Nations Permanent Forum on Indigenous Issues support the following:

1. All States cease policies and practices that deny Indigenous women access to services that address their emotional and social wellbeing.
2. All States must appropriately fund specific services to assist Indigenous women to access social and family violence prevention legal services, legal aid, redress and compensation. These services must be provided in urban, rural and remote locations.
3. We urge all states to implement their duties under the Declaration with particular regard to the establishment of state and national Indigenous women's advocacy bodies that represent the voices, rights and interests of Indigenous women.
4. Indigenous women call upon States to support life long service delivery responses for people affected by Foetal Alcohol Spectrum Disorder (FASD).

Agenda Item 6: Comprehensive dialogue with six United Nations agencies and funds
Report to Members of the United Nations Permanent Forum on Indigenous Issues, Eighth Session, UN Headquarters, New York, 18 – 29 May 2009
Supporting Intervention for Agenda ITEM 6 – Comprehensive Dialogue with UN Agencies – Statement made by the National Indigenous Higher Education Network (NIHEN)

About the Reporting Organisation

The National Indigenous Higher Education Network (NIHEN) is a professional network of Deans, Heads of Schools, Senior Policy Advisors, Directors and Managers of Schools/Units responsible for the leadership of Indigenous Education within Australian Universities. Australia currently has two Indigenous higher education committees that work with Indigenous Centres and entities within mainstream higher education institutions to form a community voice for Indigenous participation across Australia. NIHEN's main objectives are to:

- 1) Provide a collegial and supportive network for Indigenous educators, researchers and administrators working in higher education
- 2) As a national collective, in collaboration through the Indigenous Higher Education Advisory Council, provide informed program and policy advice to the federal government.
- 3) Raise the profile of Elders and Indigenous scholarship in higher education
- 4) Protect and embed the use of Indigenous knowledge, knowledge systems, languages and epistemologies within higher education, curricula, policy, research and student services.
- 5) Provide flow of information amongst Indigenous educators and
- 6) Establish local, national and international links and networks between Indigenous educators, researchers and institutions.

NIHEN members view access to education and educational outcomes as critical to addressing many of the issues that continue to impede the economic and social development, well being and sustainability of Indigenous Australians.

This paper is an IPO's perspective of the current position of Australian Aboriginal and Torres Strait Islander people within the Australian education system. It is underpinned by goals and statements related to the following international reports, declarations and programs.

The Millennium Development Goals

Goal 2 Achieve Universal Primary Education

- Ensure that all boys and girls complete a full course of primary schooling.¹

¹ <http://endpoverty2015.org/goals/universal-education> (accessed 7 April 2009)

Implementation of the Second Decade of Indigenous Peoples

The Decade's 5 Main Objectives

- Promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects.
- Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent.
- Redefining development policies that depart from a vision of equity and that are culturally appropriate, including respect for the cultural and linguistic diversity of indigenous peoples.
- Adopting targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth.
- Developing strong monitoring mechanisms and enhancing accountability at the international, regional and particularly the national level, regarding the implementation of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives.²

The Declaration on the Rights of Indigenous Peoples Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.³

Report of the Expert Mechanism on the Rights of Indigenous Peoples

Report of the First Session

- V. Study on Lessons Learned and challenges to Achieve the Implementation of the right of Indigenous Peoples to Education⁴

² <http://www.un.org/esa/socdev/unpfii/en/second.html> (accessed 7 April 2009)

³ <http://www.un.org/esa/socdev/unpfii/en/drip.html> (accessed 7 April 2009)

⁴ <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/1st/docs/A-HRC-10-56.pdf> (accessed 7 April 2009)

Reporting Mechanism

This paper is divided into four sections titled Access, Participation, Retention and Success. In Australia these indicators are known as The *Martin Equity Indicators*.⁵

These are currently used to measure the performance of Indigenous people and other identified equity groups in Australian higher education. With regards to Australian Aboriginal and Torres Strait Islander people, these indicators are measures of their share of access, participation, retention and success compared with Non-Indigenous performance.⁶ Current outcomes and challenges for Australian education will be presented using these indicators as section titles. The performance being monitored is that of the Australian education system and its approaches in policy and practice regarding Indigenous Australian people.

1. ACCESS

The broader societal approach to Indigenous education has become a numbers game. Increasing the enrolment and retention rate of Indigenous people within the education system has taken priority over systemic transformative change wherein the intellectual and scholarly contributions of Indigenous knowledge are recognised and respected. This pursuit of quantifiable progress alone fails to recognise Indigenous peoples as contributors in the education process.

Despite the prolific contributions by Indigenous educators to western teaching and research, educational institutions continually fail to recognise the tension between supplying post-compulsory education and the needs and aspirations of Indigenous peoples. The Australian education system, until recently, was locked into a philosophical base that condoned the isolation of Indigenous Australians through the retention of archaic policies and practices. Increasingly Indigenous scholars, Elders and policy advocates have called for greater parity and recognition at all levels within the education system. The challenge for the Australian Government is to adopt a more inclusive approach that engages Indigenous cultural capital within the education system. Such an approach would harness the full potential of all its citizens and ultimately work towards the betterment of the state.

The successful implementation of the Rights of Indigenous Peoples to Education rests upon the acceptance and implementation by nation states of a more culturally astute and competent education system. This system must be based upon a more inclusive set of criteria and an explicit set of values that underpin the development of policies to enhance the level of Indigenous participation and progression within the western education system. Such a system must be based upon a framework that is inclusive of Indigenous epistemologies and practices contained within the scholarship of Indigenous knowledge systems and cultural world views. Such a world view needs to underpin the disjuncture that exists between Indigenous and non Indigenous education and the appalling retention and graduation rates of minority students within mainstream institutions. While this is of major concern for Indigenous men, it raises particular issues for Indigenous women. statistically they are three times more likely than their male counterparts to enrol in post compulsory education, the retention and graduation rates of Indigenous women continues to be an area of concern.

⁵ See - Martin, L. M. 1994, *Equity and General Performance Indicators in Higher Education: Volume 1 Equity Indicators*, Canberra: Australian Government Printing Service

⁶ The Martin Indicators are ratios expressed as Indigenous: Non-Indigenous performance over total outputs. Access refers to new enrolments. Participation refers to the share of teaching and learning undertaken. Retention is a measure of progression through a degree program. Success measures completion of units and courses. These are reported annually as part of the Commonwealth Department of Education, Employment and Workplace Relations assessment of publicly funded higher education.

There are many factors that contribute to this situation. Impoverishment, high incarceration and mortality rates of many Indigenous men, limited support networks and poor health act to inhibit the ability of many Indigenous women to progress successfully through the education system. The Australian Government's commitment to "closing the gap" on Indigenous poverty and enhancing their emotional and social wellbeing will be to little avail if more strategic action is not given to address these issues.

1.1 Acknowledgement of the holistic nature of Indigenous education

Both Indigenous and non Indigenous scholars nationally and internationally I have increasingly highlighted the intellectual and meritorious values of Indigenous knowledge. Those who have sought much needed transformational change within western education systems have historically been confronted with distinct bias that fails to recognise the scholarship upon which Indigenous knowledge is based.

The recognition and intellectual activation of Indigenous knowledge today is perhaps one of the greatest acts of empowerment sought by Indigenous people across the globe.⁷ The task for Indigenous academics and social advocates has been to affirm and activate the holistic paradigm of Indigenous knowledge to reveal the wealth and richness of Indigenous languages, world views, teaching and experiences, all of which have been systemically excluded from contemporary educational institutions and from Eurocentric knowledge systems.⁸

Developing an understanding of the paradigm upon which Indigenous knowledge is based is critical to the alleviation of many of the social problems that continue to mar the progression of Indigenous people within Australia. The retention of the Eurocentric nature of western education has contributed to the marginalisation of Indigenous Australia where poverty has reached endemic proportions.

The interconnectedness of education, health, justice and emotional wellbeing must be seen to underpin the philosophical world view of Indigenous Australians and the manner in which education policies and programs are implemented. Such a framework will build upon the spiritual, physical, psychological and intellectual learning needs of individuals which aim to build a strong foundation for their families and communities. This is in direct contrast to the ideologies upon which western education systems are based. In the face of mounting concerns about the poor literacy and numeracy rates amongst Indigenous children and the systemic bias that continues to thrive within the western education system at all levels, the challenge for governments in Australia is to foster a more inclusive and culturally astute curricula that encourages a more holistic approach.

1.2 The human rights-based approach to the right to education - equality and equity, accountability, empowerment and participation

Indigenous peoples should be able to exercise their right to education without compromising or suspending their basic human rights

The Northern Territory Intervention and broader welfare reform agenda has resulted in an education system used by governments to impinge on the human rights of Indigenous Australians. Mutual responsibility has become a government strategy to enforce behaviour modification in

⁷ Battaste M. , Indigenous knowledge: Foundations for First Nations WINHEC Journal 2006

⁸ Ibid, p1, 2006

Indigenous communities in order to receive services expected and assured by the geographical and cultural position of other sections of the Australian community. Despite promises contained in the National Apology given by the Australian Prime Minister on the 13th February 2008 and the action taken by the Australian Government to endorse the Declaration of Indigenous Rights on the 3rd April 2009, no action has been taken to redress the suspension of the Racial Discrimination Act legitimising the roll out of the welfare reforms and denying Indigenous people their most basic human rights undermines the spirit of the National Apology and maintains the disempowerment of Indigenous Australians

Bi-lingual and Bi-cultural Education

Indigenous children have the right to be socialised in a manner that nurtures their cultural heritage and affords them access to western education regardless of where their communities are located. It is a concern that such rights have been based upon a history of systemic failures that have accomplished little to address the endemic poverty and appalling conditions which are prevalent in communities where the majority of Indigenous people reside.

Rather than addressing the underlying issues that would encourage greater participation of Indigenous children in the education system, governments are increasingly linking their access to schooling to their family's eligibility to income support. This enabled Governments to quarantine welfare payments to a large section of the Indigenous population in Australia and to deny essential services to many rural and remote communities. Whilst this has resulted in severe ramifications for many Indigenous families, it is the women and children who have suffered the most. High male incarceration and mortality rates and youth suicide have depleted many Indigenous families of vital social capital provided by father figures and the vibrant healthy young men. This situation has been compounded by the forced removal of young Indigenous children an action often based on allegations that have been inadequately investigated and unsubstantiated. Teachers and school administrators have been forced to be complicit in the marginalisation and further disposessions of Indigenous Australians while the cultural bias within the curriculum predominately remains.

