

# FREE and EQUAL

**towards respect for the human rights of  
the Indigenous peoples of Australia**

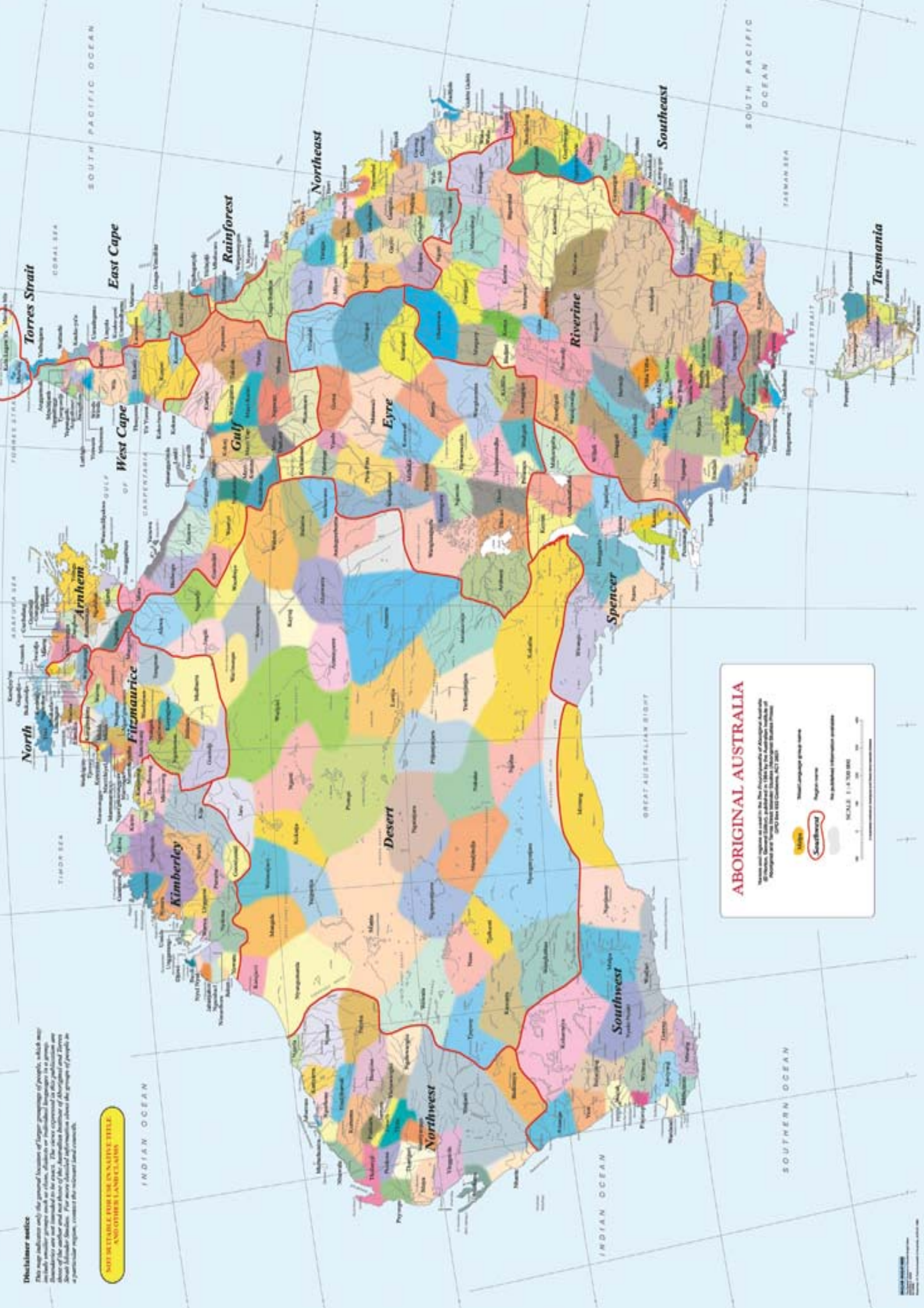
*A guide for community advocates*



**Disclaimer notice**

This map indicates only the general location of larger groups of people, which may have many different language groups and dialects. The names of Aboriginal and Torres Strait Islander groups are not intended to be exact. The views expressed in this publication are those of the author and not those of the Australian Institute of Aboriginal and Torres Strait Islander Studies. For more detailed information about the groups of people in a particular region, contact the relevant land council.

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**ABORIGINAL AUSTRALIA**

Map data based on the 1988 publication of Aboriginal Language Groups in Australia by the Australian Institute of Aboriginal and Torres Strait Islander Studies. The map is based on the 1988 publication of Aboriginal Language Groups in Australia by the Australian Institute of Aboriginal and Torres Strait Islander Studies. © 1988 Australian Institute of Aboriginal and Torres Strait Islander Studies.

**Notes**

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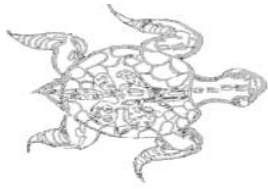
# **FREE and EQUAL**

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the Indigenous peoples of Australia**

***A guide for community advocates***



**DIPLOMACY  
TRAINING  
PROGRAM**



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### ***A guide for community advocates***

Published: July 2009; Melbourne, Australia

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DIPLOMACY  
TRAINING  
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**Warning:** Aboriginal and Torres Strait Islander readers should be aware that this document may contain images or names of people who have since passed away.

ISBN: 978-0-646-50524-4

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Cover photo: © Les Malezer

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For a copy of the Free and Equal CD, please contact the Diplomacy Training Program at [dtp@unsw.edu.au](mailto:dtp@unsw.edu.au)



This publication originated in feedback we received from Australian Indigenous community advocates and participants in courses of the Diplomacy Training Program about the need for simple, useful materials on human rights and Indigenous peoples' rights advocacy in Australia.

It was made possible through a grant to the Diplomacy Training Program from Oxfam Australia. Numerous people have contributed to the book.

This book was principally written by Bill Barker. Bill served for many years as an Australian diplomat, specialising in human rights and Indigenous issues. Bill attended numerous sessions of the United Nations Commission on Human Rights, the Working Group on Indigenous Populations, the Working Group on the draft Declaration on the Rights of Indigenous Peoples, the United Nations General Assembly, as well as many other human rights meetings. He spent four years in Geneva, Switzerland (1988–1992) as an Australian Government representative to the UN office there and served for over two years as Director of the Department of Foreign Affairs and Trade's Human Rights and Indigenous Issues Section (1994–1996). Since 1996 he has been working independently on human rights issues and has established his own consultancy, Human Rights International. Bill is the author of *Getting Government to Listen — a guide to the international human rights system for Indigenous Australians* and was the lead author of the *United Nations Guide for Indigenous Peoples*.

Bill was assisted in his work by a small reference group that provided guidance and input as the publication developed. The reference group included Annie Pettitt, Cherie Minniecon, Emeritus Professor Garth Nettheim, Karina Menkhorst, Katie Kiss, Lyndon Ormond-Parker, Patrick Earle and Dr Sarah Pritchard.

Valuable input was also provided by Brian Wyatt, Candice Koolmatrie, Corina Martin, Dea Delaney, Earl King, Frankie Clive, Graeme Smith, Grant Paulson, Hannah Nancarrow, Jacqui Katona, Joshua Creamer, Kelly Barclay, Les Malezer, Patricia Rigby-Christophersen, Peter Nathan, Robert Blackley, Sandra Creamer, Susan Sewter, Tania McLeod, Toni Ah-Sam, Victoria Davis-Jenkis and Wesley Stubbings.

Melanie Scaife and Maureen Bathgate provided editorial support and Kim Hayes designed the book. Olivia Girard coordinated the production of the book for the Diplomacy Training Program. Philip Chung is the author of the section on online advocacy tools.

Special thanks are also owed to the following organisations and individuals for the contribution of their materials: Australian Human Rights Commission, UNICEF Australia, Save the Children Australia, United Nations Office in Canberra, Secretariat of National Aboriginal and Islander Child Care Inc. (SNAICC), National Children's and Youth Law Centre (NCYLC), Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), Arts Law Centre of Australia, Meerilinga, Les Malezer and Matthew Syres.

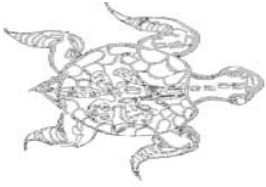
The book draws heavily on the experiences of many, and in singling out those above the Diplomacy Training Program and Oxfam Australia would also like to acknowledge the many Indigenous community advocates who have worked for so many years, often in very difficult circumstances, to uphold and promote core values of human dignity — values that have so often been absent in government policy and practice in relation to Indigenous Australians.



Photo: © Matthew Syres



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## MESSAGE FROM DTP

by **PATRICK EARLE, Executive Director**



**Patrick Earle, Executive Director, Diplomatic Training Program. Photo: © DTP**

Since it was established in 1989 by José Ramos-Horta and Professor Garth Nettheim, the Diplomatic Training Program has had a twin focus on working with human rights defenders in the Asia-Pacific Region and Indigenous peoples' advocates in Australia.

Since 2003 the Diplomatic Training Program and Oxfam Australia have worked together in organising and facilitating capacity-building programs for Indigenous Australian advocates. This collaboration is based on a shared commitment to promoting human rights and the rights of Indigenous peoples in Australia. This publication grows from that partnership.

The training courses and this publication have been informed by the commitment that both organisations have to helping to provide the information and knowledge to enable community advocates to make informed choices in relation to their rights. It is also based on recognition that there are skills to be learnt that can help to ensure that the voices and perspectives of Indigenous community advocates are heard, and that their participation in decision-making processes is meaningful and effective.

Sixty after the adoption of the Universal Declaration of Human Rights, it is clear that recognition of human rights is no guarantee of their protection or their realisation. Invoking international minimum standards of human rights will not necessarily be effective in bringing about change or improving lives. They can, however, be important external reference points for measuring government policy and practice. Human rights standards do provide a common baseline of what is acceptable and what is not. They can be practical tools to guide good policy and practice and to ensure participation of people and communities in decision making.

The United Nations adoption of the Declaration on the Rights of Indigenous Peoples in 2007 is a significant achievement resulting from the work of many people over many years. Like the Universal Declaration of Human Rights, it is informed by, and responds to, violations of the very rights it describes. The Declaration of the rights of Indigenous Peoples should inform and guide change.

The Diplomatic Training Program hopes that this guide to human rights advocacy will be of practical help in translating the recognition of rights into the reality of people's lives.



**Karina Menkorst. Photo: Lara McKinley/OxfamAUS**

## ABOUT OXFAM AUSTRALIA

by **KARINA MENKHORST**

Oxfam Australia is part of a global movement of dedicated people working hard to fight poverty and injustice. Across East Asia, South Asia, Africa, the Pacific, and Indigenous Australia we help people in need when disaster strikes, support development projects that put poor people in charge of their lives, and campaign for a fairer world.

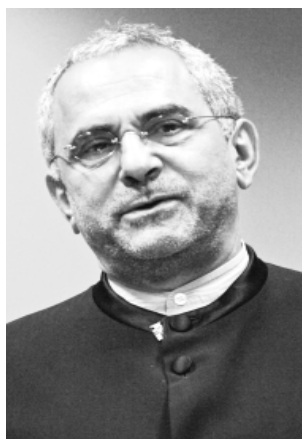
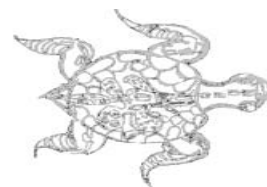
In Australia, Oxfam Australia has worked in partnership with Aboriginal and Torres Strait Islander peoples for more than 30 years to exercise their human rights, assert their dignity as full citizens and take control of their lives. This work is done in collaboration with more than 40 Indigenous and non-Indigenous organisations across Australia.

We have worked in partnership with the Diplomatic Training Program for several years to develop human rights training for Aboriginal and Torres Strait Islander advocates. Many participants in the training expressed the need for accessible, relevant advocacy materials to help them clearly understand basic human rights processes and communicate these processes to a wider audience. We trust this book will meet this need and support Aboriginal and Torres Strait Islander advocates in their important work to bring about positive change in people's lives.



# PREFACE

by JOSÉ RAMOS-HORTA



**José Ramos-Horta, Nobel Laureate, Founder and Patron of Diplomacy Training Program.**  
Photo: © DTP

As Founder and Patron of the Diplomacy Training Program, it gives me pleasure to provide a preface for this new resource for Australian Indigenous community advocates.

When I established the Diplomacy Training Program in 1989 with the help and support of Professor Garth Nettheim, I saw the opportunity for both human rights defenders in the Asia-Pacific and Indigenous advocates in Australia to use international human rights standards and the UN system more effectively.

I had only recently moved to Australia to continue my efforts to win self-determination for the East Timorese. Through Indigenous leaders from Australia, I was already aware of the human rights issues facing Australia's Indigenous peoples. On arrival in Australia I quickly learnt more about the human rights challenges they experienced.

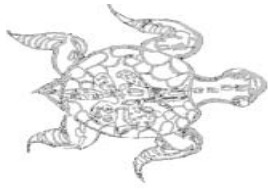
The Diplomacy Training Program's first course was held in 1990. Shortly afterwards the Diplomacy Training Program was approached to facilitate a special course for leading Australian Indigenous advocates in Alice Springs. Since that time the Diplomacy Training Program has been privileged to work with many Indigenous community advocates across Australia — as participants in its programs, trainers, members of the Diplomacy Training Program Board and its advisory council.

As I write, the 60<sup>th</sup> Anniversary of the adoption of the Universal Declaration of Human Rights is fast approaching. It is only 60 years since the world recognised the need to spell out the rights we all have as individuals. This recognition was prompted by the horrors of the Holocaust and World War II and the awful realisation of the crimes that governments are capable of.

Indigenous peoples across the globe had experienced and witnessed what crimes governments were capable of long before this, but recognition of Indigenous peoples' rights has taken longer to achieve. I am proud that my government, the government of the new nation of Timor-Leste, was among those that supported the adoption by the United Nations in 2007 of the Declaration on the Rights of Indigenous Peoples.

Recognition of human rights, of the rights of Indigenous peoples, is only another step in a challenging journey. Declarations are important because they can lead to change in lives and in societies. To take the next steps, to hold governments accountable to their commitments, to overcome prejudice and ignorance, to build societies that see poverty and discrimination as unacceptable and that treasure diversity and tolerance and the knowledge and cultures of their Indigenous peoples, will require continued commitment and determination.

The training courses organised by the Diplomacy Training Program aim to offer practical help to those with commitment and determination to make change. I hope this book will also be a source of practical help, information and advice that will help advocates build greater respect for the human dignity we share together.



## INTRODUCTION

by **LES MALEZER, Human Rights Medallist, 2008**



**Les Malezer receiving his Human Rights Award 10 December 2008, Sydney Australia.**

© Australian Human Rights Commission.

Photo: Matthew Syres.

As advocates for Indigenous peoples in Australia we face many challenges. One of these challenges is the widespread lack of knowledge and awareness by governments and people of international human rights standards. These standards affirm our individual human rights, including our rights to freedom, dignity and respect. They also recognise our collective rights as Indigenous peoples, especially our right to self-determination. While the formal language of international standards can be daunting, these rights, the rights of Indigenous peoples, speak directly to our experiences — as individuals and as distinct peoples trying to maintain our Indigenous existence in Australia.

Knowing and understanding these rights is important for community advocates for a number of reasons. While governments have obligations to respect, protect and fulfil human rights, the responsibility for reminding governments of these obligations and holding them accountable often rests with community advocates, the human rights defenders. That makes this guide an important and practical tool.

While many of us are aware of the wrongs that we see daily, knowing that our sense of what is right and wrong is already clearly articulated in universal human rights standards, adopted by the highest authority in the world, is empowering. We stand on firm ground when we use human rights standards to contest laws and policies that discriminate, or that do not respect our rights to our cultural survival. More empowering, is the realisation that we can do something practical to make changes and to right the wrongs.

While the Australian Government asserts its sovereignty to decide laws, policies and practice for all Australians, international human rights law can constrain what they can and cannot do. Human rights, as the Australian Government itself has recognised and promoted, are universal and a matter of international concern. This concern for human rights, based in respect for the common dignity of all human beings, recognises no borders.

All of us who have participated in the UN Permanent Forum on Indigenous Issues, have felt the strength of solidarity between the Indigenous populations of the world. Solidarity that derives from common experiences of colonisation, resistance and survival. In this sense, the permanent forum is a haven or a union for Indigenous peoples in the United Nations. It has been established and shaped by the effective advocacy of Indigenous activists from around the world. It is our space among the peoples of the world.

The United Nations system provides real opportunities for us to hold the Australian Government accountable to universal human rights standards, through, inter alia, the UN treaty bodies and UN special procedures. Having been part of the successful campaign to have the Declaration on the Rights of Indigenous Peoples adopted by the United Nations, I know that we, as Indigenous peoples, have many friends and supporters in the international community of peoples' and nations.

So, as advocates for our communities and peoples, we must equip ourselves. We must acquire knowledge of our rights, and of the available mechanisms for promoting and protecting these rights. We must generate widespread awareness and understanding of human rights standards and the importance of upholding and maintaining these standards. We must stress the principles of universal equality and non-discrimination.

I welcome this guide as a timely and useful contribution to our work as human rights advocates. It is tool for sharing knowledge so that we might together be more effective and successful in exercising and enjoying our rights as Indigenous people in Australia. We must develop the skills to be effective. In my experience this comes with time and with practice. I encourage you to use this guide to develop your interests in advocacy, to build your skills and to assert the human rights standards for Indigenous peoples.

# PART ONE



Professor Garth Nettheim celebrating the “Sorry Day” with DTP participants during the Oxfam Australia Youth Program, Sydney, February 2008. From the left: Jessica Bairnsfather-Scott, Kyla Flick, Prof Garth Nettheim, Peter Nathan, Nathaniel Prior, Lineesha Johnson and Kirstan Dowling. Photo: © DTP

## HUMAN RIGHTS AND INDIGENOUS PEOPLES IN AUSTRALIA

### 1.1 Human rights and Indigenous peoples

### 1.2 What are human rights?

### 1.3 Human rights in the Australian legal and political system



# DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Social and economic improvement, freedom from economic exploitation

Rights to language, media, appropriate education

The right to self-determination and the right to participate in decision-making

Equality with all other peoples and freedom from discrimination

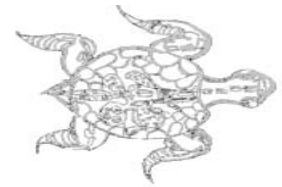
Rights to life, liberty and security

Freedom from genocide and violence, including the forcible removal of children

Rights to land, territories and resources

Rights in the areas of cultural autonomy and cultural integrity

# 1.1 HUMAN RIGHTS AND INDIGENOUS PEOPLES



## ***A historic step for Indigenous rights***

The struggle by Indigenous peoples around the world for recognition, respect, justice and better conditions of life is a struggle both for their individual rights and their rights as distinct groups of people. Indigenous people have experienced centuries of dispossession, repression, murder, cruelty and genocide. But they have never given in and have shown their strength by forcing governments and the international community to take action to recognise the justice of their claims. In doing so, Indigenous people have promoted changes in attitudes. Much remains to be done to translate expressions of concern into concrete action, but the direction is positive.

On 13 September 2007, the United Nations (UN) took a historic step by adopting the Declaration on the Rights of Indigenous Peoples. Recognising the rights of Indigenous people in this way was the result of more than 20 years' effort by Indigenous people and their sympathisers. The declaration breaks new ground, particularly in the emphasis it gives to collective rights, or the rights of Indigenous peoples as groups. The declaration is important for Aboriginal and Torres Strait Islander people in Australia and underlines the importance of using international law and international mechanisms as a way of promoting their rights.

The declaration is wide-ranging and sets out the following rights among many others:

- the right of Indigenous peoples to equality with all other peoples and freedom from discrimination;
- the right to self-determination and the right to participate in decision-making;
- the right to life;
- freedom from genocide and violence, including the forcible removal of children;
- rights to land, territories and resources;
- rights in the areas of cultural autonomy and cultural integrity;
- rights to language, media and appropriate education; and
- freedom from economic exploitation.

***The full text of the Declaration on the Rights of Indigenous Peoples is available on the accompanying CD.***

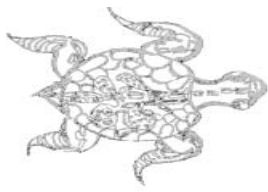


Indigenous people have always known they had these rights. But the adoption of this declaration meant that, for the first time, the nations of the world clearly recognised this in a document that is part of international human rights law. Thus, Indigenous people, collectively as well as individually, are entitled not only to all the rights that apply to all human beings, but are entitled to special rights that flow from their status as Indigenous peoples, the original custodians of the land.

Even the name of the declaration is an important step forward, as there is a significant difference between the words Indigenous "people" and Indigenous "peoples". "Peoples" with an "s" indicates that there are distinct groups of Indigenous people in the world, each of which has distinct characteristics and legal status. Thus we can talk about the Wiradjuri people or the Yolgnu people. When you group together more than one "people", you have "peoples". This emphasises the collective character of Indigenous culture and rights. It is particularly important when talking about self-determination, because international law recognises that "all peoples have the right to self-determination", that is, it is the group not the individuals who have the right. For many years, most countries refused to refer to Indigenous peoples as such, preferring to use such words as "populations".

## ***Not enough on its own***

Important though this step is, the adoption of the declaration does not of itself solve the many challenges that confront Aboriginal and Torres Strait Islander peoples. Much has to be done to put into practice the rights set out in the declaration. The declaration's standards still have to become part of Australian law, government policies and administrative actions. They need to be acknowledged in public statements by government and community leaders at all levels and be included in education, public information and the media generally. Much of this task falls on Indigenous people, though they can count on



the support of positively-minded people throughout the world. The task is made harder by the fact that the international status of the declaration does not legally require Australian governments to pass legislation to give effect to its provisions. In addition, Australia, under the Howard government, was one of only four countries to vote against the adoption of the declaration. It will always be necessary to apply pressure on many fronts to ensure that the standards set out in the declaration are reflected substantially and meaningfully in Australia.

Whatever Aboriginal and Torres Strait Islander peoples do to try and improve their situation, it is helpful for leaders, advocates and ordinary people to be familiar with the Declaration on the Rights of Indigenous Peoples and with other international human rights standards. This should include an understanding of the place of these standards in international and Australian law and how international and Australian politics can affect the implementation of human rights. To advocate effectively for their rights, people also need to know how they can use the international human rights system to produce specific results. Finally, effective advocacy involves the development of relevant skills, so that those seeking to promote human rights can have the maximum impact.

### ***How to use this guide***

This guide provides the resources for you to advocate more effectively in support of human rights.

**Part 1** explains:

- what human rights are;
- ways in which human rights affect Indigenous peoples;
- how international standards influence Australia; and
- Australia's mechanisms for dealing with human rights violations.

**Part 2** looks at Indigenous people and Indigenous rights at the international level. It includes:

- a summary of the achievements of Indigenous people on the world stage;
- more on the relevance of the Declaration on the Rights of Indigenous Peoples; and
- how the human rights-based approach to development can help empower Indigenous people.

**Part 3** looks at international standards relevant to Indigenous Australians and how they can be used to advance human rights.

It explains:

- some of the major treaties and declarations;
- the complaints process to UN bodies; and
- other ways of working with the UN.

**Part 4** suggests how human rights advocates can work effectively by:

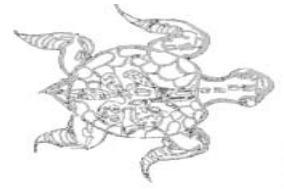
- developing strategies;
- using a range of advocacy techniques; and
- working with the media.

**Part 5** considers other approaches to bring about positive change and resolve problems at a local level such as:

- adopting alternative dispute resolution processes; and
- building community alliances.

The guide concludes with information on useful resources.

## 1.2 WHAT ARE HUMAN RIGHTS?



### **Security and dignity**

Human rights spring from the values that societies hold dear. They reflect our common humanity. The details of value systems may vary, but people everywhere seek physical security, freedom from suffering and freedom from unreasonable restraint, both for themselves and for their families. They seek equality and fairness, the opportunity to reach their potential and acknowledgement of their human dignity.

Human rights are a key that can open doors to lives of greater security and dignity. They are for everyone in the community, but are particularly important for people who are vulnerable or who face problems in basic areas of life, such as health and housing. Human rights are crucial for Indigenous peoples.

Human rights have a long history, but it is only since 1945 that major steps have been taken to recognise that all people everywhere are entitled to all rights. Working at the national, regional and international levels, governments and people have set down rights in many agreed documents. These include the right to life; freedom from racial and other forms of discrimination; freedom from torture and cruel and inhuman treatment; rights to a fair trial and free speech; and health, education and an adequate standard of living.

### **Governments must be held to account**

Governments have a responsibility to ensure that people are able to experience their rights. Governments should ensure a framework of law that applies equally to all and must provide services that enable all citizens to enjoy a life of security and dignity. Governments often fail to live up to their responsibilities, but human rights means they can be held to account, either legally or in the court of public opinion.

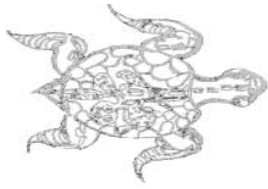
Governments have many specific obligations under international law. In more general terms, their obligations are to respect, protect and fulfil human rights. If we look at racial discrimination, for example, the obligation to respect means that the government will not take discriminatory actions or allow its officials to discriminate. The obligation to protect means that the government will stop other parties, such as private individuals, from taking racially discriminatory action. The obligation to fulfil means that the government will take action to ensure that the aim of eliminating discrimination is achieved in practice and is not just a matter of good-sounding words. Action will vary according to the human right concerned, but can include establishing programs of various kinds with appropriate budgets, setting up education and awareness campaigns, passing legislation that includes penalties, providing training, and setting up remedies for victims of discrimination.

The same framework of respect, protect and fulfil applies to all other rights. For the right to health, governments:

- respect the right by not limiting access and by not discriminating;
- protect the right by ensuring third parties in the healthcare system do not infringe rights. This is particularly important where healthcare delivery is in private hands; and
- fulfil the right by ensuring appropriate legislation, policies and funding.

In this framework, governments are called “duty bearers” — they have an obligation to ensure people enjoy their rights. Members of the community are “rights holders” — rights reside in individuals and groups, who thereby have legitimate claims on government.

The struggle for human rights is one for the long haul. While the principles of human rights seem plain commonsense, implementing them has proven difficult, not only in Australia but all over the world. The struggle for human rights is one for the long haul. The principles of human rights seem common-sense, but implementing them in law, policy and practice is a challenge in Australia and other countries. Implementation requires political commitment, overcoming prejudice and discrimination, education and awareness-building, knowledge, and the allocation of resources.



## 1.3 HUMAN RIGHTS IN THE AUSTRALIAN LEGAL AND POLITICAL SYSTEM

### **Human rights gaps in Australia's legal system**

Many non-Indigenous people like to think of Australia as a country where human rights are strongly entrenched in law and practice. Different people have different experiences, but there are elements in the Australian system that mean that human rights are not as well protected as they should be.

While many countries have human rights standards written into their laws or even their constitutions, Australian human rights legislation is quite limited. This is because Australia inherited from Great Britain a legal system that combines common law (which has been built up over centuries of custom and court decisions) and statute law — that is, law resulting from parliamentary legislation. In Australia some rights are set down in legislation, for example the Racial Discrimination Act, but many rights are not, such as rights to a fair trial or freedom of speech. Where rights are not included in legislation, they can be more difficult to enforce.

There is much that is good in the Australian legal system, including its capacity for change and development. But it is not too hard to see problems for Australians seeking respect for their rights. Many Australians — particularly Aboriginal and Torres Strait Islander people — suffer abuse of their rights and are unable to find an effective remedy. The right in question may not be well established in the common law or there may be conflicting interests, with the claim to observance of rights coming off second best. In addition, it is always open to a government to pass new legislation to override the common law or to vary existing legislation that creates rights. This has happened with the Federal Government's Northern Territory intervention, where the legislation excludes the operation of the Racial Discrimination Act (RDA). This has prompted Tom Calma, the Social Justice Commissioner to say:

*The ease with which the obligations under the RDA can be set aside by the NT intervention legislation reveals the weak status of protections of racial discrimination in our legal system.<sup>1</sup>*

### **The Australian federal system of government**

The Federal Government is accountable under international law for the implementation of its commitments to observe human rights. But in many areas, such as administration of justice, land matters, health and education, state governments have the responsibility to make and administer the laws that give effect to these rights. State and Territory governments may be less likely to acknowledge their human rights responsibilities, including when these human rights are denied or violated. This can change when bills or charters of rights are adopted – see page 18 which has more information on domestic protection of human rights.

This makes it important that there should be broad lobbying and campaigning strategies aimed at bringing about change in human rights observance. Buck-passing and ignorance are common at each level of government. And democracy is no guarantee that human rights will be observed.

When talking about Australia's federal system of government, it is important to note that the UN has strongly rejected the argument sometimes used by Australian governments that because Australia has a federal system of government it cannot ensure that its international obligations are observed.

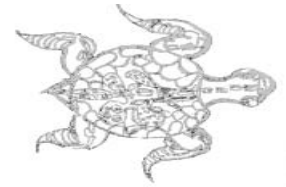
### **The international human rights system's influence on Australia**

Human rights standards have been developed as very important protections against the harm that governments are capable of. Much international human rights work is long term. The positive actions of good people and good governments often last, even after the people and the governments pass from the scene. Over time, these positive actions build up a lasting framework of human rights that protects present and future generations from abuse. These actions also lift standards generally and change the way people think about human rights.

We have seen this in Australia, where successive Australian governments have signed on, one by one, to the major international

<sup>1</sup> Page 267, Social Justice Report 2007, published by the Human Rights and Equal Opportunity Commission





human rights treaties and complaints mechanisms, with the result that Australians now in theory enjoy the protection of nearly all of them. For Indigenous people, and others, the key question is what this protection means in practice.

The quality of protection varies, partly depending on whether Australian governments have passed domestic legislation to implement the international human rights standards. As mentioned above, some human rights are part of Australia's written law and some are not. Australian courts have the role of enforcing human rights observance, whatever the legal basis for the right may be. But the courts' task is made easier if rights are specifically set out in Australian legislation.

## **THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION AND AUSTRALIA'S RACIAL DISCRIMINATION ACT**

In 1965, the United Nations adopted the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). It requires governments to ban all forms of racial discrimination. In 1975, Australia ratified this Convention and the Federal Parliament passed the Racial Discrimination Act (RDA). This act brought the provisions of CERD into Australian law and made racial discrimination unlawful.

At first it was not clear how this Commonwealth legislation would apply to the states. That is, would the RDA override state legislation that was discriminatory? The matter was cleared up by a series of High Court decisions on whether, under the Constitution, the Commonwealth could use international law as a basis for passing legislation in areas that were traditionally the preserve of the states.

