



National
Native Title
Council

20 November 2008

*spirit
of
Change*

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The Secretary
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SUBMISSION – HUMAN RIGHTS MECHANISMS AND THE ASIA-PACIFIC

Thank you for the opportunity to provide comment on the inquiry into international and regional human rights mechanisms and possible models for the Asia-Pacific region. I trust that the following comments can be taken into consideration.

The National Native Title Council (NNTC) is the national body of native title representative bodies and service providers. It was informally established in August 2005, and incorporated in 2006. Its objects are, amongst others, to provide a national voice for native title representative bodies and native title service providers on matters of national significance affecting the native title rights of Aboriginal and Torres Strait Islander people.

As the Chair of the NNTC I have participated in the United Nations Permanent Forum on Indigenous Issues (UNPFII) (2007 and 2008), the Expert Mechanism on the Rights of Indigenous People (2008) and the World Conference Against Racism, Racial discrimination, Xenophobia and Related Intolerances (2001). I have also been invited to participate in a UNPFII Workshop on Mining and Indigenous Communities (2008) and more recently the Planning Session of the World Indigenous Nations Games (2008). Other members of the NNTC have equally had significant experience in the Human Rights arena throughout the course of their careers.

Outlined below are general comments in relation to the international and regional mechanisms available to prevent and redress human rights violations.

As the Committee is aware, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples in September 2007. There has recently been a consultation period whereby the Government has sought comments on the implications were Australia to support the Declaration. In the case of the NNTC comment was sought in relation to native title and land matters. The NNTC understands that it is the Government's intention to formalise its support of the UN Declaration and I would strongly encourage the Government to do this as soon as is practicable.

The UN Declaration on the Rights of Indigenous Peoples provides a valuable framework for the recognition of Indigenous Peoples rights in Australia. In particular it provides a vital tool for NTRBs and NTSs involved in the negotiation of agreements under the principles of free, prior and informed consent. The core principle of free, prior and informed consent is that all sides in a negotiation process must have had equal opportunity to debate any proposal or agreement. For Traditional Owners this is a welcome opportunity for participation in negotiations through an equal and respectful partnership.

The NNTC would also encourage the Australian Government to ratify Convention 169 of the International Labour Organisation. This convention will complement the Government's support to the UN Declaration on the Rights of Indigenous Peoples.

Australia ratified the Convention on the Elimination on all Forms of Racial Discrimination in 1975. In order to legally comply with this Convention the Australian Government should reinstate the *Racial Discrimination Act 1975* in all Commonwealth statutes. To oversight this process and to ensure its implementation the Australian Government should appoint a Race Discrimination Commissioner separate to the position of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

One of the key mechanisms available to individuals and groups for redressing human rights violations is the role of the Special Rapporteurs. The NNTC welcomes the open invitation that has been extended to the Rapporteurs from the various Human Rights conventions to visit Australia.

The Australian Human Rights Commission has established a forum of Indigenous Peoples Organisations (IPO) that has very effective participation in the United Nations system. In particular, IPO representatives participate in the United Nations Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous People and the Convention on Biological Diversity. Indigenous participation could be increased if the Australia Government were to increase its contributions to the UN Indigenous Voluntary Fund and contribute on an annual basis.

Indigenous participation in regional mechanisms is less apparent than at the international level. It would be a welcome initiative if the Australian Government were to assist in the development of a stronger partnership between the Asia Pacific Forum, as well as other regional organisations, and the IPO network under Australian Human Rights Commission. This partnership could also be strengthened with resources being made available from the Australian Government which will enable Indigenous Peoples to report on human rights issues.

In order to strengthen the Asia Pacific regional mechanism the Australian Government should lobby for the United Nations Human Rights Office in Fiji to be enhanced and made more relevant to and effective in the region. There should also be standard agenda items on both human rights and indigenous peoples in the meetings of the Pacific Islands Forum.

On 22 December 2004, the General Assembly adopted a resolution for Second International Decade of the World's Indigenous People which commenced on 1 January 2005. The Programme of Action under the Second Decade includes the promotion of full and effective participation of Indigenous peoples in decisions which directly or indirectly affect their lives. It also includes the adoption of strong mechanisms for monitoring and accountability. The NNTC would strongly encourage the Australian Government to fully and effectively engage with Aboriginal People in implementing the Second Decade.

The Second Decade of the World's Indigenous People provides the Federal Government with an opportunity to complete a more comprehensive national human rights plan for Australia. Such a plan must include detailed strategies on enhancing the rights of Indigenous Peoples including principles that are enshrined in the UN Declaration on the Rights of Indigenous Peoples as well as other relevant conventions and covenants. Such an initiative by the Australian Government will increase the confidence of Indigenous communities across the country that the Government is serious about advancing human rights in Australia.

I trust the above comments are useful for your current inquiry, however if you require any further information or have any queries please do not hesitate to contact the A/Executive Officer, Carolyn Betts on (08) 9263 8718 at your convenience.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Brian Wyatt', written in a cursive style.

Brian Wyatt
Chairperson