

**United Nations Permanent Forum on Indigenous Issues**  
**Tenth Session – New York**  
**16 – 27 May 2011**

**Agenda Item 4(b): Dialogue with the Special Rapporteur on the Rights of Indigenous Peoples**

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**INTERVENTION DELIVERED BY MR. FRANCIS LAMPARD ON BEHALF OF THE PACIFIC CAUCUS:**

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Thank you Madam Chairperson,

The Pacific Caucus is pleased to address this intervention on the dialogue between the Indigenous peoples of the Pacific and the Special Rapporteur on the rights of Indigenous peoples, Professor James Anaya (Special Rapporteur).

The Special Rapporteur's engagement with the Indigenous peoples of the Pacific has to date been quite limited, with most time and resources devoted to two of the most economically developed nations within the Pacific, Australia and New Zealand.

However, in February this year, the Special Rapporteur visited the **Kanak people of New Caledonia** and consulted with the High Commissioner and other French officials, the President and ministers of the Government of New Caledonia, officials of the three Provinces, the members of the Customary Senate, and other customary authorities.

Much time was spent considering the Noumea Accord, which provides a framework to transfer powers from France to New Caledonian institutions and allows for the possibility of full independence. The Special Rapporteur welcomed the provisions that promote the culture and customary institutions of the Kanak people as an integral part of social and political fabric of the country, as well as the provisions that provide a foundation for the many initiatives being taken to address the conditions of disadvantage that Kanak people face in all spheres of life.

However, as well as hearing of the numerous steps towards the implementation of the Accord, he was also told of the many challenges that remain including ongoing patterns of discrimination, limitations on the exercise of customary rights, poor social and economic conditions, and lack of adequate participation in decisions affecting them in many respects. We look forward to receiving the full report of the Special Rapporteur about New Caledonia when it becomes available.

The Special Rapporteur visited the **Māori of New Zealand** between 16 and 26 November 2005 and again between 18 and 23 July 2010. In 2005, despite much progress, it was reported that the Maori continued to be frustrated with the lack of redress for breaches of the Treaty of Waitangi. In 2011, the Special Rapporteur emphasised the need for the principles enshrined in the Treaty of Waitangi and related, internationally-protected human

rights to be provided security within the domestic legal system of New Zealand so that those rights would not be vulnerable to political discretion and that efforts to secure Māori political participation at the national level be strengthened.

The Special Rapporteur visited the **Aboriginal and Torres Strait Islander peoples of Australia** for the first time in August 2009 at the invitation of Indigenous peoples and the Australian Government. In 2011, he also visited Australia at the invitation of the New South Wales Aboriginal Land Council to talk specifically about the Declaration on the Rights of Indigenous Peoples (the Declaration). Whilst the engagement between the Special Rapporteur and Indigenous peoples of Australia has been good, there is disappointment with regards to the lack of seriousness given to the Special Rapporteur's Report (and its 38 recommendations) by the Australian Government. In particular, the report was not tabled in Parliament, there has been a lack of effective engagement between Indigenous Peoples Organisations of Australia and the Government and there has been no comprehensive response to the recommendations nor an implementation plan developed.

Whilst the Special Rapporteur has not yet visited the **Indigenous peoples of Papua New Guinea** for a country report, on 19 August 2008 a special communication was made by the Special Rapporteur regarding the situation concerning Mr Jethro Tulin, the CEO of a NGO based in Porgera that has been documenting human rights violations associated with a Gold Mine there. Mr Tulin had travelled to Canada to express concerns about the mine and on his return in August 2008 was attacked, told not to return to Canada and received further anonymous threats. The Special Rapporteur wrote to the Government of Papua New Guinea, but there was no reply. A formal complaint on other human rights violations was also filed with the Human Rights Commission by Barrick Gold of Canada who also sought ordinance with the Special Rapporteur last year. Despite these actions, reports of gross human rights violation at the mine continue.

The Special Rapporteur has not yet visited the **Kanaka Maoli of Hawaii**, which forms part of the **United States of America**. However, representatives of the Hawaiian Kingdom met with the Special Rapporteur at the 2009 session of the Permanent Forum where inquiries were made for Hawaii to be returned to the decolonization list. Essentially, the response was that the priority was New Caledonia because there was bloodshed there and that no assistance was able to be provided. The dialogue between the Special Rapporteur and the Indigenous peoples of Hawaii has failed because there is no fallback mechanism when issues fall outside the scope or resources of the Office of the Special Rapporteur, because too much is left individually to the Special Rapporteur and due to a lack of timely follow up.

The Kanaka Maoli, request the Special Rapporteur to oversee the decommissioning of all American military installations in Hawai'i and return of military held lands in the Hawaiian Archipelago to a Kanaka Maoli entity. There are many deplorable impacts of militarism upon the human rights of Indigenous Hawaiians to housing, traditionally used lands and to uncontaminated water Hawai'i. For example, disturbance to ancestral bones, contamination to water and lands including through depleted uranium rounds and testing of chemical and biological weapons.