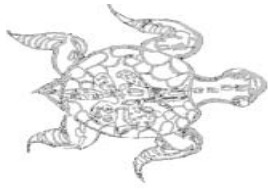
In the *Koowarta* case (1982), the High Court decided that the Commonwealth did have that power where the subject matter of the act, and of the treaty, affected Australia's relations with other nations. Specifically, it held that the RDA was a valid exercise of Commonwealth power. In the *Tasmanian Dams* case (1983) the High Court extended this power by no longer limiting it to obligations that were of "international concern". When the *Mabo* case was going forward, the High Court ruled in 1988 that a Queensland law aimed at extinguishing the traditional land rights of the Meriam people was invalid because it was in breach of the RDA. This allowed the *Mabo* case to go forward with the result that Native Title was eventually recognised in 1992.

If it had not been for international law, there would have been no Racial Discrimination Act and no recognition of Native Title. There would also have been nothing to prevent racially discriminatory actions by state governments and private persons. This is one illustration of the value of international standards.

### ***Making international law into domestic law***

The government of the day decides whether or not Australia will become party (that is, will formally agree) to an international human rights treaty. Once it becomes party, Australia has an obligation under international law to observe the provisions of the treaty. That is an obligation on all future governments too. But unless there is a specific Australian law that gives effect within Australia to the treaty, there is no legal way within the Australian court system to ensure the rights in the treaty will prevail over any legislation, whether state or federal, that is inconsistent with the treaty.

To ensure consistency with its international obligations, Australia's Federal Government sometimes passes legislation to make the provisions of an international human rights treaty into the law of the land, the point being that Commonwealth legislation (that is, legislation passed by the Federal Government) takes priority over any state or territory legislation. An example is the Racial Discrimination Act, which brings into Australian law the provisions of the International Convention on the Elimination of Racial Discrimination. But more often, rather than passing legislation, the Federal Government goes through a process of consultation with the states and territories and then comes to a judgement that the separate legislation of each state and territory is in keeping with the treaty. If this happens, the Federal Government may decide there is no need to pass



any legislation and then takes the necessary steps to become party to the treaty. In such situations there is no overriding Commonwealth legislation.

It is not hard to see how this approach can lead to problems. The process of Commonwealth-State consultation may sometimes be insufficiently thorough to weed out all unsatisfactory legislation. Even if it is thorough, there is nothing to stop any government, including the Federal Government, from later passing legislation inconsistent with the human rights treaty. State and Territory laws on mandatory sentencing, “three strikes and you are in prison” (whatever your crime or circumstances) is a glaring example of this. The Australian Federal Government’s emergency intervention in the Northern Territory, mentioned earlier, is another.

### ***Bills or charters of rights***

A bill or charter of rights is a legal document that sets out what basic rights people in the country are entitled to. Most countries similar to Australia now have national bills or charters of rights. But in Australia, taking legislative action to protect human rights has always been controversial and progress has been limited. Nevertheless, there is a growing body of opinion that Australia should join most other like-minded countries and enact legislation that protects a wider range of human rights.

In 2004, the Australian Capital Territory passed a Human Rights Act. In 2006, Victoria passed the Charter of Human Rights and Responsibilities Act. In their introductions, these acts acknowledge the importance of rights for Indigenous people. These acts focus on core civil and political rights and their purpose is not so much to open the way for litigation over human rights issues, but to promote better understanding of human rights and to ensure that government legislation and policy is developed in a way compatible with human rights standards.

On 10 December 2008, the Federal Government announced a national consultation on how human rights could be better protected in Australia. Experience will also be a guide to how the scope of human rights acts could be expanded, for example, to cover economic, social and cultural rights such as the rights to health and housing. It will be important for Aboriginal and Torres Strait Islander peoples to be involved in these processes and to make sure that their concerns are reflected to the greatest extent possible in any new legislation.

### ***Australian human rights legislation***

While taking the limitations into account, Australia has some useful human rights legislation that focuses on combating discrimination. The Commonwealth legislation includes the:

- Racial Discrimination Act 1975;
- Sex Discrimination Act 1984; and
- Disability Discrimination Act 1992.

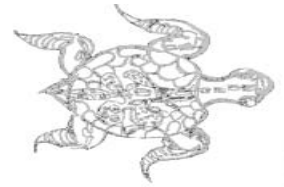
The influence of the international human rights system is clearly seen, as each of these acts implements a corresponding international human rights instrument.<sup>2</sup>

These three acts have proved beneficial in some specific cases of discrimination and have promoted awareness that discrimination is unacceptable. The Racial Discrimination Act, in particular, has had a wider significance in Australian law. It was a key element in the series of legal judgements that led to the recognition in Australian law of Native Title.

These acts make it unlawful to discriminate on grounds of race, sex or disability respectively. However, the acts do not provide for criminal penalties. Anyone who believes they have been discriminated against should first make a complaint to the Australian Human Rights Commission (AHRC).

There are three major international treaties that Australia has agreed to but which do not have any Commonwealth legislation

<sup>2</sup> The Disability Discrimination Act was originally based on the international Declaration on the Rights of Disabled Persons. Subsequently, the international Declaration was expanded and made into a legally binding Convention on the Rights of Disabled Persons.



to guarantee observance in Australia of the rights they provide for. These are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).

### **Action in Australia to protect your rights**

#### **The Australian Human Rights Commission (AHRC)**

The Australian Human Rights Commission (AHRC) was established in 1986 under Commonwealth legislation. Until 2008, it was known as the Human Rights and Equal Opportunity Commission (HREOC). It has the purpose of promoting and protecting human rights. Its activities include investigating and conciliating complaints about discrimination and human rights breaches; human rights advocacy; research; advising government; and education and public information.

The AHRC is led by a president and several commissioners, each responsible for a specific area of activity. The role of the Aboriginal and Torres Strait Islander Social Justice Commissioner is to enquire into and report on the human rights of Aboriginal and Torres Strait Islander peoples. The successive Commissioners, Mick Dodson, Bill Jonas and Tom Calma, have been outspoken advocates for Indigenous people in Australia.

While the AHRC cannot provide effective redress in relation to breaches of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights or the Convention on the Rights of the Child, it has been active in drawing attention to human rights problems in these areas. For example, one of its most important activities has been the inquiry into and report on the Stolen Generations.

In addition to the AHRC, there are bodies established under legislation of each of the states and territories to deal with race and other forms of discrimination. If you wish to make a complaint about discrimination or an alleged breach of human rights to the AHRC or one of the state or territory bodies, you should first find out the appropriate procedures. It is best to make direct contact with the organisation concerned, which will provide advice and assistance. This service is free and does not generally require legal representation.

#### **Other complaints mechanisms**

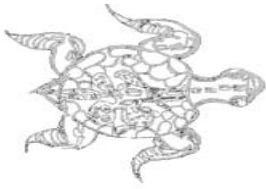
Problems can arise in specific areas of life that may not be appropriate to pursue through major human rights mechanisms, such as the AHRC or UN. Problems over housing rentals, consumer affairs, relations with the police, problems with media coverage, healthcare, education, and so on, may best be tackled at the local level first. Fortunately the ever-widening recognition of human rights has led to the development of many statements of rights and codes of conduct that are enforceable to some degree, and specific complaints mechanisms. If you have a problem, it is likely that there will be some mechanism that you can use to try to obtain some satisfactory resolution. There are also ombudsmen for complaints about the provision of federal, state and territory government services. Generally, there is no charge for using these complaints mechanisms.

#### **Contact details for Australian discrimination complaints mechanisms**

Each of the federal, state and territory bodies dealing with discrimination and human rights has their own legislation and their own mechanism for dealing with complaints. The grounds of discrimination may vary between jurisdictions.

Whether to go state or federal may depend on the circumstances of each case. It is not possible to shop between the two, so you should discuss your case carefully with each to determine which path would be best for you.

The websites of each organisation are different. It is worth looking at the general website of organisations relevant to you (that is, the AHRC and your state or territory organisation) to get an idea of their approach. It would usually be a good idea to contact the organisations by phone to discuss your case before submitting a complaint. All of the organisations have a teletypewriter (TTY) line for people who are hearing or speech impaired.



## **CASE STUDIES WHERE INDIGENOUS AUSTRALIANS HAVE TAKEN CASES OF RACIAL DISCRIMINATION TO THE AUSTRALIAN HUMAN RIGHTS COMMISSION**

By having the courage to make these complaints, Indigenous people have promoted a better future for others. When service providers realise there is a cost to racist actions, they will be less likely to commit them.

*An Aboriginal couple complained to HREOC that a caravan accommodation provider refused to rent to Aboriginal persons “under any circumstances whatsoever”. The Commission found this to be a “serious and significant case of blatant racial discrimination” and ordered the caravan provider to pay damages of \$20,000.*

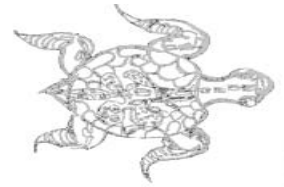
**A 16-year-old Aboriginal girl had been working part time at a grocery store. She found her cash register was short by \$50 and, when she reported this to the manager, he spoke to her in a way that she said amounted to an accusation that she had stolen the money. In a complaint to HREOC, she claimed that she was treated this way because of her Aboriginality and that another non-Aboriginal employee who made a mistake with her cash register was not treated as she was. HREOC arranged for the matter to be resolved through telephone discussions with the parties, with the company agreeing to pay the girl \$200 in general damages.**

*An Aboriginal woman who has cerebral palsy complained to HREOC that, when trying to enter a hospital to see her sick child, a security guard initially swore at her and refused her entry because he thought she had been drinking (her disability affected her speech and way of walking). The matter was resolved by conciliation. The security firm agreed to pay the woman \$3,000, which included \$2,000 in general damages and \$1,000 legal costs. The firm also agreed to provide the woman with a written apology and to introduce a comprehensive anti-discrimination policy. The hospital agreed to pay the woman \$3,000, which comprised \$2,000 for general damages and \$1,000 legal costs. This was an example of combined racial and disability discrimination.*

**An Aboriginal elder and another Aboriginal man had been performing at a dance function. They showered and then entered a hotel to buy some cigarettes. The hotel refused them service and asked them to leave the premises because staff said they smelled. They lodged a complaint of racial discrimination with HREOC. The complaint was resolved through conciliation, with the hotel agreeing to pay each of the men \$6,000 in general damages and also to provide each of them with a letter of apology.**

*An Aboriginal woman complained that a bus driver made racist remarks to Aboriginal passengers when checking their tickets. She complained to the bus company and to HREOC. The company had dismissed the driver. The complaint to HREOC was resolved through conciliation, with the company agreeing to develop and implement anti-discrimination policies for inclusion in the driver induction process. The company also agreed to engage a relevant agency to provide an initial series of anti-discrimination forums for all drivers, with follow-up forums to be held annually.*

**The commission conducted an inquiry into complaints brought by several Aboriginal people that they had been refused service at two hotels in Mareeba, North Queensland. The Commission decided that this was a violation of the RDA and ordered the hotel owners to pay damages and make apologies.**



*Links to all the organisations mentioned below may be found on the accompanying CD.*



**Australian Human Rights Commission (AHRC) – formerly called the Human Rights and Equal Opportunity Commission (HREOC)**

General website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

Complaints webpage: [www.humanrights.gov.au/complaints\\_information/index](http://www.humanrights.gov.au/complaints_information/index)

Email: [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)

Telephone: (02) 9284 9600

Complaints Infoline: 1300 656 419 (local call)

General enquiries and publications: 1300 369 711

Fax: (02) 9284 9611

SMS: 0488 744 487 (0488 RIGHTS)

TTY: 1800 620 241 (toll free)

Street address: Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney NSW 2000

Postal address: GPO Box 5218 Sydney NSW 2001

**New South Wales Anti-Discrimination Board (NSW ADB)**

General website: [www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb)

Complaints webpage: [www.lawlink.nsw.gov.au/lawlink/adb/ll\\_adb.nsf/pages/adb\\_complaint](http://www.lawlink.nsw.gov.au/lawlink/adb/ll_adb.nsf/pages/adb_complaint)

Telephone: (02) 9268 5555

General Enquiry Service and Employers Advisory Service: (02) 9268 5544

Fax: (02) 9268 5500

Freecall: 1800 670 812 (for rural and regional New South Wales only)

TTY: (02) 9268 5522

Street address: Level 4, 175 Castlereagh Street, Sydney NSW 2000

Postal address: PO Box A2122, Sydney South 1235

**Northern Territory Anti-Discrimination Commission**

General website: [www.nt.gov.au/justice/adc/index800](http://www.nt.gov.au/justice/adc/index800)

Complaints webpage: [www.nt.gov.au/justice/adc/html/complaints/index](http://www.nt.gov.au/justice/adc/html/complaints/index)

General email: [administrationadc@nt.gov.au](mailto:administrationadc@nt.gov.au)

Complaints email: [complaintadc@nt.gov.au](mailto:complaintadc@nt.gov.au)

Telephone: (08) 8999 1444

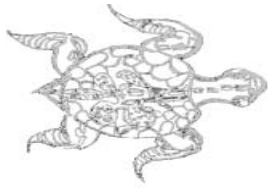
Freecall: 1800 813 846

Fax: (08) 8981 3812

TTY: 8999 1466

Street address: 7th Floor, National Mutual Building, 9–11 Cavenagh Street, Darwin NT 0800

Postal Address: LMB 22, GPO Darwin NT 0801



### **Queensland Anti-Discrimination Commission**

General website for Aboriginal and Torres Strait Islander people: [www.adcq.qld.gov.au/main/atsi](http://www.adcq.qld.gov.au/main/atsi)

Complaints webpage: [www.adcq.qld.gov.au/main/complaints\\_inclvideo](http://www.adcq.qld.gov.au/main/complaints_inclvideo)

Email: [info@adcq.qld.gov.au](mailto:info@adcq.qld.gov.au)

Telephone: 1300 130 670 (statewide)

TTY: 1300 130 680

The Anti-Discrimination Commission Queensland operates a telephone information and enquiry service. The 1300 telephone or TTY number will connect you to the closest office. Offices are located in Brisbane, Rockhampton, Townsville and Cairns. We have contact officers for: the lesbian, gay, bisexual, transgender and intersex communities; Indigenous people; people with an impairment and young people.

Do you have a hearing or speech impairment?

You can call through the National Relay Service:

TTY users, phone 133 677 then ask for 1300 130 670

Speak and listen users, phone 1300 555 727 then ask for 1300 130 670

Internet relay users, connect to the National Relay Service (see [www.relayservice.com.au](http://www.relayservice.com.au) for details) and then ask for 1300 130 670.

The National Relay Service website includes information about the options available to people who are deaf, or have a hearing or speech impairment. You can also contact 1800 555 660 or [helpdesk@relayservice.com.au](mailto:helpdesk@relayservice.com.au) for information or support.

Do you want to speak to us in a language other than English?

Contact TIS (Translating and Interpreting Service) on 131 450 from anywhere in Australia.

### **South Australia Equal Opportunity Commission**

General website: [www.eoc.sa.gov.au/site/home.jsp](http://www.eoc.sa.gov.au/site/home.jsp)

Complaints webpage: [www.eoc.sa.gov.au/site/eo\\_for\\_you/making\\_a\\_complaint.jsp](http://www.eoc.sa.gov.au/site/eo_for_you/making_a_complaint.jsp)

Telephone: (08) 8207 1977

Country callers: 1800 188 163

TTY: (08) 8207 1911

Fax: (08) 8207 2090

Street address: Level 2, 45 Pirie Street, Adelaide SA 5000

Postal address: GPO Box 464, Adelaide SA 5001

### **Tasmanian Office of the Anti-Discrimination Commissioner**

General website: [antidiscrimination.tas.gov.au](http://antidiscrimination.tas.gov.au)

Complaints webpage: [www.antidiscrimination.tas.gov.au/complaints](http://www.antidiscrimination.tas.gov.au/complaints)

Email: [AntiDiscrimination@justice.tas.gov.au](mailto:AntiDiscrimination@justice.tas.gov.au)

Telephone: (03) 6233 4841

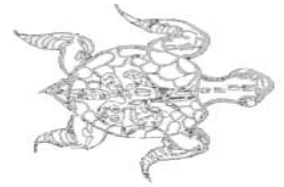
Statewide local call: 1300 305 062

Fax: (03) 6233 5333

TTY: (03) 6233 3122

Street address: Level 1, 54 Victoria St, Hobart TAS 7000

Postal address: GPO Box 197, Hobart TAS 7001

**Victorian Equal Opportunity and Human Rights Commission**

General website: [www.humanrightscommission.vic.gov.au/Home](http://www.humanrightscommission.vic.gov.au/Home)  
Complaints webpage: [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)  
Indigenous Education and Complaint Officer: contact:Taryn Lee  
Telephone: (03) 9281 7112;  
Email: [taryn.lee@veohrc.vic.gov.au](mailto:taryn.lee@veohrc.vic.gov.au)  
General email: [information@veohrc.vic.gov.au](mailto:information@veohrc.vic.gov.au)  
Complaints email: [complaints@veohrc.vic.gov.au](mailto:complaints@veohrc.vic.gov.au)  
Telephone: (03) 9281 7111 or 1800 134 142 (toll free)  
Advice line: Weekdays: 9am–5pm, Wednesdays 9am–1pm  
Telephone: (03) 9281 7100  
TTY: (03) 9281 7110  
Fax: (03) 9281 7171  
Address: Level 3, 380 Lonsdale Street, Melbourne VIC 3000

**Western Australian Equal Opportunity Commission**

General website: [www.equalopportunity.wa.gov.au](http://www.equalopportunity.wa.gov.au)  
Complaints webpage: [www.equalopportunity.wa.gov.au/discrimination](http://www.equalopportunity.wa.gov.au/discrimination)  
Telephone: (08) 9216 3900  
Freecall: 1800 198 149  
Fax: (08) 9216 3960  
TTY: (08) 9216 3936  
Street address: Level 2, 141 St George's Terrace, Perth WA 6000

**Australian Capital Territory Human Rights Commission**

General website: [www.hrc.act.gov.au](http://www.hrc.act.gov.au)  
Complaints web page: [www.hrc.act.gov.au/index](http://www.hrc.act.gov.au/index)  
Email: [human.rights@act.gov.au](mailto:human.rights@act.gov.au)  
Telephone: (02) 6205 2222  
Fax: (02) 6207 1034  
TTY: (02) 6207 0525  
Street address: Level 4, 12 Moore Street, Canberra ACT 2601  
Postal address: GPO Box 158, Canberra ACT 2601

# THE INTERNATIONAL SYSTEM

VICTORIA DAVIS-JENKINS

**Victoria Davis-Jenkins from Carins, North Queensland — Bachelor of Arts student, on her involvement with the international system.**

I am a Guundu Warra Bama woman of the Battle Camp region located between Cooktown and Hopevale. My Nanna was removed from her homeland at the age of a toddler and never returned back on country. The traditions that contributed to her identity — language, song, dances and way of life were taken away from my Nanna and her next generations. This injustice is the main reason why I have been involved in addressing Indigenous issues since I was a young girl. Since my last years at highschool, I began working for Balkanu Cape York Development Corporation P/L as a school-based administration trainee up until February 2008, where I left my last position as Executive Support to go and study at university.

In April 2008, I was selected along with 5 others to participate as a youth leader in a two week training program with FAIRA at the United Nations Permanent Forum on Indigenous Issues (UNPFII) in New York. Prior to my selection, I had attended several youth initiative events, where I befriended many people from diverse locations. It was overwhelming to have the opportunity to meet like-minded people, who face similar injustices and are still advocating as much as they can for human rights.

Raising issues at an international level is important, as it raises awareness through the media and raises our concerns globally. It puts the Australian Government on notice when it realises it is under scrutiny from an influential organisation like the UN. I was very fortunate at the UNPFII in being given the opportunity to learn about how action is taken at the international level.

Every day at UNPFII we were busy attending both the main meetings and side meetings. We participated in caucuses of Australian, Pacific and Youth delegates. We observed what was going on, took notes and networked with other Indigenous delegations from around the world.

The whole two weeks was an absolute learning experience and gave me more understanding of how the UN system works. I noticed the ignorance and arrogance of our Australian Government responses to the Indigenous people's interventions. I thought it was absurd and inefficient that interventions raised by the Indigenous delegations throughout the two weeks aren't all considered in the overall decision and session report of recommendations from the UNPFII board.

I feel very honoured to have been given the opportunity to represent and be a part of the 2008 UNPFII Australian Indigenous delegation at the international level. Since then, I attended with other colleagues the World Conservation Congress (October 2008) in Barcelona, Spain, to lobby The Wilderness Society and several other conservation groups against putting forward a motion to protect the World Heritage values of Cape York Peninsula, for not consulting the traditional owners or seeking their involvement in the decision-making process of putting forward the motion. The motion was withdrawn, as a result of successful lobbying and media pressure.

I am now studying first year BA Arts major in Sociology and aim to transition into an Arts-Law combined degree in 2009 to



become a lawyer to advocate on a higher level of understanding against the injustices Indigenous Australians are still facing today. In my lifetime, I look to contribute to making a difference for the betterment of Indigenous Australia, following on from our past and present Indigenous leaders from Australia and all over the world, who have paved the way forward toward our self-determination and our human rights.

**Victoria Davis-Jenkins, DTP Alumna (right front) at the FAIRA training group, United Nations Permanent Forum, New York, April 2008. Photo: © DTP**



# PART TWO



United Nations Permanent Forum on Indigenous Issues, New York. Photo: © Les Malezer

## **INDIGENOUS PEOPLES AND HUMAN RIGHTS AT THE INTERNATIONAL LEVEL**

**2.1 Indigenous people in the United Nations system**

**2.2 Indigenous people and international human rights standards**

**2.3 The human rights-based approach to development**

# A LIFE-CHANGING EXPERIENCE

PETER NATHAN



**Peter Nathan, DTP Alumna at the United Nations Permanent Forum, New York, April 2008.**  
Photo: © DTP

**Peter Nathan, an aboriginal Australian youth delegate, meets some of Australia's Indigenous leaders making a difference on the world stage.**

In April 2008, I embarked on my biggest journey. I was given the opportunity to attend the United Nations Permanent Forum on Indigenous Issues (UNPFII) in New York. The blood ran cold in my body when I began to think about the enormity of the event. Also I asked myself the question, "Why was I chosen?" The journey, let alone the opportunity, was to become the most defining moment in my life.

After 27 hours on three planes, I was finally in New York, literally on the other side of the world. There were high hopes in the youth camp. We were about to join in the tide of struggle which many of our fathers, mothers, and grandparents have already lived through, the struggle of Indigenous people, a valiant and long historical fight in which we were about to join on the global stage.

Finally we were able to walk the halls of the United Nations, as so many world leaders had done. Lining the walls of the lower levels were photos of the various Indigenous people who had attended previous sessions of the UNPFII. Aboriginals from many nations stared down from the walls at us, either welcoming us to the fight or warning us of the struggle. I felt honoured to take in the smells of the building and to feel the warmth of the people, which seemed to melt away any dismay and nerves I had.

Upon meeting the Australian Aboriginal delegation, I was instantly star struck. There stood in front of me Aden Ridgeway (former Australian Senator and host of *Message Stick* (an Australian Broadcasting Corporation television program) and Tom Calma (Social Justice Commissioner). These two men have always walked into the debate of Indigenous Australian inequality and come out with their heads high. I was in awe of the people who stood before me: lawyers, doctors, barristers, professors, entrepreneurs. All of whom had one thing in common: they were Aboriginal and Torres Strait Islanders "blackfellas". I instantly felt pride grow in my heart and knew for certain that I had come to the right place. For there was no hierarchy, everyone was equal.

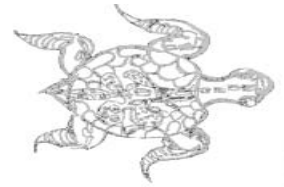
I soaked up any and all knowledge I could, and sought out networking with people who have begun to address these problems. I felt for the first time that I was learning new things and relevant issues that could progress my community and wider Aboriginal Australia. I was there to find answers to assist Mornington Island and to bring our stories to the world stage. I went as the vehicle for promoting our struggle in our small corner of the world. This gave me hope that one voice can make a difference within a busy and loud society, as there are people listening.

When the youth delegates met Mick Dodson and other Indigenous leaders at the UN, we could openly express our views and also question how the UN process works. I felt as if I was in the company of greatness, as these are the people who the global Indigenous community entrusts to lead the fight against Indigenous peoples' inequality. Yet they were willing to sit down and listen to us.

Fourteen days of international politics reinvigorated my spirit and allowed for me to observe where my focus should be. Being on the world stage gave me confidence to meet the needs of the community and voice our issues at home. I felt enormous pride at representing Indigenous Australian youth at the UNPFII. However, I felt more pride in being welcomed back home. My hope is that my representation pushes others to strive for such journeys. I was never given the opportunity to meet with such driven people when I was a child. I intend to inject my passion and persistence for change, to ensure that we don't have only one person from Mornington Island doing these international forums, but many.

We as Indigenous Australians must know that our fight is not only within Australia but also sits on the global stage with our Aboriginal brothers and sisters. As one we will make a difference.

## 2.1 INDIGENOUS PEOPLE IN THE UNITED NATIONS SYSTEM



### **The United Nations**

The United Nations (UN) brings together the governments of the world. It is a big organisation, covering a wide range of activities and sub-organisations. It was established in 1945, as World War II came to a close, with the idea that it would prevent further conflicts and help build a better world. It has a headquarters in New York and offices in many other places, including Geneva, Switzerland, where most of the human rights activity takes place.

The promotion of human rights has always been one of the UN's main purposes. However, it was many years before the rights of Indigenous people came onto the UN agenda. Change began in the 1970s and was largely due to activism on the part of Indigenous people who insisted that the international community should give attention to their concerns.

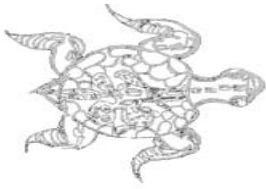
### **The world takes notice**

In 1982, the UN established a body called the Working Group on Indigenous Populations (WGIP). This grew to become one of the largest of the UN's human rights meetings. Indigenous people came from all over the world to tell the UN of their concerns and to meet others. Through this international activity, Indigenous people found they shared a common experience and a common cause. Indigenous representatives became skilled in international diplomacy. They used these skills to put forward ideas aimed at strengthening Indigenous rights.

Significant events in the history of Indigenous issues at the UN have included:

- the decision in 1985 by the Working Group on Indigenous Populations to start work on a declaration on Indigenous rights;
- the decision in 1989 by the International Labour Organization (ILO) to adopt a Convention (Number 169) on Indigenous and Tribal Peoples (this replaced an earlier ILO Convention, Number 107, which was considered to be paternalistic);
- the UN's decision to set aside 9 August each year as the International Day of the World's Indigenous People;
- the International Year (1993) and then the Decade (1994–2004) of the World's Indigenous People, including its high-profile launch at UN headquarters in New York;
- the Commission on Human Rights decision in 1995 to establish a working group to consider the draft Declaration on the Rights of Indigenous Peoples, a draft that had been under consideration by the WGIP for 10 years;
- the UN's decision in 2000 to set up a Permanent Forum on Indigenous Issues (UNPFII): this body was given responsibility for the full range of issues of concern to Indigenous people, not only human rights. It was placed higher in the UN hierarchy than any previous body concerned with Indigenous people and, for the first time in the UN, gave Indigenous people an equal role in decision-making;
- the Commission on Human Rights decision in 2001 to appoint a "special rapporteur" (a kind of investigator) "on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People". The special rapporteur has the responsibility of reporting annually to the UN;
- the UN General Assembly's decision in 2004 to proclaim a Second International Decade of the World's Indigenous People (2005–2014);
- the UN's adoption in 2007 of the Declaration on the Rights of Indigenous Peoples;

*The promotion of human rights has always been one of the UN's main purposes. However, it was many years before the rights of Indigenous people came onto the UN agenda.*



- the Human Rights Council's decision in 2007 to establish the Expert Mechanism on the Rights of Indigenous Peoples. This replaces the Working Group on Indigenous Populations and is an advance, as it is higher in the UN's hierarchy and is composed largely of Indigenous experts;
- the decision in 2008 to appoint an Indigenous person (Professor James Anaya of the United States) as the Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People;
- attention by the human rights treaty bodies, such as the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, to violations of the rights of Indigenous people;
- decisions by various bodies in the UN system, such as the World Health Organization, the World Intellectual Property Organisation, and the International Labour Organisation, to give specific attention to issues that are of concern to Indigenous people, as well as to set up specific programs of work; and
- Indigenous representation at major UN conferences such as the Conference on Environment and Development (UNCED) in Rio De Janeiro in 1992, the World Conference on Human Rights in Vienna in 1992, the World Conference on Women in Beijing in 1995 and the World Conference on Racism in Durban in 2001.

### **Indigenous Australians as leaders**

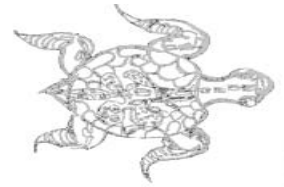
Australian Indigenous leaders such as Paul Coe, Mick Dodson, Lowitja O'Donoghue and Les Malezer have made a significant contribution to international debates, decisions, standards and events. Professor Dodson is currently one of the eight Indigenous members of the UN Permanent Forum on Indigenous Issues. Many other Australian Indigenous representatives have participated in UN meetings and made important contributions, including people who do not hold high leadership positions. In addition, there have been Australian Indigenous people working as staff at the Office of the High Commissioner for Human Rights and other international organisations. For some years the Foundation for Aboriginal and Islander Research Action (FAIRA) supported a permanent Australian Indigenous non-government representative in Geneva to ensure Australian Indigenous views were represented to UN bodies there and to ensure effective information flow.

Starting from nothing, Indigenous issues are now prominent at the UN. Aboriginal and Torres Strait Islander peoples have made a major contribution to the development of international standards. The work continues.



**Jacqui Katona, DTP Alumna and trainer for DTP, giving a lecture to DTP participants regarding lobbying for human rights during Oxfam Australia's Indigenous Training Program, Sydney, February 2007. Photo: © Oxfam AUS**

## 2.2 INDIGENOUS PEOPLE AND INTERNATIONAL HUMAN RIGHTS STANDARDS



### **Basic information on international standards**

The phrase “international human rights standards” covers a wide range of international human rights treaties, declarations and other sets of human rights principles. It also covers “customary international law” — the general practices that states regard as the right thing to do, even if it is not written down.

Written standards (often called instruments) have been negotiated and agreed by the United Nations (UN) or other international forums over the years. Most of these set out rights that, if implemented, would improve the lives of Indigenous people.

Broadly speaking, there are two types of international human rights instruments: treaties and declarations. A treaty is a written agreement between two or more countries. Treaties are legally binding under international law. When Australia ratifies — or agrees to — a human rights treaty, it is accepting a legal obligation to ensure that all the rights set out in the treaty are respected, protected and fulfilled within Australian territory.<sup>3</sup> In particular, the Australian Government must ensure that its domestic legislation complies with what is in the treaty. Human rights treaties are often called covenants, conventions or protocols. International human rights treaties also oblige governments to report regularly to the international community on their performance in implementing the treaties.

