



Yingiya Mark Guyula MLA
Member for Mulka, NT Legislative Assembly



07/05/2021

SUBMISSION REGARDING 'THE INDIGENOUS VOICE' PROPOSAL

INTRODUCTION

My name is Yingiya Mark Guyula and I represent the Electorate of Mulka in the Northern Territory.

In addition to being an elected member of the Legislative Assembly of the NT, I hold the title of Djirrikaymirr (senior traditional leader) from the Liya-dhalinymirr people of the Djambarrpuyngu clan or mala group.

Mulka covers a vast area of land in Northeast Arnhem Land, almost all of which is Aboriginal land under the Commonwealth Government's *Aboriginal Land Rights (NT) Act 1976*, excepting the small town of Nhulunbuy, a mining town held under lease by the Rio Tinto Corporation. While some Aboriginal people live in Nhulunbuy it has always been a predominantly non-Aboriginal town. The great bulk of the Aboriginal population (who we call Yolngu) live in towns and homeland centres scattered across the region. The Yolngu towns are almost all former missions, while the many homeland centres represent a direct move to assert traditional values.

SCOPE

The primary focus of this submission is to address the proposal for a Regional Voice, and provide advice and comment specifically relevant to a Regional Voice for Northeast Arnhem Land (NEAL), most of which is my electorate. Part of this is to make the connection between a Regional Voice and local voices.

A secondary focus is to comment on some aspects of the proposal for a National Voice.

A NATIONAL VOICE

At the outset, I wish to state my strong view that any proposal for a national voice for Indigenous people, founded as it must be on the facts of prior occupation of Australia and the inherent rights and interests which under international law form part of that, should most appropriately be included in the Constitution of Australia, and not merely legislated. I appreciate that this topic may be outside the defined scope of the current 'Voice' proposal, but nevertheless state it here for the reason that, in my experience, it is a view held by Yolngu people and organisations in my electorate. Our reasoning is that our land was never conquered or occupied by foreigners in the colonial period, nor succeeded by a foreign jurisdiction through a treaty. Our lived experience, until relatively recently at least, has been that the Australian system of law plays a secondary role in our social organisation and daily lives. Just as my people have always had their system of law and governance, so we recognise that mainstream Australia has its system of law and governance and that the Constitution is at the top of this.

Further, it has long been my view that the most appropriate way to pursue a respectful reconciliation and ensure a meaningful national voice for Indigenous people in Australia will be to develop a Treaty. This Treaty process should be at a national level for the same reasons, stated above, that I prefer Constitutional recognition over legislative recognition. To relegate a Treaty process to the States and Territories is to demean the entire process. Of course I am aware that the Northern Territory Government is currently pursuing a Treaty, and personally I have great respect for the Commissioner. But I am also aware that our status as a Territory renders any such document subject to immediate over-rule by the Commonwealth, and is therefore an inadequate way to express the concept of inherent



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rights for the Indigenous people of my electorate and of the wider Arnhem Land region. In 2021 we should be doing better than this.

I wish to emphasise that Constitutional recognition leading eventually to a process of Treaty development is by no means a radical or destructive proposal. On the contrary, it is in accordance with international precedent, and acts to build rather than destroy. I refer to the extensive analyses and reports of the Aboriginal and Torres Strait Islander Social Justice Commission in the Human Rights Commission. For the immediate purpose of this submission, I highlight the Canadian situation. The explicit recognition in 1989 in the Canadian Constitution of the rights of its Indigenous people paved the way for an inclusive process of Treaty-building in the Nunavut region, a process consciously facilitated and supported by the national Government of Canada. As a remote region where traditional structures and ways of being remain strong into modern times, parallels can be drawn between the Nunavut region and aspects of my electorate. The Canadian Treaty-building process has been extensively described¹, and I refer the Commonwealth to these and other readings on this subject.

A REGIONAL VOICE

I applaud the Commonwealth Government for appreciating that a national Indigenous voice cannot by itself accurately reflect the diversity of situations of Indigenous people in Australia. I emphasise two broad points – firstly that voices calling for some degree of regional autonomy have a long history in my electorate, and secondly that the development of a regional voice must come from these voices – a grassroots foundation which while connected to our governance systems also meets the Commonwealth expectations of: *inclusive participation, cultural leadership, and transparency and accountability*. I wish to propose some core principles associated with this.

Defining a region

- In order to ensure that our Indigenous nations truly have a voice, the way forward is to recognise regional voices that are based on ‘like communities’. That is, Indigenous communities which are ‘alike’ in such aspects as culture, geography and history can be linked, for the purpose of an Indigenous voice, to form coherent regions. Doing this, it is apparent that many more than two regional voices will be needed to account for the diversity of Indigenous communities in the Northern Territory.
- In the case of the communities with which I am most familiar – a regional voice that represented Yolngu speaking country would be ideal but if this were deemed too small, a coherent region exists for all of Arnhem Land based on culture, history, travel and trade links and other geo-political factors. I suggest that this be considered as one region for the purpose of a regional voice.

