

Aboriginal and Social Justice Issues

The NT Intervention:

Does the end justify the means?

by Sabine Kacha

25 August 2009

Table of Content

1	Introduction	4
2	Overview of the NT Intervention	6
2.1	Lead up to the NT Intervention	6
2.2	Little Children are Sacred Report	6
2.3	Antagonism	8
2.4	Are Aboriginal people in favour of the Intervention?	10
2.5	NTER Review	11
2.6	Change in names	12
3	Sexual abuse and health checks	13
3.1	“Evidence” for sexual abuse	13
3.1.1	So-called “evidence” in Lateline’s Broadcast	13
3.1.2	No pedophile rings found	13
3.1.3	Results of health checks	15
3.1.4	Findings of the NIITF	15
3.2	Mandatory health checks	16
4	Housing	18
4.1	Housing situation	18
4.1.1	Ampilatwatja walk off	18
4.1.2	Other testimonies	19
4.1.3	Compulsory acquisition of Aboriginal communities	20
4.1.4	SIHIP - no new houses built	22
4.2	Homelands	25
4.2.1	Healthier living on homelands	25
4.2.2	Homelands policy	27
4.3	Town camps	31
4.3.1	Tangentyere Council	31
4.3.2	Legal actions	33
4.3.2.1	Complaint to the United Nations (CERD)	33
4.3.2.2	Australia’s history with CERD	35
4.3.2.3	Advice against consultations	35
4.3.3	Tangentyere – compulsory acquisition of Town camps	36
4.3.4	Legal challenges with the compulsory acquisition of Town camps	37
4.4	Conflicting politics of Minister Macklin in opposition	40
5	Education	42
6	Money wasted	44
7	Income management and Basics Cards	46
7.1	Impact on Aboriginal people’s lives	46
7.2	Income Management	47
7.3	Basics Cards	50
7.4	Alcohol and pornography bans	50

8	Suspension of the Racial Discrimination Act (RDA)	53
8.1	1967 Referendum.....	53
8.2	RDA 1975.....	53
8.3	Limitation of human rights protection.....	55
8.4	Suspension of the RDA	55
8.5	Reinstatement of the RDA.....	57
8.5.1	Government’s timetable for reinstatement.....	57
8.5.2	Special measures.....	57
8.5.3	Consultation process.....	58
8.6	Breaches of international obligations.....	60
8.7	Importance of “Free, prior and informed consent”	60
9	Uranium and mining	62
10	Further aspects	64
10.1	Put yourself in another person’s shoes	64
10.2	Any changes?.....	64
10.3	Contradictions and open questions	65
10.4	Failures	73
10.5	Suggestions for solutions	75
10.6	Too many failed issues.....	77
11	Conclusion	78

1 Introduction

In June 2007, then Prime Minister John Howard and his Indigenous Affairs Minister Mal Brough announced that the federal government would send the army into Aboriginal communities in the Northern Territory in response to the “*Little Children are Sacred*” Report. This report was the result of an inquiry into allegations of widespread child sexual abuse in the Northern Territory. Mr. Howard called the situation “akin to a national emergency”. This action was to become commonly known as the Northern Territory Intervention which introduced a huge amount of “Special Measures” – emergency response legislation - that had some drastic changes and impact on the lives of the Aboriginal communities affected by it.

This paper covers the following topics:

- Overview of the NT Intervention
Lead up to the Intervention – “*Little Children are Sacred*” report – Antagonism – Are Aboriginal people in favour of the Intervention? – NTER Review
- Sexual abuse and health checks
What evidence exists for the alleged widespread sexual abuse? What are the results of the mandatory health checks performed?
- Housing situation and homelands
Examples of the current housing situation - homelands – compulsory acquisition of Aboriginal communities – Tangentyere - town camps and legal challenges – conflicting politics of Minister Macklin in opposition
- Education
School attendance – children’s right to education – remote education
- Money wasted?
An enormous amount of money has been spend – was it wasted?
- Income Management and Basics Cards
Impact on Aboriginal peoples’ daily life – problems with Income Management and Basics Cards – Alcohol and pornography bans
- Suspension of the Racial Discrimination Act (RDA)
Why the RDA was suspended – limitations of human rights protection – reinstatement of the RDA – special measures and consultations – breaches of international obligations – the importance of free, prior and informed consent

- Uranium and mining
Is there a relation between the Intervention and Uranium and mining interests?
- Further aspects
Put yourself in another person's shoes – Any changes? – Contradictions and open questions – Failures – Suggestions for solutions – Too many failed issues
- Conclusion

2 Overview of the NT Intervention

2.1 Lead up to the NT Intervention

The call for an intervention began in 2006 when Nanette Rogers, the Crown Prosecutor in Alice Springs who had three years of prior experience as a public defender in the Northern Territory, talked on the ABC's Lateline program on 15 May 2006 about widespread sexual abuse and domestic violence in Aboriginal communities. "...All child sexual assault in central Australia is happening at much higher rates than are currently being reported to police, as is violence on Aboriginal women and children..."¹ Prior to this there have been calls by Aboriginal communities for attending to the dire housing situation, the appalling living conditions and underfunding of successful community programmes in the Northern Territory for decades. There have also been reports on the situation of child abuse in the NT, but their recommendations were largely ignored. It could be argued that the real emergency was not a suddenly discovered need to "protect the children" but decades of government neglect, e.g. regarding housing conditions, investment in new houses and urgently needed repairs and upgrades. One may wonder what Nanette Rogers and the then Prime Minister John Howard's agenda were in making their announcements at that point in time.

2.2 Little Children are Sacred Report

On 15 June 2007 the Northern Territory Government's Report "Ampe Akelyernemane Meke Mekarle" or better known as the "*Little Children are Sacred*" Report² was publicly released in the lead up to the last Federal Election. John Howard's agenda was to win the upcoming election which appeared to not favour him. Soon after the release of the "*Little Children are Sacred*" Report, the Howard Government announced a "National Emergency" in the Northern Territory and introduced a sweep of draconian measures under the claimed objective of "saving the children". The Northern Territory National Emergency Response Act 2007 (NTNER), or more commonly known as the NT Intervention, was legislation that was concocted within days. About 500 pages of legislation had been drafted within 48 hours by Prime Minister John Howard, former Indigenous Affairs Minister Mal Brough and two senior

¹ Australian Broadcasting Corporation, TV PROGRAM TRANSCRIPT, Broadcast: 15/05/2006, Crown Prosecutor speaks out about abuse in Central Australia, <http://www.abc.net.au/lateline/content/2006/s1639127.htm>

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

bureaucrats. However, the Act did not mention once the word “child protection”. The legislation received bipartisan support in the Commonwealth parliament shortly before the election. The Australian Labor Party (ALP) indicated its support, apparently to keep the issue out of the election campaign. It was rushed through the Senate in a matter of days, treating it as sufficiently urgent as to not require meaningful Parliamentary consideration nor Indigenous consultation. There is no evidence-base for their approach to act on such an urgent basis. “On 6 August 2007, just 47 days after the announcement of the “emergency plan”, and less than 24 hours after first providing to the Opposition parties and relevant stakeholders drafts of the proposed legislation, the Government introduced the Bills in the House of Representatives. The Bills were passed in a single afternoon, notwithstanding that the Opposition parties had less than one day to consider the impact of the proposed legislation on Aboriginal people in the Northern Territory and the extent to which the measures contained in the package are necessary or appropriate to address child abuse in Aboriginal communities.”³ “Howard and Brough claimed the NT government had been too slow to respond to the “*Little Children Are Sacred*” Report, despite the federal government sitting on the Memmott report (which detailed almost identical problems) in 2001 for 18 months.”⁴ The recommendations of the “*Little Children are Sacred*” Report have been widely ignored. The Aboriginal women who had poured their hearts out for the report when being interviewed felt utterly betrayed by the government as Marcia Ella-Duncan, Member of the NTER Review Board, had said at the Sutherland Shire Citizens for Native Title and Reconciliation (SSCNTaR) public forum on 12 June 2009.

Yet, in ABC’s Lateline broadcast on 6 August 2007, Mal Brough agreed that the Government has purposely ignored the (“*Little Children are Sacred*”) report’s 97 recommendations, saying “We do not believe in any way, shape nor form that the recommendations flowing from that report reflected the urgency or the need that is needed to countenance the problems that these children suffer each and every day.”⁵

The intervention was also very much in line with Howard’s policy history. “It had a considerable policy history that accords with the Howard’s long held ideological preconceptions around ‘normalisation’ for Indigenous Australians. This goes back a long

³ Law Council of Australia, Submission to the Senate Standing Committee on Legal and Constitutional Affairs, 9 August 2007, Northern Territory National Emergency Response Legislation, http://www.aph.gov.au/Senate/committee/legcon_cte/completed_inquiries/2004-07/nt_emergency/submissions/sub52.pdf.

⁴ National Indigenous Times, 2 April 2009, A Timeline: The Northern Territory Intervention, www.nit.com.au/downloads/files/Download_197.pdf.

⁵ Reporter: Tom Iggulden, Australian Broadcasting Corporation, Broadcast: 06/08/2007, NT intervention legislation ready for Parliament vote, <http://www.abc.net.au/lateline/content/2007/s1998113.htm>.

way and was evident in his very skeptical approach to the existing policy framework on election in 1996 – reforming Indigenous affairs was a core ideological issue for the new Prime Minister evident in a series of ‘antis’: anti ATSIC, anti native title, anti reconciliation, anti the rights agenda, anti apologizing to the stolen generation in 1997, anti land rights and anti the diverse intercultural institutions of Indigenous Australia.”⁶

2.3 Antagonism

The controversial NTNER legislation has been met with fierce opposition from a number of Indigenous leaders criticising the practical and material consequences of the legislation, as well as by the authors of the *Little Children are Sacred* Report who spoke out against the intervention, arguing that its heavy-handed, top-down approach was inconsistent with the recommendations in the report. They “assessed that the problem is the breakdown of culture and the disempowerment of Aboriginal communities, the Federal Government’s response further destroys culture and the control communities have over their own lives. The Federal Government’s actions destroys rather than builds communities. Worse, it threatens the future of Aboriginal children.”⁷ The legislation and the strategies ignore the fact that the *Little Children are Sacred* report found that “Aboriginal people are not the only victims and not the only perpetrators of sexual abuse.”⁸ John Pilger, winner of the Sydney Peace Prize 2009 wrote: “One of the authors of the study, Pat Anderson, complained: “There is no relationship between the emergency powers and what’s in our report.””⁹ What it did recommend though was what would need to happen in Aboriginal communities to eradicate the root causes of sexual abuse of children, with the first recommendation being a call upon both, the Australian and Northern Territory Governments to “commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.”¹⁰ Some prominent Australians have remarked that the Intervention is the worst policy they have seen since the 1960s and the time of the Stolen Generations. For instance, Jeff McMullen, CEO (Honorary)

⁶ Professor Jon Altman, Summer 2007, Neo-paternalism: Reflections on the Northern Territory intervention, <http://news.anu.edu.au/?p=271&pg=0>.

⁷ Listen up!, Why the current intervention in the Northern Territory will not protect Aboriginal and Islander children, http://www.listenupaustalia.org/the_evidence.

⁸ United Nations Development Fund for Women (UNIFEM) - Australian National Committee, <http://www.unifem.org.au/node/171>.

⁹ John Pilger, 7 March 2008, Australia’s Hidden Empire, <http://www.globalresearch.ca/index.php?context=va&aid=8265>.

¹⁰ Patricia Anderson and Rex Wild QC, 2007, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Ampe Akelyernemane Meke Mekarle "Little Children are Sacred", http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf.

of Ian Thorpe's Fountain for Youth, remarked "Unethical, unjust and unlawful from the start, this is the most ill conceived policy inflicted on Aboriginal people in my life-time."¹¹

There was a lot of propaganda in the media: all Aboriginal men had been branded as paedophiles and child abusers. This had a hugely negative impact on Aboriginal men who felt extremely humiliated and were in deep despair. Even Aboriginal men across the nation felt the shame. In his address to the Aboriginal Support Group Manly Warringah Pittwater, Jeff McMullen said "The Northern Territory Intervention was conceived as a policy of Shock and Redemption. John Howard needed the political shock and he wanted the personal redemption. Coming so late in the Prime Minister's dying days of power, the Northern Territory Intervention can also be judged fairly as John Howard's desperate personal attempt at redemption. He was trying to remove the stain on history of his government's institutionalised neglect of Aboriginal needs and rights...When I scanned the 500 or so pages of the draft legislation like others I noticed something extraordinary. In contrast to the hysteria whipped up by Mal Brough and some sections of the media that ought to have known better, the legislation was not focussed on protecting Aboriginal children. It was a grab for administrative control of 73 Aboriginal communities."¹² The NT Intervention involved sending police, the federal Army, public servants and soldiers into remote communities. It allowed the government to grant star chamber criminal investigative powers against Aboriginal people usually applied to terrorists and Mafiosi and customary law is not to be considered in sentencing according to the new legislation. Human Rights Medal winner Les Malezer's reaction to these super powers was: "The Aboriginal population of remote Australia are already terrified by the invasion of army and police without being further intimidated by increased powers for government inquisitions into violence in communities. The decision to allocate the 'star chamber' powers to investigators, against indigenous people living under traditional laws, amounts to brutality and torture against members of the Aboriginal race by colonisers. It is absurd to bring in powers invented to deal with treason and terrorism, to provide police with extraordinary controls over Aboriginals. The targeted people are not criminals, just victims of poor government policies based upon racial superiority and intolerance of cultural diversity."¹³ And Barbara Shaw was reported as saying "The NT police are using their new powers to step up the harassment of Aboriginal people.

¹¹ Jeff McMullen, 1 September 2008, Address to the Aboriginal Support Group Manly Warringah Pittwater "Reporting Back: the Northern Territory Intervention – One Year On", <http://www.asgmwp.net/ReportingBackbyJeff%20McMullen.htm>.

¹² Jeff McMullen, 1 September 2008, Address to the Aboriginal Support Group Manly Warringah Pittwater "Reporting Back: the Northern Territory Intervention – One Year On", <http://www.asgmwp.net/ReportingBackbyJeff%20McMullen.htm>.

¹³ Les Malezer, 27 February 2008, Press Release, No Justification for Super Powers against Indigenous Peoples, <http://sydney.indymedia.org.au/story/no-justification-super-powers-against-indigenous-peoples>.

They can hold our people for an extra number of hours or days and treat them like terrorists. Aboriginal people, their homes are being raided at early hours of the morning when children are getting up, having breakfast, getting ready to go to school. The police routinely pull over and search the cars of Aboriginal people in prescribed areas.”¹⁴ But did the Aboriginal people really understand what was happening? The intervention was executed in such a rush that many people spoke of their anger, shame and horror as well as rekindling fears that their children were once again being taken.¹⁵ The Age reported “some Mutitjulu residents say people are scared about the impending "military occupation" and have warned that women and children are thinking of fleeing the community, near Uluru.”¹⁶

2.4 Are Aboriginal people in favour of the Intervention?

Those who spoke out against the NT Intervention were branded as supporting child abuse and paedophilia and the Media largely focused on strong NT Intervention supporters like Marcia Langton, Noel Pearson and Warren Mundine. These are the most prominent Aboriginal supporters that the government and media liked to showcase and portray. The Cape York Institute trialled the welfare quarantining scheme which was later copied into the NT (for more information see 7.2 Income Management, page 47). Some Aboriginal people were in favour of certain aspects of the NT Intervention like having policing where none before existed or alcohol bans, but strongly disliked other aspects, especially Income Management (IM) or the implications of the suspension of the Racial Discrimination Act 1975 (RDA). However, they were always portrayed as if they were in favour of the Intervention. Yuendumu resident Valerie Napaljarri Martin said: “Yuendumu residents were determined to resist the intervention, but pointed out that their voices were being ignored by the government, the media and the local business manager. Aboriginal people thought that if Labor got in they would stop the intervention--that they'd get rid of it--but it hasn't happened and instead they're fully supporting it. We are the first Australians and the government should be looking after us. We were supposed to have equal rights in 1967. We're not perfect--we struggle with our problems--but no one listens to us. How are we going to be treated in the future? I am worried about my grandchildren and I'm fighting for the future of

¹⁴ Barbara Shaw speaks against the NT Intervention, April 2009
http://www.sa.org.au/index.php?option=com_content&task=view&id=1968&Itemid=106.

¹⁵ ABC Radio National, 16 November 2008, Intervention: unintended, consequences,
<http://www.abc.net.au/rn/backgroundbriefing/stories/2008/2416248.htm>.

¹⁶ The Age, 26 June 2007, Indigenous fear grows to intervention, <http://www.theage.com.au/news/National/Govt-accused-of-trying-to-take-back-land/2007/06/26/1182623880015.html>.

my grandkids."¹⁷ Barbara Shaw from Mount Nancy Town Camp has stated their need to hold on to their culture, their language, to pass it on to the next generation, and said "Intervention is not helping our people or saving our children. We still live in third world conditions out in remote communities. Intervention has pushed us further below the poverty line."¹⁸

The Working Group for Aboriginal Rights (Australia) included in their Newsletter "ABORIGINAL AUSTRALIA APPEALS TO PRESIDENT OBAMA" a wonderful selection of Media Releases, News, Letters and Statements sent to President Barack Obama from many Aboriginal peoples earlier this year.¹⁹

I heard that a few people would forfeit their human rights for services. But I would argue why could Aboriginal people not have basic services without having to forego their human rights. Does any non-Aboriginal person have to forfeit their human rights for basic services? They should "have the right to expect the same level of law and order provision as every other Australian, but it should not exist as an emergency response, rather communities should be afforded proper policing and protection at all times."²⁰

2.5 NTER Review

The Rudd government commissioned an inquiry into the intervention and received over 200 submissions for the Northern Territory Emergency Response Review. The NTER Review Board signed off on its report on 30 September 2008.²¹ On 13 October 2008 it is finally released to the public, "after Ms. Macklin's office is accused of revising a draft copy of the report. One of the key recommendations of the report was to allow income management to be voluntary. But Ms. Macklin has since said that compulsory income management will remain in the Northern Territory."²² Unfortunately, the report including its key recommendations was largely ignored by the government.

¹⁷ WWSWS reporting team, World Prout Assembly, 26 June 2008, Northern Territory intervention: "Unintended consequences" or deliberate destruction? - Part 2, http://www.worldproutassembly.org/archives/2008/07/northern_territ.html.

¹⁸ Barbara Shaw speaks against the NT Intervention, April 2009 http://www.sa.org.au/index.php?option=com_content&task=view&id=1968&Itemid=106.

¹⁹ WGAR, The Working Group for Aboriginal Rights (Australia), ABORIGINAL AUSTRALIA APPEALS TO PRESIDENT OBAMA, <http://wgar.info/2009/03/26/aboriginal-australia-appeals-to-president-obama/>.

²⁰ GetUp!, What you should know about the Northern Territory Intervention, http://www.getup.org.au/files/campaigns/intervention_fact_sheet.pdf.

²¹ Report of the NTER Review Board, <http://www.nterreview.gov.au/report.htm>.

²² National Indigenous Times, 2 April 2009, A Timeline: The Northern Territory Intervention, www.nit.com.au/downloads/files/Download_197.pdf.

2.6 Change in names

The NT Intervention and aspects thereof have been repackaged many times since its inception, e.g. Income Quarantining has become Income Management. The Rudd Government's investment programme has been called 'Closing the Gap', taking the name of a long-term, community-based Aboriginal health campaign. It seems they are trying to repackage the Intervention as if it is part of the 'Closing the Gap' strategy.