There are other, non-legally-binding instruments, including declarations, which are sometimes described as “aspirational”. They do not legally require governments to take certain action but they set out principles that governments agree they should work towards. The fact that these instruments are not legally binding does not mean that they are unimportant. Indeed, they may have considerable moral force.

The Universal Declaration of Human Rights, together with the International Covenant on Civil and Political Rights (and its First Optional Protocol) and the International Covenant on Economic, Social and Cultural Rights have together become known as the International Bill of Rights.

Whether an instrument is legally binding or not makes a difference to the kind of action you can take using the treaty or declaration. If it is legally binding, it may be possible to make a formal complaint to a UN tribunal or to go to such a tribunal to point out that the government is in breach of its solemn commitments. If the instrument that sets out the right is not legally binding, however, there is no tribunal or court that you can go to. All you can do is to say publicly that the government is not keeping to the standards recognised by the international community.

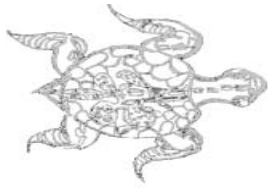
### **How do international standards apply to Indigenous people?**

Apart from the Declaration on the Rights of Indigenous Peoples and ILO Convention Number 169, the rights of Indigenous people do not receive much specific attention in international human rights standards. But this does not mean that these other standards are not useful for Indigenous people. Indeed, issues raised in these instruments are often of great importance for Indigenous people.

For example:

- the Universal Declaration of Human Rights (UDHR) includes equality, non-discrimination and the rights to life, health and education;
- the Covenant on Civil and Political Rights (CCPR) sets out, in detail, rights within the justice system and also protects the cultures of Indigenous peoples;
- the Covenant on Economic, Social and Cultural Rights (CESCR) sets out basic rights in the areas of health, nutrition, housing, education and employment;
- the Convention on the Rights of the Child (CRC) aims at the protection of children from all forms of human rights violation. It specifically refers to

<sup>3</sup> If a country has a particular problem with implementing a specific provision of a treaty, it can enter a ‘reservation’ at the time of ratifying the treaty, in which it says it does not consider itself bound by that particular provision. Australia has made only a small number of reservations, but they could be important if they relate to the issue you are concerned about. A list of Australia’s human rights treaty reservations is available on the accompanying CD. Human rights advocates should work for removal of reservations to strengthen the application of the treaty concerned.



the protection of Indigenous culture.

- the Convention on the Elimination of Racial Discrimination (CERD) expands on the need to prohibit acts of discrimination and to work to end the racism that lies behind them;
- the Convention on the Elimination of Discrimination Against Women (CEDAW) sets out equality standards for women across all areas of life; and
- the Convention on the Rights of Persons with Disabilities (CRPD) sets out equality standards for disabled people.

The conventions on racism, women and persons with disabilities provide that governments should take “special measures”, that is, specific actions aimed at eliminating areas of long-standing disadvantage.

When you look at a human rights treaty you will see that each right is stated simply and concisely. Mostly the right is expressed as a single sentence. To help clarify and develop understanding of what these rights mean in practice, guidance has been developed by expert independent committees that monitor their implementation by governments. This guidance is contained in “general comments” or “general recommendations”. Increasingly this guidance refers to the specific situation and rights of Indigenous peoples, reflecting the recent trends for greater recognition of Indigenous peoples’ rights.

One of the most relevant developments for Indigenous peoples is the increasing recognition that has been given to the right to participation. This is particularly significant in situations where Indigenous peoples have been, and still are, excluded from the decision-making processes that affect their lives and rights. You will see that the right to participation is emphasised in recognition of the right to development (see below) and also in the Convention on the Rights of the Child.

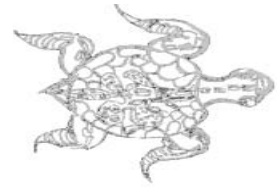
The International Labour Organization’s Convention Number 169 on Indigenous and Tribal Peoples is so far the only legally-binding human rights international instrument on the rights of Indigenous people (apart from its predecessor instrument, Convention Number. 107). ILO 169 is a comprehensive statement on the rights of Indigenous peoples and was adopted in 1989. So far, 20 countries have ratified this convention, mainly countries from Latin America. While legally binding, this convention is not prescriptive and is intended to be applied in a flexible manner. The convention provides for a reporting process by governments to the International Labour Organization. When the convention was drafted, Indigenous people were largely excluded from the process and for this reason, and because the convention is seen as fairly weak, Indigenous Australians have not been very supportive of it. The Australian Government supported the adoption of the convention by the ILO in 1989, but has never ratified it, partly because Aboriginal and Torres Strait Islander people have not pressured it to do so. ATSIC recommended ratification but there was a view that a wider consultation process was necessary. Now that the Declaration on the Rights of Indigenous Peoples has been adopted, it may be time for Indigenous Australians to have another look at ILO 169, to promote wider understanding of its contents and to ask the government to ratify. This would be an added influence on the government to ensure the rights of Aboriginal and Torres Strait Islander people and would also involve some international scrutiny of the government’s performance.

Further information on these standards is in Part 3 of this guide. If you know about these standards you will be better able to pursue human rights concerns through the courts, the media and in your contacts with governments.

***The full texts of these international human rights standards are available on the accompanying CD.***

### **The Declaration on the Rights of Indigenous Peoples**

The Declaration is a powerful and comprehensive document, but much will have to be done to ensure that the rights it sets out are included in Australian law and practice. At the time of writing, the Australian Government has only said it “broadly supports the principles underlying” the UN Declaration on the Rights of Indigenous Peoples. If Aboriginal and Torres Strait Islander people know about the content of the Declaration and its context and are able to advocate effectively, there is a greater chance that the Declaration will be made to work meaningfully. The task of making sure the Declaration on the Rights of Indigenous Peoples is reflected in Australian law and practice will be a long-term one, requiring progressive work on many fronts.

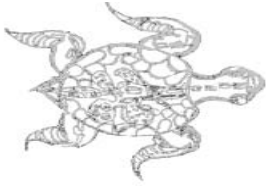


The Declaration begins with an introduction (called a preamble), which sets out the context for its adoption. Important elements of the preamble are:

- Indigenous people are equal to all other peoples;
- racism and discrimination are unacceptable;
- taking the lands of Indigenous people has led to injustices that have prevented Indigenous people from developing in accordance with their own needs and interests;
- Indigenous culture and rights need to be respected;
- Indigenous people are organising themselves, control by Indigenous peoples over developments affecting them is important for their future development;
- collective rights are necessary to the well-being of Indigenous peoples; and
- the United Nations and other international instruments for Indigenous rights are important.

The Declaration goes on to set out its provisions in 46 Articles covering a wide range of issues of concern to Indigenous peoples (note that the following is a summary only):

- the right to all human rights already recognised in international law;
- equality with all other peoples and freedom from discrimination;
- right to self-determination;
- right to self-government in matters relating to internal affairs;
- right to maintain their own political, cultural and other institutions, while retaining the right to participate in wider national activities;
- right to life; freedom from genocide; freedom from forcible removal of children;
- freedom from forced assimilation or destruction of culture;
- right to belong to an Indigenous community or nation;
- freedom from forced removal from their lands;
- right to practise and revitalise cultural traditions;
- right to practise spiritual traditions;
- right to their histories, languages and stories;
- right to their own education systems, in addition to the right to all forms of education provided by the government;
- dignity and diversity of Indigenous traditions should be reflected in mainstream education and information programs;
- right to their own media;
- labour rights;
- freedom from exploitation;
- right to participate in decisions that affect them, including through representatives of their own choosing;
- right to the improvement of their economic and social conditions, including in the areas of education employment, housing and health;
- protection for Indigenous people with special needs;
- equal right to healthcare, as well as to traditional health practices and medicines;
- right to land; right to maintain their spiritual relationship with the land; right to restitution of, or compensation for, lands that have been taken;
- right to protection of the environment;
- military activities shall not take place on Indigenous land without consent;



- right to cultural and intellectual property;
- right to determine their identity and membership;
- right to their distinctive legal systems, in accordance with international human rights standards;
- right to determine the responsibilities of individuals to their communities;
- governments must respect agreements they have made with Indigenous peoples;
- in consultation with Indigenous peoples, governments shall take appropriate measures to implement the Declaration;
- right to quick and fair decisions on disputes over rights, with due consideration for the customs and traditions of the Indigenous people concerned;
- governments have an obligation to assist Indigenous communities to achieve their rights and provide compensation where appropriate;
- the United Nations shall assist in giving effect to the Declaration;
- the rights set out in the Declaration are minimum standards; and
- the rights in the Declaration apply equally to men and women.

*The full text of the Declaration on the Rights of Indigenous Peoples is available on the accompanying CD.*

### **A turn-around in thinking**



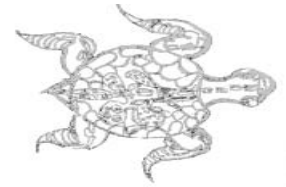
The concept of development is often thought of as applying only to poor countries, with the idea that a wealthy country like



Tracey Appo and Cherie Minniecon participate in a five-day human rights training program, in February 2007, run by Diplomacy Training Program. Oxfam Australia funded the course for Aboriginal and Torres Strait Islander Peoples Program staff, partners and allies. Photo: Matthew Vasilescu/OxfamAus



## 2.3 THE HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT



Australia is already developed. But the idea of development is without meaning unless it is seen in terms of the impact on individuals and groups of people. Its relevance for Indigenous people is clear from the definition (used in the UN Declaration on the Right to Development):

*... development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom ...*

*The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.*

Thinking about development has changed considerably over the past twenty years. Previously, development was thought of as a “top-down” process of injecting funds into projects, the benefits of which were expected to “trickle down” to ordinary people who were essentially seen as passive recipients. The inequalities in health, education and life expectancy between Indigenous and non-Indigenous Australians show that economic development does not benefit everyone equally and can lead to some being worse off.

As a result of work on the rights-based approach to development<sup>4</sup>, there has been a major turn around. Instead of a purely economic process, development is now seen as a realisation of international human rights standards in all areas. It focuses on the accountability of governments to deliver on their human rights commitments. It empowers communities by promoting their participation in decisions on matters that affect them and by facilitating their capacity to demand their rights. The principle of non-discrimination is central to development. In 2003, the UN agreed on the rights-based approach in a common understanding among relevant UN agencies.<sup>5</sup>

### **Rights vs welfare**

A key feature of the human rights based approach to development is the recognition that governments have obligations to all the people under its jurisdiction — and that all of these people have rights – to health, to education, to housing and other human rights. Professor Mick Dodson put it thus:

*Policies and programs which rest primarily on a perception of need and powerlessness subtly reinforce the powerlessness of the recipients who are seen as being given justice rather than receiving their rights. The recognition of entitlement is in itself an act of empowerment.*

Instead of services being provided on a discretionary or optional — essentially welfare — basis, services should be seen as the implementation of governments legal obligations under various human rights standards. These include standards in the areas of economic and social rights, as well as civil and political rights such as free speech and assembly, which underpin the participation of individuals and communities in decision-making. In the language of human rights theory, this shift means that governments are recognised as “duty bearers” and the bureaucrats and consultants who work for them should act appropriately. Indigenous people and others are “rights holders”: they have legal entitlements and should be able to claim their rights.

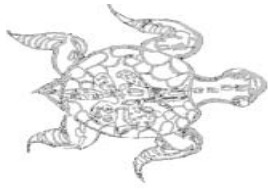
In the real world, this change in thinking does not produce instant changes in people’s enjoyment of human rights. It should rather be thought of as an opportunity for people to fight more effectively for better standards of life. The UN, in its Common Understanding, outlined elements that can be regarded as an approach to securing these better standards of life:

### **The right to health – a case study**

The issue of health provides a good example of how the rights-based approach to development is relevant to Indigenous

<sup>4</sup> Particularly the work of Andrew Frankovits, Eric Sidoti and Patrick Earle, notably in *The Rights Way to Development*, published by the Human Rights Council of Australia, 2001

<sup>5</sup> See [http://www.undp.org/governance/docs/HR\\_Guides\\_CommonUnderstanding.pdf](http://www.undp.org/governance/docs/HR_Guides_CommonUnderstanding.pdf)



people. This was dealt with in detail in the 2005 report of the Social Justice Commissioner in a section called *Achieving Aboriginal and Torres Strait Islander health equality within a generation — A human rights-based approach*.<sup>6</sup>

The right to health is set out in the International Covenant on Economic, Social and Cultural Rights, Article 12, where governments:

*... recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

The detail of the right to health is explained in a “general comment” by the Committee on Economic, Social and Cultural Rights, the body responsible for supervising the implementation of this Covenant.<sup>7</sup> General Comment Number 14 makes it clear that the right to health:

- must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health. It should not be understood as a right to be healthy (because there are factors affecting health over which the government does not have control); and
- covers underlying factors such as food and nutrition, housing, access to safe water and sanitation, and a healthy environment as well as:
  - availability of facilities, goods and services;
  - accessibility, in terms of non-discrimination, physical accessibility, affordability and availability of information;
  - acceptability, including cultural appropriateness; and
  - quality and scientific and medical appropriateness.

The committee made a special point in the general comment of identifying elements that would help to define Indigenous peoples’ right to health so that states can better implement the right. They stressed that health services should be culturally appropriate, and that Indigenous peoples should participate in the design, delivery and control of health services. The committee also said that activities that harm the relationship of Indigenous peoples with their land have a harmful effect on their health.

The committee on economic, social and cultural rights went on to set out in detail the obligations of governments to ensure that people enjoy the right to health. These include:

- respecting the right — governments should not discriminate or deny or limit access to health care;
- protecting the right — governments should ensure equal access to health care provided by the private sector;
- fulfilling the right — governments should adopt appropriate legislation and policy, undertake research and ensure cultural appropriateness; and
- core obligations to ensure immediate access to health facilities on a non-discriminatory basis, food, housing and sanitation, and equitable distribution of health facilities, goods and services.

There are other general comments on the right to housing and the right to education that also emphasise the particular situation of Indigenous peoples and their right to participate in decision-making processes. These general comments have become what is known as “soft law”. They are authoritative interpretations of what particular rights mean and they can and have been used in litigation.

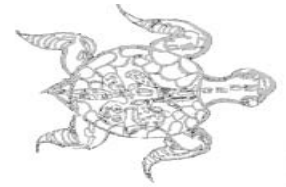
The human rights approach to development seeks to ensure that factors such as discrimination on the basis of race and gender, including the legacy of historical racism, can be understood and taken into account in development planning.

Perhaps, most importantly, it emphasises the right to participation in every part of the decision-making process, and the accountability of government.

- clarifying the human rights claims of rights holders and the obligations of duty bearers; this could involve an analysis of human rights standards and their application to Indigenous people;
- clarifying what factors are preventing the realisation of rights; this could include analysis of service delivery systems, and adequacy of budgets

<sup>6</sup> Pages 9–97, Social Justice Report 2005, Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission

<sup>7</sup> Text online at: <http://daccessdds.un.org/doc/UNDOC/GEN/G00/439/34/PDF/G0043934.pdf?OpenElement>. For those interested in knowing more about precisely what some of the rights set out in international treaties mean, the treaty bodies have provided explanations in a series of general comments, which may be found online at <http://www.ohchr.org/english/>. There are general comments on the rights to education, food and housing, among other rights.



and training for Indigenous people and government officials;

- building the capacity of rights holders to claim their rights; this could include training for Indigenous people in how to use complaints mechanisms, building awareness, promoting existing mechanisms and establishing new mechanisms; and
- establishing effective systems to monitor the realisation of human rights objectives.

### **A basis for action**

The human rights-based approach to development provides a framework for working more effectively to ensure that rights are observed and that people's lives are thereby improved. The essential point is that governments are accountable in terms of legal obligations under human rights treaties. In addition to setting out government obligations, the human rights system provides a guide to policy development and how the process of working towards improvements can be managed.

The human rights-based approach emphasises human rights as useful tools. It is possible to criticise governments for their denial of rights, or their failures to implement rights. It is also possible to use human rights as a basis of dialogue with government, to see human rights as a way to guide good policy and practice, so that past mistakes and less-than-effective approaches to dealing with poverty can be avoided.

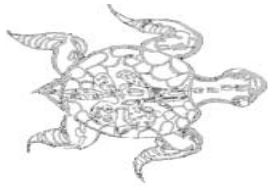
Government failure in relation to human rights can have many causes. It may be conscious or unconscious racism by officials, lack of political will to address problems seen as difficult to resolve, or lack of awareness of human rights among officials. Few, if any, government officials in Australia receive training in human rights, still less in how they might be applied to their work.

If you are an Indigenous advocate, you can strengthen your negotiating position and promote better outcomes by using the ideas in the human rights-based approach to development. For example, you can:

- familiarise yourself with relevant human rights obligations Australia has taken on, such as in the Covenant on Economic, Social and Cultural Rights;
- analyse Australia's performance in relation to these obligations;
- use statistical information to show a pattern of systematic discrimination;
- work with your communities so that they know about the rights-based approach and are empowered to act;
- use the results of your analysis as a basis for lobbying for change, either directly to governments and officials or through the media;
- incorporate Australia's human rights obligations into plans for service delivery. This could include clear objectives, performance indicators and time-lines; and
- research options for making complaints about Australia's shortcomings, either in Australian tribunals such as the courts or AHRC, or international tribunals such as complaints mechanisms under human rights treaties. Using these mechanisms could be a powerful way of focusing attention on Australia's human rights obligations.

The AHRC and non-government organisations such as Oxfam Australia, Fred Hollows Foundation, Save the Children and PLAN International are committed to applying human rights to their work and working with community advocates. They have experience and can offer tools for helping to apply human rights to development analysis and planning. Organisations such as the National Association of Community Legal Centres have developed their understanding of economic, social and cultural rights and may be a source of helpful advice. The Australian Human Rights Centre and the Centre on Housing Rights and

*Instead of a purely economic process, development is now seen as a realisation of international human rights standards in all areas.*



Evictions have developed guides on litigating for economic, social and cultural rights.

### **Shared Responsibility Agreements**

The usefulness of the human rights-based approach to development shows how human rights are relevant more widely to the concerns of Aboriginal and Torres Strait Islander peoples. As a tool for managing change, Shared Responsibility Agreements (SRAs) have been prominent since 2003. Any such tool can have positive or negative impacts depending on how it is handled. Adopting a human rights approach is most likely to produce results that will benefit Indigenous people.

In his 2005 report, the social justice commissioner stressed the importance of ensuring that SRAs comply with human rights standards.<sup>8</sup> He noted that SRAs could be a tool for promoting the right to self-determination, protection of cultural rights, achievement of culturally appropriate delivery of rights and achievement of equality before the law. He also cautioned that SRAs could impact negatively on the enjoyment of human rights if they did not address human rights issues.

<sup>8</sup> Pages 138–139, Social Justice Report 2005, Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission

## A CASE STUDY

### Ms DEA DELANEY-THIELE



**Ms Dea Delaney-Thiele.**  
Photo: © DTP

**As Chief Executive Officer of the National Aboriginal Community Controlled Health Organisations (NACCHO), my work is intimately connected with human rights. Working with Aboriginal Community Controlled Health Services (ACCHSs) around Australia to realise the human right to health has meant trying to influence government policy and priorities to improve health outcomes for our Indigenous Australians.**

When I started working with NACCHO, I was not very familiar with international human rights standards, the UN system or even that the Australian Government had recognised the right to health as a human right back in 1976 when it ratified the International Covenant on Economic, Social and Cultural Rights.

What I did know was that Indigenous Australians were dying younger, and suffering longer from preventable and treatable diseases and illnesses than other Australians.

I knew that in some communities not even the most basic form of healthcare was available. I also knew that, against all the evidence of what worked, the government was trying to exclude Indigenous Peoples' representative organisations from the policy process, and often from service delivery.

Learning more about human rights, about the right to health, and the other human rights that are linked to it (including the right to education, the right to housing and the rights to freedom of association and freedom of speech, and the Declaration on the Rights of Indigenous Peoples) helped. It gave me confidence to know that it was the Australian Government that was at odds with international standards, and recognised international policy. The right to health, and other human rights, emphasise the importance of participation in decision-making, of equality and non-discrimination, respect for diversity and difference, and the need to prioritise efforts and resources to those most denied their rights.

Going to the UN human rights bodies in Geneva, I learnt that the international system to protect our rights, to hold governments accountable is very weak. The Australian Government could be found to be in breach of its obligations, but no effective action could be taken. Going to the UN Permanent Forum in New York I could see and relate to the struggles of Indigenous peoples across the world. We have much in common and from this, one draws strength. I have made friendships and links that are important to my work. From others you learn that there can be many different ways to achieve your goals.

Under the Howard government, NACCHO's funding and place at the negotiating table was at times threatened. It was such a struggle to ensure our Sector was truly acknowledged and respected past the rhetoric. In April 2007, NACCHO and Oxfam Australia launched the "Close the Gap" Campaign. This Campaign took on many partners and the focus and momentum led to our Prime Minister, Kevin Rudd signing the "Statement of Intent" to "Close the Gap" within a generation. Recently the Commonwealth of Australian Governments announced an additional, unprecedented amount of \$1.6 billion over four years for Aboriginal and Torres Strait Islander health. This campaign was a very good example of collective affirmative action.

To get the most out of these opportunities at the international level, it is important to prepare well, to learn about the forums you are attending, who will be there, and what will be discussed, and what are the possible outcomes. It is important to set some objectives for yourself (and your organisation), but also to be open to opportunities as they arise when you are there. Take notes, as it can be easy to forget things with so much going on, and prepare a brief report for your organisation or community when you return, to help share the knowledge.

# GETTING THE MOST OUT OF AN INTERNATIONAL FORUM

HANNAH NANCARROW



**Hannah Nancarrow, DTP Alumna, at the United Nations, April 2008.**  
Photo: © DTP

**Hannah Nancarrow, SmokeCheck Project Trainer at the University of Sydney's Australian Centre for Health Promotion, discusses her participation in the United Nations Permanent Forum on Indigenous Issues as part of a young Indigenous training program.**

In 2008, I went to the United Nations Permanent Forum on Indigenous Issues (UNPFII) as part of a FAIRA (Foundation for Aboriginal and Islander Research Action) Young Indigenous Training Program. The training was designed to familiarise young Indigenous leaders with the United Nations and the structures and mechanisms that can directly and indirectly assist local Indigenous development.

Prior to going to the UNPFII, my only experience of the international human rights system was attending a Diplomacy Training Program course, which was of enormous benefit in providing general knowledge on the human rights systems of the UN.

We didn't go to the UN to bring issues to the forum, as we were there primarily for training. But I believed that by attending this type of forum and meeting [other Indigenous] people from around the world it would help and give me ideas. It was a great experience — I am very social and love listening to people's stories, which is why I want to portray the individual stories of my people in Australia to the rest of Australia and even the world.

Professionally, I wanted to learn from the leaders and others at this forum how I could effectively advocate for more culturally appropriate media and health promotion services and products in our communities. I work on a health promotion project addressing the high prevalence of smoking in Aboriginal and Torres Strait Islander communities in NSW. I also had a community goal at my church we are starting up a missions team which I want to take on a mission which involves a local Aboriginal community (such as building a school). I wanted to learn from the professionals and experts in the field who developed the Millennium Development Goals as to how we could use them to close the gap between Indigenous and non-Indigenous in Australia.

From day one, we were overwhelmed by the size, diversity and processes within the UN and UNPFII. More than 2,500 indigenous participants representing more than 370 million Indigenous people worldwide, the largest delegation so far, lined up early outside the UN headquarters in New York to register. Most participants were in traditional dress, which provided a sea of colour and fabrics.

The training group had a gruelling daily schedule. We met at 8am to discuss and share the previous day's experiences and prepare for the day's activities, responsibilities and outcomes. Then at 9am and 9.30am respectively we participated in the daily meetings of the Australian Indigenous Peoples Caucus and the Pacific Region Indigenous Peoples Caucus. This was to discuss the day's agenda, discuss issues relevant to the group, formulate sub-groups to write up interventions (statements) and choose presenters to speak to the madame chairperson and the forum.

From 10am–1pm and 3pm–6pm, the UNPFII was in session. Here we observed the functioning of the meeting where we learnt the key elements of the structure and mandate of the UNPFII; the procedures used by the UN officials and other Indigenous delegations; the agendas of the Indigenous delegations; the role and objectives of the governments; the related work of the various UN agencies; and the methodologies and directions of the UNPFII.

In between the two sessions we attended side event meetings and reported back to the group. Here we became a part of the International Youth Caucus, learnt about the Sami people in Norway, the Mohawk tribe (a traditional people from the New York area) and other issues facing many other Indigenous peoples all over the world. And lastly, at 6pm–7pm, we met again as a group to report back and debrief on the day's activities.

For me, highlights of the experience were meeting Bernie Yates, the leader of the Australian Government delegation, and meeting with prominent Australian Aboriginal leaders such as Aden Ridgeway, Tom Calma, Mick Dodson and Les Malezer. Also important was meeting young Indigenous people from all over the world, including in the International Youth Caucus. It was an excellent experience to contribute to the writing and reporting of the Joint Statement by the Aboriginal and Torres Strait Islander Youth Caucus, which raised poor health as being one of the major issues facing Indigenous youth in Australia today.

# PART THREE

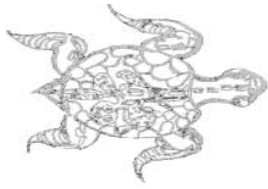


Les Malezer with some DTP Alumni at the United Nations Permanent Forum, New York, April 2008.  
Photo: © DTP

## **Taking action within the United Nations to protect human rights**

### **3.1 The Universal Declaration of Human Rights and major international human rights treaties**

### **3.2 Other opportunities for action within the United Nations**



## USING INTERNATIONAL LAW TO BRING ABOUT CHANGE

### **THE TOONEN CASE**

In 1992, Mr Toonen, a member of the Tasmanian Gay Law Reform Group, made a complaint to the UN Human Rights Committee, using the mechanism provided in the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). Mr Toonen claimed that provisions of the Tasmanian Criminal Code, which criminalised homosexual conduct between consenting adults in private, violated his right to privacy as set out in Article 17 of the ICCPR. The Human Rights Committee agreed with Mr Toonen and asked the Australian Government what it intended to do to remedy the situation.

In response, the Federal Government passed the Human Rights (Sexual Conduct) Act in 1994. This did not bring an immediate end to the Tasmanian legislation, but after a High Court challenge, the Tasmanian Government repealed the offending legislation. This was a major step forward for human rights and showed how using the international system could have an impact in Australia.

### **LOVELACE v CANADA**

In 1977, Ms Sandra Lovelace, a member of the Indigenous Maliseet Indians of Canada, made a complaint to the UN Human Rights Committee, using the mechanism provided in the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). Under Canadian law an Indigenous woman who married a person who was not an Indian automatically lost her Indian status. In 1970 this happened to Sandra Lovelace after she married a non-Indian. She lost her right to reside on her former Indian reserve and, as a result, experienced the loss of identity, of emotional ties to her friends and relations and of the cultural benefits that result from living in an Indian community. She claimed that the Canadian Government had violated her rights to enjoy her own culture provided in Article 27 of the ICCPR, as well as Article 26 on equality before the law.

It was also a question of women's rights, with the Canadian Government arguing that Indigenous people themselves were divided on the issue. In 1981, the Human Rights Committee agreed that the Canadian legislation was a violation of Article 27. In 1985, the legislation was changed so that Indigenous women no longer lost their Indian status on marriage to a non-Indian. The complaint to the Human Rights Committee was one element in a broader campaign that included political action.

The Human Rights Committee view was important. First, it made it clear that Article 27 applied to Indigenous people, even though they are not specifically mentioned in the Article. Second, it showed that the Human Rights Committee will look beyond domestic classifications of Indigenous identity.

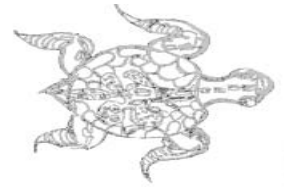
### **COMPLAINTS BY THE SAMI OF NORTHERN EUROPE**

The Sami are an Indigenous people whose lands straddle several countries in Northern Europe. Traditionally they lived by reindeer herding. Two key complaints to the UN Human Rights Committee, one by a Sami from Sweden in 1985 and the other by a Sami from Finland in 1992, have helped clarify the application of the right to culture in Article 27 of the International Covenant on Civil and Political Rights (ICCPR). Without going into the details of the complaints, the Human Rights Committee's views made several important points:

- the idea of 'culture' in Article 27 is broad enough to include the diverse economic activities of Indigenous peoples;
- Article 27 doesn't just refer to traditional means of livelihood of Indigenous peoples: the way people earn their living may adapt over the years and may be practised with the help of modern technology, for example, hunting;
- governments do not have discretion to decide that Article 27 can be overridden by other issues, such as economic development.



## 3.1 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND MAJOR INTERNATIONAL HUMAN RIGHTS TREATIES



In addition to referring to the Declaration on The Rights of Indigenous Peoples, Indigenous people should also look at other international and Australian legal instruments and mechanisms to promote and protect their rights.

What, in practical terms, can be done if Aboriginal and Torres Strait Islander people believe their human rights have been violated? There are various kinds of action based on international human rights instruments. They can:

- make a complaint to a relevant UN body;
- provide information to a relevant UN body criticising the policies and practice of the government and/or the content of the report submitted by Australia about its implementation of a treaty;
- make critical statements in the media, to the UN, or to politicians and officials, making it clear that Australia is not living up to its human rights commitments;
- promote the critical comments, findings and recommendations (concluding observations) of UN treaty bodies about Australia's policy and practice to officials to encourage change; and
- explore whether it is possible to include reference to particular standards in their litigation or calls for action by governments and international bodies.

In this section we will say more about the various important human rights standards, and look at what actions are possible with respect to each of them.

### ***The Universal Declaration of Human Rights***

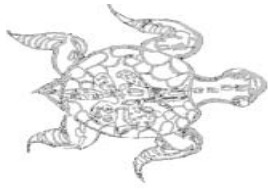
The 1948 Universal Declaration of Human Rights is the cornerstone of the United Nations human rights system and is supported by all countries. It sets out in plain language the fundamental rights to which all people are entitled. Its provisions came to be used as the basis for later more detailed and legally binding standards. They include:

- the right to equality and freedom from discrimination;
- the right to life, liberty and personal security;
- freedom from torture and degrading treatment;
- the right to equality before the law;
- the right to a fair trial;
- the right to privacy;
- freedom of belief and religion;
- freedom of opinion;
- freedom of peaceful assembly and association;
- the right to participate in government;
- the right to social security;
- the right to work;
- the right to adequate standards of living; and
- the right to education.

