**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**

**11-15 July 2011, Geneva**

**Item 3: The right to participate in decision making**

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 Final Study on indigenous peoples and the right to participate in decision-making, and Expert Mechanism advice No. 2. When read together, these provide a solid framework and extensive guidance on improving state based mechanisms for increasing Indigenous peoples' participation in decision making; including:

* the recognition, integration, and application of Indigenous determined decision-making practices into such mechanisms;
* that the right to participate in decision-making does not just mean telling Indigenous peoples what you are going to do to us – but that we are assured an active role in determining not only the policy but the desired the outcomes; and
* the need for consultations and negotiations with Indigenous peoples to comply with the human rights standards set out in the *Declaration on the Rights of Indigenous Peoples.*

The Final Report highlights the important role that NHRI’s have as independent bodies to facilitate a positive relationship between Indigenous peoples and governments; and to encourage and work with governments to ensure Indigenous representatives are involved at all levels of decision-making.

The Office of the Social Justice Commissioner was at the forefront of advocating for and facilitating the establishment of a new representative body, the National Congress of Australia’s First Peoples.[[1]](#footnote-1) It is with excitement and encouragement that I commit to working closely with this new representative body to ensure that it too is able to give full effect to the principles of the Declaration both within the organisation, and in its advocacy. And that it leads by example, by ensuring that its members across Australia, are able to effectively participate in the decision-making of the Congress, and in determining our collective future. I also congratulate Mr Les Malezer and Ms Jody Broun who commenced in their roles as the first co-Chairs elect on 8 July 2011, and the 6 Directors and 120 Delegates that form the Congress.[[2]](#footnote-2)

As Social Justice Commissioner, I am required to report annually to the Australian Parliament on the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander peoples. While this is an opportunity for me to identify the obstacles to our participation in decisions affecting us; it is also an opportunity to propose solutions and provide best practice examples. In the *Social Justice Report 2010,* I showcased community-led development processes occurring in the Aboriginal communities of the Fitzroy Valley.[[3]](#footnote-3) These communities are addressing extremely sensitive issues such as substance abuse, fetal alcohol spectrum disorder and governance, in partnership with and supported by government. I encourage all in attendance to read this report. I believe this example clearly shows that where Indigenous peoples are able to take control and make decisions about their lives, appropriately supported by government, the outcomes in most cases are positively different.

However, while it is critical that States draw on best practice to assist them in improving engagement with Indigenous peoples, they must also strive to break down the existing systemic barriers to the effective engagement and participation of Indigenous peoples in decision-making. The effective exclusion of Aboriginal and Torres Strait Islander peoples in the broader societal structures of Australia, including our national Constitution; matters concerning our lands, territories, and resources; and our cultural heritage; in addition to the often unnecessary over-administration of our affairs creates significant barriers to our effective participation in decision-making.

Mister Chair, Indigenous peoples will not fully realise the right to participate without that right being supported and applied together with the rights to free, prior, and informed consent and self-determination. I support the Final Study of the Expert Mechanism, and the final report of the Permanent Forum on Indigenous Issues 2011, in asserting the need to comprehensively apply the principle of free, prior and informed consent in determining policies, legislation and programs that affect Indigenous peoples.

However, despite increased guidance at the international level, I remain concerned that governments do not have a clear understanding of what the principles of free, prior and informed consent and self-determination mean in a practical sense to Indigenous communities, or how to effectively and appropriately integrate them into their processes, policies and programs. At the international level the UPR process could provide an effective mechanism against which States may be held to account as to whether the engagement practices of States and relevant stakeholders are consistent with the Declaration.

Mister Chair, I have identified the issue of lateral violence as a significant barrier to our effective participation in decisions that affect us. Lateral violence occurs when oppressed people internalise their oppression and turn on each other. Our ability to effectively participate in decisions that affect us is critical to addressing lateral violence. While Indigenous peoples will need to address the internal issues, governments and other stakeholders can also assist by ensuring that their engagement frameworks are flexible and do not facilitate or perpetuate lateral violence. This means that our internal governance must be strong in order for us to participate effectively externally. And, that effective engagement by stakeholders with indigenous peoples is essential to ensure that external decision-making processes support and integrate the internal decision making processes of Indigenous peoples.

Finally, my Office has developed guiding principles[[4]](#footnote-4) for States and stakeholders to effectively engage with Indigenous peoples. The application of these principles will also reduce the potential for external decision-making processes to perpetuate lateral violence or intra-Indigenous disputes.

I have provided a more detailed report to the Members through the Secretariat that elaborates on the points I have raised today. I hope that this will add to the important work of this session.

**RECOMMENDATIONS**

The Aboriginal and Torres Strait Islander Social Justice Commissioner recommends that:

1. The Expert Mechanism and the Human Rights Council urge all States to enter formal dialogues with Indigenous peoples and their representatives at the domestic level to develop agreed understandings on the principles of free, prior, and informed consent, and self-determination; and negotiate appropriate mechanisms to realise them.
2. The Expert Mechanism and the Human Rights Council urge all States to commit to working with Indigenous peoples, and their National Human Rights Institutions to:
   1. identify and address the systemic barriers to the effective engagement and participation of Indigenous peoples in decision-making; and
   2. draw on best practice to assist them in improving engagement with Indigenous peoples.
3. The Expert Mechanism conduct a study on the effects of Lateral Violence on the full realisation of the rights of Indigenous peoples, particularly their right to participate and to give their free, prior and informed consent in decisions that affect them, and the right of self-determination.
4. The Expert Mechanism addend the effective engagement and consultation Framework outlined in the *Native Title Report 2010* (Appendix A), to the Expert Mechanism advice No. 2 as a recommended international standard of engagement for States and relevant stakeholders entering negotiations with Indigenous peoples.
5. That the Expert Mechanism work with the Human Rights Council to include in the Universal Periodic Review a framework to assess whether the engagement practices of States and relevant stakeholders are consistent with the Declaration; and that the participation of Indigenous peoples in decisions that affect them is being progressively realised.

Thank you.

1. Information about the establishment of the National Congress of Australia’s First Peoples can be found at: <http://www.humanrights.gov.au/social_justice/repbody/index.html> (viewed 5 July 2011). [↑](#footnote-ref-1)
2. See <http://nationalcongress.com.au/about-us/> (viewed 5 July 2011). [↑](#footnote-ref-2)
3. M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2010*, Australian Human Rights Commission (2011), Chapter 3. At <http://www.humanrights.gov.au/social_justice/sj_report/sjreport10/index.html> (viewed 11 July 2011). [↑](#footnote-ref-3)
4. M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2010,* Australian Human Rights Commission (2011), Appendix 4: ‘Features of a meaningful and effective consultation process’. At <http://www.humanrights.gov.au/social_justice/nt_report/ntreport10/index.html> (viewed 11 July 2011). [↑](#footnote-ref-4)