
COMMUNITY CONTROL AND THE WORK OF THE NATIONAL ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION:

PUTTING MEAT ON THE BONES OF THE *UNDRIP*

by Megan Davis

Too often, when it comes to international law and human rights norms, some Indigenous leaders adopt an evangelical approach to their use. Yet our community remains—rightly so—cautious and at times sceptical of such an approach. Of course the irony of this is that the right to self-determination in international law has been the modern day anchor for Aboriginal aspirations to self-determination and international law such as the *Racial Discrimination Act 1975* (Cth) ('*RDA*')—the domestic expression of the *International Convention on the Elimination of All Forms of Racial Discrimination*¹—has been more critical to the realisation of Indigenous peoples rights than much else conceived of by the Australian state; the *Mabo* litigation² being sustained by its very enactment.³ One of the reasons for such scepticism toward international law is its complexity and the indeterminate nature of its reception by the Australian legal system. Indeed the requirement that an international convention be translated into domestic law through legislation, statutory interpretation and the uncertainty surrounding when and how such norms could be interpreted by the judiciary and the indeterminate nature of customary international law all contribute to the anxiety surrounding the non-binding status of the *United Nations Declaration on the Rights of Indigenous Peoples* ('*UNDRIP*');⁴ a status which confounds many. Of course, the binding/non-binding legal debate is a distraction and obfuscates other uses of the *UNDRIP*.⁵ This paper examines one such use through the work of the National Aboriginal Community Controlled Health Organisation ('*NACCHO*').

During my time with the United Nations ('*UN*'), *NACCHO* has made a very real difference to the health mandate of the United Nations Permanent Forum on Indigenous Issues ('*UNPFII*'), in terms of the rigour that their interventions on matters of health has made but especially in their advocacy for community control. The implementation of the *UNDRIP* through *NACCHO*'s work—self-determination through the right to health—is germane to this paper. In particular, through the work of the *UNPFII*, we have been advocating the Aboriginal community control model of health as best practice

in regard to the implementation of the right of self-determination as enshrined in the *UNDRIP*. *NACCHO*'s contribution to the work of the *UN* and to other *UN* member states in terms of the model of community control is also important as we consider the two most significant issues for Indigenous advocacy in the *UN* currently: the *UN* World Conference on Indigenous Peoples in 2014 and more importantly the post-2015 development agenda.

THE RIGHT TO SELF-DETERMINATION

At the outset I indicated that it is not effective in communities—as human rights lawyers tend to do—to spout off abstract human rights in succession as if they were self-evident and pre-ordained and demand that the state implement them. After all, the implementation of abstract human rights norms is the great challenge of the international human rights system. The *UN*, *UN* member states, human rights lawyers and scholars are all confronted with the question of how we better implement human rights: does the carrot and stick approach of the *UN* treaty system work? Currently at the *UN* there is a treaty reform process, Security Council reform process and Economic and Social Council reform process.

Therefore it is necessary in conversations about the *UNDRIP* to turn our minds to what we can do, as Aboriginal and Torres Strait Islander communities, to implement the *UNDRIP*; then work in partnership with the state (the state as a 'junior partner')⁶ to meet those aspirations. That is what self-determination is about, after all. The *UNDRIP* is a framework containing minimum standards for states to achieve in the realisation of Indigenous peoples rights. The overarching norm of the *UNDRIP* is Article 3: the right to self-determination. It is from the right to self-determination that the corpus of Indigenous rights can be realised. It is important that we take the lead—not the state—in putting the meat on the bones of the *UNDRIP* in a way that gives texture and nuance and meaning to the rights contained therein. As Aboriginal and Torres Strait Islander peoples, we cannot remain passive in the role of rights beneficiaries and

maintain an unproductive and historically adversarial relationship with the state. There is much work to be done in realising the *UNDRIP* and it is not enough to recognise it in our governance structures or constitutions. When I reflect on the work of NACCHO and Aboriginal Community Health Controlled Services, it is very clear to me that they are leading the way in our community, in translating what the *UNDRIP* means in practice through community control.

It is generally regarded as the 1970s where Indigenous peoples began to turn to international law as a consequence of, among many things, the lack of recognition for Indigenous peoples rights.⁷ Self-determination—the right to determine one’s economic, social and cultural and political destinies—appealed to Indigenous peoples as anchoring their internal struggles within the state. This was because almost universally, Indigenous peoples had been institutionalised to the extent that every aspect of their lives was controlled by the state. The right to self-determination came to represent the fundamental principle underpinning Indigenous peoples’ aspirations. And given Australia’s Aboriginal history—the Protection era, for example,—where draconian controls were placed on Aboriginal people’s right to speak language, right to marriage, freedom of movement, freedom of speech and association, right to hold property and right to participate in political choices that govern one’s life; it would be ahistorical to pillory or admonish the allegiance of the Aboriginal political domain to human rights.⁸ And so it was that the idea that Indigenous peoples should have some control over the decisions that are made about their lives took hold in Indigenous political advocacy: to enable individuals and groups to make meaningful choices about their lives. The right to self-determination as expressed in Article 3 of the *UNDRIP* is now an accepted norm in international law.