***The full text of the Universal Declaration of Human Rights is available on the accompanying CD.***



*The 1948 Universal Declaration of Human Rights is the cornerstone of the United Nations human rights system and is supported by all countries.*



## INTERNATIONAL ACTION AS PART OF A WIDER CAMPAIGN

### STEPHEN HAGAN

**Indigenous academic and activist Stephen Hagan waged a nine-year fight to have the word “nigger” removed from the name of a grandstand at the Toowoomba Sports Ground.**

He used just about every mechanism you could imagine, pursuing action through the Australian Human Rights Commission, the courts (all the way to the High Court) and the media. Local authorities in Toowoomba, the Queensland Government and the Federal Government all refused to take action. Finally Stephen Hagan made a complaint to the UN Committee on the Elimination of Racial Discrimination, which in 2003 found that the use of the word in the name of the grandstand was offensive and insulting and recommended that Australia take measures to remove the word. The Federal Government strenuously argued against Hagan’s complaint and refused to take any action. Through all this, Hagan endured many personal pressures as a result of intimidation.

However, Hagan’s persistence finally paid off. In 2008, the stand was demolished and it was announced that the name would not again be used. When the sports ground trustees suggested they would use the word in another memorial to the footballer in the grounds, the relevant Queensland Government Minister stepped in and put a stop to it.

This case study has important elements that can serve as lessons to others:

- in order to make his complaint to the UN, Stephen Hagan had to work his way through a long list of courts to exhaust available domestic remedies;
- the complaint to the UN was only part of a much wider campaign;
- if Australian Governments do not want to take action to respond to international recommendations, there is nothing to force them but International action adds considerably to the pressure and when the local political scene changes, a more sympathetic response can appear;
- the major factor in the successful outcome to this case was Stephen Hagan’s incredible determination, persistence and courage. Not many people could match this, but his stand should provide inspiration to others to stand up for their rights.

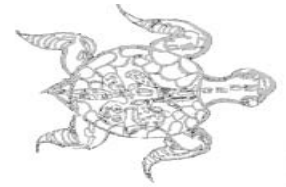
The fact that all countries support the Universal Declaration of Human Rights does not mean that it is implemented satisfactorily. Indeed, every country has shortcomings in its observance of human rights as set out in the universal declaration. International support means that all countries agree that they should work towards the full implementation of the Universal Declaration, not that they are making sure it is fully implemented.

If Aboriginal and Torres Strait Islander people believe that their rights as set out in the universal declaration are being violated, they can say so in the media or in contacts with government or officials. Because the universal declaration is not, strictly speaking, legally binding, there is no UN supervisory body to complain to or that receives reports. However, the declaration can still be used to pressure governments to ensure that these fundamental commitments are observed. Because the universal declaration is so important, the general public, as well as the international community, are likely to take seriously any well-founded concerns that it is being violated. Governments that are accused of such violations may therefore be sensitive to being exposed.

### ***International human rights treaties and what you can do with them***

While the moral force of the universal declaration is considerable, governments have taken steps to go beyond standards that are only morally persuasive. By drafting treaties, they have progressively established standards that are legally binding. While a declaration is like a solemn promise, a treaty is more like a legal contract.

A country that chooses to become party to a legally binding instrument must, among other things, make sure that its domestic legislation complies with the provisions of the treaty. If it fails to comply with the terms of the treaty, that country will be in breach of international



law. There are no direct consequences that necessarily flow from a country being found to be in breach of international law. However, being found to be in breach is likely to reflect poorly on reputation, and governments care to varying degrees about their reputation.

There are many human rights treaties. Central are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which expand on the provisions of the universal declaration. The two covenants together with the universal declaration are sometimes referred to as the International Bill of Rights.

Five other major human rights treaties deal in greater detail with specific issues or specific groups of people and are also relevant and potentially useful to Indigenous people:

- the Convention on the Elimination of Racial Discrimination (CERD)
- the Convention on the Elimination of Discrimination Against Women (CEDAW)
- the Convention on the Rights of the Child (CRC or CROC)
- the Convention Against Torture (CAT) and
- the Convention on the Rights of Persons with Disabilities (CRPD or CPD)

There is also the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, although this is likely to have less relevance for Indigenous advocates in Australia.

Each of these treaties was drafted by government representatives within the framework of the United Nations. All governments had the opportunity to take part in this work and to ensure that their concerns were reflected in the final document. Most of these treaties have been agreed to by most of the world's governments. In general, the international human rights treaties reflect a consensus of world opinion on human rights. Australia has ratified all these treaties except for the Migrant Workers Convention.

***The full texts of these international human rights treaties are available on the accompanying CD.***



## **The major human rights treaties**

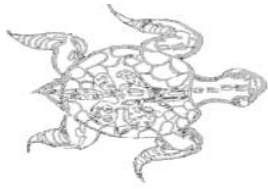
### **The International Covenant on Civil and Political Rights (ICCPR)**

This instrument begins by emphasising the right to self-determination. It goes on to set out basic principles such as freedom from discrimination of any kind and equality between men and women. It protects the right to life and prohibits the crimes of torture and slavery. Much of the covenant deals in detail with rights within the justice system, such as the right to be treated with humanity, equality before the courts, the right to be presumed innocent, the right to be represented in court and to have the assistance of an interpreter, as well as other guarantees. The covenant provides for the right to privacy, freedom of thought, expression of opinion and freedom of assembly. It prohibits race hatred. It contains a provision on the right to culture, which is applicable to Indigenous people.

This Covenant is perhaps the most powerful of the international human rights treaties because it is the longest established treaty and has had the most experience in handling reports and complaints. Its provisions on self-determination and the justice system make it highly relevant. Its complaints mechanism (discussed later in the chapter) has not yet been extensively used by Aboriginal and Torres Strait Islander people.

### **The International Covenant on Economic, Social and Cultural Rights (ICESCR)**

This instrument also begins by stating the right to self-determination, freedom from discrimination and equality between men and women. It then goes on to set out rights to work, join trade unions, social security, an adequate standard of living (which includes adequate food and housing), health and education. This covenant provides for the right to take part in cultural life and to benefit from cultural productions.



Although this covenant was adopted at the same time as the ICCPR, it has been something of a “poor relation”. The rights it sets out have been regarded by some people more as policy goals than as genuine rights and it has not had an individual complaints mechanism that would have allowed people to take their concerns to the UN. However, the international community has consistently upheld the equality of economic, social and cultural rights with civil and political rights. After many years of advocacy there is now an Optional Protocol on ICESCR that allows for individual complaints. When Australia ratifies this Protocol it will be possible to make an individual complaint to the Committee on Economic, Social and Cultural Rights.

ICESCR covers issues central to the day-to-day lives of Aboriginal and Torres Strait Islanders, such as health, housing and education. The rights in ICESCR could be used more in advocacy on issues of health, housing, education, and social security. Understanding of these rights is important in relation to the human rights based approach to development. The Australian Human Rights Commission has called for a human rights based approach to Indigenous health in its Social Justice Reports for example.

#### ***International Convention on the Elimination of All Forms of Racial Discrimination (CERD)***

This instrument prohibits all forms of racism. It lists as examples areas where discrimination should not occur, such as in employment, education or the provision of services. It prohibits racial hatred and requires governments to take measures in the fields of education and public information to combat prejudice and to promote understanding. It prohibits indirect as well as direct discrimination. Importantly, it requires governments to take “special measures” to ensure that vulnerable groups are able to enjoy in practice as well as in law the rights to which they are entitled. It further states that these measures cannot be regarded as discrimination if they seek to redress the effects of historical and/or negative discriminatory practices.

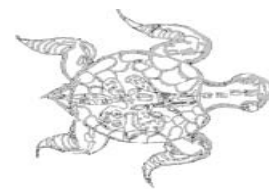
Racism is a major issue affecting Aboriginal and Torres Strait Islander peoples in Australia. It is thus a good thing that this convention is one of those that has been incorporated into Australian law. Australia’s Racial Discrimination Act closely follows the provisions of CERD. The primary mechanism for pursuing cases of racial discrimination in Australia is through the Australian Human Rights Commission. Aboriginal and Torres Strait Islanders have made good use of CERD in drawing international attention to problems such as the wind-back of Native Title and mandatory sentencing laws. CERD has an urgent early intervention procedure that can and has been used. At the time of writing, Australia’s amended legislation on Native Title is still in breach of its obligations under CERD, according to the CERD Committee, and the CERD Committee has raised its concerns in relation to the suspension of the Racial Discrimination Act and the Northern Territory Intervention.

#### ***Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)***

This instrument builds on the fundamental principle of equality set out in earlier human rights instruments. CEDAW defines discrimination against women and provides for the equality of women in all fields. Like CERD, it prohibits indirect as well as direct discrimination. It makes specific reference to women’s health and family life. It also provides for the special needs of women in rural areas. Like CERD, it also requires governments to take special measures to promote substantive equality. While it does not deal explicitly with violence against women, its supervising committee has made it clear that violence against women is a serious form of discrimination. Since CEDAW was adopted, the UN has subsequently adopted a Declaration on the Elimination of Violence Against Women.

In addition to the mainstream UN human rights bodies, there is a Commission on the Status of Women, which has played the lead role in drafting instruments relating to women’s rights, such as CEDAW.

CEDAW has been incorporated into Australian law as the Sex Discrimination Act. Procedures for taking up complaints are similar to those for CERD. In 2008, Australia ratified and became a party to the Optional Protocol to CEDAW, which would enable people in Australia to complain about violations of their rights to the Committee on the Elimination of Discrimination Against Women.



### **Convention on the Rights of the Child (CROC)<sup>9</sup>**

This instrument was a major advance in the understanding of childhood. Traditionally, children were regarded as the property of their parents, particularly their fathers. CROC is based on three fundamental principles that have to be kept in balance:

- the best interests principle — children are entitled to be protected from exploitation, abuse and neglect and to have all matters affecting them decided on the basis of their best interests;
- the participation principle — children are entitled to have their views heard and taken into account in all decisions that affect them, in accordance with their age and maturity; and
- the principle of parental guidance — children are entitled to the guidance of their parents and guardians in the exercise of their rights.

CROC sets out the rights of children in all areas of life, including civil, political, economic, social and cultural rights. In doing so, the convention recognises the rights that children are already entitled to under other treaties. Contrary to the views of some people, the convention did not undermine the rights of parents or the family. However, by emphasising the best interests principle, the convention recognised that parents' rights were limited and that children had to be protected from exploitation, abuse and neglect.

A significant aspect of CROC is that it contains one of the few specific references to Indigenous people in the major treaties, providing for cultural, religious and language rights. Article 30 provides that:

*In those States in which ethnic, religious or linguistic minorities or persons of Indigenous origin exist, a child belonging to such a minority or who is Indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.*

CROC has not specifically been incorporated into Australian law. However, in a case relating to this convention, the High Court found that the convention should be taken into account and said:

*Ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the convention.*

CROC has high status internationally, having been ratified by more countries than any other human rights treaty. Human rights advocates can refer to it with confidence in their work. Those wishing to draw attention to child rights problems in Australia can do so by contributing to alternative reports when Australia's performance is being considered by the Committee on the Rights of the Child. The committee has previously raised concerns about mandatory sentencing in Australia and its impact on Indigenous young people, among other concerns.

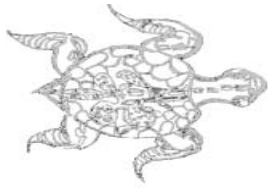
Organisations such as UNICEF (The UN children's development agency), Save the Children, PLAN International and the Secretariat of National Aboriginal and Islander Child Care are committed to using CROC in their development analysis, planning and programming. They have experience, policies and practical tools (including on generating child and youth participation) that can be drawn on.

### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**

This convention defines and prohibits torture in any form. It does not allow justification for torture of any kind. It also covers other cruel actions that might fall short of being "torture" but which are still unacceptable. CAT is particularly relevant to the treatment of people in detention. People in Australia who believe their rights under this convention have been violated can complain to the UN Committee Against Torture. In 2008, the Australian Government ratified and became a party to the Optional Protocol on the Convention against Torture that enables the UN Committee to make inspections of Australian prisons and places of detention.

### **Convention on the Rights of Persons with Disabilities (CPD)**

<sup>9</sup> We are indebted to Chris Sidoti for some of the ideas and formulations in this section.



This is the most recent of the major human rights treaties. Like CERD and CEDAW, it prohibits discrimination, this time against people with disabilities. Its provisions cover civil, political, economic, social and cultural rights. It makes specific reference to women and children. Access, mobility and healthcare are important issues.

Given the health status of many Indigenous people in Australia and the fact that many live in remote areas, this convention is relevant to Indigenous Australians. There is a Disability Discrimination Act in Australia which sets up a procedure for making complaints about violations of the rights of people with disabilities.

### **How do the treaties work?**

Each of these treaties has a supervisory committee (treaty body), which monitors how governments implement the obligations contained in the treaties. The names of the treaties, together with the names of their corresponding committees, are listed in the chart on page 47. These committees receive and comment on reports by governments on their implementation of the treaties and in some cases deal with complaints by individuals that their rights have been violated. These treaty bodies are comprised of independent experts from many different countries; they serve in an individual capacity and do not represent their country.

When Australia ratifies a treaty it agrees to submit an initial report to the treaty body and to report regularly to the committee on progress and challenges in implementing the rights in the treaties. The treaty body asks the government to be self-critical and to consult widely with the community. One purpose of reporting is to create wider awareness of rights. The treaty bodies also invite community organisations and non-government organisations to submit information about the human rights situation so that they have a fuller understanding of the issues and possible concerns.


In recent years, organisations have come together in Australia to submit “alternative” or “shadow” reports to the UN treaty bodies. In this way they can make sure that the committees are not relying only on the Australian Government’s reports. In the past this has proved to be a good way of bringing pressure to bear on the Australian Government. The National Association of Community Legal Centres has played a role in coordinating some of these reports. The National Children’s and Youth Law Centre has coordinated parallel reports on children’s rights.

The reporting process includes government representatives being questioned by members of the treaty body in an open hearing. This generally takes place in Geneva. At the end of the process the treaty body issues a public report which includes “concluding observations” that highlight areas of concern. The process for each treaty is slightly different. You can view examples of Australia’s reports at [www.ohchr.org/EN/countries/AsiaRegion/Pages/AUIndex.aspx](http://www.ohchr.org/EN/countries/AsiaRegion/Pages/AUIndex.aspx)

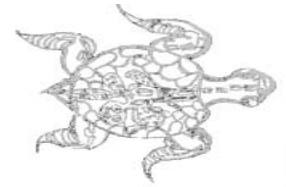
The Diplomacy Training Program and other organisations have some practical guides and advice that can be provided to organisations and individuals who are interested in learning more about how to use this reporting process as part of their advocacy.

If there is a specific problem that you are concerned about, it may be possible to make a complaint about it to one of the committees. This is possible under some treaties. This can also have quite an impact.

***Further information on how you can use these mechanisms appears in this chapter and on the accompanying CD.***

 You do not need to be familiar with all the provisions of these treaties and reporting and complaints mechanisms, but it is useful to know about them so that if problems arise, you can consider whether action under one or more of these treaties might be helpful in trying to achieve your objectives.

These treaty bodies and processes are quite weak, in that there is no way to enforce findings or judgements. They may be used as part of a “naming and shaming” strategy because governments and government officials usually want to be viewed positively by their peers. They can also be used to validate the concerns that are being raised domestically. If it is possible to show that concern about a policy and practice is shared by Indigenous advocates in Australia and by a UN Committee, it can add considerable weight.



## Human rights treaties and their supervisory bodies

HUMAN RIGHTS TREATY	TREATY BODY
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (HRC)
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	Committee on the Elimination of Racial Discrimination
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Committee on the Elimination of Discrimination against Women
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Committee against Torture
Convention on the Rights of the Child (CROC)	Committee on the Rights of the Child
Convention on the Rights of Persons with Disabilities (CPD)	Committee on the Rights of Persons with Disabilities
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families <sup>10</sup>	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

### International treaties and Australian human rights legislation

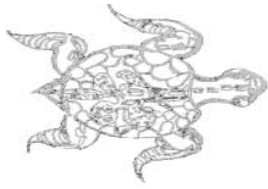
While taking action internationally can be an attractive option, generating change in Australia will also require action within Australia, particularly if appropriate legislation and mechanisms exist. If you are looking for a specific solution to a specific problem you will usually find the mechanisms under Australian legislation more useful than the UN complaints mechanisms. The main reason is that the decisions of courts and tribunals in Australia are more likely to be enforceable on the government and its officials. International action, on the other hand, will only result in a recommendation to the government to take action, and governments can ignore this if they wish. In any case, when making an individual complaint to a UN treaty body, the first step must be to take action under the Australian legislation — to be able to show that domestic remedies have been exhausted. It is not possible to go straight to the treaty body with a complaint.

The Australian Government has enacted domestic legislation to give legal effect in Australia to three of the international human rights treaties:

### Australian legislation based on international human rights instruments

Australian Commonwealth legislation	International treaty
Racial Discrimination Act 1975	Convention on the Elimination of Racial Discrimination
Sex Discrimination Act 1984	Convention on the Elimination of Discrimination Against Women
Disability Discrimination Act 1992	Convention/Declaration on the Rights of Persons with Disabilities

<sup>10</sup> The Migrant Workers Convention is also one of the major international human rights treaties. Its content is important to Indigenous people in some other countries, but because it is not highly relevant to the concerns of Indigenous Australians it is not covered in this human rights package.



In addition to the above Commonwealth legislation, most states and territories have human rights legislation of some kind, usually anti-discrimination legislation.

Commonwealth and state legislation make it unlawful to discriminate on grounds of race, colour, age, sex or disability. They also spell out exactly what discrimination means in Australian law. The legislation does not provide for criminal penalties and instead provides for procedures to investigate complaints and to try to resolve complaints through a process of negotiation. The complaints are handled by state and federal anti-discrimination and equal opportunity agencies. The agencies are impartial and do not act for either party but the process is informal and people generally do not need legal representation to pursue a discrimination complaint. At a Federal level, it is the Australian Human Rights Commission (AHRC) that people should contact. The AHRC will investigate the complaint and generally try to resolve the complaint with the people involved through a process of conciliation. If that fails, the matter can be taken to the Federal Magistrates Court or Federal Court for the court to determine if discrimination has occurred.

It is important that Aboriginal and Torres Strait Islanders consider pursuing cases of discrimination in this way. A number of positive results have been achieved through this kind of action. However, people taking action need to be aware that it can be a stressful process. A determination to succeed, and community and other support are important.

While the complaint has to be in writing (which can be in the form of email) initial contact can be by telephone to discuss your problem. Initially at least, the process is free of charge and it is not necessary to be represented by lawyers.

 **Contact details for the Australian Human Rights Commission are available on the accompanying CD.**

### ***Making complaints to the United Nations using the International Covenant on Civil and Political Rights***

All of the eight major human rights treaties listed on the previous page, except for Convention on the Rights of the Child and the Covenant on Economic, Social and Cultural Rights,<sup>11</sup> have complaints mechanisms. Provided some conditions are met, individuals and, in some cases, groups, can complain to the relevant committee that their rights as set out in the treaty concerned have been violated. The following description focuses on the International Covenant on Civil and Political Rights (ICCPR), but similar procedures apply to complaints mechanisms under other treaties.

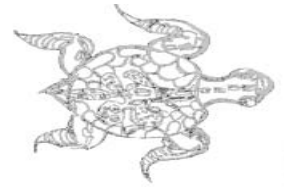
The individual complaints mechanism of the ICCPR can be an important way of bringing pressure to bear to obtain justice when all other avenues are closed. The system could be used more by Indigenous people. Despite the fact that many serious human rights violations in Australia relate to Indigenous people, few complaints over the rights of Indigenous people have been made to the UN.

The complaints mechanisms are part of special optional provisions in each of the treaties. In the case of the ICCPR, the complaints mechanism is set out in a separate treaty called the First Optional Protocol to the International Covenant on Civil and Political Rights. If a country ratifying the treaty has not also accepted the complaints mechanism, people from that country cannot make a complaint. Fortunately, Australia has ratified the First Optional Protocol.

If a complaint is made, the Human Rights Committee (the ICCPR's supervisory body) considers it, along with the comments of the government concerned, and reaches a "view" as to whether or not a violation has occurred. This is not a legal process, though it may resemble one. The consideration of complaints does not allow for personal appearance of complainants or other parties before the committees. In addition, the views of the committee are not legally binding on governments, though they are persuasive, and to ignore them opens the government to criticism at home and abroad. If the committee finds that the rights set out in the treaty have been violated, there is an expectation that the government concerned will do something about it.

<sup>11</sup> At the time of writing, the UN General Assembly is considering an Optional Protocol providing for a complaints mechanism to the Covenant on Economic, Social and Cultural Rights. It is likely to be adopted.





The covenant itself sets out the rights that a person complaining can address. The process for making complaints is set out in the First Optional Protocol.

**The texts of the International Covenant on Civil and Political Rights and First Optional Protocol are available in the accompanying CD .**

### **What kind of violations can be complained about?**

Making a complaint to the UN Human Rights Committee is a lengthy and time-consuming process that generally requires much preparation if it is to be effective. There is a growing body of experience in making such complaints; a first step in deciding whether this would be a useful path may include looking at previous committee decisions and outcomes for the victims/ complainants. It also may be worth trying to talk to those with some experience of using the process.

In considering what complaints could be brought it is necessary first to look closely at the rights set out in the Covenant to make sure that the human rights concern you have is protected. Some provisions of the covenant are of particular relevance to Indigenous people. For example, Article 27 states:

*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*

The Human Rights Committee has decided that this article also covers Indigenous peoples, even though they are not to be considered as 'minorities'. Article 27 could be the basis for complaints relating to Native Title issues if, for example, the extinguishment of title led to the denial of the right of Indigenous people to enjoy their culture. Some years ago, in response to a complaint, the Committee found that the Canadian Government had violated this article by allowing leases to be granted for oil and gas exploration on the territory of a Canadian Indigenous group. In so doing, the Committee took a broad interpretation of 'culture'. Culture is not limited to formal institutions and structures related to maintaining traditional and historic beliefs, but includes social and economic activities that are part of the culture.

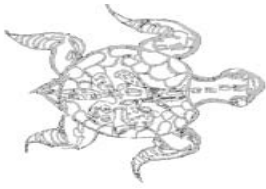
A number of articles of the ICCPR deal with the fairness of the justice system, for example:

- prohibiting arbitrary arrest or detention (Art 9);
- providing that persons deprived of their liberty shall be treated with humanity (Art 10); and
- providing for fair hearings and the provision of interpreters in court (Art 14).

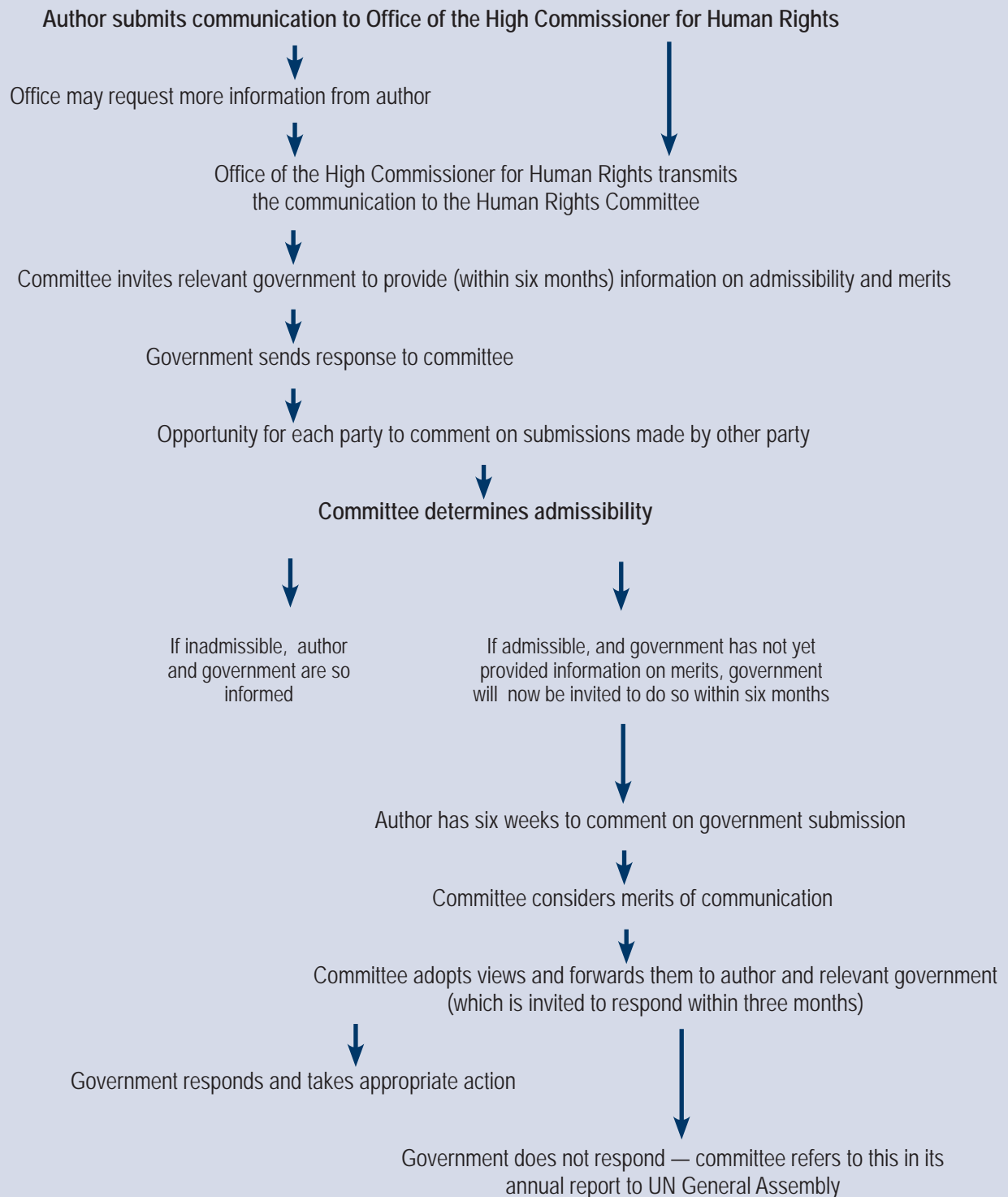
### **Admissibility criteria – hurdles to get across**

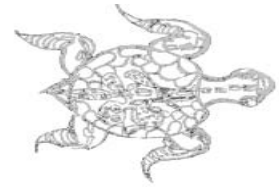
When a complaint is made to the Committee, the first thing it will consider is whether the complaint is 'admissible'. That is, the Committee will only look at the content of the complaint after it is satisfied that the complaint is worth considering. Also, the committee must be satisfied that the person making the complaint has "exhausted all effective and available domestic remedies". That means that your issue must have been taken as far as it can within the Australian legal system.

In cases of race, sex or disability discrimination it would be necessary first to work through the mechanisms set up under Australian legislation to resolve such problems. In other cases, however, there may be no tribunal to which you can take your concern. This could be the case if the violation was occurring as a result of a problem with state government law that did not relate to discrimination. If there were no Commonwealth legislation covering the matter that could be appealed to in a higher court to invalidate the state legislation, there would probably be no domestic remedy available and the complaint could be more readily taken to the Human Rights Committee.



## Stages in handling a complaint under the International Covenant on Civil and Political Rights





### Admissibility checklist<sup>1</sup>

- ✓ The communication must allege a violation of a human right which is contained in the ICCPR.
- ✓ The communication must be in writing.
- ✓ The communication must come from the victim or his or her authorised representative.
- ✓ The communication must not be an 'abuse of the right of submission' (that is, it must have something in fact or law to support it).
- ✓ The communication must not be anonymous.
- ✓ The violation referred to in the communication must not be under examination by another international investigation or settlement procedure.
- ✓ All "effective and available" domestic remedies must be exhausted before making a communication.

Source: Pritchard and Sharp, *Communicating with the Human Rights Committee*, Australian Human Rights Information Centre, Sydney 2007

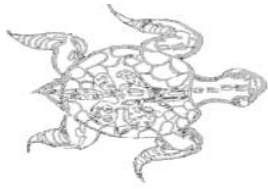
Other major admissibility criteria are:

- the complaint (or communication) should be in writing;
- the communication should be sent by the individual who claims that his or her rights, as set out in the covenant, have been violated by the country concerned (in our case, Australia). An unrelated third party having no apparent links with the alleged victim cannot submit the complaint. If for some reason the victim cannot make the complaint, the committee may consider a communication from another person who has authority to act on behalf of the alleged victim. Also, under the International Covenant on Civil and Political Rights (ICCPR), while it is possible for a group of individuals to make a complaint, it is not possible for a group to make a complaint about a collective right such as self-determination;
- the communication must make a complaint about the alleged violation of a specific right set out in the covenant; that is, it cannot just be a general claim that unspecified rights have been violated;
- the alleged violation must usually have occurred after the date on which the protocol came into force (for Australia this is 25 December 1991);
- the communication must not be anonymous or under consideration by another international settlement procedure;
- the communication must not be an abuse of the right of submission; that is, it must have something in fact or law to support it and it should not be a political attack on the country concerned.

If the committee decides that the complaint is admissible, it will then proceed to consider it "on the merits". This consideration bears a resemblance to a legal procedure but it has important differences. The Human Rights Committee will first ask the Australian Government to provide its side of the story and will then give you the opportunity to respond to the government's information. The committee does not hear evidence orally and relies solely on written testimony. The committee's consideration of the information provided is carried out in private.

The final stage of the procedure is when the committee formulates its views, which are provided in writing. These views are not legally binding on the country concerned, but they have a strong force as an authoritative statement of the country's legal obligations. The whole process can take quite some time, even if things are moving fairly quickly. Sometimes it has taken up to four years for a complaint to move from the stage of submission to the publication of the committee's views.

If a complaint to the UN Human Rights Committee is pursued then it is also important to integrate this approach into your broader advocacy approach. You should therefore think about media coverage for your actions — in Australia and overseas. The actual deliberations of the Human Rights Committee remain confidential until finalised but it is open to a person making a complaint to give publicity to their submission or any information bearing on the proceedings, unless the committee requests otherwise. This freedom to seek publicity also applies to governments. If the committee adopts a view that a violation of human rights has occurred, it will almost certainly be helpful to your case to try to get the maximum publicity for this outcome. This will likely add to the pressure on the government to respond positively.



It is possible for the Australian Government to ignore the committee's views, although this can open the government to strong criticism. As highlighted above, there is no enforcement provision. The government of the day may choose to ignore the ruling. It may make this judgement on narrow political grounds. It is also true that the next government elected may decide to act to remove the stain on Australia's reputation, which remains until the ruling is accepted and implemented.

