

4. Self-determination

This issue relates to question 3 of the List of issues to be taken up in connection with the consideration of the third report of Australia

Summary of issue

- Government policy does not acknowledge the applicability to Indigenous people of the right to self-determination. In 1997 the government actively rejected self-determination as the basis of Indigenous policy.
- Key reports which make recommendations for redressing Indigenous disadvantage, including the Royal Commission into Aboriginal Deaths in Custody, and *Bringing them home*, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, have not been fully implemented. Many recommendations, particularly those concerning the application of the principle of self-determination, have been actively rejected.
- The Social Justice Package, the third component of the government's response to the *Mabo* decision (alongside the *Native Title Act* and the National Aboriginal and Torres Strait Islander Land Fund), has been abandoned. Following broad consultations with Indigenous peoples, peak Indigenous organisations had proposed that the social justice package involve measures to redress Indigenous disadvantage and to recognise the unique status of Indigenous people.

Relevance to the ICESCR

- Article 1: Self-determination.

The following section expands on this summary under the following headings:

- Self-determination; and
- Relevance to ICESCR (an analysis of relevant articles of the Convention).

Self-determination

- 4.1 The Commission is particularly concerned at government policy on the applicability of the principle of self-determination to Indigenous peoples.
- 4.2 The present government has abandoned self-determination as policy guiding Indigenous affairs.¹ In November 1996 the Minister for Aboriginal and Torres Strait Islander Affairs announced that the government's Indigenous affairs policy would no longer be based on the principle of self-determination. In part, the justification put for this was an interpretation of the principle of self-determination that equates it solely with this external aspect. Instead, government policy is now based on the concept of 'self-empowerment.' This concept, which has no meaning in international law, is exemplified by the government's calls for Indigenous peoples to move beyond welfare dependency:

self-empowerment enables Aborigines and Torres Strait Islanders to have a real ownership of (their) programs thereby engendering a greater sense of responsibility and independence... In this sense, self-empowerment varies from self-determination in that it is a means to an end – ultimately social and economic equality – rather than merely an end in itself.²
- 4.3 This misunderstands the scope and intent of the principle of self-determination. Self-determination cannot accurately be described as an end of itself. The right of self-determination is the right to make decisions and to control their implementation. As Dr Lowitja O'Donoghue has described it, 'self-determination is a 'dynamic right' under the umbrella of which Aboriginal and Torres Strait Islander peoples will continue to seek increasing autonomy in decision making.'³
- 4.4 On 17 March 2000, the Prime Minister again rejected a call for self-determination for Aboriginal peoples by rejecting wording in the Draft Declaration of Reconciliation, prepared by the Council for Aboriginal Reconciliation.
- 4.5 The government has also rejected the recommendations of key reports for redressing Indigenous disadvantage. Most notably, they have rejected or failed to implement recommendations of the Royal Commission into Aboriginal Deaths in Custody, and *Bringing them home*, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From their families. Many recommendations, particularly those concerning the application of the principle of self-determination, have been actively rejected.
- 4.6 Self-determination was prescribed by the Royal Commission into Aboriginal Deaths in Custody as being necessary for Aboriginal and Torres Strait Islander

¹ Social Justice Report 1999, pp. 19-20.

² Senator Herron, 9th Annual Joe and Enid Lyons Memorial Lecture, as quoted in ATSIIC, *An analysis of the United Nations Draft Declaration on the Rights of Indigenous Peoples*, 2nd edition, March 1999, www.atsic.gov.au/indigrights/five_a.htm.

