

## **Indigenous Disadvantage: Australia's Human Rights Crisis**

### **ACOSS/ANTaR Seminar: Practical Reconciliation or Treaty Talks**

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Much has been said about the appalling levels of disadvantage suffered by Indigenous Australians. One commentator has noted that 'in Australian society there are the rich and the non-Indigenous poor, and then there is Indigenous Australia'.<sup>1</sup> Public perceptions of Indigenous disadvantage tend to revolve around two competing dynamics. There is a clear moral concern to ensure that no one, Indigenous or non-Indigenous, lives a life of such disadvantage, and that there should be equal opportunity to participate in Australian society. Yet on the other hand there is a growing impatience with the continuation of Indigenous disadvantage, which has proved to be more intractable than many had thought.

Moreover, there is insufficient understanding that Indigenous disadvantage is fundamentally an issue of human rights. Instead the focus has been on 'practical reconciliation', which treats the recognition of rights and the overcoming of disadvantage as unrelated and different agendas. Rights are seen as a distraction from the real task on which the government is focused. As I observed in my last *Social Justice Report*, 'in calling for a move away from welfare dependency to economic empowerment there is little acknowledgment that integral to this shift is the empowerment of Indigenous Australians through the full recognition and equal enjoyment of their human rights'.<sup>2</sup>

What the focus on 'practical reconciliation' does is maintain a situation where Indigenous people are subject to the beneficence and good intentions of government. It does not change the unequal basis of the relationship between Indigenous and non-Indigenous people, but leaves Indigenous people disempowered.<sup>3</sup>

What is necessary is a 'systemic, integrated approach to Indigenous disadvantage',<sup>4</sup> and one that is grounded in the principle of self-determination as essential for the full realisation of all other human rights. Human rights principles can provide benchmarks to assess the adequacy of responses to such questions as '[I]s the gap between Indigenous and non-Indigenous people closing? And consequently, are we doing enough to overcome it or reduce the level of disadvantage or are we merely doing enough to "manage" it?'<sup>5</sup>

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<sup>1</sup> B. Hunter, 'Three Nations Not One: Indigenous Australians and Other Australian Poverty', CAEPR Working Paper 1/1999, Canberra 1999.

<sup>2</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 1999*, HREOC, Sydney 1999, p.6.

<sup>3</sup> *Ibid*, p.23.

<sup>4</sup> *Ibid*, p.5.

<sup>5</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, HREOC, Sydney 2000, p. 25.

This paper begins with an overview of the facts surrounding Indigenous disadvantage, followed by some discussion of its historical causes. It then outlines the relevant human rights instruments, the main principles relating to Indigenous rights, and examines the response from one United Nations human rights treaty body to Australia's approach to Indigenous disadvantage. It looks finally at establishing a rights-based framework for achieving reconciliation, and the potential implications for NGOs.

## **1. Contemporary Indigenous disadvantage**

There are clear disparities between Indigenous and non-Indigenous Australians across all indicators of quality of life. Indigenous Australians experience the lowest standards of health, education, employment and housing, and are over-represented in the criminal justice system.

### *Health<sup>6</sup>*

In the 1996 Census, 352,976 people or 2.1 % of the total population identified as Indigenous. The youth population (15-29 years) is expected to grow at 2 % per annum during the decade from 1996 onwards, compared to 1 % per annum for the rest of the population.

In 1999 the life expectancy for Indigenous males was 55.6 years, in contrast to 76.2 years for all Australian males. For Indigenous females it was 63.0 years, in contrast to 81.8 years for all Australian females. The figures for Indigenous people are similar to those for non-Indigenous Australians at the turn of the century when the male life expectancy was 55 years, and the female was 59 years.

The Indigenous infant mortality rate of 14.1 infants deaths per 1,000 live births was 2.8 times the non-Indigenous rate of 5.0.

Hospital records (which are incomplete) indicate that in 1997-98 Indigenous males were admitted to hospitals across Australia 1.8 times more than other males and Indigenous females 1.9 times more than other females.