Maintaining a unique voice for homeland communities

- It is imperative that attention is given to the need to include homeland centres as an explicit and unique part of a regional voice. Homeland centres and their residents play a unique role in my electorate – a role not duplicated by the major towns – yet their importance is sometimes downplayed. The homelands movement

¹ For instance in:

Jull, Peter, “Reconciliation and Northern Territories, Canadian-style: the Nunavut process and product”, Indigenous Law Bulletin (1999) 4 (20).

Jull, Peter, “An Aboriginal Northern Territory: creating Canada’s Nunavut” (1992), Discussion paper, Australian National University, North Australian Research Unit, No. 9.



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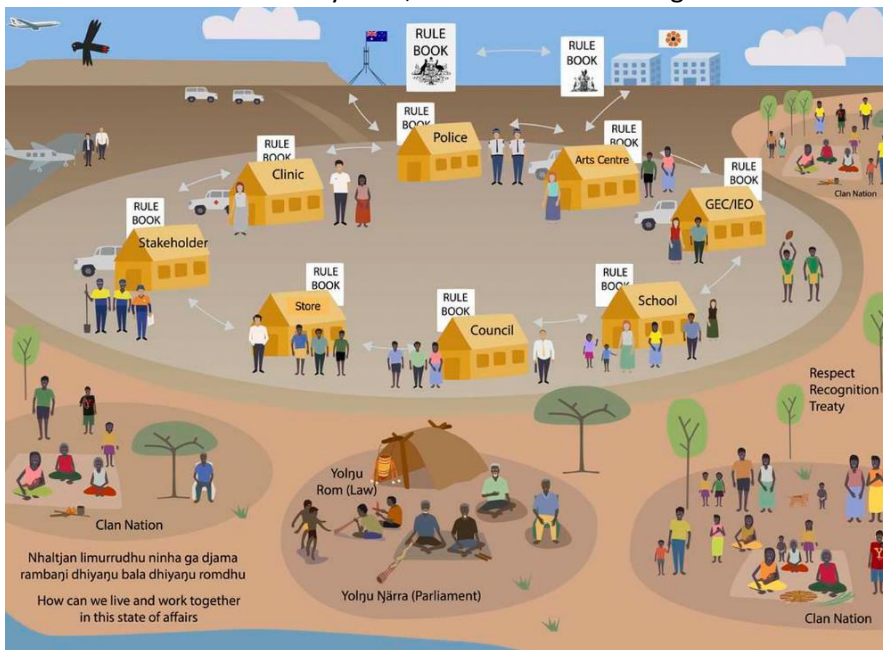


represents a move by Yolngu to assert their cultural autonomy and maintain culture in the face of its white-anting by other vested interests.

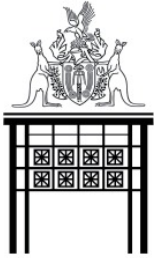
In my electorate, and indeed across Arnhem Land, the homelands movement has been the backbone of culture. Its importance is far greater than its population numbers. The unique voice of these homeland communities must be identified and ensured, and not drowned by the voices of the larger Aboriginal towns.

Linking a regional voice to local voices

- To be a genuine form of participation, regional delegates must connect with a decision-making process that stems from local governance structures. The manner in which a regional voice is created is fundamental to its ability to meet the criteria of ‘cultural leadership’ and ‘inclusive participation’.
- Properly understood, Yolngu Rom, or law, in my electorate is a process of bringing together the various interests, defined by Gurrutu (kinship), in a properly-constituted forum. Representation is designated primarily through clan (bapurru) conventions, not by individuals, and decisions are by consensus not by voting. In the case of Yolngu, governance structures comprise many clans that are led by clan djirrikaymirr and dalkarramirr (men) and gong- ganmirr (women). These leaders, or their delegates, are the appropriate people to be regional delegates, and these leaders must then connect with a more local ‘voice’. Yolngu communities that have a local Makarr Dhuni (a central decision-making forum) or similar, that has proper representation from clans and a connection back to the Ngarra’ (law, in a constitutional sense) institution are best placed to have a Yolngu local ‘voice’ and determine delegation to the regional ‘voice’.
- At the individual community level, the situation for Yolngu can be set out in a diagram as follows:



² Concept by Mr Dh. Gaykamangu, former Convener of Yolngu Nations Assembly



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While this diagram illustrates the disconnect that governments and their organisations have between their business and Yolngu structures and governance, it also suggests an opportunity to develop ways to overcome this disconnect.

CONCLUSION

My understanding is that 'the Voice' is an expression of self-determination and Indigenous rights. To this end, a regional voice must not be another form of colonisation or assimilation. Our regional voice must connect to our local system of governance that exists on our country. This is fundamental to a genuine process.

Sincerely



Yingiya Guyula MLA