

Shane Mortimer

Ngambri Elder

Independent Competition and Regulatory Commission

GPO Box 296

CANBERRA ACT 2601

Draft Report

Enlarged Cotter Dam Water Security Project

Report 6 of 2010

April 2010

Response to Invitation to Comment

Allocation of risks

The Commission has found that ACTEW and the Alliance contractors have gone through a ***detailed review and allocation of risks consistent with good commercial discipline***. Further the Commission notes that the Alliance contractors have agreed to a considerably lower risk amount than the Commission's consultant, Halcrow, has seen in similar contracts. [p6]

Dear Commissioner,

Please find my brief comments and Attachment on behalf of my peoples and other Aboriginal peoples living in our area. We are the traditional common law native title owners of the Australian Capital Territory and must be afforded our rights according to law; both under Australian Constitution, common law, the NTA and equity.

I have attached our Complaint and Petition 2009 hand delivered to the Governor General residence. Her Excellency's is waiting "advice" from the government.

The issues raised include the Enlarged Cotter Dam project and all those involved with this project acting unlawfully by ignoring outright our existing legal common law native title rights.

The projects managers have been previously contacted about existing native title interest all over the dam projects area. Their response is that "they employed local Aboriginal people to find and remove any artefacts."

They have indicated that they, nor government have raised native title as being a legal issue or even considered in any: ***detailed review and allocation of risks consistent with good commercial discipline***.

I would be pleased to meet to discuss further at any suitable time.

Yours faithfully,



Shane Mortimer

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2009

**ABORIGINAL PEOPLES OF THE AUSTRALIAN CAPITAL
TERRITORY COMPLAINT AND PETITION TO HER
EXECLLENCY-GOVERNOR GENERAL OF AUSTRALIA**

**TO BE FAITHFUL AND BEAR TRUE ALLEGIANCE TO THE
OFFICE AND OATH OF GOVERNOR GENERAL AND
EXERCISE YOUR CONSTITUTIONAL AUTHORITY AND
DUTIES ACCORDING TO LAW**

BY PROCLAMATION AND INDEPENDENT OPINION

DISSOLVE THE ASSEMBLY OF

THE AUSTRALIAN CAPITAL TERRITORY

**FOR CONDUCTING THEIR AFFAIRS IN RELATION TO GROSS
AND REPEATED UNLAWFUL LEGISLATIVE ACTS IN
DENIAL OF INDIGENOUS PEOPLES COMMON LAW
NATIVE TITLE RIGHTS WITH KNOWLEDGE THAT
SUCH ASSEMBLY CONDUCT IS INCONSISTENT WITH
REPRESENTATIVE DEMOCRACY AND RESPONSIBLE
GOVERNMENT AND CONTRARY TO AUSTRALIAN
CONSTITUTION**

**FOR THE QUEEN, THE LAW AND THE PEOPLE AND IN
ACCORDANCE WITH SECTION 16 OF THE *AUSTRALIAN
CAPITAL TERRITORY (SELF-GOVERNMENT) ACT 1988*
*(CTH)***

**PRESENTED BY SHANE MORTIMER ON BEHALF OF THE
NGAMBRI AND ABORIGINAL PEOPLES OF THE
AUSTRALIAN CAPITAL TERRITORY TO Her Excellency Ms
Quentin Bryce AC
Governor-General of the Commonwealth of Australia**

**Government House
Dunrossil Drive
YARRALUMLA ACT 2060**



***Her Excellency Ms Quentin Bryce AC
Governor-General of the Commonwealth of Australia***

Government House
Dunrossil Drive
YARRALUMLA ACT 2600

Dear Ms Bryce

Our Peoples welcome you and your family and wish you all the joy, happiness and good health while you exercise your role as Governor General in our country which we now share with all other Australians and our International friends.

It is our Peoples Complaint and Petition, clear and unambiguous that under section 16 of *Australian Capital Territory (Self Government) Act 1988 (Cth)* the whole ACT Assembly has been deliberate and continuous in contumelious disregard and unlawful reckless indifference of our common law native rights at least since *Mabo* 3 June 1992.

It is our Peoples Complaint and Petition, clear and unambiguous that the development of the Australian Capital Territory appears to erroneously depend on the validity of unchallenged legislative enactments of the Assembly to provide for the development by unlawful acquisition of our common law native title rights and that such conduct of the Assembly is inconsistent with the Australian Constitution.

