

**Commonwealth Heads of Government Meeting: Civil Society consultation forum
29th July 2011**

**This is the text of a speech delivered by Melinda Janki, Director of the Justice
Institute Guyana Inc. at the human rights session organised by the Justice
Institute Guyana Inc.**

THE INHERENT DIGNITY OF THE HUMAN BEING

Thank you chairman. Good afternoon:

In my presentation I want to pick up some of the themes from the three excellent presentations that you have just heard and link them with one idea: *the inherent dignity of the human being*.

I will do that by looking at what it means for groups who are vulnerable because of what or who they are.

This is a huge topic. Many groups within society face discrimination.....obvious examples are lesbians, Rastafarians. But it is impossible to make a list without leaving out lots of people so I'm not going to make a list.

I am going to choose two case studies:

First: Transgendered individuals

Second: Amerindian peoples

I have chosen these 2 because they illustrate some tensions between law and human rights.

In the first case study- Transgendered individuals, we will look at an actual court case.

The second case study on Amerindians involves legislation.

The first case study is about individual rights.

The second case study is a bit more daring. We will look at collective rights – something that many Governments are afraid of.

Let us begin by agreeing on one thing.

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, peace and justice in the world.

FREEDOM
PEACE
JUSTICE

We all want that.

And we can only have freedom, peace and justice if we respect one another. If we accept that each person has his or her own sense of self and a right to express that self with dignity.

So let me say it again:

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, peace and justice in the world.

You know this. These are the opening words of the Universal Declaration of Human Rights.....

Article 1 goes on to say

“All human beings are born free and equal in dignity and rights.”

So that’s the underlying theme for my presentation: the inherent dignity of the human being.

Let’s move now from the grand ideal to what is happening on the ground.

Imagine.....it is February 2009, a lovely tropical night. Two men are standing near St George’s Cathedral, one of the finest wooden buildings in the world. They say they are waiting for a taxi to take them to a snackette. Over at Stabroek Market another two men are eating at a snackette.

All four men are dressed in skirts with shirts or blouses, two have on wigs and one has a hairpiece.

The police arrest them and charge them with an offence under the Summary Jurisdiction Act.

The exact wording of the offence is:

“Someone being a man, in any public way or public place, for any improper purpose, appears in female attire.”

They plead guilty. The Chief Magistrate fines them. She tells them that they are men not women and they must give their lives to Jesus.

These four individuals say that they are transgendered. Each has said in his affidavit in court:

“Although I possess male primary characteristics I identify with the female gender.”

Each of these transgendered individuals has said he feels he must continue to dress as a woman.

But that means breaking the law. That means they could be arrested and charged again and again. These individuals could get a lengthy criminal record just because of the way they dress.

So, each of these four individuals has filed a constitutional motion.

They are asking the court to strike this law on dress as unconstitutional. They give several reasons:

First: Discrimination – The Constitution of Guyana says you cannot discriminate against people on the grounds of sex or gender.

Second: Violation of the constitutional guarantee of equality before the law – because this offence is based on treating people differently according to sexual stereotypes.

Third: Violation of the constitutional guarantee of freedom of expression – because these individuals are being prevented from expressing their gender identity and from dressing in a way that conforms to their innermost beliefs and orientations.

Incidentally they also say that the police refused to tell them why they were arrested. And one also claims that he was denied access to a lawyer. Other violations of their constitutional rights.

Everything I have told you comes from the pleadings which are public documents. But I am going to stop there. I cannot comment on the case as it is in court and arguments are being prepared. But you know enough to form your own views.

By the way there is a corresponding offence for a woman appearing in public in male attire.

Now for our second case study: Amerindian Communities.

Guyana is home to 9 different Amerindian peoples with their own culture including their own language....language not dialect... Arawak, Arecuna, Akawaio, Carib, Macushi, Patamona, Warau, Wapichan and Wai Wai.

Every Amerindian in this country has all the fundamental rights and freedoms that other Guyanese have.....right to life, right to liberty, right of expression, freedom of movement, freedom of thought, conscience and religion, and so on.

So what's the problem? We heard some of the problems from earlier presentations. For example the difficulties individual Amerindians face when they encounter the criminal justice system.

So if those problems were fixed.....would that be enough to protect Amerindians?

In most countries the answer is yes. It's all about the individual. Protect individual rights and communities will be fine.

