

**Statement by the
Aboriginal and Torres Strait Islander Social Justice Commissioner
Mick Gooda
Australian Human Rights Commission
to the
Expert Mechanism on the Rights of Indigenous Peoples
9-13 July 2011, Geneva**

Item 5: Study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples.

Thank you Mister Chair

I make this statement in my capacity as the Aboriginal and Torres Strait Islander Social Justice Commissioner on behalf of the Australian Human Rights Commission (the Commission), Australia's National Human Rights Institution (NHRI).

I begin by commending the Expert Mechanism for its Study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples. This study is particularly important in highlighting the critical nature of the protection and promotion of culture and language in ensuring the well-being and survival of indigenous peoples worldwide. The role of languages and culture in the promotion and protection of the rights and identity of Indigenous peoples is also integral to the right of Indigenous peoples to participate in decision-making, particularly concerning our dealings with States and extractive industries and our rights to our lands, territories and resources.

Unfortunately the protection and promotion of indigenous cultures and languages has too often been compromised by the economic priorities of States, extractive industries and other third parties. This has more often than not been to the detriment of Indigenous people's access to and enjoyment of our rights to our identities and our ability to maintain and transmit our cultures and languages into the future. This has been the devastating experience of Aboriginal and Torres Strait Islander peoples in Australia where Indigenous languages are critically endangered and they continue to die out at a rapid rate. Prior to colonisation, Australia had 250 distinct languages which can be broken down into 600 dialects.¹ Without intervention, it is estimated that Indigenous language usage will cease in the next 10-30 years in Australia. This has significant human rights implications particularly in relation to the realisation of cultural rights as language and culture are interlinked.² The loss of language means the loss of culture and identity.

As such it has also served to diminish the richness and potential of national identity, with Indigenous cultures and languages having much to offer, particularly in terms of the protection of biodiversity and cultural and environmental heritage. The Expert Mechanism has stressed in its study that our 'languages and cultures will only

¹ J Lo Bianco, Organizing for Multilingualism: Ecological and Sociological Perspectives A TESOL Symposium on Keeping Language Diversity Alive, 2008, p11, Alice Springs, Northern Territory, Australia, July 9, 2008.

² See *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), articles 11-13, 31; *International Covenant on Civil and Political Rights*, 1966, article 15.

flourish in environments when they are more broadly respected in their own right and for their contribution to an understanding of humanity'.³

Mister Chair

From the Expert Mechanism's study it is clear that Indigenous peoples rights to our languages, cultures and identities as well as States obligations in this regard is well established at international law. It is also clear about the challenges that we face together on fulfilling these rights, particularly global challenges such as development and climate change. This study highlights the need for States to ensure that Indigenous peoples rights to our languages and cultures includes our collective right to self-determination and are protected against discrimination, forced assimilation and destruction.

In accordance with the *Expert Mechanism Advice No. 3 (2012): indigenous peoples' languages and cultures*, and the Declaration on the Rights of Indigenous Peoples⁴, this will require States working with Indigenous peoples to design, develop and implement legislation, policies and programs that promote the maintenance, practice, revitalisation, use, development and transmittal of our cultures and languages. This includes our histories, languages and oral traditions, our philosophies, writing systems and literatures; having a say in our education including providing education in our own languages; and maintaining and strengthening our distinct political, legal, economic, social and cultural institutions, while also retaining our right to fully participate, if we so choose, in the political, economic, social and cultural life of the State.

While Australia has a National Languages Policy and is in the process of developing a National Cultural Policy,⁵ the full and effective participation of Aboriginal and Torres Strait Islander peoples is crucial in ensuring that mechanisms such as these achieve the intended outcomes. This will rely on the good faith and commitment of governments at all levels.

Recently at a conference on Native Title in Australia, June Oscar, a Bunuba Aboriginal woman from the Fitzroy Valley in the remote Kimberley region, far north Western Australia, highlighted the importance of acknowledging the challenging and complex environment in which we as Indigenous peoples attempt to live within, 'seeking justice and trying to raise our families' in a colonised state, while 'holding onto the lived practices of our beliefs in accordance with our customs and traditions' as Indigenous peoples. In her words:

We as Indigenous People live out our lives in two worlds according to our custom and tradition and the modern reality. Yet this acknowledgement has never ever been

³ Human Rights Council, *Expert Mechanism on the Rights of Indigenous Peoples: Study on the role of languages and cultures in the promotion and protection of the rights and identity of indigenous peoples*, Annex: Expert Mechanism advice No. 3 (2012): Indigenous peoples' languages and cultures, UN Doc A/HRC/EMRIP/2012/3 (2012), p21. Fifth session of the Expert Mechanism on the Rights of Indigenous peoples, 9-13 July 2012.

⁴ The Declaration on the Rights of Indigenous Peoples, articles 3, 4, 5, 8, 9, 11, 12, 13, 14, 15, 31, and 34.

⁵ See Australian Government Department of Regional Australia, Local Government, Arts and Sport, *National Cultural Policy*, at <http://culture.arts.gov.au/>; and National Indigenous Languages Policy, *Indigenous Languages – A National Approach, The importance of Australia's Indigenous languages*, at <http://www.arts.gov.au/indigenous/languages>.

forthcoming. Because the western lens is applied to everything we encounter. Our reality is very different. At a human and personal level, how is it that we cope and maintain our strength and well-being as we continue to navigate through this complex maze in our attempts to achieve a positive outcome?...Perhaps, a new skillset may be required for these new times, skills which incorporates a blend of: activism, development of intellectual capacity, anchored by the knowledge and lived practice we hold of who we are and meeting the real truth by combining this knowledge with modern western thinking...The community resilience of the Fitzroy Valley based on commitment to culture, strong leadership and innovative thinking has been frustrated by the incapacity of government to reform its governance structures and deliver services that are relevant to people of the Valley and people living within two worlds.⁶

A number of steps are required in order to fully realise Indigenous people's rights to our cultures and languages.

Recommendations:

The Aboriginal and Torres Strait Islander Social Justice Commissioner recommends that the Expert Mechanism on the Rights of Indigenous Peoples and the Human Rights Council urge all States to:

1. ratify and adopt all international standards that apply to the promotion and protection of Indigenous peoples rights to culture and language as outlined in the Expert Mechanism's study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples.
2. enter a process with Indigenous peoples to recognise their Indigenous peoples, cultures and languages as the original peoples and languages of the State in their national constitutions. This not only provides formal national recognition of the unique status of Indigenous peoples as first peoples, it also embeds the significance of our languages, cultures and identities in the life and history of the nation, and in our States founding documents.
3. develop in conjunction with Indigenous peoples and provincial governments, national language and culture policies that promote and protect the relationship between Indigenous cultures and languages to our self-determination, survival and well-being. These policies must be developed in accordance and be compliant with international law and human rights standards, in particular the Declaration on the Rights of Indigenous Peoples.

Thank you.

⁶ J Oscar, 'Recognising and Encouraging Honour and Determination', Speech delivered at the *Annual National Native Title Conference 2012*, Townsville, Australia, 4 June 2012.