LOSS OF RIGHTS

– the Despair of Aboriginal Communities in the Northern Territory

A submission to the UN Committee on the Elimination of Racial Discrimination – Australia

"There is certainly nothing dignified about losing your human rights as a human being, based on being an Aboriginal citizen"

Yananymul Mununggurr

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B) A Conversation with Elders from the Northern Territory, (held at Melbourne University Law School, May 19th 2010)

Link to full Transcript provided in submission at
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Access code is: michele

INTRODUCTION

"There is certainly nothing dignified about losing your human rights as a human being, based on being an Aboriginal citizen," Yananymul Mununggurr

Aboriginal people in Australia are the oldest surviving culture on earth. They are a proud and gentle people, deeply spiritual in their relationship with the land and in their relationships with family and cultural heritage.

Over the last five years centralising policy moves by government have stripped Aboriginal people in the Northern Territory of their rights and their dignity. History has been ignored by government. The advice given to them by a former serving Minister for Indigenous Affairs is quoted in the *Ampe Akelyernemane Meke Melarle, "Little Children are Sacred report,"*

"And one of the things I think we should have learned by now is that you can't solve these things by centralised bureaucratic direction...you need locally based action, local resourcing, local control to really make changes.

But I think governments persist in thinking you can direct from Canberra, you can direct from Perth or Sydney or Melbourne, that you can have programs that run out into communities that aren't owned by those communities, that aren't locally controlled and managed, and I think surely that is a thing we should know doesn't work." Fred Chaney (April 2007)

Government's failure to listen to and engage with Aboriginal people at the local level has led to implementation of policies in the NT that have only further disadvantaged those most in need of genuine assistance.

Some of the worst human rights violations in the Western world today are taking place in the Northern Territory of Australia. The need for Aboriginal people to be listened to has never been greater.

This submission to the Committee for the Elimination of Racial Discrimination (CERD) is in two sections. Part One provides a legal overview, an analytical discussion on the current issues related to Aboriginal rights in the Northern Territory which has been prepared by former Chief Justice of the Family Court, Professor the Hon. Alastair Nicholson AO RFD QC (Articles 1 & 2). Part Two provides a framework within which the voices of Aboriginal people from across the Northern Territory are able to provide some insight into their desperation (Articles 1& 2,5d, 5ei, 5eiii, 5eiv, 5ev). It is in this way that the submission seeks to compliment the excellent Australian NGO Report. Quotations used throughout this submission have come from a range of sources. These include the transcripts of the government's community 'consultations' at Ampilatwatja, Utopia and Bagot Community, of June to August 2009. Quotes are also taken from a forum in May this year with two

eminent elders, Rev. Dr. Djiniyini Gondarra OAM of the Dhurili People of Galiwin'ku and Rosalie Kunoth-Monks OAM of the Anmatjerre/Alyawarr people of Utopia.

Additionally quotes have been taken from a survey conducted with elders/leaders from 24 communities across the NT during the month of June 2010. Those elders/leaders invited to participate in the survey are those identified or acknowledged by community members as representing them. The same survey was carried out in the community of Galiwin'ku at the request of elders with all community members who wished to participate.

The participating communities included homelands as well as major centres and centres identified as future growth centres. Both surveys are to be found in Appendices 1 and 2**.** We would especially like to thank staff at Jumbunna House of Indigenous Learning, University of Technology in Sydney (UTS) for assistance with the survey.

A very special thank you is given to those communities who participated in the survey and to those who shared their deep concerns with us.

Participating communities:

Amoonguna
Ampilatwatja
Banthula Homeland
Corkwood Bore
Dlwpuwainirri
Galiwin'ku
Hermannsburg
Howard Island Homeland
Ilpalpa Town Camp, Alice Springs
Iwaputuka Land trust
Kalkarindji
Karlumpurlpa
Lajamanu
Mapuru
Milingimbi
Mirrngatja
Papunya
Tingkali town Camp, Tennant Creek
Titsikala
Utopia
Wallace Rockhole
West Waterhouse
Yirrkala
Yuendumu

EXECUTIVE SUMMARY

1. The failure of successive Australian governments to implement a Bill of Rights is criticised and the detrimental effect upon Aboriginal people is discussed, exemplified by the suspension of the Racial Discrimination Act in 2007 as it applied to Aboriginal people in the Northern Territory.

2. Since 2006 and continuing to date, the Australian and Northern Territory Governments have continued the policies of removing Aboriginal people from control of their lands and are using coercive measures to remove them from their homelands with the object of urbanising Aboriginal society.

3. The first recommendation of the *Ampe Akelyernemane Meke Mekarle, "Little Children are Sacred"* Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse of 30 April 2007 was as to "*the critical importance of governments committing to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities, whether these are in remote, regional or urban settings."* Both the previous and the present government failed to engage in genuine consultation before commencing and continuing with the Northern Territory Emergency Response (NTER).

4. Objectionable aspects of the original NTER included:

- The suspension of the Racial Discrimination Act.
- The adoption of income protection.
- The removal of social security benefits (inter alia) where a child is considered to be in need of protection, where the parents reside in specified areas, or where a child has an unsatisfactory attendance at school.
- The acquisition of Aboriginal lands by means of compulsory leases of up to five years duration.
- Restrictions on the use of alcohol and pornography on Aboriginal lands, coupled with heavy penalties for breach and offensive signage at the entrances to those lands.
- The previous government's abandonment of the Community Development Employment Program.
- Preventing a court from taking into account Aboriginal customary law or practices in sentencing offenders.

5. The adoption of the measures referred to in Paragraphs 2 and 4 indicated a lack of respect and understanding of Aboriginal people by both the previous and present Australian Governments.

6. The present Government's support for the suspension of the RDA and the original NTER legislation compromised it.

7. The present Government's legislation to restore the RDA coupled with the retention of many of the objectionable features of the NTER is essentially flawed.

8. The 2010 legislation preserving income management continues to provide for an arbitrary subjection of all affected people within particular geographical areas to income management. Although this purports to be a non discriminatory measure, in practice it continues to discriminate against the Aboriginal people, who form the bulk of the welfare recipients in the affected areas.

9. The remainder of the 2010 legislation covering alcohol and pornography restrictions, compulsory five year leases, licensing of community stores, extended powers to the Australian Crime Commission and the like are sought to be justified as special measures. These do not qualify as special measures as a matter of law.

10. A special measures as defined under CERD have also been defined by Australian Courts as containing four elements:

- it must confer a benefit on some or all members of a class;
- the membership of the class must be based on race, colour, descent, or national or ethnic origin;
- it must be for the sole purpose of securing adequate advancement of the beneficiaries in order that they may enjoy and exercise equally with others human rights and freedoms; and
- the circumstances must provide protection to the beneficiaries which is necessary in order that they may enjoy and exercise human rights and freedoms equally with others.

Furthermore a special measure must not be continued after the objectives for which it was taken have been achieved.

12. The relevant case law also contains a discussion dealing with the necessity of obtaining the wishes of affected Aboriginal people before introducing such a special measure.

13. UN CERD Committee and the Declaration of the Rights of Indigenous people now require that consultation and consent must occur before a special measure can be introduced and it is probable that this is now a requirement of Australian law. None of the present Government's measures satisfy the requirement for consultation and obtaining the agreement of the Aboriginal people. Therefore the legislation appears to be inconsistent with the RDA.

14. However, the measures associated with the NTER given legislative force by the present Government's 2010 legislation may not contravene the RDA because of the absence of a 'notwithstanding clause' from the legislation.

15. The reality of the Government's legislation and policies is that the measures contained in the 2010 legislation are thinly disguised versions of what went before. Some minor concessions have been made that are mainly cosmetic but very little of substance has emerged.

16. Video material taken from three of the Government's 2009 purported consultations with Aboriginal people, (the only hard evidence of the contents of any of these consultations), the Government's own summaries of regional meetings at five separate locations throughout the Northern Territory and a June 2010 survey of the views of Aboriginal elders are the main sources for the second part of the report. The government has refused to make source material available from its consultations.

17. The June 2010 Survey of 35 Aboriginal elders from 24 communities has revealed that 97% believe that they have not provided consent for the current NTER measures in their communities. This survey is particularly important because it is the only up to date survey available of the views of Aboriginal people.

18. The submission sets out the views of Aboriginal elders as to the lack of proper and genuine consultation with them. They confirm their dissatisfaction with this process and comment about its many flaws. The survey shows that 88% of elders in these communities do not believe they have been genuinely consulted. Comment from the government provided records of the five regional meetings with people across five separate regions confirm these views, as do the video records.

19. The submission contains quotes from numbers of Aboriginal people who make it clear that compulsory income management should not continue. The five regional meetings referred to, expressed strong views to this effect and provide no record of significant support for its continuation. The June 2010 survey provided zero support for the utility of the Basics Card and views are quoted as to how it has made things harder.

20. The submission sets out the overwhelming sentiment of opposition to the leases embodied in the unanimous view "**We want our land back**".

21. The submission reveals that although there was an understandable diversity of views about the desirability of alcohol availability in the communities, there were serious human rights concerns and a desire for community involvement in decision making. There was certainly no justification for the government continuation of alcohol restrictions as a special measure.

22. These restrictions were not discussed at all regional meetings. It was clear that pornography had never been regarded as an issue in the communities, but the implication from the signs was universally resented. Allegations by the previous Government of paedophile rings have been discredited and there has not been a single conviction for paedophilia in the NT since 2007.

23. While there was support for the licensing of community stores, there was concern at the removal of decision making capacity concerning these matters from the people. The June 2010 survey revealed little or no benefit from the change.

24. Since controls on publicly funded computers were subject to filters, there was little discussion of this issue.

25. Law Enforcement Measures were little understood and no overview of the extent of the powers of the Australian Crime Commission was provided.

26. The Government response to Consultation Meetings has in many instances been almost perverse and the consultative exercise, such as it was, seems to have been irrelevant to the Government's decisions. For example, the June 2010 survey reveals that no leader preferred compensation to the return of the land.
The overriding problem about the Government's amendments is that they continue to be discriminatory and arbitrary and individual rights have not been restored.

27. There has been a failure of the Intervention to improve the lives of Aboriginal People in the NT. The June 2010 survey shows that only 12% of the elders surveyed believe that the NTER has made life better for the community, whereas 88% believe it to be worse or much worse (50%).

(a) Employment

The winding down of the CDEP has had a detrimental effect upon employment. Of those surveyed only 3% believe that it has led to the creation of more jobs and 77% believe that it has reduced employment. The changes have been described as tantamount to slavery. Without CDEP, due to end in July 2011, other than in the sense of working for welfare, there will be very few jobs in the homelands.

(b) Education

The report *Closing the Gap in the Northern Territory*, July- December 2009 shows a slight decline in school attendance. Closure of bi-lingual learning programs in nine schools has caused distress. Homeland Learning Centres are treated in a highly discriminatory fashion in contrast to schools for white children. None of them received funding in recent huge expenditure by the present government on infrastructure for schools.

(c) Health

The June 2010 survey reveals no confidence in any improvement in Aboriginal health and safety. NTER measures have led to depression and despair and an increase in attempted suicide and mental illness and there has been an increase in child malnutrition.

(d) Housing and Land Rights

Years of extreme neglect and underfunding have left communities in despair and living in grossly overcrowded and sub standard housing including humpies. Only 11 houses have been built in the three years since the Intervention.

Aboriginal Land Councils no longer control communal land following 2006 legislation and the NTER. Leases are controlled by an imposed Government authority and long leases, of between 40 and 99 years, are being forced on to communities in addition to the compulsory 5 year leases. The Government is raiding the Aboriginal Benefits Account (funded from mining leases over Aboriginal land) to pay for its bureaucracy.

The previous and present governments were and are intent upon turning Aboriginal people into suburban dwellers, regardless of their choice.

28. There has been a failure to respect the integrity and culture of Aboriginal People. Many of the actions of the successive governments have depended upon stigmatisation of Aboriginal people including claims of organised paedophilia which have been demonstrated to be false. Social problems resulting from gross neglect and underfunding have been responded to with 'blame, shame and punishment'.

29. There has been a failure to protect the rights of Aboriginal People. Basic human rights principles have been disregarded and the law has been changed to remove Aboriginal rights. Government has failed in its responsibilities to abide by its international obligations, while in the Northern Territory government has failed to genuinely to engage with the people. Amendments to the legislation will be required.

RECOMMENDATIONS

1. That the UN Committee request the Australian Government to enact legislation, preferably by Constitutional amendment, to protect and enforce the rights of Australia's Aboriginal people, as part of a process to introduce an Australian Bill of Rights, thereby bringing Australia into line with other Western democracies.

2. That the UN committee request the Australian Government:

(a) To repeal the recently passed Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination) Act 2010.

(b) To pass legislation for the restoration of the Racial Discrimination Act as standalone legislation containing a provision that it has full force and effect notwithstanding other legislation to the contrary.

(c) To suspend all aspects of the NTER while independently-facilitated discussions with government and all 73 prescribed community leaders takes place to determine culturally-appropriate ways of addressing social and other problems.

(d) To abandon income management except upon a voluntary basis.

(e) To repeal the 2006 and 2007 Amendments to the Land Rights Act and restore township leases to the control of the Traditional Owners.

(f) To reinstate the CDEP program in its original form.

(g) To provide for infrastructure including improved provision for education and health in the Homelands upon an equitable basis with that supplied to the white community.

(h) To support and encourage investment in the Homelands under the control of Community leaders as a preferred employment option.

(i) To reintroduce, under the guidance of a panel of national experts, the bilingual programme as one of the routes to learning of the English language within the primary school system, where requested.

(j) To cease the practice of coercing community leaders and traditional owners to enter long leases as a condition of providing community housing and with the consent of the lessors, to discharge such leases as have been entered into in this way.

(j) To set up an independent body to review the management of, and access to, the Aboriginal Benefit's Account (ABA).

PART 1

1. Failure to Comply with Law and Human Rights Requirements (Articles 1&2)

"An early flash point with one clan of Aborigines illustrates the first stages of the conflagration of oppression and conflict which was, over the following century, to spread across the continent to dispossess, degrade and devastate the Aboriginal peoples and leave a national legacy of unutterable shame."[1]

The Absence of a Bill of Rights in Australia

In any consideration of Australian law in relation to Aboriginal people it must be appreciated that Australia is virtually the only Western democracy which does not protect the rights of its citizens by means of a Bill of Rights. Despite a recommendation from a Committee appointed by it to the effect that this situation should be rectified, the present Australian Government has made a deliberate decision not to introduce a Bill of Rights. Many of the worst human rights violations committed by successive Australian Governments are explicable because of the absence of such a protection. The Aboriginal people have too often been the victims of these violations, one of which was exemplified by the suspension of the racial Discrimination Act in 12007 in respect of the relevant Aboriginal communities in the Northern Territory.

Ampe Akelyernemane Meke Mekarle, "Little Children are Sacred" Report.

On 21 June 2007, the then Prime Minister and the Minister for Indigenous Affairs announced an intervention in the Northern Territory of Australia, ostensibly to protect Aboriginal children from sexual and other abuse. The announcement was made in response to the *Ampe Akelyernemane Meke Mekarle, "Little Children are Sacred"* Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse of 30 April 2007.[2] That report revealed a troublesome situation in relation to the abuse of Aboriginal children in the Northern Territory and clearly called for urgent action by the Northern Territory Government. Some of the abuse was by whites.

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1 *Mabo v Queensland No. 2* [1992] HCA 23; (1992) 175 CLR 1
per Justices Deane and Gaudron at Para.50

2 Rex Wild, Patricia Anderson, *"Ampe Akelyernemane Meke Mekarle "Little Children are Sacred."* Report of Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, (30th April 2007) http://www.nt.gov.au/dcm/inquirysaac/pdf/bipacsa_final_report.pdf

The Report contained some 97 recommendations and runs to 376 pages. It recorded significant and extensive consultation with Aboriginal people, including children, and was a far sighted and genuine attempt to address the problems of child abuse.

The Report was made public on 15 June 2007. It emphasised the need for real consultation with, 'and ownership by the communities of those solutions'. Significantly, the authors said:

"In the first recommendation, we have specifically referred to the critical importance of governments committing to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities, whether these are in remote, regional or urban settings. We have been conscious throughout our enquiries of the need for that consultation and for Aboriginal people to be involved."[3]

Some six days later came the Federal Government Northern Territory Emergency Response (NTER). It came entirely without consultation with the Aboriginal people and ignored the substantive recommendations of the Report to which it was purportedly responding. Despite token attempts at consultation that approach has continued under the present Government. It is quite obvious that the Report was used as a trigger to further the then Government's Indigenous policies without regard to the interests of the children concerned, but with a view to the forthcoming election. The Government had been in office for eleven years at the time of the launch of this initiative and had done little or nothing for Indigenous people. Its real commitment to them can be gauged by its opposition to signing the UN Declaration on the Rights of Indigenous Peoples, a stance that has since been reversed by the present Australian Government.