In our Peoples Complaint and Petition, clear and unambiguous that it is not the intention of our Peoples to dismantle law or cause public unrest in the Australian Capital Territory not of our doing but to exercise and seek protection within the law.

In our Peoples Complaint and Petition, clear and unambiguous we state and commit that we will always be amenable in the spirit of reconciliation to progress genuine discussions involving all the Aboriginal Peoples who have connections to the Australian Capital Territory following the dissolving of the Assembly to ensure life and development goes on in the Seat of Government according to law under the Australian Constitution and common law of Australia.

It is our Peoples Complaint and Petition, clear and unambiguous that all recent land development and those proposed in the Australian Capital Territory by the Assembly over their allocated “Territory Land and in certain “National land” reserved by the Commonwealth for itself for which development is the responsibility of the Commonwealth, has depended on its development by deliberately ignoring law or process of law in relation to either statute or common law recognition and purported acquisition of our common law native title rights to our lands and waters.

It is our Peoples Complaint and Petition, clear and unambiguous that the slate over the Seat of Government is not clean of our existing common law native title rights to our land and water.

It is our Peoples Complaint and Petition, clear and unambiguous that once, in Your Excellency’s careful opinion, untroubled from consequence, both the statute elements noted under section 16 of *Australian Capital Territory (Self Government) Act 1988 (Cth)* has been satisfied to the satisfaction of Your Excellency alone, than the Assembly must be dissolved according to law.

Recent Assembly’s Development and Proposed Developments

We have attached recent examples of the Assembly’s land developments or proposals which are included into the source of our Complaint and Petition and include some but not all recent land and development examples where the Assembly and others have unlawfully and deliberately ignored our legal rights to our land and water as required by the common law of Australia, the Australian Constitution and law under statute.

Our Peoples have no doubt that even apart from statute, your Excellency has the constitutional authority and duty to form your own opinion without direction when exercising powers under section 16 of *Australian Capital Territory (Self Government) Act 1988 (Cth)*.

Our Complaint and Petition clearly and unambiguously is mainly concerned with our existing common law native title rights and not solely under the NTA.

Our Complaint and Petition clearly and unambiguously states that for the Assembly to continue to do so with full knowledge and using the Assembly’s parliamentary system is clear and unambiguous conduct showing the Assembly is **incapable of effectively performing its functions**; and **conducting its affairs in a grossly improper manner** under Section 16 of *Australian Capital Territory (Self Government) Act 1988 (Cth)*.

We note also that any implication or stated statute limitation under or derived under section 16 of *Australian Capital Territory (Self Government) Act 1988 (Cth)* does not apply to your Excellency’s full powers.

SIGNED:

Shane Mortimer

Date:

**PRESENTED BY SHANE MORTIMER ON BEHALF OF THE NGAMBRI
AND ABORIGINAL PEOPLES OF THE AUSTRALIAN CAPITAL
TERRITORY TO Her Excellency Ms Quentin Bryce AC
Governor-General of the Commonwealth of Australia**

Government House
Dunrossil Drive YARRALUMLA ACT.

Complaint and Petition

It is our Peoples Complaint and Petition, clear and unambiguous under section 16 of *Australian Capital Territory (Self Government) Act 1988 (Cth)* that the whole ACT Assembly has been deliberate in contumelious disregard and unlawful reckless indifference of our existing common law native rights since 1992.

It is our Peoples Complaint and Petition, clear and unambiguous, that the Assembly's development of the Australian Capital Territory depends on the unlawful acquisition of our common law native title rights without compensation as did the rest of Australia before *Mabo* in 1992.

Before *Mabo*, that was true as it was then thought correct but not anymore.

The Commonwealth

In consideration of Your Excellency's opinion, it is unavoidable that we raise what we allege is the Commonwealth Government's complicity both in the role as parent of the Assembly and by similar conduct as we claim against the Assembly.

It is our Peoples Complaint and Petition, clear and unambiguous, that the Commonwealth exercising Constitutional powers in their development of "National land" also purports to acquire our common law native title without not only avoiding just terms as constitutionally guaranteed in s51 (xxxi) of Constitution but by deliberate legislative blindness in similar conduct to the Assembly.