Rates of cardiovascular disease, respiratory disease, injury, cancer, diabetes, and renal disease were higher for Indigenous people than the rest of the population. For example, deaths from respiratory disease were 5-6 times higher for Indigenous people, and the overall prevalence of non-insulin-dependent diabetes mellitus (NIDDM) was 2-4 times that among non-Indigenous people.

Babies born to Indigenous women were twice as likely to be of low birth weight (11.8%) than babies born to all women (6.6%).

Per capita health spending for Indigenous people was only 8% higher than that for non-Indigenous people.

*International comparison<sup>7</sup>*: Average life expectancy at birth between 1995-2000 for countries ranked by the UNDP as having 'medium human development' was 66.6; for 'low human development' countries, 50.7.

The average infant mortality rate for 'high human development' countries was 7 per 1,000 live births in 1998. 19 per 1,000 in the NT is comparable with a number of countries in the 'medium development' band.

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<sup>6</sup> Statistics from Healthinonet, *Summary of Indigenous Health Status, June 2001*, [www.healthinonet.ecu.edu.au](http://www.healthinonet.ecu.edu.au).

<sup>7</sup> United Nations Development Programme, *Human Development Report 2000*, Oxford University Press, Oxford and New York 2000.

Low birth weights for Indigenous babies in the NT (13.1%) and SA (15.4%) are comparable to those in areas of 'low human development' (1990-97) such as Sudan (15%), Haiti (15%), Uganda (13%) and Eritrea (13%).

### *Housing and infrastructure<sup>8</sup>*

In 1996, only 31% of Indigenous families owned their home compared with 70% of all Australian families.

17.8% of Indigenous households were overcrowded by accepted Australian standards, compared with 3.8% of other Australian households.

Indigenous households occupied almost 50% of private dwellings with 10 or more occupants.

Approximately 33% of all improvised dwellings (sheds, humpies etc) were occupied by Indigenous households

### *Rural and remote discrete Indigenous communities<sup>9</sup>*

In 1999 33% of housing in discrete Indigenous communities in remote or rural areas was in need of repair or replacement.

No water quality testing had been undertaken in 64 of the 233 discrete Indigenous communities not connected to town water; and the water supply failed to meet required standards in a further 58 communities tested in the previous twelve months.

Power interruptions had occurred on at least 20 occasions during the previous 12 months in 57 communities. Sewerage leaks were reported in 204 communities.

### *Education<sup>10</sup>*

Only 32% of Indigenous youth completed all secondary schooling compared with 73% of all Australian youth in 1998.

One-third of all Indigenous children do not complete the compulsory school years; two-thirds in northern NSW; between 84% and 100% in non-urban Northern Territory.

Indigenous students are 1.3% of students in higher education but are much more likely to be in non-degree courses such as diplomas and certificates (40% compared with 5% of non-Indigenous students).

The only secondary schools in the NT are in 6 urban centres. Only an estimated 20% of Indigenous secondary-aged youth attend secondary school.

### *Employment<sup>11</sup>*

In 1996 the unemployment rate for Indigenous people was 22.7%, 2.5 times the non-Indigenous rate of 9.9%. It is probably closer to 50% if Community Development Employment Project workers are included.

The employment rate in 1996 for Indigenous Australians was 40.8% compared to 56.4% for non-Indigenous Australians.

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<sup>8</sup> Australian Bureau of Statistics (ABS), 'Population: Special Article – Aboriginal and Torres Strait Islander Australians: A Statistical Profile From the 1996 Census', in Year Book Australia 1999, cat. 1301.0, ABS, Canberra 1999. [www.abs.gov.au/ausstats/abs@.nsf/Lookup/NT00000A56](http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/NT00000A56)

<sup>9</sup> ABS, *Housing and Infrastructure in Aboriginal and Torres Strait Islander Communities 1999*, ABS 4710.0, ABS, Canberra 1999.

<sup>10</sup> ABS, *Education and Training in Australia, 1998*, ABS cat. 4224.0, ABS, Canberra 1999.

<sup>11</sup> Altman, J., 'The Economic Status of Indigenous Australians', No.193/2000, CAEPR, Canberra 2000.

