



Edmund Rice Centre
AWARENESS ■ ADVOCACY ■ ACTION

**Submission to
the Review Board of the
Northern Territory
Emergency Response (NTER)**

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**Time for a New Approach:
Consultation and Non-Discrimination the Key**

August 2008

The Edmund Rice Centre for Justice & Community Education (ERC) is a community organisation involved in a range of projects and activities across the four areas of its operation: research, community education, advocacy and networking.



Asking the right questions

This submission from ERC will attempt to answer a number of the reference questions provided by the Northern Territory Emergency Response Review Board, specifically Questions 4, 6 and 8.

However, ERC would like to note that the NTER in general has suffered from a lack of clarity about key goals and desired outcomes. It is impossible to answer many of these questions for the simple reason that there are not sufficient criteria for measurement of performance. This deficiency necessarily means that any attempt to measure performance relies on anecdotal information with all the shortcomings of such evidence. It makes objectivity difficult: it is often partial, which although may well be real, only provides evidence of one situation and not others.

The Emergency element of the NTER came from the *Little Children are Sacred* report – which aimed at the protection of children from sexual abuse. Despite this, the NTER's enabling legislation failed to refer to children, key measures can only tenuously be connected to child protection, and even in late June there was yet to be a prosecution for child sexual assault as a result of the NTER.ⁱ Olga Havnen, CEO of the Combined Indigenous Organisations of the NT, has said that “[the NTER legislation]...does absolutely nothing to address the central issue of child protection.”ⁱⁱⁱ

Policy should be based on good empirical evidence measured with well-known and agreed criteria. Thus far, there is a lack of both good empirical evidence and good criteria in this context.

Given the diversity of Aboriginal communities, it is not uncommon for conflicting evidence to emerge from different areas – with some communities supporting NTER measures and others not. In light of this, it is important that a “one size fits all” approach not be adopted.

If the goal of the NTER is the overall improvement of communities in the Northern Territory, rather than the protection of children in these communities, this aim should be clearly enunciated. Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner and Race Discrimination Commissioner of the Human Rights and Equal Opportunity Commission (HREOC) pointed out last year that there are no real benchmarks or measures for assessing the effectiveness of the intervention,ⁱⁱⁱ making any response to question 6 rather difficult. Furthermore, policies directed towards assisting communities in the NT should have measurable outcomes which recognise the primacy of human rights and respect for human

dignity. If there is any criterion against which the NTER can or should be measured, it is this one.

Human rights and human dignity as key criteria

One of the major concerns which the ERC holds in regards to the NTER is that rights guaranteed to other Australians (such as health and security) are only being provided to Indigenous communities on the basis of racial discrimination, the surrendering of land, and unfair trading practices.^{iv}

“The provision of basic services should never have been intertwined with the stripping away of fundamental rights in this way. Nor should the provision of funding for basic services and infrastructure be given in circumstances that include the clawing back of their human rights.”^v Larissa Behrendt, University of Technology, Sydney.

Tom Calma has reported that inequality is at the heart of the NT intervention measures, something which will inhibit the development of trusting relationships between Government and Aboriginal communities. It is doubtful that such relationships will encourage a sustainable and better future for NT residents. (Question 7.)

Put simply, all measures to address family violence and child abuse should themselves respect human rights. It would be outrageous to suggest that it is not possible to achieve this.^{vi}

Tom Calma, HREOC

Additionally, the sheer speed with which the NTER was implemented does raise questions about the sustainability and humanity of those measures. Consideration of the impact on the people not included in the design and implementation of the process must be key.

Comparative crisis research suggests that the more radical the reform (income quarantining, abolition of permits, abolition of CDEP, compulsory acquisition of land, grog bans, linking income support to school attendance) the more likely that implementation will be problem ridden and fail.^{vii}

Jon Altman, ANU

With reference to Question (4) "How is each NTER measure performing and how should each be taken forward?"

The ERC has already expressed its reservations in regards to the framing of this question and the lack of measurable outcomes available. However, in regards to human rights and dignity:

(1) Quarantining: a punitive approach.

The ERC questions the validity of legislation which treats any Australian in a punitive manner on the basis of their race. Quarantining of welfare applies to certain Northern Territory Aboriginal communities. It involves half of all income-support and family-assistance payments being income managed and thus only being spent on food, rent and other essential items. ^{viii}

The stated purpose of the quarantining was to ensure that welfare funds were going towards children's welfare, however no distinction has been made between functional and struggling families: or indeed, whether people had children at all.^{ix} The only criterion seemed to be that of race. If race is used punitively to implement policy, surely that policy must be described as racist.

Once again, ERC must emphasise the danger in having a "one-size-fits-all" approach. Although these measures have been welcomed in some communities (such as in the Central Desert)^x, in many areas these punitive measures have actually served to exacerbate the problems experienced by Aboriginal communities. The Darwin Aboriginal Rights Coalition has reported that the quarantining of welfare has caused significant problems in Aboriginal communities in the Northern Territory. Amongst problems being experienced, the DARC cited cases of people having to travel from remote communities to buy food. They especially noted the problems that this can cause for people with disabilities or the elderly. The DARC reported:

"Many people voluntarily reported the increased racism they were experiencing as result of the intervention, as well as their frustration that the policy is inherently discriminatory."^{xi}

Olga Havnen, coordinator of the Combined Aboriginal Organisations of the Northern Territory, has questioned the amount of money being spent on implementing this income management scheme, saying that this money (\$88 million in the first year) could have been better spent on programs and services. ^{xii}

(2) Compulsory acquisition of land: rights issues.