But is that right?

If you believe in the inherent dignity of each person, part of one's dignity comes from belonging to and participating in one's community.

The International Covenant on Economic, Social and Cultural Rights requires States to recognise the right of everyone to take part in cultural life.

The United Nations Declaration on the Rights of Indigenous Peoples recognises the urgent need to respect and promote the inherent rights of indigenous peoples to their cultures. The UN says there must be no discrimination.

So there must be no assumptions about other cultures being superior.

Now a fundamental part of many indigenous peoples' cultures is that the people own the land together. They don't divide the land. They share it. They allocate space and use for a period of time. Everybody owns every piece. The land is not a commodity. It is the foundation of their existence as a distinct people. The mountains; the rivers; the trees; the earth...each has a significance. You can't sell this piece of land and go somewhere else.

Indigenous peoples are who they are because of their relationship with the land formed over hundreds maybe thousands of years.

Now that is very different to the way property systems operate. Land is owned by the individuals named on the title document. Land is a commodity to be bought and sold. You buy a house. You sell it a few years later at a profit. You buy another house. That is quite common outside of indigenous cultures. Property is a commodity.

But not for indigenous peoples land is not a commodity.

If as a government or a country you don't recognise indigenous peoples' concept of land, you are discriminating against them.

You are assuming that your way is better.

So how do you ensure that you do not discriminate? How do you take the principles of respect and equality and put them into practicemake them real?

Here are some suggestions:

1. **Legal Recognition:** You recognise that the people or the community are a legal entity. They exist. They don't have to register as a NGO or anything else. You recognise them as they are and as they change. People die. Children are born. But that does not affect the existence of the community. It has an existence of its own apart from the individuals who make it up.
2. **Legal Ownership:** You accept that the people or the community own the land legally.
3. **Collective Ownership:** You recognise that the people of the community own the land collectively – that it is communal land. You do not name individuals on the title. You put the title in the name of the people or the community.
4. **Proof:** You make sure they have a piece of paper that is a recognised title document so they can prove they own it.
5. **Demarcation:** You demarcate their boundaries and give them an official map so they can prove what they own.
6. **Relationship:** You look at the community's relationship with the land and you make sure that the legal arrangements reflect the culture of the people or the community. You put a prohibition on selling the land so that the people can never lose their land or be cheated out of it.
7. **Absolute title:** You make the title absolute so the land belongs to the community and nobody else can tell them what to do.
8. **Perpetual:** You make the title forever because this land is not a commodity but the basis of who they are as a people or community.
9. **Constitutional protection:** You recognise communal ownership as a private property right and you give it constitutional protection against the State. So the State cannot take away the community's land any more than it can take away your own land.
10. **Settle land claims:** And finally you set up a process for adjudicating land claims – working who owns what so they don't have to go to court. This process has to take into account the community's cultural attachment to the land. And their spiritual relationship with the land.

How many people here have Amerindians in their country? How many of you have this kind of legal process and recognition that I just described?

If you look around the world indigenous peoples are fighting for their land and it is a long hard fight. Not so long ago I saw a review of the land claims process in Canada. The review said that at the current rate of settlement it will take 500 years to deal with all the claims. This is one of the wealthiest countries in the world. 500 Years?

I said we have to be realistic. Am I being realistic with the long list of legal suggestions I gave you?

Yes. Because that is what we have done here in Guyana.

Amerindian communities in Guyana have absolute and unconditional title to their land. They own it collectively and forever. Their ownership is constitutionally protected. And all they have to do to get title to their land is show 25 years occupation and 150 people.

The Government has to take into account the cultural attachment and the spiritual relationship with the land. And they have to survey the land and give the community an official map.

This is not simply good policy. It is law. It is in the Amerindian Act 2006.

So we have two completely different situations but both issues of discrimination. Transgendered individuals are in court to claim protection. Amerindian peoples in Guyana have a specific law to protect them.

We are trying to build a strong civil society position for the Commonwealth Heads of Government Meeting. The Commonwealth is a family of 1.4 billion people. If we get it right that makes a difference.

Let us in this Human Rights session actually tell our Governments what we want them to do in order to protect our rights and the rights of our sisters and brothers.

All of our sisters and brothers.

Those like us. Those who are not like us.

Those who see the world like us. Those who see the world differently.

Because all of us are born free and equal in dignity and rights.

Thank you.