25.9% of employed Indigenous people are in unskilled or labourer positions compared to 8.8% of non-Indigenous people.  
 14% of Indigenous employees are in professional or managerial positions, compared to 26% of non-Indigenous people.  
 53% of Indigenous employees are in the private sector compared to 80% of non-Indigenous employees.  
 The mean weekly income in 1996 for Indigenous families was \$502 compared to \$730 for non-Indigenous families.

## **2. Historical causes of Indigenous disadvantage**

The role of the past in explaining the present disadvantage of Indigenous people is often overlooked or ignored by current political representatives and social commentators. There are a number of outstanding, historically-based factors that have implications for attempts to redress Indigenous disadvantage today. These can be summarised as follows<sup>12</sup>:

- *Dispossession*: Prior to British occupation, Aboriginal and Torres Strait Islander peoples 'developed a mosaic of communities and groups with rich and enduring cultures centred on an intimate relationship with the land and sea... Dispossession and dispersal have destroyed much of Aboriginal and Torres Strait Islander societies... [and] many Indigenous communities and individuals have little or no stake in the economic life of the nation other than what Governments may provide'<sup>13</sup>;
- *Exclusion from mainstream services*: Until gaining citizenship rights in the late 1960's, many Indigenous Australians were excluded from mainstream services, creating 'a significant legacy of inequality in areas such as education, health, housing and infrastructure'<sup>14</sup>;
- *Recent inclusion*: In combination with exclusion from services such as education, access to welfare has 'unintentionally, and paradoxically, created poverty traps from which it is hard to escape'<sup>15</sup>. The rapid movement from a position of exclusion from mainstream society to dependency on welfare informs this 'paradox'.
- *Past and inter-generational poverty*: Low income has prevented the accumulation of capital and investment, leading to inter-generational poverty;
- *Location in rural and remote areas*: A higher proportion of the Indigenous population lives in rural and remote areas where there are few economic opportunities and service delivery is disproportionately expensive. There are also difficulties in stimulating economic participation at the local level, some of which is related to transport and infrastructure issues; and
- *Demography*: The large and multi-generational nature of Indigenous households creates dependency ratios and a higher economic burden than in

<sup>12</sup> Council for Aboriginal Reconciliation and Centre for Aboriginal Economic Policy Research, *Towards a Benchmarking Framework for Service Delivery to Indigenous Australians*, Commonwealth of Australia, Canberra 1998, p14.

<sup>13</sup> Aboriginal and Torres Strait Islander Commission, *Recognition, Rights & Reform*, ATSIC, Canberra 1995, para 1.8.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.* In 1991, Jon Altman and Will Sanders argued that the rapidity of the movement from a position of exclusion from mainstream society to the dependency on welfare by the 1990s had been a major achievement, albeit the first step: Altman, J. and Sanders, W., *From Exclusion to Dependence – Aborigines and the Welfare State in Australia*, Centre for Aboriginal Economic Policy, ANU, Canberra 1991.

non-Indigenous families. The Indigenous population's structure is similar to that of a developing nation, with population growth outstripping that of the general Australian population, and with a younger age structure.<sup>16</sup>

In addition to these factors, the failure to acknowledge the relevance of the past to process of reconciliation creates a series of false assumptions about the relationship between Indigenous and non-Indigenous people. It also informs the continuing tension between the aspirations of Indigenous and non-Indigenous people today.

Central to the false assumptions made is the perceived cultural superiority of non-Indigenous values, culture and social structures. This perspective has affected the creation of laws, policies, practices and institutions since settlement. Two examples of this approach are:

- *Terra nullius* and the lack of recognition of native title prior to 1992; and
- The policies of forcible removal of Indigenous children from their families, which were based on the belief that the interests of 'part-Aboriginal' children would be best served by separation from their families and their Indigenous identity.