### **Complaints mechanisms under other treaties**

The complaints mechanism under the Optional Protocol to the ICCPR is much better established than those under other treaties. The Human Rights Committee has considered more than 1,000 cases since it began this work in 1977. Complaints mechanisms under other treaties are either used much less or are so new that they have not had time to establish a track record. Depending on the issue, Indigenous people should consider complaints under the other treaties as a possible way of seeking justice for a human rights concern. There are a few important points to bear in mind:

- the general procedure is similar to that of the Optional Protocol to the ICCPR;
- there is no complaints mechanism for the Convention on the Rights of the Child, nor is one presently under consideration;
- available domestic remedies must be exhausted. For complaints under the conventions relating to race discrimination, discrimination against women and the rights of persons with disabilities, you will have to work through the AHRC mechanisms available under Australian legislation;
- while the complaints mechanism under the Covenant on Civil and Political Rights does not permit group complaints, those under the conventions relating to race discrimination, discrimination against women and the rights of people with disabilities do, which can be important if the violation complained of relates to a collective or group right.

The making of a complaint is a serious business, but it need not be difficult to get the process started. There is no cost involved in making such a complaint, though if you need to obtain legal advice that may involve a charge. The Office of the United Nations High Commissioner for Human Rights has a standard format (called the "Model Communication") that can be used for making complaints under the First Optional Protocol. See [www.unhchr.ch/html/menu2/complain](http://www.unhchr.ch/html/menu2/complain)

**For more information on making complaints to UN Treaty Bodies please see accompanying CD.**

### **Australia's human rights reports to the treaty bodies**

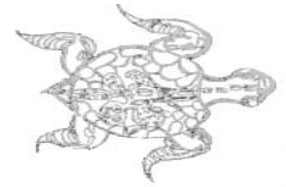
One of the legal obligations under the human rights treaties is for the government that is party to the treaty to submit a report to the treaty's supervisory committee every four or five years. The reports inform the treaty body of what the country has done to implement the rights in the treaty. The treaty body has the responsibility to comment on positive and negative aspects. It issues a public statement setting out its views, called *Concluding Observations*.

The preparation, submission and consideration of these reports are an opportunity for Aboriginal and Torres Strait Islander people to draw attention, in Australia and overseas, to their human rights concerns and to press for positive changes. There is often considerable political and media interest, because the reporting process represents an evaluation of Australia's human rights performance by the international community.

The reporting system allows for a much broader review of Australia's performance than the complaints system. A complaint almost always involves just one or a few rights, but commenting on a report permits a focus on all the rights set out in the treaty concerned. Over the past decade, Indigenous and non-Indigenous non-government submissions commenting on Australia's reports have successfully focused national and international attention on issues such as Native Title and mandatory sentencing.

### **What happens when a report is prepared and considered?**

The reporting process involves the Federal Government, through one of its public service departments, preparing a comprehensive report on each of the human rights treaties Australia has ratified. Usually, the government consults the non-government sector in the preparation of a report, though this does not mean that it will incorporate non-government viewpoints.



NGOs have commented that the governments' community consultation process has not been genuine or thorough. The government report is then sent to the UN where it waits in a queue, often for two years or more, until it is considered by the relevant treaty body.

One member of the treaty committee is usually nominated as a "rapporteur" for the report. Assisted by the secretariat, the rapporteur considers the report in detail and prepares comments and questions. Other members of the committee also examine the report. A hearing then takes place before the committee, at which Australian Government representatives attend for discussion of Australia's performance. This usually happens at the UN Office in Geneva, Switzerland. Often Australia sends a large delegation, led by a relevant government minister. Non-government representatives can attend the hearing, but are not always able to participate directly in the discussions.

The committees are often well informed and prepared. Many of the committee members' questions are direct and to the point. The process can be uncomfortable for the government representatives, who sometimes come into these meetings under-estimating the committee's authority and commitment. After its consideration of the report and its discussion with the government's representatives, the committee makes written observations, both positive and negative. These concluding observations are intended to be constructive and the Australian Government is expected to give them serious consideration. Sometimes the process can be embarrassing for the government, particularly when it generates negative publicity in Australia.

The central part of the process is the government's report. Not surprisingly, governments want to create a positive image and they tend in their reports to gloss over problems and domestic criticism. They often focus on legislation passed or budgets allocated rather than how effectively they have implemented human rights. In Australia's situation, that can mean lengthy descriptions of the legislation, policies and budget in each state and territory, rather than the intended analysis on obstacles and challenges in realising human rights for all. Whether governments ignore the criticisms and recommendations from this process can depend on the effectiveness of NGO advocacy.

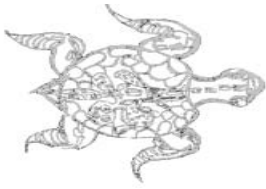
### ***Making the best use of the system – alternative reports***

To try and keep governments to their commitments, make the best use possible of the reporting system by:

- encouraging the government to consult widely and genuinely and to make an honest report;
- highlighting the gaps and inaccuracies in its report to the Australian public and members of the committee (for example, prepare an alternative report for the committee to consider);
- publicising in Australia any adverse comments the committee makes;
- pressuring the government to rectify any shortcomings the committee identifies; and
- promoting greater awareness of the reporting process and opportunities to participate.

An alternative report — sometimes called the "shadow" or "parallel" report — can be an important element in the process. This is a report prepared by a non-government organisation that addresses the same issues as the government report and aims to present a truer picture of the human rights situation in Australia. If they do not have quality information from the non-government community, treaty bodies have to depend largely on government reports and any other information they may be able to obtain independently. In that situation, and given the resource and time constraints they face, there is a danger that treaty bodies will have difficulty in arriving at an accurate assessment of the human rights situation of Aboriginal and Torres Strait Islander peoples in Australia.

Experience has shown that well prepared alternative reports can have a considerable impact. If governments are aware that their reports will come under public scrutiny within Australia as well as at the UN, it is likely that its reports will be more comprehensive and accurate. In 2000, the Australian Government had to submit itself four times to scrutiny by different human rights treaty bodies. Going into some of these meetings, the government under-estimated the extent to which its performance



would be scrutinised. The preparation and submission of high quality alternative reports ensured that the committees were well informed about the Australian situation. Although the government at that time was hostile to any thought of responding to international pressure, the hearings led to wide publicity in Australia and underscored the human rights issues at stake.

To prepare an effective alternative report:

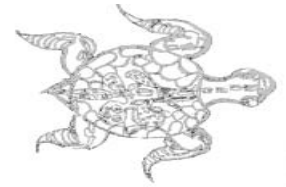
- know what stage the reporting is at under a particular treaty; there are long gaps between reports so if a report has been submitted within the past year or so, the government will not even have begun to consider the next report under that treaty. If, on the other hand, a report is about to be considered by the treaty body, there may not be time to complete a worthwhile alternative report. The current status of Australian Government reports under each of the treaties may be found on the website of the Department of Foreign Affairs and Trade: [www.dfat.gov.au/hr/current-status-aust-reports](http://www.dfat.gov.au/hr/current-status-aust-reports);
- find out what the previous reports said, and what concerns the treaty body expressed last time Australia reported; [www2.ohchr.org/english/bodies/cescr/cescrs42](http://www2.ohchr.org/english/bodies/cescr/cescrs42)
- coordinate your efforts with other interested organisations. This will minimise duplication and the danger of overloading the treaty body with too much unfocused material. Sometimes this may involve incorporating Indigenous concerns into a wider non-government report. At other times, it may be decided that an Indigenous-specific alternative report is more appropriate; [www2.ohchr.org/english/bodies/cescr/cescrs42](http://www2.ohchr.org/english/bodies/cescr/cescrs42)
- ensure it is factual, objective and concise. It should be based on a clear relationship between the rights and provisions of the treaty and the human rights problems you are drawing attention to. There is no point in indulging in unnecessary political comment;
- prepare it in good time. It may be useful to contact the secretariat in Geneva prior to its submission to ensure that they know it is coming and that you know everything you need to know about the procedure;
- use its publication to draw attention to the human rights problems it discusses. Make sure that weaknesses in government reports are known within Australia as well as to the committees;
- consider travelling to Geneva to raise your concerns directly with members of the committee. You can also monitor what the Australian Government delegation is saying and better manage media coverage. However, this has to be balanced against the high cost of international travel and is often beyond the resources of organisations.

When the committee issues its concluding observations, every effort should be made to get publicity in Australia for any concerns it expresses about Australian human rights shortcomings. The ultimate aim is to ensure that recommendations Although the government at that time rejected any possibility of responding to international concern or pressure, the hearings led to wide publicity in Australia and underscored the human rights issues at stake.

### ***Political bodies as well as legal bodies***

So far we have been focusing our attention on what can be done using international human rights treaties and declarations to improve the human rights situation of Australia's Aboriginal and Torres Strait Islander peoples. These treaties and declarations, together with the treaty bodies, make up what may be seen as the legal side of the international human rights system. Sometimes this is called the treaty-based system.

There is another set of United Nations institutions and mechanisms that deals with human rights and is also available for



**Tom Calma.**  
Photo: © AHRC

**In my role as the Aboriginal and Torres Strait Islander Social Justice Commissioner, I have consistently argued that Indigenous peoples must be better resourced to effectively advocate for our human rights.**

It therefore gives me great pleasure to see so many leading Australian Indigenous advocates continue to engage with the work done by the Diplomacy Training Program.

Human rights provide Indigenous peoples with a means of expressing our legitimate claims to equal goods, services, and the protections of the law from our governments in Australia. And human rights advocacy will be at its most effective when Indigenous peoples have the skills and knowledge to guide the projects that will achieve real results for our peoples and communities.

These materials are designed to assist Indigenous peoples' effective participation in the decision-making processes that affect us, both in domestic and international forums.

We are now at a time of rapid advance in the recognition of Indigenous peoples' rights at the international level. Over time, we can expect that this increased focus will lead to greater international scrutiny of our approach to human rights here in Australia — especially where Indigenous advocates have the capacity to contribute to international human rights processes such as treaty committees and the universal periodic review processes of the UN Human Rights Council.

The need for us to bring human rights home to the reality of Aboriginal and Torres Strait Islander peoples' lives in Australia is also now more pressing than ever. In the coming years we will face new challenges that threaten our way of life — such as access to water resources and dealing with the impacts of climate change — alongside the raft of existing barriers to the full realisation of our economic, social and cultural rights.

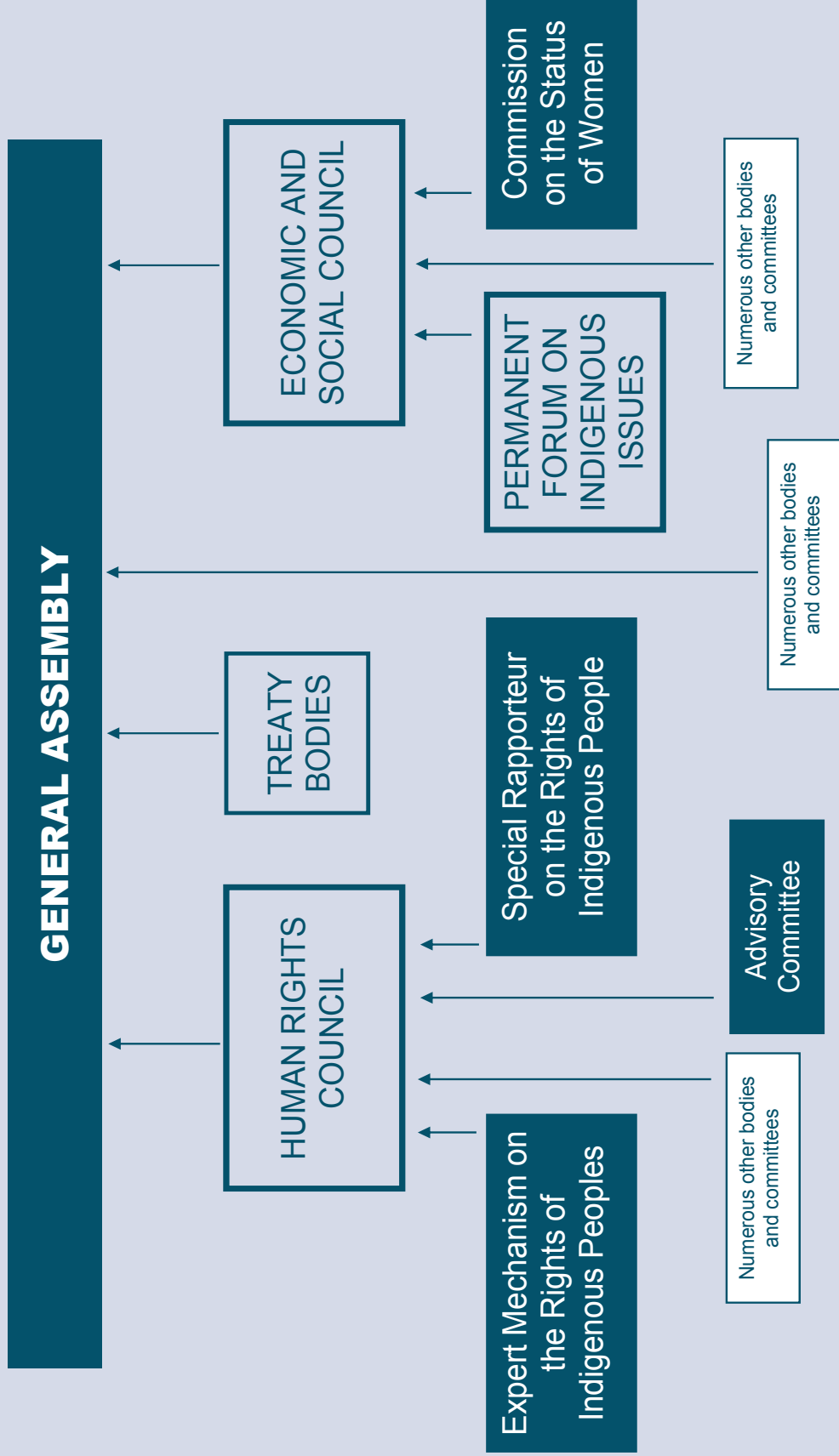
Over one year on from its passage through the UN General Assembly, I would also particularly encourage you to consider how you can use the Declaration on the Rights of Indigenous Peoples as an advocacy tool in the domestic context.

Like the Universal Declaration of Human Rights, the rights set out in the declaration will be most effectively protected in Australia when they become a standard that is recognised and referred to by the community at large. Therefore, Indigenous peoples and their organisations must now take a prominent role in promoting and using these standards as the basis on which we engage with governments and other organisations.

I congratulate you on taking part in the work of the Diplomacy Training Program, and I hope that you find these materials a useful source of guidance in your future human rights advocacy work at the local, domestic and international levels. I look forward to working together with you to achieve sustainable human rights outcomes for Aboriginal and Torres Strait Islander peoples in Australia.



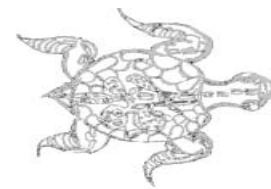
# UNITED NATIONS BODIES



United Nations bodies dealing with human rights, with particular reference to Indigenous peoples. The arrows show formal lines of communication. It should be noted that the Human Rights Council also discusses issues arising in other bodies such as the treaty bodies.



## 3.2 OTHER OPPORTUNITIES FOR ACTION WITHIN THE UNITED NATIONS



people to raise concerns. This is the charter-based system, so-called because the structures originate from the UN's foundation document, the UN Charter. This comprises a range of bodies and mechanisms that are broadly political in character. That is, government interests and wishes are the controlling factor, in contrast to the treaty-based bodies, which are comprised of independent experts and which operate in a more objective way.

The charter-based bodies include the UN General Assembly, the Human Rights Council and a range of subsidiary bodies and mechanisms. Even where these monitoring mechanisms are intended to operate independently and impartially, they are under the supervision of bodies that are broadly political in character, in contrast to the treaty bodies.

The charter-based bodies are there to be used by Indigenous people, but it is important to understand the way they work and their limitations. The charter-based human rights bodies have three main purposes:

- they provide a forum for governments, non-government organisations and others to come together to discuss human rights issues;
- they provide a framework enabling governments and others to come together to draft human rights standards;
- they monitor the implementation of international standards.

### ***The workings of the UN***

It is important to understand that the UN is not a world government. It is a voluntary organisation that is made up of, financed and run by governments, though non-government organisations and some other organisations can participate as observers in some situations. The UN can only act with the agreement of its member governments, whose support for human rights is usually qualified by other interests. Generally, it cannot force countries to comply with the wishes of the international community.

The UN gives only limited scope for representatives of non-government organisations to be involved in its work, especially at top levels. Governments call the shots so producing results means working through governments.

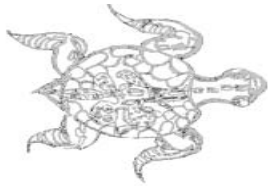
In addition to human rights, the UN's activities cover many areas, including the maintenance of peace and security, economic development, disaster relief, refugees, the environment, drug control, international law, health, labour, education and culture. The UN's resources are limited. Its structure has evolved over many years and is not always well suited to dealing with modern-day problems. Standard-setting, dialogue, persuasion and technical cooperation are the usual means the UN uses to influence the behaviour of member countries.

There are many UN meetings. At the top level is the General Assembly, which meets from September to December each year in New York. The most senior UN official is the Secretary-General.

The UN reformed its human rights structures, beginning in 2006. The Human Rights Council replaced the old Human Rights Commission and a number of other bodies have been restructured and renamed. The Expert Mechanism on the Rights of Indigenous Peoples replaced the Working Group on Indigenous Populations.

The United Nations Human Rights Council is the most important UN human rights body. It is made up of 47 member governments. The Council meets at least three times a year in Geneva, Switzerland, and deals with a wide range of issues including urgent problems in individual countries, the situations of vulnerable people, so-called thematic issues and the promotion of human rights. It has already established a good track record on the rights of Indigenous peoples, adopting the Declaration on the Rights of Indigenous Peoples, establishing the Expert Mechanism on the Rights of Indigenous Peoples and deciding to appoint an Indigenous person as special rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People.

*The charter-based bodies are there to be used by Indigenous people, but it is important to understand the way they work and their limitations.*



Professor Mick Dodson, Australian of the Year 2009, on the first time he attended the UN Working Group on Indigenous Populations:

*... what I found was that I was part of a world community of Indigenous peoples spanning the planet: experiencing the same problems and suffering the same alienation, marginalisation and sense of powerlessness. We had gathered there united by our shared frustration with the dominant systems in our own countries and their consistent failure to deliver justice. We were all looking for, and demanding, justice from a higher authority.*

The Permanent Forum on Indigenous Issues (UNPFII) is the UN's specialist body covering all issues of concern to Indigenous peoples. UNPFII is separate from the various human rights bodies and reports directly to the high-level Economic and Social Council.

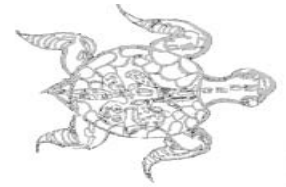
There are several ways you can try to achieve human rights objectives through the charter bodies of the UN. One is to provide information about a human rights problem to a human rights mechanism. This can be information of a general kind, for example about the issue of Aboriginal health, or specific, for example about an incident of ill-treatment of an Aboriginal person in custody. It is important to do some research to make sure that the issue or problem you are concerned about fits in with what the various human rights mechanisms are authorised to do. Second, you can go to Geneva or New York to participate in a UN meeting. Third, you could contribute to the drafting of a new human rights standard.

### **The Universal Periodic Review process**

A new feature of the Human Rights Council is what is called the "Universal Periodic Review" (UPR). This involves a review every four years of every country's performance in fulfilling its human rights commitments and obligations. A working group comprising the 47 government members of the council carries out the review. Other governments that are not members of the council can take part. Each review is prepared by a group of three countries (the troika), which are selected at random well before the review. This process brings into play a more political kind of scrutiny of a country's performance. It is important because the council now looks at the human rights situations of all countries, not only the very few serious situations it has traditionally addressed. Previously Australia's human rights performance would never have been considered. Australia will be reviewed in 2011 and every four years thereafter. The UPR process creates an opportunity for Australian human rights advocates to draw issues of concern to international attention. Governments are encouraged to have a national consultation process prior to the review, in which Aboriginal and Torres Strait Islander organisations and individuals could take part. Non-governmental organisations can submit information as "relevant stakeholders" to one of the three documents which form the basis of the review (the others are reports prepared by the country concerned and by the Office of the High Commissioner for Human Rights). NGOs can attend, but cannot speak at, review meetings, though they can address the full Human Rights Council afterwards. The website of the Office of the High Commissioner for Human Rights provides more information on the UPR process at: [www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain](http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain) Information from an NGO point of view and tips on how to get the most out of the process may be found at <http://www.upr-info.org>

### **The Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People**

A special rapporteur is a person who investigates and reports on human rights problems. The UN's Human Rights Council has 38 of these investigative mechanisms and the system as a whole is called "special procedures". The investigators are appointed with a specific "mandate" — what the mechanism is actually authorised to do. Subjects of these mechanisms include "thematic" issues, including Indigenous rights, contemporary forms of racism, torture, violence against women, exploitation of children, and religious freedom. Some of the investigators enquire into the human rights situations in specific countries, though this practice is becoming



less common. The investigators often visit countries of concern and prepare a report at least each year for the Human Rights Council or the General Assembly. The various mechanisms usually have a continuing existence so that they are able to monitor human rights issues on an ongoing basis.

To be eligible for membership of the UN Human Rights Council, a government must have issued a standing invitation to visit their country to all the UN's human rights Special Procedures (such as special rapporteurs). It is also possible for an organisation or a coalition of organisations/institutions to invite the UN special rapporteur to visit. Although this will not be an official country visit, it can be valuable for awareness raising.

### ***Sending information to the special rapporteur***

The special rapporteur on Indigenous rights is concerned to promote better observance of the human rights of Indigenous people. His role includes receiving information about specific human rights violations and acting on that information. He can attract significant public attention to Indigenous concerns.

If you have concerns, whether about a specific individual situation or a more general issue affecting an individual, it would be appropriate to send information to the special rapporteur. This procedure does not have the more difficult admissibility criteria of the treaty body complaints procedures and the Office of the UN High Commissioner for Human Rights provides guidance on how it should be done.

#### ***Guidance on how to send information to the special rapporteur is available on the accompanying CD.***

If you submit a complaint, the special rapporteur will contact the Australian Government, asking for its response to the allegations. In his report each year, the special rapporteur includes the allegation and the government's response. The mechanism is quite weak as there is no obligation on the government to do anything and the special rapporteur cannot force a positive outcome. But the procedure is simple, free of charge and can be an added element in a wider campaign, particularly if accompanied by media coverage. So far there have been few complaints from Australia.

### ***UN Permanent Forum on Indigenous Issues (UNPFII)***

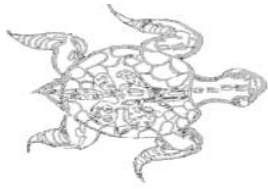
The UN Permanent Forum on Indigenous Issues (UNPFII), established in 2000, has moved Indigenous concerns to a much higher level in the UN hierarchy. The forum addresses the full range of issues of concern to Indigenous people and, for the first time, formally includes Indigenous people as decision-makers within a UN body. Of the 16 members, eight are nominated by Indigenous organisations. One of the eight Indigenous members is Professor Mick Dodson. He makes visits to relevant countries to obtain information and hold dialogues.

Indigenous people from all over the world attend UNPFII meetings. The UNPFII meets for two weeks each year at the UN headquarters in New York. Its agenda focuses on different issues each year. Since its first meeting in 2002, it has covered issues such as women, youth, territories and lands, and climate change. If you are making a submission, it is important to check that your concern is under consideration at the right time. Information on forthcoming issues is on the UNPFII website at [www.un.org/esa/socdev/unpfii](http://www.un.org/esa/socdev/unpfii)

### ***Expert Mechanism on the Rights of Indigenous Peoples***

The Expert Mechanism on the Rights of Indigenous Peoples met for the first time in October 2008. In establishing this body, the Human Rights Council chose to exert greater control than it had over its predecessor, the Working Group on Indigenous Populations (WGIP). In particular, its guidelines require it to focus on providing advice based on studies and research and limit its ability to take independent action. On the other hand, its membership includes Indigenous people whereas the WGIP never had an Indigenous member.

Because it is new, it may take time for the mechanism to settle into a working method. But while it may adopt a more low-key



approach, it is possible that it will produce positive results. It is likely that there will be an opportunity for substantive Indigenous input into its work. Indigenous people from around the world appear to have already given the mechanism strong support, with 300 participants turning up for its first meeting.

### **Second International Decade of the World's Indigenous People**

The Second International Decade of the World's Indigenous People was proclaimed in December 2004 and runs from 2005 to the end of 2014. With the adoption of the Declaration on the Rights of Indigenous Peoples, there is an opportunity to refocus attention on the international decade and to strengthen implementation of its plan of action. The permanent forum is the centre of activity on the second decade. Work on the second decade should involve action within Australia as well as at the international level.

*The plan of action is on the accompanying CD, together with the UN resolution that established the second decade.*

### **Other UN organisations**

It is also possible to submit information to other organisations within the UN system, such as the World Health Organization, the International Labour Organization, the UN Educational, Scientific and Cultural Organization, and the World Intellectual Property Organization.

*Contact information for other UN organisations is available on the accompanying CD.*

### **Attending UN meetings**

Another way to make use of the various UN bodies is by attending a meeting. The meetings that are more welcoming to Indigenous people are the permanent forum and the expert mechanism — many Indigenous people from all over the world go to these meetings each year. You can also attend meetings of the Human Rights Council and other bodies but there is less scope to be substantially involved, unless you have a specific objective.

- Whatever your objective, simply being at one of these meetings can be an empowering experience, providing an opportunity to learn about the international system and to meet Indigenous people and other experts from around the world. It is a great opportunity to meet some of the key people from Australia, both Indigenous and non-Indigenous. There is also the possibility of speaking at one of these meetings.

Because of the cost of travelling to these meetings, however, careful thought needs to be given to what you are trying to achieve and how you are going to do it. In practice, the time available for an individual to speak is quite limited, so it is better to have a broad objective. Once again, arranging for media coverage is an important aspect if you want to make an impact back in Australia.

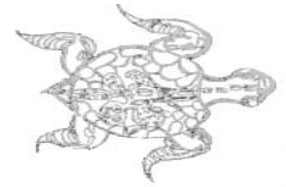
Information on participating in meetings may be found on the websites of the various UN bodies. There are also several non-government organisations based in Geneva that may be able to assist you to understand the way these meetings work. They can also provide information on the practicalities of meeting attendance.

The Australian Human Rights Commission works with a network of Indigenous Australian organisations called the Indigenous Peoples Organisations to help Aboriginal and Torres Strait Islanders attend relevant UN meetings. It has a small budget for this initiative which aims to ensure that advocates make the most of their attendance by helping them to prepare, allocating roles — including speaking on agenda items — and seeking a report from them on their return.

*Further information on how to attend UN meetings is available on the accompanying CD.*

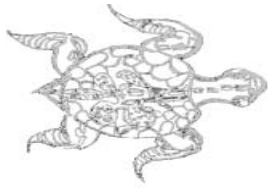
### **The High Commissioner for Human Rights and her Office**

One important improvement in the UN's management of human rights was the establishment of the position of United



## TYPES OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

TYPE OF INSTRUMENT	NAME OF INSTRUMENT	YOUR OPTIONS FOR ACTION
<b>LEGALLY BINDING WITH A COMPLAINTS MECHANISM</b>	International Covenant on Civil and Political Rights	Complaints to a treaty body
	International Covenant on Economic, Social and Cultural Rights	Prepare alternative report to government report; make comment, criticism or submit information
	Convention on the Elimination of All Forms of Racial Discrimination	Attend UN meetings to raise awareness of Indigenous concerns in Australia
	Convention on the Elimination of All Forms of Discrimination Against Women	Refer to human rights standards in the instrument in Australian media
	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Lobby the Australian Government to improve human rights observance
	Convention on the Rights of Persons with Disabilities	
<b>LEGALLY BINDING BUT NO COMPLAINTS MECHANISM</b>	Convention on the Rights of the Child (CROC)	<p>Prepare alternative report to government report; make comment, criticism or submit information</p> <p>Attend UN meetings to raise awareness of Indigenous concerns in Australia</p> <p>Refer to human rights standards in the instrument in Australian media</p> <p>Lobby the Australian Government to improve human rights observance</p>
<b>NOT LEGALLY BINDING</b>	Universal Declaration of Human Rights	<p>Attend UN meetings to raise awareness of Indigenous concerns in Australia</p> <p>Refer to human rights standards in the instrument in Australian media</p>
	Declaration on the Rights of Indigenous Peoples	Lobby the Australian Government to improve human rights observance



Nations High Commissioner for Human Rights in 1994 and the significant strengthening of the UN Office supporting the High Commissioner.

The high commissioner is the UN's leader on human rights issues. The high commissioner directs the UN's human rights policy, deciding on program directions, making decisions to some extent on how available funds will be spent and speaking out on issues of concern. The high commissioner has a major diplomatic role in dialogues with governments on human rights issues.

The UN's human rights work is carried out at staff level by the Office of the High Commissioner, often referred to as the secretariat. Much of the secretariat's work involves supporting the meetings of charter bodies and treaty bodies, but it also is involved in fieldwork in various countries and in training and public information. There is a unit that is responsible for Indigenous issues and it has prepared some specialist materials on Indigenous peoples' rights that may be of value.

### **Advocacy and strategies**

Advocacy means building public support for a particular issue. It implies pressing for change. People working for human rights are often known as human rights advocates. They press for change to improve the human rights situation. In many parts of the world they are known as human rights defenders, and the international community has recognised the valuable role they play in the UN Declaration on Human Rights Defenders.

Advocacy involves persuading others to take action. There is a wide range of activities you can undertake in your advocacy work, from holding demonstrations and waving placards and meeting with politicians or government officials to building support

### **Indigenous Human Rights Network**

The Indigenous Human Rights Network (the network) aims to strengthen Indigenous participation and engagement in human rights issues through access to information, expertise, mentoring and best practice solutions. It seeks to promote alliance building between individuals and organisations through which affirmative action can be taken to address human rights issues. It offers opportunities for personal and professional growth in the field of Indigenous human rights and aims to provide mutual support for human rights workers.

Work on establishing the network began in 2007 as a joint initiative of Oxfam Australia, the Diplomacy Training Program (DTP) and the Australian Human Rights Commission (AHRC). The initiative responds to feedback from the DTP alumni on the need to stay connected to each other, to developments in human rights, and to opportunities for participation in advocacy initiatives and international processes. It also reflects the commitment of the AHRC and Oxfam Australia to work with advocates in the community in promoting rights and holding the government accountable.

The network is the outcome of research which included more than 100 face-to-face interviews and a number of small group discussions with people from a wide variety of private, public and community organisations. There was significant support for the establishment of a network, supported by a dedicated website that could facilitate the flow of information among its members, encourage wider awareness of relevant UN decisions and processes and enable greater, wider and more effective participation in UN processes, including parallel reporting to the UN Human Rights Treaty Bodies. The Network aims to hold regional workshops leading to a national conference every three years. The Network is hosted by the Australian Human Rights Commission.