Behrendt is critical of welfare reform and its promotion as mutual obligation:

Critics of mutual obligation describe it as 'selective paternalism' in the way that it treats some Australians as capable of taking responsibility for their own welfare, and others not. It is argued that implicit in the approach is the assumption that policy makers are more 'rational' and 'moral' than welfare recipients, who are by implication incapable of looking after their own interests or those of their families.⁹

The increase of government funding to boarding schools for Indigenous children

In recent years, philanthropic and government support of boarding school scholarships have resulted in significant numbers of Indigenous children being moved away from their communities to attend school. The underlying reality is the lack of sufficient infrastructure and human resources allocated for regional, rural and remote education. This has placed families in the unenviable position of having to agree to an option that would otherwise be culturally objectionable.

- 1.5 The provision of community education services that will support indigenous peoples to develop the skills to manage the development of their communities and to participate in educational decision-making

⁹ Behrendt, L and McCausland R. August 2008. "Welfare payments and school attendance: An analysis of experimental policy in Indigenous education." In An Issues Paper for the Australian Education Union: Jumbunna Indigenous House of Learning, University of Technology Sydney. p 7

The International Covenant on Economic, Social and Cultural Rights adopted in 1999 and under general comment No. 13 identifies Availability Accessibility, Accountability and Adaptability as the assessment framework for measuring human rights action. For over three decades, the Australian *National Aboriginal Education Policy* has been current national policy with four major themes of Involvement, Access Participation and Outcomes expressed through its twenty one goals.

It is vital for the broader education system to become more closely aligned with Indigenous models of learning.

Collister writes,

Education should 'speak' to the whole person and focus on concepts not content, questions and not answers, interrelatedness and not reductionist abstract fragmentation. The synergies between eastern philosophies and Indigenous education methodologies can provide a useful map for community education which is not reliant on the next government policy document but instead is rooted in genuine learning in communion.¹⁰

1.6 Higher Education

1.6.1 University research that assist indigenous women's organizations in identifying and effectively utilizing available education resources and programmes, and promoting capacity-building through fellowships and grants

1.6.2 Increasing the outreach and information flow to and from the academic community, including indigenous educational institutions, on indigenous women's issues

Higher education institutions in Australia have only recently recognised the need to systemically embed Indigenous perspectives in curriculum and acknowledge the scholarly contributions of Indigenous communities in developing a culturally ethical framework to underpin research and learning. While many view this as a move toward the adoption of a more culturally astute and competent learning environment, Indigenous people see it as a critical step toward the accomplishment of social parity, sovereignty and economic freedom for their people. Indigenous women view education as a vital means by which they can address and sustain family and community well being, including their rights to enjoy the freedom of motherhood that so many non Indigenous women take for granted. This has particular relevance to western education and the quality of the graduates produced. The Indigenous Higher Education Advisory Council has increasingly challenged the Australian Government to adopt a more socially responsible approach to teaching, research and education. A model of cultural competency has been proposed for use by Australian universities. The Council in collaboration with the National Indigenous Higher Education Network is also calling for the adoption of more culturally inclusive curriculum across all levels of education. Both of these endeavours are designed to address the impoverishment of Indigenous communities and improve the level of participation and progression of Indigenous students.

¹⁰ Collister, Rupert, *Synergies between Indigenous education methodology and eastern philosophies and their application for community education Enriching learning cultures: proceedings of the 11th annual international conference on post-compulsory education and training: volume 1*. pp.110-116 Brisbane: Australian Academic Press, 2003

A recent project sponsored by the Australian Learning and Teaching Council focussed on positioning Indigenous Australian women for leadership in the higher education sector. *Tiddas Showin' Up, Talkin' Up and Puttin' Up: Indigenous Women and Educational Leadership* promoted the development of leadership capacity by allowing the sharing of Indigenous women's knowledge, learning and networking experiences to support professional development.¹¹ Specifically, it promoted and supported strategic change in higher education by strengthening the participation and leadership capacity of Indigenous women academics.¹²

1. PARTICIPATION

The systemic failure to acknowledge and embed Indigenous knowledge as a valid form of scholarship has contributed to the ongoing isolation that Indigenous students experience when engaged in western education.

Indigenous peoples have often had to compromise their cultural values in order to fully participate in the system of education provided by the state. Rather than build the esteem of the Indigenous students, the system has acted to marginalise and label them as unintelligent and scholastically challenged. Despite the attention given to the appalling literacy and numeracy rates amongst Indigenous students, little has been accomplished by successive governments over the past twenty years to overturn this social concern. The inadequacies within the western education system warrant in-depth examination and exposure. Indigenous students are bearing the responsibility for the failures that have occurred against imposed benchmarks derived from inadequate preparation and support for teachers and significant levels of under resourcing.

The sustainability of viable programs implemented by Indigenous communities is continually challenged by the lack of appropriate resources and support by government. The development of programs through community based models are overlooked in favour of imposing the latest educational trends more often created by non-Indigenous people.

This continues to devalue the spirit, cultural integrity and worth of the Indigenous educators and the programs themselves.

1.1 Labelling Indigenous children

Indigenous education is often described in deficit language. Performance or non-performance against normative assumptions and labelling of Indigenous children as slow or special needs is an excuse by systems that have failed to resource and adequately prepare culturally competent staff responsible for teaching Indigenous students. Rather than provide support, a large number of Indigenous students are placed in the position of feeling inadequate and incompetent. While a percentage of the students struggle through the education system many disengage from formal schooling and embark on self harming and "at risk" behaviour.

There is a concern for the growing tendency to place Indigenous children in Special Education Units (SEU). This has become an alternative for the delivery of supplementary support for literacy and numeracy development.

¹¹ Bunda T and White N, 2009 Final Project Report - The Australian Learning and Teaching Council, Leadership for Excellence in Learning and Teaching Program, *Tiddas Showin' Up, Talkin' Up and Puttin' Up: Indigenous Women and Educational Leadership*. Australian Learning and Teaching Council. <http://www.altc.edu.au/resource-tiddas-showin-up-flinders-2009> (accessed 5 May 2009)

¹² For Further Information see: <http://www.flinders.edu.au/yunggorendi/tiddas/HomePage.html>

There is a considerable psychological impact upon children as a result of this placement based upon their status as Indigenous learners. Within the SEU, teachers and other professionals are dealing with significant learning needs related to the physical and intellectual disabilities of their students. Under resourcing of schooling can leave Indigenous children intellectually fending for themselves or becoming socially and educationally bereft. Cumulative provision of schooling in this manner results in Indigenous young being unable to secure employment and impacts negatively on the emotional and social well being and economic development of families and communities. A systemic and consistent analysis across educational sectors is urgently required to identify the prevalence and consequence of this concern.

2.2 Indigenous languages in education programs

On September 13, 2007 the Declaration on the Rights of Indigenous Peoples was adopted by the United Nations. Included within the text of this document was the recognition of Indigenous language rights, articulated in Article 13-1 which stated "Indigenous Peoples have the right to revitalise, use, develop and transmit to future generations their history, languages, oral traditions, writing systems and literatures, and to designate and retain their own names for communities, places and persons." Article 14-1 read, "Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning."

Despite this and the action taken by the United Nations General Assembly to declare 2008 as the International Year of Languages, it is concerning to note the diminishing existence of many Indigenous languages across the globe. At the heart of this phenomenon lies the ongoing struggle for self determination by Indigenous Nations and their peoples. This situation is equally as critical for Indigenous Australians given the protracted history of policies that have denied their right to practice culture and to use their traditional languages. The retention and revival of traditional languages is viewed by Indigenous Australians as vital to the longevity and protection of their culture.

The Australian Institute of Aboriginal and Torres Strait Islander Studies and the Federation of Aboriginal and Torres Strait Islander Languages in their 2005 survey reported that of an original a number of over 250 known Australian Indigenous languages, only about 145 languages are still spoken and the vast majority of these, about 110, are in the severely and critically endangered categories. Eighteen languages are strong. Under the definition of strong languages (where the language is spoken by all age groups)¹³

An immediate investment in revival, maintenance and teaching of Indigenous languages in schools and institutions is required. Recognition and inclusion of Indigenous language speakers is vital.

¹³ Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and Federation of Aboriginal and Torres Strait Islander Languages (FATSIL) (2005). National Indigenous Languages survey report 2005. Canberra: AIATSIS.

2.3 Vocational Education and Training Sector Participation

Indigenous peoples are overrepresented in the Vocational Education and Training (VET) sector in Australia per their proportion of the national population. A major challenge for this sector is the progression of students to higher level qualifications either within VET or to degree level programs within higher education.

During 2007, 4.9 per cent of government funded VET students in Australia identified as Indigenous, while 8.2 per cent of students did not report their Indigenous status (figure 5.3). The proportion of government funded VET students who identified as Indigenous (4.9 per cent) was higher than the proportion of Indigenous people in the total population nationally (2.4 per cent)¹⁴

Of those Indigenous Technical and Further Education (TAFE) graduates who went on to further study, 64.4 per cent continued within the TAFE system (compared with 63.1 per cent for all TAFE graduates) and 14.6 per cent went to university (compared with 21.2 per cent for all TAFE graduates)¹⁵

The progression of Indigenous people from vocational training into employment is still a concern. High rates of unemployment within Indigenous communities contribute greatly to levels of despair and marginalisation.

2.4 Australian Indigenous Education and UN bodies

2.4.1 United Nations University Traditional Knowledge Initiative in Australia – participation of Indigenous Australian people in Higher Education

During 2007 The United Nations University's Institute of Advanced Studies established the UNU Traditional Knowledge Initiative located at Charles Darwin University in Darwin, Northern Territory. The Australian Indigenous higher education sector welcomes the opportunity for increased collaboration and participation in the development of initiatives to address the social and educational needs of Indigenous Australians.

2.4.2 UNESCO to include the participation and experience of Indigenous peoples in post-compulsory schooling in its report to the UNPFII

The United Nations Committee on Economic, Social and Cultural Rights described higher education access and responsiveness in a general comment on Article 13 The Right to Education. Higher education should be universally available.