The Destruction of Aboriginal Culture and Dispossession of Aboriginal Lands

In fact the process of dispossession of Aboriginal peoples' lands has been a continuous process since white settlement and the previous government and the present government have continued that process. As a subsequent section of this submission points out, an amendment to the A*boriginal Land Rights Act 2006,* occurring well before the NTER and follow up legislation in 2007 replaced sub-leases of community owned land formerly controlled by Aboriginal Land Councils with leases controlled not by Aboriginal Land Councils, but by a Government Authority. Community leaders have been also been forced to enter into 99 year leases as a price for obtaining housing that the Government has an obligation to supply. This forms part of a move to force Aboriginal people into designated township areas, thus freeing up their traditional lands for mining and exploitation by commercial interests. This process has been supported by the present Australian Government and the

3 ibid

Northern Territory Government and their respective bureaucrats. As part of this process little or no money is being made available for out stations,

including health, education and housing at those locations, which represent the heartland of Aboriginal culture.[4]

The Northern Territory Intervention 2007

Despite considerable public protest, the *Northern Territory National Emergency Response Act* 2007 was passed by Parliament without amendment and came into effect on 18 August 2007. It is an Act of some 500 pages in which the word 'children' does not appear and the responsible Minister, Mr. Brough, admitted that he had not read it before it was passed. Aboriginal leader Pat Dodson wrote

"The tragedy of the Howard Government's eleven-year hold on power is that Indigenous policy has focused on destroying the potential for this nation to respect and nurture the cultural renaissance of traditional Indigenous society. Public policy that celebrates Indigenous culture has been shunned.
We are left with a vague sense that the problems of the present-day crisis have no history and that the way forward is for Indigenous people to abandon their identity and be absorbed into European settler society".

He continued:

The extinguishing of Indigenous culture by attrition is the political goal of the Howard Government's Indigenous policy agenda. Our nation is confronted with a searing moral challenge."[5]

As to the NTER itself, I wrote in late 2007:

"The breadth of the legislation is frightening and it significantly overrides the rights of many Indigenous people in ways that would not be tolerated by the ordinary Australian community. It is discriminatory and racist and bundles all Indigenous people together as potential pornographers, child molesters and persons habitually addicted to the excessive consumption of alcohol."[6]

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4 See Nicolas Rothwell, *'Memo makes a mockery of NT's Aboriginal community reforms'*, The Australian newspaper, 26-27 June 2010.

5 '*Coercive Reconciliation*: *Stabilise, Normalise, Exit Aboriginal Australia'*,(Carlton Australia, Arena:2007) This a series of essays edited by Jon Altman and Melinda Hinkson and is the first book to cover the Northern Territory Intervention. These extracts are from a section of an essay written by Pat Dodson published in Crikey.com on 13 September 2007

6 Alastair Nicholson; *Australia's Children: Does the Law Offer Them Sufficient Protection? (Speech delivered at the* 27th Lionel Murphy Memorial Lecture 2007, Parliament house Sydney 2007) accessed 4/10/2009. Available at http://lionelmurphy.anu.edu.au/memorial_lectures.htm

Some of the many objectionable aspects of the legislation involved:

- The suspension of the Racial Discrimination Act.
- The adoption of income protection whereby Aboriginal people were deprived of 50% of their social service benefits which could only be spent in designated outlets on designated goods.
- The removal of social security benefits (inter alia) where a child is considered to be in need of protection, where the parents reside in specified areas of the Northern Territory, or where a child has an unsatisfactory attendance at school.
- The acquisition of Aboriginal lands by means of compulsory leases of up to five years duration.
- Restrictions on the use of alcohol and pornography on Aboriginal lands, coupled with heavy penalties for breach and offensive signage at the entrances to those lands.
- The abandonment of the Community Development Employment Scheme. This was a scheme introduced by a previous conservative Government headed by the Hon Malcolm Fraser, which provided work and training for a large number of Aboriginal people.
- Preventing a court from taking into account Aboriginal customary law or practices in sentencing offenders.

It takes only a moment's thought to appreciate the injustice of most of these measures so far as the Aboriginal community in the Northern Territory is concerned.

"We have a God given right to exert our sovereignty and have equality with others, and not be dominated and have our rights abused by others" [7]
Maratja Dhamarrandji, Elder from Banthula Homeland

The suspension of the Racial Discrimination Act involved a direct attack on the meagre rights and freedoms of Aboriginal people and should never have been countenanced.

Income protection involved the compulsory seizure of 50% of affected Aboriginal people's income from social security that had previously been inalienable and the requirement that it be spent using a so called 'Basics Card' at designated stores on a limited range of goods deemed by the Government to be necessary.

7 During Survey 1, Elders survey, (June 2010). See Appendix 1

The power to restrict payment of social security benefits because a person lives in particular areas of the Northern Territory was clearly aimed at forcing Aboriginal people to live in areas that the Government determines, rather than where they determine. This seems more directed to forced relocation of people to where the Government wants them to live. Such a measure would never be tolerated by the broader Australian community.

Similarly, benefits may be withdrawn in the event of unsatisfactory school attendance. Again this would be unacceptable in the wider community. Further, it involves a complete lack of appreciation of Aboriginal culture. The legislation was based upon a nuclear family assumption, which has little or no relevance to many Aboriginal communities. It also ignored the fact that through years of neglect of basic services to Aboriginal communities, many children would be living in situations where the provision of education services is inadequate and unattractive.

The restrictions on alcohol and pornography came at a time when approximately 80% of the homeland areas were already dry as a result of voluntary actions by Aboriginal people. There was no evidence of serious use of pornography on Aboriginal lands; rather the contrary in that its use was at a far lower rate than in the white community. The effect of this measure was to single Aboriginal people out as alcoholics and pornographers as a group. The previous government's abandonment of the CDEP scheme threw many thousands of Aboriginal people out of work. It was accompanied by a promise to create 'real jobs' for Aboriginal people, but this did not happen.

The interference with judicial discretion on sentencing to prevent a sentencing judge taking matters of customary law or practice into account was disgraceful. Such an approach does not apply for example to Jewish or Islamic people or to the people of many nationalities that have come to Australia to live who have come from places where there are different customs and practices. It is unjust for judges to be prevented from taking these matters into account in determining the degree of criminality of the offender and the appropriate punishment. It is highly discriminatory towards Aboriginal people. It is also counterproductive because it excludes Aboriginal people from the Court processes.

"… we wanted to play a role with the governments and the courts and the justice system, so we can bring a lot of those young people back language and through family. Our next leaders, all the young people …. All the young ones are getting locked up in jail but we can fix that … about training and creating employment and work opportunities." Ampilatwatja Resident, Richard Downs. [8]

8 Alastair Nicholson, Larissa Behrendt, Alison Vivian, Nicole Watson and Michele Harris, *Will they be Heard? - A Response to the NTER Consultations June to August 2009,* (November 2009).pdf Available at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

Lack of Consultation and Respect for Aboriginal People

The real problem is that the Government acted in a precipitate way without consultation with the Aboriginal people or with people with child protection expertise.

By treating the Aboriginal people in this way, it demonstrated a clear lack of respect for them and as such, their acceptance of the changes could hardly be expected. As experience suggests and as the Anderson/Wild report pointed out, consultation, Aboriginal involvement in planning and decision making and co-operation are essential for any progress to be made. The present government has continued to make the same mistakes. The situation at the time that the NTER was introduced was exacerbated by the then Government's inability or failure to give any or any sufficient explanation as to why all of these measures were necessary to protect the children. The present Government does not even continue to pretend that this is relevant.

Professor Raimond Gaita has commented:

"Could this disrespect be shown to any other community in this country? The answer, I believe, has to be no. If that is true, then it betrays neither cynicism nor insufficient love of country to suspect that, to a significant extent, Aborigines and their children are still seen from a racist denigrating perspective. From that perspective, the (sincere) concern for the children is concern for them as children of a denigrated people, just as it was when the children whom we now call the Stolen Generation were taken from their parents."[9]

From the point of view of the then Opposition and now Government, one of the most shameful aspects of this affair was its failure to oppose this legislation. It clearly took this approach to avoid giving the then Government an election issue but the consequence has been that in Government, its position is compromised, to the point where it has not only felt unable to dismantle this legislation, but has enthusiastically continued with some of its worst features.

The Suspension of the Racial Discrimination Act

The NTER involved and continues to involve openly discriminatory measures against Aboriginal people.
The 2007 legislation was later described by the United Nations High Commissioner for Human Rights Special Rapporteur, James Anaya, who reported at the end of an August 2009 visit to Australia:

9 Raimond Gaita , *Comment;* The Monthly, The Monthly Pty Ltd, Melbourne (August 2007)www.themonthly.com.au/nation-reviewed-raimond-gaita-comment--596

"*Of particular concern is the Northern Territory Emergency Response, which by the Government's own account is an extraordinary measure, especially in its income management regime, imposition of compulsory leases, and community-wide bans on alcohol consumption and pornography. These measures overtly discriminate against aboriginal peoples, infringe their right of self-determination and stigmatize already stigmatized communities.*"[10]

In the initiating legislation for the NTER, the relevant measures were described as 'special measures', thus seeking to pre-empt judicial scrutiny of them. It is doubtful whether this was a legitimate use of legislation for the purposes of Australian domestic law. It was not acceptable as a matter of international law. However this issue is no longer relevant as in the 2010 legislation, an attempt to adopt such a formula has now been abandoned following representations by the Australian Human Rights Commission (AHRC, formerly HREOC).

Because the Racial Discrimination Act was suspended, the issue of whether the measures taken in the NTER were 'special measures' was never determined by a Court.

The incoming Rudd Government had during the election campaign prior to its election in October 2007, promised to restore the Racial Discrimination Act to full operation.

However, as has been pointed out, while in Opposition it voted with the then Government to pass the NTER legislation and has remained committed to its continuation in one form or another. This has led to particular difficulties in relation to the restoration of the RDA and the relevant legislation restoring it has only recently been passed by the Parliament. As will appear, it is also significantly flawed.

Restoration of the Racial Discrimination Act and Legislation introducing "Special Measures"

This is not a time for questions and it is not a time for you to talk, you need to listen …...we demand that the Racial Discrimination Act be fully reinstated.

The problems our people face can be addressed through programs and funding targeted on a needs basis alone, under the Closing the Gap policy.[11]

Laynahapuy Mala Leaders

10 James Anaya, *Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people of Australia*, as he concludes his visit to Australia (speech Canberra 27 August 2009) http://www.un.org.au/files/files/Press%20Release%20-%20Australia%20JA%20final.pdf

11'concerned Australians', *This Is What We Said*: *Australian Aboriginal people give their views on the northern Territory Intervention*, (East Melb Vic, Feb 2010), 54

On 25 November 2009, the Government released a policy statement in which it announced pending legislation for the restoration of the RDA. The statement explained how NTER measures would be modified so that they might either not be deemed discriminatory or could be deemed beneficial forms of discrimination. The new legislation has not achieved these objects.

Continuation of Income Management

As to income management, the legislation continues to provide for an arbitrary subjection of all affected people within particular geographical areas to income management where 50% of their income is only capable of being spent using a "basics card' that can only be used to purchase a limited range of goods from certain suppliers.
The people targeted are as follows:

1.People aged 15 to 24 who have been in receipt of Youth Allowance (other), Newstart Allowance, special benefit or Parenting Payment for more than 13 weeks in the first 26 weeks (disengaged youth)

2. People aged 25 and above (and younger than pension age) who have been in long-term receipt of specified payments, including Newstart Allowance and Parenting Payment (long-term welfare payment recipients).

3. People referred for income management by child protection authorities.

4. People assessed by Centrelink social workers as requiring income management due to vulnerability to financial crisis, domestic violence or economic abuse.

The legislation is no longer specifically directed at Aboriginal people and it potentially extends income management to all. However, the effect of it enables the Government to designate particular geographical areas as being subject to income management and at present, the area is confined to the Northern Territory.

Since the vast majority of welfare recipients in the NT are Aboriginal, the Act while expressed in non-discriminatory terms, continues to primarily target Aboriginal people. In particular, the first and second categories affect nearly all Aboriginal people in the NT, because they are the most economically disadvantaged people in the NT and because they generally live in locations where little or no work is available.

The Government has not disclosed its plans (if any) in relation to the rest of Australia, but it is possible that geographical areas will be selected that continue to primarily target Aboriginal people.

All people forming part of the groups that are designated by the legislation are subject to this regime, subject to a proviso that they may be exempted

from income management arrangements where they are able to demonstrate a record of 'responsible parenting' or participation in employment or study, or of their capacity to manage money. This means that their rights to manage their own affairs are ignored unless they can satisfy some faceless official that they are somehow entitled to them.

The Bills Digest produced by the Parliamentary Library in relation to the 2010 legislation contains a useful discussion of this issue.12 It says:

"The Australian Human Rights Commission has issued draft guidelines for ensuring income management measures are compliant with the RDA. The Commission poses three key questions:

- *where the measure is established by legislation, does it ensure equality before the law?*
- *is the measure implemented in a way that avoids both 'direct' and 'indirect' discrimination?, and*
- *is the measure a 'special measure'?*

(If a measure is non-discriminatory, it is not necessary to determine whether it is a special measure.)

The Commission notes that a measure that has a disparate effect on a particular racial group may be discriminatory. It is not necessary that the measure targets a group.

What matters is the practical effect of a measure. If in practice, it has a greater impact upon people of a particular race, then it may be discriminatory."

The current income management legislation fails the first two of these tests because it does not ensure equality before the law and does not avoid either direct or indirect discrimination. At its highest from the point of view of the Government, it discriminates against all of the most disadvantaged within the community without regard to whether they are Aboriginal or otherwise. In Australia social security entitlements have been treated by law as inalienable since the Great Depression of the 1930's. This legislation encroaches upon that principle in a serious way.

More importantly for the purposes of this discussion the legislation does not avoid discrimination and indeed is designed to be discriminatory towards Aboriginal people, because in practice it has a greater impact upon them.

The third test provided by the Australian Human Rights Commission as to income management being a special measure does not arise because the Government does not argue that this is a 'special measure' because of the ruse employed of making it appear to target all social welfare recipients.

12 http://www.aph.gov.au/library/pubs/bd/index.htm (accessed 1 July 2010)

The Bills Digest Paper goes on to point out that the Australian Human Rights Commission had proposed a model to Government:

"------that could comply with the RDA which would comprise the following features:

- *it should be subject to the application of the RDA and state/territory anti-discrimination legislation*
- *it should not apply automatic quarantining—different options that should be considered may include allowing for a voluntary/opt in approach or a last-resort suspension approach for income management*
- *it should provide for a defined period of income management, where the time-frame for compulsory quarantining would be proportionate to the context and/or subject to periodic review*
- *it must allow for a review and appeal processes, and*
- *it should include additional support programs that the address the rights to food, education, housing, and provide support for welfare recipients, safe houses for women and men, alcohol and substance abuse programs."*

The Bills Digest paper notes:

"-------The first element will not be met immediately. As can be seen from the discussion of Schedule 2 below, the income management scheme established by this Bill would not comply with the second element of the Commission's model—that is, that the scheme should not apply automatically to particular classes of welfare recipient. Nor in all cases would it comply with the third element that the income management scheme should provide for a defined period of income management.

In relation to the fourth element, a determination by the Secretary is one of the requirements for a person or group of persons to be subject to income management under the scheme. This determination may be revoked by the Secretary on request by a person subject to the determination. Where income support recipients wish to apply for exemption from the new arrangements, evidence must be provided to justify this exemption. Any person in receipt of income support also has rights of review under Part 4 of the Social Security Act 1991. Thus, the scheme could be said to meet the fourth element of the Commission's model.

The fifth element in the model suggested by the Commission is consistent with evidence about the kinds of assistance necessary to bring about sustainable change in disadvantaged communities. As will be seen below, the model of income management outlined by the Government includes assistance for welfare recipients in the form of financial counselling and money management services. Further, the Howard and Rudd Governments have both provided assistance across most of the areas suggested by the Commission above. The difficult question is whether such assistance can be said to have been sufficient to have addressed the rights to such things as

food, education, housing, safety and health care. There also does not appear to be any suggestion that expansion of income management across the NT will be accompanied by additional assistance in the form of social services. The new model proposed meets some but not all of these criteria."[13]

We are puzzled by the statement that the first element would not be met immediately. It has not been met at all and will not be met, because the Act reinstating the RDA does not contain a 'notwithstanding' clause which would ensure that the provisions of the RDA would prevail over any inconsistent (racially discriminatory) provisions in the Northern Territory Intervention legislation, as has been pointed out in the NGO submission.14 We would also take issue with the proposition that the fourth element, being a determination by the Secretary and the grant of a right of review complies with the Australian Human Rights Commission proposal. Having said this however, it remains a damning indictment of the legislation that it does not otherwise comply with the Commission's proposal.