The Commonwealth has purported, subject to Constitution, to have 'carved up' our common law native title rights to our land and water over the "granted "territory" for the Seat of Government by acquiring our common law native title rights without compensation for their "exclusive possession" and for "public purposes" as required by the Constitution.

We are obligated to the Aboriginal Peoples of the Australian Capital Territory to provide a few plain examples of the continued and unlawful acquisition and legislative dispossession of our common law native title rights.

Canberra Private Airport and the Commonwealth

We have the view that the Commonwealth did not have constitutional power necessary to firstly acquire our common law native title rights without compensation over the Canberra airport land without just terms and then transfer our common law

native title rights to a private company to take “exclusive possession” under the guise of “public purposes” under Commonwealth legislation of the Canberra Airport.

It is our Peoples Complaint and Petition, clear and unambiguous that recent new development in relation to the Canberra Airport has by conduct similar to our Complaint and Petition against the Assembly and when unavoidable, involves the Commonwealth, continued unlawful purported acquisition of our common law native title without just terms.

Canberra Free land Grant to Zoo

We have attached letter of our concerns [6 November 2006] of how a private Canberra based company was granted free land of ours even when our common law native title rights were formally raised with the NCA but transferred without any consideration for our common law native title rights through joint arrangements with the Commonwealth and Assembly.

Our correspondence and formal meeting with the NCA states clearly that “the deliberate avoidance of [our] legal rights with the “land transferred” to the Zoo or of being a compulsory acquisition of [our] legal interest in the land has no legal effect and is void.

We or any body else that raised concerns about this purported transfer received no replies.

We again made further direct contact with the General Manager of the Zoo about our existing native title rights by email dated 23 October 2008 as we were informed that the Zoo had or was preparing to submit to the NCA their development plans over the free land grant; which include commercial motel styled accommodation and other commercial activities purported to be connected to visitors to the Zoo.

In our understanding of colonial history, such “free land grants” were abolished by the introduction in NSW of responsible government.

The Crace and Lawson Land Development

These recent residential subdivision examples, as there are others, have been approved by the Assembly regardless of us raising that our common law native title rights have not been addressed or dealt with according to law.

Our lands associated with these new residential subdivisions have been criminally destroyed with deliberate, contumelious disregard and unlawful reckless indifference of our existing common law native rights

Our common law native title rights are not illusory.

The New Cotter Dam Expansion

We formally complained and raised our existing common law native title rights over the land and water of the proposed expansion of the Cotter dam and received no answers in reply.

These are only a few examples and should not limit Your Excellency's request for all such developments, both Commonwealth and Assembly, that have taken place or proposed to, at least since June 1993, for consideration of our Complaint and Petition.

We have attached further specific examples of some of the recent and major property developments by the Assembly that have ignored our common law native title rights.

Statement of supporting facts to our Peoples Complaint and Petition

It is our Peoples Complaint and Petition, clear and unambiguous that on inquiry, Your Excellency can determine if any genuine legislative process of prior acquisition or process has been established by the Assembly in dealings with our existing common law native title rights to our land and water.

It is our Peoples and Petition, clear and unambiguous Complaint that there is none to satisfy dealings with common law native title according to law.

We would invite Your Excellency to inquire onto the Commonwealth management of "National land" with our existing common law native title in consideration of your opinion as to not do would pile fiction onto fiction.

It is our Peoples and Petition, clear and unambiguous Complaint that the Assembly has by legislative avoidance of law with our existing common law native title rights to our land and water only provided for some contracted legal representation outside the Assembly to advise the Assembly when required on matters concerning any native title application under the *Native Title Act 1993(Cth)* and equivalent corresponding but brief *Native Title Act (ACT)*.

It is our Peoples and Petition, clear and unambiguous Complaint that the obvious and deliberate Assembly omission of not having in place any established procedure or body to advise and be involved according to law with both common law native title and applications of native title under statute in all proposed land development championed by the Assembly, undoubtedly will strengthen the independent opinion of your Excellency in determining that the Assembly is *incapable of effectively performing its functions as required to by law and has continued to conduct its affairs in a grossly improper manner*.

