

Indigenous recognition should guarantee us a place at the table or it's meaningless

[Nolan Hunter](#)

Following last week's conference in Broome, there is reason to be confident that constitutional recognition for Indigenous Australians can be meaningful



'Noel Pearson's (pictured) proposal for an Indigenous consultative and representative body in the constitution is the only proposal that could implement Indigenous peoples' rights to be properly consulted where government laws affect our interests.' Photograph: Tracey Nearmy/AAP

Nolan Hunter is the CEO of Kimberley Land Council

The Guardian - Monday 25 May 2015 11.23 AEST

Coming out of the Broome conference, we were encouraged to see our human rights commissioners, both Indigenous and non-Indigenous, acknowledging that Indigenous people have property rights like everybody else, and acknowledging that we have rights to economic development, like everybody else.

Human rights commissioner Tim Wilson showed a respect for our property rights that was not tainted by cultural generalisations and misconceptions. This was refreshing, and about time. Aboriginal and Torres Strait Islander social justice commissioner Mick Gooda demonstrated an understanding that social justice should mean more than handouts, it should mean economic development.

As Indigenous people, and as human beings, we have rights to self-determination. Self-determination means the right to "freely pursue social, economic and cultural development" and is protected by article 3 of the UN Declaration on the Rights of Indigenous Peoples and other human rights instruments.

In a practical sense, self-determination means that our people should be the primary decision-makers in our own lives. We should not have decisions made about us without our genuine input.

Do we want to allow economic development on our land, or preserve it for environmental and cultural purposes? That should be our choice.

Do we have ideas about making our remote communities sustainable, or should they be closed? We should be able to negotiate to this effect, and to put forward our own ideas for our future.

In short, we should have a place at the table. Article 18 and 19 of the [UN Declaration on the Rights of Indigenous Peoples](#) protect the rights of Indigenous people to participate in decision-making that affects their rights and requires states to consult and cooperate with Indigenous people and their representative institutions.

Australia has in many respects failed to implement the principles of this UN declaration. There are no structures in Australia for Indigenous participation and consultation to happen fairly. Decisions are generally made about us without our input.

Recently, the Kimberley Land Council went to New York to appeal to the UN. Our anxiety was over the forced closure of Indigenous communities, a decision made yet again without consultation. The WA premier now says that he will consult before any further decisions are made. This is at least a step in the right direction. But what did our people have to do to achieve this change in attitude? We became protestors, as we always do, resorting to rallies and the UN.

Where is our formal place at the table in our own nation? Where is our negotiation table with government – our space for measured and rational debate and conversation? For nuanced policy discussion?

Why do we have to go to New York before someone will listen to us?

The time has come for Australia to implement the essential principles of the declaration, and put formal structures in place for us to always have a say in the political decisions and laws that are made about us.

Other countries are way ahead. New Zealand has the Treaty of Waitangi, reserved Maori seats in parliament, as well as the Maori Council – a national representative body for Maori to have a voice in their affairs. They have the Waitangi Tribunal for Maori tribes to negotiate and make settlements with the Crown. Norway and Sweden have Sami parliaments to advise government on their issues.

Other western nations like Canada and the USA have full bills of rights in their constitutions. But bills of rights are not the only way to protect human rights. Participation and consultation is another way to do it.

Too often, human rights lawyers are stuck in their bill of rights bubble. They pursue constitutional rights clauses, whether or not bipartisan support can be achieved for that kind of reform. Bills of rights engage courts and judges: more non-Indigenous people, usually, deciding what is good for us. Our people have fought enough court battles to know this is true. Bills of rights and court battles are necessary and important. But they are not the only way forward.

Father Frank Brennan claims that Indigenous people should have a place at the political table, but does he know what that means? He is busy promoting his book on how he thinks we should be recognised in the constitution but has he thought about how a place at the table might be achieved for our people in a way that is authoritative and enduring?

Noel Pearson's proposal for an Indigenous consultative and representative body in the constitution is the only proposal that could implement Indigenous peoples' rights to be properly consulted where government laws affect our interests.

Constitutional recognition should guarantee us a place at the table.

If we do not fight for this proposal, we will still be in the powerless position we are in now, even after a referendum happens. The government will have its Indigenous power, but we will still have no say in the laws that it makes under that power. That would be a poor outcome, and is not a reform worth fighting for.

Our people need to see the opportunity that is before us. This is about achieving a successful referendum for something meaningful, that will actually make a difference in our lives.

The constitution should respect our human rights and our rights as Indigenous people. But "human rights" does not only mean bills of rights.

It also means self-determination. The right to choose our own destinies. It means participation and consultation. Our human rights can also be protected through proper processes and procedures. By guaranteeing us a say in our affairs. By negotiating fairly when decisions are made.

We hope that coming out of the Broome conference, our human rights commissioners will support us in this cause. But more importantly, we hope that our fellow Indigenous leaders will see this for the important opportunity it is.

Our people have a right to a place at the table, and a say in the laws that are made about us. It is this right which deserves constitutional recognition.