The continuing failure to respect and recognise the values of Indigenous cultures makes it difficult for Indigenous people to participate fully and equally in Australian society. A commitment needs to be made to address the imbalance of power that currently exists, including such factors as landlessness, poverty and disadvantage across a range of socio-economic indicators. It remains essential for Indigenous Australians to implement the right to self-determination, 'to negotiate freely their status and representation in the State in which they live'.<sup>17</sup>

### **3. Relevant human rights instruments**

The major international human rights instruments to which Australia is a party set out citizenship rights, such as civil, political, economic, social and cultural rights. The following instruments are particularly relevant to Indigenous peoples' rights:

- The International Covenant on Civil and Political Rights (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- The Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The two International Covenants on Human Rights, the ICCPR and the ICESCR, were developed through the Commission on Human Rights, at the request of the United Nations General Assembly. The Committee on Economic, Social and Cultural Rights and the Human Rights Committee monitor the compliance of State bodies with the ICESCR and the ICCPR respectively. Broadly speaking, the ICCPR covers matters

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<sup>16</sup> See further: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 1999*, HREOC Sydney 1999, Chapter 2; Taylor, J and Hunter, B., *The Job Still Ahead: Economic Costs of Continuing Indigenous Employment Disparity*, Centre for Aboriginal Economic Policy Research, ANU, Canberra 1998.

<sup>17</sup> Daes, E. *Discrimination Against Indigenous People – Explanatory Note Concerning the Draft Declaration on the Rights of Indigenous Peoples*, para 26.

relating to the enjoyment of civil and political freedoms, and the ICESCR covers economic, social and cultural rights.

The Committee on the Elimination of Racial Discrimination (or CERD) monitors the Convention on the Elimination of All Forms of Racism. CERD places obligations on member States to take appropriate means to combat and eliminate discrimination, particularly against minority groups such as Indigenous peoples.

Other human rights principles that emerge from these Covenants relevant to the acknowledgement and protection of Indigenous rights are:

- Self-determination (ICCPR & ICESCR, Art 1);
- Equality and non-discrimination (ICCPR, Art 2 & 26; ICESCR, Art 2; CERD, Art 2 & 5);
- Racial non-discrimination (CERD, 1, 2 & 6);
- Special measures (ICESCR, Art 2; CERD, Art 1, 2 & 7; ICCPR, Art 2 & 26);
- Progressive realisation (ICESCR, Art 2);
- Right of a group to practice and protect its culture, religion and language (ICCPR, Art 27); and
- Rights relating to cultural and intellectual property (ICESCR, Art 15).

These principles have been significant in recent assessments by the UN Human Rights Committees of Australia's approach to Indigenous disadvantage, and I will briefly outline those of chief relevance here.

International law protects a *substantive equality* standard, which is grounded in the understanding that the promotion of equality does not mean the rejection of difference or treating everybody in an identical manner. It stands in contrast to the principle of formal equality, which relies on the assumption that all people should be treated identically regardless of their differing circumstances. As Judge Tanaka of the International Court of Justice has explained, substantive equality 'means the relative equality, namely the principle to treat equally what are equal and unequally what are unequal'.<sup>18</sup> It is not discriminatory therefore to consider race-specific factors such as socio-economic disadvantage, historical subordination and cultural difference in order to redress inequalities.

The principle of *progressive realisation*, which is set out in Article 2 of the ICESCR, places obligations on States to ensure that economic, social and cultural rights are exercisable in a non-discriminatory manner. State parties have a 'minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights' and they must be able to demonstrate that 'every effort has been made to use all resources ... to satisfy ... those minimum obligations'.<sup>19</sup>

International human rights law also recognises the legitimacy of differential treatment that seeks to preserve minority cultures. *Special measures*, a form of differential treatment and affirmative action, recognise that where there has been on-going and systemic discrimination against a particular group, there needs to be a period for the group to catch up. These measures must have assessable objectives

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<sup>18</sup> *South West Africa Case* (Second Phase) [1966] Rep 6, pp. 303-304, 305.