Native Title Claims in ACT

As there is no statute definition of what conduct constitutes "grossly improper manner" it is enough for consideration of your Excellency opinion that we objectively raise the contemptuously behaviour of the Assembly who without regard to the rights or damage done by the Assembly's powers onto our common law native title rights has continued to do so regardless of:

- two recent Native Title claims that the Assembly has been involved with being connected to the Australian Capital Territory

- Over 30,000 plus pages of internal government documents alerting the Assembly on issues of common law native title (these documents were uncovered by a local Aboriginal women (Eva Coe) successful claim over the Assembly for FOI on native title documents in possession of the Assembly- As a result of this case, the Assembly response without dissent was to amend their FOI Act to avoid future disclosures]

We have provided some brief background to these two native title claims further in our complaint and Petition.

It is enough of an example to highlight the continued, in our view, contemptuously behaviour of the Assembly and their reckless indifference of our common law native legal rights.

It is our Peoples Complaint and Petition, clear and unambiguous that the Assembly's unlawful conduct, in the views of our Peoples, is unfit and incapable to further govern as the Queen's representative of responsible government and ministerial accountability.

The Nation Capital

Our ancient lands and water represent the constitutional self-granted territory for Seat of Government described now as the Australian Capital Territory; granted without Treaty, payment or compensation to Aboriginal peoples.

A constitutional compensation right of acquisition by the Commonwealth made available to others at the time by the two founding Acts for "exclusive jurisdiction" by the Commonwealth over only the territory of the Seat of Government.

The Promise of Representative Democracy

Both the Commonwealth and Assembly inform the Australian people of the promise of representative democracy through the Seat of Government under Constitution and inform the international world that Canberra acts as the true representation of both the Australian people and the nation.

That promise of democracy under responsible government has been deliberately and unlawfully denied to the Aboriginal peoples of the Australian Capital Territory by both the conduct of the Assembly by legislative blindness of the legal consequences and promises of *Mabo* and of our now existing recognisable legal proprietary interest over the land and waters of the Seat of Government, described conveniently as common law native title.

It is our Peoples Complaint and Petition, clear and unambiguous that our common law native title rights are protected against the whole world under the common law of Australia and subject to law under Constitution.

It is our Peoples Complaint and Petition, clear and unambiguous that our common law native title rights are not the gift of statute or parliament and continue unimpaired until either we seek some further accommodation and recognition by the Australian legal system under the *Native Title Act 1993 (Cth)* or the legislature

exercise valid power to either extinguish in some degree or acquire our rights. There is still concern about the validity of the latter.

“Native title in Australia is a special, distinctive and legally unique interest that is now given recognition by Australian common and statute law. Subject to the Constitution, like any other legal interest, it is not immune from legislative modification”:

Kirby J in *Griffiths* [2008] HCA 20 (15 May 2008) at [104].

Our Complaint and Petition clearly and unambiguously state that both have been ignored. We note that only one element under section 16 of *Australian Capital Territory (Self Government) Act 1988 (Cth)* is serious enough in the opinion of Her Excellency, enough to dissolve the Assembly.

Here, we submit, both elements are satisfied.

Our Complaint and Petition clearly and unambiguously state that the whole ACT Assembly are deliberate in their conduct of unlawful racial discrimination in all the Assembly’s dealings and enactments affecting our existing common law native title rights to our lands and waters since 3 June 1992 and all developments in relation to the purported exercise of valid Assembly legislative powers are void from the beginning or suffer serious defects of valid title.

The purpose of providing Your Excellency with a date, 3 June 1992, when the High Court decided the native title case of *Mabo*, does not mean to limit considerations of other times or periods except to identify practically a period answerable by the Assembly on inquiry subject to section 16 of *Australian Capital Territory (Self Government) Act 1988 (Cth)*.

The Assembly

To deliberately ignore our property rights to land and water conveniently described as common law native title rights and interest and treat our existing rights inconsistent with the *Racial Discrimination Act* because of our race is, without validity of powers, unlawful.

Special Measures under the Racial Discrimination Act 1975 (Cth)

The special measures exemption under the RDA is not meant to legalise either current or retrospectively, deliberate unlawful racial discrimination and offers no excuse or protection to any legislative act of the Assembly or others in relation to the avoidance of our legal common law native title rights.

The Commonwealth

Similarly, it is unavoidable because the Assembly is the child of the Commonwealth, the Commonwealth by complicity becomes a party involved with our Peoples Complaint and Petition against the Assembly.