3 Sexual abuse and health checks

3.1 “Evidence” for sexual abuse

3.1.1 So-called “evidence” in Lateline’s Broadcast

“In April, 2006 Lateline reported the claims of Central Australian prosecutor Nanette Rogers that violence and sexual abuse in Aboriginal communities had reached shocking levels. A month later, however, Lateline followed up the story with a piece entitled ‘Sexual slavery reported in Indigenous community’. Lateline revealed that it had found evidence to back Brough’s claim about paedophile rings. Among several witnesses, it aired the statements of an ‘anonymous youth worker’ whose face was blacked out and voice digitised, purportedly to protect his identity for ‘safety reasons’. As it turned out, the ‘anonymous youth worker’ was none other than Gregory Andrews, a senior official in Mal Brough’s department. Lateline knew Andrews’ identity and his links to the minister. Lateline knew Andrews had never worked as a ‘youth worker’. Lateline broadcast his claims regardless. Almost every one of them has since collapsed, including a story he spun about reporting incidents of s-xual abuse in Mutitjulu to police. Since the broadcast, a Northern Territory police investigation, responding to the Lateline allegations, found no evidence whatsoever to support the claim that petrol was being traded for s-x.As to the p-edophile ring claims, the Australian Crime Commission reported to a Senate Estimates committee a fortnight ago that despite extensive investigations in Central Australia (and throughout the nation) they have uncovered “no information to substantiate that claim”. ”²³

3.1.2 No pedophile rings found

Little has been said about expected case findings of sexual abuse and health outcomes as a result of the intervention. The Australian Crime Commission (ACC) that was sent into remote communities to uncover organised paedophile rings “had determined there was not organised paedophilia in indigenous communities”²⁴, but at the start of the NT Intervention there was sensationalised reporting of child abuse claims by every section of the media.

²³ Bob Gosford, Crikey, 21 October 2008, NT medical clinic wins over the ACC’s coercive powers, <http://blogs.crikey.com.au/northern/2008/10/21/nt-medical-clinic-wins-over-the-accs-coercive-powers/>.

²⁴ Nick McKenzie, The Age, 5 July 2009, Pedophile ring claims unfounded, <http://www.theage.com.au/national/pedophile-ring-claims-unfounded-20090704-d8h9.html?skin=text-only>.

The New South Wales (NSW) Report *Breaking the Silence: Creating the Future*²⁵ having been released after a state-wide taskforce in 2006, showed levels of abuse in NSW Aboriginal communities similar to those in the NT. At the time the NSW Government's own modelling showed \$40 million was needed to tackle the issue. But what has been done in NSW to tackle the issue? There has not been any intervention announced as in the NT, rather the NSW Government developed a strategy on child abuse without allocating additional money.²⁶

In her article "Howard's New Tampa - Aboriginal Children Overboard", Jennifer Martiniello wrote "And of course Mr Howard's scheme targets only Aboriginal communities, despite the fact that the findings specifically state that non-Aboriginal men, that is, white men, are a significant proportion of the offenders, who are black-marketeering in petrol and alcohol to gain access to Aboriginal children. What measures is the Howard Government going to take about non-Aboriginal sex offenders, pornographers, substance traffickers and the like? Nothing according to the measures announced, but then, they're not Aboriginal and they don't live on the Aboriginal communities where their victims live."²⁷ Regarding sexual abuse of Aboriginal children, "it is a problem bound up with the deprived and marginalised existence that Aboriginal people are forced to endure. And so far, the only evidence that has come to light of child sex has involved young people in what they consider to be consensual relationships."²⁸ This has been confirmed by Mr O'Reilly in the Senate Standing Committee on Community Affairs on 29 April 2008 when he said "there has been an increase over the last 12 months or so. Without fail, every example that we have had has been to do with situations where there has been a relationship between teenagers. There has been no paedophilia at all that we have seen. It has concerned relationships some of which have been customarily sanctioned relationships between, say, an 18-year old and a 15-year old. I think that the youngest we had was a 13-year-old. There have been children of these relationships and there has been an increase in those sorts of matters. But there has been no paedophilia that we have seen."²⁹

²⁵ Aboriginal Child Sexual Assault Taskforce (ACSAT), 2006 Report, *Breaking the Silence: Creating the Future*, <http://www.lawlink.nsw.gov.au/acsat>.

²⁶ Reconciliation, 29 June 2008, Aboriginal child abuse and the NT Intervention, <http://reconciliation.org.au/nsw/recent-issues/aboriginal-child-abuse-and-the-nt-intervention/>.

²⁷ Jennifer Martiniello, 28 June 2007, Howard's New Tampa - Aboriginal Children Overboard, <http://eniar.org/news/JenniferMartiniello.html>.

²⁸ WWS reporting team, 15 July 2008, Manipulating social tragedies for political gain, <http://www.wsws.org/articles/2008/jul2008/nt4-j15.shtml>.

²⁹ Mark O'REILLY, Principal Legal Officer, Central Australia Aboriginal Legal Aid Service, Senate Standing Committee on Community Affairs, Tuesday, 29 April 2008, http://www.nterreview.gov.au/subs/nter_review_report/212_senate_standing_committee/212_Senate_Standin_g_Committee_5.htm.

3.1.3 Results of health checks

Don Watson reported on 5 July 2008 “despite the protestations and humiliation of the homeland elders for whom such things are unimaginable, to investigate malicious rumours of child sexual abuse – a crime that no one associated with the homeland in its 40-year history has ever seen a sign of. Knowing the community well, the visiting nurse did not believe the rumours, but decided to conduct her own examinations and tests. She found no evidence of child abuse or sexually transmitted diseases. The intervention has conducted 7433 health checks on children in remote Aboriginal communities and has reported 39 at risk of abuse or neglect. Nationally, last year, protection agencies received 310,000 notifications: 58,000 were substantiated.”³⁰

ANTaR Victoria writes “Invasion of privacy by the Australian Crime Commission: The Australian Crime Commission was brought in to investigate the allegations of widespread child sexual abuse. The Commission has acted in an aggressive and insensitive way in fulfilling this role. In particular, the Commission sought access to the confidential medical records of children who had been treated at a number of health clinics within the affected NT communities in order to gather evidence of sexual abuse. In separate Federal Court cases, the clinics won the right to keep these records secret. They claimed that this would be a breach of trust with their clients that would drive them away from seeking access to health services. The commission insists that it will continue to use its coercive powers in its investigations.”³¹

3.1.4 Findings of the NIITF

One of the preliminary findings of the National Indigenous Violence and Child Abuse Intelligence Task Force (NIITF) - Special Intelligence Operation – highlights that “poor information sharing between service providers and government agencies results in an inadequate understanding of the extent and nature of child abuse and consequently, inadequate responses to address these issues.”³²

³⁰ Don Watson, 5 July 2008, The lives sent down the drain, <http://www.eniar.org/news/education4.html>.

³¹ ANTaR Victoria, The Intervention under Rudd: Are we any closer to protecting Aboriginal Children in NT?, <http://www.antarvictoria.org.au/ntintervention.html>.

³² ACC, National Indigenous Violence and Child Abuse Intelligence Task Force (NIITF) - Special Intelligence Operation, http://www.crimecommission.gov.au/our_work/determinations/niitf.htm.

3.2 Mandatory health checks

Aboriginal children were to undergo medical health checks, the underlying reason for this being able to check for traces for sexual assault. This procedure was redundant as health checks have already been done previously and the new checks did not reveal much new from what was already known. But since the health checks were mandatory, this meant an assault on the children by itself - their parents were not being asked for permission. Normally medical information cannot be released without the consent of the individual concerned (Privacy Act).

Mutitjulu community leaders Dorothea and Bob Randall wrote: "... we have been without a doctor, we have fewer health workers, our council has been sacked, and all our youth and health programmes have been cut. We have no CEO and limited social and health services. The Government has known about our overcrowding problem for at least 10 years and they've done nothing about it. ... We have been begging for an alcohol counsellor and a rehabilitation worker so that we can help alcoholics and substance abusers but those pleas have been ignored ... The fact that we hold this community together with no money, no help, no doctor and no government support is a miracle. Any community, black or white would struggle if they were denied the most basic resources. Police and the military are fine for logistics and coordination, but health care, youth services, education and basic housing are more essential. Any program must involve the people on the ground or it won't work. For example, who will interpret for the military? Our women and children are scared about being forcibly examined; surely there is a need to build trust. Even the doctors say they are reluctant to examine a young child without a parent's permission. Of course, any child that is vulnerable or at risk should be immediately protected, but a wholesale intrusion into our women's and children's privacy is a violation of our human and sacred rights."³³

The checks were broadened to incorporate full health checks when there were suggestions that 'sexual abuse' checks were in themselves a breach of human rights. "Australia's peak doctors' group has withdrawn from any future role in the Northern Territory intervention. The move comes as one of the authors of the report that sparked the intervention criticises the action. The Australian Medical Association's (AMA) head, Rosanna Capolingua, says the group wants no further involvement in recruiting doctors for the Northern Territory intervention. She says working with the Government during the first stage has been fraught

³³ Dorothea and Bob Randall, Mutitjulu community leaders: please listen to us, <http://jura.org.au/node/474>.

with problems and too costly..."Fund it appropriately and admit that it takes committed endeavour by government, not just altruism, to make the difference," she said."³⁴ "Doctors argue that it is the provision of follow up procedures that is really failing these communities. These follow up measures include treatment and management of disease, as well as implementation of preventative projects."³⁵ "None of the recommendations in all of those hundreds of national health reports (from a wide range of health organisations) recommend compulsory sexual health tests for every Australian child under sixteen. Not one of them recommends that a viable solution is closing down youth and health programs, in fact they all advocate that more are needed."³⁶

Australian Doctor editor Paul Smith states in his article of 23 July 2009 that "After a long-running legal tussle, a remote Aboriginal health clinic has lost its battle against the Australian Crime Commission (ACC) to safeguard the privacy of its patient records. Subject to another appeal, the clinic will have to hand over the records of eight Indigenous children to the ACC. Whether those records contain information which is of sufficient importance to justify the protracted efforts of the country's most powerful crime-fighting organisation to seize them is one of many unanswered questions about this case." Towards the end of his article he says "the fact that a government agency was attempting to do this in secret, with a series of gagging orders on doctors and health workers, thereby denying these Indigenous communities any knowledge of what was being done, still seems to me alarming. The Federal Court's judgment on a second NT clinic and ACC is expected soon."³⁷ For the ACC powers to gain insight of medical records means a breach of doctor-patient trust.

³⁴ ABC News, 15 June 2008, AMA pulls out of NT intervention, <http://www.abc.net.au/news/stories/2008/06/15/2274925.htm>.

³⁵ GetUp!, What you should know about the Northern Territory Intervention, http://www.getup.org.au/files/campaigns/intervention_fact_sheet.pdf.

³⁶ Jennifer Martiniello, 28 June 2007, Howard's New Tampa - Aboriginal Children Overboard, <http://eniar.org/news/JenniferMartiniello.html>.

³⁷ Australian Doctor editor Paul Smith, 23 July 2009, Aboriginal patients may end up the real losers in ACC victory, <http://www.crikey.com.au/2009/07/23/aboriginal-patients-may-end-up-the-real-losers-in-acc-victory/>.

4 Housing

4.1 Housing situation

Some media reported Aboriginal people were in favour of the intervention. Why is it then that many of them moved from the Northern Territory into Queensland (e.g. Mount Isa³⁸)?

"Mount Isa is the latest community to complain that it's the Federal Government's intervention in the territory that has caused a rise in itinerancy" and Annie Guest is reporting "Alice Springs, along with towns in Western Australian, South Australian and Far North Queensland have previously reported waves of people escaping the Territory's welfare quarantining and alcohol bans."³⁹ For Aboriginal people connection to country is really strong and the land is of the highest importance for them. Then why is it that they left their country behind? This migration is contradictory to the showcased agreement of the Aboriginal people to the Intervention and explains how bad it really is for them living under the NT intervention policies.

4.1.1 Ampilatwatja walk off

An example of the dire housing situation in remote communities and many Aboriginal people being opposed to the Intervention is Ampilatwatja, located 325 km north-east of Alice Springs. On 15 July 2009 residents left the community in protest against the housing and living conditions with pipes broken and sewage running through the streets. "They said the NT intervention had done nothing to solve their problems and had actually made things much worse."⁴⁰ "Health worker Kim Morrish says the raw sewage in some of the public houses in Ampilatwatja ...regularly leads to gastric and skin infections. "And there are quite a number of people living in houses that are exclusively made of tin," he said."⁴¹ Barkly Shire provides tenancy, repairs and maintenance services on behalf of Territory Housing, an NT government agency. Barkly Shire chief executive Jeff Sowiak says "The Barkly Shire is acting and doing the best we can with the funds that we have available." He adds "the

³⁸ ABC News, 1 May 2008, Katter attacks governments over Mt Isa welfare woes, <http://www.abc.net.au/news/stories/2008/05/01/2232313.htm>.

³⁹ Annie Guest, ABC, The World Today, 1 May 2008, Mt Isa wants itinerant Aborigines sent back to NT, <http://www.abc.net.au/worldtoday/content/2008/s2232610.htm>.

⁴⁰ Peter Robson, Green Left online, 9 August 2009, Ampilatwatja walk-out stays strong, <http://www.greenleft.org.au/2009/806/41456>.

⁴¹ Alice Brennan, ABC Local, 16 July 2009, Ankle-deep' sewage sparks Indigenous walk-off, <http://www.abc.net.au/news/stories/2009/07/16/2627363.htm?site=local>.

sewage issue is a recurrent problem because houses are overcrowded and the septic tanks were not designed to handle the load.”⁴² Karl Hampton, the Minister for Central Australia, “says his own Government's remote public housing policy, which sees Aboriginal people charged \$25 per fortnight to live, in some cases, in tin sheds, is unacceptable.”⁴³ Richard Downs, a spokesman for the community, said “The place is a disgrace. Our leaders are not getting involved. We're an outcast and we're not having any say into what's happening on the community at all.”⁴⁴ The land on which the Ampilatwatja community stands had been compulsory acquired for five years by the government as one of the emergency measures introduced by the Intervention. Mr. Downs continued “We see all these government agencies and bodies coming and going but to no result, so what's the use of sort of living in a community which the Government has a five year lease on it?”⁴⁵

4.1.2 Other testimonies

Nigel Scullion, Country Liberal Party senator, complained to the government on water supplies to Corella Creek, which he said “was in the prescribed intervention area of the NT. A number of houses “have now been without water since January this year”, and the local school had been forced to close at times due to a lack of water.”⁴⁶

On the occasion of the second marking of the NT Intervention, members of the Prescribed Area Peoples’ Alliance have met from 18-19 June 2009 and said the following which is part of a longer statement: “The government will only give you a house if you sign a lease. Our houses are broken down. We don’t believe the government’s promises anymore. We’ve come to a dead end. The only way we can get services and housing is to sign a lease. They’re pushing us into a situation where land is the name of the game. They want the minerals that are in the sacred lands right across the territory. They want to take the town camps now but there are always strings attached. The government will control the country then. We want to stay in control. We need to work together. We don’t want the government to take over our communities and camps. The government is only promising housing to a few communities who sign leases. All the rest miss out. It’s causing argument and division

⁴² Alice Brennan, ABC Local, 16 July 2009, Ankle-deep' sewage sparks Indigenous walk-off, <http://www.abc.net.au/news/stories/2009/07/16/2627363.htm?site=local>.

⁴³ Alice Brennan, ABC News, 21 July 2009, Tin shed rent is 'unacceptable': minister, <http://abc.com.au/news/stories/2009/07/21/2631772.htm?section=justin>.

⁴⁴ Alice Brennan, ABC Local, 16 July 2009, Ankle-deep' sewage sparks Indigenous walk-off, <http://www.abc.net.au/news/stories/2009/07/16/2627363.htm?site=local>.

⁴⁵ Alice Brennan, ABC Local, 16 July 2009, Ankle-deep' sewage sparks Indigenous walk-off, <http://www.abc.net.au/news/stories/2009/07/16/2627363.htm?site=local>.

⁴⁶ Australian Associated Press, 18 August 2009, Some NT homes 'lacking water for months', <http://news.theage.com.au/breaking-news-national/some-nt-homes-lacking-water-for-months-20090818-eor5.html>.

between communities. We are all in this together. We want housing without signing a lease.”⁴⁷

In her speech on 13 August 2009, the Australian Greens Senator Rachel Siewert pointed to a long history of failed delivery of housing to Aboriginal communities: “I am hearing a bit of hypocrisy from both sides of this chamber at this time. Federal and territory governments of both persuasions have failed over many years to deliver housing to Aboriginal communities throughout Australia-particularly the federal and Northern Territory governments in the Northern Territory.”⁴⁸

4.1.3 Compulsory acquisition of Aboriginal communities

As part of the NT Intervention, the government legislated to compulsorily acquire certain Aboriginal land in the NT for five years. In addition, the government used coercive powers and pressure to obtain much longer leases from anywhere between 40 to 99 years. The official reason for requiring these leases was to expedite the building of urgently needed new houses. However, unfortunately until now not a single house has been built through the Strategic Indigenous Housing and Infrastructure Program (SIHIP) associated with intervention funds in the NT. The fact that no new house has yet been built for any Aboriginal family in the NT has also received a good amount of media coverage recently. This raises the question why there was a need to take control over Aboriginal land if the planned goal of building new houses has still not been fulfilled after two years into the NT Intervention.

Contrary to promises, the compulsory acquired and suffering communities have received no compensation as per Crikey on 20 June 2008 “Contrary to Howard’s promise, the legislation did not require government’s to provide ‘just terms’ compensation for the compulsory acquisition, a breach of the Australian Constitution.”⁴⁹

The National Native Title Council (NNTC) does not accept that the protection of “special measures” can justify critical aspects of the NTER legislation, especially the compulsory acquisition of five-year leases over Aboriginal land. In its submission to the Northern

⁴⁷ ONE VOICE’ GATHERING IN DARWIN, PRESCRIBED AREA PEOPLES ALLIANCE STATEMENT 18-19 JUNE 2009, Stop the Intervention: Self-Determination not Assimilation, <http://rollbacktheintervention.wordpress.com/>.

⁴⁸ Spokesperson Rachel Siewert, The Australian Greens, 13 August 2009, Indigenous Housing, <http://rachel-siewert.greensmps.org.au/content/speech/indigenous-housing>.

⁴⁹ Chris Graham, Chris Munro and Amy McQuire of the National Indigenous Times, 20 June 2008, Howard’s NT Intervention promises: a progress report, <http://www.crikey.com.au/2008/06/20/howards-nt-intervention-promises-a-progress-report/>.

Territory Emergency Response Review it “considers that the non-consensual acquisition of interests in Aboriginal land has not demonstrated connection to the problems of sexual and substance abuse, and is entirely unrelated to and inconsistent with the purpose of securing the “adequate advancement” of the targeted communities. To the contrary, statutory erosion of the incidents of Aboriginal freehold title, as opposed to the freehold title of other property owners, is racially discriminatory at a fundamental level. Nowhere has it been suggested that the Federal Government should suspend the property rights of non-indigenous people in areas with a high incidence of sexual abuse and domestic violence in urban Australia. This should constitute part of the test to determine whether so-called special measures are proportionate and justifiable.”⁵⁰

The Aboriginal Land Rights Act 1976 (ALRA) was established as restitution for dispossession. However, through the Intervention it is being completely undermined. For instance it is being rolled back by various leasing arrangements in township areas through which the role of the traditional owners is removed. Once the land is leased it is – effectively forever – outside the control of traditional owners as Greg Marks, international lawyer points out.⁵¹ To repeal the ALRA would not be politically viable and the push for leasing in townships already existed before the NTER. The homeland policy also fits very well with the concept of undermining the ALRA by depopulating the bush, i.e. “encouraging” people to move to the so-called “growth centres”, which in this case would be those 20 hubs which have been promised to receive further funding for necessary infrastructure and housing. Reading the Memorandum of Understanding (MOU) of September 2007 between the Australian Government and the Northern Territory in respect of Indigenous Housing, Accommodation and Related Services you may notice that it prohibits any Commonwealth funding for public housing going to outstations and similar small communities – ever. The idea is to leave the current housing stock in about 500 Aboriginal communities to deteriorate – and with the added pressure of accommodation, the lack of services such as education and health – which will lead to Aboriginal people eventually having to leave their own country whether they like it or not and having to move to so-called growth centres such as urban areas.⁵²

⁵⁰ The National Native Title Council submission to the Northern Territory Emergency Response Review, Racial Discrimination Act 1975 (CTH), http://www.terreview.gov.au/subs/nter_review_report/141_national_native_title_council/141_National_Native_Title_Council_4.htm.

⁵¹ Greg Marks, International lawyer, 24 March 2009, Twilight seminar: Race Discrimination, the Intervention and Indigenous Australians, <http://www.ila.org.au/pdfs/CERD%20commentary%20speaking%20notes.pdf>.

⁵² Greg Marks, International lawyer, 24 March 2009, Twilight seminar: Race Discrimination, the Intervention and Indigenous Australians, <http://www.ila.org.au/pdfs/CERD%20commentary%20speaking%20notes.pdf>.