ERC would like to express serious reservations about the Federal Government providing essential services in exchange for land, an exchange which surely no other Australian would ever be subjected to.

ERC supports the ratification of the Declaration on the Rights of Indigenous Peoples, which notes that "States shall provide effective mechanisms for prevention of, and redress for (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources." ^{xiii}

The compulsory acquisition of land has been a key element of the NT intervention. Last year the Federal Government took control of townships through five year leases. Although they promised to provide 'just terms', this did not occur. Reggie Wurridjal, a traditional owner of the Maningrida land in Arnhem Land, has taken this issue to court, claiming that the lack of 'just terms' is unconstitutional. ^{xiv}

The Rudd government signed its first Regional Partnership Agreement for a forty-year lease in the Northern Territory in May of this year. ^{xv} According to Minister for Indigenous Affairs Jenny Macklin, this lease will be exchanged for "more than \$25 million to address housing, education, law and order, health, employment and economic development and leadership." ^{xvi} The listed outcomes of this scheme are admirable, however the question remains: why must Aboriginal people give up their rights to land in order to receive these basic services when other Australians must not"?

here is a range of measures that have been designed to target Aboriginal people particularly, and they're interventions that wouldn't be used or wouldn't be deemed to be acceptable to any other group within the Australian community.

Olga Havnen. ^{xvii}

With reference to Question (8), "What alternative measures should be considered?" the ERC would suggest a three pronged approach:

(1) Research based and consultative solutions.

The ERC firmly believes that a problem as serious as child-abuse deserves an equally serious response. This response must be not be based on ideology: it must be based upon thorough research; the identification, funding and promotion of existing successful programs; and constant communication with individual communities to identify and support their specific needs.

The strongest message from the research done on this issue and from Aboriginal leaders has been the need for consultation and services which are not only culturally but community appropriate. Research has shown that it is vital for communities to have control over their own resources.^{xviii}

Larissa Behrendt has spoken of the need for research based programs which have been proved to work and which are not punitive; for instance bringing families into schools or having more Aboriginal teachers.^{xix} Another possibility raised by Olga Havnen would be Centre Pay Deductions, a better and voluntary alternative to the welfare quarantining. None of these would involve stripping Aboriginal people of their rights, and yet none of these programs have been implemented during the intervention.

The Edmund Rice Centre's Indigenous Education Officer, Cassandra Gibbs, has described positive developments in her home community of Goodooga, in north-western New South Wales. She says that Community Health Workers have successfully liaised with communities by asking them what they want, rather than telling them. One other example of a successful grassroots programs have included bringing parents and grandparents into the classroom. No money has been spent on proven community initiatives such as these (and further examples found in HREOC's *Social Justice Report* 2007) during the NT Intervention.

The key point here is not that these good programs from Goodooga should be repeated in other distant places. Rather, it is the fact that common factors must be identified in appropriate and successful programs. Communities must be consulted on measures which affect them.

(2) Honouring commitments to the *Racial Discrimination Act* and the *UN Declaration of the Rights of Indigenous peoples*.

The ERC encourages the Federal Government to honour commitments made by the ALP both to the *Racial Discrimination Act*^{xx} and to the United Nations' *Declaration of the Rights of Indigenous Peoples*.

This Federal Government stated in opposition that it would be guided by the Declaration's benchmarks and standards.^{xxi} This declaration "**reaffirms** that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind." It also states that "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions."

(3) Long term planning.

This would include signing the *Declaration on the Rights of Indigenous People*, as mentioned above.

A National Representative Body.

The ERC commends the Federal Government for starting a process of consultation with Indigenous communities throughout Australia as well as Indigenous leaders such as Tom Calma (HREOC) and Mick Dodson (ANU) and adopt a structure which responds to and advocates for the to the highly diverse needs of these communities.

Tom Calma, the Aboriginal and Torres Strait Islander Social Justice Commissioner, has said that "the system for administering Indigenous affairs that was created in the ashes of ATSIC is simply not working and has serious shortcomings that will limit the ability to implement any new agenda", and warns that a whole generation of Indigenous children is at stake if we do not learn from the past and do things differently. That means serious investment in infrastructure over a sustained period of time, in a way which involves genuine partnership with Indigenous people.^{xxii}

The National Government has the mandate to develop policies for Indigenous people. There must be a mechanism developed that enables Aboriginal people to most effectively engage in the interface with the Government. A national representative body could be one effective starting point, provided that it has the support of the people it is designed to represent, rather than being imposed upon them from above. However, development of this body is something which should probably be resourced by government.

Entrenched Rights.