Of course in Australia we experience transitory and impermanent Indigenous policies driven by the democratic cycle which invites new waves or trends in Indigenous policy (ie ‘new engagement’, ‘new relationship’ etc) that emerge and subside, oblivious to the fact that right to self-determination, community control and local decision-making IS what communities actually aspire to. One obstacle to an effective policy of self-determination is that ‘self-determination’ has been eviscerated from the lexicon of Australian politicians, policy makers and political commentators.⁹ As I argued in the Naram Oration, ‘Self-determination has been inelegantly and somewhat inaccurately dismissed as a ‘failed experiment’ and antithetical to Aboriginal

economic development’.¹⁰ Yet in spite of the near-ridicule attached to it by the political class in Australia, the right to self-determination remains fundamental to the aspirations of Aboriginal communities. It is useful to note from international experience that most UN member states with Indigenous peoples especially the United States, Canada and New Zealand adopt ‘self-determination’ in their work and partnerships with Indigenous people. The approach is neither evangelical nor obsequious but rather practical: the right to self-determination aligns with the aspirations of Indigenous communities and good government recognises this.

COMMUNITY CONTROL

Still, the right to self-determination is not prescriptive enough; it has lacked specificity because it is both an abstract human right and also primarily employed as a political tool.¹¹ This has meant that less time has been given to determining what the content of self-determination may mean to Aboriginal people in their daily lives. Many say, as I have in the past, the *UNDRIP* tells us what self-determination is or the whole Declaration is self-determination: but in practice, what does that actually mean? What does the right to self-determination look like in practice in Australian communities? It looks a lot like ‘community control’. It is apparent when we look to the Aboriginal community controlled health services sector, we can see that for decades and decades they have been leading the way already in the realisation of the most fundamental aspect of the right to self-determination: making decisions about one’s health. Community control is intuitive to communities.

NACCHO has already established a path forward in how the *UNDRIP* should be implemented. One definition of community control is, ‘Community control is the local community having control of issues that directly affect their community’.¹² According to the National Aboriginal Health Strategy: implicit in this definition is the clear statement that Aboriginal people must determine and control the pace, shape, and manner of change and decision making at local, regional, state and national levels.¹³ This means that there must be locally driven decision making so that there is Indigenous empowerment. If one looks to criteria NACCHO membership:

1. initiated by a local Aboriginal community;
2. based in a local Aboriginal community;
3. governed by an Aboriginal body that is elected by the local Aboriginal community; and
4. delivering a holistic and culturally appropriate health service to the Community that controls it.¹⁴

This important principle of—community control—is finally getting greater visibility and traction in the wider community. Noel Pearson in response to Peter Shergold's lament on his failure to close the gap¹⁵ and the failure of Australian public policy wrote:

Since [the Aboriginal and Torres Strait Islander Commission's] ATSIc's demise, across the nation [I]ndigenous organisations have been de-funded and closed down. The bureaucracy's share has grown considerably and the share of the consultants and service providers has grown exponentially. Today the nominal budgetary outlays for indigenous affairs are way more than in ATSIc's heyday, and [I]ndigenous affairs is indeed a true industry.¹⁶

Noel Pearson argued:

That is why [I]ndigenous organisations have disappeared. If there has been failure during the past decade, this has been a period when the mainstream bureaucracy, [Non Government Organisations] NGOs and outsourced service delivery providers have been the principal actors. There is no ATSIc to blame any more, and if you know anything about the declining role of indigenous organisations and leaders in the administration of [I]ndigenous affairs in this era, you will know they too cannot be blamed for the poor progress.¹⁷

But the most important part of Noel's opinion piece was this: No amount of services to indigenous people will change things without leadership. This leadership must come from the people whose lives and futures are at stake.¹⁸ In reflecting on the possibility of Tony Abbott becoming Prime Minister, Pearson said: He will need to understand that governments that do not understand how they can be a junior partner with [I]ndigenous people in tackling the future are governments that are destined to repeat this failure.¹⁹ That is to say, governments cannot truly tackle disadvantage or close the gap without allowing communities more responsibility in the decisions that affect their lives and this includes service delivery.