4.1.4 SIHIP - no new houses built

“The National Indigenous Times and Crikey revealed on July 22 that Jenny Macklin had been warned via a private office memo that the \$672 million Strategic Indigenous Housing and Infrastructure Program (SIHIP) - the most expensive plank of the NT intervention – would not deliver any housing until 2011, and would drive up the cost of construction.”⁵³

SIHIP was supposed to deliver more than 750 new houses, more than 230 new replacement houses and up to 2500 housing upgrades. A condition for Aboriginal people accessing SIHIP funds is their signing of long-term leases that would give the Commonwealth control over their land. Another stated goal was to employ Aboriginal people.⁵⁴

Serious doubts have been raised about the outcome of the program: “Hobbled by soaring costs and “appalling mismanagement”, the Strategic Indigenous Housing and Infrastructure Program is yet to produce a single new home in almost 18 month. The program’s sacked head, Jim Davidson, went public yesterday [i.e. on 19 August 2009] with a number of damning claims, including a statement that the scheme was never going to be able to deliver the 750 homes it promised. Instead, he says the \$672 million will result in only 300 new houses, ...”⁵⁵ ABC’s 7.30 Report mentioned that the “budget to deliver the promised number of houses is likely to blow out to well over \$1 billion, with funding required from the National Partnership Agreement on Remote Indigenous Housing.”⁵⁶

“The claimed promise of 20 per cent of Aboriginal employment throughout the SIHIP was in fact aspirational.”⁵⁷

Senator Rachel Siewert underlined also some other aspects of the housing problems: “Clearly, there were deep problems with this program [SIHIP], yet the government has continued with it and still no houses are built. We will take a step back to the intervention. Under the intervention, as I said a couple of moments ago, housing was to be provided for government business managers and other government workers in town and also, as I must

⁵³ Chris Graham, 4 August 2009, Anderson quits, NT government on the brink, <http://www.crikey.com.au/2009/08/04/anderson-quits-nt-government-on-the-brink/>.

⁵⁴ Amy McQuire, National Indigenous Times, 6 August 2009, ANALYSIS, THE BIG READ: Jenny's House, ISSUE 183, <http://www.nit.com.au/News/story.aspx?id=18383>.

⁵⁵ TARA RAVENS, The Canberra Times, 20 August 2009, Indigenous housing scheme under fire, <http://www.canberratimes.com.au/news/national/national/general/indigenous-housing-scheme-under-fire/1601156.aspx>.

⁵⁶ Jano Gibson, ABC News, 19 August 2009, Macklin blamed for Indigenous housing wrangle, <http://www.abc.net.au/news/stories/2009/08/19/2660418.htm?section=justin>.

⁵⁷ Spokesperson Rachel Siewert, The Australian Greens, 13 August 2009, Indigenous Housing, <http://rachel-siewert.greensmps.org.au/content/speech/indigenous-housing>.

add here, as safe houses. Some of the safe houses are still not operating. They have not got their staff there. They have only just been made available over the last couple of months and operational two years down the track. The houses, and admittedly they are largely prefabricated houses, were put in place in communities within months. Within months those compounds were up and running and were liveable and operational. So within months they could move to put houses in place for government business managers and government employees, but still no houses have been built in any of these communities for Aboriginal families ... But now the government has come along and changed its mind and not everybody in the communities subject to the intervention is going to get access to housing. While there are 26 communities Australia-wide, the government has decided that only 15 communities are going to be the focus of the provision of maintenance and new housing. So you can understand why many people in these communities are upset. They have copped what they think is the bad side of the intervention, expecting they would at least get something out of it, but they are going to get nothing out of it. Not only are we not seeing houses built under SIHIP, we are also seeing the situation where many of these communities are not going to see any houses at all.”⁵⁸

Tennant Creek was one of three remote locations selected for the first rollout of SIHIP packages.⁵⁹ The Julalikari Council Aboriginal Corporation signed a 60-year lease with the NT government for Tennant Creek. \$30 million⁶⁰, with an additional funding of \$6.5 million were promised for infrastructure, upgrades and new houses.⁶¹ Mr. McAdam, a former Northern Territory Housing minister who had helped to set up the scheme with the Commonwealth in 2007, said “The expectation was that 20 houses would be built, then it went down to nine houses and then of course, now it’s down to zero houses ... So in Tennant Creek, despite a further injection of \$6 million, totalling \$36 million, there will still be no houses built in Tennant Creek and I just find that intolerable.”⁶² Despite the obvious problems, the federal and the NT government both committed to deliver all 750 houses within 5 years.⁶³ “Both governments are determined to make sure that we deliver on these

⁵⁸ Spokesperson Rachel Siewert, The Australian Greens, 13 August 2009, Indigenous Housing, <http://rachel-siewert.greensmps.org.au/content/speech/indigenous-housing>.

⁵⁹ Michael Owen, The Australian, 14 August 2009, Indigenous housing dreams shattered again, <http://www.theaustralian.news.com.au/story/0,25197,25926660-601,00.html>.

⁶⁰ ABC, 12 August 2009, No new homes for Tennant town camps, http://www.optuszoo.com.au/regional_news/1146/alicesprings/no-new-homes-for-tennant-town-camps.html.

⁶¹ Natasha Robinson and Matthew Franklin, The Australian, 6 August 2009, Stark call to end housing 'grave train', <http://www.theaustralian.news.com.au/story/0,25197,25889903-2702,00.html>.

⁶² Sara Everingham for AM, ABC News, 31 July 2009, Bureaucratic honey pot: ex-MLA blasts NT housing, <http://abc.com.au/news/stories/2009/07/31/2642059.htm?section=justin>.

⁶³ TARA RAVENS, The Canberra Times, 20 August 2009, Indigenous housing scheme under fire, <http://www.canberratimes.com.au/news/national/national/general/indigenous-housing-scheme-under-fire/1601156.aspx>.

commitments” “We want to make sure that we get value for money and we get the houses that we said we’d build and the houses that we want to see upgraded.” Ms Macklin said the housing program was the biggest undertaken by the commonwealth and that she had recently sent a senior departmental officer to work in Darwin and keep the program under line-by-line scrutiny to limit administrative waste and ensure delivery. NT Chief Minister Paul Henderson had appointed a senior bureaucrat of similar rank for the same purpose.”⁶⁴ An example of government agencies wasting money is given in the Australian: “The couple [Kerry Gearman and Bronwen King], who were paid a salary of \$71,000 each, told The Australian they spent five months, along with five other managers, doing “absolutely nothing” during their employment with the NT government. ... In one instance, seven remote audit building managers employed by the NT government were each given new Toyota Hilux utes, worth more than \$50,000 each, to be used twice a year for trips to remote central Australian communities. Mr. Gearman and Ms King were given a car each, and during their five months of employment with the NT government only ever used the cars to drive to work. “When we left, the cars were sitting out in a carpark collecting bird shit and leaves,” Ms King said. “From the time I got the car in March until I left, the vehicle had only done about 36km.””⁶⁵

Their failing housing policy earned the federal and NT governments harsh criticism. Professor Marcia Langton [a prominent supporter of the NT Intervention] criticised the NT government: ““This will end in disaster,” she said of reports that SIHIP funds were being swallowed up by the NT bureaucracy.”...Adam Giles, the indigenous affairs spokesman of the NT’s opposition, said “people in Tennant Creek felt duped by the government.”⁶⁶ Bes Nungarrayi, the chair of the Northern Territory Indigenous Affairs Advisory Council, says “Indigenous people around the Territory are frustrated more houses are not being built.”⁶⁷ Mr Jim Davidson, the (former) project manager of SIHIP, “... said Ms Macklin was in part responsible for the SIHIP controversy. “It was dealt a fatal blow when Jenny Macklin first announced the program and she categorically said that they were going to deliver 750 houses, 230 upgrades and 2500 refurbishments for a budget of \$672 million,” he said.”⁶⁸ The NT indigenous policy minister Alison Anderson left the Labour government “... over what she said was a lack of political will shown by her cabinet colleagues in overcoming

⁶⁴ Natasha Robinson and Matthew Franklin, The Australian, 6 August 2009, Stark call to end housing 'gravy train', <http://www.theaustralian.news.com.au/story/0,25197,25889903-2702,00.html>.

⁶⁵ Natasha Robinson, The Australian, 19 August 2009, Aboriginal housing consultant Jim Davidson axed after criticism of federal program, <http://www.theaustralian.news.com.au/story/0,25197,25950460-601,00.html>.

⁶⁶ Natasha Robinson and Matthew Franklin, The Australian, 6 August 2009, Stark call to end housing 'gravy train', <http://www.theaustralian.news.com.au/story/0,25197,25889903-2702,00.html>.

⁶⁷ Sara Everingham for AM, ABC News, 31 July 2009, Bureaucratic honey pot: ex-MLA blasts NT housing, <http://abc.com.au/news/stories/2009/07/31/2642059.htm?section=justin>.

⁶⁸ Jano Gibson, ABC News, 19 August 2009, Macklin blamed for Indigenous housing wrangle, <http://www.abc.net.au/news/stories/2009/08/19/2660418.htm?section=justin>.

Aboriginal disadvantage. She called the Territory a "failed state" run by a "rotten government" obsessed with looking after its political mates and doctoring its own image."⁶⁹ Galarrwuy Yunupingu, an aboriginal leader from Arnhem Land, "... withdrew his support for the federal intervention in the NT, condemning Canberra's inability to deliver on Aboriginal housing."⁷⁰

In a recent speech, Senator Siewert made the appeal: "It is time the government looked at SIHIP and it is time it actually provided housing on the ground and it did not just restricted to those 15 communities that they have decided on. The government made that decision without, again, consultation ... I will acknowledge-we have police in some communities, and everybody likes that. But, besides that, we have nothing to show for it-nothing, other than we have taken away people's rights yet again. We still have not got it right. We still have not got members of the Aboriginal communities living in decent living conditions-and they still have their rights taken away. It is time we did better."⁷¹

4.2 Homelands

4.2.1 Healthier living on homelands

"Aborigines are healthier, happier and cost governments less money when they are living on their traditional lands, according to new research. Keeping Aboriginal people actively involved in homeland settlements also offers significant benefits to the environment, said senior economist David Campbell. "We're finding clear evidence that working 'on country' has benefits for the health of Aboriginal people and for the nation," said Dr Campbell from the Desert Knowledge Cooperative Research Centre. ... "The health benefits in terms of reducing levels of high blood pressure, diabetes and kidney disease are quite striking when people are actively engaged in looking after their country," he said ... "Aboriginal elders and leaders set up these small settlements because it was important to their wellbeing and health," said project leader Dr Jocelyn Davies. ... "If you move people away from their land in an attempt to deliver better health and other services, paradoxically you may sever the link that gives them both physical and psychological health ... "The health impacts derive partly from improved diet and fitness but are also due to the psychological and social effects of caring for country, she explains." Dr Campbell said healthier Aboriginal communities

⁶⁹ Natasha Robinson and Matthew Franklin, The Australian, 6 August 2009, Stark call to end housing 'gravy train', <http://www.theaustralian.news.com.au/story/0,25197,25889903-2702,00.html>.

⁷⁰ Michael Owen, The Australian, 14 August 2009, Indigenous housing dreams shattered again, <http://www.theaustralian.news.com.au/story/0,25197,25926660-601,00.html>.

⁷¹ Spokesperson Rachel Siewert, The Australian Greens, 13 August 2009, Indigenous Housing, <http://rachel-siewert.greensmps.org.au/content/speech/indigenous-housing>.

translated into lower costs for medical treatment and hospitalisation. But they also mean people live longer lives in which they can contribute to their society grandparents, for example, can look after the kids longer or people can work for longer and generate more economic activity," he said. According to Dr Campbell's research, there could be savings of as much as \$2 million over 25 years for a community of 1,200."⁷²

Warren Snowdon, Minister for Indigenous Health, Rural and Regional Health and Regional Services Delivery, Australian Government Department of Health and Ageing said during his speech at the 11th Garma Festival on 8 August 2009: "In recent times there has grown a view that homelands are not viable ... That they are beyond the reach of law enforcement, represent some sort of failed Utopian experiment, and should not be encouraged and should not be supported. However contrary to such a view there is very strong evidence that homelands provide positive, creative and constructive lifestyle choices for Indigenous people. The outstanding study is the 2008 Utopia study, largely because it has been carried out over a long period (ten years), the data measurement techniques are high quality, and the results are so dramatic. It establishes that Utopia homeland residents have:

- A mortality rate from all causes which is 40-50% lower than the NT average for Indigenous adults
- A mortality rate from cardiovascular disease which is 40-50% lower than the NT average for Indigenous adults – Indigenous death from this disease is higher than any other factor. There are obvious implications for Closing the Gap in life expectancies.
- Much lower rates of the risk factors for cardiovascular disease, including diabetes, blood pressure, cholesterol and smoking.
- Much lower rates of hospitalisation for cardiovascular disease- this means large savings for governments in terms of hospitalisation.

An earlier study in the same communities compared health outcomes and risk factors in Utopia homelands with those in surrounding centralised communities. The study found homelands residents had:

- Significantly lower prevalence levels of type 2 diabetes, hypertension and obesity
- Significantly lower mortality rates than those living in the centralised communities
- Were significantly less likely to be hospitalised for any infection or injury (particularly any injury involving alcohol)

⁷² Tara Ravens, 11 August 2008, Aborigines 'healthier living in country', <http://news.ninemsn.com.au/article.aspx?id=612307>.

- Lived on average 10 years longer than residents of the centralised communities, evidence for the Closing the Gap implication of reduced death rate from cardiovascular disease. ...

In 1984 Kerin O’Dea demonstrated that where Aboriginal people have returned to their traditional land and adopted a semi-traditional hunter/gatherer lifestyle, there is a marked reduction in the major risk factors for coronary heart disease, and that these changes can occur in a very short time. This indicates that even for people who do not live at homelands all the time, short-term visits will improve health outcomes.... A recent study by the Menzies School of Health Research in collaboration with traditional owners of Western and Central Arnhem Land, the Northern Land Council and Charles Darwin University, reported in 2007, draws quantitative links with the health of those Aboriginal people engaged in natural and cultural resource management particularly those living in homelands.

- Those who engaged in natural and cultural resource management are significantly healthier overall.
- This include significantly lower rates of type 2 diabetes and cardiovascular disease
- Participants in natural and cultural resource management report a more nutritious diet and a greater degree of physical activity.

There are approximately 10 000 people living on homelands in the most remote parts of the Northern Territory. Homeland communities therefore matter in terms of indigenous policy but also in regard to broader policies concerning remote areas of the nation.”⁷³

“Researchers at the World Health Organisation’s Commission on Social Determinants of Health have shown that people who have control over their lives enjoy better standards of health and welfare.”⁷⁴

4.2.2 Homelands policy

At the 11th Garma Festival Warren Snowdon also spoke about outstations or homelands as they are more generally known having been an integral part of the NT community for decades. “They were developed by Indigenous people as a deliberate strategy to improve their own health and well-being. The history of the homelands movement is well documented in works like the late great Rev. Jim Downing’s “Spirit of My Country”. What is apparent from

⁷³ Warren Snowdon, Minister for Indigenous health, Rural and Regional Health and and Regional Services Delivery, Australian Government Department of Health and Ageing, 8 August 2009, “Health, Homelands and Creativity” speech at the 11th Garma Festival, <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/sp-yr09-ws-wssp080809.htm>.

⁷⁴ ANTaR Victoria, The Intervention under Rudd: Are we any closer to protecting Aboriginal Children in NT?, <http://www.antarvictoria.org.au/ntintervention.html>.

Jim's research is that the homelands movement started despite governments not because of them ... they were a calculated and deliberate strategy to provide opportunities for Indigenous people to exercise their cultural responsibilities, and improve health and safeguard families. It is one of the very few initiatives in Indigenous affairs which has actually worked and continues to work to this day. In recent times there has grown a view that homelands are not viable ... the recent facts are that policies intended to discourage remote settlements by limiting the provision of housing and other services, has meant homelands have become increasingly unable to cope because of overcrowding and lack of adequate funding for maintenance and infrastructure. As a result there has been a drift of population to the major Indigenous communities and to the fringe of the regional service towns of Alice Springs, Katherine, Tennant Creek and Darwin. The end result for these newcomers in the towns, fringe camps and suburbs of the urban centres is marginalisation, overcrowding, conflict, continued social and cultural breakdown, and deep personal distress.

There is increasing pressure placed on resources and infrastructure and also increasing social tensions in the towns and regional centres that people move to. Homelands certainly have the potential to play creative and positive roles as 'communities of recovery' in situations like this ... Homelands have too often been the victims of arbitrary bureaucratic abuse of power, but despite this, homelands have continued to respond in a variety of creative and innovative ways to their situation. As a result we see a spectrum of types of small de-centralised communities with a variety of needs and challenges before them, but all with a continuing commitment to the health, well being and cultural responsibilities of their people. These core commitments have allowed Indigenous people on homelands to engage with wider society and the ways of the modern world for the benefit of all. Government policy settings that reflect the strong attachment of Indigenous people to their traditional lands and their rights to live on those lands are likely to have benefits not only for those Indigenous Australians but the wider Australian community as well. All homeland communities have needs and all deserve the respect of being considered for support. Homelands; places of health, creativity, well being and cultural responsibility."⁷⁵

On the occasion of the expression for support of the United Nations Declaration on the Rights of Indigenous Peoples on 3 April 2009, Jenny Macklin, the Minister for Families, Housing, Community Services and Indigenous Affairs said that "we acknowledge Articles 8 and 10 - I quote: Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. And I quote again: Indigenous peoples

⁷⁵ Warren Snowdon, Minister for Indigenous health, Rural and Regional Health and and Regional Services Delivery, Australian Government Department of Health and Ageing, 8 August 2009, "Health, Homelands and Creativity" speech at the 11th Garma Festival, <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/sp-yr09-ws-wssp080809.htm>.

shall not be forcibly removed from their lands or territories. Today Australia takes another important step to make sure that the flawed policies of the past will never be re-visited.”⁷⁶
How does this statement fit with the recently announced outstation policy?

In response to the announcement of the Homelands Policy, Euahlayi leader and founder of the 1972 Aboriginal Embassy, Michael Anderson, released a statement on 26 May 2009: “...One would think that if this Rudd Labor government pursues its current policy, by forcefully removing people from their homelands and out stations to the proposed 20 town centres, all they will do is make the same mistakes yet again – another offense against Aboriginal people. The people who will be impacted by this current policy have nothing but a nightmare and extreme trauma to look forward to. There are cries coming out of the Northern Territory where people such as Yananymul Mununggurr who, when speaking on behalf of the Laynhapuy Homelands Association, asserted in a press statement that ‘the Northern territory government has either refused, or is unable, to fully understand the cultural significance of Homeland.’ She added: ‘The Northern Territory government announced a policy that relegates our homelands to third world conditions, if not extinction. She also asked in her press statement of 21 May 2009, when questioning the NT government’s A Working Future Policy : ‘Where is the economic modeling, the data collection or cost/benefits analysis recommended by the NTG’s own consultant, Patrick Dodson, when establishing these town centres?’ Prof Jon Altman, Director at the ANU for the Centre of Aboriginal Economic Policy Research, criticises the proposed development of the 20 Aboriginal communities at the expense of the other 500 communities throughout the NT by saying: ‘It’s a terrible idea.’ We know from the past that governments have not be able to fulfill nor deliver in full their policy objectives of assimilation. The centralizing of Aboriginal people of different language groups, different skin groups, all of whom belong to different nations will have long term disastrous affects that will be felt for generations to come. We here in the south are a testament to the failures of this type of policy and strategy. Dr Gawirrin Gumana AO, a Yolngu Elder, posed a challenge to the Australian government last Thursday, when he said: ‘Government, if you don’t help our Homelands, and try to starve me from my land, I tell you, you can kill me first. You will have to shoot me.’ He added: ‘I don’t want to move again like my father moved from Gangan to other places like Yirrkala or Groote. I don’t want my children to move. I don’t want my family to move. I will not lose my culture and my tribe to your games. Like a bird moving from place to place, looking for its camp or to sleep in other places, on other peoples’ land that is not our land.’ His final plea: ‘I

⁷⁶ The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 3 April 2009, Statement on the United Nations Declaration on the Rights of Indigenous Peoples, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/un_declaration_03apr09.htm.

do not want my people to move from here and die in other places, I don't want this. We don't want this. We want to stay on our own land. We have our culture, we have our Law, we have our land rights, we have our painting and carving, we have our stories from our old people.'