Just Terms

To deny the reality of the practical legal effects of “acquisition” of our existing common law native title without just terms is to deny reality itself.

The Assembly had either thought they or the Commonwealth had achieved with our common law native title rights by purported extinguishment, impairment or outright acquisition, which would enable either to ignore such common law native title rights, answers the wrong constitutional question; which is hardly surprising when the same body attempts to provide both the question and answer.

The Rule of Law

One judicial exposure of the principle of no expropriation without just compensation has always been recognised wherever the rule of law has prevailed; otherwise, as we claim in our Complaint and Petition, in our situation, there is deliberate unlawful and outright abuse because of race.

Quick and Garran in their *Annotated Constitution of the Australian Constitution (1901)* states: A law of the Commonwealth law means a valid law. A law passed by the Federal Parliament outside the scope of its authority would be no law at all.

We would say the same applies to the Assembly.

Though we acknowledge, because of the seriousness of our Complaint and Petition involving primarily the Assembly, matters with the Commonwealth cannot remain submerged or hidden and they will provide some concern to you; and because of our need to elaborate some on a few points connected inextricably to our Complaint and Petition and not pretend fiction regulates our current and future Constitutional gaze over the Seat of Government.

No Genuine Process

We have confidence that after Your Excellency’s inquiries, the Assembly will fail to provide any evidence of establishing a genuine process as have the rest of Australia, for all dealings and accommodation with our existing common law native title rights over the Australian Capital Territory as according to law.

We have provided and attach, complements of the Canberra Times, certain land and water development or proposed in the Australian Capital Territory and are confident because of no contact from government of any representative of government or land development agency, that common law native title was ignored as a legal factor or consideration in any of the attached list.

Recent Native Title Claims and the Assembly

The Assembly has by contract sought legal advice on request from the Australian Government Solicitors in two previous native title claims over or connected to the Australian Capital Territory.

One native title claim associated with the Seat of Government lodged in 2001, formally accepted by the National Native Title Tribunal (the NNTT), was recently

discontinued by the Aboriginal claimants over lack of professional assistance and resources to progress their application under the *Native Title Act 1993 (Cth)*.

The Commonwealth did not apply to become a party to any of these two recent native title applications; preferring the erroneous claim that the native title application needed to be first registered under the Native Title Act. The existing common law native title rights because of race were ignored as a right ample enough for the Commonwealth to become involved.

The other long standing native title application, suffering the same lack of resources, claiming all unalienated Crown land in the Australian Capital Territory was encouraged this year by the ACT Government legal representatives to the Federal Court to be dismissed; not by its possible illegitimacy, but by new amendments under the *Native Title Act* that on issues of procedures or lack of, the Court can dismiss a native title claim either under its own motion or by notice of motion by any party to the native title claim.

The Assembly would have found it impossible in law after attempting to settle this still unregistered native title claim by offer of agreement, and after the offer was rejected by the claimants, to then seek a judicial declaration of the court to “summarily dismiss” the claim as being totally helpless.

The Assembly saw the advantage of seeking shelter under the courts new powers in able to dismiss a native title claim to do what the Assembly could not.

Australian Government Solicitors

It is true that the Australian Government Solicitors are commissioned at times to give legal advice about native title issues in the Australian Capital Territory to the Assembly but that later process is not what the constitutional safeguard of dealings with acquisition of property and common law native title rights require; it is a latter step and cannot even be described as some legal compliance consistent with the acquisition of property.

It follows that by the conduct and actions of the Assembly of our Complaint and Petition in relation to ignoring existing native title rights of our Peoples as required to by law places all property development sourced from the Assembly with serious defects of bona fide titles that are void from the beginning.

Our Complaint and Petition clearly and unambiguously states that because the Assembly’s deliberate conduct over native title has created sound findings to satisfy both the elements under section 16 of *Australian Capital Territory (Self Government Act 1988 (Cth))* and we respectfully Petition, that in the exercise of your Excellency’s careful considerations and independent opinion under this statute alone, dissolve the Assembly.