³ *ibid.*

peoples to overcome their previous and continuing, institutionalised disadvantage and domination:

The thrust of this report is that the elimination of disadvantage requires an end of domination and an empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands.⁴

- 4.7 In *Bringing Them Home*, the Human Rights and Equal Opportunity Commission also recommended self-determination be implemented in relation to the well-being of Indigenous children and young people through the passage of national framework and standards legislation.⁵ The Commonwealth Government has failed to implement these proposals.⁶
- 4.8 In addition, the government has failed to implement the Social Justice package of 1995. The government responded to the *Mabo* decision of 1992 by announcing that they would take action in three areas - the introduction of the *Native Title Act 1993* to recognise and protect native title (and validate non-Indigenous forms of land usage); the introduction of an Indigenous Land Fund⁷ – to redress dispossession for Indigenous people who would be unable to establish native title due to past extinguishment of their rights; and a Social Justice Package.
- 4.9 ATSIC, the Aboriginal and Torres Strait Islander Social Justice Commissioner, and the Council for Aboriginal Reconciliation undertook broad consultations in regard to the development of the Social Justice Package. Strategies and proposals were presented by these three bodies to the government in 1995. The proposals broadly called for the recognition of the rights of Indigenous people, for the implementation of self-determination as the basis of government policy and for governments to redress Indigenous disadvantage as a right and not out of welfare. In 1996, the newly elected government abandoned the Social Justice Package.
- 4.10 Further concerns regarding self-determination have been raised above in relation to the amendments to the *Native Title Act 1993*.

⁴ Royal Commission into Aboriginal Deaths in Custody, Volume 1, para 1.7.6.

⁵ Human Rights and Equal Opportunity Commission, *Bringing them home*, HREOC Sydney 1997, Recommendations 42, 43-53.

⁶ For further details see Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report*, 1998, Chapter 4. Available online at: www.hreoc.gov.au.

⁷ See Australian Government Third Report, UN doc. CCPR/C/AUS/98/3, paragraph 1401. See Australian Government Fourth Report, CCPR/C/AUS/98/4, paras 136-138.

Relevance to ICESCR

Article 1: Self-determination

- 4.11 The HRC has recognised the relevance of the right to self-determination to Indigenous peoples in its Concluding Comments on Australia dated 28 July 2000:

With respect to article 1 of the Covenant, the Committee takes note of the explanation given by the delegation that rather than the term 'self-determination' the Government of the State party prefers terms such as 'self-management' and 'self-empowerment' to express domestically the principle 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 resources (article 1, para 2).

- 4.12 The Commission also notes the concluding observations of the HRC in relation to Canada:

The Committee notes that, as the State party acknowledged, the situation of the aboriginal peoples remains "the most pressing human rights issue facing Canadians". In this connection, the Committee is particularly concerned that the State party has not yet implemented the recommendations of the Royal Commission on Aboriginal Peoples (RCAP). With reference to the conclusion by RCAP that without a greater share of lands and resources institutions of aboriginal self-government will fail, the Committee emphasises that the right to self-determination requires, inter alia, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.⁸

- 4.13 The government's rejection of the recommendations of the Royal Commission into Aboriginal Deaths in Custody and *Bringing them home*, and the abandonment of the Social Justice Package, are analogous to the Canadian government's failure to implement the RCAP recommendations and constitute a breach of article 1 of ICESCR.

⁸ (1999) UN doc. CCPR/C/79/Add. 105, para 8. See also the HRC Concluding Comments on the initial report of Azerbaijan, UN Doc A/47/40 (1992) para 296; HRC Concluding Comments on Canada's fourth periodic report concerning Article 1 and the right to self-determination, UN Doc. CCPR/C/79/Add.105(7 April 1999), at para 7; HRC General Comment 12 on Article 1 and General Comment 23 on Article 27 of the ICCPR, UN Doc. HRI/Gen/1/Rev 3 (1997); and HRC Concluding Comments re Article 27 for Norway and Mexico UN Doc. A/49/40 (1994) and the United States UN Doc. A/50/40/ (1995); ICERD Article 2 (2) and CERD General Recommendation XX and Article 5(c) and General Recommendation XXIII UN Doc. CERD/C/365 (11 February 1999).

4.14 The failure to acknowledge the application of the principle of self-determination to Indigenous peoples also breaches Australia's obligations under Article 1(3) of the Convention to promote the realization of the right to self-determination.