Dr Gawirrin Gumana last words to the government were: 'I know you have got the money to help our homelands. But you also know there is money to be made from Aboriginal land.'

What this government is doing to Aboriginal people is genocide by nature and design... Why is it that Aboriginal people cannot be free to decide their own future, live where they want to live while maintaining their culture and traditions. Why can't we teach our own culture, languages? Why don't we have the right to retain our national identity in our own land? We accept there is a lot wrong, but because government policies have failed we should not be bludgeoned into giving up our identity, our traditions, our religion, our culture for the sake of trying to be like a whiteman. All we ask governments to do is: 'Work with us, don't dictate to us.' Governments must overcome their paranoia of Aboriginals asserting our right to self-determination. We can enjoin and develop by way of treaties through informed consultations and negotiations. We seek to be free and have the right to make our own choices for our children's future. The current path under the Rudd government policies is designed to make us like the non-Aboriginal communities. We are and never will be suburbanites. We have our own Dreamings, the Story of creation. We don't want to be part of a world where, in the name of the creator, wars are fought. Hate, mistrust and distrust pervades the society that you wish us to become part of. The path of assimilation ends in genocide and we will fight against it by any and every means possible, because the only possible outcome for this Rudd policy will be further 'mental harm to members of the group' and can only result in 'conditions of life set to destroy the group in whole or in part' both of which are definitions under the Genocide Convention. In the 1930s, the Chief Protector of Aboriginal people in Queensland, J.W. Bleakley, argued that the public interest in Aboriginal affairs had grown to the point where definite measures needed to be developed for the protection of the remaining Aboriginal population because: '...it seems to be the generally accepted view that the extinction of the Australian Aborigine is inevitable.' He questions: 'Is it any use trying to preserve these people? Is not their extinction inevitable?' Then Bleakley reaches the core of the issue by quoting Lord Glenelg, when Secretary for the Colonies: ' "Let us not cast upon Heaven a destruction which is our own and say the aborigines are doomed by Divine Providence when the guilt lies with ourselves?"'⁷⁷

⁷⁷ Michael Anderson, Press Conference 9:30am at the Aboriginal Embassy, Canberra, 26 May 2009, Northern Territory Intervention: Michael Anderson says "We should not be bludgeoned into giving up our identity", Michael Anderson launches worldwide campaign against the Rudd government's policy of genocide against Aboriginal Peoples, <http://wgar.info/2009/05/27/northern-territory-intervention-michael-anderson-says-we-shouldnot-be-bludgeoned-into-giving-up-our-identity/>.

Could the exodus of Aboriginal people out of remote communities into town camps and urban centres be an "unintended consequence" of the federal government's intervention into the Northern Territory (as a number of newspaper commentators have begun describing the exodus)? Could it be that the break up of remote communities is not an accident but a key aim of the government measures? Former Indigenous Affairs Minister Mal Brough was reported in the Australian on 9 August 2007 as having said "Some communities are going to be very challenged to remain as they are and we are going to have to have honest conversations with people ...If you want to live there that's OK but not expecting the Government to somehow build a clinic and put a school in for 10 kids or whatever it may be..."⁷⁸

In the ACTU speech on Homelands Policy on 20 June 2009, Yananymul Mununggurr points out that "a few months ago in December 2008, the Council of Australian Governments entered into Partnership Agreements of remote services and indigenous housing which confirmed this focus on major communities – 15 in the NT – and re-stated the ban on the growth of homelands. It was a partnership between Governments, not between Government and Indigenous Australians."⁷⁹

4.3 Town camps

4.3.1 Tangentyere Council

Tangentyere Council holds a lease over 18 Alice Springs town camps. The Rudd government had demanded Tangentyere agree to give up the control of 16 of the camps for 40-years, in exchange for \$125 million worth of upgrades to homes and infrastructure.⁸⁰

The Tangentyere Council had agreed to the requested 40-year lease, but refused to accept the Government's condition that tenancy management be handed over to the NT Housing Authority. As Tangentyere Council didn't trust government to properly deliver housing for Aboriginal people, it proposed tenancy management through the Central Australian Affordable Housing Company, which had been established with the Government's assistance.

⁷⁸ Patricia Karvelas, 9 August 2007, The Australian, Some communities 'won't survive', <http://www.theaustralian.news.com.au/story/0,25197,22212015-5013172,00.html>.

⁷⁹ Yananymul Mununggurr, 20 June 2006, ACTU speech Homelands Policy, <http://rollbacktheintervention.wordpress.com/>.

⁸⁰ Chris Graham, Crikey, 6 July 2009, Macklin advised not to consult Aboriginals over town camps, <http://www.crikey.com.au/2009/07/06/macklin-advised-not-to-consult-aboriginals-over-town-camps/>.

In her speech of 13 August 2009, Senator Siewert said: “The minister funded the community to develop a community housing model. They were using the top standards for developing that model. The actual entity is not in place yet, but it is moving quite rapidly towards getting established. The community was very clear that they wanted to maintain control of housing decisions. It would be under the government's guidelines but they wanted to maintain control. But the government was forcing, and wants to force, the community to agree to Northern Territory Housing making the decisions and doing the day-to-day management of those houses. Northern Territory Housing has a very bad record of involving and providing housing for Aboriginal members of the community in the Northern Territory. So you can understand why that community was very nervous about handing over control to Northern Territory Housing, when Northern Territory Housing has not proved they can provide adequately for members of the Aboriginal community.”⁸¹

In response to the refusal of Tangentyere Council to sign the leases with the conditions proposed by the government, Macklin announced in a Media Statement of 25 May 2009 that “the Australian Government is taking the first step towards compulsory acquisition of the Alice Springs town camps.”⁸²

“When asked on the 7.30 Report on 26 May about whether the compulsory acquisition of Aboriginal land leases would be consistent with the Racial Discrimination Act, Minister Jenny Macklin was adamant that they would. When pressed by Kerry O’Brien as to how she could be sure, Macklin replied: “Well in my personal view, these are beneficial measures... The benefit said to be conferred, is the “substantial improvement in the quality of housing and essential services”, which is on its face, a legitimate aim. But the forcible acquisition of the town camps is not proportionate to its attainment. Instead, it requires that people forfeit their property rights to improve conditions caused by decades of neglect and under-funding by the Northern Territory Government. The Tangentyere Council had agreed to the 40 year lease insisted upon by the Government but refused to accept the Government’s condition that tenancy management be handed over to the Northern Territory Housing Authority, which has a poor reputation with Aboriginal people. Instead, the Council proposed tenancy management through the Central Australian Affordable Housing Company, ironically established with the Government’s assistance. The net result is loss of perpetual leases

⁸¹ Spokesperson Rachel Siewert, The Australian Greens, 13 August 2009, Indigenous Housing, <http://rachel-siewert.greensmps.org.au/content/speech/indigenous-housing>.

⁸² Minister Jenny Macklin, Official Website of the Australian Labor Party, 25 May 2009, Media Statement, First steps on Alice Springs town camps, <http://www.alp.org.au/media/0509/msia250.php>.

because of the failure to agree over tenancy management, which cannot be assessed as proportionate to any legitimate aim. No other Australian is asked to surrender land rights to secure basic services. No other Australian is being bullied into a compromise with government rather than a negotiated outcome...The history of town camps as ration distribution stations and labour camps; as homes to families who moved there following their light skinned children removed to homes in Alice Springs; as homes to those dispossessed from their traditional lands by the pastoral industry; as homes to people prohibited entry into Alice Springs and who resisted being physically rounded up and taken away; and most recently as homes to those moving from homelands because of the Intervention is a history of Aboriginal asserting their rights, which is about to be removed in totality with the issue of a notice.”⁸³

4.3.2 Legal actions

In October 2007, Bawinanga Aboriginal Corporation (BAC) and Reggie Wurrdjal, a traditional owner in Maningrida in the Northern Territory launch a legal action against the Commonwealth’s compulsory acquisition of townships on five year leases. In February 2009, the High Court dismisses the NT intervention challenge by the BAC and Mr. Wurrdjal with retiring Justice Michael Kirby the only judge to dissent.⁸⁴

4.3.2.1 Complaint to the United Nations (CERD)

After this dismissal by the High Court Aboriginal people of Australia subject to the measures of the NTNER legislation were left with no other option but to make an appeal under international law to the International Committee for the Elimination of Racial Discrimination (CERD) in form of a “Request for Urgent Action” which was sent to CERD in February 2009.⁸⁵ In their request “Aboriginal people living under the NT Intervention raise objections to the following main points:

- The suspension of the Racial Discrimination Act,
- Compulsory income management
- Compulsory acquisition of Aboriginal land
- Powers over Aboriginal community councils
- Removal of consideration of Aboriginal customary law

⁸³ Alison Vivian and Larissa Behrendt, 16 June 2009, Is Macklin ignoring her own legal advice on town camps acquisition?, <http://www.crikey.com.au/2009/06/16/is-macklin-ignoring-her-own-legal-advice-on-town-camps-acquisition/>.

⁸⁴ National Indigenous Times, 2 April 2009, A Timeline: The Northern Territory Intervention, www.nit.com.au/downloads/files/Download_197.pdf.

⁸⁵ Prepared by the Authors' legal representatives, 28 January 2009, Request for Urgent Action, www.nit.com.au/downloads/files/Download_192.pdf.

- Coercive powers of the Australian Crime Commission Task Force
- Abolition of Community Development Employment Projects (CDEP).⁸⁶

In response to this appeal by the Aboriginal people, CERD's Chairperson requested the Australian Government in its letter of 13 March 2009 to report by 31 July 2009 on their "Progress on the drafting of the redesigned measures, in direct consultation with the communities and individuals affected by the NTER, bearing in mind their proposed introduction to the Parliament in September 2009" and their "Progress on the lifting of the suspension of the Racial Discrimination Act". CERD adjudged the Northern Territory intervention laws to be a breach of international law and "notes with concern that the Racial Discrimination Act was suspended as a necessity to enact the measures contained in the NTER."⁸⁷

The Australian Greens "welcomed reports that the United Nations has written to the Australian Government expressing concern over racist elements of the Northern Territory Emergency Response (NTER). "This is the slap of realism that this Government desperately needs. The international community are crying out against this blatantly racist intervention, which is serving as a major embarrassment for us on a global stage," said Australian Greens spokesperson on Aboriginal Issues Senator Rachel Siewert."⁸⁸

An article by the Australian dated 19 March 2009 stated that, "Aboriginal leader Warren Mundine described both the complaint and those making it as a "joke". "If people are accusing Rudd and (Indigenous Affairs Minister Jenny) Macklin of being racist ... it's laughable," he said. He said said the real human rights violations were being perpetrated against Aborigines living in sub-standard conditions in the Territory." The same article reports University of NSW law professor George Williams as saying that "Australia appeared to be in clear breach of its obligations under the treaty and predicted the complaint would be upheld. "The committee's findings are not enforceable under Australian law," he said. "The main sanction is international shaming and the impact on Australia's reputation."⁸⁹

⁸⁶ National Indigenous Times, 2 April 2009, Complaint in brief , www.nit.com.au/downloads/files/Download_197.pdf.

⁸⁷ STATEMENT BY LES MALEZER, CHAIRPERSON OF THE FOUNDATION FOR ABORIGINAL AND ISLANDER RESEARCH ACTION, 18 March 2009, Australia promises to end racial discrimination, <http://sydney.indymedia.org.au/story/australia-promises-end-racial-discrimination>.

⁸⁸ Spokesperson Rachel Siewert, 19 March 2009, United Nations concern over NT Intervention, <http://rachel-siewert.greensmps.org.au/content/media-release/united-nations-concern-over-nt-intervention>.

⁸⁹ Paul Maley, The Australian, 19 March 2009, UN 'concerned' over suspension of Racial Discrimination Act, <http://www.theaustralian.news.com.au/story/0,25197,25209009-5006790,00.html>.

4.3.2.2 Australia's history with CERD

Australia has been in almost constant dispute with CERD since August 1998 when the CERD Committee requested information from the Australian Government, in particular on amendments to the Native Title Act 1993 (NTA). In 1999 it found a number of key provisions of the amended Native Title Act not to be consistent with CERD obligations, and that, as amended, the Native Title Act, despite its Preamble, could no longer be considered a special measure within the meaning of the relevant articles of CERD.⁹⁰

4.3.2.3 Advice against consultations

The Minister for Indigenous Affairs was advised by her own department against "formally consulting with Aboriginal people over the compulsory acquisition of their land because it would be too expensive, tie up too many resources and the whole process was unlikely to get the outcome the government wanted, leaked documents reveal. ... They reveal Macklin has deceived Aboriginal people over the Northern Territory intervention consultations currently underway, and the government's moves to compulsorily acquire the Alice Springs town camps. Ironically, the advice was 'read, agreed and noted' by Macklin on March 26, just one week before her government endorsed the United Nations Declaration on the Rights of Indigenous Peoples, a human rights vehicle which commits the federal government to genuine consultation with Aboriginal people."⁹¹

"ALRM CEO Neil Gillespie said on Tuesday that Ms Macklin's actions run contrary to the Rudd government's apology to the Stolen Generations, and to its commitment to the UN Declaration on the Rights of Indigenous Peoples. "If this is true and the Minister has not acted in the best interests of Aboriginal people, and unless she changes her position, she has no right to represent Aboriginal people at a government level, or to be responsible for Aboriginal programs," Mr Gillespie said. The statement notes that the Rudd government is committed to "re-setting the relationship" between black and white Australians. Mr Gillespie says the revelations place another black mark on Australia's international reputation."⁹²

⁹⁰ Greg Marks, International lawyer, 24 March 2009, Twilight seminar: Race Discrimination, the Intervention and Indigenous Australians. <http://www.ila.org.au/pdfs/CERD%20commentary%20speaking%20notes.pdf>.

⁹¹ Chris Graham, National Indigenous Times, A SPECIAL NIT INVESTIGATION, ISSUE 181, 9 July 2009, THE BIG READ: TICKING BOXES - Leaked documents reveal Rudd government's deceit on NT intervention consultations and Alice Springs town camp land grab, <http://www.nit.com.au/news/story.aspx?id=18204>.

⁹² National Indigenous Times, 9 July 2009, PM should censure Macklin over consultations: ALRM, ISSUE 181, <http://www.nit.com.au/News/story.aspx?id=18201>.

“Reports that the Minister for Indigenous Affairs, Jenny Macklin, has been advised by her department how to avoid human rights obligations must raise questions of dishonesty in government and public deception.”⁹³

4.3.3 Tangentyere – compulsory acquisition of Town camps

In a Media Release of May 2009, the Intervention Rollback Action Group pointed out: “Today Indigenous Affairs Minister Jenny Macklin marked the opening of Reconciliation Week by announcing that Alice Springs town camps will be compulsorily acquired. The announcement has been met with outrage by town camp residents.”⁹⁴

On the compulsory acquisition of the Alice Springs Town camps, Professor Larissa Behrendt, named Indigenous Person of the Year 2009 at the national NAIDOC awards, raised the question in June 2009 whether Jenny Macklin is ignoring her own legal advice. An NIT news article of 9 July reported that leaked documents revealed “Rudd government’s deceit on the NT intervention consultations and Alice Springs town camp land grab.”⁹⁵ According to that same article Jenny Macklin was warned in March 2009 that with the RDA being reinstated under the NT intervention legislation, compulsory acquisition of Aboriginal land was at a “significant risk” of surviving a court challenge. If challenged, the government intended to rely on an argument that the policies, while racially discriminatory, are legal because they constitute a 'special measure' under the terms of the RDA. The advice also warned against creating any "formal consultative" process on compulsory land acquisition as this might not "sufficiently strengthen" the government's legal position in the event of a court challenge, and was unlikely to get the outcome the government required: "informed consent". Instead, the official recommends an "informal consultative process on land use approvals which goes some way to providing a consultative mechanism.”⁹⁶ “The minister is waiting until the eve of legislation reinstating the RDA (due by September or October 2009) to decide whether or not to axe the five-year leases, or go to court and try and make a case that they comply with the Racial Discrimination Act. Before she does, Macklin is planning to

⁹³ National Indigenous Times, ISSUE 182, 23 July 2009, OPINION: TICKING BOXES Pt 1 UPDATE : A not-so- united nation, <http://www.nit.com.au/Opinion/story.aspx?id=18278>.

⁹⁴ Intervention Rollback Action Group, May 2009, Media Release, Takeover of Aboriginal Land marks Opening of Reconciliation Week, <http://wgar.info/2009/05/25/takeover-of-aboriginal-land-marks-opening-of-reconciliation-week/>.

⁹⁵ Chris Graham, National Indigenous Times, A SPECIAL NIT INVESTIGATION, ISSUE 181, 9 July 2009, THE BIG READ: TICKING BOXES - Leaked documents reveal Rudd government's deceit on NT intervention consultations and Alice Springs town camp land grab, <http://www.nit.com.au/news/story.aspx?id=18204>.

⁹⁶ Chris Graham, National Indigenous Times, A SPECIAL NIT INVESTIGATION, ISSUE 181, 9 July 2009, THE BIG READ: TICKING BOXES - Leaked documents reveal Rudd government's deceit on NT intervention consultations and Alice Springs town camp land grab, <http://www.nit.com.au/news/story.aspx?id=18204>.

compulsorily acquire the Alice Springs town camps.”⁹⁷ It would seem that the plan may be to expedite the compulsory acquisition of the town camps via the intervention legislation to take advantage of the RDA being still suspended. To NIT’s question whether this may be the case, Minister Macklin issued the following written response: “The possible acquisition of the town camps would occur under the NTER legislation and is aimed at benefiting the town camp residents ... The proposed action in relation to the town camps is solely for the purposes of protecting vulnerable women and children, benefiting the residents and facilitating substantial upgrades to housing and infrastructure in the town camps.”⁹⁸ How does this response compare with the leaked government advice coming from the minister's department? On top of this, she had received this advice only one week prior to her announcement of the government’s support of UNDRIP.

4.3.4 Legal challenges with the compulsory acquisition of Town camps

The Commonwealth must provide a period of notice to anyone whose interest in the town camp land is affected by the proposed compulsory acquisition. Crikey reported on 27 July 2009 that “currently, Tangentyere Council holds a lease over the land on behalf of the town camp housing associations, who in turn lease individual homes to town camp families. In late May - after Tangentyere refused to sign over control of its land for 40 years in exchange for \$125 million in housing and infrastructure upgrades - Macklin gave the council and the town camp associations formal notice that the Commonwealth was considering compulsorily acquiring the land. But it seems no-one in the Minister’s office thought to formally notify the actual tenants of the town camp.”⁹⁹

On 28 July 2009¹⁰⁰ Ms. Macklin announced Tangentyere Council’s agreement to the 40-year leases indicating that Tangentyere would like to sign the lease. The Intervention Rollback Action Group with the assistance of Stop the Intervention Collective Sydney sought endorsements for a statement calling on the Government to stop the compulsory acquisition of the Alice Springs Town Camps. Some prominent Australians as well as organisations have joined the call. An advertisement - ending with the statement “All Australians will be

⁹⁷ Chris Graham, National Indigenous Times, A SPECIAL NIT INVESTIGATION, ISSUE 181, 9 July 2009, THE BIG READ: TICKING BOXES - Leaked documents reveal Rudd government’s deceit on NT intervention consultations and Alice Springs town camp land grab, <http://www.nit.com.au/news/story.aspx?id=18204>.

⁹⁸ Chris Graham, National Indigenous Times, A SPECIAL NIT INVESTIGATION, ISSUE 181, 9 July 2009, THE BIG READ: TICKING BOXES - Leaked documents reveal Rudd government’s deceit on NT intervention consultations and Alice Springs town camp land grab, <http://www.nit.com.au/news/story.aspx?id=18204>.

⁹⁹ Chris Graham, 27 July 2009, Macklin botches Alice Springs town camp compulsory acquisition, <http://www.crikey.com.au/2009/07/27/macklin-botches-alice-springs-town-camp-compulsory-acquisition/>.