CONCLUSION

The *UNDRIP* is not a sacred text—it is not different to other human rights texts. We have to make the Declaration work for us and make it mean something in the Australian context. The next phase does not require us to agonise over how the state is or is not implementing the *UNDRIP*; we need to take ownership of the text and we need to put meat on the bones of the *UNDRIP*. In Australia, where Aboriginal groups are highly localised in terms of geography and culture, self-determination can only be elucidated in a context-specific way. Self-determination must become more specific and personalised in order to be capable of reflecting what self-determination means for

Aboriginal people in their daily lives. And we cannot leave it to the state to do that for us. We must do that ourselves as Aboriginal people.

The community control sector—more than any other sector—deal with the bread and butter of self-determination—choices people make about their lives each and every day. It is very apparent to me that the health community control sector is implementing the *UNDRIP* in terms of leading the way on the right to self-determination—what it looks like in practice. What better evidence do we need than the NACCHO Report Card²⁰ that reveals to us the difference that Aboriginal community control makes to improving Aboriginal health? Now, what NACCHO requires is improved support and recognition from government to do that. What that support looks like is something the sector knows better than I, but in the state doing its part to meet its obligations, its human rights obligations to Aboriginal and Torres Strait Islander Australians—obligations both in international law but as Australian citizens—the state has an already established and trusted community sector that it can work with as a junior partner. This is crucial if human rights are to have any meaning and if people are going to benefit from their recognition. Otherwise—and this is the fundamental message—how do we know if self-determination has been achieved? The Aboriginal Community Controlled Health Services are well placed to lead the way. The NACCHO Ten Point Plan 2013–2030²¹ and even the 2012 NACCHO Members Meeting report²² illustrate how drilled down into communities this sector is able to reach; to individuals and families that no government could ever possibly reach.

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- 1 *International Convention on the Elimination on All Forms of Racial Discrimination* opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969).
- 2 *Mabo v Queensland* (No 1) (1988) 166 CLR 186; *Mabo v Queensland* (No 2) (1992) 175 CLR 1.
- 3 See also *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168.
- 4 *Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, UN Doc A/RES/47/1 (2007).
- 5 Megan Davis, 'To bind or not to bind: The United Nations declaration on the rights of indigenous peoples five years on' (2012) 19 *Australian International Law Journal* 17.

- 6 Noel Pearson, 'Recent indigenous policy failures can't be pinned on Aborigines' *The Australian* (June 15 2013).
- 7 See generally S James Anaya, *Indigenous Peoples in International Law* (2004); Ravi de Costa, *A Higher Authority: Indigenous Transnationalism and Australia* (2006); Alexandra Xanthaki, *Indigenous Rights and the United Nations Standards: Self-Determination, Culture and Land* (2007).
- 8 See M Davis, 'NARAM Oration 2012 - Aboriginal Women: The Right to Self-Determination' *Australian Indigenous Law Review* 16(1) (2012) 78.
- 9 Ibid.
- 10 Davis, above n 8.
- 11 See M Davis, 'Aboriginal women and the right to self-determination: a capabilities approach to constitutional reform', PHD dissertation, Australian National University, 2010.
- 12 NAHS Working Party National Aboriginal Health Strategy AGPS, Canberra, 1989.
- 13 Ibid.
- 14 See NACCHO, *Membership organization definitions* (2013) <http://www.naccho.org.au/about-us/membership-organisation-definitions/>.
- 15 See Peter Shergold, 'Foreword' in Rhonda Craven, Anthony Dillon, and Nigel Parbury (eds), *In Black and White: Australians All at the Crossroads* (Connor Court 2013); See also, Patricia Karvelas, 'My 20 years of failure to close gap: Peter Shergold' *The Australian* (June 1 2013): <http://www.theaustralian.com.au/national-affairs/my-20-years-of-failure-to-close-gap-shergold/story-fn59niix-1226654821728#sthash.HAEtqOUy.dpuf>.
- 16 Noel Pearson, 'Recent indigenous policy failures can't be pinned on Aborigines' *The Australian* (June 15 2013).
- 17 Ibid.
- 18 Ibid.
- 19 Ibid.
- 20 Australian Institute of Health and Welfare (AIHW) and NACCHO, *Healthy for Life, Aboriginal Community Controlled Health Services Report Card* (2013), Cat. No. IHW 97 <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129543587>>.
- 21 See NACCHO, *Investing in Healthy Futures for generational change: NACCHO 10 Point plan 2013-2030* (2013) http://www.naccho.org.au/download/naccho_health_futures/NACCHO%20Healthy%20Futures%2010%20point%20plan%202013-2030.pdf.
- 22 AIHW and NACCHO, above n 20.

Portraits of Landscape Series

Vanessa Russ
 Indian ink and water on
 Arches paper, 2012
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