<sup>19</sup> Committee on Economic, Social and Cultural Rights, *General comment 3: The nature of States parties obligations* (Article 2, para 1), 14/12/90, para 10.

to be met within a certain period, and they are not to be 'continued after the objectives for which they were taken have been achieved'.<sup>20</sup>

As a special kind of minority and also one of the most disadvantaged groups on earth, Indigenous peoples have rights under international law to maintain their distinctive cultures, and State Parties are to take measures to combat and eliminate discrimination, including the protection of Indigenous cultural identity.<sup>21</sup> In accordance with Article 1 of the ICCPR and ICESCR, States are obliged 'to promote realisation of the right to self-determination', the right of all peoples, including Indigenous peoples, to 'freely determine their political status and freely pursue their economic, social and cultural development', and 'freely dispose of their natural wealth and resources'. It entails the 'right to demand full democratic partnership' in society on equal terms – not on the basis of 'sameness', but in such a way that recognises the unique status of Indigenous peoples, respects and gives appropriate expression to their distinctive cultures within societal structures.

Another emerging international instrument, the *Draft Declaration on the Rights of Indigenous Peoples* (DDRIP), also promotes the right of Indigenous peoples to self-determination. The *Draft Declaration* seeks to affirm existing standards for the equality of Indigenous peoples with other peoples, including their self-determination and rights to a distinct identity and culture. Once adopted by the UN General Assembly, it will constitute a non-binding declaration and therefore will not create any obligations for Australia under international law. But as an aspirational document the *Draft Declaration* has the potential to provide a moral framework for Indigenous peoples' rights and an international tool for changing attitudes.

### ***Australia's reporting to United Nations Committees in 2000***

During 1999-2000 Australia's compliance with its international obligations was reviewed through the periodic reporting processes of the Human Rights Committee, the Committee of Economic, Social and Cultural Rights, and the Committee on the Elimination of All Forms of Racial Discrimination. Some of the major areas of Indigenous concern were inadequate protection of human rights in Australian law, including against racial discrimination; failure to protect cultural diversity; the extent of Indigenous disadvantage; Indigenous over-representation in criminal justice systems; mandatory sentencing; reconciliation and the *Bringing Them Home* report.

For the purposes of this paper I will focus on the CERD's observations on Australia's approach to Indigenous disadvantage, an issue to which the Committee members returned time and again. Ms Gay McDougall, the Country-Rapporteur, brought this issue into sharp focus:

I think we all have to welcome the increase in government resources going into what seem to be a multiplicity of programs and activities to address the social and economic disadvantage within the Aboriginal community, and I

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<sup>20</sup> CERD, Article, 1(1).

<sup>21</sup> In 1997 a General Recommendation concerning Indigenous peoples by the CERD Committee confirmed that States are required to apply the Convention's obligations to Indigenous peoples. See Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII (51) Concerning Indigenous Peoples*, adopted 18 August 1997, UN Doc CERD/C/51/Misc 13/Rev 4 (1997) paras 4-5.

think that in some respects, in many respects, the report is very candid about the track record...

Now I note that you said today that there's been great improvement over a short period of time, and I'm sure there has been, but you know it's interesting to me, and again I will say this because I come from a country myself where there is a disadvantaged community and a lot of government programs et cetera, *it's of serious concern the extent of the dramatic inequalities that are still being experienced by these population groups when they represent only, you know, no more than 2% of the population of a highly developed, industrialised state*, and ... it makes me wonder about things like the effectiveness of the programs, monitoring, benchmarking, what are the standards, is anybody watching this to see whether or not they really are designed to meet the disadvantages that are real in the communities, you know the real history of systemic discrimination, institutional racism?<sup>22</sup>

In their comments the Committee members acknowledged that:

- Indigenous disadvantage is the result of systemic discrimination;
- the appropriate benchmark by which to measure progress is one of equality between Indigenous and non-Indigenous Australians;
- the government is obligated to take sufficient steps (or special measures) to achieve such equality;
- there must be adequate monitoring and evaluation of progress, including measuring effectiveness through benchmarking and standard setting; and
- real progress requires the effective participation of Indigenous people in decision making (including through the representative voice of ATSIC).