Most of the remaining measures contained in the 2010 legislation are claimed by the Government to be special measures. A notable exception is the measure preventing a sentencing Court or a Court hearing a bail application form taking into account Aboriginal law and culture. The present Government has refused to repeal this legislation despite its open discriminatory nature while at the same time purporting to restore the RDA. This says much about the Government's real commitment to the RDA.

Defining Special Measures

"We should not be subjected to special measures that separate us out or impose things on us without agreement."[15]
Laynhapuy Mala Leaders

The definition of 'special measures' in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) is as follows:

> *"Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."*

13 http://www.aph.gov.au/library/pubs/bd/index.htm (accessed 1 July 2010)

14 NGO CERD Report Para 123

15 concerned Australians', *This Is What We Said*, p 54

Special Rapporteur Anaya said of special measures:

"-------any special measure that infringes on the basic rights of indigenous peoples must be narrowly tailored, proportional, and necessary to achieve the legitimate objectives being pursued. In my view, the Northern Territory Emergency Response is not. In my opinion, as currently configured and carried out, the Emergency Response is incompatible with Australia's obligations under the Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, treaties to which Australia is a party, as well as incompatible with the Declaration on the Rights of Indigenous Peoples, to which Australia has affirmed its support."[16]

The Parliamentary Library Bills Digest relating to the NTER legislation contained the following useful discussion of special measures under *Australian Law.*[17]

"The Australian courts have interpreted this definition as containing four elements:

- *a special measure must confer a benefit on some or all members of a class;*
- *the membership of the class must be based on race, colour, descent, or national or ethnic origin;*
- *a special measure must be for the sole purpose of securing adequate advancement of the beneficiaries in order that they may enjoy and exercise equally with others human rights and freedoms; and*
- *the circumstances of the special measure must provide protection to the beneficiaries which is necessary in order that they may enjoy and exercise human rights and freedoms equally with others.*

Furthermore a special measure must not be continued after the objectives for which it was taken have been achieved."

This is in line with the current NGO submission to the Committee as to the effect of Australian law and summarises the effect of the High Court decision in the case of Gerhardy v Brown.

16 James Anaya, *Statement* as he concludes his visit to Australia (27 August 2009) http://www.un.org.au/files/files/Press%20Release%20-%20Australia%20JA%20final.pdf

17 http://www.aph.gov.au/library/pubs/bd/2007-08/08bd018.pdf

The Significance of Consultation in Relation to Special Measures

Importantly, the above definition does not discuss the issue of consultation and obtaining the views of the Indigenous group that is to be subject to the special measures. However the discussion in the Bills Digest refers to a very important passage of Brennan J's judgment in that case as to consultation where he said:

> *"The dignity of the beneficiaries is impaired and they are not advanced by having an unwanted material benefit foisted on them. An Aboriginal community without a home is advanced by granting them title to the land they wish to have as a home. Such a grant may satisfy a demand for land rights. But an Aboriginal community would not be advanced by granting them title to land to which they would be confined against their wishes. Importantly, the terms and conditions upon which the benefit is conferred have been relevant to the court's assessment of the purpose of the agreement. The wishes of the Indigenous community with whom the agreement was made may also be relevant. Difficult issues have arisen for a court's consideration where the wishes or views of the Indigenous community are not uniform."*

While not conclusive, this passage confirms the existence of a duty of consultation in order to ascertain the wishes of Aboriginal people under Australian law. Since 1985, the law in relation to Aboriginal issues has developed further, particularly as a result of the decision of the High Court of Australia in *Mabo v Queensland*. The duty of consultation has also been refined further by Special Rapporteur Anaya and is fully dealt with in 'Will They Be Heard' at paras 80- 83.[18] The inadequacy of the Government's consultation process is fully described in that report and in the passages that follow in this submission.

The only hard evidence of these "consultations" is the series of videos from three locations which are the subject of the *Will They Be Heard* report. They reveal that the consultations were not consultations at all but simply a process of going through the motions of consultation to reach an outcome already pre-determined by the Government. The Government has not released notes or evidence of the other 'consultations' except for a series of summaries discussed later in this submission, which confirm the criticisms made in the *Will They be Heard* report and confirm that there was no agreement on the part of the Aboriginal people to continuation of the NTER measures. The Minister has claimed that there were a number of individual consultations that justify the Government's position but has released no evidence in this regard. She has claimed that women to whom she has spoken concerning income management support it but again no figures or details have been given.

18 *Will They Be Heard? - A Response to the NTER Consultations June to August 2009,* (November 2009). Available at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

The surveys discussed in the second part of this submission suggest that women are far from happy with the continuation of income management. The only possible conclusion therefore is that these 'consultations' do not support the Government's position and as a result, none of the changes can be passed off as special measures.

The Reality of the Government's Legislation and its Policies

The reality is that the so-called special measures contained in the 2010 legislation are thinly disguised versions of what went before. Some minor concessions have been made that are mainly cosmetic but very little of substance has emerged.

We still have controls on alcohol and pornography which apply to no other ethnic group in Australia. So far as alcohol is concerned about 80% of homeland Aboriginal communities were dry before the NTER and yet these restrictions are maintained. It is true that there is more flexibility in relation to them but the underlying assumption is that all relevant aboriginal people should be subject to them unless they can establish otherwise. Capitals like Melbourne are plagued with enormous concentrations of drunk and violent young people every night, mainly white, and pornography and inappropriate sexual imagery of young women is available on a grand scale and there is no suggestion that this sort of restriction should apply to them. Sexual abuse of children occurs at a higher rate in the white than in the Aboriginal community and yet our Government determines that special measures are called for in respect of Aborigines.

Aboriginal lands are acquired compulsorily on five year leases for no apparent purpose or benefit to Aboriginal communities.

Aboriginal schools are generally so poorly staffed and supported that it is little wonder that children do not wish to attend them and parents are reluctant to make them do so. Those who are either unwilling or unable to force their children to attend these schools are deprived of the meagre social security support to which they are entitled.

Aboriginal leaders are blackmailed into granting long leases, up to 99 years, over Aboriginal traditional lands in return for promises of housing for their people that often do not eventuate and which the Government has an obligation to supply in any event.

Aboriginal people are driven off their traditional lands and forced into urban agglomerations that destroy their culture.

The control of much Aboriginal land now lies with the Federal and NT Governments and not with the Aboriginal people and the imposed

bureaucracy administering this exercise is paid for out of funds paid to aboriginal people from mining leases of their lands.

The present Government purported to restore the CDEP scheme, but like so many of its measures, this involved more spin than reality. The old Scheme is being phased out by the government and is due to end in July 2011.

The present situation is that those employed under the new CDEP scheme are paid only the equivalent of a 'Newstart allowance', no matter what hours they work and most lose control of 50% of it under income management. The end result is that instead of gaining independence by their work they are thrust back some 50 years in time to the period when many Aboriginal workers worked for rations. This position has been compared to slave status.

Aboriginal offenders are sentenced under a different and more punitive code than applies to any other ethnic group because courts are not permitted to take into account their law and culture.

We conclude this section of our submission by pointing to the very heavy responsibility the Australian Government has for the protection and nurture of its Aboriginal and Torres Strait Islander people and for the need for it to re-think how these responsibilities should be discharged without resort to the heavy handed methods of the past.

In this regard it has been extremely disappointing in the week ending 3 July to see that the Opposition leader, Mr Abbot has been reported as saying that the solution to Aboriginal problems is putting them all to work, 'picking up rubbish' if necessary.

There seems to be a lack of understanding that any solution must involve genuine consultation and inclusion of Aboriginal people in the decision making process, rather than arbitrary compulsion imposed by legislation.

The remainder of this submission sets out the views of many Aboriginal people themselves as to what has occurred and is thus the most important section of this submission.

PART 2

2. Failure to Gain the Consent of Aboriginal People for the Introduction of the NTER Measures (Article 1&2)

From the June 2010 Survey of elders, we also find that:

> 97% believe they have not provided consent for the NTER Measures in their communities
>
> 3% believe they have given consent for the NTER Measures in their communities

"We should not be subjected to special measures that separate us out or impose things on us without our agreement."
Laynhapuy Mala Leaders Yirrkala. [19]

"Look we want a full say in our community, on everything that happens about the way forward with the intervention and so on. Because what is happening … is the enforcement of someone's visions and goals onto people and that is what we are up against. And this blanket cover and accusations and categorizing and all that, you know. It's wrong." [20] Ampilatwatja Resident

UNDRIP Article 19 of the Declaration on the Rights of Indigenous Peoples states: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, PRIOR and INFORMED consent before adopting and implementing legislative and administrative measures that may affect them.

19 'concerned Australians', *This Is What We Said* , p54

20 Nicholson, Behrendt, Vivian, Watson and Harris, (Nov 2009) *Will they be Heard?* pdf. See part 2 Ampilatwatja Tier 2 consultation 00:37:40:22, p 145 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf ,

See also, *This Is What We Said,* 29

3. Failure to Genuinely Consult with Aboriginal People
(Article 1&2)

Rosalie Kunoth-Monks, Elder from Utopia made the following observations regarding the consultations of 2009.

"*No, we were not consulted in the true meaning of the word consultation... . We certainly did not! But there were trips out into the remote areas that was said to be consultation. It was a one-way conversation. One way conversation does not mean that you are giving consent, simply because you don't fully understand the language in which you are being addressed. Your first language is something different from that of the people that are consulting you. So definitely not. Some of the concept that was being put forward of course was not in the Aboriginal language as well. So as far as I was concerned, in my area there was not a consultation."* [21]

Rev. Dr Djiniyini Gondarra from Galiwin'ku on Elcho Island comments on the process of government consultation,

"I think the way that the system operates is that the decision is made somewhere on top and we are being been left out." [22]

During the 2009 Consultation, a Bagot community woman was so convinced that decisions had already been made regarding the NTER measures that she said,

" *… they don't come and sit down with us. That is where it is wrong. They should have come and sat down and set up a program, set up a big plan how of what the problem is, they sit down with us and then we can work it out together, because your policy is not working at all in remote communities."* [23]

According to an Ampilatwatja resident, "*…the governments have already made their decision as to the way forward and this is just formality, to say that we have consulted with Aboriginal people."* [24]

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21 *A Conversation with Aboriginal Elders from the Northern Territory* forum (Melbourne University Law School, 19 May 2010)**,** transcript 00:10:11 www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

See also video of night (access code michele) at http://vimeo.com/12267968

22 ibid Transcript at 00:12:24

23 Nicholson, Behrendt, Vivian, Watson and Harris, (Nov 2009) *Will they be Heard?* pdf. See part One Bagot Tier 2 consultation, 0:53:55, p 66 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf .

24 Nicholson, Behrendt, Vivian, Watson and Harris, *Will They Be Heard? pdf* Ampilatwatja Tier 2, Part 2, 00:32:36:14, p143 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

From a June 2010 survey conducted with elders/leaders from 24 communities across the Northern Territory, we find that:

> 12% believe they have been consulted about the NTER Measures in their communities
>
> 88 % believe they have not been consulted about the NTER Measures in their communities

Maratja Damhamarrandji from Banthula Homeland, describes the consultation process as

"You (Yolngu) do it and we (government) will decide."[25]

The Consultations Process 2009

- One of the greatest failures of the consultative process was the absence of independence – there is clear potential for conflict where public servants are bound by the Public Service Act to implement government policies and programmes. [26]
- The restricted nature of the process gave no opportunity to explore innovative culturally based initiatives.

"Why is the Government playing with us? Any move like this should have came after the traditional leaders from all 40 clans across Arnhem Land discussed whether they wanted to make the way for it to happen…" stated Dr. Gawirrin Gumana AO, Yolgnu Elder from Gangan.[27]

Geoffrey Gurwanawuy Dhamarranji, an elder from Elcho Island says, *"Their first priority should have been to come and see what kind of people we are and discuss. Then I would have told them what to do, not tell us."* [28]

See also 'concerned Australians', *This Is What We Said,* (Feb 2010), 29

25 During NT Elders Survey, (June 2010) Appendix 1

26 Public Service Act and instruments made under that Act http://www.apsc.gov.au/publications/legislation.htm

27 'concerned Australians', *This Is What We Said,* (Feb 2010), 57

28 During Survey2 Galiwin'ku Community (June 2010) Appendix 2

- The design for the consultations was set out in a discussion paper, "Future Directions", prepared by the Department of Families and Housing, Children's Services and Indigenous Affairs (FaHCSIA), which provided limited choices and restricted open discussion.[29] It was designed in a manner that could only provide engagement in areas chosen to coincide with already planned policy directions. For example, questions on Income Management gave a choice of continuity of the established programme or pre-designed changes to the established programme. No option was provided to reconsider the programme as a whole. This left no scope for genuine discussion around compromise solutions or explorations of other innovative ideas to address the perceived problems of money management within a cultural context.[30]

- Lack of transparency and a failure to make public recordings of consultations has undermined trust in the process. None of the consultations were directly recorded by Government. Notes were taken by Government officers but were not made available to all community members, nor placed on the website for access to others. When requested by the Greens Party to table the reports in Parliament, the government refused to comply.[31]

- The flawed process of the consultations has been documented in the "*Will They Be Heard?"* report. The deficiencies in the process are highlighted in the report under the headings:

  a. Lack of independence from government on the part of the people undertaking the consultancy;

  b. Lack of Aboriginal input into design and implementation;

  c. Lack of notice;

  d. An absence of interpreters;

  e. The consultations took place on plans and decisions already made by the government;

29 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Australian Government, *Future Directions for the Northern Territory Emergency Response - Discussion paper*,(May 2009), available at http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/future_directions_discussion_paper/Pages/default.aspx

30 ibid. "The [2008] NTER Review Board did not support the continuation of *compulsory* income management in the Northern Territory", p10.

31 Rachael Siewert, Green Senator, Notice of Motion, (26th Nov 2009) http://rachel-siewert.greensmps.org.au/motions

f. Inadequate explanations of the NTER measures;

g. Failure to explain complex legal concepts; and

h. Concerns about the government's motives in implementing consultation. [32]

NTER Measures

The Government's consultation process of June to August 2009 was conducted at a number of levels, from unrecorded consultations with individuals, to consultations with stakeholders. Tier 2 consultations were conducted in 73 prescribed communities. These were followed shortly after by consultations at a regional level where representatives from communities in given areas came together for extended meetings of 2 or 3 days duration. Reports from these Tier 3 meetings have provided the best overview of the views of Aboriginal people across five separate regions.

The regional meetings were held in:

Tennant Creek (30 June – 2 July)
Alice Springs (14-16 July)
Darwin (4-5 August)
Katherine (11-12 August) and,
Nhulunbuy (18–19 August)

The reports have also highlighted the inability for consultation on a number of the measures because of the participants' lack of knowledge concerning the issues (Law Enforcement,) and the limited scope of consultation of some measures (Business Management Powers). Reports from these meetings do not quantify the comments made but they do provide two sections that assist in understanding the prevailing views of the meetings. These sections are 'Summary' and 'Continuity'. The latter being a response to whether the community representatives wished for the continuation of the measure being discussed. Tennant Creek is the one regional meeting that did not provide a 'continuity section' but does provide a 'summary section'. The five Regional Tier 3 Reports can be found towards the back of the *Will They Be Heard?* report.

Income Management

The government's discussion paper offers two options: continuation of the programme (compulsory income management) or an opportunity to apply for an exemption based on individual assessment by Centalink.

32 Nicholson, Behrendt, Vivian, Watson and Harris, *Will They Be Heard*? (*WTBH*) Summary points no. 38, p10 http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

Responses from the Regional reports 'continuity' sections:

Alice Springs:

Compulsory Income Management should not continue.

A voluntary IM model with triggers for people not sending kids to school; not spending money on kids; and abusing or neglecting kids should be introduced.

The current measure is still breeding dependency.[33]

Katherine:

No. We want it to gone completely; we don't want the Basics Card or compulsory IM and want it to stop; get rid of IM.

If it is going to continue we support a voluntary trigger model; it should also be applied Australia wide, not just in the NT.

