determination and rights. The conference will run for three days. The first day will be a workshop concentrating on the practical and more technical aspects of the policy process. The following two days will focus on self-determination and rights with keynote speakers engaging and challenging participants to look anew at current policy approaches. The intended outcomes are: adoption of new approaches to the policy process and decision making in Aboriginal and Torres Strait Islander affairs, improved understanding of self-determination and Indigenous rights,and improved Indigenous policy directions. National Convention Centre 31 Constitution Avenue,Canberra ACT 2600 Tel:02 6257 4905 Fax:02 6257 6405.

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ATSIC is also involved in a three day conference on the treaty process from 27 through 29 August. The details are being worked out by ATSIC and ANTaR currently, but the topics to be considered are reconciliation, sovereignty, treaty making, the economics of the process, social impacts and the treaty framework. They are also planning a televised debate for later in the year. More information will be available in March on the TreatyNow website www.treatynow.org.au

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The NTRU plans to jointly host a conference for Representative Bodies with Yatamtji and ATSIC Queensland. While the details are yet to be decided, it will be held in September or October and will be devoted to legal issues, research and practice and capacity building.

New AIATSIS Research Fellow Appointed

Patrick Sullivan has begun duties as the Visiting Research Fellow in Regional Organisation and Governance in the Institute's Research Section. While not a member of the Unit, Patrick's interests in native title and governance will likely see his involvement in projects organised by the NTRU.

FEATURES

Exercising Your Culture: Indigenous Cultural Heritage and the Environment

Paper presented at The Past and Future of Land Rights and Native Title Conference Townsville, 28-30 August 2001 by Commissioner Rodney Dillon

Introduction

My name is Rodney Dillon. I am a Palawa Aboriginal man from Tasmania and the Commissioner elected for the Tasmania Zone of the Aboriginal and Torres Strait Islander Commission (ATSIC).

I want to talk about native title and how it relates to sea rights for Aboriginal and Torres Strait Islander peoples. I also want to talk about the concerns our people have about marine resource management and the adverse impact that various non-indigenous groups have on our ability to continue practicing and enjoying our traditional customs as they relate to the sea and its resources.

The Native Title Act 1993 and sea rights

Native title is based on the laws and customs of Aboriginal people and Torres Strait Islanders. Whilst the High Court of Australia and Australian governments have given some recognition to these rights, especially by the passing of native title legislation, they fail to adequately recognise exclusive native title rights in relation to the seas. The right to maintain an exclusive native fishery or rights to control access to waters where native title exists is not recognised under current laws. This concerns me because it denies our people the right to manage and control natural resources which have been part of our cultural traditions for countless generations.

Section 24HA of the *Native Title Act 1993* (the Act) is the major provision relating to the management of water and living aquatic resources. Under the Act all Aboriginal

people and Torres Strait Islanders may claim native title over Crown lands and waters that are located within traditional estate boundaries. However, we do not, under current laws, have any right to negotiate in relation to proposed future acts involving marine areas below the high water mark. Also, contrary to our traditional rights as sea estate custodians, we are not able to claim exclusive rights of ownership of the seabeds and its resources or claim exclusive user rights. For example, under the current arrangements our people have to share the resources with existing commercial fishing licence holders and accept other user group rights.

The present legal position under common law and under the Act falls well short of affording native title claimants a level of protection that ensures that either their traditions or the rights themselves can be fully enjoyed. Moreover, all other interest groups competing on a commercial or economic stake in the sea take priority over Indigenous rights.

The impact of current laws on Aboriginal and Torres Strait Islander customary laws

Our communities, in particular, coastal peoples, have enjoyed a continued and strong relationship with the sea and its resources. We have inherited rich traditions, beliefs and customs about the sea from our ancestors. Fundamental to the way we interact with the sea is our belief that we are part of the sea, and the sea is part of us. This belief is maintained through stories passed down from one generation to the next. Even in coastal areas where a community has been historically dispossessed, cultural associations and concerns for the sea and its resources have remained strong.

Our people are concerned about dispossession from traditional land and sea estates and the loss of ancient fishing and hunting rights. We are concerned about the destruction of the environment through development, pollution and the intensive harvesting of our resources. The blatant disregard for culturally sensitive areas affects us deeply. We are also concerned about the lack of consultation with local communities on sea related matters and the lack of opportunities for us to participate in decision making about the sea and its resources.