The ERC has played a major role in the ongoing conversation about constitutional change through the Brooklyn Project: Young Australians and the Next 100 years. Under the leadership of "Father

of Reconciliation” Patrick Dodson, and with the input from various experts, this project sought to identify groups marginalised during the creation of Australia’s founding document. Participants recognised the need for greater recognition of the rights of all Australians, and a particular need for entrenched rights for Indigenous Australians – whether this is constitutional or legislative.

Indigenous leaders such as Patrick Dodson and Larissa Behrendt have spoken out about the need for indigenous rights to be more firmly entrenched in Australian law. Behrendt has said on a number of occasions that a Bill of Rights (whether constitutional or legislative) would be a step in the right direction towards protecting the human rights of all people in our society. ^{xxiii}

Enquiries in regard to this Submission should be directed to: -

Phil Glendenning, Director,

Edmund Rice Centre for Justice & Community Education

15 Henley Rd, (PO Box 2219)

Homebush West, NSW 2140

Ph: (02) 8762 4200 Fax: (02) 8762 4220

E: erc@erc.org.au W: www.erc.org.au

- ⁱ Black, Sophie (2008) *NT intervention leak: a year on, it's a shambles* at <http://www.crikey.com.au/NT-Intervention/20080618-NT-intervention-documents.html>
- ⁱⁱ Carrick, Damien (The Law Report) (2007) *NT Indigenous intervention legislation* at <http://www.abc.net.au/rn/lawreport/stories/2007/2007854.htm>
- ⁱⁱⁱ Ring, Graham (2007) *Intervention Tension* <http://newmatilda.com/2007/08/08/intervention-tension>
- ^{iv} under the Racial Discrimination Act, the Trade Practices Act and the Northern Territory Aboriginal Land Rights Act.
- ^v Behrendt, Larissa (2008) *Wonderful words... where's the action?* at <http://www.nit.com.au/Opinion/story.aspx?id=15082>
- ^{vi} Calma, Tom (2008) *Indigenous Rights and the debate over a Charter of Rights in Australia* http://www.hreoc.gov.au/about/media/speeches/social_justice/2008/20080404_charter.html
- ^{vii} Altman, Jon (2008) *Reflections on the NT Intervention - 1 year on* <http://www.crikey.com.au/NT-Intervention/20080619-Reflections-on-the-NT-Intervention-one-year-on.html>
- ^{viii} Havnen, Olga www.hreoc.gov.au/legal/seminars/NT_emergency_intervention.ppt
- ^{ix} Graham Chris, Chris Munro and Amy McQuire (2008) *Howard's NT Intervention Promises: A Progress Report* <http://www.crikey.com.au/NT-Intervention/20080620-Howards-Intervention-promises-a-progress-report.html>
- ^x Skelton, Russel (2008) *The intervention we had to have*, The Sydney Morning Herald Review June 21-22, 2008.
- ^{xi} Ravens, Tara (2008) *Intervention creates 'hardship, racism'* in <http://www.theaustralian.news.com.au/story/0,25197,23809364-5006790,00.html>
- ^{xii} Carrick, Damien (2007) *NT Indigenous intervention legislation* at <http://www.abc.net.au/rn/lawreport/stories/2007/2007854.htm>
- ^{xiii} Article 8, Declaration on the Rights of Indigenous Peoples.
- ^{xiv} Graham Chris, Chris Munro and Amy McQuire (2008) *Howard's NT Intervention Promises: A Progress Report* <http://www.crikey.com.au/NT-Intervention/20080620-Howards-Intervention-promises-a-progress-report.html> and Black, Sophie (2007) *Maningrida v The Government: it's the vibe* <http://www.crikey.com.au/NT-Intervention/20071031-maningrida-court-case.html>
- ^{xv} Ravens, Tara (2008) *Rudd govt's first 40-yr lease signed on Groote Eylandt* at <http://www.nit.com.au/news/story.aspx?id=15114>
- ^{xvi} FaHCSIA (2008) *Historic Agreement for Groote Eylandt region* at http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/groote_eylandt_20may08.htm
- ^{xvii} Carrick, Damien (The Law Report) (2007) *NT Indigenous intervention legislation* <http://www.abc.net.au/rn/lawreport/stories/2007/2007854.htm>
- ^{xviii} Behrendt, Larissa (May 28 2008) speech written by Larissa for the *Black and White Unite for Rights Conference*, organised by the Aboriginal Rights Coalition.
- ^{xix} Behrendt, Larissa (May 28 2008) speech written by Larissa for the *Black and White Unite for Rights Conference*, organised by the Aboriginal Rights Coalition.
- ^{xx} 'Additional comments by the Australian Labor Party', contained in Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the NTER*, August 2007 pp.37-47 in Calma, Tom (2007) *HREOC ATSI Social Justice Report 2007*p.213
- ^{xxi} Section 44, Chapter 13 the 44th Australian Labor Party National Conference (2007).
- ^{xxii} Calma, Tom (2008) *Sustainable options for Australia's new national Indigenous representative body*
- ^{xxiii} Behrendt, Larissa (2008) *The right wrong on shifting a nation* at <http://www.nit.com.au/Opinion/story.aspx?id=14837>