**[www.ihrn.org](http://www.ihrn.org)**

Margaret Raven

Indigenous Human Rights Network Coordinator

Social Justice Unit

Australian Human Rights Commission

# PART FOUR



Dr Sarah Pritchard giving a lecture to DTP participants regarding the 'Declaration on the Rights of Indigenous Peoples' during the Oxfam Australia Follow-up Program, Sydney, April 2008.  
Photo: © DTP

## **Human rights advocacy**

### **4.1 Human rights advocacy and developing strategies**

### **4.2 Advocacy techniques**

### **4.3 Human rights and working with the media**

# DEALING WITH RACISM

**JOSHUA CREAMER**

**Arts/Law student Joshua Creamer uses a range of strategies to fight racism.**

**I was a delegate with the Oxfam International Youth Parliament (OIYP) [now Oxfam International Youth Partnerships] in 2004. As a delegate with OIYP I was required to complete an action plan.**

The action plan that I developed sought to improve the legal education for Indigenous Australians to ensure that Indigenous people had a greater understanding of the criminal justice system and had a better understanding of their legal rights and responsibilities, particularly when dealing with the police. I developed this plan in an attempt to address the serious levels of Indigenous over-representation at all levels of the criminal justice system.

On completion of the two-week sitting of the OIYP, delegates were then required to implement the plan in their communities. I still continue to work towards fulfilling that plan. In the next few months I will graduate with a double degree in Law Arts and I will continue to work towards addressing not just over-representation in the justice system but also Indigenous disadvantage. At this early stage of my career I have witnessed first hand many of the issues affecting Indigenous people, from working in criminal law to working in the area of Native Title.

For me, university has been an education in racism on many levels. I am one of only two Indigenous students that attend the law school at my campus. Racism for me has taken many forms, some of it is open and on display, such as when ignorant and inaccurate views are expressed and not corrected. At other times it is more subtle, such as not being included in groups, being isolated from other students and not having my opinions valued. This can be extremely difficult particularly as a large component of the program is dependent on group work.

It continually falls onto the shoulders of the Indigenous student to address racism. Many lecturers simply don't understand exactly what racism is. Now as a final-year student, I continue to advocate for improved education for staff and students in regards to racism, in particular educating staff in how to recognise racism and how to address it, how to educate the person expressing that sentiment and how to assist the person or persons who may have been affected. Finally, I advocate for the university to include a course on discrimination in the program as a core component of the degree. As yet the university has not implemented any real change.

In 2007, I was then selected to facilitate the third sitting of the OIYP. This time I mentored the new delegates, which including running workshops and training programs as well as supporting delegates in their endeavours. Recently I was awarded the Rubin Hurricane Carter Award for my commitment to social justice. It is important for me to use the skills and the opportunities I have had, not just to benefit myself, but the wider Indigenous community. I have been fortunate to benefit from the sacrifices of those who have gone before me and I want to ensure that those who come after me are in a better position than my generation.



**'I was awarded the Rubin Hurricane Carter Award in May 2008, for my commitment to social justice', Joshua Creamer. Photo: © DTP**



## 4.1 HUMAN RIGHTS ADVOCACY AND DEVELOPING STRATEGIES



through positive media coverage. Effective advocacy often involves using a range of tactics, techniques and activities. In any of this activity it is helpful to have an organised approach or a strategy. This will ensure you get the maximum results for the resources you have available.

Having a strategy means knowing what you want to achieve and how you intend to go about it. You should have clear objectives. One way of knowing if you have a clear objective is whether or not you can say in one sentence what the outcome is that you want. You can have long-term objectives, for example reducing the incidence of Type 2 Diabetes. Other objectives may have shorter time frames, for example stopping the eviction of a family from a house. To clarify your objectives, you may have to spend some time discussing them with other people. You may have to reformulate them several times. Objectives must be realistic. It is also helpful if they are time-bound — what do you want to achieve by when?

Most strategies begin with an analysis of the situation that you want to change or improve. Sometimes discussion with others can assist this analysis, as can further research. Answering some simple questions can help guide your action: Who is responsible for the problem? Who can do something about it? Who or what is likely to influence their decisions/actions? Who or what is likely to persuade them to take the action we want them to take?

For example, to stop a family being evicted it may be important to know whether it is a private landlord or a housing authority that is trying to evict them. They may have different responsibilities under the law and different sensitivity to media coverage of the eviction or to the appeals of the local parliamentarian.

### **SWOT analysis**

As well as having clear objectives, you need to understand your own capacities individually or as an organisation or community. People in organisations often apply what is known as a “SWOT” (strengths, weaknesses, opportunities and threats) analysis to see where they are now, where they need to improve and where they need to be careful. This analysis can be done by brainstorming within a group and writing down the results on a whiteboard or on paper.

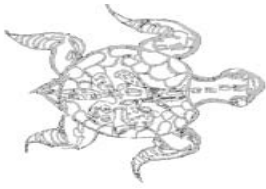
Strengths and weaknesses usually relate to issues within your organisation, such as resources, skills, credibility and political or media contacts. If you rate your organisation highly on these criteria you might be well placed to take action. If, on the other hand, you find major gaps, it might be advisable to do something about them before proceeding, such as taking time to build contacts, obtain resources or arrange skills training.

Opportunities and threats relate to the external environment. Opportunities might include a major upcoming meeting on a subject relevant to your concerns, a visit by a celebrity or a journalist or an upcoming election where candidates may commit to action. Threats would be a hostile government or competing issues that are drowning out your concerns.

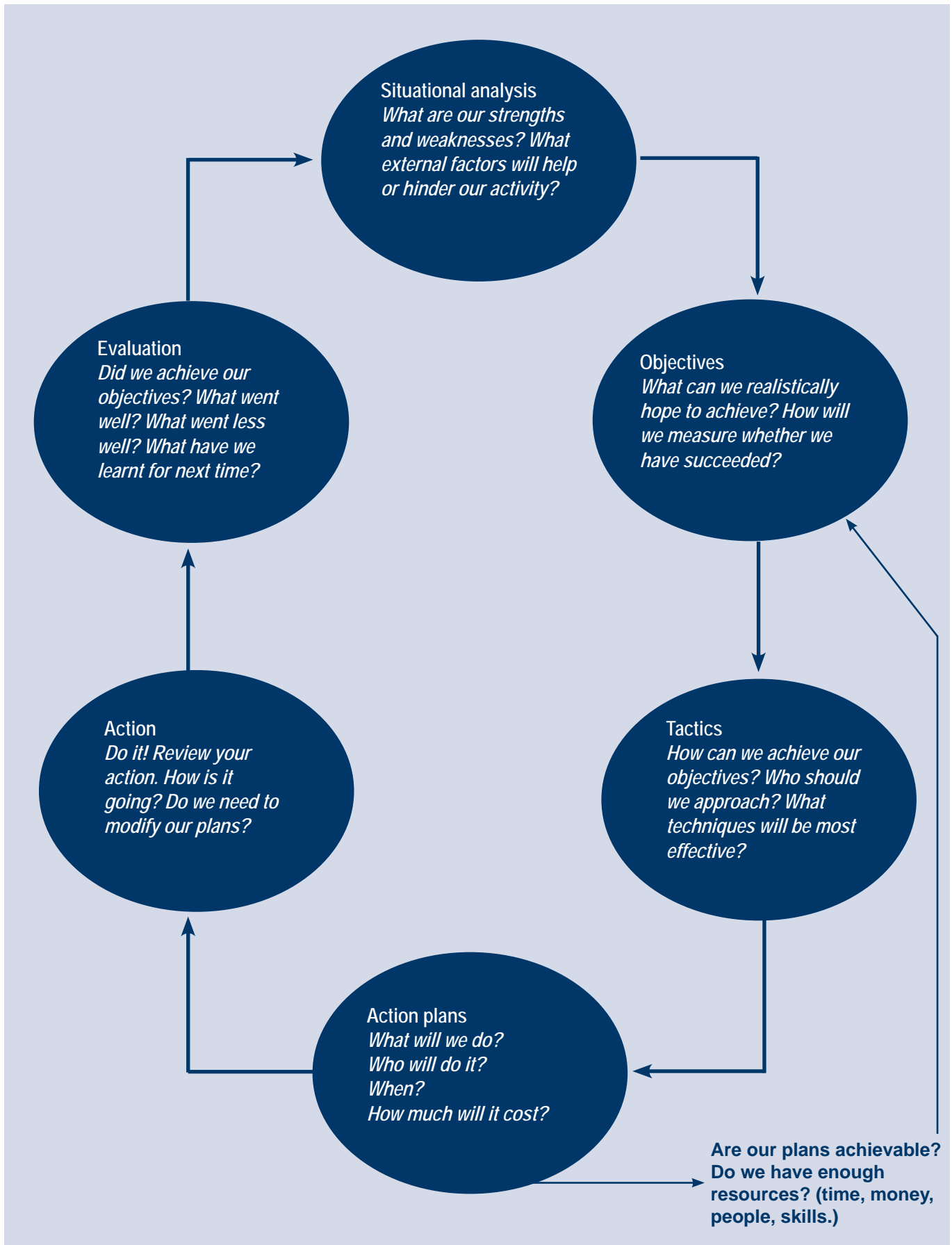
### **Developing strategies**

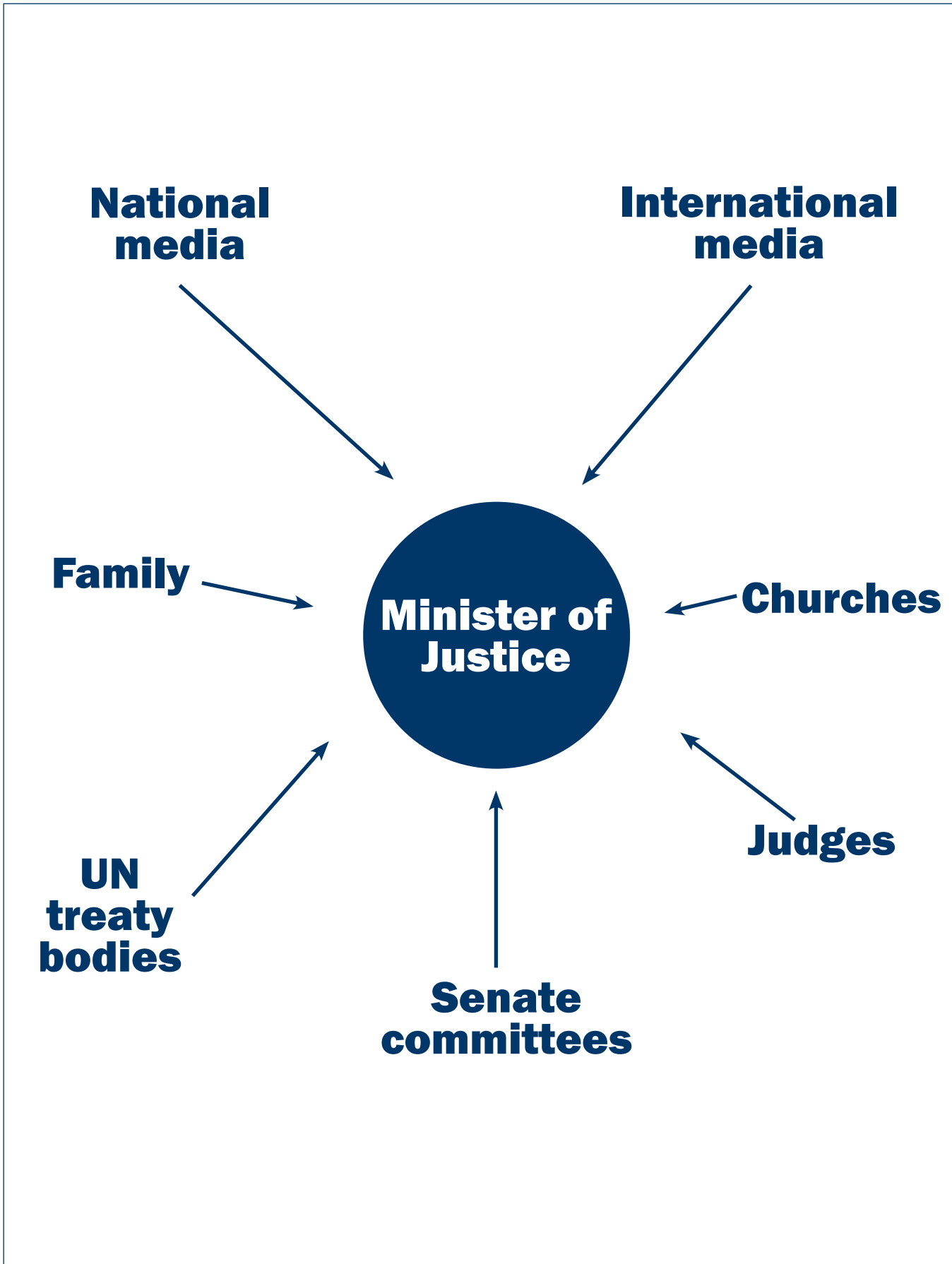
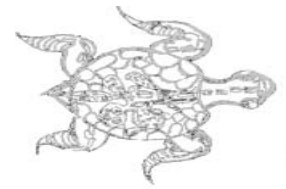
After you have analysed your organisation’s capacities, it is time to formulate your strategies. You need to keep a number of elements in mind. We have already emphasised clear objectives, but these need to be communicated and understood by everyone in the organisation. Proposed objectives have to be realistic and achievable within the resources available. In a hostile environment, your objective may simply be to stop things from getting worse.

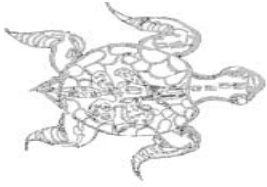
You need to build and ensure credibility so that you will be more persuasive to those you are asking to take action, the media, and your supporters. Credibility can come from an organisation’s care in sticking to the facts and avoiding exaggerated



## DEVELOPING AND IMPLEMENTING A STRATEGY







## SET SMART OBJECTIVES

Specific

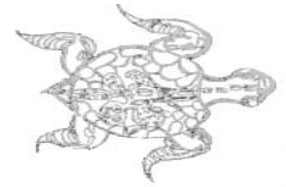
Measurable

Actionable

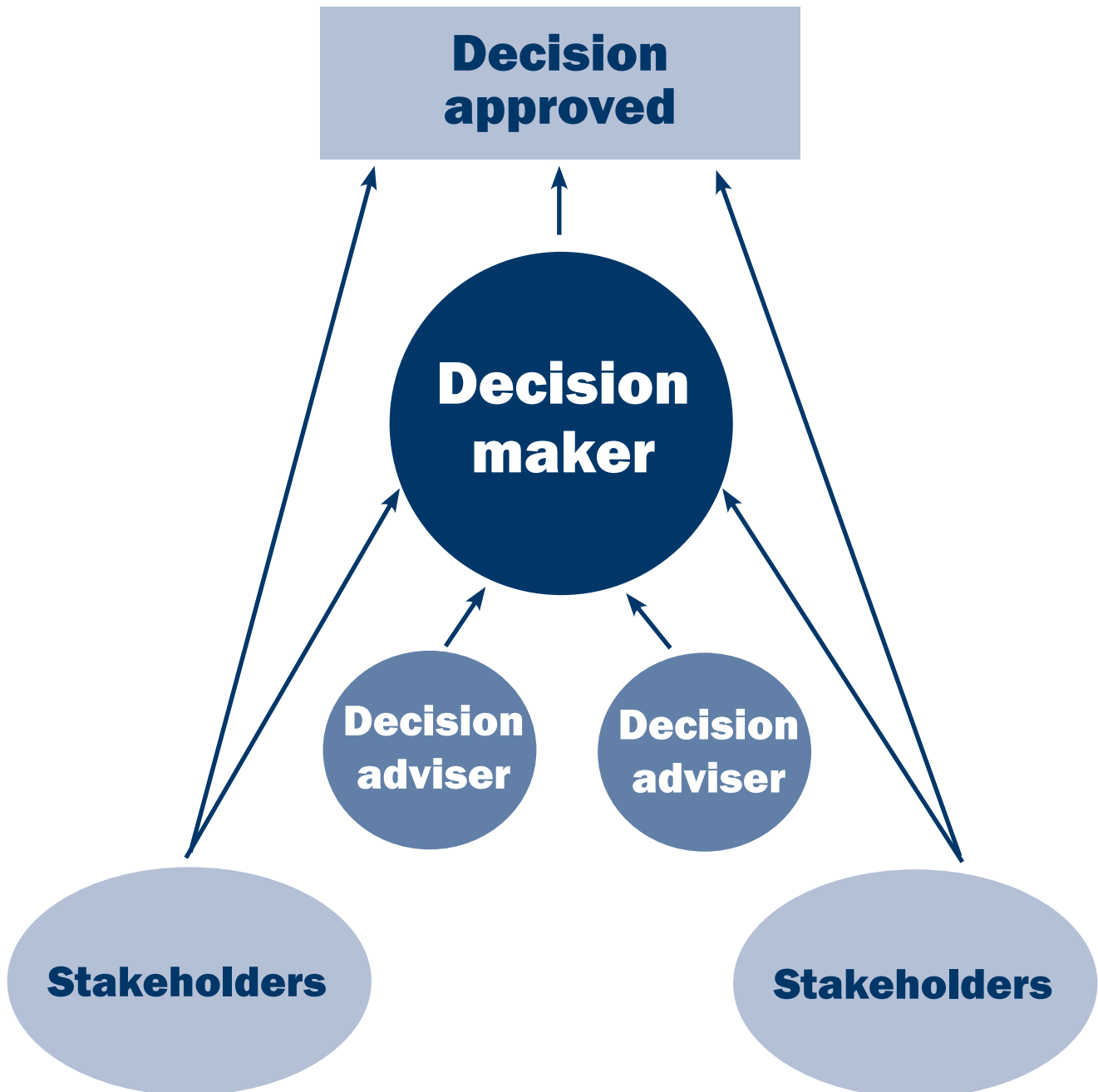
Realistic

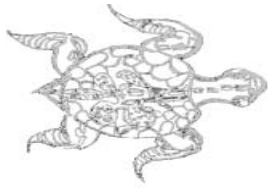
Time-limited

When we evaluate our campaign, **SMART** objectives will help us evaluate progress against our campaign objective.



**Power analysis**





claims; its reliability in meeting undertakings; and from the personal qualities of your organisation's spokespeople. You need to understand those you are trying to persuade and tailor your actions appropriately. Commitment is important, so that effort can be maintained over time and so that approaches that do not work are replaced by ones that are more successful. Strategies need to be measurable, so that you will know whether you have succeeded.

In formulating strategies, be conscious of your support base. If you propose ambitious objectives you might motivate and energise your supporters for a while, but if your actions to achieve these objectives are unsuccessful or only partially successful, you may experience a drop in morale and motivation. It may also undermine your credibility. In addition to selecting achievable objectives it is helpful to involve your support base to the greatest extent possible in developing strategies and communicating what you are doing.

It is important to include the element of timing in your strategies. When planning your action you should be able to say what you think or hope will be different in six months or a year (or five years) as a result of your advocacy efforts. This is important for motivating those involved in your advocacy. It also helps you to monitor your progress, change your strategy if needed, and consider outside factors such as election cycles that might influence your strategies and priorities for action.


It is better to write your strategies down so that they are clear to everyone in your organisation. This should not mean your strategy is inflexible; you need to be willing and able to adapt it to changing circumstances.

As with most things, practice and learning from others and from your own experience can be helpful in developing your advocacy and strategy skills. It is rare to be able to win all the time and learning from setbacks and failure can be as important as learning from success. Build in the time to reflect on your experiences. It can also be helpful to find others that you trust to talk things over with and get an outside view.

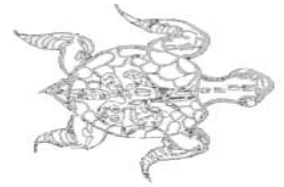
***Further advice, information and resources on campaigning and advocacy are available on the accompanying CD.***

### **Using a range of techniques**

Human rights work often focuses on actions such as court action, making a complaint under the provisions of a human rights treaty or using alternative dispute resolution procedures. But effective human rights work often involves a range of techniques and approaches. Choices on which should be used, and which should be given priority (effort and resources) at particular times, need to be part of the broader strategy that you are taking.

 As discussed, advocacy involves persuading others to make change. Most often in human rights advocacy we are trying to influence and change the actions of government and government officials. It is after all governments that have the responsibility

## 4.2 ADVOCACY TECHNIQUES



to respect, protect and fulfil human rights. In most cases, successful action through the courts can force governments and their officials to change, take action or offer redress. But there are obstacles and disadvantages in taking action through the courts, such as the costs and time involved or the absence of relevant legislation that protects human rights in Australia. Sometimes the government can be so opposed to the court decision that it changes the law (as happened in response to the High Court's recognition of Native Title in the Mabo and Wik cases).

The weakness of international human rights accountability mechanisms (treaty bodies) have been mentioned earlier. For example, even if you were successful in getting a treaty body to find that your complaint showed the government to be in violation of its treaty obligations and even if the treaty body called on the government to remedy the situation, the government is not legally bound to respond. A positive government response to accept and implement the finding would be a political decision, depending on how the government evaluated the various pressures, of which the treaty body decision would be but one.

You will improve your chances of fully achieving your objective if the complaint to the UN treaty body (or formal court or other action) is backed by widespread support that has been generated through other advocacy work. Even if the result guarantees the achievement of your objective, it might be desirable to complement it with advocacy work to promote public support for the outcome.

Cases such as work on Native Title and Stephen Hagan's campaign to remove the word "nigger" from the grandstand of the Toowoomba Sports Ground (see page 43), show the importance of having a broad strategy that does not rely on one technique, such as a court or a complaint to the UN treaty bodies.

### **Prioritising**

There are many actions you could take to achieve your objectives, so you will almost certainly have to prioritise. Not all actions will be appropriate to the situation. Generally we do not have the resources available to do all that we would like to do. In choosing an action, it is useful to work back from your objective and analysis and evaluate a variety of actions to decide which are likely to be most productive in the circumstances.

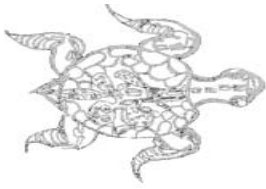
Relevance of a proposed action is an important consideration. For example, it is no good putting effort into pressuring the Federal Government if the problem you face is essentially one within the jurisdiction of a state government. Timing is another factor. If, for example, you are trying to influence legislative processes, your action needs to occur before decisions are taken rather than after.

### **Possible techniques**

Techniques vary in scale and levels of energy. Some can be seen as angry and aggressive, whereas others can be seen as more conciliatory and low-key. Advocates have to consider techniques carefully because high-intensity activities may not be as well suited to producing the desired result as a more moderate approach. Letting off steam can be important, but it should not become counter-productive.

So, when considering what to do, you should look at the full range of techniques. Keep your objectives and analysis in mind and match your techniques to these. Indeed, you will probably find that you have a better chance of achieving your objectives if you

*Most often in human rights advocacy we are trying to influence and change the actions of government and government officials.*



use a variety of techniques. For example, you may decide you need to do something visual to get media coverage, so that an official is willing to meet with you to discuss your concerns, and if they don't act following this meeting, it may be necessary to organise a letter-writing campaign so they can see the level of concern.

### **Demonstrations and protests**

Demonstrations and protests may come first to mind when considering some form of action on a human rights issue. They are a way of channelling anger and unhappiness. Sometimes they occur spontaneously. They often readily attract media attention because they involve conflict and emotion. Their intensity can heighten political pressure on governments and other decision-makers, particularly if the demonstration is on a large scale.

A demonstration is a legitimate option for people who are concerned about human rights. Those organising demonstrations need to be aware of possible problems, though. Sometimes demonstrations require approval of appropriate authorities, such as the police, if you intend to block public streets. Demonstrations can be difficult to keep "on message", particularly if the participants include people from outside your organisation. Demonstrations can sometimes be taken over by others who may be pursuing different objectives to yours. Any descent into violence or property damage will only harm your cause, as well as exposing those involved to legal penalties. Demonstrations run the risk that they will project a negative image that will put the public off rather than build support. If your protest ends up being on a small scale, there is also a risk that it will be seen as a failure, demonstrating only that your concern lacks wide support.

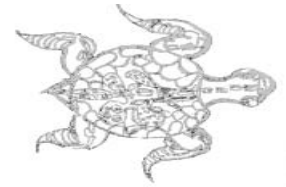
If you choose to go ahead with a demonstration, keep the following points in mind:

- participants should be disciplined. You should have some people designated as "marshals", who will direct demonstrators as to what they should and shouldn't do;
- speakers and spokespersons should be selected and briefed. They should be able to set out your concerns concisely and persuasively;
- creativity can make your demonstration more interesting and newsworthy. Instead of just a crowd of people shouting slogans, some element of theatre will have a greater impact and will interest the media. Some kind of symbolic representation of the issue may highlight your concerns and help the public to understand how you feel;
- inviting supportive politicians or celebrities can give your activity a higher profile and illustrate wider support;
- timing may be important, for example in relation to media deadlines, or important decisions. Location can also be important. It may be easier to get attention if your protest is in Canberra or a state capital than if it is in the country, though this has to be balanced against the difficulty of getting people there in numbers;
- the demonstration should be accompanied by a media strategy. A well-timed media release will alert the media to the protest and will set out the main elements of your concerns. Spokespeople and their mobile telephone numbers should be clearly identified. Banners or placards should be large enough and colourful enough that they create a strong visual image. Remember it is important for impact and your credibility that you do not inflate the numbers of those you expect to attend — it can be very demoralising to say that there will be hundreds or thousands when only 50 show up.

### **Events and public meetings**

An event is a kind of well-organised demonstration. It usually involves a special theme or element of theatre that aims to bring home to people attending or viewing some sense of the problem you are concerned about. It is an opportunity for you to portray your concerns in a graphic way that is likely to win the sympathy of the public and attract media interest. An event is also an opportunity to seek more concrete forms of support, such as financial donations or signatures to a petition. A good example of this was the Sea of Hands campaign in Australia and internationally to protest changes being made to Native Title legislation and the undermining of efforts at reconciliation based on social justice for Indigenous Australians — [www.antar.org.au/sea\\_](http://www.antar.org.au/sea_)





of\_hands This campaign saw visually attractive displays of many individual hands. In a non-threatening way, these displays brought home to the wider public the scale of the problem and also provided an opportunity to involve individual members of the public personally by placing a “hand” in the “sea”. The Aboriginal Tent Embassy in Canberra could be regarded as a permanent event that has drawn attention to injustices over a long period of time.

Public meetings are a way of conveying your concerns to what can be described as a “captive audience”. People attending a public meeting can be expected to give their attention to you for the duration of the meeting. Usually you will be speaking to people who are basically supportive, though you can also invite others — such as representatives of organisations you are seeking to influence — who might not otherwise have wished to attend. Public meetings are an opportunity to reach out to potential supporters with graphic information about your concerns. In addition to persuasive speakers, you can use video and still photos and distribute hardcopy materials. It can be an interactive experience with questions and statements from the audience. It may be possible to achieve an outcome such as a resolution adopted by those attending. Once again, meetings are an opportunity to raise funds and obtain signatures to petitions.

Organising successful meetings is not easy. It is important to have a good chairperson to keep things on track and on time. Your speakers have to be persuasive, inspiring and entertaining. The venue has to be the right size for the expected audience. Funding is required for the venue and publicity. Timing and location are important. If you fail to attract enough people or things do not go well, your meeting will fall flat and be counter-productive, quite apart from the financial loss you will probably suffer. It may be better to look at public meetings as an outcome of alliances with other organisations which might be better resourced and experienced to hold them. Remember also to consider the media — if you have a guest speaker from out of town, the local media might be interested in interviewing them and this can reach many more people than those who attend the meeting.

### **Strikes and boycotts**

Strikes involve withholding labour from an employer. Boycotts involve consumers or clients who may refuse to deal with particular companies, organisations or service delivery agencies. Strikes have an important history in overcoming injustice suffered by Aboriginal people in Australia.

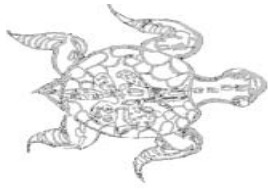
Strikes and boycotts can vary in scale. Short-term actions are more symbolic in nature but can draw attention to an issue. Long-term strikes and boycotts are much more difficult to sustain as they require extraordinary commitment and willingness to endure hardship.

If considering whether this form of action is appropriate or likely to deliver the outcomes you want, it is suggested that you consult with organisations/individuals that have experience in using them.

### **Public speaking**

Public speaking is a way to get your message across to people outside your community. There are some prominent and successful Aboriginal public speakers such as Noel Pearson and Mick Dodson. You can speak to community or sporting groups, political party members, mainstream human rights workers, students and other groups involved in education, and many others. People outside Indigenous communities may be eager to hear your point of view. As well as informing people, you will have the chance to get them to support your objectives.

Many people are afraid to speak in front of an audience. To some extent, public speaking is a personal talent. Some people simply have greater confidence to get up in front of large audiences, a good speaking voice, the ability to think on their feet, a sense of humour, and so on. But public speaking is also a skill that can be learned. Aspects such as preparing a well-structured and persuasive statement, looking at your audience rather than your text, not speaking too fast and avoiding “ums” and “ahs” can all be learned and practised. Once you have built up some basic skills, you will find you have greater confidence, can relax and be yourself. These will also be useful in other contexts, such as dealing with the media and meeting with politicians and officials.



## **Email and internet use – online advocacy tools**

There are numerous online tools available to human rights organisations in furthering their cause. One of the main issues for many organisations is to inform others of what their problem is and to do this in the most efficient manner.

### **Email**

Sending emails (or electronic messages) to appropriate mailing lists or organisational emails is one of the most effective ways to notify other interested parties of major issues concerning your organisation. Most organisations would have their own email address — this is like a postal address but for electronic mails. Otherwise, a number of large companies (for example, Google, Yahoo) provide free email facilities for anyone interested in setting up an account. A mailing list is simply a list of email addresses (and other details such as names) of individuals or organisations interested in receiving news and other related information concerning a particular topic from a particular organisation. The simplest way of creating an email list would be to collect names from existing contacts or to use existing mailing lists that you have subscribed to for receiving information. Mechanisms can also be created to allow interested parties to subscribe to your mailing list for news and updates automatically. Once a mailing list is created (or appropriate existing mailing lists have been located), you can then use these lists to send out messages to a large number of recipients fairly quickly and efficiently — a great way to lobby support for your cause. While sending emails to mailing lists is an efficient way of communicating to a large number of people, you should be careful that the frequency and content is appropriate for a particular email list, otherwise your messages may be treated as “spam” (or unsolicited emails) and may be ignored over time.