PRESENTED BY SHANE MORTIMER ON BEHALF OF THE NGAMBRI AND ABORIGINAL PEOPLES OF THE AUSTRALIAN CAPITAL TERRITORY TO HER EXCELLENCY

Signed:

Shane Mortimer

Date: 21 December 2009

Handed to the Representative of Her Excellency on 21 December 2009

**THE PROMISE OF THE ASSEMBLY FOR THE THEN NATIVE TITLE
CLAIMS TO BE WITHDRAWN FOR THIS 2001 INTERIM AGREEMENT
HAS IN 2009 BEEN FORMALLY DISCARDED BY THE ASSEMBLY**

COMMENT

All but one claimant (the late Don Bell) withdrew their native title claims because of this enticement from the Assembly and on behalf of the Assembly.

Don Bell's son, Dean Bell on behalf of his peoples, later attempted without any legal or professional assistance, to lodge a native title claim over all unalienated Crown lands of the Australian Capital Territory; and this claim was recently urged by the ACT Government legal representatives to the Federal Court to have the court dismissed.

These years of deliberate acts and conduct since 1992 by the Assembly as a whole and by use of the Assembly's parliamentary powers and process, we submit, have been accentuated by unlawful racial discrimination on contrary advice; and clearly satisfy with out the need for more, the elements of section 16 of *Australian Capital Territory (Self Government) Act 1988 (Cth)*.

AGREEMENT BETWEEN

THE AUSTRALIAN CAPITAL TERRITORY

AND

A.C.T. NATIVE TITLE CLAIM GROUPS

WHEREAS:

- A. prior to colonisation of the region around and including what is now known as the Australian Capital Territory, Aboriginal Australians have had an historic association with the region (for many thousands of years);
- B. this association has been constrained in the last two centuries to the detriment of Aboriginal people;

- C. there are two undetermined native claims over the Australian Capital Territory before the Federal Court;
- D. the Parties believe that although this agreement involves matters other than native title the agreement will lead to the resolution of the undetermined native title claims;
- E. the Territory believes that it is not precluded from making an agreement with Aboriginal people who have a historic association with the Territory; **THEN**
- F. the Parties wish to make such an agreement in the spirit of reconciliation; and
- G. this agreement is not an agreement about native title but is an agreement made under section 86F of the *Native Title Act 1993* of the Commonwealth.

Interpretation

In this agreement, unless the contrary intention appears:

“Conservator” means the Conservator of Flora and Fauna under the *Nature Conservation Act 1980*;

“Aboriginal Signatories” – means the members of the native title claim groups who are authorised to sign this agreement on behalf of the native title claim groups;

“Aboriginal Parties” – means those native title claim groups who are parties to this agreement, and their biological descendants;

“Namadgi National Park” means the area reserved under the Territory Plan prepared under the *Land (Planning and Environment) Act 1991* as a national park;

“native title claims” means the native title determination applications AG 6001 of 1998 and AG 6002 of 1998 before the Federal Court of Australia;

“native title claim groups” means the native title claim groups named in the native title determination applications AG 6001 of 1998 and AG 6002 of 1998, and the registered Aboriginal parties to those applications;

“Namadgi Special Aboriginal Lease” means the following rights and privileges:

- (i) to participate in the management of Namadgi National Park in accordance with the arrangements specified in Parts 5 and 6;
- (ii) to be acknowledged as people with an historical association with the area;
- (iii) to be consulted on specific regional Aboriginal cultural issues; and
- (iv) to be consulted on the development of amendments to legislation that will impact on Namadgi National Park;

and;

“the Territory” means the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.

2. Parties

- 2.1 The Parties to this agreement are the Australian Capital Territory (“the Territory”) and the Aboriginal Parties.
- 2.2 The Aboriginal Signatories warrant that they are authorised to sign this agreement on behalf of the relevant native title claim group and to withdraw the native title claim from the Federal Court.

3. Nature of agreement

- 3.1 This agreement is not an agreement about native title but is made under section 86F of the *Native Title Act 1993* of the Commonwealth, and the Parties have negotiated this agreement with a view to the withdrawal under that section of the native title determination application.

4. Namadgi Special Aboriginal Lease

- 4.1 Under this agreement, the Territory will offer to grant a Namadgi Special Aboriginal Lease over Namadgi National Park.
- 4.2 The Territory’s offer is subject to all native title claims being either finally determined or withdrawn in a manner to be agreed between the Parties.