The United Nations Education Science and Cultural Organisation (UNESCO) has a mandate for higher education. Over time, it has included the perspectives of Indigenous peoples as part of broader education agendas. As an agency providing reports to the UNPFII, UNESCO it is uniquely placed to report on the participation and experience of Indigenous peoples in post-compulsory education across the world and be effective is highlighting good practices.

¹⁴ SCRGSP (Steering Committee for the Review of Government Service Provision) 2009, Report on Government Services 2009, Indigenous Compendium, Productivity Commission, Canberra p 73

¹⁵ SCRGSP (Steering Committee for the Review of Government Service Provision) 2009, Report on Government Services 2009, Indigenous Compendium, Productivity Commission, Canberra p 83

3. RETENTION

Many interrelated factors impact upon the retention and progression for Indigenous peoples in education. Institutions, governments and communities need to be inclusive in policy and practice of the contributions Indigenous peoples make to education. Progression to post-compulsory schooling and further education is achieved where positive relationships are established and maintained through the acknowledgement and inclusion of Indigenous worldviews, perspectives and knowledges.

3.1 Indigenous perspectives in curriculum

During the last decade Indigenous scholars, policy makers and social advocates have called upon the Australian Government to embed Indigenous history as a compulsory component of curriculum across all levels of education. To date this vision has achieved limited success despite the dearth of knowledge about Indigenous Australians within the wider population. In the Spirit of the National Apology and the Nation's commitment to becoming a reconciled state, Indigenous scholars are lobbying Governments for much needed educational reform to address this issue. The achievement of this goal is critical for the well being of Indigenous women who continue to experience the consequences of colonial policies that legitimised the many atrocities imposed. Such an approach is seen by many as critical to the restoration of Indigenous self determination facilitating an awareness of the historical role that Indigenous people have played in the development of Australia since colonisation.

3.2 Schooling for urban Indigenous communities

The 2006 Australian Census revealed that 75.4% of Indigenous Australians live in urban and rural communities.¹⁶ Indigenous students undertaking education in major towns and cities are overlooked in relation to statistics arising from inadequate services provision in remote locations. The identity of urban Indigenous peoples is continually contested with enormous impacts on their engagement with schooling. Being a lone Indigenous child in the school is a common reality for this group. The challenge for schools is to provide a culturally inclusive curriculum which recognises the needs of Indigenous people living in urban settings. This isolation can have a negative impact upon the individual and their families' participation and retention within the school community.

3.3 Resourcing schools, retaining quality teachers

The number of Indigenous people who are employed as teachers and other professional positions within the education systems must increase. Recognition of their cultural capital and contributions as educators is vital for their retention in the system. The engagement of teachers and schools within the broader community is seen as necessary for ensuring service provision matches needs and aspirations. Embedding Indigenous perspectives in curriculum has been identified as a contributing factor to retention and achieved by establishing and maintaining relationships between teachers and Indigenous community members, particularly Elders. Teacher education programs in higher education have over time recognised the need for exposure of its undergraduates to issues affecting the social, economic and emotional wellbeing of Indigenous peoples and their impacts on the educational process. However, the number of Indigenous people employed in universities delivering pre-service teacher preparation remains low. Children are entitled to professionally competent as well as culturally competent teachers.

¹⁶ Australian Bureau of Statistics (ABS) 2008. Population Characteristics: Aboriginal and Torres Strait Islander Australians, 2006, cat. no. 4713.0, ABS, Canberra.

4. SUCCESS

Success is measured by the ability of Indigenous peoples to overcome educational hurdles constructed and maintained by western meritocracy. Inclusion of the voices of Indigenous people in education as learners, teachers, administrators, parents and policy makers is surely an indicator of a successful system.

4.1 The Indigenous Higher Education Advisory Council (IHEAC)

The establishment of The Indigenous Higher Education Advisory Council in 2005 is a notable success for Indigenous education. The role of IHEAC is to provide policy advice to the Federal Government through the Minister for Education on issues concerning participation rates of Indigenous Australians in the University sector across Australia.

IHEAC's position is that higher education has a central role to play in the advancement of Indigenous communities and the preservation and development of Indigenous cultures. Its foremost objective is to bridge the gap for participation in Australian higher education by achieving:

- more Indigenous undergraduates, especially in the professional disciplines.
- more Indigenous postgraduates, in research higher degrees and doctorates in particular.
- higher completion rates for Indigenous people who commence university degrees.

For these outcomes to occur, Australian universities need to apply:

- greater cultural competence on the part of all students and staff.
- greater prominence for Indigenous studies and Indigenous research.
- more Indigenous staff, particularly in senior academic positions and leadership roles.
- more prominence for Indigenous knowledge, cultures and values on campus.
- more involvement of Indigenous people in university governance.

The current fourteen member Council's term of office expires in May 2009 and the Federal Government has committed itself to appointing a new Council to continue with the important work carried out to date.

4.1.1 Key Issue – Under-representation

Underrepresentation of Indigenous students and staff in the higher education system is due to

- intergenerational educational disadvantages
- high attrition rates of Indigenous students in senior school;
- an over-representation of Indigenous students undertaking vocational rather than academic studies in years 11 and 12.

4.1.2 Challenges

- To improve enrolment levels that are well below population parity levels, particularly in key professional areas.
- An access rate for Indigenous students as a ratio to the access rate for non-Indigenous students, a level which has declined annually from 1.61% in 2002 to approximately 1.43% in 2007.
- Increasing retention and success rates which are approximately 80% of those of non-Indigenous students.
- To reach population parity of Indigenous PhD students, candidature would need to rise by more than 500%.
- To improve the numbers of Indigenous academic and general staff (which is unacceptably low) - Indigenous staff represents only 0.83% of all staff in higher education institutions in 2007, having increased from 0.71% in 2001.

4.1.3 Current Initiatives

IHEAC's vision sees a higher education system in which Indigenous Australians share equally in life and career opportunities available through university education.

IHEAC is currently involved in a number of initiatives to help achieve this vision. Focus will be on the whole of life learning:

- inspirational leadership and pathways projects in secondary schools.
- better support for Indigenous students at university – financial and academic
- An Indigenous Learned Academy and an Indigenous Model of Researcher Development.
- IHEAC and *Universities Australia* have formed a joint Working Party on Indigenous Cultural Competency.
- Cultural competency ensures the institutional culture, staff culture and nature of curriculum of universities recognises and supports the participation and cultural knowledge of Indigenous students. It also equips all graduates with Indigenous cultural competence as a core skill to take into the broader workforce.
- The Federal Government has allocated \$500,000.00 (Australian) to *Universities Australia* and the IHEAC to develop pilots and implement Cultural Competency across the Higher Education Sector.
- Development of a National Indigenous Higher Education Workforce Strategy that aims to increase recruitment and improve the development of Indigenous staff in academic and general positions in universities.

4.2 Relationship between NIHEN as a community body and IHEAC as the government advisory body

NIHEN is a professional network of Indigenous education leaders. It is a self governing group and as such is able to respond in flexible, pragmatic and community based approaches. A majority of the IHEAC are NIHEN members. A good working relationship has been established between the groups based upon shared goals for increasing Indigenous participation and success in education across all sectors. NIHEN has actively supported the IHEAC in its strategic directions and projects. IHEAC recognises NIHEN as the larger sector network.

Releasing the potential of Indigenous people as individuals, families, communities and nations through successful Indigenous education policy and programs is vital for the planet's survival. Ancient knowledge that is respected and cherished will ultimately cradle future humanity.

INTERVENTIONS PRESENTED BY THE PACIFIC CAUCUS DELEGATION AT THE EIGHTH SESSION OF THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES; AND JOINT STATEMENTS BY: THE AUSTRALIAN GOVERNMENT, THE INDIGENOUS PEOPLES NETWORK OF AUSTRALIA AND THE AUSTRALIAN HUMAN RIGHTS COMMISSION AND THE NEW ZEALAND HUMAN RIGHTS COMMISSION AND AUSTRALIAN HUMAN RIGHTS COMMISSION.

Agenda Item 7: Future Work of the Permanent Forum including issues of the Economic and Social Council and emerging issues: climate change and land tenure.

Presented by: Brian Wyatt - Joint Statement on behalf of the Pacific Caucus and the Indigenous People's Organisations Network of Australia

Thank you Madam Chair

This intervention is made on behalf of a number of Indigenous Peoples of the Pacific Region present at this Forum.

Recommendations:

- 1. The UN PFII should recommend to the UN Human Rights Council the creation of a United Nations Special Rapporteur on Climate Change & Human Rights focusing on Climate Justice.**
- 2. The UN PFII should recommend the UN Human Rights Council members call for a special session to deal with Climate Change.**
- 3. The UN PFII should recommend an official UN Day on Climate Justice to be commemorated on October 1 and explore the elaboration & creation of a Decade.**
- 4. The UN PFII should sponsor a series of expert workshops on Climate Change & Human Rights: On the Frontlines of Cultural Survival.**
5. The UN PFII should recommend to the newly created Expert Mechanism on the Human Rights of Indigenous Peoples to continue and update the collection of the questionnaire created by the former UN Working Group on Indigenous Peoples and build on the studies by many Indigenous experts throughout the Pacific region.
6. The UNPFII should recommend immediate action to provide infrastructure to safeguard people living in low lying islands in the Pacific.

I will briefly explain the reason behind each recommendation and the necessity to ensure these measures are enacted so we can create tools and techniques to ensure the indigenous peoples of the Arctic and Pacific are not forgotten while striving for cultural survival and struggling to realize the right of self-determination in the face of climate change.

The UN PFII should recommend to the UN Human Rights Council the creation of a United Nations Special Rapporteur on Climate Change & Human Rights.

The creation of a new UN Special Rapporteur on Climate Change & Human Rights would be an important international mechanism for indigenous peoples in the Arctic and Pacific as well as the five other regions. The UN SR on CC & HR would be able to visit first hand to see the peoples facing the impacts of climate change and its impact to deny the realization of human rights. The UN SR on CC & HR would be able to do two missions each year to speak with indigenous peoples, NGOs, National Human Rights Institutions and governments attempting to survive climate change.

For the first missions, it is suggested the UN SR on CC & HR would visit a Pacific Island State and an Arctic state. The SR could then share his/her findings in the Pacific of traditional crops suffering from salination and water levels rising at alarming levels and in the Arctic of disappearance of traditional hunting practices due to extinction of animals and indigenous villages falling into the sea or being moved inland.

