

Indigenous Knowledge Forum 2019 Report



The Third Indigenous Knowledge Forum (IKF) was held on 12-13 June 2019 at the University of Technology Sydney (UTS). The IKF, ‘Models for a Competent Authority – Facilitating Self-Determination’, brought together a diverse range of presentations from Australian and international speakers. Several of the speakers made their presentations via video link as they were not able to be present at the Forum. The IKF was recorded for research purposes, and we thank **Andreas Dalman**, Systems Specialist from UTS Information Technology Division for his technical support throughout the Forum.

The IKF also included workshops with the Garuwanga Project’s Research Roundtable members, and with the wider group of IKF participants.

The Garuwanga Project Research Roundtable met briefly on Wednesday morning to discuss the draft Final Report that was distributed. During this session, themes discussed included some options for competent authorities, how they might operate, relationships between them, governance principles, issues around rights and ‘ownership’, and Indigenous law. These issues formed the basis of the Workshop sessions on Day 2.

Uncle Allan Madden gave the Welcome and Acknowledgement of Country, and was followed by introductions from **Professor Lesley Hitchens**, Dean of the UTS Faculty of Law, and Professor **Natalie Stoianoff**, Director of the UTS Faculty of Law’s Intellectual Property Program, and Chair of the Indigenous Knowledge Forum Committee.

Day 1 comprised a Keynote Speaker, and two sessions of presentations. The first Keynote Speaker, **Professor Chidi Oguamanam** (University of Ottawa, Canada), spoke about Indigenous self-determination and self-governance in a global context, arguing that there is need to interrogate the global geo-politics of capacity development which has served top-down development scenarios in which Indigenous peoples are cast as docile recipients of western development paradigms.

The first session was on ‘Theories of Indigenous Knowledge Self-Governance’, chaired by **Professor Ruth Okediji** (Harvard University) who gave an insightful introduction to the session. **Dr Oluwatobiloba Moody** (Centre for International Governance Innovation, Canada) discussed the problem of biopiracy within the specific context of Indigenous peoples. He outlined the role of competent authorities, clarifying the concept of Indigenous self-determination with respect to access to genetic resources and associated traditional knowledge.

Dr Michael Davis (UTS, Sydney, Australia) outlined some early attempts in Australia to realise Indigenous peoples’ self-determination rights, and to establish mechanisms for Australian

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Indigenous peoples to exercise decision-making in relation to their cultural and ecological knowledge, biological resources and artistic and cultural expressions. He suggested a way forward might require re-thinking a new kind of language and discourse framed within concepts of Indigenous governance over biocultural rights.

Andrea Buitrago-Carranza (McGill University, Canada) explored the justification of an independent right to self-government under the UN Declaration on the Rights of Indigenous Peoples, in connection with three main international instruments that protect the right to self-determination of peoples, and which have been ratified by Canada. These are the 1945 *Charter of the United Nations* and both *International Covenants* of 1966.

Associate Professor Daniel F Robinson (UNSW, Sydney, Australia) examined cases where there was quantified patent utilisation of specific genetic resources and documented traditional knowledge. He used an approach describing ‘patent landscaping’ focussing on plants with associated *mātaraunga Māori* (Māori knowledge) from Aotearoa New Zealand.

Session Two on ‘International Models of Competent Authorities’ was chaired by **Associate Professor Alpina Roy** (Western Sydney University). **Professor Giacomo Pace Gravina** (University of Messina, Italy by Zoom video link), described the situation regarding intangible heritage for the island of Sicily which, in 2005, established the *Register of Intangible Heritage* and the *Regional Program of Intangible Heritage*, renewed in 2014. The Register has recorded 177 elements since its establishment.

Dr Ekapong Sarnnoi and **Dr Chongnang Wiputhanupong** (Sripatum University, Thailand), outlined legal measures in promoting and preserving Thailand's cultural heritage, especially traditional cultural expressions. The authors’ study found that social change and acceptance of modern culture from abroad were a serious threat to this cultural heritage. The study identified the important role that the youth of Thailand are playing in protection of the cultural heritage such as folk crafts, music, and songs in their regions.

Professor Brad Morse (Dean of Law, Thompson Rivers University, Canada) explored two different Canadian developments that may fulfil the UNDRIP provisions recognising Indigenous Peoples’ rights to maintain, control, protect, and develop their traditional knowledge. First is establishing OCAP® (Ownership, Control, Access and Possession) standards by the First Nations Information Governance Centre (FNIGC) mandated to implement Indigenous control over the collection and use of data. The second development referred to Federal Bill C-262, which aims to ensure that Canadian laws reflect UNDRIP.

Day 2 began with Keynote presentations (introduced and chaired by **Professor Robynne Quiggin** (Associate Dean (Indigenous Leadership and Engagement), UTS). The Keynote speakers were **Associate Professor Trevor G. Reed** (Hopi, Arizona State University, USA), and **John Scott** (by Zoom video link from Montreal, Canada), Senior Programme Officer for Traditional Knowledge and Customary Sustainable Use of Biological Diversity, Secretariat of the UN Convention on Biological Diversity.

Associate Professor Trevor Reed discussed initial efforts of the US Indigenous IP Project to map the ownership and circulation of Indigenous song-knowledge in Hopi and other Indigenous communities in the present-day South-western United States. He suggested that efforts to locate Indigenous authorities that own or circulate knowledge materials might begin by focusing more on the ontological nature of the material in question and the relations or obligations encompassed by it,

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rather than seeking out individuals, processes, or protocols that hold or generate authority over those materials. One way to identify and understand this kind of networked authority is to carry out the return of knowledge materials and other resources back into Indigenous networks through repatriation.