- 4.3 The Aboriginal Parties will be incorporated as a statutory corporation for the purposes of holding the Namadgi Special Aboriginal Lease. The structure of the statutory corporation will be the subject of further agreement between the Parties.
- 4.4 The term of the Namadgi Special Aboriginal Lease will be 99 years with an option for renewal at the end of that term.
- 4.5 The Namadgi Special Aboriginal Lease will not confer or create any lease or licence within the meaning of the *Land (Planning and Environment) Act 1991* and the offer in clause 4.1 is to be construed accordingly. The terms and conditions of the Namadgi Special Aboriginal Lease will be subject to further negotiation between the Parties.

5. Interim Management of Namadgi National Park

- 5.1 Upon withdrawal of the Aboriginal Parties' native title claim and until the Namadgi Special Aboriginal Lease commences, the Territory agrees to implement interim arrangements for the involvement of the Aboriginal Parties in the management of Namadgi National Park as outlined in this Part.
- 5.2 An Interim Namadgi Advisory Board will be established comprising five Aboriginal members and five non-Aboriginal members. Members will be appointed by the Minister. The five Aboriginal members will be comprised as follows:
 - 5.2.1 one member nominated by the Aboriginal Signatory for the native title claim group in the native title determination application AG 6001 of 1998;
 - 5.2.2 one member nominated by the Aboriginal Signatory for the native title claim group in the native title determination application AG 6002 of 1998;
 - 5.2.3 one member nominated by the respective Aboriginal Signatories for each of the three native title claim groups who are

registered parties to the claims in the native title determination applications AG 6001 of 1998 and AG 6002 of 1998;

- 5.3 In the event that one or more of the native title claim groups referred to in 5.2.1 to 5.2.3 is not a Party to this agreement, the Aboriginal Signatories may nominate a person who is a member of the Aboriginal Parties to fill the vacant membership position. Any such nomination must be agreed by all Aboriginal Signatories. In the event that there is no agreement, then the position shall remain vacant. Any such appointment shall cease at such time as the relevant native title claim group does become a Party to this agreement, if ever.
- 5.4 It will be the policy of the Territory that the Interim Namadgi Advisory Board must be consulted:
 - 5.4.1 in the preparation of the draft Plan of Management for Namadgi National Park under Division 5 of Part 5 of the *Land (Planning and Environment) Act 1991*; and
 - 5.4.2 in relation to any decision about consenting to particular types of activities in Namadgi National Park under section 56 of the *Nature Conservation Act 1980*.

6. Management arrangements under the permanent Board

- 6.1 The management arrangement to apply under the Namadgi Special Aboriginal Lease will be negotiated between the Parties. The Parties agree that the negotiations will proceed on the basis that the management arrangement will include:
 - 6.1.1 a statutory Board of Management with responsibility for preparing and overseeing the implementation of a Plan of Management for Namadgi National Park;
 - 6.1.2 the Board of Management will have 6 Aboriginal members and 6 non-Aboriginal members with the 6 Aboriginal members being elected by the Aboriginal Parties;

6.1.3 the term of appointment for members of the Board of Management will be 3 years; and

6.1.4 the mode of election of the Aboriginal members of the Board of Management will be the subject of further negotiation between the Parties and the Parties may seek the assistance of the National Native Title Tribunal in those negotiations.

Resourcing

- 7.1 The Territory will provide remuneration in the form of sitting fees to the Aboriginal Parties in exchange for the provision of services on the Interim Namadgi Advisory Board and the final Board of Management for Namadgi National Park.
- 7.2 The quantum of remuneration will be subject to further negotiation between the Parties.
- 7.3 The remuneration provided by the Territory will only be paid to the statutory corporation referred to in clause 4.3 or, in the interim and as agreed by the Parties, to an incorporated body representing the Aboriginal Parties. Remuneration provided by the Territory will not be paid to individual members of the Aboriginal Parties.

Official event and consultation protocols

- 7.4 Subject to clause 8.3, where the Territory wishes to extend an invitation to the regional Aboriginal people to attend an official function or event, the Aboriginal Parties will be invited to nominate a representative to attend that function or event.
- 7.5 Subject to clause 8.3, where the Territory wishes to consult on specific regional Aboriginal cultural issues such as heritage, the Territory will conduct consultation through the Aboriginal Parties.
- 7.6 Once there is an incorporated body representing the Aboriginal Parties as contemplated in clause 7.3, the Territory will consult with the management committee of that body for the purposes of clauses 8.1 and 8.2.