It should only be compulsory for those who cannot manage their own money; it shouldn't be compulsory for everyone.[34]

Darwin:

No, not in its current form. It should be a voluntary trigger model.[35]

Nhulunbuy:

- *Not in its current form. It should be voluntary. Yolngu don't want their income to be managed.*

- *We want our rights back. Enough is enough. Let us be who we are.*

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33 Nicholson, Behrendt, Vivian, Watson and Harris, *Will They Be Heard?* NTER Redesign Tier 3 Regional Meeting Workshop Alice Springs, Attachment B the Measures, p 6. Or, p 221 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

34 Nicholson, Behrendt, Vivian, Watson and Harris, *Will They Be Heard?* NTER Redesign Tier 3 Workshop Katherine , Attachment B the Measures, p 262 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

35 ibid. NTER Redesign Tier 3 Workshop Darwin , Attachment B the Measures, p 239 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

• *Stop playing us like puppets on a string.*[36]

Tennant Creek: (summary section):

Participants acknowledged there have been some positive benefits from IM.

However, did not support either of the compulsory options outlined in the Discussion Paper.[37]

From these Regional Reports it is clear that there is no record of support for the continuation of Compulsory Income Management.

Further to this, in the June 2010 Survey elders and leaders were asked whether the use of the Basics Card had made it easier for them to manage their money, and none said it had.

0% said it had
30% said there had been no change
70% said it had not made it easier to manage money.

A Bagot Community resident stated,

"The income management, it's very extreme, everything about the Intervention is just full-on extreme… The only reason we can have income management is because Bagot and other communities are welfare based. But then to have such extreme actions like income management where, it's a simple thing, like I said it's not rocket science, all you need is to have, is to instigate a programme that within communities for all, that can help people budget their money. That's all you need, you don't need people to be, you know, to have income management forced upon them, to make them do the right thing." [38]

Dr. Djiniyini Gondarra referred to Income Management as,

"… a crime. It is like someone is calling you a liar. It is something that was already done in the 50's....." [39]

Comments from the June Survey include:

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36 Ibid. NTER Redesign Tier 3 Workshop Nhulunbuy, Attachment B the Measures, p 286 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

37 Ibid. NTER Redesign Tier 3 Workshop Tenant Creek , p 203 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

38 Nicholson, Behrendt, Vivian, Watson and Harris *Will They Be Heard?* (Nov 2009) Bagot Tier 2, 0:18:5, p 86 http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

39 *A Conversation with Aboriginal Elders* (May 19 2010),Transcript 48:47 www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

Elaine Peckham from the Iwaputuka Land Trust says*, "Basic Card has made things harder. It has taken away our choice and responsibility. The Intervention has been very disempowering."* [40]

"People can't spend their money where they want. People always have to deal with Centalink." according to Mark Lane from Tingkarli.[41]

And Walpri woman, Rachel Jurrah says*, "We try to save our money, but basics card makes it hard. We are no drinkers."*[42]

Pamela Sampson of Ilparlpa Town Camp says, *"Basics Cards makes things much harder. There is more racism now."* [43]

"People weren't given options to choose whether to be income managed or not," comments Sarena Williams from Hermannsburg.[44]

One attendee at the Katherine Regional Meeting said*, "When I went to the shop with one of my grandkids to get an ice cream I couldn't use my Basics Card. Centrelink has to say this is what you can and can not buy."*[45]

5-Year Leases

Five year leases were compulsorily taken over community townships. Government agreed to pay compensation for the land.

Responses from the Regional Reports 'continuity' sections:

Nhulunbuy:

No way. We don't want leases in our community. Give our land back.[46]

Darwin:

No. We want our land back. We don't want the government to control our land with 5-year leases.[47]

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40 During Survey 1, Elders/ leaders survey, (June 2010) Appendix 1

41 ibid
42 ibid
43 ibid
44 Ibid

45 *Will They Be Heard?* NTER Redesign Tier 3 Workshop, Katherine , Attachment B the Measures, p 269 http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

46 Nicholson, Behrendt, Vivian, Watson and Harris *Will They Be Heard?* NTER Redesign Tier 3 Workshop Nhulunbuy, Attachment B The Measures, p 289 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

47 ibid, NTER Redesign Tier 3 Workshop Darwin , Attachment B the Measures, p 243 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

Katherine:

No. Leases should be voluntary.[48]

Tennant Creek: (from the summary)

The majority of participants took the view that discussion on land issues was the domain of the Land Councils and Traditional Owners. [49]

Alice Springs: (from the summary)

They stated that all discussions on 5-year leases should be directed through the relevant land council and associated traditional owners associations.[50]

The Survey of June 2010 showed 24 communities are of the following view:

100% said they wanted their land returned rather than being provided with compensation.

David Ross, Director of the Central Land Council observed,

"The Government has used the five year leases to further its own and the Northern Territory Government's interests without any benefit to the residents of these communities." [51]

"Compulsory taking of the five year lease is ridiculous, it is like somebody going into your property and saying, look I am going to take over this

land,.... this is thieving...actually breaking the law, it is breach against the law of this land, according to Dr. Djiniyini Gondarra.[52]

48 ibid , NTER Redesign Tier 3 Workshop Katherine , Attachment B the Measures, p 268 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

49 ibid , NTER Redesign Tier 3 Workshop Tenant Creek , p 208 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

50 *Will They Be Heard?* NTER Redesign Tier 3 Workshop Alice Springs , Attachment B the Measures, p 224 http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

51 Central Land Council Media Release, *NT Emergency Response Still Ignores Aboriginal People*, (25 Nov 2009) available at http://australiansall.com.au/archive/post/nt-emergency-response-still-ignores-aboriginal-people/
See also, *This Is What We Said,*, 59

52 *Conversation with Aboriginal Elders from the Northern Territory,* (May 19th 2010) Transcript 12:24 at www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

UNDRIP Article 26.1 Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

Alcohol Restrictions:

The vast majority of NT Homelands were already dry area before the NTER measure was imposed.

Residents are liable for large fines if they are found with alcohol in a prescribed area.

Nhulunbuy:

Yes (restrictions should continue). We do not want grog in our communities.[53]

Darwin:

- *Restrictions should not be continued.*
- *This is just forcing drinkers to other areas and not solving the problem.*
- *There needs to be more consultation with individual communities – 'one size does not fit all'.* [54]

Katherine:

- *Lets work together to solve this problem and develop community based solutions.*
- *Yes to alcohol restrictions.*
- *Wet areas are required.*[55]

Tennant Creek:

The workshop generally supported the proposed changes (changes not identified) to this measure, but wanted more action taken to manage alcohol usage and combat alcohol misuse, rather than just restrictions and policing.[56]

53 Nicholson, Behrendt, Vivian, Watson and Harris *Will They Be Heard? (WTBH),* NTER Redesign Tier 3 Workshop Nhulunbuy, Attachment B the Measures, p 289 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

54 *WTBH?,* NTER Redesign Tier 3 Workshop Darwin , Attachment B the Measures, p 242 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

55 *WTBH?,* NTER Redesign Tier 3 Workshop Katherine , Attachment B the Measures, p 266 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

56 *Will They Be Heard?,* NTER Redesign Tier 3 Workshop Tenant Creek , p 206 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

Alice Springs:

This needs to be dealt with on a community by community basis
The issue goes back to basic human rights.[57]

The diversity of responses clearly highlights the failure to obtain an 'across the board' consent for this measure. There is a strong theme of individual communities wanting to address this problem independently.

UNDRIP Article 23 of the Declaration on the Rights of Indigenous peoples: Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

A resident of Utopia says, "*We, on this place here have always controlled alcohol coming in to this place. If there are any of our young people coming back here we, we discipline them. We say, 'you do not drink, where there's children, women and older people like', like myself*." [58]

While a Bagot resident focuses on the importance of rehabilitation,

"It's a very hard problem to tackle, you know, alcohol restrictions and to have ten thousand dollar fines for the first offence and any other offence $74,000. How can people afford to pay things like that because they're, they're afflicted with alcoholism and because they come to drink and the only place they feel safe is in their home and they're going to get a $74,000 because they're just sitting there having a drink, you know. Surely it would make more sense for somebody to be available here in the community, and to go out to each house and say, look you know, you've gone to bits and you might need help, you know." [59]

<u>Pornography Restrictions</u>:

Restrictions on pornography were not discussed at all of the regional meetings

Nhulunbuy: not discussed

57 *Will They Be Heard?* NTER Redesign Tier 3 Workshop Alice Springs, Attachment B, p 223 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

58 *This Is What We Said*, (Feb 2010),40

59 *Will They Be Heard?* (Nov 2009) Bagot Tier 2, part 2, 0:33:24 , p 91 http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

Darwin:

Participants advised they did not want pornographic material in their communities; however, considered the signage offensive and wanted it removed. Many people advised the policy was flawed as it did not block the purchase or supply of porn in nearby townships and failed to exclude broadcasting of sexually explicit material into prescribed areas via television and the internet.

There was concern the measure was also sending the wrong message to tourists and contributing to Aboriginal men being unfairly labelled as sex offenders.[60]

Katherine:

Participants supported the government's proposal to change the pornography restrictions in prescribed communities, but considered the signage offensive and wanted it removed because it misrepresented Aboriginal people and sent the wrong message to tourists visiting communities.

Participants also stated the current policy should be extended to block the supply of pornography from neighbouring townships and the broadcast of sexually explicit material into prescribed areas via television, phones and the internet.[61]

Tennant Creek: Not discussed

Alice Springs:

Participants noted the proposed changes and generally stated that pornography was not a big issue in Aboriginal communities before the NTER was introduced. There was a prevailing view that an unintended consequence of erecting signs in each community was that it had raised children's awareness and curiosity on the issue. Community members advised that while they did not want pornography in their communities, the signage

should be removed as it was offensive and sent the wrong message to people visiting communities. [62]

While the NTER Measure on Pornography Restrictions was not discussed with all regions, there was a common and clear message from three regions

60 Nicholson, Behrendt, Vivian, Watson and Harris, (Nov 2009), *Will they be Heard?* NTER Redesign Tier 3 Workshop Darwin , Attachment B the Measures, p 245 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

61 *Will The Be Heard?* NTER Redesign Tier 3 Workshop Katherine , Attachment B the Measures, p 270 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

62 *Will They Be Heard?* NTER Redesign Tier 3 Workshop Alice Springs ,Attachment B the Measures, p 223 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

indicating that pornography had never been a major issue in communities. However, the implication that Aboriginal people had been involved with pornography was both insulting and offensive. The erection of signs at the entrances to communities, banning pornography, have giving a bad name to the communities and appears to be linked with earlier statements of paedophilia. The removal of signs was demanded.

On 15 June 2007, the Minister for Family Services and Indigenous Affairs (FaCSIA), Mal Brough, re-stated in very strong terms that "there were paedophile rings operating in the Northern Territory." He provided evidence from Kalumburu, in Western Australia.[63]

There has not been a single conviction for pedophilia in the Northern Territory since the Intervention was commenced in June 2007. [64]

"We're not, we're not (paedophiles) and we are saying it loud and clear. Now I want you to answer and tell these men, and these women, and myself, why are we being punished by the Federal government and by the Northern Territory government?" asks an Arlparra/Utopia Resident.[65]

"…blue sign-take 'em away! You pointing the finger at us! Whitefella they see that sign and they think they must be really bad with that pornography...Yet you can still go into a newsagent in Tennant Creek, adult bookshops and so on and buy all the materials there, but not here", says an Ampilatwatja resident, and again.[66]

"… we are part of that community that are categorized, all us blokes now, as racists, as sexual abusers and got this so called pedophile ring across the Territory…I mean that's how we feel. We're put down. We're pushed down" [67]

63 ABC News(online), "*Indigenous child abuse a national disgrace, says Brough,"*(15June 2007), http://www.abc.net.au/news/newsitems/200706/s1952739.htm
See both the story and related audio link. The Minister quotes Kalumburu figures in the radio interview. This is not in the N.T. but in Western Australia.

64 The Age, Nick Mckenzie, *'Pedophile ring claims unfounded,'* (5July 2009), http://www.theage.com.au/national/pedophile-ring-claims-unfounded-20090704-d8h9.html .The "...crime commission Chief John Lawler said his agency's 18-month multimillion-dollar investigation had determined there was "not organised pedophilia in indigenous communities".

65 *Will They Be Heard,* Arlparra/Utopia Tier 2 , part 1, 00:08:24;25, p 170 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf
See also, 'concerned Australians', *This Is What We Said,*47

66 *Will They Be Heard,* Ampilatwatja Tier 2, Part 2, 01:07:50;19, p 155 http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf Or *This Is What We Said*, 45

67 Will They Be Heard, Ampilatwatja Tier 2, Part 1, 00:54:41;23-00:55:04;26, p130-131 http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf
Or *This Is What We Said*, 45

UNDRIP Article 15.2 States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Licensing of Community Stores

Participants from all five regional meetings generally agreed there had been benefits to communities as a result of the licensing of community stores and that licensing of stores should continue. [68]

However, communities expressed concern regarding their loss of control and the failure of government to consult in the transfer of many of their stores to Shire operators. This also meant profits from some stores were not ploughed back into the communities.

Even where a measure has been generally accepted, it is clear that actions have been taken without the consent of those affected, and that control over decisions, and consequences of those decisions affecting day to day life, have been removed from the people.

UNDRIP Article 23 Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

From the June 2010 Survey, elders/leaders provided the following information

10% said that they were now able to buy more fresh food in the community store

52% said there had been no change

38% said they were not able to buy more fresh food in the community store

The high cost of fresh food was of great concern. If the purpose of licensing stores is to ensure healthy foods are available to residents, consideration must also be given to ways of ensuring competition in order to keep prices at affordable levels.

Diane Stokes of Karlumpurpla says, "*We don't get much money*"[69]

68 See the 5 relevant sections of Tier 3 Regional meeting, *Will They Be Heard report.* Tennant Creek p, 209; Alice springs 224; Darwin 244; Katherine 268; Nhulunbuy 289

Rodney Hudson of Lajamanu further explains, *"The price is too high even though there is fresh food."*[70]

Cheryl Wilson from Corkwood Bore says she is not able to buy fresh food because,

"*the price of fresh food has increased along with everything else*," and Glenys Porter from Wallace Rockhole agrees with her.[71]

Valerie Martin from Kalakarindji comments, "...*the price is too high*".[72]

Controls on the Use of Publicly Funded Computers

There was little discussion on this as representatives from all five regions indicated that they believed that there were already filters on publicly funded computers.

Law Enforcement Measures

The majority of the representatives of the five regions advised that they had very little knowledge of this measure. A full overview of the extent of the powers of the Australian Crime Commission was not provided.

Business Management Powers

The government proposed to remove its power to be able to stop funding to organisations not properly providing services. This proposal created some confusion where some regions asked for the power to remain, others agreed with its removal and Alice Springs advised that, "government already had enough power."[73]

Discussion of Regional Meetings on NTER Measures

In respect of some measures important community feed-back was provided to government and the response to it in some instances, has appeared perverse.

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69 During Survey 1, NT Elders (June 2010) Appendix 1

70 ibid
71 ibid
72 Ibid

73 NTER Redesign Tier 3 Workshop Alice Springs , Attachment B the Measures, p 225 at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

All five regions rejected Compulsory Income Management. The response from Government is to entrench the measure in new legislation and to expand the measure to other welfare recipients in the NT. The consultative exercise was, therefore, irrelevant to the decision.

There will be major changes to Income Management in that it will be rolled out across the Northern Territory. The vast majority of those who will be directly affected will be Aboriginal people and it therefore continues to be racist. Some changes to categories have been altered but on the whole, Aboriginal people cannot expect much relief from the planned changes.

Three regions rejected continuity of 5-year leases. The other two directed government to speak with Land Councils and traditional owners. Once again this advice has been discarded and 5-year leases remain central to the new legislation.

Alcohol and pornography restrictions will continue. However, there has been recognition by government that 'one size does not fit all'. There will now be more opportunity for individual communities to plan changes with the NT government regarding actions to address the problems of alcohol addiction. There is no reference to the role the community will be allowed to play or whether culturally designed initiatives will be encouraged. Rather than removing the harsh fines for possession, there are threats about what will happen if new programmes are not successful.

The 'hated' blue signs showing alcohol and pornography restrictions that have caused such deep distress remain in place. However under the new legislation the government has offered to re-design them so they are less offensive and to relocate them in a more acceptable position.

