

Agenda 6: Half day discussion on the Pacific

23 April 2008

Panel statement by Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission of Australia, www.humanrights.gov.au

Thank you Madam Chair.

I speak as the Aboriginal and Torres Strait Islander Social Justice Commissioner and National Race Discrimination Commissioner of Australia. I am a member of Australia's national human rights institution.

Our Commission plays an active role in technical assistance programs within our region and currently our President chairs the Asia Pacific Forum of National Human Rights Institutions. The Asia-Pacific Forum is a regional body of national institutions that have been accredited as complying with the *Paris Principles* of the General Assembly on the functioning of independent national human rights Commissions.

Madam Chair, there has been extremely limited focus by governments, in development programs and by the United Nations on building the mechanisms for the protection of human rights in the Pacific region. This has a particularly severe impact on Indigenous peoples within the Pacific, as well as on women.

Among Pacific Island States, there is limited ratification of human rights treaties and a significant 'protection gap' between international standards and domestic legal systems.

There are also limited institutional mechanisms – such as national human rights institutions and UN field presences – to further human rights. At present, for example, other than Australia and New Zealand, there are no existing human rights commissions at the domestic level that meet the requirements laid out in the Paris Principles for independent, robust national institutions.

It means that the Pacific region has fallen behind every other region of the world in terms of the existence of human rights mechanisms.

I recommend to the Permanent Forum that it advise ECOSOC of the urgent need for technical assistance and development cooperation in the Pacific region to build the capacity of Pacific Island nations to implement human rights standards and develop local institutions to promote human rights. This should be accompanied by efforts to promote increased ratification of human rights treaties within the region and their domestic implementation.

I further recommend that the Permanent Forum request the Special Rapporteur on Indigenous Issues to focus his efforts on the Pacific region,

including through visits, to address this situation; and that States be encouraged to contribute funding to the various voluntary funds to increase participation of Indigenous peoples from Pacific Island nations in the Permanent Forum as well as the human rights mechanisms.

Madam Chair, it is vital that I also mention the importance of advancing the decolonisation agenda within the Pacific region. There remain a number of territories to whom the *Declaration on the Granting of Independence to Colonial Countries and Peoples* still applies. Progress is slow and attention is required.

I further recommend that the Permanent Forum request ECOSOC to reiterate to the General Assembly the importance of States completing the decolonization process within the Pacific region with immediacy and note the need for special assistance by the United Nations to assist fledgling democracies within the Pacific region.

The Pacific Island nations are also vulnerable to climate change impacts such as of becoming disappearing nations. The preservation of cultural identity, landlessness and situation of being 'climate change refugees' are all major challenges that could arise in the Pacific region in the coming decades. **The Permanent Forum should also recommend that the High Commissioner for Refugees ensure a significant focus on refugee issues in the Pacific region given the particular vulnerability of Indigenous peoples in this region.**

Madam Chair, we have already heard about some of the efforts of the new Australian government to re-engage with Indigenous communities and enter into a new partnership.

On the first day of sittings of the new Parliament, a welcome to country was provided by the local indigenous tribe for the first time in the history of the Australian parliament. This will now occur at the opening of Parliament each year.

On the first day of business of the new Parliament, the first item of business was to apologise to the stolen generations for past policies of forcible removal of Aboriginal children from their families.

And on the 20 March 2008, the Prime Minister and national indigenous health representative bodies committed to a new relationship with the express purpose of eliminating the 17 year life expectancy gap between Indigenous and non-Indigenous Australians by the year 2030. These bodies also committed to halving Indigenous infant mortality rates within 10 years, consistent with the Millennium Development Goals.

The Prime Minister signed a *Statement of Intent to Close the Gap* on indigenous health. This was the result of a two year campaign led by my Office where every major indigenous and non-indigenous organisation from the health, human rights, reconciliation and NGO sectors had worked together to achieve a reform agenda for Indigenous health.. The UN Special Rapporteur on Health has commented that this campaign constitutes world best practice for implementing the right to health for Indigenous peoples.

Through this, the government has committed to a partnership approach with Indigenous peoples to close the gap; namely to establish a long term plan funded to the level of need, based on benchmarks and targets that are matched to the progressive realisation principle and addressing the key criteria of the right to health. The government has also announced a number of mechanisms to embed these commitments into the day to day operations of the government – a National Indigenous Health Equality Council is soon to be established to guide the process and the Prime Minister will report to Parliament on progress on the first day of Parliament each year.

Madam Chair, each of these developments is a major advance for Indigenous peoples in Australia. They also reflect a partnership approach based on shared ambitions and shared goals.

Despite this, there remain significant human rights challenges within Australia. Most notable is the continued absence of a formal process for engagement with and the effective participation of Indigenous peoples in policy making processes – something that the government has committed to rectifying.

And there is what has become known as the Northern Territory intervention. Madam Chair, in July last year the government announced an emergency intervention to address violence and abuse in Indigenous communities in the NT.

Measures to tackle violence are to be welcomed. The intervention however, involves a sweeping range of measures that impinge upon Indigenous peoples rights in significant ways. For example:

- Programs that provided community development opportunities in Indigenous communities were abolished and Indigenous people were moved onto social security payments;
- Indigenous people in receipt of such payments were then subjected to mandatory quarantining of their money. Regardless of circumstance, 50% of their social security entitlement is quarantined and can only be used at specified stores using store credit cards to purchase essential items such as food. A decision can then also be made for this quarantining to be increased to 100% of their welfare entitlement. These arrangements have only been applied to Indigenous people;
- Measures were also introduced to enable Aboriginal townships to be compulsorily acquired, without access to the normal schemes for compensation, and without consent; and
- Administrative and procedural safeguards – such as administrative review of decisions by bureaucrats – was also limited or removed.

Most worryingly, all the measures introduced have been made exempt from the protections of racial discrimination legislation. So in the exercise of any powers under the legislation for the NT, there is no requirement for programs to be racially non-discriminatory.

In my role I report to the federal Parliament each year on human rights issues facing Indigenous peoples. I have recommended how the federal Parliament can amend the legislation to make it non-discriminatory. The new government has stated that they will consider the findings of this report as part of reviewing the NT arrangements after 12 months of operation – that is in August this year. I welcome this commitment from them and will advise the Forum of progress at its next session.

The continuation of discriminatory arrangements in the meantime, however, is contrary to the partnership approach which the new government has sought to establish with Indigenous communities. And it is entirely inconsistent with Australia's international treaty obligations under ICERD, CROC, CEDAW and the ICCPR.

This is a matter that will continue to be closely watched by the human rights treaty committees and special rapporteurs of the Human Rights Council. It is also a matter of significant concern for other agencies such as UNICEF, UNIFEM, UNHCHR and UNITAR.

Put simply, no UN agency would ever fund a development package of this nature in the Pacific that was based on systemic racial discrimination against Indigenous peoples. No Australian government would fund an overseas development package that was built on such an approach either. And yet this is what is happening within Australia in the Northern Territory at the moment.

Programs to address family violence and child abuse in Indigenous communities must be built on respect for human rights and frankly, it is a nonsense to suggest that a non-discriminatory approach cannot be found.

I conclude by further recommending that the Permanent Forum call on all States to address situations of violence and abuse within Indigenous communities, and to do so on a non-discriminatory basis and consistent with human rights standards and with the full and effective participation of Indigenous peoples.

Thank you Madam Chair.