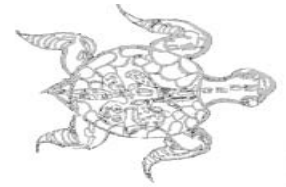
### **Blogs, wikis and other technologies**

Other web-based technologies such as blogs and wikis are providing even more ways for your organisation to keep in contact (and in some cases, encourage collaboration) with your readers. For example, there is a growing trend to provide “blogs” (or weblogs) which are similar to diary entries on a webpage indicating significant events or new items, or can simply be comments that are regularly updated. These blogs can be general and maintained by individuals or they can focus on a particular topic or issue and be maintained as part of an organisation. Generally, these blogging websites provide a facility for online discussion by allowing readers to comment or respond to your postings. Features that allow you to engage with your readers are key to effective lobbying and campaigning. For an even more collaborative environment and greater user participation, some organisations provide the facility in which users can directly change and update information on a particular section of their website. These are generally referred to as “wikis”. A popular wiki is Wikipedia ([www.wikipedia.org](http://www.wikipedia.org)) which claims to be one of the largest reference websites with over 2.6 million articles written in English. As a starting point, you may consider creating and maintaining a number of articles in Wikipedia to better understand this model of communication.

Other forms of messaging such as SMS messaging from your mobile phone may be a simple way to send out crucial details quickly. This is a good way to mobilise many people especially, when an internet connection is not available or is inconvenient.

Posting a short video on YouTube ([www.youtube.com](http://www.youtube.com)) or other more specialised multimedia distribution websites (for example <http://www.hub.witness.org>) can also be an effective way to communicate your message to a very large audience, especially when you are working on a campaign. Generally, these distribution websites will allow short clips (up to 10 minutes of footage) to be posted.

However, care needs to be taken to appreciate some of the infrastructure or resources needed to create and maintain information using these newer media and technologies. Ultimately, as advocates, it is necessary for you to be able to appreciate the various types of technologies available to you and to choose ones that are appropriate for effective lobbying and advocacy depending on your circumstances.



### **Websites**

While emails are a great way to inform others of what is happening within your organisation, it is often useful to have a permanent place in which you can provide information about the workings of your organisation and the particular issues that are of concern to you. This can be achieved by creating and maintaining a website. With a central contact point available for information about your organisation, it makes it easier for anyone interested in your situation to quickly and easily locate the relevant information. A website also provides a convenient mechanism with which human rights organisations can make their information available to a wider audience. This is one of the main ways in which the media and other readers, for example, locate information with the assistance of an Internet search engine such as Google or Yahoo. One of the best ways to learn how to create your website is to have a closer look at those websites that you use to locate information about issues of interest to you. You should pay attention to the structure of the content and the layout of these websites. Specifically, care and thought should be given to the homepage of your website since this will be the first port of call for your intended audience. As in other advocacy strategies, it is important to appreciate the potential of combining different tools such as the use of emails to notify others of the action alerts that you have posted on your website and providing RSS news feeds that your readers can subscribe to in order to obtain updates. For examples of action alerts (and campaigning on the web), have a look at the "Take Action" section of the Human Rights Watch website ([www.hrw.org/takeaction](http://www.hrw.org/takeaction)) for ideas.

### **Advertising**

Advertising is occasionally used by human rights organisations to get a message across or build support. Advertising is also a way of drawing attention to a forthcoming event, such as a public meeting.

Advertising that works often has shock value or the ability to amuse or entertain. The problem is that advertising costs money and unless your organisation is well funded it is difficult to justify allocating scarce resources in this direction. Advertising would normally only be part of a major campaign that attracted widespread support including financial donations.

For example, Oxfam Australia and other organisations used advertising effectively in the Close the Gap campaign on Indigenous health. They used newspaper advertisements to show open letters to the Prime Minister from a wide coalition of organisations and individuals.

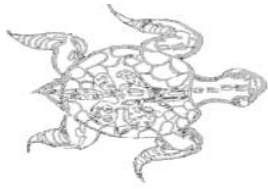
Often a more cost-effective way of getting coverage for your concerns is to have a good media strategy which will enable you to get the same points across for little or no cost.

### **Printing and distributing materials**

The production, printing and distribution of materials also costs money. Any proposal to do this has to involve a careful balancing of the costs against the likely benefits. In your longer-term strategy you may wish to produce a brochure to explain your organisation and what it does. But if you are contemplating a big campaign that includes the large-scale use of printed materials you have to be prepared for major expenses. Factor in any distribution costs such as postage or inserting materials into newspapers.

One area where it is useful to have printed materials on hand is when you are running or participating in public meetings or events or when you are meeting with people you want to persuade. In these situations, it can be important to have materials to explain your organisation and your concerns. These should always be concise and clear, use plain English and be illustrated with photographs or easy-to-read graphs and tables.

Given funding issues, you should look first at how you might achieve your objectives by lower-cost approaches. One would be to use email and the internet to communicate, though this is not so effective for reaching people beyond your network. Another is to produce and print your materials in-house, using desktop publishing computer programs. This would be sufficient for back-up materials.



If your purpose is educational and long-term rather than political, you may be able to obtain funding from a government, educational or philanthropic organisation to produce a package of materials. Also, if you have alliances with other better-funded groups you may be able to obtain funding for specific campaigns.

### **Writing letters**

While email and text messaging are the most common way of communicating in writing, there is still a place for letter writing as an advocacy technique. You can write to government ministers, members of parliament, government officials, agency representatives, representatives of private companies and newspapers. In some cases, letters have greater impact than email, which is easier to ignore.

If you are writing a letter, you need to think about objectives, relevance and timeliness. What are you asking the recipient of the letter to do? Is the recipient the right person to deal with your issue?

Your letter should be typed, with your organisation's name and address at the top and your handwritten signature and typed name at the bottom. You should insert the recipient's proper title and name at the top of the letter (this may be obtainable from their website). The substance of what you want to say should be set out clearly and concisely. The points you are making should follow logically and persuasively, setting out the facts step-by-step and finishing with a conclusion and what you would like the recipient to do.

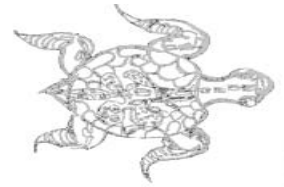
It is important to take a respectful tone. Aggression or abuse will only result in your letter being thrown away. Stay focused on the issue, not personalities, whatever your private feelings may be.

Your letter will probably be given more weight if it comes from an organisation rather than an individual — although letters from respected and/or high profile individuals also have impact and can be influential. If the letter comes from an organisation it should include a brief paragraph describing the organisation — who it represents, when it was established, who is involved etc. Letters from other individuals or organisations can show that your concerns are shared more widely. There can be value in persuading high-profile supporters to write in support of your cause. This will show that your concerns are shared more widely across the community. These supporters can be anyone with a profile, not just people with a special interest or expertise in the issue of concern. Celebrities or well-known sportspeople would be particularly helpful, because of the perception that they can generate publicity. If you are asking someone to write in support of your issue, you need to provide them with the necessary information, even to the extent of providing them with points to make.

### **Lobbying politicians and meeting government officials**

Governments are important. They develop policies, are responsible for legislation, control vast resources and make decisions that affect people's lives directly. Most human rights advocacy aims to influence the actions of government in support of human rights and human dignity. The Australian Government has the obligation to ensure that all Australians enjoy the human rights that Australia has agreed to — which is essentially the entire body of international human rights law. In a democracy such as ours, it is entirely appropriate that people who believe their rights are being violated should take up their concerns with government, including through personal meetings.

Clear objectives, relevance and timeliness are important when meeting someone. You need to be well organised, with a clear idea beforehand of what you want to say. It is a good idea to write out the points you want to make and practise them before you go into the meeting. It is reasonable to have several representatives of your organisation participate in the meeting — maybe three — though it is necessary to check this beforehand with the office of whoever you are meeting. A group will take some pressure off the individual and will make it easier for you to take notes as to what was said and agreed. It may also provide an opportunity to show that different groups in your community share the same concerns — women as well as men, younger people as well as older people. If you have a group it will be necessary to have one person as your leader and for you to work out



beforehand who is going to say what.

It is useful to research who you are going to meet. At the same time it is best not to go into the meeting with preconceptions. Often an individual will be different in person to the way they appear in public or in the media. Be prepared for different kinds of responses to what you say.

Dress appropriately for the meeting and try to be relaxed. State your case precisely, keep the discussion on track and make it clear what you want out of the meeting. Focus on the issues, not on personalities, and don't allow emotion to lead you into personal attacks. Maintain a courteous attitude but be firm about your concerns. Be prepared for questions and deal with them confidently. Check what you have agreed before leaving.

It will probably be useful to provide some documentation about your concerns before your meeting. Two or three days before is probably about right. Any earlier and it will be sidelined, if it arrives the day of the meeting, it probably won't get looked at.

After the meeting it is a good idea to write to thank the person for the meeting and remind them of anything they have agreed to do.

When seeking a meeting to try to achieve your human rights objectives, you need to consider who you are going to meet with. You should be sure that the person is relevant to your concerns. In the first instance you need to be clear as to whether your issue is one for federal, state or local government. You then need to be clear that your issue is actually within the responsibility of the person you are seeking to meet.

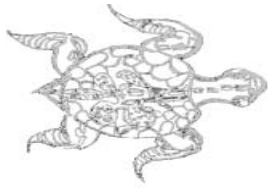
Government ministers are probably the most important people you can meet. They have the power to shape policy and to take decisions, though their power is not unlimited. This is especially the case if your request involves significant expenditure or if it cuts across several areas of government activity. If you have a meeting with a minister it is vital to make the most of it. You may not get a second chance to put your case at that level.

You can also meet with your local member of parliament (MP). It is important to make them aware of your concerns because he or she is your representative and they should know what is of concern to their constituents. It may be that your local member does not belong to the governing party. While this will make it more difficult for them to have an influence on government policy, it is still worth talking to them. Indeed, it may be useful to inform the relevant shadow minister of your concerns.

Your local MP quite often has considerable influence in relation to local matters — and sometimes national matters. If your issue is a local one, then they may well be more willing to act — your vote and the vote of your friends, colleagues and community is likely to be important to them. This is particularly the case in closely fought electorates. A letter from your MP raising the issues you have raised with them is more likely to get a senior level response from officials in all levels of government. It is a simple thing to ask your elected representative for if it will help. In many cases the local MP (and their staff) may become valuable and sympathetic allies in your advocacy for human rights.

Government officials are on a different level to politicians. Some of them have delegated power and can make decisions within defined areas, such as who is entitled to what level of social security benefit. As implementers of decisions, policy and practice in many areas of life, officials can have a big impact on people's day-to-day lives. The history of Australia shows that the way that past discriminatory policies and practices were interpreted and implemented was influenced by the attitudes and beliefs of officials. Clearly the more senior the official the more discretion and authority they have for making decisions and influencing how policy and practice is implemented. You must decide whether you would like to pursue an issue with a particular level of official. It may be best (and appropriate) to take the matter to a higher level of official. Sometimes it may be best to take the matter to the Minister with the relevant portfolio responsibility. Your decision will be based on judgement about who is in a position (has the responsibility, power, discretion) to take a decision, who you think will be most likely to take the decision you are seeking, and your relationships (if any) with the individuals involved.

Public servants also have the role of advising government and decisions are left to ministers. While this may suggest that



**Fundraising can be fun but it can also be a lot of work. Be realistic about your aims, your audience and about the work involved. Use your connections and get things donated. Work smart, think about possible partnerships and be imaginative.**

**Quiz nights:** can have both an educative and fun dimension. It's a good way for supporters to meet.

**Benefit gig:** ask supportive musicians or comedians to participate in a benefit concert for you. Get a venue or do it in partnership with a venue. You can run a bar alongside it or hold it at a venue that has a licence. Use gig guides in papers, online and on the radio to promote your event. Try and get a story up about the event in the media.

**Fundraising dinner:** it's a big job to do it all yourself but you can take a cut of the cost of a dinner. It's nice to have some quality entertainment but remember people will do lots of talking. Keep the speeches to a minimum.

**Raffles:** can be run alongside other events — at your quiz night or benefit gig. However, they can be a stand alone fundraiser as well.

**Auctions:** can be effective if you have a big membership, or good promotions. Having interesting and quirky things to auction helps. Celebrity involvement can help with both interest and promotion.

**“Charity of choice”:** be the charity of choice for other organisations. Partner with local athletics club on a fun run, or with a university law society on a benefit gig. Ask Rotary or Lions to sponsor or fundraise for one of your projects.

**Paid training:** depending on your expertise you could investigate the possibility of providing paid training.

**Regular givers:** if you have a committed core group of supporters you could ask them if they'd like to be regular givers — \$20 a month can turn into \$240 a year. Ask supporters to contribute to a particular project you are doing.

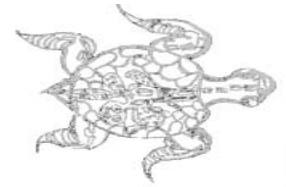
**Public speaking:** can work as a fundraiser if the speaker is very high profile.

**Art sales** — if you have connections with artists ask them to donate a work for sale or go 50–50 with them.

there is not much point in talking to officials, it is probably worthwhile in certain situations. Officials are usually responsible for preparing the options that politicians consider when they make decisions. If you establish a good relationship with a relevant official you may be able to influence the advice they give to their political bosses. You may also find that if you get to know officials, they may be prepared to open up about what is going on behind the scenes. Often they are closer to the detail of issues than the politicians and can provide you with useful information. If you do get into this position, you should be careful not to compromise any information that is provided to you in confidence. You would probably find that if you used in the media something you had been told privately you would immediately lose access to the official concerned and he or she might end up in trouble for being helpful to you.

Other government officials that you may need to talk to are people such as police, health workers and social security staff who are at the interface between government service delivery and your community. Sometimes the issue may be something positive and constructive, such as where you are setting up a cooperative activity. At other times the contact may be more difficult, for example if you are pursuing a complaint. In such a situation, you still need to stick to the basic approaches listed above — objectives, mutual respect and clear outcomes.

A longer-term aspect of advocacy in relation to government officials relates to training. Government is much more likely to respond positively to your concerns if they understand human rights and the points of view of Indigenous Australians. Training programs in these areas are much more common now than they were in the



past. But still, many government workers are not well aware of human rights and many who have had little positive contact with Indigenous people could benefit from good cultural training programs. If you are concerned that government officials with whom you are dealing lack appropriate training you can propose that relevant training programs be established in their organisations. A proposal for such training could in fact be the objective of your advocacy over some issues.

### ***Fundraising***

Many aspects of advocacy require money — staff salaries, transport, communications, printing and distribution of materials, advertising, venue hire, and so on — and any opportunity to raise money as part of advocacy activities should be considered. Fundraising imposes additional requirements, for example financial accounting and legal responsibility, and involves additional skills that your organisation may need to develop. This is particularly important in large-scale campaigns, which are not likely to be viable without a significant fundraising capacity.

There are many ways in which funds can be raised to support community advocacy activities. Many of the ways in which funds can be raised also present opportunities for promoting campaign and advocacy goals — if you are making a grant application, organising a quiz night, holding a raffle, cake or garage sale then these are all opportunities for explaining the issue you are working on, and to seek support. They can work in bringing people together and making them feel involved. Most fundraising, like advocacy, requires choices to be made about where and how you will dedicate the time and effort of yourself and others. Grants are available from many different sources that may help fund your advocacy activities — from government bodies and funding agencies, from corporations, from trusts, and from foundations such as the Myer Foundation. Some have dedicated streams of funding for Aboriginal and Torres Strait Islander initiatives. However, it can be difficult to raise grant funds for activities that are seen as political. Advice is available from different sources including Philanthropy Australia ([www.philanthropy.org.au](http://www.philanthropy.org.au)) and Givewell ([www.givewell.com.au](http://www.givewell.com.au)). There are useful guides for making effective grant applications.

The UN Voluntary Fund ([www2.ohchr.org/english/about/funds/indigenous](http://www2.ohchr.org/english/about/funds/indigenous)) has funds available to make grants to enable Indigenous advocates to participate in international conferences and seminars.

There are many useful ideas and guides to organising and making the most of community fundraising activities including [www.oxfam.org.au/publications/teaching/docs/fundraising.pdf](http://www.oxfam.org.au/publications/teaching/docs/fundraising.pdf); [www.actnow.com.au/Tool/Fundraising\\_ideas.aspx](http://www.actnow.com.au/Tool/Fundraising_ideas.aspx); [www.workingwonders.com.au/go/help-sick-kids/fundraise/twenty-fun-fundraising-ideas](http://www.workingwonders.com.au/go/help-sick-kids/fundraise/twenty-fun-fundraising-ideas); [www.communitybuilders.nsw.gov.au/finding\\_funds/accessing/fqg](http://www.communitybuilders.nsw.gov.au/finding_funds/accessing/fqg)

### ***The role of the media***

The media include radio, television, newspapers, magazines and journals, websites, film and books. The media have a key role in building public awareness and shaping public opinion. They can run a story which generates supportive action from the public, putting pressure on governments and other actors. Media coverage can also give your organisation a profile and credibility and raise the morale of your supporters.

Getting your story into the media can sometimes be easy. Local media is often searching for interesting stories and are prepared

# ACTING AGAINST RACISM

**BRIAN WYATT**



**Brian Wyatt, DTP Alumnus, at the UNPFII in New York in 2007.**  
Photo: © DTP

**Brian Wyatt, Chairman of the National Native Title Council, used a range of advocacy techniques to take a local issue to the international stage.**

Some years ago we had a situation in Kalgoorlie where local authorities were applying oppressive racist policies against Indigenous people, for example through use of 'move on laws' and confiscation of alcohol. All efforts locally and nationally at the domestic level were not achieving any acknowledgement that such issues were of major concern to Indigenous people. We had had enough and decided to take them on.

We decided to take action at the international level as part of the process of getting the State to recognise that it has a serious problem in addressing racism in this country. I saw this as an area where the UN could intervene to remedy human rights abuse and conflict with UN member States that perpetrated such abuses.

In 2001, the world was preparing to discuss how to combat racism at a major international conference in Durban, South Africa. We first took a local incident in Kalgoorlie Boulder to a national preparatory forum on racism in Canberra and then went on to Durban.

This followed a large media campaign to put the issue in the public eye to take the matter to a much more serious level to bring about change. We developed a media strategy and documented events and issues, to give the various forums information about the concerns and some ideas of addressing these concerns. This involved the wider Indigenous community and informing them through public and informal processes of what the issues were and where they were going to be raised. The international dimension raised the level of attention to our concerns in local media.

The result has been a major turn around by local authorities, in terms of policies, practices and structures. The Goldfields is now seen as an example for other areas in how to move forward. The City of Kalgoorlie Boulder has adopted a Reconciliation Plan with the assistance of the Australian Human Rights Commission and the Equal Opportunity Commission of WA. This means the issue now is that the wider community has the task of improving attitudes toward Indigenous people in Kalgoorlie Boulder. It's the same plan that has now expanded its role in looking at important matters such as Indigenous unemployment.

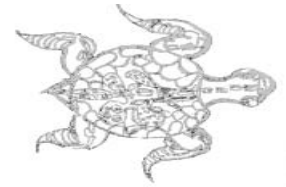
I am very supportive of using the international system to promote the interests of Indigenous Australians. However, we need to know how to work the system. There has to be good leadership from non-government organisations and a coordinated approach. It can't be done just by individuals. People trying to use the international system need to know what each forum is for and need to integrate their concerns into the appropriate treaty, covenant or working group. In addition, there are a lot of technical issues. You have to meet deadlines and ensure the appropriate bodies are addressing issues that are relevant.

Working at the international level is a specialist field, mainly because it takes time to develop a process for action. There is an overwhelming need to undergo long-term training and mentoring in diplomacy and international affairs and commitment to being involved. Your involvement must be long term as these processes do take time.

As a result of this international activity, my own personal development has expanded to include networking in the Indigenous Peoples Organisation and becoming more involved at the national level, which is sponsored through the Australian Human Rights Social Justice Commissioner. I have been selected on a number of occasions to represent the Pacific Caucus Region at international meetings relevant to Indigenous people. I have also been able to undertake human rights training through courses such as those run by the Diplomacy Training Program.



## 4.3 HUMAN RIGHTS AND WORKING WITH THE MEDIA



to run whatever you provide. Getting coverage in state or national media is more difficult, depending on the issue. And ensuring your story is told in the way you would like it to be told can be difficult as well. Working successfully with the media requires its own strategy, just as with other human rights advocacy.

### **Your media strategy**

You need to analyse your current situation with regard to media use, research the media possibilities, consider target audiences, clarify your objectives, choose possible actions and implement them, and monitor results.

What are the results of a SWOT analysis of your present media situation? What precisely are your objectives? Are you trying to reach out to your own community? Are you trying to bring about a change in government policy, or are you trying to build support in the wider community? Who is your target audience? Is it the general public or some specialised sector, such as lawyers? How does the available media relate to your objectives?

There are many possible media outlets, each with their own special features. There are Indigenous media, which include newspapers, radio and television. These outlets will be sympathetic to your concerns but do not have much outreach into the wider community. Then there are television and radio programs specialising in Indigenous issues on mainstream networks, mainly the ABC and SBS. In addition, mainstream print and electronic media often have journalists who have a specific responsibility for reporting on Indigenous issues. They are likely to be more interested and approachable than others. Beyond this, there are the general mainstream media which can be broadly divided into the capital city outlets and local media. International media can be useful in some situations; international coverage is difficult to achieve, but it can have an impact by embarrassing the Australian Government.

Television has significant impact, but competition for space is more intense. Also it can be difficult to ensure that the coverage turns out the way you would want or expect. Radio provides more opportunities as there are many more stations and talk programs, but unless you can get coverage on high-rating or influential programs your reach will be patchy. Local media, whether print or electronic, are more likely to run your story and to give you more space. Occasionally issues appearing in local media will get picked up by the capital city or national media.

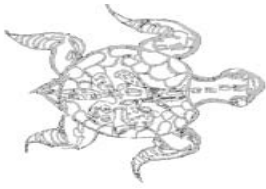
Building constructive relationships with journalists can be useful. This relationship may involve “off the record” discussions. Not only will this make it more likely that your story will be covered, but you can benefit from tips about story presentation and timing. The relationship can also be helpful for journalists who can get a deeper understanding of the issues. In turn, you will have a better-informed and more sympathetic contact in an influential position.

Your story may be about a problem that you would like fixed. In this situation, you may be looking for action from governments or others and your media activity will be intended to promote that action. In addition to media activity of this kind, it can be useful to have a “soft media” approach, in which you aim to build up a generally supportive attitude in the community. This could be done through “good news” stories, highlighting positive things you are doing. A strong human interest angle will make such stories more attractive. Local media are often interested in these stories and may be prepared to run them as a series, with a view to informing the local community about itself.

### **Working with the media**

You should have a clear and consistent message. You need to consider who can speak on behalf of your organisation, so that you don't create confusion. Your spokesperson should be clearly identified to the media and be accessible. You should have ready access to a computer so that you can produce and distribute media releases. Your spokesperson should be reliable in their dealings with the media and accurate with regard to the facts of the issues. Exaggeration and ranting will not be helpful.

It is important to understand how the media works. Journalists work under considerable pressures, especially time pressures.



Decisions have to be made as to whether or not to run a story; when to run it; the relative priority of competing stories; how much coverage to give; how much editing to do; which angles to run; whether one point of view needs to be balanced by a comment from someone with a different standpoint; what headline to use; whether photos should be used, and so on. The person making these decisions will probably not be the journalist you have been talking to. News programs have tight deadlines. If it is an old story it is unlikely to get a run. Your story needs to be up-to-the minute but it has to fit in with the media's deadlines. You have to understand the system as it is. If your story does not get as much coverage as you would like, look at how you can present your concerns more effectively in the future.

Media skills are important to any organisation. A large organisation may wish to employ people who have extensive journalistic training. But any staff member who is in a leadership role will benefit from basic media skills, such as writing media releases, doing telephone interviews or appearing on television. If they lack media skills, you should look at putting them through training courses.

### **The media release**

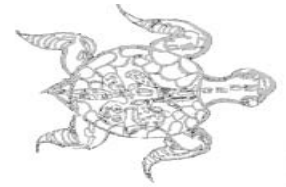
A media release is the basic way of getting your message out. Usually, it is sent as an attachment to an email. The media release is your opportunity to tell your story in the way you want it told. But to get it used in a way you will be happy with you need to do it right:

- the media release should be typed with your organisation's logo or heading, and include the contact details of your spokesperson and the date. Your spokesperson should be available to take any follow-up calls;
- your release should be no longer than two pages (one is usually sufficient) and use short and simple sentences and paragraphs. You have to catch the journalist's attention. The main point should be in the first paragraph, with an interesting first sentence and heading. The release should include quotes, attributed to your spokesperson;
- a human interest angle is usually helpful;
- good photos may add to the attraction of your story. It is better to have photos of people doing something rather than just smiling at the camera or sitting around a table.

### **The telephone interview**

Radio interviews are usually done over the phone. Also, print journalists may occasionally want to follow up your media release with some questions over the phone. Sometimes the interview will be recorded and edited, with the result that just a short 'sound bite' will be used. At other times the interview will go to air live. Some points you should keep in mind:

- agree with the journalist or the media organisation about a start time for the interview and how long it is likely to run;
- also agree on the broad subject and, if appropriate, indicate issues you don't want to talk about. Ask what will be the first question the journalist will ask;
- prepare for your interview. Make a written list of the main points you want to cover. Because it is a telephone interview you can have these points in front of you as you speak. However, do not read out a statement — this will not sound natural. Take some time to practise with your colleagues;
- make sure you are ready when the radio station calls. Take the call in a quiet place where you will not be disturbed. If it is live radio, switch off your radio while you are talking. If you need the radio on to record your interview, switch the speaker volume right down;
- be relaxed and natural in the interview, as if you are explaining your concerns to a friend. This will help you to convey a sense of sincerity and credibility;
- you are the one with the information, so maintain control of the interview. Make your main points first. Don't get side-tracked — make sure you keep the discussion focused on your key points;
- keep your answers clear and concise but speak in complete sentences so that if the interview is edited it still makes sense;



- introduce human interest angles. If the problem is having an adverse impact on individuals, explain how they are feeling;
- keep your cool. If the interviewer tries to stir you up with a hostile question or a negative comment, respond in a positive and informative way;
- don't be afraid to show some emotion, but don't lose control or let yourself sound unreasonable.

### **Television**

Many of the points above apply equally to television interviews. Once again, be prepared. Discuss your concerns with the journalist and find out what questions they intend to ask. With television, the visual image will probably have as much impact on the audience as what you say. Wear solid colours rather than distracting patterns. Don't wear sunglasses. Try to convey a relaxed, confident image. Speak naturally and look at the interviewer rather than the camera. The camera picks up everything you do, so don't fidget or react to questions with facial grimaces. If seated, sit upright on your chair rather than slumped.

If the television station is sending a crew to take footage on site, try to ensure that there are images available that back up your story and portray your community in a positive light.

### **Dealing with negative media**

Sometimes it may be media coverage that is the problem. Historically, the media has reported Aboriginal and Torres Strait Islander peoples in a negative and sensationalist way, often not bothering to try to understand the Indigenous point of view. Journalists are bound by a voluntary code of ethics that should result in balanced reporting that addresses all essential facts and does not promote racist images (though with some exemption in relation to the latter). If you believe that these standards are not being met in a particular case or with respect to a particular media organisation, there are mechanisms available to seek justice. The best approach is to try to resolve the issue by contacting the media outlet concerned in writing. If this does not work you can take your concerns to the Australian Broadcasting Association, the Australian Press Council or the Australian Human Rights Commission.

So far we have been looking at ways of dealing with problems that are essentially adversarial, that is, the problems involve a conflict between two or more parties, where the solution is seen as coming out of pressure or litigation, rather than mutual agreement. Actions such as demonstrations, strikes, court action, and taking complaints to tribunals can be seen as examples of these more adversarial approaches to problem solving. However, there is a range of cooperative approaches which are broadly known as alternative dispute resolution mechanisms or methods of conflict resolution. The chart opposite shows the various options appearing on a line from more cooperative to more assertive approaches.

### **Many advantages – but it isn't easy**

There are many advantages in trying to resolve problems through alternative dispute resolution mechanisms rather than the

## ATTENDING INTERNATIONAL MEETINGS

**Sandra Creamer**



**Sandra Creamer, DTP Alumna. Photo: © DTP**

**Sandra Creamer, law student at Deakin University, on her experience attending international meetings on Indigenous issues.**

Before I actually went to international human rights meetings I had the idea that the UN should be the answer to all Indigenous peoples' problems — it was the last resort, but the most powerful, and that it was the strongest for human rights. I've been to two Indigenous Permanent Forums in New York and have seen the way things work. I am still very positive about the UN but I found that things were not as straightforward as I used to think.

I went there to learn about the rights of Indigenous people, particularly with regard to land, welfare and health and how the law applies for Indigenous people. It has been a great learning experience and I feel I now understand the law better. I have also had the opportunity to listen to many people's journeys — the stories of people from all over the world facing similar problems and issues. I have built up a good network of contacts with Indigenous women from other parts of the world.

The UN provides Indigenous people with the opportunity to take united action. You can network about your concerns and make intervention statements to the meetings. But if you are going to the UN, you need to do a lot of research and prepare well. I saw that the UN system could work — including through recommendations being made. I also recognised that sometimes we have to use the laws in our own country. The two efforts can go hand in hand.

It takes time to bring about change but change can come: The Mabo case is a good example of how international law changed things in Australia for the good. The Mabo case also used the common law here in Australia and was the beginning of a journey in regards to the recognition of land in Australia.

Studying law has given me more of an understanding of how to use both laws, and how to apply both together. The UN, though is a mediator. They do work towards getting everyone on an equal footing and up to a standard that is equitable for everyone.