¹⁰⁰ RUSSELL SKELTON, WA Today, 29 July 2009, Alice town camps dispute resolved, <http://www.watoday.com.au/national/alice-town-camps-dispute-resolved-20090730-e20r.html>.

diminished if the compulsory acquisition proceeds"¹⁰¹ - has been published in the Australian newspaper on 30 July 2009. It has received wide coverage as for example: "The federal Government has won its battle to take over the impoverished Aboriginal town camps on the outskirts of Alice Springs ... Even as the Tangentyre decision was announced by Indigenous Affairs Minister Jenny Macklin, an advertisement in the Australian attacked Canberra's insistence on holding leases on the camps. The advertisement was signed by unions, aboriginal groups, student bodies and high-profile Australians including politicians and Olympic swimming star Ian Thorpe. Thorpe had told an audience in London that the "gross neglect" of Aborigines was Australia's "dirty little secret", and that the NT intervention tried to punish Aborigines and take over their lives, rather than work with them. Yesterday's [30 July 2009] advertisement urged Canberra to "stop the blackmail", and said the provision of infrastructure and services should not depend on the surrender of fundamental rights."¹⁰²

Barbara Shaw from Mount Nancy Town Camp sought an injunction "against the minister compulsorily acquiring the town camps, or signing any agreement with Tangentyere because the tenants of the town camps have never been properly notified that their rights are about to be extinguished."¹⁰³ Tangentyere's lawyers, Gilbert & Tobin wrote to Minister Macklin to indicate an intent to sign up for a 40-year lease: "The housing associations have agreed to enter into the sub leases for the simple reason that you have threatened them with compulsory acquisition if they do not," Gilbert & Tobin wrote. "The loss of tenure to these lands is something that is abhorrent to the housing associations and they could not run the risk that it might occur." On the public claims by Macklin that the time for negotiation had ended, Tangentyere's lawyers noted: "It is simply incorrect to assert that time has run out. The timetable is completely within your power to set, as indeed you have done throughout these negotiations." If the letter raises serious questions about the legality of the entire process, politically speaking it's even worse. The "people under duress" are the nation's poorest, most marginalised citizens who were told that unless they did what the government wanted they would lose their land forever ... Tangentyere and the housing associations which represent the town campers want housing upgrades but they just wanted to be a key part of the process."¹⁰⁴ Senator Siewert poses the following questions in this respect: "How

¹⁰¹ Advertisement. Stop the Blackmail. Keep Aboriginal Housing in Aboriginal Hands, 30 July 2009, the Australian, <http://www.abc.net.au/news/documents/2009/07/30/STICSAustralian1.pdf>.

¹⁰² Greg Ansley, 31 July 2009, Govt to take over Aboriginal town camps, <http://www.nzherald.co.nz/australia/news/article.cfm?id=15&objectid=10587714>.

¹⁰³ Chris Graham, Crikey, 31 July 2009, Macklin's town camp takeover derailed by big guns, <http://www.crikey.com.au/2009/07/31/macklins-town-camp-takeover-derailed-by-big-guns/>.

¹⁰⁴ Chris Graham, Crikey, 31 July 2009, Macklin's town camp takeover derailed by big guns, <http://www.crikey.com.au/2009/07/31/macklins-town-camp-takeover-derailed-by-big-guns/>.

is that fair? It is not. How is that meeting our requirements under any international conventions on treating people equally? It does not. Yet this government has proceeded with that approach.”¹⁰⁵

Barbara Shaw with the assistance of a legal team had made an appeal for injunction against the government’s steps to compulsorily acquire the Alice Springs town camps. On 6 August 2009, Federal Court Justice Alan Goldberg issued an injunction preventing the Minister for Indigenous Affairs, Jenny Macklin from taking over the Alice Springs town camps. The matter will now proceed to a full hearing on August 28-31.”¹⁰⁶

On 24 August 2009, Minister Jenny Macklin issued a Joint Media Release with Warren Snowdon MP, Member for Lingiari, that the period for consultations and submissions on the possible acquisition of the Alice Springs town camps will be extended until 27 October 2009.¹⁰⁷ In the case of Mount Nancy Town Camp, a piece of paper announcing the extension has been attached to the outside fence without an address or any date. The tone of the Media Release sounds very disrespectful, paternalistic, judgmental and discriminatory. It makes it sound as if it was the fault of the Aboriginal people that the process has been delayed and upgrading and building new houses has not yet started. But it fails to make any mention of urgently needed houses that had been promised over two years ago, still not having been built throughout the period of the Intervention. Regarding the Media Release’s statement “my preference has always been an agreed outcome” I wonder why an “agreed outcome” has to come via coercion instead of voluntary agreements. The mention of the notices going to be delivered to “tin sheds...including outdoor mattresses” of same Media Release sounds very disrespectful and humiliating. Continuously omitting Aboriginal men, when talking about “protecting the vulnerable, women and children” is just demeaning and discriminatory towards all the Aboriginal men.”¹⁰⁸

¹⁰⁵ Spokesperson Rachel Siewert, The Australian Greens, 13 August 2009, Indigenous Housing, <http://rachel-siewert.greensmps.org.au/content/speech/indigenous-housing>.

¹⁰⁶ Chris Graham, Crikey, 7 August 2009, Alice camps injunction is down to Macklin, <http://www.crikey.com.au/2009/08/07/alice-camps-injunction-is-down-to-macklin/>.

¹⁰⁷ The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 24 August 2009, Joint Media Release with Warren Snowdon MP, Member for Lingiari, Alice Springs town camps, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/jm_m_alice_camps_24august2009.htm.

¹⁰⁸ The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 24 August 2009, Joint Media Release with Warren Snowdon MP, Member for Lingiari, Alice Springs town camps, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/jm_m_alice_camps_24august2009.htm.

4.4 Conflicting politics of Minister Macklin in opposition

There is a huge discrepancy in Ms. Macklin's attitudes in 2007 when in opposition as compared to her current position on the Tangentyere Council and Alice Springs Town Camps. In 2007 being the opposition spokesperson on Indigenous affairs, Jenny Macklin was very much opposed to compulsory acquisition and long-term leases being made conditional to receive housing and basic infrastructure: "She went on to praise the Tangentyere Council, who administer the Alice Springs town camps, for refusing to give into Indigenous affairs minister Mal Brough's \$60 million 'carrot' - an offer to boost housing and infrastructure in exchange for a 99-year land lease. It was, said Macklin, simply unacceptable for the Howard government to link the provision of basic government services to land tenure reform. Macklin praised Tangentyere for responding by saying 'No thanks, we know how to wait.'" She also said "that the key reason the council hadn't signed the lease was that the "deal included one non-negotiable term - that they relinquish the housing management to the Northern Territory government". "With desperately needed funds dangling before them, the chances of people being able to make these important decisions in a free and informed way were undermined," Macklin told Parliament. "We are still hopeful, I have to say, that a resolution can be found. But finding a resolution should be an imperative of the government, and an understanding is needed that it will take time and a willingness to negotiate. "...We understand the need and the desire for economic development and empowerment in Australia's remote regions, working with Indigenous people, not taking away hard won land rights."¹⁰⁹

And as Senator Siewert pointed out "At the time, the then opposition spokesperson, Jenny Macklin -now the minister- made some very strong statements in the other place around opposing 99-year leases, how that was obstructing progress and how it meant that it would slow down building houses. Now this same minister is requiring communities to sign- admittedly they are not 99-year leases-40-year leases. And she is saying that, unless state or territory governments can get the communities to sign away their land, they will not get housing."¹¹⁰

ANTaR posted on their website an article entitled "*THE BETRAYAL: Macklin unveils plan to force 40-year leases in exchange for public housing*" "The land tenure reforms stand in stark

¹⁰⁹ Amy McQuire, National Indigenous Times, 6 August 2009, ANALYSIS, THE BIG READ: Jenny's House, ISSUE 183, <http://www.nit.com.au/News/story.aspx?id=18383>.

¹¹⁰ Spokesperson Rachel Siewert, The Greens, Speech, Indigenous Housing, 13 August 2009, <http://rachel-siewert.greensmps.org.au/content/speech/indigenous-housing>.

contrast to Labor's position on this issue in Opposition less than two years ago. Then, Jenny Macklin - as shadow spokesperson for Indigenous affairs - argued passionately against an almost identical proposal being pushed by the Howard government that would see traditional owners effectively forced to give up their land for 99 years in exchange for basic services. After quoting from the iconic land rights song, 'From little things big things grow', Macklin told parliament it was "hard to imagine that any other group of Australians would have their property rights treated in this way". "What we do not want is decisions being made in a rushed or politically charged environment," she told parliament. "We do not want land tenure reform being made a condition of funding for basic services. "What we do want is an informed, open and transparent debate about the details of 99-year leases over townships."¹¹¹

When in opposition, Minister Macklin had made some very strong statements opposing long term leases and emphasised that a key factor for the Council's not signing the lease was their refusal to lose control over housing management over to the NT government housing. Now she made the loss of control over housing management to a non-negotiable term herself in her dealings with Tangentyere Council to sign over the leases for 40 (plus 40) years. Why has Jenny Macklin changed her mind so drastically with the Alice Springs Town Camps acquisition? With such a complete turnaround in opinion is it any surprise that anyone organisation would call this behaviour a betrayal, and it being reported as a betrayal in the media?

¹¹¹ ANTaR, first published in the National Indigenous Times, 19 February 2009, THE BETRAYAL: Macklin unveils plan to force 40-year leases in exchange for public housing, http://www.antar.org.au/the_betrayal.

5 Education

“In 2007, only 42.9 per cent of indigenous 17-year-olds attended secondary school, compared with 65 per cent of non-indigenous 17-year-olds. Research suggests that students who do not complete this level of education will have much reduced levels of employment and economic independence. Compared with the general population, unemployment among the Aboriginal population is three times higher than for non-indigenous Australians. ... The right to education in mother tongue continues to be violated in Australia. Indigenous literacy outcomes are directly related to Aboriginals' access to their own culture, history and languages, and books in indigenous languages for students whose first language is not English, are rare. The Northern Territory government recently announced a move towards a more 'English-only' form of education, which represents a patent breach of the right of indigenous peoples to some form of education in their own languages where practicable.”¹¹²

Warren Snowdon, MP highlights the importance of education regarding the homeland policy: “In recent times homeland schools have come under close scrutiny with suggestions that they have been abject failures and that students need to be re-located to larger centralised communities so as to take advantage of the educational services offered there. Teachers and others involved in Indigenous education tell me that in fact homelands schools particularly in this region of East Arnhem Land have superior attendance rates and despite being poorly resourced can out perform major community schools. I have seen documents that suggest homeland schools in this region have had a minimum attendance of more than 80% whilst larger centralised community schools often have attendance rates as low as 25-30%. As for academic performance ...in 2008 Laynha homeland schools in this region have approximately 250 students, averaged over T-12 this is about twenty students per year level. From that group last year, seven students completed and attained their NT Year 12 Certificate, a 35% pass rate. No large centralised Indigenous school anywhere in the region could rival those outcomes.

Creative technological breakthroughs in distance education allow us to consider an even brighter future for homelands schools. In 2001 the Australian Government provided satellite technology and computers to provide a distance education service to 65 cattle stations and 66 remote schools. Unfortunately at several large centralised schools this service was

¹¹² Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2009 - Australia, 16 July 2009, available at: <http://www.unhcr.org/refworld/docid/4a66d9c1c.html>.

provided only to the children of the non-Indigenous staff of the community. Homelands schools appear to have been excluded... In 2008 I am informed that the provision of up-to-date technology and distance education software has been extended to over 250 remote sites, of these five only are homeland schools. What is missing from the educational service equation for homeland schools?

- Access to equivalent distance education technology for homeland schools.
- Access to quality English literacy and numeracy internet sites developed specifically for Indigenous students.
- Make the technology and software available in the first instance to schools that have operated successfully for five years or more, with proven enrolments of twenty students or more, and at sites where the technology is safe and secure.

Charles Darwin University has developed an English literacy program for remote and very remote communities. This software does not require a teacher to be present and does teach basic English literacy. It is called REOW (Read English on the WEB) and is currently being trialled at numerous sites around Australia by Batchelor Institute of Indigenous Tertiary Education. If successful this internet link could be extended creatively to adult education including for health workers, administration staff, small business and land management amongst many other possibilities.”¹¹³

¹¹³ Warren Snowdon, Minister for Indigenous health, Rural and Regional Health and and Regional Services Delivery, Australian Government Department of Health and Ageing, 8 August 2009, “Health, Homelands and Creativity” speech at the 11th Garma Festival, <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/sp-yr09-ws-wssp080809.htm>.

6 Money wasted

After two years of the “national emergency” more than \$1 billion has been spent. There have been those who raised the issue of funding as being insufficient or misdirected as too much of the funding is being spent on administration instead of going towards Aboriginal organisations to deliver services directly in the NT. \$88 million of taxpayers’ money alone went to making the initial administrative changes in Centrelink to facilitate the welfare quarantining, but not one dollar was spent in the intervention on any of the types of programs that have been proven to engage Aboriginal children in schools as Professor Behrendt pointed out during the Juanita Nielson Lecture on 1 June 2009. “All this in communities where only 47c is spent to the \$1 spent on non-Aboriginal student; in communities where there are not enough teachers and classrooms. A punitive measure placed on families to ensure their children come to school is hypocritical from any government that neglects the same children by failing to provide adequate funding for a teacher and a classroom. Even if it did work to physically bring more children into a classroom, what is the quality of the education they will receive when there has been underinvestment in teachers and educational infrastructure.”¹¹⁴ Others have been criticizing the allocation of funding as disproportionate as the size of the NT population is much smaller as compared to the percentage of national Aboriginal spending. Therefore hundreds of millions dollars have been wasted by the government to supposedly protect Aboriginal children. As John Pilger reports “Hundreds of millions of dollars that Australian governments claim they spend are never spent, or end up in projects for white people. It is estimated that the legal action mounted by white interests, including federal and state governments, contesting Aboriginal native title claims alone covers several billion dollars. Smear is commonly deployed as a distraction.”¹¹⁵

“Mason and other business managers are paid up to \$200,000 a year and have wide-ranging, almost dictatorial powers, not unlike the Native Affairs superintendents of yesteryear. They treat Aboriginal people with the same sort of contempt. While Aboriginal residents battle to deal with seriously overcrowded and substandard homes, no government

¹¹⁴ Speech by Prof. Larissa Behrendt, 1 June 2009, Juanita Nielson Lecture, 2009 - Indigenous people and human rights: a litmus test for social policy, <http://lee.greens.org.au/index.php/index.php/index.php/index.php/content/view/2962/113/>.

¹¹⁵ John Pilger, 7 March 2008, Australia's Hidden Empire, <http://www.globalresearch.ca/index.php?context=va&aid=8265>.

expense is spared for the business managers, who are provided with brand new housing as part of their assignment. Mason's residence is surrounded by a six-foot wire fence, topped with barbed-wire."¹¹⁶

¹¹⁶ WWS reporting team, World Prout Assembly, 26 June 2008, Northern Territory intervention: "Unintended consequences" or deliberate destruction? - Part 2, http://www.worldproutassembly.org/archives/2008/07/northern_territ.html.

7 Income management and Basics Cards

7.1 Impact on Aboriginal people's lives

The NTER legislation has a catastrophic impact on the lives and the rights of Aboriginal people. The Australian Indigenous Doctors' Association (AIDA) gives some scathing evidence in its submission to the Northern Territory Emergency Response Review Board. It "reported on a health impact assessment currently under way which indicates that the NTER has created a feeling of 'collective existential despair' – feelings characterised by a 'widespread sense of helplessness, hopelessness and worthlessness, and experienced throughout entire community(s)'."¹¹⁷ AIDA is also concerned about the evidence showing some community members having experienced extreme hunger or 'starvation'.¹¹⁸ Most of the Aboriginal townships were seized for five years, the permit system (which gains entry into Aboriginal communities) was removed opening up homelands and reducing Aboriginal people's power to protect their sacred sites. "I could find no evidence of the proposed measures being connected in any way to child sex abuse" said Prof John Altman from the ANU in a report prepared for Oxfam. "There may even be some risk of exacerbating the situation if the permit system is relaxed," Prof Altman warned.¹¹⁹

Aboriginal land rights were wound back under the NT Aboriginal Land Rights Act. Community Development Employment Projects (CDEP) was scrapped pushing people onto the dole so that half of their income can be managed. CDEP had provided the main employment for Aboriginal people and contributed to community infrastructure, especially in remote areas. CDEP was created by the Fraser Government in 1977 to establish work programs on remote Aboriginal communities and to foster economic and social benefits. Around 8,000 Aboriginal people in the Top End were CDEP workers. As CDEP receipts are wages they could not be quarantined and consequently the whole CDEP scheme had to go. In ABC's 7.30 Report of 1 August 2007, former Indigenous Affairs Minister Mal Brough stated: "The biggest sum of money that comes into these communities is in fact CDEP money, and because of the way it actually is handled, the quarantining of the 50 per cent of

¹¹⁷ Report of the NTER Review Board, October 2008, Chapter 2 - Assessment of key elements, http://www.nterreview.gov.au/docs/report_nter_review/ch2.htm.

¹¹⁸ The Australian Indigenous Doctors' Association (AIDA), Submission to the Northern Territory Emergency Response Review Board, http://www.aida.org.au/pdf/submissions/Submission_8.pdf.

¹¹⁹ ANTaR Victoria, The Intervention under Rudd: Are we any closer to protecting Aboriginal Children in NT?, <http://www.antarvictoria.org.au/ntintervention.html>.

welfare payments can't be achieved if we leave it the way it is."¹²⁰ Government business managers were imposed on communities, truancy was not tolerated and cuts to Bilingual education have been announced.

7.2 Income Management

On 21 December 2007 ABC reported about a plan to quarantine the welfare payments of families in some Queensland Indigenous communities. "Federal Indigenous Affairs Minister Jenny Macklin committed \$48 million to a four-year trial of the program at a meeting with Queensland Premier Anna Bligh and Cape York Indigenous leader Noel Pearson this morning."¹²¹ Four Queensland indigenous communities had voluntarily agreed to be part of the welfare experiment spearheaded by Noel Pearson's Cape York Institute with the support of the State and Federal Governments. Almost one year later it seems that the project is not going as well as hoped for. As SBS' Living Black reports on 27 August 2008 "Now two months since welfare reform became legislation, Mayor Greg McLean says council is ready to pull the plug on its involvement in the project, citing lack of transparency and consultation. He says promises haven't been kept."¹²²

"ANTaR does not believe the quarantining of welfare payments should be extended to the Northern Territory until a proper evaluation of the Cape York project has been carried out and unless it is supported by Northern Territory Aboriginal communities. Indigenous people have not been adequately consulted about the proposed changes."¹²³

Under the NT Intervention, of concern are the income management measures that control how a person spends their money and under which 50% of welfare payments to Aboriginal people is set aside and managed by Centrelink. This system was designed to prevent spending money on alcohol, pornography and cigarettes and is supposed to prevent people being humbugged for money for alcohol and drugs. Families were now managed by the federal government. This significantly interferes with a person's right to privacy and with the way people manage their life. It only creates dependency on the government and impacts Aboriginal people negatively. Sunrise Health documented in late 2007 a number of instances

¹²⁰ Reporter: Murray McLaughlin, Australian Broadcasting Corporation, The 7.30 Report, 1 August 2007, CDEP scrapping causes unease in Top End, <http://www.abc.net.au/7.30/content/2007/s1994420.htm>.

¹²¹ ABC News, 21 December 2007, Govt backs Indigenous welfare quarantine, <http://abc.gov.au/news/stories/2007/12/21/2125257.htm>.

¹²² SBS Living Black, 27 August 2008, Queensland Welfare Reform, http://news.sbs.com.au/livingblack/welfare_reform_556607.

¹²³ ANTaR, Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008.

in which the roll out affected people's capacity to purchase food at all. The documentary, *INTERVENTION, Katherine, NT* showed an Aboriginal man being called into the Centrelink office to have explained the new IM system to him. He was asked to sign a paper and told the income management would go ahead whether he agreed or not. Irene Fisher, CEO Sunrise Health, remarked that widespread sexual abuse was not rampant in her area. She mentioned that people did want more policing and improved housing. The Australian Human Rights Commission is also concerned about "the retrospective application of parts of social security legislation and the exclusion of some aspects of social security administrative decisions from review."¹²⁴ Would any other race, e.g. White Australians stand for having their income managed? I am sure there would be a huge public outcry if this policy was to be applied to any other Australians. The discriminatory aspect of the blanket approach to IM is that it is applied to all Aboriginal Australians living in the Prescribed Areas, regardless of whether they have worked all their life, live a responsible life, drink alcohol at all, are pensioners, their children attend school, or they do not even have children. They are all being subjected to the demeaning need of having to go to the Centrelink office and spend hours outside the office waiting for somebody from Centrelink to help them "manage" their income. This policy is applied to those Aboriginal people based on their race.