The immediate creation of this special mechanism would allow the UN Human Rights Council to keep informed of what indigenous peoples are facing today and the rest of humanity will face in the near future.

This is important as one major criticism of the newly created UN HR Council is the elimination of special rapporteurs. This would show when there are imminent issues the HR Council will take bold action. The SR on CC and HR will assist the HR Council in dealing with its new agenda item on climate change.

The UN Human Rights Council should call for a special session to deal with Climate Change.

The UN Human Rights Council has been willing to hold special sessions to focus on important issues of the day dealing with human rights. Already in its first two years, the Human Rights Council has called more special sessions than in the nearly previous six decades of the UN Commission on Human Rights. The special session will bring together the 47 members of the UN Human Rights Council to focus on this important issue. The special session can also add to the important meetings of the UN Framework Convention on Climate Change final meeting in Copenhagen in December 2009.

The UN PFI should recommend an official UN Day on Climate Justice to be commemorated on October 1.

The commemoration of an UN Day on Climate Justice would be a catalyst to wake up the world to what people have to live with due to climate change on a daily basis and what some of the looming challenges that will make it even more difficult on an ever increasing level.

The idea behind October 1 is it the national day of independence of Tuvalu when it became a member of the family of nations. While it is now free, what will its future be if its land base disappears? The disappearance of a country will be a unique issue the world will have to deal with. More importantly, the issue of climate justice is crucial as more countries will have to face such challenges to their very survival.

Tuvalu became independent in 1978 and is a member of the United Nations. What will happen when it sinks? Will we lower the flag from the pole outside of the UN? Will it lose its independence and its seat at the UN on top of its homeland in the Pacific?

It is an indisputable fact that indigenous peoples fundamental freedoms will be denied due to the disappearance of the entire homeland for environmental reasons. The human rights violation will be indirect from across oceans yet no less destructive in fact even more dire with entire disappearance of one's sacred homeland and actual extinction. This will honor the nation of Tuvalu as the first nation to deal with but not the final one. If we do not take stock every year of this important issue, more and more states will face similar conditions as Tuvalu.

The UN PFI should sponsor a series of expert workshops on Climate Change & Human Rights: On the Frontlines of Cultural Survival.

A series of expert workshops on Climate Change & Human Rights will be an important addition to the dialogue and most important an attempt to fill a gap in the international legal system to address this imminent issue.

One important component of the workshops would be to be hosted in communities already facing the impacts of climate change. It is vital for the expert workshops to be hosted in the communities. By living with communities throughout the meeting, the experts can add to their research while seeing firsthand what people are forced to deal with. We suggest six expert workshops to be held with the location to switch every year between the Pacific and Arctic regions. We suggest also that meetings actually take place in Tuvalu during king tides of February and during usual winter in Greenland. These are just two examples but will allow the experts to see firsthand what is happening to people and why the matter is so urgent.

The UN PFII should recommend to the newly created Expert Mechanism on the Human Rights of Indigenous Peoples to continue and update the collection of the questionnaire created by the former UN Working Group on Indigenous Peoples.

In 2003, the Pacific Caucus raised the issue for the first time at the UN Working Group on Indigenous Peoples. Following the issue being raised, Francoise Hampson, a member of the UN WGIP, suggested it be placed permanently on the annual agenda and authored a report. Under the heading, The Human Rights Situation of Indigenous Peoples in States and Territories Threatened with Extinction for Environmental Reasons, indigenous peoples continued to bring their issues forward and Hampson drafted an extended report and eventually a questionnaire. We believe the questionnaire is a valuable tool to assess the impacts of climate change for each member state of the United Nations. The questionnaire will provide important information to receive an updated assessment of the latest impacts of climate change on indigenous peoples. The questionnaire is already drafted and could be updated and resent to states to provide the latest information.

It is well known that Indigenous people are and will be most affected by climate change, yet we have contributed least to its impacts. It is time for this to change and the most appropriate vehicle for change is the United Nations Declaration on the Rights of Indigenous Peoples. Our rights as set out in the Declaration must be upheld in all decision-making and activities related to climate change. Indigenous peoples must be part of the debate and we must take a greater role in the solutions.

The UNPFII should recommend immediate action to provide infrastructure to safeguard people living in low lying islands in the Pacific.

Climate change immediately threatens the survival of Indigenous Communities living on low lying islands around the globe. High tide surges, storm swells, and the pace of sea level rise have already devastated crops, homes, infrastructure, and traditional ways of life. Abandonment of island homelands is already taking place, and entire populations are seeking asylum in countries with higher ground.

Thank you

Agenda Item 7: Future Work of the Permanent Forum including issues of the Economic and Social Council and emerging issues: Health

Presented by: Ngiare Brown – Bullana, The Poche Centre for Indigenous Health - Joint Statement on behalf of the Pacific Caucus and the Australian Indigenous People's Organisations Network

I would like to begin by acknowledging the Traditional Owners of the land on which we gather, and bring respects from my Ancestors to the members and participants of the Permanent Forum.

We cannot achieve the realisation of our human rights if we are not healthy, nor raise our children or empower our youth. This Intervention is focused on a proposal for future work to address the health and well-being of the world's Indigenous Peoples, and the roles and responsibilities of UN, World Health Organisation (WHO), and other health related agencies. We propose as part of our future work, and consistent with the mandated areas of the Permanent Forum, the development and promotion of a global agenda addressing the health of the world's Indigenous Peoples.

We are all well versed on the persistent disparities in health and social justice outcomes for Indigenous peoples the world over. Colonisation; oppression; racism and discrimination; policies and practices with intended and unintended negative impacts; and social and political environments all contribute to the complex matrix of risk factors that influence the health and well-being of our men, women and children.

These risk factors influence poorer outcomes such as significant life expectancy disparities; higher rates of maternal and infant mortality, even in developed nations; poor mental health status and higher rates of interpersonal violence, self harm and suicide; substance abuse (including tobacco, alcohol, marijuana, amphetamines and narcotics); excess morbidity and mortality from preventable chronic diseases such as heart disease, diabetes and kidney disease; grossly disproportionate incarceration rates; lower educational completion and attainment; and lower employment and income status.

On a more positive note, there is evidence that successful initiatives developed to address and resolve these disparities are usually locally driven and community owned. We believe that such local and regional Indigenous expertise has the potential to provide leadership and innovation in order to drive international health reform and global improvements in health and social justice outcomes for the world's Indigenous Peoples.

The World Health Organisation's Commission on the Social Determinants of Health recently published a comprehensive report describing a social determinants and human rights-based approach to health equality. Other UN agencies continue to undertake essential work relating to the health and wellbeing of the world's populations. However, missing from such work is dialogue on the CULTURAL DETERMINANTS of health and an explicit, sustained focus on the health needs and priorities of Indigenous peoples. We note that the WHO is yet to routinely engage or provide regular reports to the Permanent Forum, although regional office representatives are often in attendance.

It is not enough to assume the inclusion of Indigenous issues under various other contexts such as vulnerable populations, women's health, refugees, minorities etc. We are distinct peoples with health issues intimately connected to our Indigenous status, beliefs, experiences and expertise. And whilst social determinants describe the influence and impacts of education, employment, income and economic status on health, wellbeing and participation, in addition we must promote discussion, research and action on the cultural determinants of health – concepts essential to Indigenous existence, healing and well-being.

Cultural determinants of health include sovereignty and self-determination; access to and utilisation of traditional lands; issues of identity; preservation of language; and cultural integrity – that is the protection and promotion of Indigenous lore and positive traditional practices that are protective and facilitate improved resilience.

Aboriginal health professionals in Australia are working with Colleagues in the Pacific on these cultural determinants.

Recommendations

The Pacific Caucus and the Australian IPO network make the following recommendations:

1. That the World Health Organisation be one of the agencies identified to engage in comprehensive dialogue with the Permanent Forum in 2010 and subsequent years to report on their work during the second decade of the world's Indigenous Peoples.
2. That the UNPFII, ECOSOC and member States engage with the World Health Assembly (WHA), the international agency which determines the direction and mandate of the WHO, to develop a comprehensive, integrated agenda addressing the health of the world's Indigenous peoples.
3. That the Permanent Forum suggest WHO mandate regional offices to engage with (or continue to engage with) member States to develop initiatives specific to the health of Indigenous Peoples in their region.
4. That WHO, their regional offices and UN agencies develop themed reports specific to Indigenous health e.g. The State of the World's Children – Indigenous maternal and newborn health. These agencies should draw on the extensive, collective expertise and networks of the UNPFII and participants to progress this work.
5. That the UNPFII facilitate research and action on the cultural determinants of health.

Thankyou Madam Chair, Permanent Forum members, brothers and sisters.

Joint Intervention presented at the Eighth Session of the United Nations Permanent Forum on Indigenous Issues by the Australian Government, the Indigenous Peoples Network Of Australia and the Australian Human Rights Commission

Thank you Madam Chair

First, I would like to acknowledge the traditional owners of the land on which we are meeting.

This joint statement on behalf of the Australian Government, the Indigenous Peoples Network of Australia and the Australian Human Rights Commission reflects our joint determination to forge a new era of relations grounded in good faith and mutual respect.

In the past 18 months, we have seen in Australia a re-setting of relationships. It began with the *National Apology to Australia's Indigenous Peoples* of which we spoke in this Forum last year.

On 3 April this year the Australian Minister for Indigenous Affairs made a statement on behalf of the Australian Government in support for the Declaration on the Rights of Indigenous Peoples.

This was another important step in building trust and moving forward to a new future.

The statement reversed the Australian Government's previous position, reflecting a change in values and a renewed willingness to build relationships at home and in the international arena.

The Minister's Statement reads that:

The Declaration recognises the legitimate entitlement of Indigenous people to all human rights - based on principles of equality, partnership, good faith and mutual benefit.

And that:

Australia joins the international community to affirm the aspirations of all Indigenous peoples.

It also emphasises that the Australian Government supports the Declaration:

...in the spirit of re-setting the relationship between Indigenous and non-Indigenous Australians and building trust.

As parties to this joint statement, we know that we won't always agree on everything. Our relationship will be tested and will evolve. But more and more, we can discuss issues in an open and respectful way.

