
MABO ORATION: NATIONAL NATIVE TITLE CONFERENCE 2017*

by Commissioner June Oscar

INTRODUCTION IN BUNUBA

Yanigi warangira ngindaji yuwa muwayi ingirranggu, Gurambilbarra Walgurakaba yani u. Balangarri wadjirragali jarra ningi — gamali ngindaji yau muwayi nyirrami ngarri thangani. Yanigi miya ngindaji Muwayi ingga winyira ngarragi thangani. Yathawarra, wilalawarra jalangurru ngarri guda.

I would like to begin by acknowledging the traditional owners of the land we meet on today, the Gurambilbarra Wulgurukaba people and pay my respects to their elders past, present and future. It is my honour to speak to you all today as the first female Aboriginal and Torres Strait Islander Social Justice Commissioner.

HONORING EDDIE KOIKI MABO

It is fitting that this conference takes place in Townsville, a place that Eddie and his family called home for many years. Townsville may have been a significant birthplace in the legal fight for native title, but we know that it was also a very different place for a young Eddie Mabo than it is today. When Eddie lived here, he was busy raising a family with his wife Bonita, working as a gardener at James Cook University and later as a lecturer, becoming the first secretary of the Aboriginal Advancement League in Townsville and running the Black Community School just a few blocks away from this conference. None of that would have been easy for Eddie, because Townsville, like most Australian towns, has had its share of racial tensions. However, Eddie was not worn down by the challenges of his environment or his personal circumstances. Instead, he drew proudly on his cultural heritage and identity as the key for improving the social situation of all of our peoples. He placed it at the centre of his political activism, inspiring a long campaign for land rights on his beloved Mer Island.

The benefit of hindsight and history place Eddie and his

co-claimants as national heroes, but at the time, they were met with great resistance, particularly by the powerful elites of this nation, most notably the mining industry and State governments. It was just the beginning of a conflict that every native title claimant knows all too well.

Eddie's crusade might have seemed futile amidst the backdrop of government policies at the time, but nevertheless—he persisted. Eddie knew that he did not have the luxury to bemoan these many trials. He knew what was needed was thoughtful, decisive action. What might have seemed improbable to many was a simple statement of fact to Eddie that was steeped in law and traditions going back centuries. It was this unshakeable determination that gave us native title. I wish to speak to some of that unrealised potential today—about how we can begin to open up the world for ourselves and future generations by working with the opportunities within the western legal system.

RIGHTS JOURNEYS

I think that it is important at events such as this, to reflect upon the journeys that our families and communities take in engaging with the complexities of the western legal system, such as native title. Our peoples carry an enormous role and responsibility in relation to country and so we engage in these spaces and use the best people to work with us to articulate our knowledge and our knowing—to carry the fight for what is rightfully ours and what we must all protect. We may be celebrating 25 years of Mabo this week, but we have watched how governments have continued to water down our rights within this space.

We know that the native title space is a complex one and impacts heavily on the lives of our family, friends and community. I often think about what the personal cost of this journey has meant for the Mabo family. I know that these journeys have come at a great price for so many of

us. It is sad for me to reflect on the efforts of so many of our old people who have made their cases over years and even decades but have never lived to see the settlement of their claims. The native title process, which places our claims within a long line and waiting list does not appreciate the impact of all of those years and legal requirements on the human person. These processes become so disengaged with us as people and human beings and what we stand for and what we fight for. Many of us are managing all of these feelings and responsibilities to Country alongside these complexities. So when we sit in native title meetings, sometimes it is hard for us to speak and the words don't come because we are remembering people who were a part of the conversation when it first started. Alongside all of this, we know that our nation is yet to develop a comprehensive policy to support native holders to enjoy and fully benefit from their rights once they have them. For the most part Prescribed Body Corporates ('PBC's') are poorly resourced. I know about this because I was the Chair of the Bunuba PBC. We had little resources to protect our rights, negotiate agreements and rebuild our communities. In 2012, I proposed a policy framework to address this critical problem—but fundamentally, nothing has changed since then. I understand how frustrating it is for all of us and the hurt and pain that Traditional Owners and native title holders feel—that we all do. But we must not give up, we must have hope, we must continue on.

MILESTONES

I want to speak now about milestones. There are many of them upon us this year of which the Mabo decision is just one.

25 years ago, Eddie's fight, joined by his co-claimants—produced an extraordinary legal milestone which destroyed the myth of terra nullius and gave us the Native Title Act and our peoples the benefits which have flowed from that high watermark. When we look at our country right across this great land, from the Torres Strait to Tasmania, and from the North and South and East and West, we know that we hold around 40 per cent of this continent, and the beauty of this country and we also hold in our hands our hopes and aspirations for the future.

