



**Australian
Human Rights
Commission**

**United Nations Permanent Forum on Indigenous Issues
Thirteenth Session - New York
12-23 May 2014**

Agenda Item 3: Principles of good governance consistent with the United Nations Declaration on the Rights of Indigenous Peoples: articles 3 to 6 and 46

Statement delivered by: Katie Kiss on behalf of the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Australian Human Rights Commission

Thank you Mr/Madam Chairperson

I make this statement today on behalf of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda.

As this is the Commissions first statement to the Forum this year, I would like to acknowledge the Haudenosaunee Peoples, the traditional owners of the lands on which we meet, their elders past and present, and thank them for their hospitality during our stay on their country.

I also congratulate Ms Dalee Sambo-Borough on her election as the Chair of this Forum.

Before I proceed, the Social Justice Commissioner makes the following recommendations to this agenda item:

RECOMMENDATIONS:

We recommend that the Permanent Forum through ECOSOC urge all States:

- **to acknowledge that effective Indigenous governance is central to self-determination and sustainable development in Indigenous communities and to work with their Indigenous populations to give effect to articles 3-6 in the Declaration.**
- **to commit to building their own cultural competency and capacity to enable and support effective Indigenous governance, and use the Declaration as a guide to achieving this.**
- **to properly resource Indigenous communities to strengthen their contemporary governance structures, including by investing in**

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developing and strengthening governance structures and systems in Indigenous communities to ensure they are culturally legitimate and aligned to community needs and priorities.

- **to undertake genuine consultation, work in partnership with; and seek the free, prior and informed consent of Indigenous peoples, communities and organisations on any reforms that directly or indirectly impact governance within Indigenous communities.**

Mr/Madam Chair

In Australia, effective governance has proven to be a significant challenge for governments and Aboriginal and Torres Strait Islander peoples, our communities and our organisations. Good governance is critical to achieving self-determination.

As Indigenous peoples of Australia, we have governed ourselves since time immemorial in accordance with our traditional laws and customs. However, a number of challenges have had a significant impact on our capacity for self-determination, self-governance and autonomy including:

- the long-term application of the doctrine of *terra-nullius* which was only overturned by the High Court in 1992,
- the absence of a treaty recognising the sovereignty of Aboriginal and Torres Strait Islander peoples to our lands, territories and resources, and
- the lingering effects of colonisation.

For example, legislation that enabled the forced removal of Aboriginal and Torres Strait Islander peoples from across Australia to missions and reserves served to disempower us and controlled every aspect of our lives. Legislation such as this disrupted our ability to govern and organise ourselves, and denied people the right to make decisions about our lives in ways that are relevant for us. The consequences of such legislation are still being addressed by Aboriginal and Torres Strait Islander peoples today and will be for a long time to come.

After more than 200 years of colonisation, when we talk of Indigenous governance in Australia we are no longer referring to the pre-colonial state. Rather we are referring to contemporary Indigenous governance that takes into account the melding of our traditional governance with the requirement to effectively respond to the wider governance environment. June Oscar, a Bunuba woman from the Kimberley region of Australia highlights the need to acknowledge the challenging and complex operating environment in which Indigenous peoples continue to live. She states that:

We as Indigenous Peoples live out our lives in two worlds according to our custom and tradition and the modern reality. Yet this acknowledgement has

never ever been forthcoming. Because the western lens is applied to everything we do.¹

Navigating and managing these two worlds is not an easy task. Non-Indigenous governance predominantly seeks to manage economic risk, while the primary focus for Indigenous peoples is trying to maintain our cultures and identities at the same time as managing the risk of people dying early as a result of the levels of disadvantage we face, and securing our economic, social, cultural and political futures.

Mr/Madam Chair

The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda is required to report annually through the Social Justice and Native Title Reports to the Australian Parliament on the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander peoples. He also provides recommendations on action that should be taken to ensure that these rights are observed.²

The 2012 Social Justice and Native Title Reports³ considered what constitutes 'effective Indigenous governance' in Aboriginal and Torres Strait Islander communities, how governments can enable and support this, and how the Declaration can assist them to do this effectively.

In these report the Commissioner argued a number of key points, including:

- that self-determination is a critical element of governance and that the exercise of self-determination can only be achieved if we have good community governance
- that self-determination can mean different things to different groups of people and that there are many elements to self-determination
- that a major impediment to effective Indigenous governance in Australia is positive and respectful relationships between Governments, Indigenous peoples and other external influences
- that the key human rights principles set out in the Declaration: self-determination, participation in decision-making, respect for and protection of culture, and equality and non-discrimination; provides a solid framework to facilitate effective, legitimate and culturally relevant governance for Aboriginal and Torres Strait Islander peoples and our communities
- that governments, non-Indigenous organisations and businesses that work in and for our communities need to develop their cultural competency and security⁴ and do their work in line with the principles of the Declaration.