Comment that the extensive and expensive process of 'consultation' was set around pre-determined outcomes have been given credence. Why weren't the full extent of the measures included in the discussions, for example the extent of the role of the Government Business Managers? And why are controls over publicly funded computers being raised to such a level of importance when in many areas computers are difficult to access and when it would appear that the majority already have filters? [74]

There have been some small amendments to the legislation which was passed 21 June 2010.[75] They have been described as 'softening' the

74 See all 5 regional Tier 3 consultations, *Will They Be Heard?* report, from page 200

75 Third Reading, *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill*
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;db=;group=;holdingType=;id=;orderBy=priority,title;page=0;query=%22%20reinstatement%20%22Dataset%3AbillsCurBef%20SearchCategory_Phrase%3A%22bills%20and%20legislation%22%20Dataset_Phrase%3A%22billhome%22;querytype=;rec=0;resCount=Default

measures in an attempt to comply with the requirements of 'special measures'.

How could 5-year leases be considered 'special measures'? At each regional meeting there was a clear rejection of the measure and a demand that the land be returned to the people.

In his March 2010 report to the Australian Government the Special Rapporteur makes the point that he is of the opinion that ,

"the NTER's racially discriminatory aspects could no more qualify as legitimate differential treatment" than they could as "special measures."[76]

According to Australian law "a special measure must confer a benefit on some or all members of a class".[77] Five-year leases do not confer benefits on Aboriginal people.

In the June Survey, elders were asked whether they would prefer to 'continue' to receive compensation for the land or whether they would prefer to have the land returned to them. The result was that all leaders demanded the return of their land.

> 100% said they would prefer the return of land rather than receive compensation

The overriding problem with the amendments made by government is that individual rights have not being restored and the measures continue to be racially discriminatory.

76 Professor James Anaya, United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *'Observations On the Northern Territory Emergency Response in Australia',* Advance Version February 2010. *http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=4136:observations-on-the-northern-territory-emergency-response-in-australia-un-special-rapporteur&catid=54:australia-indigenous-peoples&Itemid=76*

77 See also 81 this is the first of 5 features of Special Measure. Refer Art 1(4) of ICERD,http://www.hreoc.gov.au/racial_discrimination/publications/RDA_income_management2009_draft.html#Heading134

4. Failure of the Intervention to improve the lives of Aboriginal People in the NT (Article 5)

From the June 2010 Survey of elders, we find that none believed the changes had made life better. In fact the majority felt it was much worse or worse (88%). Only 12% believe that the NTER Measures had made no change to community life.

Yananymul Mununggurr, elected counsellor from East Arnhem Shire says, "*Our communities are now subject to discriminatory measures."*[78]

A traditional owner from Elcho Island says, *"Our people have been crippled, we are less and less likely to get our natural food, speak in our own tongue and participate in our own cultural practises...without the choice to provide what is best for us."* [79]

While a Bagot resident says, *"Because it is wrong in what they are doing because…I mean, this goes back to, I am sorry, but back in the time when you had Native Affairs where the government was overruling people and then you've got it, it is now 40 years down the track now, 50 years down the track. I was there in Native Affair times and if anybody remembers Native Affairs time, and this is exactly what they are doing to us now."* [80]

a) Employment (Article 5 ei)

It is hard to imagine how any of the above measures has been specifically aimed at assisting in the increase of employment in communities.

*"Upgrades (to houses) are going to be done by government, by contractors coming out from town. Then all that money is gone back again. That our mob don't get that opportunity to train and work with contractors. So that's another issue… They go straight back again, yeh? All these contractors, you know, but our mob not getting involved. We are not getting trained, our young people," a*ccording to one Ampilatwatja resident.[81]

78 Survey 1 NT Elders, see Appendix 1

79 Dr. Djiniyini Gondarra OAM, '*Message From a Traditional Owner Of Elcho Island, North east Arnhem Land',* (8th March 2009), http://stoptheintervention.org/facts/your-voice/dr-djiniyini-gondarra-oam

80 *Will They Be Heard? ,* Bagot Tier 2, Part 1. pdf, 0:18:40, p 55
http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf
See also, *This Is What We Said*, (Feb 2010), p 15

81 *Will They Be Heard,* Ampilatwatja Tier 2, Part 1 (above) 00:31:29;15, p 123 at
http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf
See also, *This Is What We Said*, 53.

The June survey conducted with elders and leaders provided the following information:

3 % of people surveyed believe that the changes have led to more jobs

20% of the people surveyed believe that the changes have led to fewer jobs

77% of the people surveyed believe that the changes have led to fewer jobs in the community

Prior to the introduction of the Intervention, a plan to phase out the Community Development Employment Programme (CDEP) was in place. Since 1977 the programme had provided wages for those in areas, particularly remote areas, where employment opportunities are minimal. CDEP jobs often provided the basic community infrastructure, supported cultural projects associated with traditional painting and craft work as well as providing staff for welfare–type programmes such as night patrols and women's shelters. [82]

A Bagot resident said *"CDEP … was taken away. That was the basic infrastructure for all communities."* [83]

The change in policy, ideologically driven, aims to move people to 'real jobs' through a scheme of structured training and employment projects and which focuses on training through work-for-the dole type schemes. On its own this does not address the driving issue of investing in and creating jobs in, remote areas but has shamelessly moved large numbers, for whom there were no 'real' jobs, from CDEP wages to welfare benefits.[84]

The shame and despair related to such imposed changes are discounted as is the social cost. Professor Jon Altman from the Centre for Aboriginal Economic Research (CAEPR) at ANU, comments, "Participants are being forced from voluntary workfare to compulsory work for welfare, considered in some quarters an infringement of human rights and tantamount to slavery".[85]

Peter Inverway, a Gurindji man from Kalakarinji, works for 30 hours

82 ABC Radio(On Line), '*Indigenous jobs,'* 16 Jun 10
"… loss of CDEP is creating greater social disadvantage…" and "… the latest official figures point to a spiralling Indigenous jobless rate...." http://www.abc.net.au/rn/breakfast/stories/2010/2928050.htm

83 *Will They Be Heard,* Bagot Tier 2, Part 1 , 0:28:27, p 58
http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

84 ABC Radio(On Line), '*Indigenous jobs,'* 16 Jun 10
"… loss of CDEP is creating greater social disadvantage…" and "… the latest official figures point to a spiralling Indigenous jobless rate...." http://www.abc.net.au/rn/breakfast/stories/2010/2928050.htm

85 Centre for Aboriginal Economic Policy Research at ANU '*Neo-Paternalism and the Destruction of CDEP'*, J.C. Altman (August 2007)
http://www.anu.edu.au/caepr/Publications/topical/Altman_Paternalism.pdf

per week, mainly on a government funded construction site under the new programme. Currently he is paid by Centalink $460 per fortnight, half of which is quarantined. In terms of cash wages, this means Mr Inverway is receiving approximately $3.80 per hour (with a further $3.80 per hour paid into his Basics Card). In the past Mr. Inverway has earned wages on construction sites of up to $ 1,200 per week.

''We've gone back to when my people were working for rations of tea, flour and a bit of tobacco," he says.[86]

While the introduction to the changes is expressly stated for the purpose of preventing Aboriginal people to be taken advantage of through the CDEP programme, the consequence of removing people from the position of 'wage earner' to a work-for-the-dole-scheme is shameful. Only one or maybe, at best, two in five of those who were on CDEP are said to be obtaining work.[87] The change almost always leads to loss of income. Refer to '*Working for the Basics Card*' report.[88]

UNDRIP Article 17.3 Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary

There are currently estimated to be several thousands of Aboriginal people in the NT who have lost their CDEP jobs and been forced to move to unemployment benefits. This process is planned to continue for another twelve months, until July 2011 when the CDEP programme is due to terminate.

Without CDEP there will be very few jobs in the Homelands and it is inevitable that there will be massive movements to the newly identified growth centres and away from traditional homelands. This is a form of forced removal through coercion.

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86 Andra Jackson, '*For some workers, the struggle will never end'*
See also , The Age (Melbourne), 16 June 2010, available at http://www.theage.com.au/national/for-some-workers-the-struggle-will-never-end-20100615-yd9p.html

87 ABC Radio National Breakfast (Online),*Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, discusses how the changes to the work for the dole scheme will affect Indigenous Australians*, (17 Jun 10)
"But a number of councils say they simply don't have the funds to employ additional workers, and the loss of the CDEP funding is having an impact on the delivery of service… also… CDEP reforms will jeopardise fledgling Indigenous enterprises in remote communities."Available at http://www.abc.net.au/rn/breakfast/stories/2010/2928048.htm

88 Paddy Gibson, Jumbunna Indigenous House of Learning - UTS , '*Working for the Basics Card in the Northern Territory: The impact of the Northern Territory Emergency Response and associated policies on employment conditions in NT Aboriginal communities',* (Feb 2010)
http://www.apo.org.au/research/working-basicscard-northern-territory

UNDRIP Article 8
1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
(d) Any form of forced assimilation or integration;

Rosalie Kunoth–Monks from Utopia says,

"Yes we've talked about ... young people leaving in hordes to go into the towns as they have no jobs out bush. Because there is no structure put out or invested in the remote areas, as the terminology goes." [89]

In the current environment, it is unfathomable that government should be encouraging moves away from homelands. Growth centres are already overcrowded and are the focus of severe social problems. This only goes to emphasises the disconnect between policy and the realities of life on the ground.

There have been constant calls from homeland elders for investments in the remote areas.

Yingiya Guyula of Mirrngatya begs government to, *"leave us on the homeland and improve the infrastructure, services, education etc."* [90]

"We do not want to relocate to one large community. That's what the... government is trying to make us do. And because we won't do it, we're being punished." [91]

This is a cry from across the homelands and these sentiments are repeatedly expressed in the comments of the June 2010 Survey.

b) Education (Article 5 ev)

It is hard to see that there have been improvements to education as a result of the NTER Measures. In a newly released report, *Closing the Gap in the*

89 *A Conversation with Aboriginal Elders*, Transcript 1:34:04at www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

90 During Survey 1 NT Elders (June 2010) Appendix 1
91 ibid

Northern Territory Monitoring Report July – December 2009, we are advised that school attendance has declined slightly. The closure of the bi-lingual learning programme in nine schools has caused distress to many who believe their right to language for their children is being denied. Yalmay Yunupingu, a bi-lingual teacher, made an impassioned statement in the hope that the government would reverse its decision,

"Yolngu language is our Power, our Foundation, our Root and everything that holds us together. Yolngu language gives us strength, language is our identity, who we are. Yolngu language gives us pride. Language is our Law and Justice." [92]

UNDRIP Article 14.1 Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

There are 45 Homeland Learning Centres (HLC) across the Northern Territory providing education for approximately 800 children of all ages. Most of these schools do not have full-time qualified teachers and the government does not provide these children with full-time education. There are unqualified assistant teachers at most HLC's

A recent comparison was made between Mirrngatja Homeland Learning Centre with 14 Aboriginal children and Dundee Beach School with fewer than a dozen white children.[93]

The former had a qualified teacher for one-day a week. The latter had a full-time teacher with accommodation in the community. Mirrngatja HLC, a single class room, was constructed by the parents 28 years ago with scrap metal. It is today in a desperate state of ill repair. Dundee Beach School was constructed approximately 12 years ago by the NT Department of Education and training and is well maintained. The school has its own well-equipped library, multiple student computers and an ablution block. None of these facilities nor access to computers are available to Mirrnjata HLC.

A comparison chart of these two 'schools' is found at Appendix 3 There is no greater example of the extreme discrimination that is practiced in the Northern Territory.

92 Letter to Minister Marion Scrymgour, re Bilingual education
http://groups.google.com.au/group/foblmail/web/yalmay-yunupingus-letter-to-minister

93 Kerry O'Brien: Murray McLaughlin reporter, ABC 7.30 Report, A Tale of two schools:' *When is a school not a school? In the Northern Territory, it's when they're called Homeland Learning Centres*.'(24 Feb2010)http://www.abc.net.au/7.30/content/2010/s2829391.htm

Yingiya Guyula, who grew up in Myrrngatja wants his children to get their education there too, rather than to be sent away to school,

"This is where I came to my full strength of education, who I am, where I belong, and the education that I learnt from my family, the parents and the land here This is where I came to my full strength of education, who I am, where I belong, and the education that I learnt from my family, the parents and the land here." [94]

The Prescribed Areas Peoples Alliance make their wishes clear,

"We want to our young people to stay on land and learn culture. We want to see kids going to school and getting a proper education in a school that's on Aboriginal land, not to have to send them away." [95]

The recent Building Education Revolution, as part of Australia's stimulus package, saw billions of dollars being spent on school halls and libraries. Government was looking to spend money and to create jobs. Not one HLC was listed as a part of this project.

UNDRIP Article14.2 Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

c) Health (Article 5 vi)

Rosalie Kunoth-Monks states, *"Health is about being emotionally sound, mentally sound, and knowing who you are, as well as being physically fit. You know who you are when you are on your land, doing what generations of Aboriginal people have done, taking care of that land, singing the songs that the mythology brought forward, right up to today."*[96]

The NTER Measures work against this holistic view of health. They fail to acknowledge the history of a people who have suffered colonisation, massacre, dispossession of land, forced movements, removal of children and extreme discrimination at every level. The fear and innate distrust has not been acknowledged nor has the intergenerational trauma. If it had, why would a government have embarked on an unannounced Intervention

94 Yingiya, a Senior Elder of the Liya-dhalinymirr clan of the Djambarrpuyrju People (Eastern Arnhem Land). http://www.creativespirits.info/aboriginalculture/politics/northern-territory-intervention.html#ixzz0qu8qSbKF

95 Prescribed Areas Peoples -Woman's Group Statement, (During a gathering of people from remote communities and town camps, Alice Spring October 2008). Full statement available at http://indigenist.blogspot.com/2008_10_01_archive.html

96 *A Conversation with Aboriginal Elders,* Transcript 37:36 www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

through the use of the Australian Army? If it wasn't an act in ignorance, then it was extreme cruelty. There were many stories at the time of mother's fleeing into the bush to hide with their children for fear of them being removed from their care.

A resident from Utopia declared, "..... *we are still reeling from the way the Federal Government wheeled out, or dealt out, the intervention, in a military fashion when Major Chalmers sent out the army, in uniform……"* [97]

The June 2010 Survey with elders/leasers asks the question, "Do you think the people in your community feel safer since the changes?

6 % said they felt more safe
56% said not change
38% said they felt less safe

The government refers to 're-setting' the relationship with Aboriginal people. This is a much needed process but where the Apology of 2008 acknowledged the wrongs of the past, there has been little to show that this process is understood. Rebuilding the relationship with Aboriginal people starts by showing respect, by recognising the importance of engaging with Aboriginal people at every level to share in the planning of all that will affect their lives.

Cheryl Wilson from Corkwood Bore states the changes are,

"...*making it harder for people to live on their homelands with all the changes. No choice – going back, not forwards."* [98]

In his letter to the Minister, former Yuendumu Council President, Harry Nelson, wrote,

"Everything is coming from the outside, from the top down. The government is abusing us with this intervention. We want to be re-empowered to make our own decisions and control our own affairs. We want self-determination. We want support, funding and resources for things coming from our community, from the inside." [99]

The NTER Measures were designed in Canberra. They fail to recognise basic tenets of trauma rehabilitation, that the acknowledgment of culture and

97 *Will They Be Heard?,* Arlparra/Utopia Tier 2,Part 1, 00:02:06;07, p168
http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf
See also, *This Is What We Said,* 15

98 Survey 1 Elders NT June 2010

99 Harry Nelson, *Yuendumu to Macklin: 'We don't want this intervention,'* statement signed by 236 residents & presented to Minister Macklin (28 October 2008)
http://www.crikey.com.au/2008/10/28/yuendumu-to-macklin-we-dont-want-this-intervention/

identity is central to achieving a state of well-being. The measures fail to recognise that community well-being and a sense of safety are central to individual well being.

"Healing will not happen if you are still torturing us, taking our land and killing our culture", says Dr. Djiniyini Gondarra.[100]

Improving control over daily life is an essential feature of well-being. Through the NTER Measures the transfer from community control of community stores and the rigid control of personal weekly spending, work against promoting well-being where education and support would be far more effective. Creating anxiety through compulsory leasing of community land, and the imposition of Government Business Managers, combine to undermine the establishment of trust. The resultant depression and despair that leads to dependencies, such as alcohol, is addressed through the NTER Measures by disproportionate fines and jail terms rather than culturally designed rehabilitation programmes.

Dr Gondarra says, *"I have never seen what the changes that the Intervention has brought. It's the same thing that our people are still being depressed, that our people still living in poverty, that our people are still being seen as second class citizens, that our people feel that they are black."* [101]

From Altman's summary of the *Closing the Gap in the Northern Territory Monitoring Report July – December 2009*,[102] we are told there has been an increase in attempted suicide/self harm and the incidence of mentally ill persons.[103]

Rosalie Kunoth-Monks talks about the importance of culture and identity as central to well-being, as central to her existence,

"*But first and foremost I am an Aboriginal woman. Cultured, noble with a strong sense of what is right and what is wrong. We have a law that binds us to live a meaningful life on this earth. To live a life that cares not only for the land.*

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100 Dr. Djiniyini Gondarra OAM, *'Message From a Traditional Owner Of Elcho Island, North east Arnhem Land',* (8th March 2009), http://stoptheintervention.org/facts/your-voice/dr-djiniyini-gondarra-oam

101 *A Conversation with Aboriginal Elders*, Transcript 1.04.36 www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

102 Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, *Closing the Gap in the Northern Territory Monitoring Report – July to December 2009,(June 2010),* at http://www.facs.gov.au/sa/indigenous/pubs/nter_reports/closing_gap_NT_jul_dec_2009/Pages/default.aspx

103 Jon Altman, *'NT intervention three years on: government's progress report is disturbing'(21June 201), available at* www.crikey.com.au/2010/06/21/nt-intervention-three-years-on-governments-progress-report-is-disturbing/?source=cmailer

I think people have heard it many times, a lot of people say 'The earth is our mother. It's a bit more deeper than that. This land gives me my identity, my language gives me my identity and my customary practices gives me a way of expressing who I am . I cannot probably fully impart to you what it is to be an Aboriginal. But I can impart to you that I feel pain that a so-called democratic government can to a minority of its people break the very rules on human rights that it is a signatory to. I cannot fathom it, I cannot understand it but I can understand my Aboriginal law and live under that with no conflict." And,

"Take away from me my language, take away from me my responsibilities for the land, take away from me my land and I am a nothing. I will become a carbon copy of a different culture." [104]

The Intervention has imposed on Aboriginal people in the Northern Territory a sense of worthlessness and shame. Their pride as a race has been trampled on by constant untruths and blame. Their deep sense of spiritual belonging to the land has been attacked through compulsorily acquired leases, by thinly veiled moves towards assimilation with a plan to move services to growth centres /hub towns, and limit funding to homelands.[105]

Dr Paul Burgess from the Menzies School of Health Research indicates that,

"Our findings indicate that outstations foster important health-promotion activities that appear to deliver both ecological and human health gains,"[106]

Both the Menzies School of Health Research[107] and the Australian Aboriginal Doctors Association (AIDA)[108] have expressed concerns regarding the negative impact of the Intervention on Aboriginal health outcomes in the NT.

Dr Djiniyini Gondarra says, "*We, we who are the victims in our own lands...a system one would say is creating apartheid, racism, dividing of*

104 *A Conversation with Aboriginal Elders*, Transcript, 00:17:27
www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

105 Amnesty International, Sarah Marland, '*Healthy Homelands'*, (11 March 2010) *"There has been no transparency about the basis for this selection and no information about what will happen to the other 30 Aboriginal townships with populations of more than 200 people."*
http://www.amnesty.org.au/poverty/comments/22681/

106 Paul Burgess AMA, *"Caring for country" linked to good health, (*17 May 2009)
http://www.ama.com.au/node/4661

107 Menzies School of Health Research, *Welfare Quarantining May Not Lead to Healthier Purchases in Indigenous Community Stores,* (May 2010)
http://www.menzies.edu.au/research/research-news/welfare-quarantining-may-not-lead-healthier-purchases-indigenous-community-st

108 ADIA, 'Intervention continues to cause harm: new report, '*Health Impact Assessment of the Northern Territory Emergency* Report' , (12March 2010) http://www.aida.org.au/viewrelease.aspx?id=58

class.....black are blacks, whites are whites, yet we live in the one country. For blacks there is different rules, for whites there is different rules…."[109]

The NTER measures focus on disempowerment rather than capacity building and education.

Prof Altman comments from the Government's *Closing the Gap in the Northern Territory Monitoring Report July – December 2009* that for the second year in a row child malnutrition is up despite 88 licenced stores and 16,695 income managed customers. [110]

UNDRIP 24.2 Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right

Physical health services have been under funded and grossly neglected for several decades but it is not money alone that will lead to change. The three years of the Intervention has shown poor results even though large sums of money have been allocated to these areas. A different approach is needed and that should start by listening to and fully engaging with Aboriginal leaders in the NT.

Rosalie Kunoth- Monks, "...*the Australian government is way off target of closing any gaps or indeed of having the goodness of heart to assist a minority that is in the midst of them. It is time they really did something."* [111]

"We are the First Australians. And people got massacred there, and massacred here, massacred, but we have survived and we reached to the 21st century. Now, because we are a minority, that is what the policy is doing to us, and we are not happy about it. Despite what you are going to tell and go through with that but we want you to take the message get right back, if you want to restart the intervention, start it for black and white together..." says a Bagot resident.[112]

109 *A Conversation with Aboriginal Elders*, 1:25:05 at www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

110 Professor Jon Altman, *'NT intervention three years on'.* www.crikey.com.au/2010/06/21/nt-intervention-three-years-on-governments-progress-report-is-disturbing/?source=cmailer

111 *A Conversation with Aboriginal Elders*, Transcript1:34:04 www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

112 *Will They Be Heard,* Bagot Tier 2, Part 1, 0:50:04, near bottom of p 64 http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

d) Housing and Land Rights (Articles 5eiii & 5d)

Years of extreme neglect and underfunding have left communities in situations of gross overcrowding in houses of disrepair. In some communities there are stories of Aboriginal peoples, including young children, living in humpies and, their numbers said to be increasing.[113] This has done little to give confidence to the Northern Territory government's administration of basic services to Aboriginal people or the Commonwealth's capacity to oversight them.

To alleviate this appalling situation the Australian government has promised to provide 750 new houses and 2,500 renovations over a five year period.

A resident from Ampilatwatja reminds government,

"Upgrade the houses, but they are still overcrowded. Just write that down, the houses will be upgraded but they will still be overcrowded." [114]

Roger Hudson of Lajamanu says, "They just came with their own plan. We have got only promises. We are still overcrowding and scared the rent will go up." [115]

Three of those five years is now at hand and to date 11 houses have been built.[116] This shows a total failure of the government in its commitment to and regard for Aboriginal people. If this were to happen in Melbourne or Sydney it would be considered an outrage and a target of ridicule.

It is not surprising that from the June survey, which asks whether any additional houses have been built in the community, only 3% answered in the affirmative.

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113 Some "….were charged up to $50 a week rent to live on a mattress…"
Chris Graham, National Indigenous Times, *'FOR RENT: Tin humpy. $50 a week'* , 18 March, 2010
Available at http://www.nit.com.au/news/story.aspx?id=19094

114 Under the current 5 year lease not one new house will be built.
Will They Be Heard (WTBH), Ampilatwatja Tier 2 Part 2,00:47:22;04 p 37, Or *WTBH* pdf p 148
http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf
See also 'concerned Australians', *This Is What We Said,* (Feb 2010),51

115 During Elders/ leaders June 2010, Appendix 1

116 May, 2010. There have been major concerns about poor progress and cost blowouts.
See also The Australian, Natasha Robinson and Lex Hall, *'Remote housing initiative at crisis point',* (March 12 2010) http://www.theaustralian.com.au/in-depth/aboriginal-australia/remote-housing-initiative-at-crisis-point/story-e6frgd9f-1225839773850

Failure to provide and maintain adequate housing is just one of the reasons why Aboriginal communities are seen as some of the most disadvantaged in the world.

"*For a country which, by human development standards, is the third most developed in the world and one which has emerged from the global financial crisis comparatively unscathed, such a level of poverty is inexcusable, unexpected and unacceptable,*" said Irene Khan Secretary General of Amnesty International." [117]

During the 2009 consultations at Ampilatwatja, an interpreter speaking on behalf of one resident asked,

"*In another three years can they ask for houses? She is still living in a tin house." [118]*

It is well known that disadvantaged peoples in situations of gross overcrowding suffer violence and abuse at a number of levels.
Mal Brough, the Minister for FaCSIA responsible for the design of the Intervention states,

"*Neglect includes the failure to provide adequate food, shelter, suitable clothing and medical attention and education." [119]*

It is certainly true that government has failed to make adequate provision for Aboriginal communities. In 2006, the AMA was led to call for a Royal Commission to look into the massive shortfall in funding for Aboriginal medical services.

"*This issue is so important in regard to Australia's international reputation that nothing short of a Royal Commission is good enough to examine the tragic health, social and living conditions of the first Australians, especially those in remote areas*."[120]

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117 Amnesty International Secretary General:"*Irene Khan Calls for New Approach to Tackling Indigenous Disadvantage"*,18122009 http://www.amnesty.org.au/news/comments/22119/

118 Under the current compulsorily acquired lease not one new house will be built in this community, *This Is What We Said,* (Feb 2010), p 51

119 Mal Brough, Minister for Families, Community Services and Indigenous Affairs, *Social Security And Other Legislation Amendment (Welfare Payment Reform) Bill 2007 - Second reading speech*, Canberra), 7 August 2007
http://www.formerministers.fahcsia.gov.au/malbrough/speeches/Pages/ss_amendment_7aug07.aspx

120 AMA President, Dr Mukesh Haikerwal, May 26 2006 http://www.ama.com.au/node/3109

Even though there is ample evidence of the government's neglect, there is still a ring of blame when the Minister Brough states. "*when confronted with a failed society....*",[121] rather than, **'**we have failed this society'**.**

Sadly the Intervention as a whole has been promulgated by government, in emotive terms, as a necessary action that will change what is called by former Prime Minister Howard, "*an extreme social breakdown*."[122] The terminology consistently distances government from the dire situation of a third-world health status, of very limited access to education as well as totally inadequate housing.

The NTER Measure of 5-year leases was said by government to be imposed for the purpose of providing easy access for building of houses. On this count and to date, the measure has proved to be unnecessary. However the major difficulty with regard to new housing has little to do with 5-year leases.

Until 2007 leases to portions of communal land were in the domain of the Aboriginal Land Councils. Land Councils were able to grant sub-leases over individual portions of land for the purpose of development and commercial activity. This retained communal ownership.

UNDRIP Article 26.2 Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

However, an amendment to the Aboriginal Land Rights Act (ALRA) in 2006,[123] and follow-up legislation in 2007[124] was a dramatic change. The former community sub-leases have been replaced by a 'whole-of-township' 99 year lease arrangement without full consultation with

121 The Hon Mal Brough, 2nd Reading Speech – *Northern Territory Emergency Response Bill 2007*, Hansard, 7 August 2007, p10. http://www.hreoc.gov.au/about/media/speeches/social_justice/2008/essentials_reform20080220.html

122 John Howard, Prime Minister of Australia, '*To stabilise and protect',*(Speech delivered at Sydney Institute 25 June 2007), http://www.abc.net.au/news/opinion/speeches/files/20070625_howard.pdf

123 2006 amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (ALRA), 29 May, 2007. Available at http://www.aph.gov.au/library/pubs/bd/2006-07/07bd165.pdf

> "*The new ALRA will further erode the already weak property rights that traditional owners hold*." John Altman, *'Amended Land Rights Law will be Bad Law'*, 21 July 2006, at http://cpd.org.au/article/amended-land-rights-law-will-be-bad-law

124 ALRA (Northern Territory) Amendment (Township Leasing) Bill 2007, http://www.aph.gov.au/library/pubs/bd/2006-07/07bd165.pdf .This Act preceded the Northern Territory National Emergency Response Act 2007(Cth)

Aboriginal land owners.[125] Leases themselves are no longer controlled by Aboriginal Land Councils but by an imposed Government authority headed by an Executive Director of Township Leasing.[126] This position is funded from the Aboriginal Benefit's Account (from mining royalties from Aboriginal land). Any concept of communal ownership has been removed.[127]

Dr Djiniyini speaks of the guilt he feels at being forced to give a lease to government in order to get basis housing for his community,

"*There was no choice but to sign 40years lease. It was very, very difficult because we had to make choice to admit that lease the property [land] that our people won, that people who live in the one house, 20 people, a small house, we're in really bad position. ... But we felt guilt inside, inside guilt that this is the way the system work, this is the way the Westminster system of law work to try to force on somebody else who already had land, had a law, that spirituality, a decision that is being rejected."* [128]

Interestingly, when the Aboriginal Land Rights Legislation Amendment Act 2007, which the Labour party opposed, was presented in Parliament, the current Minister for FACHSIA, Jenny Macklin, who was then in opposition, reminded government,

> *"It is important to remember just how hard and how long Indigenous people have fought for land rights. The struggle has been underpinned by absolute determination and dignity.*
>
> *I am speaking on Aboriginal Land Rights (Township Leasing) Bill 2007 which follows the government's amendments that were pushed through Parliament amidst a great deal of controversy ... included a 99-year township proposal ... but it also removed direct control by traditional owners over development and township land.*[Labor voted against it.]

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125 "A scheme to facilitate township leasing was included in the 2006 ALRA amendments. Under section 19A of the ALRA, a Land Trust may grant a 99 year lease of a township to an 'approved entity'…"http://www.aph.gov.au/library/pubs/bd/2006-07/07bd165.pdf . See also, Stephanie Peatling, *'Back into the darkness: Critics are concerned about rushed changes to the Aboriginal Land Rights Act',* (Sydney Morning Herald), August 25, 2006. At http://www.smh.com.au/news/national/back-into-the-darkness/2006/08/24/1156012675644.html

126 ALRA (Northern territory) Amendment (Township Leasing) Act 2007

127 The ALRA (Northern Territory) Amendment Bill 2006 assented 17 August 2006. *… This meant land that was "… owned communally through the local Land Council… move[d] into private ownership."* http://www.actnow.com.au/Issues/Indigenous_land_rights_in_the_Northern_Territory.aspx

128 *A Conversation with Aboriginal Elders*, Transcript ,00:12:24 www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

> *Today we oppose the creation of this statutory office, to be funded out of Aboriginal money, for the same reason.*
>
> *The Aboriginal Land Rights Act of 1976 was the first and strongest legal recognition of the profound connection that Indigenous people have to their country. It recognised the communal nature of landownership in Aboriginal law and culture through a form of freehold title. The Act, back in 1976 represented the most significant set of rights won by Aboriginal people after two centuries of European settlement."* [129]

The Minister, when in Opposition, was correct and it is a travesty that such well held beliefs can be so easily discarded.

The Amendment Bill overview includes:

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY)
AMENDMENT BILL 2006

Overview
2. The Bill seeks to promote economic development on Aboriginal land by providing for expedited and more certain processes related to exploration and mining on Aboriginal land. It also facilitates the leasing of Aboriginal land and the mortgaging of leases. In addition the Bill makes provision for long term leases over townships on Aboriginal land to make it easier for Aboriginal people to own homes and businesses on land in townships.

The government had made it quite clear that it wished to open up the land for development and for mining leases. Mal Brough, the then Minister, refers also to the development of 'normal suburbs'. The amendment is also based on a belief that Aboriginal people ultimately desire home ownership. These ideas, however, are not driven by NT Aboriginal people and Tom Calma, the Aboriginal and Torres Strait Islander Social Justice Commissioner made the point,

"Basic economic modelling demonstrates that the Australian Government's expanded home ownership scheme will be out of reach of the majority of remote Indigenous households." [130]

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129 *Aboriginal Land Rights (Northern Territory) Amendment (Township Leasing) Amendment Bill,* Tuesday, 12 June, 2007 Second Reading, http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2007-06-12/0099/hansard_frag.pdf;fileType=application%2Fpdf

See also, '*Jenny Macklin speaks on the Aboriginal Land Rights (NT) (Township Leasing) Amendment Bill'* available at http://www.antar.org.au/node/56

130 Tom Calma, A&TSI'er Social Justice Commissioner, '*Customary law in sentencing and changes to tenure arrangements on communally owned land',* (Speech to 'Indigenous Legal Issues Forum,' 35th Australian Legal Convention, 24 March 2007) http://www.hreoc.gov.au/speeches/social_justice/2007.html

The change to leasing arrangements requires traditional owners to hand over control of Aboriginal land to government in return for adequate community housing. There can be no greater threat to Aboriginal land rights.

Already the people of Bagot Community fear the loss of their homes in an Aboriginal community so close to the centre of Darwin. The fear of dispossession is very real.[131]

Prior to the 2007 federal election, Indigenous Affairs Minister Mal Brough said he would make Bagot into a 'normal superb' and that changes could be 'forced'. He said funds would be sourced from the ABA and the Indigenous Business Association grants initially.[132]

"*To ask us to hand back the land so that we can get our rights to housing, what kind of a law is that? That is one of treachery ...*" according to Rosalie Kunoth- Monks.[133]

UNDRIP Article 25 Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

As Dr Djiniyini Gondarra tells us,

"...*we are spiritual people, we are the people of the land. You taste the spirituality of this country, you have never tasted. When you taste it, it is like the honey, sweet, if you receive it, if you accept it, it is yours because you are born in Australia.*" [134]

But,

131 There was some discussion around this issue during the Bagot consultation. *Will They Be Heard* , Tier 2 Part1, Bagot 1:28:44 –1:32:06, p77
http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf

132 Refer 2 articles
Nick Calacouras, NT News, *'I will make Bagot normal suburb'* (29th October 2007)
http://www.ntnews.com.au/article/2007/10/29/2458_ntnews.html.

Nick Calacouras , NT News, '*Govt pushes Bagot to be normal suburb'*, 8 July 2009
Accessed 2 July 2010. http://www.ntnews.com.au/article/2007/10/29/2458_ntnews.html
http://www.ntnews.com.au/article/2009/07/08/64895_ntnews.html

133 *A conversation with elders*, Transcript 17:27
www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

134 *A conversation with elders*, Transcript just above 32:16
www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

"...*they are going to build Arnhem Land, you can see a little Melbourne, a little Brisbane, industrialisation, modern country, change all the image of the real spirituality that is there today."* [135]

The UN Rapporteur, James Anaya, urged government to, "*..... resolve, clarify, and strengthen the protection of indigenous lands and resources should be made. In this regard, government initiatives to address the housing needs of indigenous peoples, should avoid imposing leasing or other arrangements that would undermine indigenous peoples' control over their lands*." [136]

It is noted that government has chosen to ignore this advice. It is also noted that the costs associated with the Amendment will be paid for from the Aboriginal Benefit Account,

"There are expected to be costs of up to $15 million over five years from 2006-07 to 2010-2011 to assist with the establishment of the township leasing scheme. The necessary funds will be sourced from the Aboriginal Benefit Account."[137]

135 *A conversation with elders*, Transcript just before 32:16 & above 56:09 www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

136 Statement of Professor James Anaya the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, 27 August 2009 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=53&LangID=E

137 Financial Impact statement no 6 at http://scaleplus.law.gov.au/ComLaw/Legislation/Bills1.nsf/bodylodgmentattachments/EC3126CC45DACDF7CA2571800020047A?OpenDocument accessed 30 June 2010.

5. Failure to Respect the Integrity and Culture of Aboriginal People (Article 1&2)

Not only has government failed to engage with Aboriginal people in their attempts to bring changes to the Northern Territory but they have also distorted information in order to obtain popular support for their actions. Rather than taking responsibility for the desperate state in which Aboriginal people are living, it has engaged in a process of stigmatisation.

The Australian Institute of Health and Welfare (AIHW) chart of notifications for child abuse for the years 1999/2000 to 2006/2007 do not lead one to believe that there was a looming 'Emergency' in 2007.It does indicate that there may have been one in the Australian Capital Territory in 2004-05 or in Tasmania in 2006-07. However the footnotes indicate that the sudden changes in the figures are a result of changes in methodology of data collection and increased notifications.

AIHW Chart

Table 2.4: Number of substantiations of notifications received during the relevant year, states and territories, 1999–2000 to 2006–07

Year	NSW[a]	Vic	Qld	WA	SA	Tas[b]	ACT	NT	Total
1999–00	6,477	7,359	6,919	1,169	2,085	97	233	393	24,732
2000–01	7,501	7,608	8,395	1,191	1,998	103	222	349	27,367
2001–02	8,606	7,687	10,036	1,187	2,230	158	220	349	30,473
2002–03	16,765	7,287	12,203	888 [c]	2,423	213	310	327	40,416
2003–04	n.a.	7,412	17,473	968	2,490	427	630 [d]	527	n.a.
2004–05	15,493	7,398	17,307	1,104	2,384	782	1,213	473	46,154
2005–06	29,809	7,563	13,184	960	1,855	793 [e]	1,277	480	55,921
2006–07	37,094	6,828 [f]	8,441 [g][h]	1,233	2,242	1,252 [e]	852 [i]	621	58,563

(a) The data for 2002–03 onwards should not be compared with previous years. New South Wales implemented a modification to the data system to support legislation and practice changes during 2002–03 which would make any comparison inaccurate. New South Wales was able to provide limited data for 2003–04 due to the introduction of a new client information system.

(b) The increase in substantiations in Tasmania is considered to be in part due to increased application of the Tasmanian Risk Framework as well as greater adherence to the definition of 'substantiation' published by the AIHW.

(c) The decrease in substantiations in 2002–03 reflects the decrease in notifications in Western Australia.

(d) The increase in substantiations in 2003–04 relates to the increase in notifications in the ACT.

(e) Data relating to substantiations for Tasmania for 2005–06 and 2006–07 should be interpreted carefully due to the high proportion of investigations in process by 31 August (see Table 2.1).

(f) Due to new service and data reporting arrangements, the Victorian child protection data for 2006–07 may not be fully comparable with previous years' data. See the 'Data and analysis' section for more information.

(g) 2006–07 data for Queensland are interim and will be revised in 2008.

(h) 2006–07 substantiation figures for Queensland are affected by a change in recording practice. From March 2007, any new child protection concerns received by the department that relate to an open notification or investigation and assessment are recorded as an additional concern and linked to the open notification/investigation and assessment. Previously, any new child protection concerns received by the department were recorded as an additional notification. If an investigation relating to these notifications was substantiated, each notification was recorded as a separate substantiation. Because new concerns are now recorded as additional concerns and not notifications, only the original notification is counted as a substantiation, where the investigation outcome is substantiated.

(i) The decrease in the number of substantiated investigations reflects a requirement of staff to substantiate emotional abuse or neglect only if there was, or is likely to be, significant harm and there was no-one with parental responsibility willing and able to protect the child/young person. Recording an outcome of an appraisal as not substantiated does not exclude ongoing work with the child or young person.

Sources: AIHW child protection database; Table 2.2.

Diedre Penhaligan, co-author of the AIHW noted in 2007,

"If we look at the Northern Territory, about 4 per cent of all substantiated cases of child abuse and neglect were for sexual abuse in Indigenous children.

But for other children, that is people who haven't identified as being Indigenous, it is actually 9 per cent and that's a pretty consistent finding across all the jurisdictions." [138]

The Intervention is said to have been launched as a result of the release of the 2007, *Ampe Akelyernemane Meke Mekarle* report.[139] This was only 6 days before and the timeframe leads one to believe this explanation to be most unlikely.

The authors of the 2007 *Ampe Akelyernemane Meke Mekarle* report brought to attention a very real concern about the sexual abuse of children in NT communities and the need to introduce systems based on trust to strengthen families and to work more closely with them within a cultural context. This was a very far cry from the government's emergency response .

While one would not dispute the grave importance of protecting children from abuse, the terminology of the Minister, Mal Brough, was nothing less than inflammatory.

"*the difficult core issues of children being raped, babies with gonorrhoea, children having their absolute hearts ripped out by people who are supposed to be people of authority*, ..."[140]

"Everybody in those communities knows who runs the paedophile rings..." "There is considerable evidence of that." [141]

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138 AIHW, Chart found in *Child protection Australia 2006-07 (AIHW),* p35 http://www.aihw.gov.au/publications/cws/cpa06-07/cpa06-07.pdf . ABC, Message Stick (Online), *NT child abuse figures 'not a stand out'* ,(6 July 2007) at http://www.abc.net.au/message/news/stories/ms_news_1972244.htm

139 Rex Wild, Patricia Anderson, *"Ampe Akelyernemane Meke Mekarle "Little Children are Sacred."* Report of Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, (30th April 2007) http://www.nt.gov.au/dcm/inquirysaac/pdf/bipacsa_final_report.pdf

140 Mal Brough, Minister for Indigenous Affairs and Family and Community Services 'Commonwealth's *intervention into Aboriginal Communities in the NT' (speech delivered at* National Press Club, Canberra, 15 August 2007). http://www.formerministers.fahcsia.gov.au/malbrough/speeches/Pages/speech_nter_15aug07.aspx

141 Tony Jones, ABC Broadcasting/late line *Paedophile rings operating in remote communities* with Mal Brough, ABC (16/05/2006 [?CORRECTION 2007] http://www.abc.net.au/lateline/content/2006/s1640148.htm

The claims of paedophilia were investigated by the Australian Crime Commission and in 2009 the crime commission chief, John Lawler, admitted his agency's investigation had found there was no "organised pedophilia" in indigenous communities in the Northern Territory.[142]

"*And I haven't heard one apology from any of the ministers, so … you got to understand, I mean that's how we feel. We're put down. We're pushed down*" says an Ampilatwatja resident, says Richard Downs of Ampilatwatja.[143]

It was, however, such claims that led to the Intervention and accompanying measures.

Visiting Rapporteur, Professor James Anaya observed in the 27 August 2009 statement,

"These measures overtly discriminate against aboriginal peoples, infringe their right of self-determination and stigmatize already stigmatized communities." [144]

Such emotive statements by the Minister led to media frenzies that fuelled the distress and despair of Aboriginal people who were unable to understand the cruel attacks on their integrity.

UNDIP Article 8.2(e) States shall provide effective mechanisms for prevention of, and redress for:
Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

"Where are the arrests and evidence of abuse? We want the report….They have not given us any numbers. They have not given us anything, "said a Bagot Community resident.[145]

" … sexual abuse and pedophile rings and all that's happening across the Territory as stated by Howard's intervention party, which was supported by the Labor Party for the Bill to be passed, so it can be introduced into the Territory. You tell us now.

142 "The finding by the Australian Crime Commission demolishes one of the central claims used by the Howard government to support its controversial NT intervention."
See footnote 64, Nick Mckenzie, '*Pedophile ring claims unfounded,'*(5July 2009)

143 *Will They Be Heard,* Ampilatwatja Tier 2, Part 1, 00:55:04; 26, p 20. Or pdf at http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf 00:55:04; 26 131. See also *This Is What We Said*, 45

144 United Nations Human Right (UNHR), *Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, as he concludes his visit to Australia,* (Canberra/ Geneva), 27August 2009. Available at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=53&LangID=E

145 This Is What We Said, 17

I am going to ask you. You give us proof, some evidence on how many people have been locked up since the Intervention started," asked an Ampilatwatja resident.[146]

"… look into your own backyards before you condemn us, you know. We are just a people without no name, and, of course, the government is going' to still target us, regardless, unless we get our rights back as Aboriginal people of this land, and the First Nation. And, unless we get that back, there is no hope for Aboriginal people, because the government will still condemn us every way they can," according to a Bagot Community Resident. [147]

By refusing to engage with Aboriginal elders and leaders in pursuing solutions for problems that have resulted from decades of neglect,[148] government has failed to gain a genuine, in-depth understanding of the cultural values or the diversity of the Northern Territory's Aboriginal people.

Professor James Anaya stated,

"I have observed numerous successful indigenous programmes already in place to address issues of alcoholism, domestic violence, health, education, and other areas of concern, in ways that are culturally appropriate and adapted to local needs, and these efforts need to be included in and supported by the Government response, both logistically and financially. In particular, it is essential to provide continued funding to programmes that have already demonstrated achievements."[149]

The current Minister, Jenny Macklin, expresses a goal of getting Aboriginal people into 'proper' jobs. She says "*they've got used to working only a few days a week*" and "*I certainly hope they want to aspire to full-time work*."[150] Many of the statements used also express white values in our modern society.

146*Will They Be Heard?* Ampilatwatja Tier 2 Part 1, 00:49:22:00, p129.
http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf
See also, *This Is What We Said*, 17

147 This Is What We Said, (Feb 2010), 17

148 "*…historical forces continue … manifest… themselves in serious disparities between indigenous and non-indigenous parts of society, including in terms of life expectancy, basic health, education, unemployment, incarceration, children placed under care and protection orders, and access to basic services." UNHR, Statement of the Special Rapporteur……., James Anaya,* (Speech delivered Canberra) 27 August 2009

149 ibid,
See also, *This Is What We Said*, p 65

150 ABC (Online), 'Indigenous *employment'* Jenny Macklin, Minister for FHaCSIA, 16 June 1020 discusses the changes to CDEP http://www.abc.net.au/rn/breakfast/stories/2010/2928048.htm .

ABC Radio(On Line), '*Indigenous jobs,'* 16 Jun 10
"… loss of CDEP is creating greater social disadvantage…" and "… the latest official figures point to a spiralling Indigenous jobless rate...." http://www.abc.net.au/rn/breakfast/stories/2010/2928050.htm

The Opposition Leader, Tony Abbott Speaking at the Australia Unlimited 2010 Summit said, "*there were no ''cultural excuses'' for indigenous children to miss school or adults to not seek work...there may not be a great job for them but whatever there is, they just have to do it, and if it's picking up rubbish around the community... .*"[151]

The traditional cultures of the Northern Territory with all their diversity are little understood by the majority of Australians living many thousands of kilometres away. It would be fair to say that the average Australian may be more familiar with Asian cultures than those of Aboriginal peoples. However since the Intervention more government workers have arrived in communities and this has caused some tensions. Buthiman Dhurrkay of Galiwin'ku comments,

"*When it started, from their words, we thought it would be good but it has turned out worse. 'Balanda' (non-indigenous) are running around everywhere without respect.*"[152]

Dianne Stokes of Karlumpurlpa says, "*Most shocking is the disrespect shown to the town community by contractors who have come in – very unsafe ....there are many bad things.*"[153]

In the Northern Territory there are Aboriginal people living traditional lives and who need the opportunity to express their views and to be part of a constructive dialogue around those issues that affect their future. Dr Djiniyini Gondarra reminds us,

"If you go to Arnhem Land ..... we still remain and maintain our law, our culture, our tradition, our ceremony and our language. Still maintain, we still speak 18 to 15 different dialects." [154]

UNDRIP Article 3 Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Rosalie Kunoth- Monks says, "The biggest thing that we have an argument with the government is, we're not white people. We have our own language. We have our own ceremonies. We have our own land. What we want from

151 Adam Carey, *'Aborigines 'must take jobs',* , The Age (Melbourne), Ist July2010 http://www.theage.com.au/national/aborigines-must-take-jobs-20100630-zmug.html

152 During Survey 2 Galiwin'ku community Appendix 1

153 During Survey 1 NT Elders Survey Appendix 1

154 Conversation with Elders, Transcript 00:24:22 www.socialpolicyconnections.com.au/Portals/3/docs/forum%20transcrpition%20jun%2010.doc

*government is real help and real funding rather than putting law on top of our Law," [155] a*nd

"We've met you more than half way. It is time you came and had a relationship of meaning and significance with us." [156]

155 *This Is What We Said*, 21

156 Ibid

6. Failure to Protect the Rights of Aboriginal People
(Articles 1&2)

Transfer of powers from Aboriginal people to Government commenced before the Intervention.

In 2004 government re-organised service delivery in the Northern Territory whereby Indigenous Co-ordinating Centres (ICC's), run by public servants, took control from the community over managing grants and negotiating agreements at a local level.[157] In the main, Aboriginal people now had virtually no input to policy development and implementation with their own people. In most respects they became on lookers in their own communities.

In the March 2010 report to Government from the Human Rights Council (HRC), James Anaya advises,

"The Government should seek to fold into its initiatives the goal of advancing self-determination, in particular by encouraging indigenous self-government at the local level, ensuring indigenous participation in the design, delivery and monitoring of programs, and promoting culturally-appropriate programs that incorporate and build on indigenous initiatives." [158]

Banjo Morton from Ampilatwatja, in reference to the Intervention says he has experienced,

".....loss of power, dignity self-determination. Government's closed 'Ahevvenge Association Office'...we have nothing now."[159]

Planning for the reform to CDEP commenced in 2005 and this has led to dramatic changes to those who were wage earners under the programme and many are now welfare recipients managed by Centalink. Rodger Hudson from Lajamanu comments,

"*Only a few people have employment now."*[160]

Phillip Wilyuka from Titsikala adds,
"Jobs on CDEP – no jobs now." [161]

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157 "*In 2004…introduced 'new arrangements'… to be managed by mainstream government departments. These changes affect how many Indigenous programs are run and the way that some services are delivered .."* www.jumbunna.uts.edu.au/ngiya/pdf/Toolkit_negotiating_SRA.pdf

158 Professor James Anaya, "*Observations on the Northern Territory Emergency Response in Australia',* A/HRC/15/, Appendix B, 4 Mar. 2010 (originally made public February 2010*)* http://unsr.jamesanaya.org/docs2.cfm

159 During Survey 1 NT Elders Appendix 1

160 ibid

In 2006, through the amendments to the Northern Territory's Land Rights Act, control over communal township lands was transferred from Aboriginal Land Councils to government. Leases management was removed from the control of Aboriginal Land Councils to that of a Government statutory body.