Ultimately, together, we seek to demonstrate that trust and partnership are essential if we are to fully protect the rights of Indigenous peoples. We recognise that we each have a part to play in ensuring Aboriginal and Torres Strait Islander peoples' rights are fully protected and their life outcomes are improved:

(1) for government, by ensuring:

- participation of Aboriginal and Torres Strait Islander peoples in decision making that significantly affects them, including through their representative organisations;
- governments are accountable for their progress in closing the gap in disadvantage experienced by Aboriginal and Torres Strait Islander peoples;

- programs and policies respect Aboriginal and Torres Strait Islander peoples' human rights;
- Aboriginal and Torres Strait Islander peoples' aspirations to economic independence are recognised and their ability to manage their own affairs is supported; and
- Aboriginal and Torres Strait Islander peoples' culture and identity are recognised, strengthened and maintained; and

(2) for Aboriginal and Torres Strait Islander peoples, by ensuring:

- their communities and societies provide safe and nurturing environments for their populations, where individuals and vulnerable groups are protected and able to exercise their individual rights and freedoms in accordance with human rights laws;
 - o and especially the right of Aboriginal and Torres Strait Islander women and children to safe and healthy lives including protection from acts of violence, other forms of harm or abuse, and are not deprived of their right to education, social and cultural development; and
- they exercise their rights to economic, social and cultural development in accordance with their held beliefs and traditions, free from discrimination and consistent with applicable laws.

In this statement we seek to inform the Forum of some of the key positive actions that have been taken in the past 18 months in Australia.

Since 2006, the Australian Human Rights Commission has led the Close the Gap coalition calling on governments to implement a human rights based approach to addressing Aboriginal and Torres Strait Islander health inequality.

In March 2008, the Australian Government signed a Statement of Intent with Aboriginal and Torres Strait Islander health organisations, mainstream health organisations, NGOs and the national human rights institution for a new partnership to close the gap.

The Australian Government, together with State and Territory Governments, has made major commitments towards closing the gap between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians.

In an unprecedented step, all governments have signed up to targets towards closing the gap between Aboriginal and Torres Strait Islander peoples and other Australians in life expectancy, child mortality, early childhood education, literacy and numeracy, high-school completion and employment within specified timeframes.

It is acknowledged that this is an extremely significant undertaking that will require substantial investment and a new approach. Governments have announced significant new funding of some \$A6 billion for Indigenous specific initiatives to support these commitments.

This is not only about dollars – but a commitment to national policy reform. We must find new ways of tackling these challenges.

All governments are also committed to being held publicly accountable for their progress in improving outcomes for Aboriginal and Torres Strait Islander peoples. Alongside regular independent assessments, the Prime Minister has committed to report annually to the federal Parliament on progress in achieving the closing the gap targets.

Critical to Australia meeting its human rights obligations and closing the gap is the degree to which Aboriginal and Torres Strait Islander peoples can set the agenda, and affect policy and service delivery.

To this end, the Australian Government has committed to support the establishment of a National Indigenous Representative Body to engage with Aboriginal and Torres Strait Islander peoples at the highest level on issues of importance to them.

To help establish a new national representative body, there is currently a major consultation process underway in Australia – at arm’s length from government – coordinated and chaired by the Australian Human Rights Commission.

The Government does not have a pre-determined model for the representative body. An independent committee formed by the Commission will propose a model to the Government in July this year. We aim to have a new body in operation by the end of this year.

Australia also maintains a strong commitment to supporting national mechanisms for protecting the rights of Aboriginal and Torres Strait Islander peoples, including via the Australian Human Rights Commission. The Commission is unique among national institutions in that it has a specific designated Indigenous commissioner position that reports annually to the Australian federal Parliament on the adequacy of protection of the rights of Aboriginal and Torres Strait Islander peoples in Australia.

Madam Chair, we can inform the Forum of critical developments concerning the Northern Territory Emergency Response, announced in 2007 by the previous Australian Government.

An independent Review commissioned by the current Government, while acknowledging the emergency situation continues, highlighted the negative impact of inadequate consultation with the affected communities and the suspension of racial discrimination protections for Indigenous peoples in the Northern Territory.

In response to the Review report, the Government has committed to introducing legislation into Parliament in October this year so that the *Racial Discrimination Act 1975* (RDA) applies to the emergency response and the current provisions excluding the operation of the RDA are removed. This will be preceded by extensive community consultations commencing in the Northern Territory next month.

This commitment is welcomed by Aboriginal and Torres Strait Islander peoples and is seen as an essential reform to meet our international human rights obligations.

Madam Chair, this joint statement is an indication of a new spirit and a new partnership based on mutual respect and good faith. We aspire to build this partnership. In future years we hope it will lead to joint reports to the Forum on the key themes for each session.

See also: Australian Government statement of support for the UN Declaration on the Rights of Indigenous Peoples

Joint Statement by the New Zealand Human Rights Commission and Australian Human Rights Commission to the Eighth Session of the Permanent Forum on Indigenous Issues.

May 2009

Madam Chair, it is with respect that the National Human Rights Institutions of New Zealand and Australia present this intervention for consideration of the Permanent Forum on Indigenous Issues.

The Human Rights Commissions of Australia and New Zealand are independent national human rights institutions established and operating in compliance with *Principles relating to the Status of National Institutions (known as the Paris Principles)* as endorsed by the UN General Assembly in Resolution 48/134 - 20 December 1993).

Both institutions hold “A” status accreditation to the United Nations Human Rights Council. This status is determined periodically by the International Coordinating Committee of National Human Rights Institutions to ensure that all bodies that seek recognition as national institutions are in fact robust organisations that fully comply with the Paris Principles. Resolutions of the Human Rights Council provide that “A” status national human rights institutions have full participation rights in all mechanisms associated with the UN Human Rights Council. For example, National institutions have a key role to play in the Universal Periodic Review process of the Human Rights Council and are regularly consulted by treaty committees in the course of considering periodic reports and in formally appearing before committees.

We also note that the Human Rights Council has requested that the Expert Mechanism on the Rights of Indigenous Peoples seeks input from NHRI’s in all of its operations.¹

At present, however, there is no dedicated mechanism for the accreditation and participation of national human rights institutions in the work of the Permanent Forum. Due to historical reasons, the Australian commission has been accepted to participate in this session whereas the New Zealand Commission has only been registered as an observer without speaking rights.

Madam Chair, the lack of distinct status for national human rights institutions in this Forum runs counter to the recommendations and purpose of the Forum. We note, for example, in the report of the seventh session the Forum makes recommendations relating to national human rights institutions including at paragraphs 144 and 145. These recommendations acknowledge the critical role that national human rights institutions play in the implementation of the Declaration on the Rights of Indigenous Peoples. They are a vital mechanism in the implementation of Article 42 of the Declaration.

Madam Chair, there is great potential for this Forum to build partnerships with national human rights institutions in order to draw on the extensive research and experience of these organisations globally, as well as to extend further the activities that national institutions undertake to promote and protect the rights of Indigenous peoples. The capacity for this is inhibited by the lack of formal accreditation processes to participate in this Forum.

Accordingly, we recommend that a new category for national human rights institutions be added to the resolution for accreditation to participate in the UN Permanent Forum on Indigenous Issues. Such accreditation should be on the same terms as in the UN Human Rights Council – that is, for national human rights institutions that have “A” status accreditation as Paris Principles compliant organisations.

¹ Resolution A/HRC/6/36 para 9 and Resolution A/HRC/9/L/17 para 6.

National Sorry Day 26 May 2009

The IPO Network provided a statement to the Forum to commemorate the Australian National Sorry Day. The statement reads as follows:

Thank you Madam Chair

Distinguished Guests and International Representatives,

I acknowledge and pay my respects to the traditional custodians of the land on which we meet for the United Nations Permanent Forum on Indigenous Issues. I pay tribute to all international custodians of their traditional lands, their Elders and descendants.

Today marks the 12th National Sorry Day since the release of the *Bringing Them Home Report* of 1997 by the Human Rights and Equal Opportunity Commission, (NSW, 1997) of the *National Inquiry into the separation of Aboriginal and Torres Strait Islander Children from their families* (HREOC 1995-1997), now commonly referred to as the 'Stolen Generations'.

In the era of 'protection', the Australian government wanted to eradicate Indigenous people: put them on missions and reserves, isolate them from society with age restrictions (removing children from as young as 4) and caste restrictions and assimilation rules(1), in the hope that Indigenous people would '*breed out and die out*' – under the guise of '*it's for their betterment*'.

The policies and rules - of ordinances of 1910-1912 - were modified to suit the application throughout the decades until approximately 1970 and varied by state and territory governments. In reality, the practice of removal occurred since colonisation, with black wars and massacres right up until 1940. This was reported in the *Bringing Them Home Report* as genocide.

In short, coloured or mixed race Indigenous children who were to be taken from their families, communities and lands and trained in institutions, forbidden to practice their traditional customs and language; so they could eventually '*take up their place in Australian society*'

These policies and practices contravened the human rights of all Indigenous Australians; and in violation of the *Universal Declaration of Human Rights* endorsed by the UN in 1948. Yet, the report covered removal until 1972. This is evidence that the human rights of Indigenous Australians were not - counted nor visible nor in the psyche - when Australia signed off on that Declaration. Aboriginal people were socially, politically, geographically and economically excluded from Australian society.

National, State and Territory governments lobbied for the implementation of the recommendations of that report. Eventually all state and territory governments - between 1998 and 2003 said "sorry". Public apologies were also recorded in thousands of Sorry Day Books across Australia. Over the last 12 years National Sorry Day events have been held in every state and territory.

I would also like to commend the Australian Government who on February 13 last year gave a genuine and honest *Motion of Apology to Australia's Indigenous Peoples*, which was passed by the Australian Parliament. This apology confirms without doubt, that the separation and removal of 'full blood' Indigenous to missions and reserves, and removal and separation of 'half caste' Indigenous children to institutions were practice and policy.

Attachment B

The inquiry captured 535 individual stories, and 777 submissions, and we know there are many more. It was a belief by Stolen Generations and other Australians that the inquiry would bring justice.

The *Bringing Them Home Report* featured 54 recommendations some with parts totalling 146 part recommendations. Approximately half the recommendations appear to have been implemented. National Sorry Day commemoration is recommendation 7a.

For approximately the past 10 years the Australian Government has funded *Link Up* organisations to find and reconnect with family. The Australian Government has established an Indigenous Steering Committee to implement a much needed "Healing Foundation" to address the family and community traumatisation as a consequence of Australian government practice and policy.