This year we also mark the 20-year anniversary of the Commission's *Bringing Them Home Report*, which highlighted the suffering of our children and families of the Stolen Generations. I am sad to say that the situation for our

children of today has worsened and much still needs to happen to see the changes that we desperately need.

The same sentiment goes for the approaching 10 year milestone of the United Nations Declaration on the Rights of Indigenous Peoples, which is upon us this September. For many of you, I know that human rights are just words on a page and not a part of your lived reality. It will be a priority for my term to address this fact.

I also want to take this time to reflect upon the work of Aboriginal and Torres Strait Islander women. It has been 30 years this year, since the Commonwealth began to fund Indigenous women's programs and since the national consultations on Indigenous women took place. These consultations were led by people like Jackie Huggins and Irene Davey who is here today. I think that it is important that we pause and reflect on what our women bring to not just our native title space, but to our general community as those who are keeping our families together, and how they balance these many responsibilities with such grit and strength.

I must also acknowledge the 60th anniversary of the Palm Island strike later this month. The actions of those men who, in 1957 led the strike for better treatment of our peoples sparked a very important change for the Palm community and for our broader rights movement.

And finally, our nation is also reflecting upon the historical achievements of the 1967 referendum achieved half a century ago this year. I understand that Eddie was a campaigner for the 1967 Referendum and I am sure that he would have some keen insights into the current movement for change. 50 years ago, our fellow Australians stood alongside our peoples, united in the desire for change so that we might begin to thrive. We know that has not yet happened but our nation has an opportunity to complete that journey. These are all significant milestones in the growth of our nation. We must honour them and learn from them.

But as we know all too well, we must do more than simply mark the passage of time between key events in our nations' history.

Taking stock of our achievements is worthless if not followed by meaningful action. Our people know best that the high hopes that these milestones are initially met with have gradually faded over time, lost to election cycles, political will and often,

through the further erosion of our rights. It has been this sentiment that has driven much of the groundswell to reform our nation's founding document.

We all know that we have much, much further to go if we are to truly reconcile our past with our present, and ensure that the aspirations that we have for future generations of Aboriginal and Torres Strait Islander peoples are realised.

THE ULURU STATEMENT OF THE HEART

Hundreds of Aboriginal and Torres Strait Islander peoples gathered on the lands of the Anangu to take part in the Uluru National Convention. They came from the furthest corners of this country, to discuss a matter of great importance that has occupied the minds of our peoples for some time—how we, as the First Peoples of this country stand in Australia's founding legal document—the Constitution.

This was the culmination of months of Regional Dialogues, conversations which took place across the country, about what if any change should take place. This coordinated effort brought together a great cross section of our communities, with diverse voices at each location. This process brought these discussions out of the football stadiums and our television screens and into our communities, it brought together people of all ages, young and old, from community members, to those from our organisations and some of our people who were involved in the 1967 referendum process.

As I travelled to Uluru, I was conscious of the eyes that would be upon us and the need for consensus to determine the way forward for this issue—because a proposal that does not have the fundamental support of our peoples should not be taken to a vote. Uluru delegates expressed diverse views, but there was consensus about the need for change, for the need to have greater control over our lives and for the long-held aspirations around treaty and a final settlement to be answered.

The Uluru Statement delivered overwhelming support for substance, because we as Aboriginal and Torres Strait Islander peoples know that nice words do not get us very far. We have ridden the waves of good will and hope of the 1967 referendum, the national apology and the early days of the Mabo decision. But we are practiced in the experience that nice words do not keep our kids at home, our people out of gaol or address the yawning health gap between us and our fellow Australians. Only action can do that.

When five million Australians cast their vote 50 years ago they were doing so because they imagined a better future for our peoples. This spirit was shared by our old people, by the original campaigners and by people like Eddie Mabo. That day has not yet materialised, but we have an opportunity now to build on the spirit offered by that milestone. It will not come with an enshrined body or a treaty alone, but must be matched with an unwavering commitment to honoring our people's voices without imposing solutions on us by those who think they know us better than we know ourselves.

TREATY AND A FIRST NATIONS VOICE ENSHRINED IN THE CONSTITUTION

The Australian nation should not be unsettled by the term Treaty. That is agreement making and is already entrenched in public policy and practice through Indigenous Land Use Agreements ('ILUAs').

Many of us in this room already have treaties in the form of ILUAs—and there are nearly 1200 of them currently across the country delivering outcomes for our peoples. We have nearly three times more ILUAs than successful native title determinations but we know that this system is not perfect. We know that treaties as they exist in other countries have not been the magic bullet for the Indigenous peoples of Canada, New Zealand or the United States. But having a requirement to consult with us on the nature and extent of these types of agreements can only enhance a treaty process. The Uluru Statement says that both goals are important for our peoples. And I agree.