John Scott presented an overview of the activities of the CBD Secretariat, including identifying the relevant Aichi Biodiversity Targets in the Strategic Plan for Biodiversity of the International Union for the Conservation of Nature (IUCN). John's presentation included an overview of other developments including protocols, achievements, country reports, and the CBD's future work plans including the Post 2020 Global Biodiversity Framework, leading up to CBD COP 15, in China, November 2020.

The first session 'Case Studies of Competent Authorities and Self-Determination Part I' was chaired by Professor Robynne Quiggin.

Associate Professor Gawaian Bodkin-Andrews (UTS, Sydney, Australia), with **Shannon Foster** (UTS), **Aunty Frances Bodkin**, **Uncle Gavan Andrews** and **Uncle John Foster** (D'harawal Elders), and **Professor Bronwyn Carlson** (Macquarie University, Sydney, Australia) engaged with the D'harawal Ancestral Story of the seven Yandel'mawa (peacekeepers) and their leader, the Yandel'bana (peacemaker). Through exploring the layers of meaning embedded within this story, and with reference to Indigenous protocols, ethics, guidelines, and Indigenous ways of knowing, and weaving lessons from the D'harawal Ancestral Stories with contemporary narratives of Indigenous survival, resistance, and protection, a series of principles were revealed to contribute to a more meaningful engagement with Indigenous Storytelling.

Dr Marie Geissler (University of Wollongong, Australia), discussed the implementation of Indigenous-developed operational protocols of the Buku-Larrngay Mulka Art Centre, arguing that the Centre has been exemplary in ensuring the cultural control and security over the use of Yolngu sacred designs, and maintaining their political and intellectual sovereignty over their land and sea-based culture.

Deb Breckenridge (Cultural Liaison Officer, Yaegl Community), **Associate Professor Joanne Jamie**, **Associate Professor Subramanyam Vemulpad** (Macquarie University, Sydney, Australia), and **Collette Geier** (PhD scholar) presented the achievements of the collaboration between the Indigenous Bioresources Research Group (IBRG) and the Yaegl community of northern New South Wales, on documentation and scientific investigation of bush medicines.

Professor Natalie Stoianoff concluded this session with an overview of the outcomes of the ARC Linkage funded project, *Garuwanga: Forming a Competent Authority to Protect Indigenous Knowledge* (the Garuwanga Project) which explores potential legal structures for such a competent authority. The presentation outlined the forms of competent authorities established by other nations to protect Indigenous knowledge, and reported on the legal and governance structures already utilised by Indigenous communities in Australia to protect their knowledge and culture. A key feature of this project is the Indigenous governance principles developed to evaluate Australian-based organisations that could provide potential models for such a competent authority. Following the outcomes of the 'on Country' consultations, the project has proposed a tiered approach for competent authorities to operate in Australia focussing on local or regional level governance supported by a national level reporting body.

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The second session was chaired by Professor Brad Morse, on the theme ‘Case Studies of Competent Authorities and Self-Determination Part II’.

Dr Lida Ayoubi (by Zoom video link, Auckland University of Technology, NZ) presented an overview of the different competent authorities, or lack thereof, at eight New Zealand universities and their approaches to safeguarding the rights and interests of Māori in their mātauranga in the intellectual property commercialisation process.

Bernice L Murphy (Museums Australia Magazine) discussed *ethics codes* and collectively shared professional standards upheld by museums, alongside the pursuit of legally-based measures for rights-protection. She presented an international overview of these, and also discussed the Australian situation from her direct experience of museums and state galleries, to analyse crucial standards-setting protocols and other advances that have been achieved since 1993, in respect of the rights of Indigenous people in control of their culture and expression.

Professor Nancy E Shurtz (University of Oregon, USA) **and Dottie Rundles** (descendant from Comanche and Cherokee ancestry) outlined some of the mechanisms and approaches in the American system of tribal recognition and organisation. They examined tribal status, sub-governmental entities, tax exempt organisations, trusts (including business trusts) and various kinds of private business forms, in terms of their potentially significant impacts on the taxability and economic viability of tribal and individual economic activity.

Dr Evana Wright (UTS, Sydney, Australia) presented a comparative analysis of the institutions established by India and Peru for the protection of traditional knowledge including the governance of access and benefit sharing under their respective legislative frameworks. She identified lessons for Australia that may inform the design and implementation of a governance system for the protection of traditional knowledge including any competent authority.

In the afternoon of Day 2 there were parallel workshop sessions addressing three themes from the draft Final Report, each workshop chaired by members of the Garuwanga Research Roundtable group. The themes discussed were:

- Purpose, functions and roles of each tier of governance and how those tiers interrelate, co-chaired by **Aunty Frances Bodkin** (D’harawal Traditional Knowledgeholders and Descendants Circle) and **Uncle Gavin Andrews** (Banyadjaminga Swaag Incorporated);
- Identifying relevant governance principles for different tiers of governance, chaired by **Dr Virginia Marshall** (Triple BL Pty Ltd/Australian National University); and
- Two laws: reconciling Indigenous and Western laws, chaired by **Ian Perdrisat** (Madjulla Association).

IKF3 concluded with a plenary session in which each of the three workshop groups reported on the outcomes of their discussions thus providing valuable feedback for producing the Garuwanga Project Final Report.