Finally, I dedicate this as a legacy, to all those who were part of the Stolen Generations and have advocated and lobbied for the rights of Stolen Generations at state and national levels in Australia. For our grandmothers and great grandmothers, who are Stolen Generations; for our aunts, uncles, and cousins for many of them too were Stolen.

In closing, I know time is precious, and so too is the value of human life. Let us observe a minutes silence to reflect on the millions of people who will never make it back home, who have been lost, stolen, enslaved, persecuted, seeking refuge, and victims of genocide and disempowerment across our globe. [1 minutes silence]

Thank You.

IPO Response to the Government's announcement to compulsory acquire Alice Springs Town Camps

During the UNPFII, the IPO Network distributed a joint statement to the Australian media in response to the Australian Government announcement on 24 May 2009 that it would commence steps to compulsory acquire the Alice Springs Town Camps. The joint statement reads as follows:

28 May 2009

On 24 May 2009 the Minister for Indigenous Affairs announced the Australian Government is taking steps towards compulsory acquisition of the Alice Springs town camps 'to give children in the camps a better chance at a safe, healthy and happy life'. The Minister described the conditions in the camps as appalling, referring to acute overcrowding, sub-standard housing, alcohol abuse, despair, hopelessness and horrific crimes. The Minister announced intentions to implement a comprehensive plan to transform the town camps and provide intensive support services.

We the Indigenous Peoples Organisations of Australia attending the eighth session of the United Nations Permanent Forum on Indigenous Issues decide as follows:

We strongly oppose the proposal by the Government of Australia to compulsory acquire leases over Aboriginal and Torres Strait Islander lands or territories without their free, prior and informed consent.

We call upon the Government of Australia to comply with its international obligations to respect the rights of the Indigenous Peoples of Australia by ensuring that the representatives of the Aboriginal people in the region of Alice Springs are able to make an informed decision regarding the provision of adequate housing and services for their populations.

Specifically, we urge the Australian Government to re-open negotiations with Tangentyere Council, in concert with other relevant representative Aboriginal organizations, and facilitated by the Australian Human Rights Commission, with a view to concluding as soon as possible an agreement for urgent funding for suitable housing to meet the needs of the Aboriginal people of the region.

We ask the Australian Government to withdraw their decision to compulsory acquire the lands held by the Tangentyere Council.

In regards to the international obligations of the Australian Government we note the following paragraphs regarding the rights of Indigenous Peoples and relevant recommendations by the human rights mechanisms of the United Nations and international human rights treaty bodies.

The Declaration on the Rights of Indigenous Peoples was adopted two years ago by an overwhelming vote of the UN General Assembly. Australia was one of only four governments to vote against the adoption of this universal Declaration but on 3 April 2009 the Government announced its support for the Declaration.

'Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.'

(Article 23, UN Declaration on the Rights of Indigenous Peoples)

In May 2007, following a visit to Australia during 31 July to 15 August 2006, the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, recommended to the United Nations in Paras 98 and 135 of his report that Aboriginal people should be given control to the greatest extent possible of our affairs and expressed his particular concern that removal of Aboriginal people as decision makers over the use and access of the land in the Northern Territory would undermine the right of self-determination. He advised that such action 'may call into question Australia's obligations under the International Covenant on Economic, Social and Cultural Rights, including its provisions on self-determination'.

'Australian governments must urgently address the humanitarian tragedy of the lack of housing and basic services for the indigenous peoples of Australia, living on indigenous lands and elsewhere. To this end, the Special Rapporteur encourages relevant government staff to visit and reside in indigenous communities, including town camps, and rural and remote communities, in order to better comprehend the reality and the challenges faced by the populations and communities in these locations.'

(Para 133, Report on Mission to Australia, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, UN Document A/HRC/4/18/Add.2, 11 May 2007)

On 13 March 2009, the Committee on the Elimination of Racial Discrimination (CERD) wrote to the Australian Government expressing its concern that the Racial Discrimination Act was suspended in the Northern Territory and calling for a report to the Committee by 31 July 2009 on the progress made in redesigning its (the Government's) approach in the Northern Territory in consultation with the Aboriginal communities.

'... In order to continue a constructive dialogue with your Government, the Committee requests the State party to submit further details and information on the following issues no later than 31 July 2009 progress on the drafting of the redesigned measures, in direct consultation with the communities and individuals affected by the NTER, bearing in mind their proposed introduction to the Parliament in September 2009 [and] progress on the lifting of the suspension of the Racial Discrimination Act. The Committee welcomes the government's commitment to building a new relationship with Indigenous Australians based on mutual respect, mutual resolve and responsibility.'

On 2 April 2009, the Committee on Human Rights released its findings on Australia's obligations under the International Covenant on Civil and Political Rights.

The Committee expressed its concern with the Northern Territory Emergency Response measures and particular concern about the negative impact of the measures on the enjoyment of the rights of indigenous peoples and at the fact that they suspend the operation of the Racial Discrimination Act 1975 and were adopted without adequate consultation with the indigenous peoples.

'The State party should increase its efforts for an effective consultation with indigenous peoples in decision-making in all areas having an impact on their rights ... The State party should redesign NTER measures in direct consultation with the indigenous peoples concerned, in order to ensure that they are consistent with the Racial Discrimination Act 1995 and the Covenant.'

(Concluding observations on Australia, Human Rights Committee, UN Document CCPR/C/AUS/CO/5, 2 April 2009)

On 22 May 2009, the Committee on Economic, Social and Cultural Rights, in examining Australia's periodic report under the International Covenant on Economic, Social and Cultural Rights, expressed its concern that some of the Northern Territory Intervention measures are inconsistent with the Covenant rights, in particular with the principle of non-discrimination, and have a negative impact on the realisation of the rights of indigenous peoples and noted 'with regret' that measures were adopted without sufficient and adequate consultation with the indigenous peoples concerned.

'The Committee recommends that the State party take effective measures, in line with the Committee's general comment No.4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant), to address homelessness in its territory. The State party should implement the recommendations of the Special Rapporteur on the Right to Adequate Housing contained in the report of his mission to Australia... The Committee calls on the State party to take immediate steps to improve the health situation of indigenous people, in particular women and children, including by implementing a human rights framework that ensures access to the social determinants of health such as housing, safe drinking water, electricity and effective sanitation systems.'

(Concluding observations on Australia, Committee on Economic, Social and Cultural Rights, UN Document E/C.12/AUS/CO/4, 22 May 2009)

We also appreciate that the Australian Government has presented to this session of the Permanent Forum on Indigenous Issues a joint statement with our delegations expressing a desire that Australia meet its human rights obligations, and we recognise that a critical factor in achieving this goal is the degree to which Aboriginal and Torres Strait Islander peoples can set the agenda, and affect policy and service delivery.

Our delegations are encouraged by the Australian Government's decision to support the UN Declaration on the Rights of Indigenous Peoples.

Therefore, in conclusion to this statement, we support the view that the Government of Australia should establish and implement in conjunction with the Aboriginal and Torres Strait Islander peoples a fair, independent, impartial, open and transparent process to adjudicate the rights of the Aboriginal people in relation to our lands. This provision is stipulated in Article 27 of the Declaration on the Rights of Indigenous Peoples.

We strongly recommend that the Australian Government provide, as a matter of priority and urgency, extensive human rights training on how human rights apply to Aboriginal and Torres Strait Islander peoples in the areas of non-discrimination and civil, political, economic, social and cultural rights. The training should target all sectors of society, but particularly it should target State officials having a direct role in engagement of the Aboriginal and Torres Strait Islander peoples and the judiciary.



**ADDRESS OF H.E. MIGUEL D'ESCOTO BROCKMANN,
PRESIDENT OF THE UNITED NATIONS GENERAL ASSEMBLY,
TO THE EIGHTH SESSION OF THE UNITED NATIONS PERMANENT
FORUM ON INDIGENOUS ISSUES**

New York 28 May 2009

Excellencies, Madame Chairperson, Distinguished Members of the Permanent Forum, Indigenous Elders and Representatives, Sisters and Brothers All,

1. I am honoured to be invited to address the opening ceremony of the Eighth Session of the Permanent Forum on Indigenous Issues. I am pleased to see so many indigenous representatives here at the United Nations, coming from around the world to participate in your Eighth Session. The Forum continues to be a shining example of collaboration and dialogue between indigenous peoples, Member States, the United Nations system and civil society at large.
2. It was an historic moment on 13 September 2007 moment when the General Assembly adopted by an overwhelming majority the United Nations Declaration on the Rights of Indigenous Peoples. Our challenge is now to fully and effectively implement the Declaration. Partnerships are crucial to achieve this objective, and States and the UN system should strive to ensure that indigenous peoples fully participate in this process.
3. In this regard, I welcome Australia's recent endorsement of the Declaration on the Rights of Indigenous Peoples and urge all governments that may have voted against the Declaration or abstained to follow Australia's lead. I would also like to express my optimism about developments in my own region, Latin America, where the Declaration is having a profound resonance, including its adoption as national law in Bolivia. I think we are all proud of the great effort that President Evo Morales Ayma has been making to promote and implement the rights of indigenous peoples and all excluded people. We are witness to irreversible progress in other countries as well.
4. The Permanent Forum's emphasis on accountability and its decision to devote this session to the follow-up of its recommendations in three of its mandated areas is highly significant. I sincerely hope that this analysis of the implementation of the Forum's recommendations, as well as the in-depth dialogue with six UN agencies, will result in strengthened accountability and partnerships for the full implementation of the Declaration.
5. I especially welcome the Forum's decision to follow-up on its recommendations regarding the Second International Decade of the World's Indigenous Peoples. The Second Decade's

objectives include the promotion of participation and partnerships, as well as the enhancement of monitoring mechanisms and accountability.