The difficulties in procuring food under the IM are mentioned in a Media Release on the Intervention Rollback Action Group's (IRAG) website: "This Intervention is no good. Its not working for the kids, the kids are missing out. Its harder for families with Income Management. Its harder to get food since the Intervention. When the food runs out, we have to turn to our family members", said Mark Lane from Kalumpulpa community 110kms outside Tennant Creek."¹²⁵

One of the NTER Review Board's key recommendation was that "compulsory Income Management become a voluntary measure to be used at the discretion of individuals and communities. It should only be compulsorily applied in instances of dysfunction. It should apply across the entire Northern Territory, rather than discriminating against Indigenous Communities..."¹²⁶

As John Pilger wrote: "Welfare payments are "quarantined" and people controlled and patronised in the colonial way. To justify this, the mostly Murdoch-owned capital-city press

¹²⁴ Australian Human Rights Commission, February 2009, Let's Talk About Rights, National Human Rights Consultation Toolkit, www.hreoc.gov.au/letstalkaboutrights/downloads/HRA_ATSI.doc.

¹²⁵ Media Release, Prescribed Area People's Alliance condemns Macklin, says Intervention widening the gap, 24 OCTOBER 2008, <http://rollbacktheintervention.wordpress.com/media/>.

¹²⁶ ANTaR Victoria, The Intervention under Rudd: Are we any closer to protecting Aboriginal Children in NT?, <http://www.antarvictoria.org.au/ntintervention.html>.

has published a relentlessly one-dimensional picture of Aboriginal degradation. No one denies that alcoholism and child abuse exist, as they do in white Australia, but no quarantine operates there.”¹²⁷

Many Aboriginal people have expressed that they feel shamed by IM and that it takes them back to the mission days and reminds them of the dog tag days. Irene Fisher, CEO Sunrise Health in Katherine points out IM has neither reduced alcohol or drug consumption, nor stopped humbug, or the conversion of Basic Card purchases into cash for grog, nor has it increased the supply of fresh food which is vital to fighting anaemia. There is scant evidence linking income management to improved school attendance and educational outcomes. Ms Fisher also points out that “Indigenous Affairs Minister Jenny Macklin said women in some Aboriginal communities had pleaded with her to maintain quarantining as a compulsory measure. This followed the Government’s decision that the Racial Discrimination Act would not be reinstated until the welfare system complies with its provisions.”¹²⁸ In its submission to the Senate Select Committee, Sunrise Health Service Aboriginal Corporation refers to Jon Altman’s – ANU – statement that “Anecdotal evidence is one thing and we have to recall that Mal Brough also based this intervention on a comment he had from women in remote communities...that does not constitute evidence and it’s not transparent.” Then it refers to Minister Macklin’s press release of 11 July 2008 “At the moment we don’t have all the evidence in yet but there is evidence that there has been improvement particularly in the consumption of fresh food.” It continues with that evidence having been discussed in the Senate by Senator Siewert and Tom Calma “Senator Siewert: Are you aware that in conducting that research [on the fresh food], they phoned 10 stores and asked if their sales had increased – six said “yes” but they did not provide any evidence of it; one said “no” and I think three were “unknown”? In your opinion, is that a satisfactory basis for an evaluation of whether the intervention has been successful and people are getting fresh fruit and vegetables? Mr. Calma: Firstly I am not aware of the survey or the review, and I have not seen the outcomes. If it was just a phone call to the store manager, I would suggest a more rigorous process might be more beneficial” In addition it states “Income Management does nothing to assist people budget. It shames those who live under it; it infantilises us and takes

¹²⁷ John Pilger, 7 March 2008, Australia's Hidden Empire, <http://www.globalresearch.ca/index.php?context=va&aid=8265>.

¹²⁸ Irene Fisher, Chief Executive Officer, Sunrise Health Service Aboriginal Corporation, 22 March 2009, Closing the Gap: is the evidence really there?, Racism and the Intervention Forum, UTS Sydney.

us back to the days of the mission; it sets Aboriginal people apart from their fellow Australians.¹²⁹

The Australian reported on 9 August 2007 “Labor has also called for the bills to be amended to include protection from racial discrimination in the quarantining of welfare payments for food and rent as applies only to indigenous communities in the Territory.”¹³⁰ How does this correspond with their plan to continue Income Management the way they have?

7.3 Basics Cards

Store cards and basics cards were distributed to the Aboriginal people (through which access to quarantined money is controlled). There were huge problems with the cards and at times they did not work, they could be used only in certain stores - in stores segregated queues were started, being reminiscent of apartheid. People living on outstations have to travel sometimes hundreds of kilometres into a town to access their income management, most of their money is spent on fuel or hiring others to take them, alternatively they have to spend about \$200 one-way for a taxi. Only the person owning the card can go to Centrelink to access money, if you fall ill then you cannot go to access your money.

7.4 Alcohol and pornography bans

Punitive measures and the denial of basic rights to Aboriginal people were applied to justify alcohol bans. Before the intervention “dry” communities already existed, but the difference is that this was the choice of the community and not imposed on by the government. In fact, “Aboriginal communities around Tennant Creek and Katherine have been lobbying Governments and town councils for decades to restrict the sale of alcohol on Thursdays, when Aboriginal community people come to town for supplies. So far their pleas have been rejected.”¹³¹ “Nearly all Territory Aboriginal communities have been ‘dry’ for some years. However, this has not prevented the availability of alcohol from towns surrounding the communities or the illicit trade in ‘grog running.’ Unless these sources are also tackled, a

¹²⁹ Sunrise Health Service Aboriginal Corporation, Submission to the Senate Select Committee, Regional and Remote Indigenous Communities, http://www.aph.gov.au/senate/committee/indig_ctte/submissions/sub85.pdf.

¹³⁰ Patricia Karvelas, 9 August 2007, The Australian, Some communities 'won't survive', <http://www.theaustralian.news.com.au/story/0,25197,22212015-5013172,00.html>.

¹³¹ Jennifer Martiniello, 28 June 2007, Howard's New Tampa - Aboriginal Children Overboard, <http://eniar.org/news/JenniferMartiniello.html>.

ban is unlikely to be effective.”¹³² “Current evidence suggests that enforced alcohol restrictions, in the absence of broader strategies to deal with addictions, simply reduce supply and tend to shift problem drinking into unregulated areas, such as Alice Springs town camps. As a result, a single measure such as enforced alcohol restriction may, in fact, result in increased harm from violence and abuse in these communities.”¹³³ However, now there is a blanket ban imposed on all Aboriginal communities within the Prescribed Areas. “Australian Aborigines are less likely to drink alcohol than non-Aboriginal Australians but among those who do drink alcohol, consumption at hazardous levels is common...”¹³⁴ But the problem of alcohol also exists in mainstream Australia with problems of teenage binge drinking and alcohol-fuelled violence in the clubs and pubs of Australia’s cities.

ANTaR Victoria points out: “the Howard Government failed to implement these restrictions [pornography and alcohol within the ‘prescribed areas’] in a way that understood their impact on the people and communities affected. Those suffering from the devastating effects of alcohol withdrawal found it difficult to access treatment programs for symptoms which range from anxiety and shakiness to hallucinations and convulsions.”¹³⁵

Rachel Siewert: “They [Aboriginal communities] have raised many other concerns about the intervention. They have had alcohol bans. In some communities they have been more successful than in others. But at the same time they had all that, they did not have the funding put in place to have adequate rehabilitation. Ask anybody as you go throughout the Northern Territory, ‘Are there enough resources for safe houses, for rehabilitation and for counselling?’ and they will tell you no. So they copped all that expecting that at least they would get adequate housing delivered.”¹³⁶

Instead of funding the creation of rehabilitation centres for alcohol and drug abuse, why has the government defunded successful Aboriginal community initiatives like the women’s night patrol in Yuendumu or rehabilitation programs, if they really wanted to tackle the issue of family violence and sexual abuse?

¹³² ANTaR, Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008.

¹³³ Ian Anderson, Unexplained differences, Australian Policy Online, <http://apo.org.au/commentary/unexplained-differences>.

¹³⁴ Published by Oxford University Press on behalf of the Medical Council on Alcohol, 8 December 2006, Alcohol intake and incidence of coronary disease in Australian Aborigines, Alcohol & Alcoholism Vol. 42, No. 2, pp. 119-124, 2007, <http://alcalc.oxfordjournals.org/cgi/reprint/42/2/119.pdf>.

¹³⁵ ANTaR Victoria, The Intervention under Rudd: Are we any closer to protecting Aboriginal Children in NT?, <http://www.antarvictoria.org.au/ntintervention.html>.

¹³⁶ Spokesperson Rachel Siewert, The Australian Greens, 13 August 2009, Indigenous Housing, <http://rachel-siewert.greensmps.org.au/content/speech/indigenous-housing>.

Pornography was banned and publicly funded computers required the installation of pornography filters. Audits of all publicly-funded computers to identify illegal material were introduced.¹³⁷ Huge signs announcing Alcohol and Pornography free zones were put up in front of communities to the shame and embarrassment of its Aboriginal inhabitants.

¹³⁷ United Nations Development Fund for Women (UNIFEM) - Australian National Committee, <http://www.unifem.org.au/node/171>.

8 Suspension of the Racial Discrimination Act (RDA)

The measures of the NTER would not have been possible without the suspension of the Racial Discrimination Act (RDA) 1975.

8.1 1967 Referendum

In 1967 the national Referendum changed the Australian Constitution in a way that Aboriginal people in Australia for the first time received rights as basic citizens that all other Australians have already enjoyed. The referendum gave the federal government the power to make laws in relation to Aboriginal people and responsibility is increasingly shared in health, housing, education and heritage protection between the federal government and the states. It “gave the Australian Constitution the so-called “race power” which was a power given to the Commonwealth that was always assumed to be for the “benefit” of Aboriginal people.”¹³⁸ On 13 October 1966 the Australian Government signed the International Convention on the Elimination of All Forms of Racial Discrimination.¹³⁹ It committed to outlaw racism and to guarantee every person a right to appeal in the courts of Australia against acts of racial discrimination, but with the introduction of the NTER legislation in June 2007 it reneged on that commitment.

8.2 RDA 1975

In 1975 the Racial Discrimination Act (RDA) implementing the CERD was passed. This meant that for instance Aboriginal people can make a complaint to the Australian Human Rights Commission (AHRC) under the RDA 1975. “The Race Discrimination Act of 1975 – based as it was on international law – led, among other things, to the Mabo judgement and the recognition of Native Title. The Commonwealth used the race power to remove the operation of the Race Discrimination Act under the Intervention, and it is worth noting that this was the third time this has taken place. In each case – Hindmarsh Island, Wik, and the Intervention – the revocation of the Race Discrimination Act targeted Aboriginal people....

¹³⁸ Irene Fisher, Chief Executive Officer, Sunrise Health Service Aboriginal Corporation, 22 March 2009, Closing the Gap: is the evidence really there?, Racism and the Intervention Forum, UTS Sydney.

¹³⁹ International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en#EndDec.

Amnesty's Dr Seth-Purdie told ABC radio last Monday that the Northern Territory Intervention was a "clear-cut" breach of the International Covenant on Civil and Political Rights, while the income management regimes was "humiliating" for many Aboriginal Australians. "There's never an excuse for breaching the prohibition against racial discrimination, even in a national emergency," Dr Seth-Purdie said."¹⁴⁰ With the suspension of the RDA, Aboriginal people are denied access to the complaints procedures under the RDA, the Human Rights and Equal Opportunity Act 1984 (Cth), and the Federal Court of Australia Rules. Not only involves this intolerable racial discrimination allowing officials to act in a racially discriminatory way, but it also contravenes Australia's obligation in article 2(3)(a) of the International Covenant on Civil and Political Rights (ICCPR) which it ratified on 13 Aug 1980.¹⁴¹ As Les Malezer points out in a statement on 18 March 2009 "The Aboriginal people are, in terms of civil and political rights, the most vulnerable population in Australia. Aboriginal people living in isolation in remote areas, including central and northern Australia have no knowledge of the oppressive laws applied over their lives. The racist laws affecting Aboriginal people in the Northern Territory are a complete mystery to the people most affected, and an anathema to democratic principles."¹⁴² On the suspension of the RDA, Professor Behrendt said: "It took away the rights of the most marginalised within our community to complain about unfair treatment or unfair impact to just about anyone. ... The Racial Discrimination Act does not just instil a principle of non-discrimination into our society. It provides a mechanism through which people who feel they are being discriminated against on the basis of their race can make a complaint to the Australian Human Rights Commission. It gives an avenue of redress when a wrong has occurred. And the process allows for policies and processes to be improved to make them compliant with the standards of non-discrimination that the Act expects. The suspension of the Racial Discrimination Act as part of the Northern Territory intervention takes away right of a person to complain to the Australian Human Rights Commission so when someone suffers a wrong, there is no mechanism by which those policies can be adjusted."¹⁴³

¹⁴⁰ Irene Fisher, Chief Executive Officer, Sunrise Health Service Aboriginal Corporation, 22 March 2009, Closing the Gap: is the evidence really there?, Racism and the Intervention Forum, UTS Sydney.

¹⁴¹ International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, <http://www2.ohchr.org/english/law/ccpr.htm>.

¹⁴² STATEMENT BY LES MALEZER, CHAIRPERSON OF THE FOUNDATION FOR ABORIGINAL AND ISLANDER RESEARCH ACTION, 18 March 2009, Australia promises to end racial discrimination, http://antarsa.auspics.org.au/index.php?option=com_content&task=view&id=180&Itemid=2.

¹⁴³ Speech by Prof. Larissa Behrendt, 1 June 2009, Juanita Nielson Lecture, 2009 - Indigenous people and human rights: a litmus test for social policy, <http://lee.greens.org.au/index.php/index.php/index.php/index.php/content/view/2962/113/>.

Australian of the Year 2009, Mick Dodson, is quoted in the Australian on 9 August 2007 as being cynical about the Government's motivations and saying "We are told we need to take peoples' land from them and remove their right to control access to that land in the name of stopping abuse -- yet we know in our heart of hearts that this has nothing to do with the issue of child abuse. Deep down we know it is something else," he wrote on the Crikey website. "I'm at a loss as to what to do. "I've been fighting racial discrimination all my life -- I've run out of ideas. But I know that no Australian should accept that racial discrimination is necessary in any context. It is too high a principle to set aside -- as sacred as the rule of law itself".¹⁴⁴

8.3 Limitation of human rights protection

Australia has gross limitations of human rights protections and there are by no means sufficient human rights protections entrenched in the Australian Constitution. Neither does Australia have a Human Rights Act to protect the rights of its citizens. At least the principle of non-discrimination on the grounds of race should be entrenched in the Constitution. In its fact sheet "Human rights and Aboriginal Torres Strait Islander peoples", the Australian Human Rights Commission states "One of the most glaring limitations of human rights protections in Australia is that the Australian system of government does not prevent the federal government from making laws that discriminate against Indigenous peoples on the basis of race. Recent examples include the federal government's 1998 amendments to the Native Title Act and the enactment of the 2007 Northern Territory Emergency Response legislation".¹⁴⁵

8.4 Suspension of the RDA

It is only through constitutional protection that the government can be stopped from simply suspending the RDA each time it wants to discriminate against Aboriginal people. Larissa Behrendt, UTS professor and lawyer, advocates for the inclusion of three rights into the body of the Constitution – the right to due process before the law, the right to equality before the law and the right to be free from racial discrimination – saying that they would offer advantages to Aboriginal people every time they wished to challenge a law that treats them in a discriminatory manner. In the case of the Northern Territory (NT), it being a territory and

¹⁴⁴ Patricia Karvelas, 9 August 2007, The Australian, Some communities 'won't survive', <http://www.theaustralian.news.com.au/story/0,25197,22212015-5013172,00.html>.

¹⁴⁵ Human Rights and Aboriginal Torres Strait Islander peoples, Information Sheet by the Australian Human Rights Commission, http://www.hreoc.gov.au/letstalkaboutrights/downloads/HRA_ATSI.pdf .

not a state, the government was able to suspend the RDA 1975 under the 2007 Northern Territory Emergency Response (NTER) legislation.

The claim by both the Government, and by the Leader of the Opposition in the House of Representatives on 6 August 2007, that the proposed legislation is consistent with the RDA is another problem with the discriminatory nature of the NT Intervention. In its submission to the inquiry by the Senate Standing Committee on Legal and Constitutional Affairs into the Northern Territory National Emergency Response Bills, the Law Council of Australia correctly notes, that “if such claim were correct, the Government and its advisers would not have considered it necessary to suspend the operation of the RDA.”¹⁴⁶

The federal NTER legislation introduced measures to address sexual abuse of children and family violence in 73 prescribed Indigenous communities in the NT in 2007. However, protecting children can be achieved without discrimination and without infringing other human rights - the government did not have to suspend the RDA in order to protect children from sexual abuse and family violence. This means Aboriginal people have no right to appeal. It should be the right of an Aboriginal person as for any other Australian citizen to appeal.

In his speech “Indigenous Rights and the debate over a Charter of Rights in Australia” at the Human Rights Law Resource Centre’s Annual Human Rights Dinner in Melbourne on 4 April 2008, Tom Calma, the Aboriginal and Torres Strait Islander Social Justice Commissioner said among other things: “The most revealing indicator that the NT intervention was not consistent with human rights principles was the provision at the centre of the legislative machinery used to support the intervention, namely suspending the operation of Racial Discrimination Act.”¹⁴⁷

¹⁴⁶ Law Council of Australia, Submission to the Senate Standing Committee on Legal and Constitutional Affairs, 9 August 2007, Northern Territory National Emergency Response Legislation, http://www.aph.gov.au/Senate/committee/legcon_cte/completed_inquiries/2004-07/nt_emergency/submissions/sub52.pdf.

¹⁴⁷ Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma http://www.hreoc.gov.au/about/media/speeches/social_justice/2008/20080404_charter.html Australian Human Rights Commission, (2008).

8.5 Reinstatement of the RDA

8.5.1 Government's timetable for reinstatement

Yet the Rudd government continues the suspension of the Racial Discrimination Act that was introduced by the Howard government in June 2007. "Jenny Macklin has promised that legislation will be ready for the Spring session of parliament, which begins on September 7."¹⁴⁸ Also a blanket welfare quarantine will be maintained for at least this year.

8.5.2 Special measures

It will be interesting to see if and how the government will be reinstating the RDA while at the same time continuing with Income Management (IM). For IM to be able to continue after having reinstated the RDA quite a bit of fancy legal semantic footwork will be required. IM will have to be dressed up as a "Special Measure". I wonder whether "income managed" people find anything "Special" about the IM. NNTC finds the claimed justification of the provisions of the NTER Act, and of acts done under or for the purposes of those provisions, as "special measures" for the purposes of the RDA highly problematic. "Article 1(4) of CERD provides that special measures are: *"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 equal enjoyment or exercise of human rights** and fundamental freedom, provided that such measures do not 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 "* (emphasis added)...And as Brennan J observed in *Gerhardy v Brown* (1985) 159 CLR 70: "A special measure must have the sole purpose of securing advancement, but what is "advancement"? ... The purpose of securing advancement for a racial group is not established by showing that the branch of government or the person who takes the measure does so for the purpose of conferring what it or he regards as a benefit for the group if the group does not seek or wish to have the benefit. The wishes of the beneficiaries for the measure are of great importance (perhaps essential) in determining whether a measure is taken for the purpose of

¹⁴⁸ Chris Graham, A SPECIAL NIT INVESTIGATION, 9 July 2009, ISSUE 181, THE BIG READ: TICKING BOXES - Leaked documents reveal Rudd government's deceit on NT intervention consultations and Alice Springs town camp land grab, <http://www.nit.com.au/news/story.aspx?id=18204>.

securing their advancement. The dignity of the beneficiaries is impaired and they are not advanced by having an unwanted material benefit foisted on them."¹⁴⁹

"A 'special measure' is a law or program that discriminates in favour of Aboriginal people - for example Abstudy is racially discriminatory because it's only available to black Australians, but it's permitted under the RDA as a 'special measure' because it clearly aims to assist Aboriginal people, not disadvantage them."¹⁵⁰

8.5.3 Consultation process

In paving the way to reinstate the RDA, the authorities have embarked on a so-called "consultation" process. The Media Release of 21 May 2009 by the Minister for Families, Housing, Community Services and Indigenous Affairs announces that "following extensive consultations with Indigenous communities in the NT, the Australian Government will introduce legislation into Parliament to lift the suspension of the RDA and restore its application to the NTER. Consultations will also inform the Government's design of a compulsory income management policy which does not require the suspension of the RDA. People living in each of the NTER-affected communities will be encouraged to contribute their views as part of on-the-ground consultations. Trained interpreters will be available and the process will be independently monitored to make sure the opinions of all groups within each community are accurately recorded. Regional leaders' meetings will be held as well as discussions with a wide range of non-government organisations working in health, education and service delivery. Consultations will start next month and continue until September. We expect to introduce the amendment Bills in October."¹⁵¹ Yet Imelda Palmer, a teacher and community leader in Santa Teresa, where consultations were held recently, says that no notice was given for the meeting.¹⁵² During consultations communities are being subjected to patronizing and inaccurate power-point presentations that are most notable for what they

¹⁴⁹ The National Native Title Council submission to the Northern Territory Emergency Response Review, Racial Discrimination Act 1975 (CTH), http://www.nterreview.gov.au/subs/nter_review_report/141_national_native_title_council/141_National_Native_Title_Council_4.htm.