The Government responded by emphasising the progress to date; its use of 'practical' measures; the increased funding in Indigenous-specific programs; its policies of empowerment and responsibility; the complicating factor of the demographic structure and location of the Indigenous population; and the historically-derived nature of the disadvantage. The absence of any recognition of the importance of a rights approach to redressing disadvantage was notable in Government's responses.<sup>23</sup>

Similarly, there was no reference by the Government to adopting special measures or a substantive equality approach to Indigenous disadvantage. While the Government affirmed the importance of performance measures and benchmarks, the only examples were derived from the Commonwealth's access and equity strategy.<sup>24</sup>

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<sup>22</sup> Ms McDougall, *CERD Transcript – 21-22 March 2000*, 1393rd meeting, Part II, p4. Emphasis added.

<sup>23</sup> In this regard, note the concluding observations of July 2000 of the Human Rights Committee (UN Doc: CCPR/CO/69/AUS) which states in paragraph 9 that:

with respect to article 1 of the (ICCPR), the Committee takes note of the explanation given by the delegation that rather than the term 'self-determination' the Government... prefers terms such as 'self-management' and 'self-empowerment' to express domestically the principles of indigenous peoples exercising meaningful control over their affairs. The Committee is concerned that sufficient action has not been taken in that regard. The State Party should take the necessary steps in order to secure for the Indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources.

<sup>24</sup> Commonwealth of Australia, *Written Answers to the Committee on the Elimination of Racial Discrimination. Issue: Benchmarking / Measuring Reconciliation*.

There was no attention given to the current inadequate collection of statistics at the national and regional levels, as well as the need for agreement on improved benchmarks and targets at all levels of government, and for better monitoring and evaluation mechanisms to ensure greater accountability and transparency.

Of further concern was the Government's reference to \$2.2 billion expenditure on 'special programs'. As a 1999 study on public expenditure on services for Indigenous people noted: 'While Indigenous people benefit substantially more than other Australians from specific programs, they benefit substantially less from many, much bigger, general programs.'<sup>25</sup>

For example, Indigenous people access the large general schemes such as Medicare and the Prescribed Pharmaceutical Benefits scheme at substantially lower rates than non-Indigenous people. A large number of unemployed Indigenous people are 'hidden' within the Community Development Employment Projects Scheme rather than accessing Jobstart allowance. Put differently, much of the expenditure through programs that are identified as 'special programs' is in fact expenditure that would otherwise be spent through mainstream programs.

In its conclusions the Committee 'acknowledge[d] the efforts being made to increase spending on ... programmes for indigenous Australians' but 'remain[ed] seriously concerned about the extent of the dramatic inequality still experienced by an indigenous population that represents only 2.1 per cent of the total population of a highly developed industrialized State.' It 'recommend[ed] that the State party ensure, within the shortest time possible, that sufficient resources are allocated to eradicate these disparities.'<sup>26</sup>

#### **4. NGOs and support for Indigenous aspirations**

Last year HREOC's *Social Justice Report* called for Indigenous policy to be formulated within a human rights framework. It put forward four principles, synthesising a range of human rights obligations, for a rights-based approach to addressing the unresolved business of reconciliation, including disadvantage. These principles are:

- Non-discrimination – a guarantee of equal treatment for all, which extends to recognition of distinct cultural characteristics and the adoption of temporary special measures to overcome existing inequalities;
- Progressive realisation - the commitment of sufficient resources through well-targeted programs to ensure adequate progress in overcoming Indigenous disadvantage;
- Effective participation - adequate involvement of Indigenous people and communities in decisions that affect them, including service delivery and design; and

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<sup>25</sup> Neutze, M, Sanders, W, Jones, G, *Public Expenditure on Services for Indigenous People – Education, Employment, Health and Housing*, Discussion paper 24, The Australia Institute, Canberra 1999, p xiii.

<sup>26</sup> Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of All Forms of Racial Discrimination: Australia*, UN Doc: A/49/18, paras 535-51.

- Effective remedies - the provision of mechanisms for redress where human rights are violated.<sup>27</sup>

The Report also identified crucial commitments for Government to make to progress meaningful reconciliation. It argued that to increase the accountability and transparency of governments for policies to overcome Indigenous disadvantage, the Government must:

- Make an unqualified national commitment to redressing Indigenous disadvantage;
- Facilitate the collection of data for decision making, reporting and monitoring progress;
- Set benchmarks - negotiated with Indigenous peoples, state and territory governments and service delivery organizations, with clear timeframes for achieving longer term and short term goals;
- Provide national leadership to facilitate inter-governmental cooperation; and
- Ensure the full participation of Indigenous peoples in the design and delivery of services.