6. Regarding the Second Decade, I would like to point out that the General Assembly recently adopted a resolution on indigenous issues, in which it calls for a mid-term assessment report of the Second Decade, evaluating progress made in the achievement of its goals and objectives. This exercise represents another vital step towards strengthened partnerships and accountability and the full implementation of the Declaration.
7. Despite significant progress, it is important to point out that indigenous peoples continue to face marginalization, extreme poverty and other human rights violations that threaten their ways of life and, in some cases, their very survival. The ongoing global economic crisis will undoubtedly have a negative impact on indigenous peoples around the world.
8. It is a bitter irony that the people who are doing the most to protect our dear Mother Earth from the rapacious landlords and agro-industrialists are the ones who are hurt the most by this and related crises. This fundamental injustice underlines the urgency of concerted action to fully implement the Declaration on the Rights of Indigenous Peoples and the objectives of the Second Decade of the World's Indigenous Peoples.
9. It is also one of the fundamental reasons that why I would like to bring to your attention an important meeting that is deeply relevant to Indigenous Peoples around the world – indeed to all people who are struggling to have their voices heard in this period of global economic turmoil and hardship. A summit of leaders from all 192 Member States of the General Assembly will meet from 1 to 3 June to address the global economic and financial crisis and its impact on development. While smaller groups of countries have met to resolve the deepening economic and financial crisis, the United Nations is the appropriate forum where the needs and interests of all countries can be taken into account.
10. I would like to conclude by commending the members of the Permanent Forum on Indigenous Issues, indigenous representatives, Member States and UN agencies gathered here for your continued commitment to indigenous peoples' rights. In these times of broken promises and eroded trust, it is truly significant that you have placed both hope and trust in this United Nations Forum. I hope this Organization is always there when you need it. I wish you a very successful and productive Eighth Session.

Thank you.



Statement by Professor James Anaya

Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous Peoples Eighth Session of the UN Permanent Forum on Indigenous Issues

20 May 2008, New York

I am grateful for the opportunity to address the Permanent Forum and all those attending this session in order to share some of my experiences during my first year as Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people. This has been a year of continual challenges in my work, with my optimism for a better future for indigenous peoples animated by positive developments in many places, yet tempered by the reality of ongoing struggles and violations of indigenous peoples rights across the globe.

Cooperation with the Permanent Forum and Expert Mechanism

My participation here is a fundamental part of the necessary cooperation between the Permanent Forum and my mandate as Special Rapporteur. The Human Rights Council has explicitly called upon me “to work in close cooperation with the Permanent Forum on Indigenous Issues and to participate in its annual session” (Human Rights Council Resolution 6/12, art. 1(e)). This cooperation now extends as well to the Council’s Expert Mechanism on the Rights of Indigenous Peoples, which had its first session last October. In my capacity as Special Rapporteur I participated in seminar in Madrid in February with the members of the Expert Mechanism and four members of the Permanent Forum, along with other experts, to explore ways to coordinate and streamline the work of the three mechanisms in order to maximize our collective impact and avoid unnecessary duplication.

I would like to acknowledge and express my gratitude for the support provided for this seminar by the International Work Group on Indigenous Affairs, Almaciga Intercultural Work Group, and the Spanish Agency for International Cooperation and Development of the Government of Spain. The report of the seminar, which includes a series of recommendations, has been made public and will be available on the website of the Special Rapporteur. I am eager to continue to cooperate with the Permanent Forum and Expert Mechanism to share work agendas, identify the strengths and limitations of our respective mandates, and to channel our work in the way that it will be most effective.

Normative Framework

While the Permanent Forum, the Expert Mechanism and I as Special Rapporteur have different roles, a common purpose that joins us is to advance the human rights of indigenous peoples throughout the world. Clearly an important point of reference for pursuing this common purpose is the United Nations Declaration on the Rights of Indigenous Peoples. In my first report to the Human Rights Council last September, I emphasized that the Declaration represents the global

common understanding about the minimum content of indigenous peoples' rights, building as it does upon a well-established body of international human rights law. It provides a normative framework for the work of all United Nations institutions and agencies in relation to indigenous issues. By article 42 of the Declaration itself, the General Assembly calls upon all United Nations bodies and agencies to "promote respect for and full application of the provisions of the Declaration." And in its resolution reauthorizing the mandate of the Special Rapporteur on indigenous peoples, the Human Rights Council directs the Special Rapporteur to promote the Declaration in carrying out the work of the mandate.

Areas of Work

Since becoming Special Rapporteur just over a year ago, I have engaged in a range of activities within the terms of my mandate to monitor the human rights conditions of indigenous peoples worldwide and promote steps to improve those conditions. Throughout this work, I have attempted to incorporate a gender perspective as well as be attentive to the particular vulnerabilities of indigenous children. Overall, I have tried to develop work methods oriented toward constructive dialogue with governments, indigenous peoples, non-governmental organizations, relevant United Nations agencies, and other actors, in order to address problem situations and build on advances already made. The various activities I have carried out can be described as falling within four, interrelated spheres of activity.

Promoting Good Practices

A first area of my work follows from the directive given me by the Human Rights Council to "identify ...and promote best practices" (H.R.C. res. 6/12, art. 1(a)). I am working to advance legal, administrative, and programmatic reforms at the domestic level to implement the standards of the Declaration on the Rights of Indigenous Peoples and other relevant international instruments. Reform of this kind is no small task, as it is necessarily full of all kinds of complexities and requires a strong commitment, both financial and political, on the part of Governments.

During my time as Special Rapporteur, I have been asked to provide assistance with constitutional and legislative reform initiatives by providing orientation on how to conform those initiatives to relevant international standards. Shortly after assuming my mandate in May 2008, I was asked by indigenous organizations and the President of the Constituent Assembly of Ecuador to provide technical assistance with that country's constitutional revision process. After my visit to Ecuador, I communicated to the Government a series of observations on proposals for constitutional reform relating to the "plurinational" character of the country, collective rights, rights over traditional lands and territories, and the principle of free, prior and informed consent. Ecuador's new Constitution was approved by referendum in September 2008 with provisions on each of these areas of concern. I continue to monitor Ecuador's implementation of these reforms and subsequent legislation, and I invite information from indigenous organizations and the Government in this regard.

Also, in April 2009, I carried out a visit to Chile to assess the situation of the indigenous peoples in that country, as a follow up to the 2003 visit to the country by my esteemed predecessor Professor Rodolfo Stavenhagen. While many problems persist for indigenous peoples in Chile, as elsewhere, the Government of that country has taken important steps within the last year to advance protections for their rights, including by ratifying International Labor Organization Convention No. 169 in September 2008 and by committing to enact constitutional reforms to recognize and promote indigenous rights. In light of the constitutional reform process, I developed and submitted to the Government a report, which was made public, outlining and analyzing the

various applicable elements of the right to consultation, and providing examples of consultation mechanisms in other countries. The Government has initiated consultations with the indigenous groups of Chile on the constitutional reform process, and I will continue to monitor their progress.

Additionally, the Government of Suriname extended an invitation to me as Special Rapporteur to provide it with technical and advisory assistance as it implements the judgment of the Inter-American Court of Human Rights in the case of *Saramaka People v. Suriname*. This judgment comprehensively addresses the rights of indigenous peoples to lands and resources and to free, prior, and informed consent. I have accepted the invitation to assist with this initiative and am available to help Suriname draft legislation to implement the judgment.

Clearly, an important component of efforts to build good practices at the domestic level is a policy of commitment to advance the rights of indigenous peoples in accordance with the Declaration. This year, Australia officially endorsed the Declaration and, in a widely circulated statement, committed to “fully implement the standards contained therein.” This is a welcome development in Australia’s policies towards indigenous peoples, which I noted in a press release issued jointly with the chairpersons of the Expert Mechanism and of the Permanent Forum. It also sets an important example for the three other States that did not vote in favor of adoption of the Declaration in the General Assembly in September 2007, as well as for those that abstained in the vote. I am encouraging these other states to take the same action and am optimistic that they eventually will. In August, I will carry out a visit to Australia to examine the situation of indigenous peoples in that country; the Declaration will provide an important frame of reference for this visit.

Thematic Studies

A second area of work, which is intended to contribute to good practices in specific country situations, involves conducting or participating in studies on issues or themes that are of interest to indigenous peoples across borders and regions of the world. My predecessor Professor Stavenhagen carried out a number of thematic studies during his time as Special Rapporteur to identify major issues and to provide a foundation for subsequent positive practical action and reform. These included studies on the impacts of development projects on indigenous communities, the implementation of domestic laws and international standards to protect indigenous rights, indigenous peoples and the education system, the relationship between formal state law and customary indigenous law, and international norms concerning indigenous peoples. However, taking into consideration Human Rights Council resolution 6/36 of December 2007, which established the Expert Mechanism with a mandate to provide thematic expertise and recommendations to the Council on issues affecting indigenous peoples, I now see my own work carrying out thematic studies as secondary to the other areas of my work. My role will for the most part be complementary and supportive of the work of the Expert Mechanism. In this regard, I provided information, based on my experiences as Special Rapporteur, for the Expert Mechanism’s current study on the right of indigenous peoples to education.

Apart from this input, I am collaborating with nongovernmental organizations and indigenous experts in two initiatives related to two thematic areas of recurrent concern to indigenous peoples. One is a seminar, organized by the NGOs Khredda and UNESCO Centre of Catalunya to take place in October of this year, on dispute resolution mechanisms in regard to extractive industries operating or seeking to operate within indigenous territories. This seminar, and the report it will generate, correspond to a recommendation made last year by the Permanent Forum that I carry out a study on transnational corporations, and it is intended to complement the Permanent Forum’s own work on this subject. A second initiative is a multifaceted study on legal pluralism and indigenous customary law, to be carried out in collaboration with the International Council on

Human Rights Policy and the Office of the High Commissioner for Human Rights. This study will likely begin with a workshop at the University of Arizona later this year.

Country Reports

A third area of work involves investigating and reporting on the general human rights situations of indigenous peoples in selected countries. The country reports include conclusions and recommendations aimed at strengthening good practices, identifying areas of concern, and improving the human rights situations of indigenous peoples. The reporting process typically involves on site visits to the countries under review, during which I interact with government representatives, indigenous communities from different regions, and a cross section of civil society actors that work on issues relevant to indigenous peoples. These on site visits can only take place with government consent and cooperation. Over the past year, I have visited Brazil, Nepal and Botswana to report on those countries, and I have conducted a follow up visit to Chile to evaluate its progress in implementing the recommendations in the report of my predecessor, Professor Rodolfo Stavenhagen. I also plan on carrying out a follow up visit some time in the next few months to Colombia, another country reported on by my predecessor. I am currently awaiting comments from the governments of Brazil and Nepal on drafts of my reports on these countries, and am in the process of engaging in further exchanges of information with the governments concerned to develop an initial country report on Botswana and a follow up report on Chile. I will present all of these reports in my annual update to the Human Rights Council in September.