¹⁵⁰ Chris Graham, National Indigenous Times, A SPECIAL NIT INVESTIGATION, ISSUE 181, 9 July 2009, THE BIG READ: TICKING BOXES - Leaked documents reveal Rudd government's deceit on NT intervention consultations and Alice Springs town camp land grab, <http://www.nit.com.au/news/story.aspx?id=18204>.

¹⁵¹ The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 3 April 2009, 21 May 2009, Media Releases, Towards a sustainable development phase: Discussion paper on Future Directions for the NTER, http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/future_directions_nter_21may09.htm.

¹⁵² Working Group for Aboriginal Rights (Australia), 18 June 2009, WGAR Media Release, Website launch for National Day of Action against NT Intervention, <http://wgar.info/2009/06/18/website-launch-for-national-day-of-action-against-nt-intervention/>.

do not say. The National Indigenous Times (NIT) prepared a guide to help cut through the government spin.¹⁵³

"Last week, the government came under fire after leaked party advice revealed Macklin's mishandling of \$672 million in Indigenous housing funding. That came two weeks after leaked documents revealed she had accepted advice from her department warning against consulting with Aboriginal people over a key part of the Northern Territory intervention - the compulsory acquisition of land in and around towns..."¹⁵⁴

On the issue of consultations, members of the Prescribed Area Peoples' Alliance have stated among other things from their 18-19 June 2009 meeting: "We feel shame. This policy is continuing to put us down. There is no consultation. People need to have ownership over decisions that affect their community. Jenny Macklin says she is talking to people in the communities, but everytime we invite her to come meet with us she refuses. Proper consultation is government coming to our homelands or communities, sitting down with us without a time limit and listen and talk to us face to face. Listen to our ideas. Talk to us properly. What we want. Come out to our homeland."¹⁵⁵

In his national apology to the Stolen Generations on 13 February 2008, Kevin Rudd made clear commitments such as "A future where this Parliament resolves that the injustices of the past must never, never happen again" and "A future where we harness the determination of all Australians, Indigenous and non-Indigenous, to close the gap that lies between us in life expectancy, educational achievement and economic opportunity"¹⁵⁶ as well as equality and equal opportunities for ALL Australians regardless of origin. So why, over two years into his government, are the majority of the 580 remote communities in the NT being told they will have to leave their lands to access vital resources? This is part of the homelands policy that has been announced in May 2009 where only 20 "hubs" are to receive further funding. This policy signifies going backwards and is undermining Aboriginal self-determination. Why are successful Aboriginal organisations such as the Tangentyere Council in Alice Springs facing the seizure of their lands and assets? Why have tens of thousands of Aboriginal people had to face unemployment with the recent closure of CDEP?

¹⁵³ National Indigenous Times, NIT consultation slides - NT intervention [2.3 MB - Powerpoint], <http://www.nit.com.au/downloads/>.

¹⁵⁴ Chris Graham, 27 July 2009, Macklin botches Alice Springs town camp compulsory acquisition, <http://www.crikey.com.au/2009/07/27/macklin-botches-alice-springs-town-camp-compulsory-acquisition/>.

¹⁵⁵ ONE VOICE' GATHERING IN DARWIN, PRESCRIBED AREA PEOPLES ALLIANCE STATEMENT 18-19 JUNE 2009, Stop the Intervention: Self-Determination not Assimilation, <http://rollbacktheintervention.wordpress.com>.

¹⁵⁶ Kevin Rudd, Prime Minister of Australia, Apology, <http://www.nswsdc.com.au/page1000.html>.

An Intervention that relies on the suspension of the very Act designed to protect people from racism, makes a mockery of any claim that it is for the benefit of Aboriginal people.¹⁵⁷

8.6 Breaches of international obligations

The Apology by the Rudd government is welcome, but future government apologies will be needed, because under the NT Intervention, Australia is in breach of a staggering 25 articles – more than half - of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Of the Universal Declaration of Human Rights, which Australia endorsed decades ago, the intervention breaches almost half of the 30 articles. In its article “The intervention: a battalion of human rights breaches” of 2 October 2008, the NIT presents an excellent and detailed analysis of an appalling high number of breaches of the Declaration’s articles on several fronts, e.g. RDA, IM, absence of consultations.¹⁵⁸

8.7 Importance of “Free, prior and informed consent”

While the Rudd government has finally expressed its support for the United Nations Declaration on the Rights of Indigenous Peoples on 3 April 2009 – “Today, Australia joins the international community to affirm the aspirations of all Indigenous peoples”¹⁵⁹ – the RDA is to be only reinstated in October 2009. This now leaves only three of the four States who originally voted against the legally non-binding United Nations Declaration on the Rights of Indigenous Peoples that was adopted by the United Nations General Assembly in September 2007. Tom Calma said “while the support for the declaration filled him with hope, Aboriginal and Torres Strait Island peoples remained marginalized and faced entrenched poverty and ongoing discrimination”.¹⁶⁰ The issue of “**free, prior and informed consent**” is included in six of UNDRIP’s 46 articles. Yet in its support statement for UNDRIP, the Minister said that “While there is continuing international debate about the meaning of ‘free, prior and informed consent’, we will consider any future interpretations in accordance with Article 46.”¹⁶¹ The document “UN experts welcome Australia’s endorsement of the UN

¹⁵⁷ Human Rights Day Statement, 13 December 2008, <http://www.stoptheintervention.org/>.

¹⁵⁸ National Indigenous Times, 2 Oct 2008, The intervention: a battalion of human rights breaches, Issue 163, <http://www.nit.com.au/story.aspx?id=16231>.

¹⁵⁹ The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 3 April 2009, Statement on the United Nations Declaration on the Rights of Indigenous Peoples, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/un_declaration_03apr09.htm.

¹⁶⁰ Lawyers Weekly, 6 April 2009, UN rights mean NT intervention should end, http://www.lawyersweekly.com.au/blogs/top_stories/archive/2009/04/06/un-rights-mean-government-should-end-nt-intervention.aspx

¹⁶¹ The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 3 April 2009, Statement on the United Nations Declaration on the Rights of Indigenous Peoples, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/un_declaration_03apr09.htm.

Declaration on the Rights of Indigenous Peoples” states that “the rights recognized in the Declaration constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world” and that “The main challenge for Member States is to ensure that the Declaration is implemented at national and regional levels, in consultation and cooperation with indigenous peoples, including through the adoption of appropriate policies and legislation.”¹⁶²

“There is a world of difference between ‘consult’ and ‘consent’. In Article 19, the UN Declaration on the Rights of Indigenous Peoples advocates Free Prior and Informed Consent (FPIC), despite attempts by several Nation States to substitute ‘consult’ for ‘consent’ during the drafting process in the UN. The progress of the Intervention and the resistance to it is turning on these two words. Minister Jenny Macklin appears content with her version of ‘consult’ whereas the NT Aboriginal voice for ‘consent’ is growing louder. Even the version of the UN Declaration on the Rights of Indigenous Peoples that was handed out in Parliament House during Minister Jenny Macklin’s formal support of the Declaration omits the words ‘free prior and informed’ before the word consent.”¹⁶³

¹⁶² UN experts welcome Australia’s endorsement of the UN Declaration on the Rights of Indigenous Peoples, http://www.un.org/esa/socdev/unpfii/documents/Australia_endorsement_UNDRIP.pdf.

¹⁶³ Working Group for Aboriginal Rights (Australia), 18 June 2009, WGAR Media Release, Website launch for National Day of Action against NT Intervention, <http://wgar.info/2009/06/18/website-launch-for-national-day-of-action-against-nt-intervention/>.

9 Uranium and mining

“Russia, China and India are all keen to buy Australian uranium to develop civilian nuclear energy. Australia has 40 percent of the world's recoverable uranium.”¹⁶⁴ Some of the world's biggest deposits of uranium lie in the Northern Territory. “Canberra wants to mine it and sell it. Foreign governments, especially the US, want the Northern Territory as a toxic dump. The railway from Adelaide to Darwin, which runs adjacent to Olympic Dam, the world's largest uranium mine, was built with the help of Kellogg, Brown & Root, a subsidiary of the American giant Halliburton, the alma mater of Dick Cheney, Howard's "mate". “The land grab of Aboriginal tribal land has nothing to do with child sexual abuse,” says the Australian scientist Helen Caldicott, “but all to do with open slather uranium mining and converting the Northern Territory to a global nuclear dump”.¹⁶⁵ Just over four years ago Howard proposed four sites in the NT for a federal radioactive waste dump. When in opposition the Rudd government promised to repeal the Commonwealth Radioactive Waste Management Act (CRWMA) if elected with ALP politicians having referred to the legislation as ‘draconian’, ‘sordid’, ‘arrogant’ and ‘profoundly shameful’. But over one year later it has not told communities if or when it will honour this commitment.” The CRWMA overrides NT laws prohibiting transport and storage of nuclear waste. It prevents the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 from having effect during investigation of potential dump sites, and it excludes the Native Title Act 1993 from operating at all. Amendments passed the following year to the CRWMA override Aboriginal Land Rights Act procedures requiring informed consent from all affected people and groups. In fact, these changes explicitly state that site nominations from Land Councils are valid even in the absence of consultation with traditional owners. The UK Committee on Radioactive Waste report released in June 2006 highlights how internationally; “There is a growing recognition that it is not ethically acceptable for a society to impose a radioactive waste facility on an unwilling community”¹⁶⁶.

In October 2005 it was reported that China had asked the Federal Government if it could conduct uranium exploration and mining operations in Australia. The director-general of the

¹⁶⁴ Reporting by Rob Taylor, Editing by James Thornhill, 14 July 2009, Australia government approves new uranium mine, <http://www.reuters.com/article/environmentNews/idUSTRE56D1K520090714>

¹⁶⁵ John Pilger, 24 October 2008, Under cover of racist myth, a new land grab in Australia, <http://www.johnpilger.com/page.asp?partid=507>.

¹⁶⁶ Beyond Nuclear Initiative, February 2008, booklet: The Northern Territory Radioactive Waste Dump – Dumping on communities, Dumping on Democracy, <http://beyondnuclearinitiative.wordpress.com/nt-waste-dump/>.

Australian Nuclear Safeguards Office, John Carlson, “warned that state governments and territories - responsible for licensing mining and exploration - opposed further uranium mining and exploration. Mr. Carlson said it was hoped political attitudes would change, but this was likely to take some time. In August the Federal Government assumed control of mining rights in the Northern Territory, declaring it open for further uranium mining subject to environmental and Aboriginal approvals. The territory’s Chief Minister, Clare Martin, had made an election promise of no new uranium mines. More than 12 companies have licences to explore the territory, which is estimated to have \$12 billion in uranium deposits.”¹⁶⁷

“In April 2006, Australia and China signed two bilateral safeguards agreements that would open the way for Australia to supply uranium to China’s growing nuclear energy industry.”¹⁶⁸ As also reported in the World Nuclear News on 21 November 2008, Australia started shipping uranium to China, details like quantity and destination were not disclosed.¹⁶⁹ There have been suggestions that the export of uranium could be a reason behind the NT Intervention and that the abolishment of the permit system as well as the compulsory acquisition of Aboriginal land was introduced to better gain access to minerals like uranium lying underneath the land.

John Pilger also wrote: “The Northern Territory is where Aboriginal people have had comprehensive land rights longer than anywhere else, granted almost by accident 30 years ago. The Howard government set about clawing them back. The territory contains extraordinary mineral wealth, including huge deposits of uranium on Aboriginal land. The number of companies licensed to explore for uranium has doubled to 80. Kellogg Brown & Root, a subsidiary of the American giant Halliburton, built the railway from Adelaide to Darwin, which runs adjacent to Olympic Dam, the world’s largest low-grade uranium mine. Last year, the Howard government appropriated Aboriginal land near Tennant Creek, where it intends to store the radioactive waste.”¹⁷⁰

¹⁶⁷ Richard Baker, 17 October 2005, China wants to mine uranium, <http://www.smh.com.au/news/national/china-wants-to-mine-uranium/2005/10/16/1129401145627.html>.

¹⁶⁸ World Nuclear News, 21 November 2008, Australia starts shipping uranium to China, http://www.world-nuclear-news.org/ENF-Australia_starts_shipping_uranium_to_China-2111086.html.

¹⁶⁹ World Nuclear News, 21 November 2008, Australia starts shipping uranium to China, http://www.world-nuclear-news.org/ENF-Australia_starts_shipping_uranium_to_China-2111086.html.

¹⁷⁰ John Pilger, 7 March 2008, Australia’s Hidden Empire, <http://www.globalresearch.ca/index.php?context=va&aid=8265>.

10 Further aspects

10.1 Put yourself in another person's shoes

In his famous address at Redfern Park in Sydney on 10 December 1992 at the Australian Launch of the International Year for the World's Indigenous People, the then Prime Minister Paul Keating stated "We practised discrimination and exclusion. It was our ignorance and our prejudice. And our failure to imagine these things being done to us. With some noble exceptions, we failed to make the most basic human response and enter into their hearts and minds. We failed to ask - how would I feel if this were done to me?"¹⁷¹ Discrimination is still practised today and (I would say that) the NT Intervention only intensified racism in Australia. I wonder how many people actually imagine what it would be like to walk in the shoes of an Aboriginal or Torres Strait Islander.

10.2 Any changes?

But did all the renaming of the NT Intervention and its various aspects as well as its Special Measures really bring about any significant changes or any changes at all? What would you do if you had to live under the NTNER? How can the future of Aboriginal children be protected by taking over land and property and suspending the RDA? Have there been any visible improvements as a result of the Intervention? Concerning the government's emphasis of an evidence-based approach, is there any evidence to be seen? A recently released Productivity Commission report reveals that the "Gap" is actually not *closing*, but in fact *widening* since the inception of the Intervention. As Irene Fisher so aptly pointed out in her speech given at the Racism and the NT Intervention Forum in Sydney on 22 March 2009 "I am still waiting, but I have yet to see *any* evidence that the removal of human rights leads to better health or educational outcomes – or can protect our children....Unless things change – and unlike their fellow Australians – these kids will grow up under a regime under which they do not enjoy the human rights the rest of us do.... And the Intervention was supposed to save our kids."¹⁷²

¹⁷¹ Paul Keating, then Prime Minister, delivered at Redfern Park in Sydney on 10 December 1992 at the Australian Launch of the International Year for the World's Indigenous People, <http://cityofsydney.nsw.gov.au/Barani/news/KeatingsRedfernAddressanunforgettablespeech.htm>.

¹⁷² Irene Fisher, Chief Executive Officer, Sunrise Health Service Aboriginal Corporation, 22 March 2009, Closing the Gap: is the evidence really there?, Racism and the Intervention Forum, UTS Sydney.

10.3 Contradictions and open questions

“Federal Labor supported the intervention legislation when it was proposed by the Howard government last June, however the ALP announced on November 23 – just before the federal election – that it would review the intervention and work on an evidence-based approach. After Labor PM Kevin Rudd made the historic apology to the stolen generations on February 13, there was some hope among many Aboriginal activists and supporters that it may herald a new beginning for Aboriginal Australia and a break with the paternalistic and racist policies of the Howard government. However on February 25, federal Aboriginal affairs minister Jenny Macklin announced that the government would not abolish the welfare quarantine system, but would extend it to more communities in the NT – affecting an additional 500 people – and introduce a similar system to some remote communities in Western Australia. ... Mitch, an Aboriginal activist from Alice Springs said in a February 7 statement that “Kevin Rudd has said his apology will contain an affirmation never to repeat past wrongs, but this is precisely what his government is doing rolling out Howard’s intervention. He is continuing the genocidal policy of the stolen generations and the Howard years.”¹⁷³

Why was IM introduced without any evidence whether the Cape York trial is successful?

What was the benefit of scrapping CDEP and imposing blanket welfare quarantining on ALL when there were Aboriginal people (the reasons behind this system did not apply to), eg. Pensioners, people who do not drink, manage their income responsibly?

In a 28 February 2008 Media Release, the Aboriginal Rights Coalition stated: ““Jenny Macklin claims that "evidence" will be the 'the one criteria which guides Labor policy'. Yesterday's decision to expand the welfare quarantine came in response to a state coroner's report that indicated high levels of suicide in many Aboriginal communities in WA. But the concept of the quarantine flies in the face of all the evidence-based research focussed on addressing the issue of indigenous suicide." "Professor Stephen Cornell from Harvard University's Project on American Indian Economic Development, for example, has demonstrated that there is a direct correlation between declining suicide rates and increases in resources allocated to allow for self-government and community based services”.

¹⁷³ Peter Robson & Margarita Windisch, Green Left Online, 1 March 2008, Indigenous women: Welfare quarantine a disaster, <http://www.greenleft.org.au/2008/742/38411>.

"So where are the funding commitments? Where are the plans to empower communities? Punitive, dis-empowering measures such as welfare quarantines will only compound the problems facing Aboriginal communities in WA".¹⁷⁴

The Australian Greens called on the Minister for Indigenous Affairs Jenny Macklin not to extend the roll-out of welfare quarantining any further until evidence of problems and undue hardship caused by the measures had been properly assessed. "We have heard on-the-ground evidence of some serious problems with the way in which efforts to quarantine welfare is breaking down," said Senator Rachel Siewert today. "Under these circumstances it is imperative that the Minister does not extend compulsory welfare quarantining any further."¹⁷⁵

Concerning the compulsory acquisition of Aboriginal communities Crikey reported: "Contrary to Howard's promise, the legislation did not require government's to provide 'just terms' compensation for the compulsory acquisition, a breach of the Australian Constitution."¹⁷⁶

Previously I have mentioned Minister Macklin's statement on Australia's support for UNDRIP on 3 April 2009 (when she said among other things) "Indigenous peoples shall not be forcibly removed from their lands or territories."¹⁷⁷ How does this statement correspond with the outstation policy of pushing people out of homelands by limiting the provision of housing and other services? Warren Snowdon, an experienced NT Minister, has clearly outlined in his speech at the 11th Garna Festival the various benefits of people living on homelands. Why is it then that a newly elected Indigenous Affairs Minister is ignoring these facts by continuing the outstation policy?

A startling letter from federal Indigenous affairs minister Jenny Macklin to all state and territory housing ministers says that "funds must not be spent on public housing on Aboriginal-owned land in remote regions unless Aboriginal landholders first agree to lease

¹⁷⁴ Aboriginal Rights Coalition, Media release of 28 February 2008, No evidence for racist WA welfare quarantine, http://antarsa.auspics.org.au/index.php?option=com_content&task=view&id=104&Itemid=2.

¹⁷⁵ Spokesperson Rachel Siewert, The Australian Greens, Media Release, 25 February 2008, Stop NT roll-out and assess the evidence: Greens, <http://rachel-siewert.greensmps.org.au/content/media-release/stop-nt-roll-out-and-assess-evidence-greens>.

¹⁷⁶ Chris Graham, Chris Munro and Amy McQuire of the National Indigenous Times, 20 June 2008, Howard's NT Intervention promises: a progress report, <http://www.crikey.com.au/2008/06/20/howards-nt-intervention-promises-a-progress-report/>.