Many delegates saw constitutional reform as an important stepping stone to a treaty. An Indigenous body gives us an opportunity to elevate our voices in a country where we are a minority and occupy a space on the fringe of government policy. A voice gives us the ability to address Parliament directly through our connections to our communities and regions. I don't believe that we should underestimate the goodwill of our fellow Australians, nor the resolute determination and patience of our peoples.

We might be patient, but we also see the urgent need to address the situation facing our peoples today—knowing that we cannot wait another 50 years. We urgently seek a means to address our powerlessness.

The Uluru Statement recognises the need for an entrenched constitutional voice on the one hand whilst maintaining the long term aspirations of our peoples for a treaty on the other. Both have the potential to be meaningful and both represent the collective vision of our peoples.

As we sat on the red grounds of the Anangu people on the third day, we felt a great sense of hope in that moment of unity. But we were reminded of how important that and political will is in the push for reform. We were reminded of the proud statements of our people in the form of the Yirrkala Bark Petitions and Barunga Statement that hang in the halls of Canberra, like cultural relics, still waiting to be activated. We heard the disappointment of our peoples such as Alison Hunt, Anangu Elder, who spoke of interpreting the reply for then Prime Minister Bob Hawke, as she stood beside him at the Barunga Festival in 1988—only to see his great promise of treaty fade to dust. Our people spoke of their ritual visits to these Declarations every time they visit Canberra, out of respect for their old people and as reminders of their unwavering vision for greater rights. It is these unanswered calls that has driven a lot of the current push for change. Until we address some of these fundamental questions about having greater agency over our lives and a resolution of the broader questions around treaty—true reconciliation will continue to elude us.

The Uluru Statement carves out a path for change and we need that to be embraced by our fellow Australians and our political leaders. The sentiments expressed by our peoples should be respected and our leaders should hold off on making statements to scuttle the process before the Referendum Council has reported.

So many Aboriginal and Torres Strait Islander people have given their support to this process because they are tired of their powerlessness; because they seek to have a greater say on matters that affect their daily lives, so that our children might thrive. We have an opportunity to begin to address that powerlessness, to render ourselves visible amongst a national population that engulfs us. If we are so committed to closing the gap between Aboriginal and Torres Strait Islander peoples and our fellow Australians, then I do not know how we cannot honour the calls for a process that allow us to do that. The unfinished business of the 1967 Referendum and the Mabo decision speak to this broader movement for change. These moments are key markers in Australia's history—but they are journeys which are not yet complete.

We need a government who has the courage to take these proposals to a referendum and into the future with a Makarrata or Treaty Commission.

CONCLUSION

There are a lot of synergies between the current push for constitutional reform and the native title process. Both represent two imperfect systems that we have to navigate in order to further our rights and our standing within them.

But I want to close by saying that no piece of paper or legal judgment, no matter how significant—can ever speak to the complexity of our existence as Aboriginal and Torres Strait Islander peoples.

Our old people are our living encyclopaedias for our Country and for our lores, languages and ways of knowing going back millennia. They tell us more than anything else who we are and provide us with strength in what has always been—no court or constitution will ever truly capture this for us.

That lies within us all.

It is incumbent on us to engage with every opportunity that enables us to create a better future for our children, so that our culture may be as strong for them as it is today.

I'd like to finish by reflect on the words of the first Indigenous woman elected to the Federal Parliament, Nova Peris OAM, which she used during her maiden speech: 'nothing is impossible to those who see the invisible'.

This is a sentiment that drives many of us in our communities because we know that despite the hardship, that we eventually arrive at a point in time where the change we are seeking will be realised. Eddie Mabo saw it with native title and many of us have that same transformative vision about constitutional reform, and its ability to speak to the many issues affecting our lives as First Nations peoples of this country.

The Mabo decision entrenched the recognition of the rights of Aboriginal and Torres Strait Islander peoples in Australian law and created a policy environment for agreement making. It is only logical that we advance our rights to be constitutionally accepted so that we have a voice which will be heard forever.

Thank you.

Aboriginal leader and advocate, June Oscar AO, is a proud Bunuba woman from Fitzroy Valley in Western Australia. She is also the first woman to be appointed as Aboriginal and Torres Strait Islander Social Justice Commissioner. Commissioner Oscar starts her new role at the Australian Human Rights Commission on 3 April 2017.

*This speech was delivered at the 2017 National Native Title Conference, Townsville. The full version is available at: <https://www.humanrights.gov.au/mabo-lecture-2017>

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Tony Albert

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