The government continues to allow large companies to engage in the practice of intensive harvesting of fish and shellfish to satisfy domestic and overseas market demands. Moreover, they are doing it without ensuring these resources are maintained at sustainable levels for generations to come.

They would do well to recognise our 50,000 years of cumulative knowledge about the oceans and to actively seek our views and input into the development of conservation, fisheries and other policies affecting the sea and its resources. Seeking our involvement in the management of fisheries and other ocean-related activities is also important.

Equally, contemporary Australian society would benefit from recognising our customary law system. When European settlers first came to Australia they assumed we did not have ownership of the land and the sea. Because of our traditional nomadic lifestyle, they failed to realize that we had protocols and elaborate laws in place to protect the rights of owners, managers and custodians of particular tracts of land and sea.

Recognition of Indigenous sea rights - How do we get adequate recognition ?

The time has come for Aboriginal and Torres Strait Islander peoples to regain control over the sea and its resources to ensure the social, spiritual and traditional rights, customs and practices of our ancestors are preserved for our children and their children's futures.

It appears highly unlikely that the Act will enable us to reach this aim. We should, therefore endeavour to take our crusade for recognition of sea rights outside of the native title debate and outside of the Court system.

Regional agreements

Traditional owners should be allowed to sit down and negotiate with commercial and recreational fishing bodies to reach agreements about the management of the seas

and the resources which they are dependent on. I am talking about agreements that will allow traditional owners to be directly involved in managing their sea country, protecting areas of particular importance and allowing them to participate in the commercial fishing industry.

National agreements

Our leaders could negotiate directly with Commonwealth and state and territory governments to seek an enforceable and long-lasting agreement. The kind of agreement I would envisage is one that gives recognition to our customs, rights and aspirations, similar perhaps to those negotiated in Canada and New Zealand by the Indigenous groups in those nations. The structure of this type of agreement could vary and may form part of a TREATY that would ensure legal recognition of our inherent sea rights.

International forums

Another alternative would be for a delegation of our people to present our case to the United Nations Human Rights Committee. We have a right, recognised in international legal principles, to use our marine resources on a sustainable basis and to protect those resources for future generations by being involved in management regimes, by exercising our right to negotiate over proposed marine developments and by participating in the implementation of agreements with other stakeholders.

The native title Act has been a great disappointment to my people. I believe we should be looking ahead positively, past reconciliation and towards TREATY. It is in TREATY that we may achieve recognition of our sea rights.

A Human Rights Approach to Native Title Agreements

Paper presented at The Past and Future of Land Rights and Native Title Conference Townsville, 28-30 August 2001 by
Margaret Donaldson

I wish to pay my respects to the traditional owners and thank them for permitting me to speak on their land.

This conference has confirmed that native title agreements are emerging as an important tool in defining the rights of native title holders over their land.

As suggested by David Bennett QC and others in the course of this conference, agreements are not negotiated in a vacuum but are taking place against a background of rather confused and uncertain legal principles contained primarily in the Native Title Act (NTA). Indeed some would suggest that it is because of the uncertainty of these principles that so many native title agreements are taking place at this time

The concern from a human rights perspective is that the legal principles contained in the NTA which currently form the benchmark for agreements making are inconsistent with Australia's international human rights obligations.

Last year the NTA was considered by three international human rights committees. The UN human rights committees oversee the performance of signatory States under the treaty and consider the periodic reports submitted by States regarding their obligations under the treaty. The periodic reports are considered by the committee at a meeting in Geneva where states attend to put oral submissions. NGO's and national human rights institutions like HREOC do not have speaking rights at this meeting but attend as observers and can provide information to the committee informally.

Most people will be aware of the decision of the Committee on the Elimination of Racial Discrimination in March 1999 which found significant sections of the amended NTA to be discriminatory, in particular the validation, confirmation and primary production upgrade provisions as well as the winding back of the right to negotiate.

This same Committee met 12 months later in March 2000 to consider Australia's periodic report for the six preceding years. In their Concluding Observations the Committee stated: