THE UNITING CHURCH IN AUSTRALIA

NORTHERN SYNOD

OFFICE OF THE GENERAL SECRETARY

Submission from the Uniting Church in Australia Northern Synod to the Northern Territory Emergency Response Review

INTRODUCTION

The Northern Synod of the Uniting Church in Australia makes the following submission to the Northern Territory Emergency Response Review. The Northern Synod covers all the Northern Territory, the Kimberly Region around to and including Broome and the APY Lands of South Australia. Through the work of its predecessors' in the Methodist and Presbyterian Churches, the Northern Synod has an extensive history of engagement and working in partnership with Northern Territory Indigenous peoples.

The submission refers to the Emergency Response as 'the Intervention'. This submission contains views as developed by the Annual meeting of the Northern Synod in September 2007 and the Synod Standing Committee in August 2008.

2007 STORY

In making this submission, the Northern Synod reiterates the unanimously approved statement, made in response to the strongly presented views of our Indigenous members, at the 2007 Annual Synod:

> *"We are now under three laws - our own Aboriginal Law, Australian Law for all Australians and this new white man's law for Aboriginal People in the Northern Territory"* - An Arnhem Land Church Leader
>
> Through our partnerships as Indigenous and non-Indigenous members of the Northern Synod we share a sense of pain, loss, confusion, and sadness generated by the Federal Government's Intervention in Northern Territory Indigenous communities. Our Synod members from Anangu Lands in South Australia and from the Kimberley in Western Australia are also very concerned.
>
> At our annual Synod meeting held 30 September to 3 October 2007, we heard many cries for help and expressions of concern with comments such as:
>
> - "Is there a war between black and white people?" (a child from Galiwin'ku.)
> - "We heard they are coming to take away our children." (a woman from Ramingining)

- "There are so many voices; it is all crazy, leaving us with a feeling of hopelessness." (a man from Galiwin'ku)

We share a strong sense of betrayal concerning the Federal Government's lack of consideration and incorporation of the recommendations from the *Little Children are Sacred* Report into its legislative response.

While the Northern Synod welcomes government action in seeking to address sexual abuse and also supports initiatives that will keep our communities safe, this Synod condemns the current legislative response as abusive, intrusive, and damaging. Of particular concern is the removal of the Permit system for entry into Aboriginal Land and the lack of consultation with Indigenous people on this matter and on other major reforms contained within the various legislative changes that have been enacted.

The Northern Synod calls on the Australian Government to enter into a real partnership with Indigenous people in the Northern Territory by enacting legislation that upholds human rights, affirms self-determination and enhances the capacity of individuals and communities to contribute to solving issues of concern within their own lives.

Therefore we believe that the Government should:

a) repeal the *NT Emergency Response Act 2007;* and

b) start afresh through consultative processes to develop a range of responses that directly address the recommendations of the *Little Children are Sacred* Report.

We encourage all governments to build on successful community development projects that have involved Aboriginal consultation and decision-making, as demonstrated by Aboriginal Resource and Development Services and Arnhemland Progress Association.

The 2007 Synod decision is quoted here in full because it still reflects the view of the Northern Synod, that real and sustainable progress will not be made unless there is appropriate and relevant engagement with Northern Territory Indigenous peoples and groups. Indeed there is the danger of a backlash against Indigenous peoples due to the lack of identifiable outcomes against the expenditure of large amounts of public funds through the Australian Government's Intervention.

2008 STORY

The Standing Committee of the Northern Synod held on 1-2 August 2008, discussed the Australian Government Intervention and makes the following comment. As the submission indicates, there are very few measures that can be said to be "working", as most measures are a "mixed impact", usually having both positive and negative outcomes. There are some measures that are clearly "not working" and these should be repealed immediately.

1. WHAT IS WORKING?

This section addresses measures that are viewed as generally being successful.

Additional police for Aboriginal communities

The provision of additional police is supported for those communities that have requested this assistance. However the arrangements for appropriate cross-cultural orientation including attention to improved communication is essential. The extra police provision is especially welcome in those communities where the outcome of police has been one of quieter nights and fewer liquor and drug related incidents. The engagement of police in community activities such as local sporting events and in the community generally has made a positive impact in lowering levels of community violence.

There are however concerns about police entering houses without a warrant, as police now have this power in prescribed areas. Measures that treat people in prescribed areas differently to those in other areas of the Northern Territory are unjust and should not be continued.

Baby bonus

The measure to spread the payments made under the baby bonus scheme is supported. We would however, question the view that Australians should be paid to have babies (recognised as not being part of the Intervention) as this may leave some people vulnerable to undue pressure and exploitation.

2. MIXED IMPACT

This section addresses measures that have some merit, but also have considerable negative impacts.

CDEP changes

It is noted that the Rudd Government has reversed the Howard Government's decision to abolish CDEP. The retention of CDEP is supported because many Indigenous people wish to undertake part-time, rather than full-time employment. CDEP allows for this type of employment for individuals, while also allowing for the delivery of important community service functions.

In supporting the retention of CDEP, the submission is not opposed to the transition to full-time employment for those who desire it, but it recognises that very few full-time jobs exist in prescribed areas – hence the importance of retaining CDEP, as it offers the opportunity of part-time employment for many.

It is noted that changes to CDEP under the Intervention are occurring at the same time as the Northern Territory Government is introducing its new Shire arrangements. The establishment of Shires at this same time has added confusion about who will be employed, who will not and which jobs will exist. There is a growing and also alarming information void concerning how CDEP will function under the new Northern Territory Shire arrangements.

Prescribed areas

Prescribed areas are the legal mechanism through which many of the measures of the Intervention are enacted. While this mechanism works well where there is a clear cut and logical boundary, this is not always the case with the existing prescribed areas having borrowed the imprint of Aboriginal lands under the *Commonwealth Land Rights (Northern Territory) Act 1976.*

Specifying the boundaries this way without the involvement of those who live within those areas only serves to confuse and exclude Indigenous people, which is clearly not the appropriate way to

try and win their approval and endorsement. It would be preferable to have clearly understood and intentional boundaries if prescribed areas are to continue to be used. This submission calls for local community and specific regional consultations to determine these areas and the details of their boundaries.

Town camps

While the attention to issues of concern in town camps is welcomed, the lack of consultation with the residents of these camps is not. The rights of residents of town camps should be respected through government engagement with town camp representatives to address issues of concern in each of the camps.

Business management areas

The provision of Australian Government business managers in larger Indigenous communities is welcomed because it has the potential to enable community residents to have improved access to information. However this also means that communication facilitation needs to be taken seriously as English for most people is a 5th or 6th language. Feedback to our organisation is that while some of the these managers are effective, others are more of a hindrance than help. The levels of competence, including understanding of Government agency operation and cross-cultural awareness of some managers is questionable.

The general focus to allocate increased resources, eg Government business managers, to Indigenous communities is welcome, but this measure is very mixed in effectiveness, especially in those locations where little if any attention has been given to facilitating better cross-cultural communication.

Computers

This submission supports efforts made to exclude pornographic material etc on computers in Indigenous communities. However, the sedition clauses contained in the legislation are draconian and over-reach reasonable powers to enforce this desirable intent.

Community stores

The measures concerning community stores are related to income management. Again, while the submission supports improved standards in community stores, the heavy-handed approach of the Intervention is not likely to be positive in the longer term.

The take-over of some community stores is welcomed, where this will bring about sustainable changes and (hopefully, where this is occurring), prevent corrupt payments to some senior community leaders.

Liquor

The complete ban on liquor within prescribed areas (unless otherwise exempted) is supported where this view is also the view of the affected community. It should be recognised that there were more than 100 liquor restricted areas in the Northern Territory before the Intervention commenced, most of which were completely liquor free. All of these areas (declared under the *NT Liquor Act*) were negotiated with local communities and included a range of community based stakeholders. The effect of prescribed areas has been to remove the ability from local communities within prescribed areas to engage in local liquor management issues and to develop locally determined solutions. Where a community wishes to have a complete ban on liquor possession and

consumption, this submission supports this view. However, where a community wants the right to engage in developing a local solution, eg Groote Eylandt, there should be scope for such initiatives.

Pornography

While the intent of this restriction is supported, implementation of it is problematic. For example, content that shows people in 'adult behaviours' is still being broadcast on free-to-air television and mobile phones, making the measure inconsistent and of limited value.

3. WHAT ISN'T WORKING?

This section addresses measures that are not working and which should be repealed or discontinued.

Five year or other term leases

This measure is not supported because of the lack of consultation with local land owners and community members. A 'one-size-fits-all' approach has greatly offended and angered almost all Indigenous persons with traditional land ownership responsibilities who have received no compensation or adequate explanation from Government. One of the issues to emerge through implementation of the Intervention measures is private deals with the 'big men'. These deals are not transparent, exclude wider community participation and are open (even if they contain positive measures) to criticism because of their secrecy and lack of wider stakeholder engagement.

Infrastructure statutory rights

The acquisition of infrastructure rights for buildings constructed after 18 August 2007 is unfair. Such a broad brush approach is not appropriate, and where it relates to infrastructure funded in full or in part by Indigenous community groups, is a form of asset grabbing.

No consideration of customary law or cultural practice

The restriction on courts such that no consideration may be given to customary law or cultural practice establishes a different standard of justice to other Australian citizens before the courts. Instead, positive initiatives such as the Milingimbi 'Raypirri (discipline)' program and the Galiwinku 'Elders in Justice' initiatives should be supported.

Racial Discrimination Act and Northern Territory Anti-Discrimination Act

The suspension of these Acts is completely unacceptable. See Attachment A for an analysis of this issue.

Australian Crime Commission Act 2002

Amendments to the Australian Crime Commission Act now require people to give evidence. It may be argued that this measure is warranted if it has resulted in an increase in the number of cases resulting in convictions before the courts. However, if this is not the case, this measure, which further reduces individual rights, may not be justified as it has not made a difference.

Health checks

Health checks done on a 'fly-in, fly-out' basis, without the high level involvement of Indigenous and non-Indigenous local health professionals are a waste of public funding. Instead of trying to duplicate the data that is already there, this funding should have been used to strengthen the ability of local clinics and develop local and/or regional health infrastructure to undertake this activity on an ongoing and sustainable basis.

Income management regime

Support mechanisms that assist Indigenous women (in particular) to manage their income, especially providing protection from humbug from family members, are welcome. However, there is no option for those whose income falls within the ambit of this aspect of the Intervention. This submission does not support involuntary income management. Apart from the different treatment of people issue, quarantining of some people's income has caused significant hardship due to difficulties in being able to access quarantined income in some stores. This is another example of a measure that does not allow individuals to engage with issues which strongly and adversely affects their lives and is not supported.

Voluntary income management measures have previously been developed and implemented by other organisations, such as the Arnhem Land Progress Association (ALPA). However, in this case, the people using the ALPA access card have opted in, whereas in the case of the Intervention, there is no opt in or opt out choice.

***Aboriginal Lands Rights (Northern Territory) Act* 1976**

Changes to the permit system made by the Howard administration were not supported because a 'watered-down' permit system does not make children safer and only serves to undermine Aboriginal peoples ability to manage their communities and their land.

3. WILL THE SUITE OF MEASURES DELIVER THE INTENDED RESULTS?

The suite of measures listed above will not deliver their intended outcomes simply because they come from a mindset of 'one-size-fits-all', and have not been designed with local community input. In addition a useful yardstick to guard against the implementation of measures that may have negative consequences is to ask the question – "Will this measure further promote people's feelings of powerlessness and their sense of 'loss of control'?" Local community and in some cases wider regional input, is vital because without the engagement of individuals and communities, the measures will not be supported, or will only be supported while unsustainable levels of Government funding are applied.

5. WILL NTER LAY THE BASIS FOR A SUSTAINABLE AND BETTER FUTURE FOR RESIDENTS OF REMOTE COMMUNITIES AND TOWN CAMPS IN THE NT?

No, because the basis of the Intervention is itself not sustainable and will not be supported by a sufficient number of community members to achieve intended outcomes.

6. WHAT ALTERNATIVE MEASURES SHOULD BE CONSIDERED?

Sustained engagement with local communities is needed, to develop and implement local solutions. The issue is not alternative measures, but alternative approaches, and ‘one-size-fits-all’ responses should definitely be avoided. The central thesis of this submission is that Governments need to stop intervening and start working with Indigenous community groups. Successful Alcohol Management Plans in the Northern Territory are an example of this approach in action.

ATTACHMENT A

The Northern Territory Emergency Response:
a human rights assessment
prepared by UnitingJustice Australia
National Assembly, Uniting Church in Australia

This briefing paper discusses the Northern Territory Emergency Response in relation to Australia's international human rights commitments and the Commonwealth Racial Discrimination Act (RDA).

The phrase 'Northern Territory Emergency Response' refers in practice to several individual measures contained in three different pieces of Commonwealth legislation passed through federal parliament in August 2007:

- the *Northern Territory National Emergency Response Act 2007*
- the *Social Security and Other Legislation Amendment (Welfare Payment Reform Bill) 2007*
- the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007*
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The Uniting Church and Justice for Indigenous Australians

The Uniting Church hopes for a nation which acknowledges the rights of Indigenous Australians as the first people of this land, respects the land on which we live, and is committed to empowering Indigenous people to take control of their own lives and destinies. Justice for Indigenous people will depend on policies which ensure appropriate resourcing in the areas of health, housing, education, employment and welfare support and the Uniting Church is committed to public advocacy which press for these policies.

At its 7th National Assembly, the Uniting Church formally entered into a relationship of Covenant with its Indigenous members, recognising and repenting for the Church's complicity in the injustices perpetrated on Australia's Indigenous community, and pledging to move forward with a shared future.

> 'It is our desire to work in solidarity with the Uniting Aboriginal and Islander Christian Congress for the advancement of God's kingdom of justice and righteousness in this land, and we reaffirm the commitment made at the 1985 Assembly to do so. We want to bring discrimination to an end, so that your people are no longer gaoled in disproportionate numbers, and so that equal housing, health, education and employment opportunities are available for your people as for ours. To that end we commit ourselves to work with you towards national and state policy changes. We commit ourselves to build understanding between your people and ours in every locality, and to build relationships which respect the right of your people to self determination in the church and in the wider society.'[1]

[1] Uniting Church in Australia (1994), *Covenanting Statement*

The Uniting Church and Human Rights

At its inception in 1977, the Uniting Church affirmed its commitment to human rights in its *Statement to the Nation*:

> 'We affirm our eagerness to uphold basic Christian values and principles, such as the importance of every human being, the need for integrity in public life, the proclamation of truth and justice, the rights for each citizen to participate in decision-making in the community, religious liberty and personal dignity, and a concern for the welfare of the whole human race…
>
> We pledge ourselves to seek the correction of injustices wherever they occur. We will work for the eradication of poverty and racism within our society and beyond. We affirm the rights of all people to equal educational opportunities, adequate health care, freedom of speech, employment or dignity in unemployment if work is not available. We will oppose all forms of discrimination which infringe basic rights and freedoms.'

The Church's commitment to human rights is born from the belief that every person is precious and entitled to live with dignity because they are God's children, and that each person's life and rights need to be protected or the human community (and its reflection of God) and all people are diminished.

In 2006, the National Assembly of the Uniting Church in Australia adopted its statement *Dignity in Humanity: Recognising Christ in Every Person*. This statement committed the Church to a continuance of its commitment to human rights and, in particular, to holding the Australian Government accountable to its international human rights obligations, stating:

> 'We pledge to assess current and future national public policy and practice against international human rights instruments, keeping in mind Christ's call and example to work for justice for the oppressed and vulnerable'.

It is therefore crucial that the Church address the Northern Territory Emergency Response in relation to its impact on the rights of Indigenous Australians and advocate for improvements which better meet the Australian Government's international human rights commitments.

Racial equality and non-discrimination

Non-discrimination and equality before the law are among the most basic principles in the protection of human rights. These principles create an obligation on the Australian Government to ensure that every person is able to exercise their rights without discrimination. The Convention on the Rights of the Child (CRoC), for example, makes it clear that all human rights as they relate to children must be applied in a non-discriminatory fashion.[2]

One of the most important characteristics of the international human rights system is the acknowledgement that human rights are overlapping, inter-connected and indivisible. This means that all rights are of equal importance and there is no priority in the protection of rights. Governments cannot, therefore, act to protect one right whilst breaching another. In the context of the Northern Territory Emergency Response, it is not justifiable to violate the non-discriminatory

[2] HREOC Aboriginal and Torres Strait Islander Commissioner (2008a), *Social Justice Report 2007*, available: http://hreoc.gov.au/social_justice/sj_report/sjreport07/pdf/sjr_2007.pdf, p.239

principles of the international human rights system in order to further other rights (such as the rights of children and protection from violence). Human rights law requires that solutions be found to the problems of violence and poverty in Indigenous communities that protect all human rights.[3]

In Australia, there is no constitutional protection against discrimination, except on the narrow grounds of state residency. The most significant protections against racial discrimination are statutory, and contained within the Commonwealth Racial Discrimination Act of 1975. This Act prohibits 'any act involving a distinction, exclusion, restriction, or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom'. The Act also makes it an offence to discriminate in many specific areas, such as employment, housing and the provision of goods and services.[4]

Special measures': exemption from non-discrimination protections

In international law, the right to non-discrimination has attained a status of *jus cogens*, which means that under no circumstances can a government justify the introduction of discriminatory policy. Therefore, it is never permissible to claim to 'balance' a discriminatory measure to further the enjoyment of a specific human right.[5]

However, there does exist the concept of 'special measures', which allows for exemption from the prohibition of racial discrimination. 'Special measures' enables preferential treatment for a group, defined by race, in order to make possible the full enjoyment of their human rights. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) states that these measures will not be deemed to be racial discrimination.

The criteria for a 'special measure' are set out in Article 1(4) of the ICERD. 'Special measures' will:

- provide a benefit to some or all members of a group based on race;
- have the sole purpose of securing the advancement of the group so they can enjoy human rights and fundamental freedoms equally with others;
- are necessary for the group to achieve that purpose; and
- stop once their purpose has been achieved and do not set up separate rights permanently for different racial groups.

In order for the Northern Territory Emergency Response to be deemed 'special measures', it needs to be demonstrated that these measures:

- will clearly benefit Indigenous people by materially tackling the problem of child abuse;
- have the sole purpose of advancing Indigenous people and tackling child abuse;
- are absolutely necessary to ensure the advancement of Indigenous people and protect Indigenous children
- will cease once their purpose has been achieved.[6]

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[3] ibid, p.238
[4] HREOC (2008b), *An International Comparison of the Racial Discrimination Act 1975*, Background Paper No. 1, p.7
[5] HREOC Aboriginal and Torres Strait Islander Commissioner (2008a), op. cit., p.239
[6] ACOSS (2007), *Submission to the Senate Legal and Constitutional Affairs Committee on: Social Security and Other legislation (Welfare Payment Reform) Bill; Northern Territory National Emergency Response Bill 2007; and Family and Community Services and Indigenous Affairs and Other legislation (Northern Territory National Emergency Response and*

Government position and justification of measures

The Government has consistently emphasised that the NT Emergency Response measures are consistent with Australia's human rights obligations and are overwhelmingly concerned with the safety of Indigenous children in the Northern Territory. The Explanatory Memorandum for the *Northern Territory National Emergency Response Bill 2007* claims that the Emergency Response measures will 'protect children and implement Australia's obligations under human rights treaties.' They have also maintained that urgent action was needed to address the problem of child abuse in Indigenous communities, characterising the situation as an 'emergency'. The term 'emergency' has been used to justify the breach of racial discrimination protections and as justification for the 'balance' that has allegedly been created between measures aimed at protecting children and ensuring they are non-discriminatory.

More specifically, the Government deemed the Emergency Response measures to constitute 'special measures', that is, they must be discriminatory in their intent and application in order to advance the rights of Indigenous people in the prescribed communities. The legislation was also exempted from the provisions of the RDA. Although this may seem a redundant measure (i.e. 'special measures' policies are permitted to be discriminatory and therefore RDA protections would be irrelevant), it was in fact needed as the RDA does not allow measures that involve the management of Aboriginal property by others without consent to qualify as 'special measures' under any circumstances. The Government justified this exemption from the RDA as ensuring certainty of process. [7]

Evaluation

At the introduction of the Emergency Response, the Government stated that the measures were introduced to protect the rights of Indigenous children in the Northern Territory. Indeed, was the Government not to take action to address violence and abuse in Indigenous communities, they would be in breach of their human rights obligations under the Convention on the Rights of the Child (CRoC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and ICERD.[8]

The publicity around the Emergency Response measures has illuminated the extent of the denial of human rights and access to basic support and services that Indigenous Australians have endured since colonisation. The renewed attention that has been cast on violence, abuse and poverty in Indigenous communities must be welcomed. However, it is clear that several of the measures included in the Emergency Response have a significant number of actual and potential negative impacts on the rights of Indigenous people, and many have minimal or no relationship to the protection of children from abuse and violence.[9]

Special measures' and an 'emergency situation'

As previously discussed, it is clearly established in international law that protections against racial discrimination cannot be overridden by efforts to secure other rights. The CRoC also makes it clear

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Other Measures) Bill 2007, available:
http://acoss.org.au/upload/publications/submissions/3015__Senate%20Legal%20Affairs%20Committee%202007.pdf
[7] HREOC Aboriginal and Torres Strait Islander Commissioner (2008a), op. cit., p259
[8] ibid, p249
[9] ibid., p.260

that the protection of children's human rights most be ensured in a non-discriminatory manner. Whilst the situation in the Northern Territory certainly required urgent action, it does not meet the criteria laid out in the International Covenant on Civil and Political Rights for an emergency situation where limits on the protection of rights can be justified.[10] Claiming, therefore, that policies to address child abuse and violence in Northern Territory communities cannot be implemented in a non-discriminatory manner lacks credibility and cannot be justified.

The clear lack of evidence that many of these measures will address child abuse, combined with a substantial level of community opposition and lack of consent for the measures make it impossible to deem the policies 'special measures'.

For measures that may negatively impact on human rights to be deemed 'special measures' they must be conducted in consultation with, and generally with the consent of, the group involved. If this is not the case, the measures cannot be reasonably said to be for the advancement of the target group. Doing so indicates a paternalism that considers the viewpoint of the target group on their wellbeing as irrelevant.

In addition, it is a very dangerous precedent to waive the Racial Discrimination Act, particularly with such feeble pretexts. It also potentially creates two sets of standards (one for Indigenous Australians and one for non-Indigenous Australians). This type of system will not assist whatsoever in furthering racial equality in Australia.

Land tenure and the permit system

The Emergency Response legislation abolished the permit system[11] and implemented compulsory five year government leases over Indigenous communities.

The compulsory acquisition of five year leases over Indigenous communities undermines the rights of traditional landowners and pays no respect to the importance of Aboriginal control over their lands. This approach would not have been required had policies been decided upon and implemented with the involvement of the Indigenous communities themselves. It disempowers communities and the existing governance arrangements and institutions which have been put in place with extensive community involvement and increases the difficulty in building trust and cooperative relationships between communities and government.

The *Little Children are Sacred* report made no reference to land tenure or permits. The Australian Government did not supply any justification for linking the permit system or current land tenure arrangements to child abuse and violence in Indigenous communities[12], instead stating that the new leasing provisions are required to secure access to townships and security over land and assets to allow the Government to build and repair buildings and infrastructure.[13] The permit system did not impede service delivery in communities, prevent media scrutiny or stop economic development from

[10] Article 4 of the ICCPR sets out these strict criteria for circumstances where a government may derogate from its human rights obligations – the situation involves a public emergency which threatens the life of the nation; the emergency is officially proclaimed; the restrictions on rights imposed are strictly required by the situation; the restrictions are not inconsistent with other provisions in international law; they may not involve discrimination solely on the basis of race; they must not breach certain provisions of the Covenant; and the intention to enact emergency measures must be communicated to all other member of the treaty.

[11] Legislation to reinstate the permit system is being passed through Parliament in the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008*. As at 1 August 2008 this Bill was still before the Senate.

[12] ANTaR (2007), *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Appropriation (Northern Territory National Emergency Response) Bill (No.2) 2007-2008*, available: http://www.antar.org.au/images/stories/PDFs/sub60.pdf

[13] HREOC Aboriginal and Torres Strait Islander Commissioner (2008a), op. cit., p.244

taking place. Rather, police in the Northern Territory have acknowledged that the permit system assisted them and the community to enforce alcohol bans and regulate visitors[14] and several submissions to the Inquiry into the provisions of *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008* noted the importance of the permit system in assisting Indigenous communities to manage their own affairs and maintain their culture.[15] The repeal of the changes to the permit system in the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008* (currently before the Senate) is therefore a welcome change to the Emergency Response measures.

The Community Development Employment Projects (CDEP) program

The reinstatement of Community Development Employment Projects (CDEP) program was an important step in reforming the grossly inappropriate Emergency Response measures. CDEP programs allow important community control over the types of activities that these programs perform, with many providing essential services extremely valuable to Indigenous communities. It is essential that the Government's current process of reform for the Indigenous Employment Program and the CDEP program is informed by the feedback it has received from those involved in the projects in the community.

The decision to abolish CDEP programs ignored the reality of employment opportunities in many remote Indigenous communities. In 2006, the Local Government Association of the Northern Territory found that there were only 2 955 'real' jobs across 52 remote communities in the Northern Territory, allocated across a population of 37 000, of which 2 722 were non-Indigenous. If those formerly employed on CDEP programs were unable to find other work, their incomes may have been significantly reduced and their ability to provide an adequate standard of living for themselves and their families threatened. It is also well known that unemployment places additional stress on families and it is possible that this may increase the risk of family violence in Indigenous communities.

There is no evidence of a link between the existence of CDEP and of child abuse and violence in Indigenous communities. What was clear is that the abolition of the CDEP would increase government control over the incomes of Indigenous people and will do little to improve the employment opportunities in Indigenous communities. CDEP participants, because they receive a wage, would not be subject to income management under the Emergency Response. Moving these workers off the CDEP and requiring them to register for Newstart allowances and partake in Work for the Dole in the instance that they are unable to find employment means their payments will be subject to income management.[16]

Income management

The *Social Security and other Legislation Amendment (Welfare Payment Reform) Act 2007* provided for the control of welfare payments of Indigenous peoples in the prescribed Northern

[14] The Greens (2007), *The Australian Greens on the NT Intervention*, available: http://greens.org.au/content-data/473d47c43074c/NT%20Intervention%20Policy.pdf
[15] Senate Community Affairs Committee (2008), *Report of the Inquiry into the provisions of Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008*, available: http://www.aph.gov.au/senate/committee/clac_ctte/NT_emerg_response_08/report/c01.pdf, p.5
[16] HREOC Aboriginal and Torres Strait Islander Commissioner (2008a), op. cit., p.280

Territory communities, initially for 12 months and with the possibility of an extension for up to five years. According to the Act, the purpose of this measure is to:

- Reduce the amount of incomes spent on substance abuse and gambling
- Ensure that welfare payments are spent on priority needs of adults and children
- Promote socially responsible behaviour, particularly in relation to the care and education of children.

The right to social security is set out in Article 9 of ICESCR, Article 5 of ICERD, Article 26 of CRoC and Articles 11(1)(e) and 14(2)(c) of CEDAW. One key feature of these articles is the principle that the right to social security is to be enjoyed without discrimination, including on the basis of race. Quarantining the income payments of all Indigenous people in the prescribed communities is a racially-based, and therefore discriminatory, measure. The blanket application of income management in the 73 prescribed communities in the Northern Territory means that individuals who are not responsible for the care of children, do not gamble and do not abuse alcohol or other substances will have their income managed. The criteria for income management are therefore based solely on race rather than on the basis of need.

The quarantining of income payments is a blunt, ineffective instrument for addressing the complex social problems in Indigenous communities. There is no evidence to suggest that making school attendance a condition of income support will improve attendance. In cases of truancy, parents want their children to attend schooling, but they are often powerless to achieve this without considerable support from schools, their family and other community services.[17]

Making improved school attendance an objective of income management presupposes that children in the Northern Territory could assess educational opportunities if they and their families wished to do so. The Combined Aboriginal Organisations of the Northern Territory reported[18], in response to the Emergency Response legislation, on a severe lack of educational services in the Northern Territory. 94 percent of Indigenous communities in the Northern Territory have no preschool, 56 percent have no secondary school and 27 percent have a local primary school that is more than 50km away. The Combined Aboriginal Organisations of the Northern Territory also details a lack of adequately trained, culturally-aware teachers and a high turnover of teachers in communities.

It has also been argued that quarantining welfare payments may increase the risk of violence against women and children, threatening their rights to live free of the threat of violence and abuse. In those communities where the mother is the person responsible for the children, the father may blame the mother for the quarantining of payments. In addition, many Indigenous families have care arrangements where other family members have responsibility for the children. Yet if those children fail to attend school, the payments of the mother and father will be quarantined. This may also expose a range of women to violence.

Income quarantining does not encourage financial responsibility, and may in fact lead to greater dependency on others to manage budgets.[19] More constructive and beneficial policy would involve programs to improve financial literacy and the capacity of Indigenous people to budget their welfare payments.

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[17] ACOSS (2007), op. cit.
[18] Combined Aboriginal Organisations of the Northern Territory (2007), *Submission to the Inquiry into the Northern Territory National Emergency Response Bill 2007 and Related Bills*, available: http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2004-07/nt_emergency/submissions/sub125.pdf, p.18
[19] ACOSS (2007), op. cit.

Alcohol bans

Alcohol restrictions with the full support and consent of communities may qualify as ‘special measures’ under the RDA. This type of policy should, however, be only the first step. A sustained policy response which properly establishes and funds programs to address the underlying factors that contribute to alcohol abuse is needed, including increased funding for treatment and rehabilitation services (such as counselling and health facilities)

Consultation with Indigenous people

Successful consultation with Indigenous Australians must be the cornerstone of any legitimate policy to address child abuse, violence and disadvantage in Indigenous communities. This did not occur to any degree prior to the Northern Territory Emergency Response.

Without consulting with communities, the Government cannot fully understand the needs and circumstances of Indigenous Australians and cannot expand successful programs that have been devised and run by Indigenous communities.

In addition, any measures that are taken with the neither the consultation nor consent of those affected cannot be legitimately labelled ‘special measures’. This principle is particularly important in relation to the rights of Indigenous people. The UN Committee on the Elimination of Racial Discrimination has called on parties to ICERD to:

> ‘ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent’

The approach taken by the Government distanced and disempowered Indigenous communities from the policy process.

Conclusion

Placing the fundamental problem of human rights violations at the heart of the Northern Territory Emergency Response will continue to hinder the building of trustful and productive partnerships between the Government and Indigenous communities. Failing to consult and engage with Indigenous communities has wasted a crucial opportunity on an issue where there is such potential for common ground and collaboration.

Effective and just policy should always stand up to human rights scrutiny. Policy cannot be sustainable in the long tern if it does not safeguard the human rights of the population it is designed to protect and benefit. Effective child abuse prevention and child protection occurs when local community agencies, police and child protection staff work in a collaborative environment.