

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

Agenda Item 4: Study on Indigenous Peoples and the right to participate in decision-making

Speaker: Sandra Miller

JOINT STATEMENT ON BEHALF OF:

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

Thank you Mr Chairman,

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

We welcome the Final Study on Indigenous Peoples and the Right to Participate in Decision-Making released in May 2011 that includes an analysis of examples of good practice at different levels of decision-making, and we acknowledge the previous Progress Report released in June 2010. We congratulate the Expert Mechanism on these comprehensive reports in an area of critical importance to our services and make the following comments for consideration in the finalisation of these reports.

The Final Study acknowledges the recently established National Congress of Australia's First Peoples. The National Congress met for the first time in June this year and we acknowledge and welcome the election of the Co-Chairs and Board of Directors by the Aboriginal and Torres Strait Islander members of the Congress as a new era of Indigenous leadership and participation in decision-making in Australia. The new Board officially commenced on 8 July this year.

A further welcome development in Australia has been the establishment of an Expert Panel comprised of Indigenous and non-Indigenous experts to develop options on Constitutional Recognition of Aboriginal and Torres Strait Islanders as First Peoples.

Despite these positive developments we remain concerned about the following issues.

The Final Study should remove section IV(A) of the Final Report, relating to participation in the electoral process of the State, The example provided, of Australia's enrolment of the Aboriginal and Torres Strait Islander peoples on the electoral roll, is not a positive example of decision-making by Indigenous Peoples. We are unable to support this section of the Final Report and request that Paras 40 and 41 of the Final Report be deleted because they are not consistent with Article 5 of the Declaration which states:

“Indigenous peoples have the right to maintain and strengthen their distinct political... institutions, while retaining their right to participate fully, if they so choose, in the political... life of the State.”

Secondly, Indigenous organisations working in critical areas of service delivery for Indigenous Peoples must continue to be supported and respected by States. Although new Indigenous structures may provide opportunities for engagement, States must not abandon the critical value and worth of existing Indigenous organisations. Indigenous legal services, health services and education institutions invariably have expertise and community based support for continuing to advocate and provide services to realise the rights of Indigenous Peoples. We urge States to offer increased funding and other support for these existing Indigenous controlled services.

A further issue is the arbitrary time constraints and pressures imposed by States on Indigenous Peoples in their decision-making processes. This is particularly concerning where such internal processes concern complex areas such as legal and constitutional reform.

Finally, we repeat our calls for States to incorporate the rights of Indigenous Peoples to participate in decision-making into Human Rights Frameworks and National Human Rights Action Plans. The right to participate in decision making must be reflected in broader human rights policies of education, engagement, protection and respect.

We recommend the Expert Mechanism amend the Final Report to remove Section IV(A).

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

- 1. recognise and support the critical role of Indigenous organisations involved in service delivery as an important element in the complex fabric of realising the rights of Indigenous Peoples;**
- 2. respect the internal decision-making processes of Indigenous Peoples in raising awareness and generating support for significant constitutional, legal and policy change; and**
- 3. incorporate the Declaration on the Rights of Indigenous Peoples and especially the right of Indigenous peoples to participate in decision-making into all aspects of national human rights frameworks, action plans, policies, procedures and legislation.**

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