7.7 Pending any finding of the Federal Court on the existence or otherwise of native title in the Australian Capital Territory, the Parties agree that the Territory will, at any official function or event, acknowledge members of the Aboriginal Parties as:

representatives of the regional Aboriginal people with an historical association with the ACT.

Public consultation

7.8 The Parties agree that the Territory will undertake a public consultation process on the detail of the Namadgi Special Aboriginal Lease and management arrangements for Namadgi National Park (“the Agreement”).

7.9 Public consultation will occur after the Parties have settled on a final version of the Agreement but before the Agreement is signed.

7.10 Any of the Parties may propose variations to the Agreement in response to the public consultation. Any agreement on the settled version of the Agreement referred to in clause 9.2 shall be subject to further negotiation on any proposed variations.

10. Finalising matters

10.1 In consideration of this agreement, the Aboriginal Parties agree to settle the native title claims over the Australian Capital Territory by withdrawing those claims under section 86F of the *Native Title Act 1983* of the Commonwealth within one month of signing this agreement.

11. *Termination*

11.1 This agreement will be automatically terminated in respect of an Aboriginal Party in the event that a new native title determination application over any part of the Australian Capital Territory is lodged with the Federal Court by or on behalf of any member of that native title claim group.

11.2 The Parties agree that the Territory may unilaterally terminate this agreement if the Aboriginal Parties do not, within one month of signing

this agreement, withdraw their native title claim over the Australian Capital Territory in accordance with clause 10.1 of this agreement.

12. Later signature of this agreement

12.1 The Parties agree that this is not an exclusive agreement and additional native title claim groups who are not initial signatories to this agreement may become Parties at a later date.

13. *Amendments to this agreement*

13.1 The terms of this agreement may be amended with the consent in writing of all Parties.

14. Limitations

14.1 Undertakings given by the Territory in this agreement will be carried out consistently with relevant Commonwealth laws.

14.2 The Parties acknowledge that undertakings given by the Territory in this agreement are subject to the political processes of the ACT Legislative Assembly.

14.3 The Parties acknowledge that while the Territory will use best endeavours, this may not be sufficient to secure the passage of legislation in the ACT Legislative Assembly to facilitate the grant of the Namadgi Special Aboriginal Lease and establish the Aboriginal Parties as a statutory corporation. The Territory shall not be taken to be in breach of this agreement in this circumstance.

14.3 In the event that the Territory's best endeavours are not sufficient to secure the passage of legislation as contemplated in clause 14.3 above, the Parties agree to negotiate further with a view to agreeing on an alternate mechanism to give effect to the intention of this agreement.

14.5 Nothing in this agreement prevents the ACT from entering into further agreements with other parties on the same subject matter.

Signed thisday of2001

Gary Humphries MLA
Chief Minister
for and on behalf of the Territory

(Signature of Witness)

(Name)

Nurri Arnold Williams
Aboriginal Signatory
for and on behalf of the
native title claim group in Federal Court
application AG 6001 of 1998

(Signature of Witness)

(Name)

Agnes Shea
Aboriginal Signatory
for and on behalf of the
native title group comprised of Agnes Shea,
John Heath, Hilary Crawford, Bruce Merrit,
Jean Merrit, Ron Walker, Dulcie Airsman and Eric Bell

(Signature of Witness)

(Name)

Valda Connors
Registered Aboriginal party

(Signature of Witness)

(Name)

Frederick Monaghan
Registered Aboriginal party

(Signature of Witness)

This 2001 “offer” and “legislative inducement” from the Assembly of a promised lease has in 2009 been discarded.



General Assembly

Distr.: General
2 October 2007

Sixty-first session
Agenda item 68

Resolution adopted by the General Assembly

[without reference to a Main Committee (A/61/L.67 and Add.1)]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

*107th plenary meeting
13 September 2007*

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

¹ See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53)*, part one, chap. II, sect. A.

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of

² See resolution 2200 A (XXI), annex.

Action,³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

³ A/CONF.157/24 (Part I), chap. III.

⁴ Resolution 217 A (III).

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

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

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the

community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

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.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, *inter alia*, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, *inter alia*, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

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 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, *inter alia*, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.