Communications on Allegations of Human Rights Violations

Finally, the fourth—and perhaps principal—area of my work as Special Rapporteur involves responding on an ongoing basis to specific situations of alleged human rights violations. A fundamental aspect of the mandate of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, as reaffirmed in Human Rights Council resolution 6/12 is “to gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous people and their communities and organisations, on alleged violations of their human rights and fundamental freedoms” (para. 1(b)).

My ability to address specific situations of alleged violations relies to an important extent on the information provided to me by indigenous peoples and their organizations, NGOs and other sources. There are no formal requirements for submitting information to the Special Rapporteur. However, it is crucial that the information provided be accurate, complete, and up to date. I would like to take this opportunity to encourage the indigenous representatives present at the Permanent Forum to send me information about the concerns that they are facing in their respective communities. I would also like to thank the representatives of indigenous peoples for their participation here and their continued struggle; I know that many have traveled from very far to attend this session. Their efforts are the driving force behind the work of all of the United Nations mechanisms that deal with indigenous issues.

Over the past year, I have received information about situations of alleged human rights violations in countries in every continent and, in response, have sent numerous communications to governments about these situations. These cases involve infringements of the right to free, prior and informed consent, especially in relation to natural resource extraction and displacement or removal of indigenous communities; denial of the rights of indigenous peoples to lands and resources; indigenous peoples in voluntary isolation; incidents of threats or violence against indigenous peoples and individuals; and concerns about constitutional or legislative reforms in indigenous subject matter, among other situations.

Given the limited resources available to me, it is impossible to respond to every case that comes to my attention. But in general, I will do my best to act on detailed and credible information that presents a serious situation falling within my mandate in which intervention has a reasonable chance of having a positive impact, either by drawing needed attention to the situation or by prompting government authorities or other actors into corrective action. Alternatively, I may take action where the situation is representative of, or connected to, a broader pattern of human rights violations against indigenous peoples.

The usual first step in taking action on such information is to forward it to the government concerned, along with a request that the government respond. In some cases, I have issued public statements calling attention to or expressing concern over the human rights violations alleged. In addition, as I have already done in one case, I may issue observations with analyses and recommendations that I hope will be of use to the governments and indigenous peoples concerned in their efforts to address the situation. Summaries of the communications together with summaries of the government responses, if any, and observations I may make on the situations addressed are included in the reports to the Council.

In all my work as Special Rapporteur, I have been endeavoring to be proactive in efforts to prevent human rights violations from arising or escalating. These efforts require active engagement with governments, indigenous peoples and other actors to closely monitor and evaluate situations, identify underlying causes of immediate problems, promote specific action that builds on advances already made, and develop recommendations that are practical, well-founded in available knowledge, and in accordance with relevant human rights standards. I want to take this opportunity to thank the many indigenous peoples, governments, United Nations bodies and agencies, NGOs, and others that have cooperated with me in this regard.

Conclusion

In my first year as Special Rapporteur I have been developing my work methods to be as effective as possible in carrying out my mandate to respond to human rights violations that are brought to my attention and to promote positive change for indigenous peoples through various means. I will continue to collaborate with the Permanent Forum; the Expert Mechanism on the Rights of Indigenous Peoples; regional human rights institutions; United Nations agencies and programmes; non-governmental organizations; and indigenous peoples themselves to promote the full operationalization of the United Nations Declaration on the Rights of Indigenous Peoples and to find solutions to the problems indigenous peoples face in the enjoyment of their human rights. Towards this end, I am committed to working to ensure that indigenous peoples are effectively heard, and to facilitate constructive dialogue between indigenous peoples, governments, and other relevant actors. I would like to take this opportunity to reaffirm here my strong commitment to my role as Special Rapporteur, acknowledge with humility the responsibility it represents, and thank all those who have supported me and continue to support me as I try to contribute to moving toward reality the shared aspirations of a better future for the world's indigenous peoples.

United Nations

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Permanent Forum on Indigenous Issues
Eighth session
New York, 18-29 May 2009
Agenda item 9
Adoption of the report of the Forum on its eighth session

Draft report

Rapporteur Mr. Michael Dodson

Chapter I Matters calling for action by the Economic and Social Council or brought to its attention

A. Draft decisions recommended by the Forum for adoption by the Council

1. The Permanent Forum on Indigenous Issues recommends to the Economic and Social Council the adoption of the following draft decisions:

Draft decision I

The Economic and Social Council decides to authorize a three-day international expert group meeting on the theme "Indigenous peoples: development with culture and identity; articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples", and requests that the results of the meeting be reported to the Permanent Forum at its ninth session in 2010.

09-35216 (E) 280509



Draft decision II
Venue and dates of the ninth session of the Permanent Forum on Indigenous Issues

The Economic and Social Council decides that the ninth session of the Permanent Forum on Indigenous Issues shall be held from 19 to 30 April 2010.

Draft decision III
Provisional agenda and documentation for the ninth session of the Permanent Forum on Indigenous Issues

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Discussion on the special theme for the year "Indigenous peoples: development with culture and identity" ^{articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples}.
4. Human rights:
 - (a) Implementation of the United Nations Declaration on the Rights of Indigenous Peoples;
 - (b) Dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs.
5. Half-day discussion on North America.
6. Comprehensive dialogue with six United Nations agencies and funds.
7. Future work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues.
8. Draft agenda for the tenth session of the Permanent Forum.
9. Adoption of the report of the Permanent Forum on its ninth session.

B. Matters brought to the attention of the Council

2. The Permanent Forum has identified the proposals, objectives, recommendations and areas of possible future action set out below and, through the Council, recommends that States, entities of the United Nations system, intergovernmental organizations, indigenous peoples, the private sector and non-governmental organizations ~~assist~~ assist in their realization.

3. It is the understanding of the Secretariat that the proposals, objectives, recommendations and areas of possible future action to be carried out by the United Nations, as set out below, will be implemented to the extent that resources from the regular budget and extrabudgetary resources are available.

¹ The attention of the Economic and Social Council is drawn to a recommendation on this matter under item 7.

Chapter II

Venue, dates and proceedings of the session

4. By its decision 2008/250, the Economic and Social Council decided that the eighth session of the Permanent Forum would be held at United Nations Headquarters from 18 to 29 May 2009.

5. At its 1st to 4th meetings, on 18 and 19 May 2009, the Permanent Forum considered agenda item 3, "Follow-up to the recommendations of the Permanent Forum: (a) Economic and social development; (b) Indigenous women; and (c) Second International Decade of the World's Indigenous People". At its 16th and 17th meetings, on 29 May 2009, the Forum considered and adopted its recommendations submitted under agenda item 3 (see chap. I, sect. B).

6. At its 5th and 6th meetings, held on 20 and 21 May, the Forum considered agenda item 4, "Human Rights: (a) Implementation of recommendations of the United Nations Declaration on the Rights of Indigenous Peoples"; (b) Dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs.

7. At its 7th meeting on 21 May, the Permanent Forum considered item 5, "Half-day discussion on the Arctic". At its 16th and 17th meetings, on 29 May, the Forum considered and adopted its recommendations submitted under agenda item 5 (see chap. I, sect. B).

8. At its 8th to 11th meetings, on 22 May and 26 May, the Forum considered agenda item 6, "Comprehensive dialogue with six United Nations agencies and funds: Office of the High Commissioner on Human Rights; Food and Agricultural Organization of the United Nations; International Fund for Development; United Nations Development Programme; United Nations Population Fund; Department of Economic and Social Affairs".

9. At its 12th and 13th meetings, held on 27 May, the Forum considered agenda item 7, "Future work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues". At its 16th and 17th meetings, on 29 May, the Forum considered and adopted its recommendations submitted under agenda item 7 (see chap. I, sect. B).

10. At its 14th and 15th meetings, on 28 May, the Forum considered agenda item 8, "Draft agenda for the ninth session of the Permanent Forum". At its 17th meeting, on 29 May, the Forum considered and adopted its draft decision submitted under agenda item 8 (see chap. I, sect. A, draft decision III).

Chapter III

Adoption of the report of the Permanent Forum on its eighth session

11. At its 16th and 17th meetings, on 29 May, the Rapporteur introduced the draft decisions and recommendations, as well as the draft report of the Permanent Forum on Indigenous Issues on its eighth session.

12. At the 17th meeting, on 29 May, the Permanent Forum adopted the draft report, as orally amended.

Chapter IV Organization of the session

A. Opening and duration of the session

13. The Permanent Forum held its eighth session at United Nations Headquarters from 18 to 29 May 2009. It held 17 formal meetings and 1 closed meeting to consider items on the agenda and 7 informal meetings for consultations among members of the Forum.

14. At its 1st meeting, on 18 May, the eighth session was opened by the Assistant Secretary-General for Economic and Social Affairs and the Special Adviser of the Secretary-General on Gender Issues. At the opening ceremony, Tododaho Sid Hill, of the Onondaga Nation, delivered a welcoming address. A ceremonial recognition of the indigenous women was also held.

15. At the same meeting, the President of the General Assembly made a statement. Statements were made by the Deputy Secretary-General of the United Nations, the Assistant Secretary-General for Economic and Social Affairs and the great granddaughter of Chief Deskaheh (League of Nations, 1923) of the Haudenosaunee Nation, Kim Morf.

16. Also at the first meeting, a statement was made by Victoria Tauli-Corpuz, Chairperson of the eighth session of the Forum.

B. Attendance

17. Members of the Forum and representatives of Governments, United Nations entities, intergovernmental organizations and bodies and non-governmental and indigenous organizations attended the session. The list of participants is contained in document E/C.19/2009/INF.2.

C. Election of officers

18. At its 1st meeting, on 18 May, the Forum elected the following members of the Bureau by acclamation:

- Chairperson
Victoria Tauli-Corpuz
- Vice-Chairpersons
Tonya Gonella-Frichner
Margaret Lokawua
Elisa Canquillo
Pavel Suliandziga
- Rapporteur
Michael Dodson

D. Agenda

19. At its 1st meeting, on 18 May, the Forum orally revised the provisional agenda as contained in document E/C.19/2009/1.

E. Documentation

20. A list of the documents before the Forum at its eighth session is contained in document E/C.19/2009/INF/1.