**Sandra Creamer outside the UN in New York with the delegation from National Aboriginal Community Controlled Health Organisation (NACCHO), 21 May 2008. From left: Sandra Creamer, Yvonne Buza, Dea Delaney Thiele (Chief Executive Officer) and Lyn Mundine. Photo: © DTP**

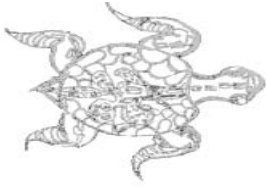


Dr Sarah Pritchard applying the Declaration on the Rights of Indigenous Peoples in practice with the DTP participants during the Oxfam Australia follow-up program, Sydney, April 2008. From left: Dr Sarah Pritchard, Robert Blackley, Grant Paulson, Tania McLeod, Zanniece Bickey and Frankie Clive. Photo: © DTP

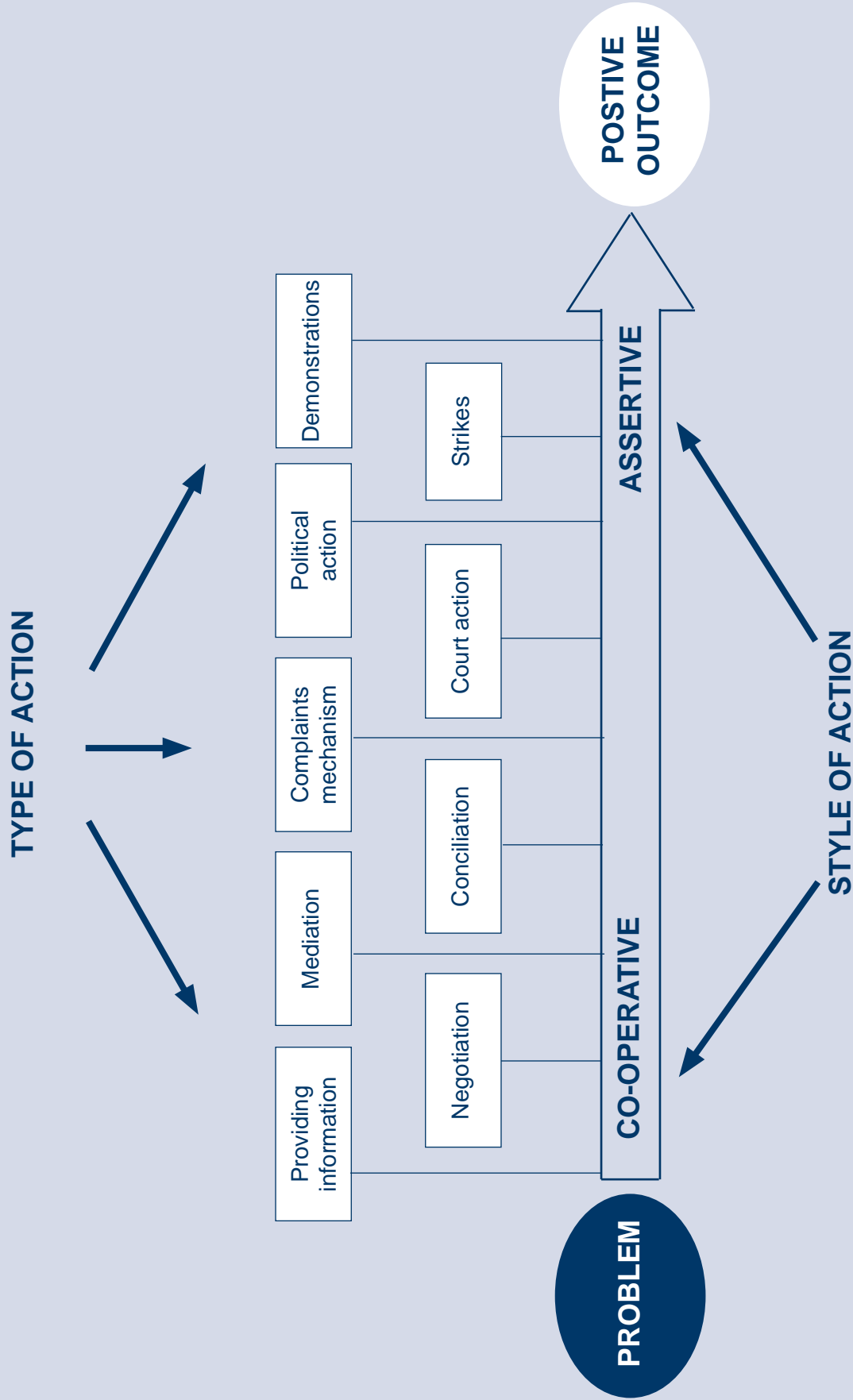
## Other approaches to achieving your objectives

### 5.1 Alternative dispute resolution

### 5.2 Building community alliances

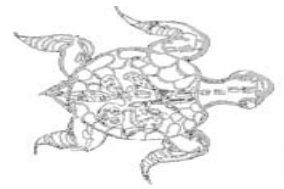


# WAYS OF WORKING FOR CHANGE – THE CONFLICT RESOLUTION CONTINUUM



Different types of action that can be taken to try to produce change, with the more cooperative options at the left side of the scale. These are more often effective, though they can be harder to do well. It is possible to pursue more than one type of action at the one time, though not if the options are incompatible.

## 5.1 ALTERNATIVE DISPUTE RESOLUTION



more adversarial approaches. Alternative dispute resolution is:

- generally cheaper;
- faster;
- more predictable;
- more likely to produce a satisfying outcome for all parties; and
- better for maintaining good relationships among the parties (which is important for neighbours, in the workplace and in communities).

Given this, it is somewhat surprising that alternative dispute resolution (ADR) is not more widely used. The reason may be that doing it can be quite difficult for the people involved. It involves bringing parties together who may have been in bitter dispute. For them to sit down and try together to develop a mutually satisfactory outcome is not easy, compared, for example, with leaving an issue in the hands of lawyers.

### ***Principled negotiation to win-win***

The most common approach to conflict resolution is often called principled negotiation. This approach is cooperative in nature rather than competitive. It seeks to produce win-win outcomes, that is, to satisfy, to a greater or lesser extent, the interests of all parties to the conflict. This approach:

- focuses on the problem rather than the people involved in the problem;
- seeks to find solutions through identifying the needs and interests of the parties rather than asserting positions — often there will be common ground that had been hidden;
- seeks to generate many possible options for solution; and
- relies on objective standards wherever possible.

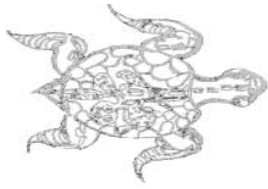
Principled negotiation is a voluntary process. It may be done through direct contacts between parties to the conflict or through third-party mediation. The basic approach is applicable to all kinds of conflicts, whether large or small, local or international, complex or relatively simple. If, for whatever reason, this voluntary approach does not produce results, it is often necessary to deal with conflicts through approaches which have a compulsory outcome, such as going to court.

### ***Used by the Australian Human Rights Commission (AHRC)***

An example of ADR is the process used by the AHRC to deal with complaints alleging discrimination. When the AHRC receives a complaint, it generally investigates the complaint and then tries to resolve it through conciliation. This involves discussing the complaint with the person making the complaint and the person alleged to have done the discriminating, with the aim of resolving the complaint in a way both parties are satisfied with. This negotiation can be done by telephone or through an exchange of letters, emails and phone calls, or may involve a face-to-face meeting facilitated by an AHRC conciliator. If the matter cannot be resolved informally it is open to the party making the complaint to take the matter to the Federal Magistrates Court or Federal Court to hear and determine the matter. It is notable, however, that the vast majority of cases are resolved through this ADR process.

### ***Negotiation***

Many issues that involve inappropriate or discriminatory treatment may be able to be addressed at a local level before attempting to deal with them through a more conflictive process such as making a complaint or taking court action. Effective ADR processes are the key to producing successful results. The simplest such process is negotiation, which can be defined as an interaction in which people try to meet their needs or accomplish their goals by reaching an agreement with others who are



trying to get their own needs met. A good method of negotiation should produce a wise agreement if possible, be efficient and not damage the relationship between parties.

We are all negotiators; we negotiate everyday in our families, at work, at school or university, in making business arrangements, and in buying and selling. However, sometimes when we label an activity as “negotiation” we become uncertain or confused. People think there must be winners and losers. In particular, they think that they stand to lose something or will have to give up power. They may also feel that negotiation is a complex task for which they are not trained or that they have to take a tough stance on an issue even though they do not want to.

### **Mediation**

People are often emotionally involved in the problem and find it difficult to avoid getting into arguments with the other parties to the dispute. For this reason, it can be useful to move on to the next level of ADR, which is *mediation*. This is similar to negotiation, except that the process (but not the content or outcome) is controlled by a third party, the mediator. Mediators are trained to manage the resolution of disputes and can help to overcome the problems caused by heated emotions and lack of knowledge of how to negotiate. Mediation is a process widely used to deal with disputes in the workplace and the community which otherwise might fester into stressful and costly conflicts.

You may find that problems can be dealt with more effectively by ADR mechanisms than by more conflictive methods such as court action. Professional mediators are available to assist in the resolution of such disputes. It may also be useful if someone in your organisation has basic training in ADR. This will assist in negotiating solutions to problems you have to deal with as well as resolving problems within your organisation.

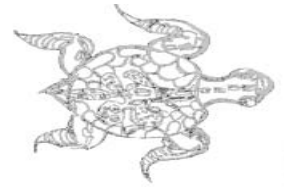
### **You don't have to be on your own**

Human rights work can be tough. Whether you are an individual person or an individual organisation, it can seem as though few people understand or care and that mechanisms for resolving problems are distant and difficult. Difficult though it may be, the work is necessary and worthwhile. One way to lighten the load is by building alliances with other people and organisations in the community. Such people and organisations can assist you with helpers, supporters and expertise. There are many people and organisations in the wider community who stand ready to help Indigenous organisations achieve justice. They may only be held back by not knowing who to contact, not knowing what they can do or by being reluctant to take the initiative.

Community alliances can be on a short-term basis, over a specific issue, or a long-term relationship. Sometimes they are both. The long struggle for recognition and respect for Indigenous rights in Australia has always involved reaching out for broader



## 5.2 BUILDING COMMUNITY ALLIANCES



community support and seeking allies. The 1967 Referendum Campaign that is seen as one landmark in this struggle brought a wide coalition together to win overwhelming public support to end discriminatory policies. Many non-Indigenous Australians recognise that they have a responsibility to address the human rights abuses experienced by Indigenous Australians, and recognise that Australia must acknowledge the truth of past abuses and the rights of Aboriginal and Torres Strait Islander peoples.

In the 1990s, the government supported the establishment of the Council for Aboriginal Reconciliation which, in turn, supported the formation of local community groups dedicated to promoting reconciliation based on acknowledgement of Indigenous rights, and the abuse of those rights. For example, Australians for Native Title and Reconciliation (ANTaR) was formed to campaign for Indigenous rights, bringing thousands of people together and establishing local groups to take action. One outcome of this alliance building was the march across Sydney Harbour Bridge by hundreds of thousands of Australians in support of reconciliation. Clearly, community alliance building can have a major impact.

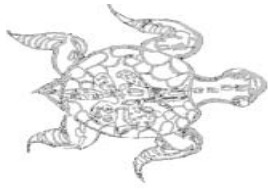
Indigenous communities and organisations have often worked in effective alliances with environmental organisations out of a shared interest in protection and sense of custodianship in relation to the land. But there have also been occasions when perspectives and interests have differed. Sometimes environmental organisations can give priority to their understanding of environmental protection over recognition of the rights of Indigenous peoples.

Building alliances can be time consuming and can raise issues of decision-making and control that need to be considered. Effective alliances require the building of personal and organisational relationships. Consideration needs to be given to these issues at the beginning of building any alliance. It is important to have transparent decision-making processes, to identify decisions that should be made jointly (by consensus) and have processes for managing differences when they arise. Trust can take a long time to build, but can be quickly destroyed and hard, if not impossible, to rebuild.

### ***Who should you reach out to?***

When looking at building alliances you need to consider which organisations might be prepared to offer support and that are relevant to your concerns. This is not to say that partnerships could not develop with organisations that have no particular focus on Indigenous issues but that wish to get involved out of a sense of goodwill. But in the first instance, it makes sense to approach organisations that may share interests with yours such as:

- human rights organisations;
- sporting organisations;
- religious groups;



- environmental groups;
- organisations representing lawyers;
- organisations representing medical workers;
- trade unions; and
- private companies or business organisations.

### **Areas of cooperation**

In many cases it will be up to you to take the initiative to approach the organisation (if you already know someone there it may be possible to ask for their informal advice without having to take any formal action). You need to:

- have a clear idea of what you want them to do — it needs to be within their capacity and resources for them to agree;
- provide enough information about your concerns and issues so that they can make a decision; and
- if you are asking the organisation to take action in support of your campaign/advocacy, make it as easy as possible for them to take that action — for example, they have the name and address of the person they are being asked to write to, some points for the letters, and necessary background information.

The range of actions that these organisations could take could include writing to or meeting with government leaders or officials, participating in events, providing space for an event, speaking to the media, providing training, helping you to prepare complaints to treaty bodies or domestic mechanisms and gathering factual data for legal or media purposes. These organisations would probably want to get something out of the partnership for their own members. This could range from deriving satisfaction out of participating in a worthwhile struggle for justice to learning more about Indigenous Australia. Depending on your priorities, it may be appropriate to become involved in the activities and programs of the organisation.

In some situations, you may be approached by organisations to work with them. Many organisations seek Indigenous input into their processes to provide an Indigenous perspective or to validate them in some way. If you receive such an approach try to respond positively. The relationships that develop may be satisfying and could be beneficial at a later stage when you might be looking to build alliances on an issue of concern to you.

- Australian Human Rights Commission (AHRC) and state/territory anti-discrimination boards
- Commonwealth and state/territory ombudsmen
- Complaints mechanisms dealing with police, health, education, housing media, consumer affairs, media, employment issues
- Office of the High Commissioner for Human Rights (OHCHR), special rapporteurs, permanent forum, expert mechanism
- Federal and state/territory ministers for Aboriginal and Torres Strait Islander affairs
- Government agencies — Department of Foreign Affairs and Trade (DFAT), Attorney-General's Department (AGs), Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)
- Indigenous non-government organisations

# PART SIX



Photo: © Matthew Syres

## Further information

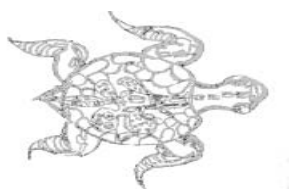
**6.1 Where to get further information**

**6.2 Abbreviations**

**6.3 Glossary of key words and ideas**

**6.4 Further reading**

**6.5 Index**



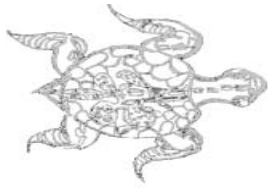
## 6.1 WHERE TO GET FURTHER INFORMATION

- Major mainstream human rights non-government organisations and others dealing with issues of concern to Indigenous Australians
- Relevant international non-government organisations with an interest in Indigenous issues
- You can obtain the information on the CD with this guide or on the website [www.dtp.unsw.edu.au](http://www.dtp.unsw.edu.au)

## 6.2 ABBREVIATIONS

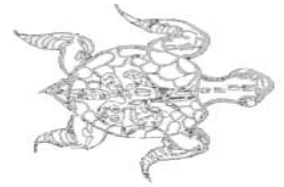


AD Boards	Anti-discrimination boards
ADR	Alternative dispute resolution
AGs	Attorney General's Department
AHRC	Australian Human Rights Commission (formerly known as the Human Rights and Equal Opportunity Commission — HREOC)
ATSIC	Aboriginal and Torres Strait Islander Commission
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CPD	Convention on the Rights of Persons with Disabilities
CHR	UN Commission on Human Rights (no longer operating)
CRC	Convention on the Rights of the Child
CROC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DECLIP	United Nations Declaration on the Rights of Indigenous Peoples
DEFAT	Department of Foreign Affairs and Trade
ECOSOC	Economic and Social Council (of the UN)
EMRIP	Expert Mechanism on the Rights of Indigenous Peoples
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FAIRA	Foundation for Aboriginal and Islander Research Action
HRC	Human Rights Council (the UN's major human rights body)
HRC	Human Rights Committee (supervising body for the ICCPR)
HREOC	Human Rights and Equal Opportunity Commission (now called AHRC)
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRPD	Convention on the Rights of Persons with Disabilities
ILO	International Labour Organization
ILO 169	Convention No. 169 of the International Labour Organization
IPO	Indigenous Peoples Organisation
ISHR	International Service for Human Rights
OHCHR	Office of the UN High Commissioner for Human Rights
PFII	United Nations Permanent Forum on Indigenous Issues
RDA	Racial Discrimination Act 1975 (Cwth)
SRA	Shared responsibility agreement
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCED	UN Conference on Environment and Development, Rio de Janeiro, 1992
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNPFII	United Nations Permanent Forum on Indigenous Issues
WGIP	Working Group on Indigenous Populations (no longer operating)
WHO	World Health Organization

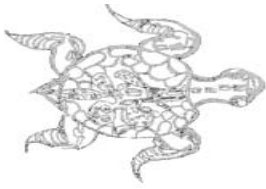


## 6.3 GLOSSARY OF KEY WORDS AND IDEAS

Accession	A process whereby a country becomes a party to a treaty.
Admissibility	If a complaint meets the conditions for it to be considered by a UN or treaty body it is said to be admissible.
Adoption	The step whereby a resolution or legal instrument is approved by the United Nations.
Alternative dispute resolution	A way of resolving conflicts by negotiating among the parties with a view to reaching a mutually satisfactory outcome.
Civil rights	Rights to freedom, equality and protection of the law.
Common law	Law that has developed over many years as a result of cumulative court decisions and custom.
Consensus	Agreement among all parties to a decision.
Convention	See <b>treaty</b> .
Covenant	A more solemn word for treaty.
Declaration	In the UN, a solemn statement by the countries of the world. A declaration has moral force but not binding legal force.
Drafting	The process whereby governments, with some participation from non-government organisations, prepare documents which set out human rights standards.
Economic and Social Council	A high level UN body. It supervises the Permanent Forum on Indigenous Issues and the Commission on the Status of Women. It reports to the General Assembly. Its role is more administrative than concerned with policy.
Economic, social and cultural rights	Rights concerned with standards of living – housing, education, health etc. They contribute to the sense of human dignity.
Exhaustion of domestic remedies	The requirement to have taken a case to the highest possible level in the courts of a particular country before being able to take it to the United Nations.
Federal system of government	A system of government such as we have in Australia where power is constitutionally divided between central and state governments. The Australian Government is often called the Commonwealth Government.
Incorporation into domestic legislation	The process whereby the provisions of a treaty to which a country has agreed at the international level are written into the law of that country.
International law	The law which governs relationships between countries. In the area of human rights it can extend to the way in which countries treat individuals.
Legal right	A right that is written into law and which can be the subject of court action.



Legally binding	Having the force of law. At the international level, however, the mechanisms for enforcement are not strong.
Member	In the UN and its constituent bodies, a member of a body has the right to vote and to decide on what work the body will do. In most cases it is governments that are the members.
Observe provisions of a treaty	Where a government does what a treaty says it should do.
Observer	Observers can participate in a body by speaking and following proceedings, but do not have a vote. Non-government organisations almost always only have observer status.
Office of the High Commissioner for Human Rights	The department of the United Nations bureaucracy that deals with human rights issues. It is based in Geneva.
Party to a treaty	A country is a party to a treaty if it has agreed to be legally bound by what the treaty says. Other words for becoming party to a treaty are ratification and accession.
Political rights	Rights to take part in the political process.
Protocol	A legal instrument that is an 'add-on' to a treaty. A protocol is legally binding on countries that accept it.
Ratification	A process whereby a country becomes party to a treaty.
Security Council	One of the highest level bodies of the UN. It deals with peace and security issues and rarely gets involved in human rights matters.
Sovereignty	The doctrine by which a country has exclusive authority over what happens within its borders.
Special Rapporteur	A person appointed by a UN body to inquire into a problem and to report on it.
Treaty	A legally binding international agreement between governments.
Treaty body	A committee set up by a treaty to monitor and supervise the implementation and observance of the treaty.
UN Charter	The international treaty that set up the United Nations.
UN General Assembly	The highest body of the UN. All UN member countries are members of the General Assembly. Non-government organisations are not able to participate at this level.
Universality	The principle that human rights applies to all people, regardless of their country, culture, race, language or religion.



## 6.4 FURTHER READING

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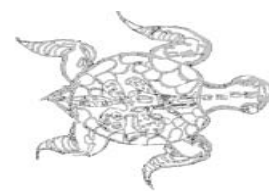
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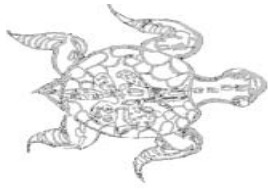
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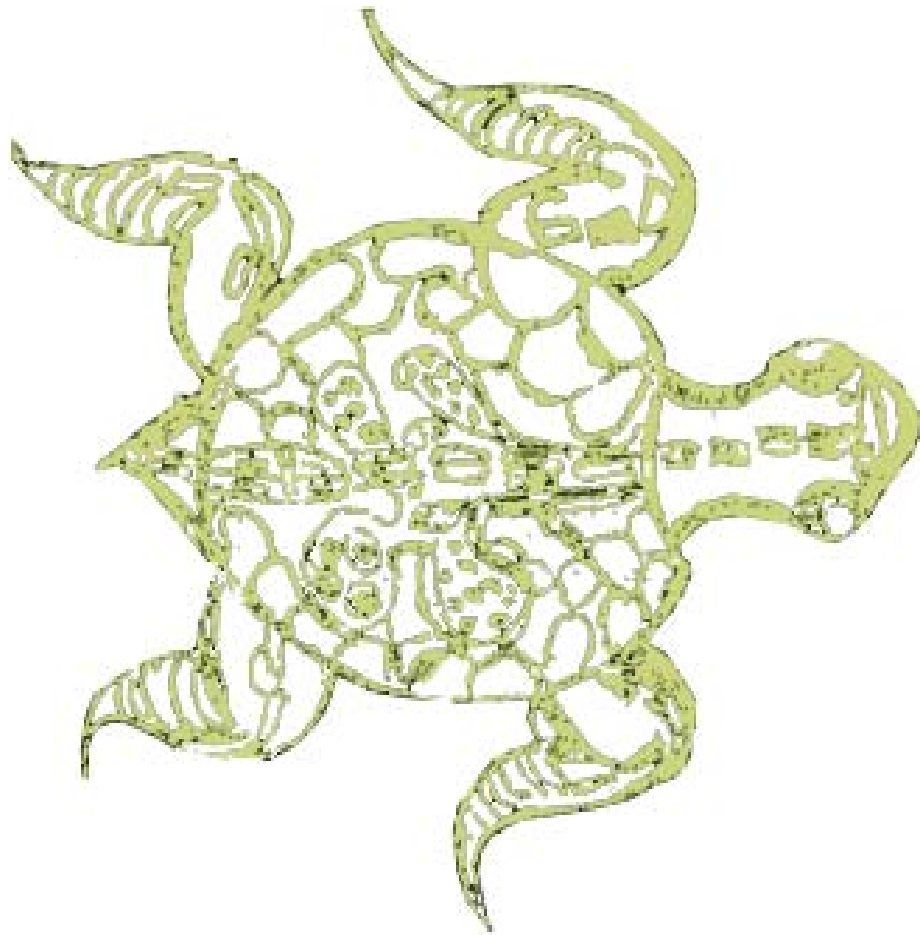




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We would like to thank artist Shirley Stroud for permission to reproduce her Indigenous motif "Ancient Knowledge" (copyright Shirley Stroud 2008) throughout this publication. Of the image, Shirley says: "I would never kill and eat turtle because they are old time people. They take a long time to get to their age to be snuffed out. I identify with the turtle because of their wisdom".

# United Nations Declaration on the Rights of Indigenous Peoples

**Article 1: Human Rights** - Indigenous peoples, as groups and as individuals, have the right to enjoy all the human rights and freedoms recognised in international law.

**Article 2: Equality** - Indigenous peoples are equal to all other peoples, and must be free from discrimination.

**Article 3: Self-determination** - Indigenous peoples have the right to self-determination. This means they can choose their political status and develop as they want.

**Article 4: Autonomy** - As a form of self-determination, indigenous peoples have the right to autonomy or self-government in relation to their own affairs.

**Article 5: Distinct Institutions** - Indigenous peoples have the right to keep and develop their distinct institutions. They also have the right, if they want, to take part in the life of the rest of the country.

**Article 6: Nationality** - Every indigenous person has the right to be a citizen of a country.

**Article 7: Existence** - Indigenous peoples have the right to live in freedom, peace and security. They must be free from genocide and other acts of violence, including the removal of their children by force.

**Article 8: Cultural Integrity** - Indigenous peoples shall be free from forced assimilation. Governments shall prevent:  
a) actions which take away their distinct cultures and identities;  
b) the taking of their land and resources;  
c) their removal from their land;  
d) any form of forced assimilation;  
e) propaganda against them.

**Article 9: Communities and Nations** - Indigenous peoples have the right to belong to indigenous communities and nations, in accordance with their traditions and customs.

**Article 10: Removal and Relocations** - Indigenous peoples shall not be removed from their land and by force. They shall not be relocated without their agreement. Where they agree, they should be provided compensation, and, where possible, have the possibility to return.

**Article 11: Culture** - Indigenous peoples have the right to their cultural traditions and customs. This includes aspects of their culture such as sacred sites, designs, ceremonies, technologies and performances. Their cultural property shall be returned to them, if it was taken without their consent.

**Article 12: Spiritual and Religious Traditions** - Indigenous peoples have the right to their spiritual and religious traditions, customs and ceremonies. They have the right to their sacred sites, ceremonial objects and the remains of their ancestors. Governments shall assist indigenous peoples to recover their ceremonial objects and the remains of their ancestors.

**Article 13: Language** - Indigenous peoples have the right to their histories, languages, oral traditions, stories, writings and their own names for places and people. Governments shall ensure that in courts and other proceedings, indigenous peoples can understand and be understood through interpreters and other appropriate ways.

**Article 14: Education** - Indigenous peoples have the right to their own schools and to provide education in their own languages. Indigenous people, especially children, have the right to the same education as all people. Governments shall assist indigenous people, especially children, who do not live in indigenous communities to learn their own culture and language.

**Article 15: Information** - Education and public information shall reflect the dignity and diversity of indigenous cultures, traditions and aspirations. In consultation with indigenous peoples, governments shall take measures to promote tolerance and good relations between indigenous and other peoples.

**Article 16: Media** - Indigenous peoples have the right to their own media in their own languages. They shall also have equal access to non-indigenous media. Government-owned media must reflect indigenous cultures.

**Article 17: Employment** - Indigenous peoples have rights under international and national labour laws. In consultation with indigenous peoples, governments shall take measures to protect indigenous children from exploitation and harmful work. Indigenous peoples must not be discriminated against in matters connected with employment.

**Article 18: Decision-Making** - Indigenous peoples have the right to participate in decisions that affect them. They can choose their own representatives and use their own decision-making procedures.

**Article 19: Consent** - Governments shall consult with indigenous peoples in order to obtain their consent before adopting laws and policies which may affect them.

**Article 20: Economic Activities** - Indigenous peoples have the right to their own political, economic and social systems and to pursue their traditional and other economic activities. Where indigenous peoples have been deprived of their means of subsistence, they are entitled to compensation.

**Article 21: Special Measures** - Indigenous peoples have the right to improved economic and social conditions. This includes in the areas of education, employment, housing, health and social security. Governments shall adopt special measures to ensure the improvement of economic and social conditions.

**Article 22: Elders, Women, Youth, Children and Persons with Disabilities** - Particular attention shall be paid to the rights and needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration. Governments shall adopt measures, in conjunction with indigenous peoples, to protect indigenous women and children against violence and discrimination.

**Article 23: Economic and Social Development** - Indigenous peoples have the right to determine priorities and strategies for their development. They should be involved in determining health, housing and other economic and social programs and as far as possible, administer these programs through their own organisations.

**Article 24: Health** - Indigenous peoples have the right to their traditional medicines and health practices. The plants, animals and minerals used in medicines shall be protected. Indigenous peoples shall have access to all social and health services without discrimination. Indigenous individuals have an equal right to the highest attainable standard of physical and mental health.

**Article 25: Lands, Waters and Resources: Distinctive Relationship** - Indigenous peoples have the right to keep and strengthen their distinctive relationship with their lands, waters and other resources.

**Article 26: Ownership** - Indigenous peoples have the right to own, use and control their lands, waters and other resources. Governments shall recognise and protect these lands, waters and resources.

**Article 27: Independent Process** - Governments shall establish a fair and independent process to recognise and decide the rights of indigenous peoples relating to their lands, waters and resources. Indigenous peoples shall have the right to participate in this process.

**Article 28: Restitution** - Indigenous peoples have the right to the return of their land and resources taken without their consent. Where this is not possible, they shall receive fair compensation in the form of lands and resources, or money.

**Article 29: Environment** - Indigenous peoples shall receive assistance in order to restore and protect the environment of their land and resources. Hazardous material shall not be stored or disposed of on the land of indigenous peoples without their consent. Governments shall take measures to assist indigenous peoples whose health has been affected by such material.

**Article 30: Military Activities** - There shall be no military activities on the land of indigenous peoples, unless justified by a public interest or agreed by the indigenous people.

**Article 31: Cultural and Intellectual Property** - Indigenous peoples have the right to control and develop their cultural heritage, traditional knowledge and sciences and technologies, including seeds, medicines, knowledge of flora and fauna, oral traditions, designs, art and performances. Governments shall take measures to recognise and protect these rights.

**Article 32: Resource Development** - Indigenous peoples have the right to determine strategies for the development of their lands and resources. Governments shall consult in order to obtain the consent of indigenous peoples before giving approval to activities affecting their lands or resources, particularly the development of mineral, water and other resources. Just compensation must be paid for such activities, and measures taken to lessen their adverse impact.

**Article 33: Indigenous Citizenship** - Indigenous peoples have the right to determine who are their members. They have the right to decide upon the structures and membership of their organisations.

**Article 34: Indigenous Laws and Customs** - Indigenous peoples have the right to their own legal systems and customs, as long as they accord with international human rights law.

**Article 35: Responsibilities** - Indigenous peoples can decide the responsibilities of individuals to their communities.

**Article 36: Borders** - Indigenous peoples separated by international borders have the right to maintain relations and undertake activities with one another.

**Article 37: Treaties and Agreements** - Governments shall respect treaties and agreements entered into with indigenous peoples.

**Article 38: National Measures** - In consultation with indigenous peoples, governments shall take measures to give effect to this Declaration.

**Article 39: Assistance from Governments and International Organisations** - Indigenous peoples have the right to financial and other assistance from governments and international organisations in order to enjoy the rights recognised in this Declaration.

**Article 40: Disputes** - Indigenous peoples have the right to fair procedures for the resolution of disputes with States and other parties, and to effective remedies for infringements of their rights. These procedures must take account of indigenous customs and traditions.

**Article 41: Assistance from the United Nations** - The United Nations and other international organisations shall provide financial and other assistance in order to give effect to the rights recognised in this Declaration.

**Article 42: Special United Nations Bodies** - The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, shall promote respect for this Declaration.

**Article 43: Minimum Standards** - This Declaration contains only minimum standards for indigenous peoples.

**Article 44: Men and Women** - The rights recognised in this Declaration apply equally to indigenous men and women.

**Article 45: Other Indigenous Rights** - Nothing in this Declaration affects other rights indigenous peoples presently hold or may get in the future.

**Article 46: United Nations Charter** - Nothing in this Declaration allows any action against the Charter of the United Nations or which harms the territorial integrity of independent countries.

## Useful Websites

- **United Nations Permanent Forum on Indigenous Peoples:** [www.un.org/esa/socdev/unpfii/](http://www.un.org/esa/socdev/unpfii/)
- **Office of the High Commissioner of Human Rights:** [www.ohchr.org/](http://www.ohchr.org/)
- **United Nations Voluntary Fund for Indigenous Populations:** [www.unhcr.org/refugees/refund/2029/index.html](http://www.unhcr.org/refugees/refund/2029/index.html)
- **Human Rights and Equal Opportunities Commission:** [www.hreoc.gov.au](http://www.hreoc.gov.au)
- **Diplomacy Training Program:** [www.dtp.unsw.edu.au](http://www.dtp.unsw.edu.au)
- **Oxiam Australia:** [www.oxiam.org.au](http://www.oxiam.org.au)

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