Fundamental to achieving reconciliation is adopting an 'appropriate standard for measuring progress in addressing Indigenous disadvantage', which is

... one of equality between Indigenous and non-Indigenous Australians. A focus on equality highlights that Government is obligated to progressively reduce the inequalities faced by Indigenous people by targeting such disadvantage and taking appropriate steps to the maximum of available resources...<sup>28</sup>

The current approach, which simply highlights the level of expenditure on Indigenous programs, helps create 'resentment among other parts of society about 'special treatment' and 'lacks comparative and evaluative components'.<sup>29</sup> By contrast the governments of Canada and New Zealand have both adopted a long-term, whole-of-government approach aimed at progressively 'closing the gaps' between Indigenous and non-Indigenous populations.<sup>30</sup> The Report calls for a coordinated, long-term, equality-based strategy at the national level to address Indigenous disadvantage.

In considering how the NGO sector might support a rights-based approach to Indigenous disadvantage, the adoption of human rights principles to establish protocols and best practices, and to inform frameworks for Indigenous policy and service delivery should be fundamental. In order to take into account factors like cultural difference and the impact of historically-based disadvantage, the principles of non-discrimination and substantive equality should provide core values. Implementing the principle of progressive realisation might mean committing more

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<sup>27</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, *op.cit.*, pp.87-88.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, p.91.

<sup>30</sup> *Ibid.*, pp.91-94.

significant resources and re-assessing benchmarks and targets to ensure adequate progress – and asking the question of whether we are doing enough to overcome disadvantage or merely managing it. It could also mean making a commitment to addressing Indigenous disadvantage over the long haul, and establishing long-term targets and adopting a more flexible approach to programs and service delivery where possible.

Ensuring effective Indigenous participation entails building equitable partnerships with Indigenous people and communities especially in regard to decision-making processes, including those relating to service delivery and design. For example, benchmarks should be negotiated with Indigenous peoples, with clear timeframes for achieving longer term and short-term goals. Effective participation also needs to be linked to the principle of self-determination. Last year's *Social Justice Report* drew attention to the potential for Indigenous self-government arrangements to bind together the various strands of reconciliation – that is, the aims of promoting recognition of Indigenous rights, overcoming disadvantage and achieving economic independence. A focus on Indigenous self-governance generally highlights:

- The need for greater coordination of services and a holistic approach to Indigenous need;
- The need for more flexible funding arrangements, and greater responsibility and accountability for outcomes;
- The need to develop an independent economic and resource base; and
- The importance of renewing Indigenous social structures and respect for Indigenous cultures at the local level.

Self-governance arrangements are a means of providing political recognition and respect for the right and ability of Aboriginal and Torres Strait Islander peoples to determine their own priorities and strategies. An NGO commitment to effective Indigenous participation should entail respect and support for Indigenous self-determination as it realised through any newly emerging forms of self-government, and sensitivity in working with these arrangements.

Lastly, a rights-based NGO approach might give public support to an unqualified national commitment to redressing Indigenous disadvantage. This might include contributing to public awareness for the need to enshrine and protect Indigenous rights in line with international standards and ensure government accountability. Support could be given to mechanisms designed to improve Australia's accountability for Indigenous human rights such as a treaty between Indigenous and non-Indigenous Australians, a Bill of Rights and a guarantee against racial discrimination in the Constitution. NGOs could also consider supporting any mechanisms at national, state and local levels that recognise these rights – along the lines, for example, of the national framework legislation proposed in the Council for Aboriginal Reconciliation's *Reconciliation Bill 2000*. This might further involve adoption of the Social Justice principles from the *Social Justice Package* of 1995 as the basis for negotiations about service delivery, regional governance and unfinished business. In the absence of legislative support for such mechanisms, the same principles could be employed by NGOs to set protocols for negotiations with Indigenous people at every level.