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United Nations Permanent Forum on the Rights of Indigenous Peoples

Item 5(d): Human rights dialogue with the Special Rapporteur on the rights of Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples

INTERVENTION by the New South Wales Aboriginal Land Council, delivered by CEO Yuseph Deen, and member of the Wuthathi Peoples

Thank you Mister/Madam Chairperson,

We pay our respects to the Elders and Ancestors, past and present, and extend our appreciation to Indigenous experts and participants at this session.

We use this opportunity to address the **Special Rapporteur on the rights of Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples**. This includes the ongoing issue of the First Nations culture and heritage rights and the implementation of the Declaration.

The NSW Aboriginal Land Council makes the following recommendations to the Permanent Forum, including that all States:

- Implement the United Nations Declaration on the Rights of Indigenous Peoples within domestic legislation and policies at all levels;
- Acknowledge the interconnected nature of land, cultural heritage, language and identity. First Nations peoples must have access to these rights in order to fully realise our social, economic and cultural development;
- Immediately legislate to strengthen protections for First Nations culture and heritage. Reforms must be designed and endorsed by First Nations peoples in alignment with the United Nations Declaration on the Rights of Indigenous peoples; and
- Fund, and have confidence in, First Nations community-controlled organisations to undertake culture and heritage programs.

A strong connection to Country and culture is integral to Aboriginal identity, and is inherently linked to the development of strong, sustainable Aboriginal communities. Aboriginal heritage is complex, living, and evolving, and is connected not just through historical artefacts, but through Songlines, storylines, landscapes and waters. Country, culture, and Aboriginal peoples are linked. This connection existed and persisted before and beyond colonisation, and with the destruction of our culture, the identity of Aboriginal peoples is harmed.

Australian governments are failing to protect our culture and heritage. Legislation designed by these governments, is not inclusive, not responsive, denies accountability, and continues to enable the ongoing destruction of our heritage and culture. The destruction of Juukan Gorge in May 2020 triggered an ongoing global conversation about the protection of First Nations cultural heritage. While Aboriginal peoples have been raising their concerns for many years over the ongoing and systematic degradation of cultural heritage, this event inspired a widespread review of the current legislation around Australia that permits the destruction of our culture. NSWALC demands that governments adhere to the principles of the legislation they have designed.

Current legislative systems perpetuate the destruction of our culture by:

- Limiting the control Aboriginal peoples have over the protection and management of our culture and heritage; and
- Failing to adequately incorporate Aboriginal concepts of culture and heritage. Laws focus on material or physical cultural heritage, referred to in legislation as ‘objects’, ‘places’, or ‘areas’. This ignores the management of land and natural resources, and the incorporation of spiritual elements of our heritage; and
- Lacking enforcement of current laws and extremely low penalties where offenders are prosecuted.

In accordance with Articles 25 to 32 and of the Declaration of the Rights of Indigenous Peoples, and for Aboriginal and Torres Strait Islander peoples in Australia to be able to protect our culture and heritage, we need:

- Full rights and access over our own lands and waters;
- For First Nations peoples to have agency to determine the protection of our heritage and compensation for our ongoing cultural loss and dispossession; and
- Free, prior and informed consent about development decisions on our lands and waters.

Governments have committed to protect our heritage – now they must do so. Decisions about Aboriginal cultural heritage must be made by Aboriginal people to ensure continued custodianship and protection for future generations. We urge the Special Rapporteur to encourage states to fully implement the Declaration in order to return the control and protections of our culture to First Nations peoples. It is fundamental that the richness and diversity within and between our peoples,



cultures, and languages (both contemporary and historical) are recognised for their significance as determined by our peoples.