The Commissioner identified three intricately connected components to effective governance in Aboriginal and Torres Strait Islander communities:

- *community governance* - which is where we decide what we want to achieve and how we organise ourselves to achieve it. It is grounded in our culture allowing us to determine who can speak when, for whom, to whom and about what on behalf of a community;
- *organisational governance* - effective community governance provides a solid foundation for our organisational governance and it enables our organisations to achieve what we have identified as our priorities and development aspirations. To be effective, our organisations must be seen as legitimate by both our communities and governments. They should guide governments in their actions and responses to progressing our communities' priorities and development aspirations.
- *the governance of governments, and other external influences* - Governments role is to support and enable the empowerment of Indigenous peoples, our communities and our organisations by facilitating self-determination, removing the barriers to effective governance, ensuring that government processes build rather than diminish our capacity and support strong community and organisational governance, and respecting and supporting our decision-making processes.

Governments lack of understanding of its role in enabling effective governance in Indigenous communities' results in disempowerment and significant and unnecessary burden on our communities. This is further exacerbated by 'fragmented or rapidly changing government processes; overload of reform and change initiatives; ad hoc funding ; poorly coordinated and monitored programs; and multiple accountability requirements and red tape' which effectively disables communities and diminishes our organisational capacity to achieve goals and deliver outcomes.⁵

Recent policy initiatives in Australia have unfortunately resulted in the governance capacity of our organisations being crippled by government bureaucracy. For example, local government reforms and the Northern Territory Intervention which occurred at the same time dismantled Indigenous governance structures and arrangements within local Northern Territory communities. These events removed decision-making from Aboriginal communities and centralised power and control over people's daily lives to both the Federal Government through the Intervention in 2007; and to the Northern Territory Government through the amalgamation of Aboriginal Community Councils into new super shires in 2008.⁶ We are also seeing large mainstream NGO's being funded over Aboriginal and Torres Strait Islander organisations to provide services and support to our communities, without any assessment of their cultural competency; and the Australian Government have indicated an intention to significantly reduce funding to key peak representative organisations to conduct advocacy activities in the upcoming budget being announced on 13 May in Australia.

Finally Madam/Mr Chair

All Member States have an obligation to facilitate the exercise of self-determination by ensuring that their societal and political structures support self-determination.

As set out in Article 3 and clarified in Article 4 of the Declaration on the Rights of Indigenous Peoples, States in consultation and co-operation with Indigenous peoples must take appropriate measures, including legislative measures to achieve all the elements of self-determination. This includes good Indigenous governance and good State governance; and Indigenous peoples rights to autonomy and self-government, the right to participate in decisions that affect us through our own decision-making structures, the right to maintain and strengthen our distinct political, legal, economic, social, and cultural institutions, and the right to pursue our development aspirations.

Having genuine decision-making power in the hands of communities is critical to achieving good governance, self-determination and sustainable development. It is only through having control over our own lives that the 'practical' aims of Indigenous peoples and States will be sustainably achieved.

Thank you Mr/Madam Chair.

1 J Oscar, *Recognising and encouraging honour and determination* (Keynote address presented at Pe-workshop, Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Native Title Conference, Townsville, 4 June 2012).

2 *Australian Human Rights Commission Act 1986* (Cth), s46C(1)(a).

3 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2012*, Australian Human Rights Commission, 2012, Chapters 2-4. At: <http://www.humanrights.gov.au/publications/social-justice-report-2012> (viewed 30 April 2014).

M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2012*, Australian Human Rights Commission, 2012, Chapters 2 and 3. At: <http://www.humanrights.gov.au/publications/native-title-report-2012> (viewed 30 April 2014).

4 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report*, Australian Human Rights Commission, 2011, Chapter 4. See also Chapters 2 and 3 for a discussion about lateral violence and its impact on Indigenous governance. At:

<http://www.humanrights.gov.au/publications/social-justice-report-2011> (viewed 7 May 2014).

5 K Tsey, J McCalman, R Bainbridge and C Brown, *Improving Indigenous community governance through strengthening Indigenous government organisational capacity*, Resource Sheet No 10, Closing the Gap Clearinghouse, Australian Government (January 2012). At

http://www.aihw.gov.au/closingthegap/documents/resource_sheets/ctgc-rs10.pdf (viewed 1 May 2014).

6 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2012*, Australian Human Rights Commission, 2012, Chapter 3, pp 124- 153. At:

<http://www.humanrights.gov.au/publications/social-justice-report-2012> (viewed 30 April 2014).