Additionally there were and are proposed changes to the Commonwealth Radioactive Waste Management Act (CRWMA) which reduced the requirements of consent by Aboriginal land owners regarding issues of location related to the dumping of radioactive waste and which is currently one of the issues in regard to the proposed Muckaty Station Dump, in the Tennant Creek area.[162]

In June 2007 the Intervention, when introduced, brought with it further transfers of Aboriginal powers to government. Communities found Government Business Managers had been appointed to live in their midst, often in accommodation surrounded by wire fences and locked gates. Their responsibility according to government is 'to develop a detailed understanding of the community in which they work, the service delivery and funding arrangements, and ensure that Australian Government objectives are achieved', in other words an overseer.[163]

One Galiwin'ku resident, Joan Malku Dhamarrandji comments that the changes,

"don't recognise Yolngu as humans capable of doing their own thing now or in the future."[164]

The NTER Measures are based on control of land through compulsory 5-year leases, heavy fines for breaking imposed restrictions on alcohol and pornography, controls over public computer use and the transfer of management of many community stores from local management to that of Government Shire Councils. Compulsory income management has been imposed to keep control over personal spending.

Rosanne Kemarre Ellis states her community has been disadvantaged, *"by taking over our community. And making people's lives a living hell."* [165]

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161 Ibid

162 *Commonwealth Radioactive Waste Management (Related Amendment) Act 2005,* and the subsequent *Commonwealth Radioactive Waste Management Legislation Amendment Act 2006*. The *National Radioactive Waste Management Bill 2010* (*the Bill),* is intended to repeal and replace the existing *Commonwealth Radioactive Waste Management Act 2005* (the Act). http://www.aph.gov.au/library/pubs/bd/2009-10/10bd125.htm#Passage.

163 Government Business Managers and Community Employment Brokers: Role and functions.http://www.facs.gov.au/sa/indigenous/pubs/nter_reports/Documents/nter_review_submission/appendix3.pdf

164 During Survey 2 Galiwin'ku community Appendix 2

165 During Survey 1 Elder Survey Appendix 1

And Marie Elena Ellis says,

"My community is disadvantaged since the NTER arrived. There are no employment, respect and happiness for my community." [166]

In September 2007 memoranda of agreements between the Commonwealth and the NT Governments further expose arrangements that will transfer control over land from communities to government as well as for the eventual demise of homelands.[167] The memorandum includes the following:

> "Both governments agree that the funding will facilitate the transition from Indigenous community-controlled housing to a public housing model. (point 9)
>
> The Australian Government's position is that ARIA (Australian Remote Indigenous Accommodation) funding not yet committed be applied to the following priorities...
>
> Third order of priority [includes]... no Australian Government funding to be provided to construct housing on outstations/homelands. (point 17)
>
> For all communities, access to ARIA funds for repairs and upgrades will be dependent on their communities agreeing to transfer of their housing to publicly owned Territory Housing on completion of the repairs and upgrades. (point 19)

In 2008 the decision to transfer community municipal management to the nine, newly created Shires [168] has led to a further loss of control, created much confusion and has lessened the opportunity for continuing direct input from the communities to local decision making. Rather than moving towards a state of self-determination through capacity building, people have been disempowered through these processes.

While the operation of community municipal services by Shires may have appeared practical on paper, considerable problems have been created on the ground. In an open letter, Greg Thompson, Bishop of Darwin, explained that in the area of Numbulwar there are no plumbers for basic repairs or for

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166 ibid

167 *Memoranda of understanding between the Australian Commonwealth and the NT Government, Indigenous Housing, Accommodation and related services Sept 2007*
http://www.aph.gov.au/senate/committee/indig_ctte/submissions/sub28_attachment_8.pdf

168 Local Government Act
http://www.dlgh.nt.gov.au/__data/assets/pdf_file/0010/37477/localgovernment_q_and_a.pdf

sewage seeping from the houses. [169] The community at Ampilatwatja had similar unaddressed problems and many of the residents were forced to move away from their homes. One resident stated,

"Yesterday when I turned up there was still sewage about one foot deep on the ground…Yet the sewage was thick and rotten, flowing down the lawn and so on" [170]

Dr Michael Nelson from Papunya comments,

"Things were working well before. No access [now] *to equipment or a vehicle."*[171]

From the June Survey elders/leaders believed the changes had led to their holding

more power	0%
the same power	6%
less power	94%

Angeline Luck of Ampilatwatja says, *"Our Association Corporation wiped out,* [government] *not listening to our leaders."*[172]

Arrernte woman, Annette Doolan of Amoonguna says, *Local jobs have been lost. No bus to take the local people into town for shopping/work… The Art's Centre will be closed – nowhere to sell artwork for artists to work…."* [173]

169 Open Letter from Bishop Greg Thompson to Mr Taryn Lesser, the High Commissioner for Human Rights, Geneva (June 4th 2009) Appendix 5

170 *'This Is What We Said,* (Feb 2010),53

171 During Survey 1, Elder Appendix 1
172 ibid
173 ibid

CONCLUSION

Social problems resulting from gross underfunding and neglect by government have been responded to with 'blame, shame and punishment.' There could be no greater punishment for Aboriginal people than removing from them control over their lives and their land.

Fr Frank Brennan SJ AO at MCD Centenary Conference states,

"Just because the indigenous people amongst us also need work and education, that is no reason to deny them their land rights and self-determination. The challenge as with the Northern Territory intervention is to heed the voice of those speaking for country and for themselves as we decide together how best to provide work and education. Otherwise we will be back here in another 40 years lamenting the unintended consequences of us making decisions for them across a racial divide." [174]

Human rights principles have been discarded. There has been virtually no meaningful attempt by government to achieve real partnerships with, nor to obtain authentic informed consent from, Aboriginal people with regard to any of the changes which have directly impacted upon them. Aboriginal people have not simply been marginalised, but have been ruthlessly stripped of powers over their lives and their land to which they are profoundly connected.

Aboriginal cultural integrity is endangered and a new commitment by government to listen to and genuinely engage with Aboriginal people in the Northern Territory within a justice framework is now urgently required. Immediate restoration of rights through amendments to recently enacted legislation must reflect Australia's international legal obligations of ensuring self-determination, cultural rights, non-discrimination and equality before the law.

"The day is justice for me when I am treated the same way as others…."
Rev. Dr Djiniyini Gondarra (May 19 2010)

174 Frank Brennan SJ AO, '*Speaking for Country Speaking for Self'* (Speech delivered at Melbourne College of Divinity- Centenary Conference Trinity College University of Melbourne 6 July 2010).

Appendix 1
(1of 2)

SURVEY 1: ELDERS/LEADERS RESPONSES
NT COMMUNITIES
June 2010

Number of Respondents	MALE	16
	FEMALE	19

I have been fully consulted about the NTER Measures in the NT

YES	11.8%
NO	88.2%

I have given my consent to the NTER Measures in my community

YES	2.9%
NO	97.1%

A Do you think the NTER Measures have made life for you and your community better or worse?

Greatly improved	0%
Improved	0%
The same	11.8%
Worse	38.2%
Much worse	50.0%

B Has the Basics Card made it easier for you to manage your money?

Yes	0.0%
No change	30.0%
No	70.0%

C Has there been any additional housing built in your community?

Yes	2.9%
No change	2.9%
No	94.0%

D Have any of the changes led to more jobs for community residents?

More jobs	2.9%
No change	20%

Fewer jobs	77.1% '

Appendix 1
(2of 2)

SURVEY 1: ELDERS/LEADERS RESPONSES, NT COMMUNITIES
June 2010

E Are you able to eat more fresh food because of the changes to community stores?

Yes	9.7%
No change	51.6%
No	38.7%

F Do you think people in your community feel happier since the changes?

More happy	0.0%
no change	14.3%
Less happy	85.7%

G Do you think people in your community feel safer since the changes?

More safe	5.9%
No change	55.9%
Less safe	38.2%

H As a result of the changes, do leaders and elders have more power to make decisions about the future of their communities?

More power	0.0%
no change	5.7%
Less power	94.3%

Government has agreed to pay compensation for 5-year leases that were compulsorily taken on your land. As from now, if you had a choice, would you prefer to continue to receive compensation for your land or would you prefer to have the land returned to you?

Compensation	0.0%
Return of land	100.0%

Appendix 2
(1of 2)

SURVEY 2: GALIWIN'KU COMMUNITY MEMBERS
June 2010

Number of Respondents	MALE	20
	FEMALE	31

I have been fully consulted about the NTER Measures in the NT

YES	6.5%
NO	93.5%

I have given my consent to the NTER Measures in my community.

YES	9%
NO	91%

A Do you think the NTER Measures have made life for you and your community better or worse?

Greatly improved	0%
Improved	6.8%
The same	6.8%
Worse	9.1%
Much worse	77.3%

B Has the Basics Card made it easier for you to manage your money?

Yes	10.6%
No change	14.9%
No	74.5%

C Has there been any additional housing built in your community?

Yes	55.3%
No change	10.6%
No	34.1%

D Have any of the changes led to more jobs for community residents?

More jobs	13.6%
No change	38.7%
Fewer jobs	47.7%

Appendix 2
(2of 2)

SURVEY 2: GALIWIN'KU COMMUNITY MEMBERS
June 2010

E Are you able to eat more fresh food because of the changes to community stores?

Yes	34.8%
No change	43.5%
No	21.7%

F Do you think people in your community feel happier since the changes?

More happy	4.3%
no change	23.4%
Less happy	72.3%

G Do you think people in your community feel safer since the changes?

More safe	4.2%
No change	22.9%
Less safe	72.9%

H As a result of the changes, do leaders and elders have more power to make decisions about the future of their communities?

More power	4.3%
no change	12.7%
Less power	83.0%

Government has agreed to pay compensation for 5-year leases that were compulsorily taken on your land. As from now, if you had a choice, would you prefer to continue to receive compensation for your land or would you prefer to have the land returned to you?

Compensation	2.2%
Return of land	97.8%

Appendix 3

COMPARISON BETWEEN TWO SCHOOLS

Institute for Cultural Survival Inc
POBox 40743, Casuarina NT 0811. www.culturalsurvival.org.au

Location	Dundee Beach	Mirrngatja
Years opened	1998	1982
NT DET classification for the level of service offered[2]	School	Homeland Learning Centre[3]
NTDET classification of asset	School	Remote School[4]
Years of operation	12	28
Enrolment numbers in 2009	6[5] Attendance records for 2004 unavailable.	13[6] In 2004[7], an average attendance of 100%.
Threat of closure by NT DET	No threat	Constant threat[8]
First language(s) of students	English	Djambarrpuyngu, Ganalbingu
Resident teacher(s)	Yes One fulltime	No A Visiting Teacher attends for one day per week[9]
Resident Assistant Teacher	Yes	Yes[10]
School infrastructure		
classroom	Yes Paid for by NT DET	Yes Paid for and built by parents.
library room	Yes	Nil
air conditioner - classroom	Yes	Nil
ablution block	Yes	Nil
shaded play area	Yes	Nil
office	Yes	Nil
teacher accommodation	Two bedroom	Nil
carport	Yes	Nil
Classroom resources		
Reading schemes	Yes	No
Class sets of readers	Yes	No
Class sets of text books	Yes	No
etc		
Languages formally taught at school	English, Indonesian, Auslan	English

APPENDIX 4

(1of2)

Open Letter from Bishop Greg Thompson
Anglican Bishop of the Northern Territory

Mr Taryn Lesser
Special Procedures Division
Officer of the High Commissioner for Human Rights
Geneva

16 July 2009

Dear Taryn,

I would like to welcome you personally to the Northern Territory but it seems your visit will not permit church leaders to engage you.

A planned visit to Groote Eylandt (where there are three Anglican Churches with three Indigenous clergy) while helpful for the communities there, however, will not provide you with the issues in East or West Arnhemland.

Your visit may not permit you opportunity to hear of the serious breakdown in the NT Emergency Response or NT govt initiatives in what is planned in the itinerary. For example - at Numbulwar (one of the major 'hubs' of the Federal Govt to support outstations and region), no plumber is resident and all the equipment has been relocated to Katherine 500km away. It has cost a mission organisation $2,000 to fly plumbers from Katherine to assess and do basic remedy to one house. There is no plumbing equipment to remedy sewerage seeping into houses.

Recently I visited Numbulwar to discover that the 70 yr old Indigenous deacon had been assaulted at her home. I also heard at that time the wife and grandchild of the Indigenous Rector had been assaulted at a fellow ship service. No action was taken when the police had this reported.

The NT emergency response has brought multiple layers of bureaucracy to scrutinise the building of a toilet but it cannot manage the drinking or the violence in communities.

At Oenpelli 400km east of Darwin on the edge of Kakadu, we sought last year to obtain govt permission to build toilets next to our church which holds regular funerals for the community, even though we have had a builder and we can fund the project of $50,000. Traditional Owners have wanted this done for sometime but we received permission in June 09.

We will hold an ordination service on 24 August at Oenpelli for traditional elder Lois Namanyilk who alongside other women try to lead their people. It is one community which the NT Emergency Response legislation failed to prohibit the sale of alcohol - why, you need to ask government officials.

I will do the ordination service on the day the 'wet canteen' is not opened, because of the regular patterns of violence that follows drinking sessions.

The failure to address these basic community concerns alongside the coercive policies of government compounds the deep sense that our governments do not want to engage in effective partnerships - with churches, NGO's, or local leadership. Much has to do with incompetence, the underlying prejudice towards First Australians and a failure to build lasting friendships and alliances with communities.
Sadly my concerns are not being addressed or those of many other

Appendix 4 (2of2)

Territorians who are not given basic citizenship under the current regime rather treated as a burden in their own country.

Not one house under the NTER in two years has been built for an Indigenous family. Though 15% of the $670 Million has been allocated for project management.

When I visit remote communities I meet Federal Govt Business Managers who are under resourced and given little cooperation by other government agencies. One Govt Business Manager has not been able to move into the Manager's Centre for over 18 months because of chemicals used in the demountables and which is sited on a tidal surge zone.

How little is known of the logistical failures across the communities and how little do we appreciate the context in which many in our country want better education, housing, health and employment outcomes for Indigenous Australians.

My grave fear is the silence of consent in majority Australia to the ill considered policies and plans trying to be implemented in the NT.

I would be pleased to introduce you to the Heads of NT Churches who have worked longer in the NT than government has with Indigenous communities. It has been over 40 years since churches managed remote settlements, but the health, education, housing and employment has significantly deteriorated since that time.

In the wake of the NT Intervention in remote communities, at least one Indigenous leader, Galarrwuy Yunupingu, has said that they were better off under mission rule. Abuse was low, they felt protected. (The Age, Melbourne, March 27 2008, page 1). What is hard for government to hear is the failure of the relationship between government and Indigenous people and particularly when older leaders know and express a longing for 'mission' days. Their longing is not for being led by white men but for stability, safety and for people who were their friends.

Attached is a paper on the background and ethics of the NT Emergency Response - White Man's Dreaming which I delivered in Canberra at the Ethical Society in February 09.

I would also welcome you to attend the important ceremony of the first Indigenous woman in Oenpelli to be ordained on the 24 August, but others may have planned for you to be elsewhere.

regards

Greg

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cc National Aboriginal and Torres St Islander Ecumenical Commission; General Synod Public Affairs Commission

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Margaret Djulunga Dhurrkay
Maria Elena Ellis
Marissa Burrinyaliny Burarrwanga
Mark Lane
Mark Watjcina
Mary Njandama
Mavis Duwalatji
Minbirik Guyula
Nigel Yunipinga
Nyomba Gandangu
Pamela Sampson
Peter Gandhalirr
Peter Inverway
Peter Marwurr
Phillip Wilyuka
Rachel Jurrah
Raelene Silverton
Raylene Rahmirri
Rev Dr Djiniyini Gondarra OAM
Rev. Ken Garrawurra Minypirriwuy
Richard Downs
Rodney Bambdiyawuy
Rodney Hudson
Rosalie Bananaki
Rosalie Kunoth-Monks OAM
Rose Guywanga
Roseanne Kemarre Ellis
Roy Ruwarringa
Rummyguduyu
Ruth Marrwulpu
Sarena Williams
Sarita Gathayalng
Serena Balalapu Gaykamungu
Timmy Birthakpuy
Valerie Martin
Vanessa Bathuthapu Maymum
Wulkurrgu Bukulatjpi
Yalmay Yunupingu
Yananymul Mununggurr
Yingiya Guyul