Another issue for many in the Pacific, including Hawaii, is the lack of protocols for addressing existing political structures concerning Indigenous peoples. For example, many Indigenous Hawaiians are represented by a Hawaiian Kingdom and negotiations between the US Government and Indigenous people are often only at that level, which removes many Indigenous peoples from the dialogue and creates barriers to engagement.

This has also been raised as an issue by the **Indigenous peoples from Tahiti** (which for UN purposes forms part of **France**), who noted that the Special Rapporteur has met with representatives from the Kingdom of Tahiti and Dependance, but not specifically with the Indigenous peoples of Tahiti, who are frustrated with continued French rule.

Many other member states in the Pacific have similar structures of Indigenous Kingdoms. We urge the United Nations and the Special Rapporteur to be aware of such local politics and to find ways to make engagement with Indigenous peoples of the Pacific inclusive of all Indigenous peoples and transparent.

The **Indigenous peoples of Tahiti** want independence from the French and to be able to exercise their rights to self-determination. Because of this, they are keen to engage with the Special Rapporteur. However, there has been no official visit or country report due to the non-recognition by the French of their status as Indigenous peoples, their rights to self-determine and refusal to extend the required invitation to attend.

The **Indigenous peoples of Maluku and West Papua** in **Indonesia** face a similar struggle to Tahiti. They too aspire for freedom from their colonizers and to be able to exercise their rights of self-determination as articulated in Article 3 of the Declaration. Although Indonesia has been visited by a number UN Special Procedures, they have not received a visit from the Special Rapporteur on the Rights of Indigenous Peoples.

On a similar vein, the Special Rapporteur has not officially visited the **native Fijians** nor provided a country report on Fiji due to the refusal of the Military Government to extend the required invitation to his Office. Fiji has been under military rule since 2006. Since that time, the Military have singled out native Fijians and abused their human and collective Indigenous rights. For example, since 2006 the Military Government has perpetrated on the native population at least 5 murders, over 500 arrests without trial and over 100 assaults resulting in permanent disability. The Great Council of Chiefs has been restrained from meeting for five years. In that time, the customary basis of income entitlements has been amended detrimentally, as have the laws that administer native land. All these amendments have been made without consultation.

There is low knowledge about the Special Rapporteur by the **Indigenous peoples of Micronesia**, where there have been no visits by any UN Special Procedures. The Indigenous peoples of Micronesia would like to learn more about the role and mandate of the Special Rapporteur and how his Office may be able to assist with significant issues they face with regards to climate change, rising sea levels, typhoons and tsunamis. They have been asking for help from their Government with this crisis and the famine and poverty that is occurring as a result but it has not been forthcoming. Whether that is due to them being Indigenous or very remote or for some other reason they do not know. What they do know is that they

need help and the hope that an improved understanding of and dialogue with the Special Rapporteur will assist with this.

The **Indigenous peoples of Tuvalu** also have received no UN Special Procedures, though in July 2010 there was an invitation extended to the Independent Expert on the Human Rights to Water and Sanitation. The Indigenous peoples of Tuvalu are facing serious issues of forced relocation in violation of Article 10 of the Declaration and would benefit greatly from an increased dialogue with the Special Rapporteur.

## **Conclusion**

We, the Indigenous peoples of the Pacific want to improve our engagement with the Special Rapporteur and the UN in order to raise awareness about the plight of our peoples and have our human and Indigenous rights concerns addressed. However, many Indigenous peoples in the Pacific face numerous barriers to accessing the UN including language barriers, remoteness, poverty and disadvantage. For example, the cost associated with sending delegates from our region to both the Permanent Forum (in New York) and the Expert Mechanism on the Rights of Indigenous Peoples (in Geneva), which both provide opportunities to meet with the Special Rapporteur is prohibitive. The fact that the two nations of the Pacific that have received the most attention from the Special Rapporteur are Australia and New Zealand show clearly the inequities that exist in accessing mechanisms within the United Nations.

Finally, we note that often the best solutions to issues faced by Indigenous peoples occur at the local level. In that regard, we would like to be offered opportunities to discuss with the Special Rapporteur solutions and ways to work together to improve the situation for Indigenous peoples in the Pacific.

## **Recommendations**

On the basis of these comments, we make the following recommendations:

1. That the Permanent Forum recommend to the Economic and Social Council that the resources allocated to the Special Rapporteur be increased so that the Office is able to better respond to requests.
2. That all requests to the Special Rapporteur be responded to in writing within at least one month.
3. That the Special Rapporteur be given jurisdiction to conduct regular country reports based on available information and civil society participation, regardless of whether the member states have extended an invitation to attend.
4. That the Special Rapporteur develop culturally appropriate and accessible educational programs about his mandate and protocols for engagement that are easily accessible to Indigenous peoples from developing and remote regions.

5. That the Special Rapporteur develop ways to engage with all Indigenous peoples in member states and exercise caution in relying heavily on existing political structures for Indigenous engagement.
6. That the Permanent Forum conduct an evaluation into the effectiveness of individual complaints to the Special Rapporteur and consider options for other mechanisms.

Thank you Madam Chairperson.