¹⁷⁷ The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 3 April 2009, Statement on the United Nations Declaration on the Rights of Indigenous Peoples, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/un_declaration_03apr09.htm (already mentioned on page 26).

their property."¹⁷⁸ "In broad terms, it represents a national roll-out of one of the most controversial parts of the Northern Territory intervention - the compulsory acquisition of Aboriginal land for the reconstruction of townships. It's also an extension of the Northern Territory Aboriginal land rights act amendments which were introduced by the Howard government in 2007, and strongly opposed by Labor while in Opposition ... It's certainly never been aired publicly by the government, although last week while delivering his 'Closing the Gap report card', Prime Minister Kevin Rudd did hint at a major shake-up. While telling parliament that Aboriginal people who trashed houses would be held responsible, Rudd revealed that his government was "driving an aggressive land tenure reform agenda". Ironically, he added that a key plank of his government's agenda was to work in partnership with Aboriginal people. This plan will, undoubtedly, be met with outrage from Indigenous groups, and will be widely seen as a betrayal of Aboriginal land interests by Labor."¹⁷⁹

When in opposition in 2007, Jenny Macklin was strongly opposed to compulsory acquisition and long-term leases made conditional to receive housing and basic infrastructure even emphasising Tangentyere Council's key importance of retaining control over management of the houses. But now in the case with the Alice Springs Town Camps, why is she not only demanding a 40-year lease in exchange for housing (which Tangentyere would have agreed to), but is even insisting on Tangentyere Council handing over control over management of the houses (which Tangentyere Council very reluctantly and only recently agreed to under great duress, out of fear of being otherwise compulsorily acquired forever)?

Also, NIT highlighted several contradictions on the Alice Springs Town Camps: "In late May, in an undated letter, Macklin wrote to the town camp associations: "After any acquisition, current residents in the camp will be able to continue to reside on the land, subject to any new residential tenancy arrangements." The statement could prove problematic for the government. In the media and during public meetings at the town camps - albeit poorly attended meetings - Macklin guaranteed the rights of tenants would continue unaltered if a forced acquisition went ahead. But her letter to town camp associations clearly states that the rights of town camp tenants will be altered. Macklin also appears to have already decided to compulsorily acquire the town camps, despite publicly stating that she wouldn't reach a final decision until after August 4 ... given the sheer volume of media Macklin did, it was inevitable she would eventually slip up. It came on May 26 - National Sorry Day - in an

¹⁷⁸ ANTaR, first published in the National Indigenous Times, 19 February 2009, THE BETRAYAL: Macklin unveils plan to force 40-year leases in exchange for public housing, http://www.antar.org.au/the_betrayal.

¹⁷⁹ ANTaR, first published in the National Indigenous Times, 19 February 2009, THE BETRAYAL: Macklin unveils plan to force 40-year leases in exchange for public housing, http://www.antar.org.au/the_betrayal.

interview with Kerry O'Brien on the ABC's 7:30 Report. O'Brien specifically asked Macklin if there really was "no other resort" to the "forced acquisition" of the town camps "particularly given the claim that this will be in breach of international law?" Macklin's response revealed a decision to forcibly acquire the land had already been taken. "I have worked very, very hard over the last year to get an agreement with Tangentyere Council and with the housing associations covering the town camps in Alice Springs. I certainly wanted an agreement. And I thought we had one ... Unfortunately, Tangentyere Council have gone back on that agreement ... It is, in my view, no longer tenable for us to wait any longer. The level of overcrowding, the level of violence, is just too great, and I considered that it was time to act," Macklin said.¹⁸⁰

Why is it that despite there being warnings as early as 2008 that there would be little chance of a house being built before 2011 under SIHIP and that "the entire project was really worthy of a review before too much more money was wasted"¹⁸¹ that the advice seems to have been ignored? Why has it been possible to put up houses in place for government business managers and government employees within months without none having been built in any of these communities for Aboriginal families? Why is it possible that after two years into the NT Intervention, building houses being a key plank of the Intervention measures, not a single house has yet been built?

\$672 million SIHIP was supposed to deliver more than 750 new houses, more than 230 new replacement houses and up to 2500 housing upgrades, yet none have yet been built.

"At the time, the federal government said it was seizing the land to prevent any delay in the provision of housing services to NT Aboriginal communities. But ironically, two years on the government has still not constructed a single home for an Aboriginal family. Macklin's deceit also centres around the Tangentyere Council, which holds a lease over 18 Alice Springs town camps."¹⁸²

Why is it that Tennant Creek signed a long-term lease with the understanding they would get houses and of the promised houses, the number had been reduced over time to zero in the end?

¹⁸⁰ Chris Graham, 27 July 2009, Macklin botches Alice Springs town camp compulsory acquisition, <http://www.crikey.com.au/2009/07/27/macklin-botches-alice-springs-town-camp-compulsory-acquisition/>.

¹⁸¹ Spokesperson Rachel Siewert, The Australian Greens, 13 August 2009, Indigenous Housing, <http://rachel-siewert.greensmps.org.au/content/speech/indigenous-housing>.

¹⁸² Chris Graham, National Indigenous Times, A SPECIAL NIT INVESTIGATION, ISSUE 181, 9 July 2009, THE BIG READ: TICKING BOXES - Leaked documents reveal Rudd government's deceit on NT intervention consultations and Alice Springs town camp land grab, <http://www.nit.com.au/news/story.aspx?id=18204>.

"Before she does [reinstate the RDA], Macklin is planning to compulsorily acquire the Alice Springs town camps. That's despite the government promising earlier this year no further land would be compulsorily acquired, and despite signing the UN Declaration on the Rights of Indigenous Peoples just a week after receiving the departmental advice. It's also despite Australia being a signatory to the Convention for the Elimination of All Forms of Racism, which expressly forbids the forced resumption of Aboriginal land without informed consent." A letter by Minister Macklin to all state and territory housing ministers in January 2009.¹⁸³

How does the Media Release of 21 May 2009 by the Minister for Families, Housing, community Services and Indigenous Affairs announcing extensive consultations with Indigenous communities in the NT fit with various reports of consultations having been farcical?

Why did the NTER emergency measures have to be rushed through without any consultations in order to "protect children" when there seems to be no evidence for steps having been taken to protect children?

Australian National University Professor Jon Altman points out in an Oxfam report that his paper provides compelling evidence that the proposed changes to the ALRA have no connection with the incidence of child sexual abuse.¹⁸⁴

Why have the recommendations of the "Little Children are Sacred" report largely been ignored (when this was the catalyst where to act upon rushing through with the Intervention emergency measures)?

Why had mandatory health checks without requiring parents' approval been allowed on under-age children when this violates the right to privacy between a doctor and patient?

Why have claims been made about widespread sexual abuse and paedophile rings when so far none have been discovered and the claims have not been substantiated?

¹⁸³ Chris Graham, National Indigenous Times, A SPECIAL NIT INVESTIGATION, ISSUE 181, 9 July 2009, THE BIG READ: TICKING BOXES - Leaked documents reveal Rudd government's deceit on NT intervention consultations and Alice Springs town camp land grab, <http://www.nit.com.au/news/story.aspx?id=18204>.

¹⁸⁴ Professor Jon Altman, The Australian National University, 7 August 2007, Briefing paper for Oxfam Australia, The 'National Emergency' and Land Rights Reform: Separating fact from fiction, An assessment of the proposed amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976*, <http://www.oxfam.org.au/campaigns/indigenous/docs/land-rights-altman.pdf>.

The catalyst for the NT Intervention, the Lateline report claims of having evidence of widespread sexual abuse in Aboriginal communities has not presented any evidence.

"On 3 August 2008, one of Australia's wealthiest men, Andrew Forrest, announced a major initiative to address devastating rates of unemployment in Indigenous communities - the Australian Employment Covenant. In essence, Forrest promised to deliver 50,000 jobs in the private sector, within two years. Joining Forrest, Prime Minister Kevin Rudd pledged to fund the training requirements of willing employers. ... in February, when it was announced that up to 300 Indigenous people would be employed in Crown Ltd's casinos, under the auspices of the AEC ... Consequently, it is appropriate to ask - why is the Rudd Government subsidizing employment in the gaming industry? Surely, there are other industries making a beneficial contribution to Australia's social fabric, who could be engaged in the AEC? Both are important questions. Both were ignored by the Indigenous affairs reporters of News Ltd and Fairfax. Other important questions were similarly lost on the mainstream press. For example, how does the involvement of Crown Ltd sit with Noel Pearson's philosophies about welfare reform? ... Perhaps the most poignant revelation of all however, is that as the Commonwealth splashes training dollars at Crown Ltd, it is withdrawing similar resources from Indigenous communities by phasing out CDEP; an irony that was also lost on the nation's press...if the AEC is to have credibility, it must be subject to genuine scrutiny..."¹⁸⁵

Why have there been cuts to bilingual education in the NT considering reports of bilingual education being beneficial? Why are there cuts to bilingual education in the NT, while in NSW there have been attempts to revive local Aboriginal languages?

Why was the NTER Review commissioned by the government, when its own review board's recommendations have been largely ignored?

How can the Rudd government state that Australia is not a racist country (after the attacks on Indian international students) when it is discriminating against its own people, especially Aboriginal people based on race?

How can the Minister say that the women like the intervention in the case of the opening of the Yuendumu swimming pool in October last year when the local Aboriginal women denied

¹⁸⁵ Nicole Watson, National Indigenous Times, ISSUE 177, 14 May 2009, THIS LITTLE BLACK DUCK: Can't see the forest for the trees, <http://www.nit.com.au/Opinion/story.aspx?id=17730>.

this and the Minister was presented on 27 October 2008 with a petition with over 200 signatures opposing the intervention?¹⁸⁶

Why is it that the Media Release of 21 May 2009 as well as others like the recent one notifying Alice Springs Town Camps residents of changes in lease agreements, not make any mention of men? They are only talking about the protection of women and children. By omission Aboriginal men are again being demonised in the process.

Where is the evidence for more fresh food being consumed as having been reported in the media?

Where is the evidence-based approach promised by the current government? "In the words of Jenny Macklin, federal minister for Indigenous Affairs [on 21 October 2008]: ...we must continue sound, evidence-based policy interventions that close the gap between Indigenous and non-Indigenous Australians."¹⁸⁷

"NIT divulges details of a leaked letter from Macklin to all state and territory housing ministers, in which she directs that no Commonwealth housing funds be spent in remote Aboriginal communities unless state and territory governments first gain a minimum 40-year lease over the land. The plan would affect about one quarter of the nation's Indigenous population and is a complete reversal of Labor's policy in Opposition."¹⁸⁸

"However, on March 25, 2009 the Minister received advice from the department that consultations with communities should be managed to meet pre-determined government outcomes. The advice describes the RDA as a 'risk' to government policy and practices. This is clearly inappropriate advice from the public service, which is bound by ethics and integrity to advise the government on its compliance with human rights obligations under national and international law. The department recommends the Minister not proceed with the establishment of a 'formal consultative mechanism' because, in meeting human rights standards, it might not lead to community consent to leases over Aboriginal property. More alarmingly, the advice recommends pursuing 'voluntary' leases as an outcome of consultations. This advice snubs the principle of free, prior, informed consent because it

¹⁸⁶ ABC TV, Media Watch: Intervention Yes or No?, 3 November 2008, <http://www.abc.net.au/mediawatch/transcripts/s2409170.htm>.

¹⁸⁷ Irene Fisher, Chief Executive Officer, Sunrise Health Service Aboriginal Corporation, 22 March 2009, Closing the Gap: is the evidence really there?, Racism and the Intervention Forum, UTS Sydney.

¹⁸⁸ Amy McQuire, National Indigenous Times, 6 August 2009, ANALYSIS, THE BIG READ: Jenny's House, ISSUE 183, <http://www.nit.com.au/News/story.aspx?id=18383>.

reveals a clear purpose to convince communities to 'give up' leases if the government cannot legitimately acquire property through legislation. The majority of information contained in the Ministerial advice is directed towards the means by which the government can shroud existing policies as 'special measures' for the benefit of the Aboriginal people. The brief provides a list of characteristics of the intervention that could be used to describe the intervention as a special measure. In reality the list does not contain any significant effort beyond provision of housing and related services to communities, and does not rationalise the need for five-year leases over Aboriginal lands. The steps taken by government are a significant departure from the undertaking to CERD in February. The government may have deliberately misled CERD - and the United Nations and international community - about its motives and intentions. The Rudd government is now confronted with two problems requiring attention. The government may need to review discriminatory and devious treatment of Aboriginal interests within government, arising from a failure to meet its own standards for participation, accountability and professionalism. Prime Minister Rudd's vision of an inclusive and innovative government is being put to the test. The advice to the Minister exposes a hard truth - the government remains dishonest in its intentions and goals, and fails to grasp the essential requirements for non-discrimination. While this form of corrupt, alien and imposed government continues, consultation between government and communities will be farcical and unproductive. The second problem for the Rudd government lies with the perception that it may have tried to dupe CERD and, in doing so, damaged its international credibility. Australia does have serious international legal obligations through its membership of the United Nations, and derived from the international human rights treaties ratified by Australia. Australia ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1975. This 'race convention' has great significance to the situation of the Aboriginal and Torres Strait Islander people in Australia. The convention has relevance to many of the rights of Indigenous Peoples, including ownership of territories and resources, self-determination and the principle of free, prior and informed consent. By becoming a party to this international treaty, Australia has assumed specific and important obligations under international law to respect, to protect and to fulfil human rights of the Aboriginal and Torres Strait Islander people, i.e:

- refrain from curtailing human rights;
- protect against human rights abuses; and
- take positive action to advance human rights.”¹⁸⁹

¹⁸⁹ National Indigenous Times, ISSUE 182, 23 July 2009, OPINION: TICKING BOXES Pt 1 UPDATE : A not-so-united nation, <http://www.nit.com.au/Opinion/story.aspx?id=18278>.

In order to make the NT Intervention compliant with the RDA (by spring session of parliament in 2009), the government will possibly disguise discrimination as “special measures” for the benefit of Aboriginal people. According to international law Indigenous people have the right to decide whether or not they accept any such special measures, but unfortunately most Aboriginal people are not consulted prior to the announcement of any policies like these.

A discussion paper for Minister Jenny Macklin by IRAG talks about the lack of evidence despite the government’s commitment to evidence based policy: “Not evidence based. The new Labor government has made a key commitment to evidence based policy making in Aboriginal Affairs. However the Northern Territory Emergency Response Intervention legislation and Taskforce recommendations cannot be considered evidence based. There is no evidence that any of the punitive controls support the wellbeing and safety of children, encourage healthy and strong communities or to support communities to ‘close the gap’. Many international studies demonstrate that only approaches that respect self-determination will lead to improvements in community life.”¹⁹⁰ As Social Justice Commissioner Tom Calma has said, “I am a firm believer that many of the answers to Indigenous problems can be found in Indigenous communities. Please remember, from self respect comes dignity, and from dignity comes hope.”¹⁹¹

How do all the current policies fit with the “Closing the Gap” strategy?

10.4 Failures

In reference to SIHIP, Galarrwuy Yunupingu, a former long-serving chairman of the Northern Land Council, reported in the Australian of 1 August 2009: “THIS week the Northern Territory and commonwealth governments confessed the key program in the Closing the Gap strategy was out of control and that, yet again, money was being diverted from the needy into the pockets of government treasuries and non-Aboriginal companies ... And what of all the other promises? In the Territory we have been promised boarding schools. These, too, have disappeared from view. Education in the Territory remains a scandal where the same skimming is taking place to the benefit of the Northern Territory government ... At the moment it is an effort to control my anger and my sense of outrage ... When Aboriginal

¹⁹⁰ Intervention Rollback Action Group, 10 July 2008, Discussion Paper for Minister Jenny Macklin, Alice Springs, <http://rollbacktheintervention.wordpress.com/irag/>.

¹⁹¹ Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, HREOC, 31 March 2008, Speech Essentials for Social Justice: Protecting Indigenous children, Launch of the Social Justice Report 2007 and Native Title Report 2007, http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/20080331launch_sjrnr07.html.

leaders like myself accepted the challenge of the intervention and took steps to engage and to debate the future, we trusted the commonwealth to deliver on its promises, such was the obvious determination of the main political parties. So far these promises are looking very thin and it has taken two responsible ministers from the Territory to tell us all just how bad it is. I know Rudd and his ministers have a financial crisis on their hands, but their attention must now be redirected to our efforts in Aboriginal affairs.”¹⁹² In an ABC Radio Interview on 7 August 2009, Galarrwuy Yunupingu responds to the question whether he thinks the Government has done enough to try and get housing into communities: “They haven't done enough. The Government is still caught up in what they have been doing in the last 50 years. You know, and they need to get out of the system; to look into new area of Aboriginal people building homes for themselves. We are the worst off, not cities like Darwin or Alice Springs, or some big cities, you know, there's always commission homes are being built everywhere, you know, but Aboriginal communities have hardly no homes.”¹⁹³

The Australian reports that MAJOR-GENERAL Dave Chalmers', former head of the NT emergency response, “strong view is that the atrocious conditions [in the Northern Territory] represent the failures of successive governments” and “the truth is, people find themselves in those circumstances for reasons that 200 years of history have created, and for reasons of failed government policy of years and years.”¹⁹⁴

In the 2009 Juanita Nielsen Memorial Lecture, Professor Larissa Behrendt mentioned that “In many ways, the intervention in the Northern Territory is a textbook example of why government policies continue to fail Aboriginal people:

- the policy approach was ideologically led rather than making any reference to the research or understandings about what actually works on the ground;
- in fact, the policy approach contained in the intervention actually lies in direct contradiction of what the research shows us works and what experts recommend as appropriate action;
- the rhetoric of doing what is in the best interests of Aboriginal people, or children, masked a list of other policy agendas - private ownership of land and welfare reform in particular - that were unrelated to effective approaches to dealing with

¹⁹² Galarrwuy Yunupingu, The Australian, 1 August 2009, Direct talk and honest dealing, <http://www.theaustralian.news.com.au/story/0,25197,25863902-7583,00.html>.

¹⁹³ Sara Everingham, ABC Radio PM, 7 August 2009, Indigenous leader declares govts irrelevant in improving Indigenous housing, <http://www.abc.net.au/pm/content/2008/s2649689.htm>.

¹⁹⁴ Paul Toohey, The Australian, 22 November 2008, Soldier's sympathy intervenes, <http://www.eniar.org/news/NTintervention51.html>.

systemic problems of violence and abuse and instead sought to undermine community control over their land and resources; and

- the approach is paternalistic and top-down rather than a collaborative approach that seeks to include Aboriginal people in the outcomes.

The most powerful example of this is the quarantining of welfare payments and its spurious links to improving school attendance."¹⁹⁵

10.5 Suggestions for solutions

"The Secretariat of National Aboriginal and Islander Child Care (SNAICC) and the Combined Aboriginal Organisations of the Northern Territory represent Aboriginal and Islander expertise in child and family services. Both have clearly stated that both urgent action and coordinated long term planning and resources are necessary to address child abuse and family dysfunction. Both have clearly stated that the Federal Government's actions are inappropriate and could in fact exacerbate the causes of dysfunction – poverty, cultural disconnection and the lack of self-determination. What will work for the future of Aboriginal children in the Northern Territory and the rest of Australia are policies, programs and services which are culturally attuned, strengths-based and holistic, developed and managed by Aboriginal communities. What is needed is self-determination, which is appropriately resourced and involves building the capacity of communities. International evidence notes that Indigenous communities which are self-determining have better outcomes in health and wellbeing. What is needed is a recognition of the importance of Aboriginal and Islander connection to land. We need to renew a process of addressing the unfinished business of reconciliation and redressing issues of Aboriginal and Islander custodianship and traditional ownership of their land. What is needed are investments in culturally-attuned, Aboriginal and Islander community controlled services. They work overseas – they are working in Australia but are under-resourced and largely ignored ... The emergency intervention is not based on listening to communities. The voices of Aboriginal and Islander communities and experts in the field, not politicians, are best placed to work out solutions for Aboriginal communities."¹⁹⁶

"What is required, however, is a comprehensive and evidence-based approach that addresses the acute social, cultural, health and welfare problems affecting some people in these communities that draws on local expertise and the achievements of community

¹⁹⁵ Speech by Prof. Larissa Behrendt, 1 June 2009, Juanita Nielson Lecture, 2009 - Indigenous people and human rights: a litmus test for social policy, <http://lee.greens.org.au/index.php/index.php/index.php/index.php/content/view/2962/113/>.

¹⁹⁶ Listen up!, Why the current intervention in the Northern Territory will not protect Aboriginal and Islander children, http://www.listenupastralia.org/the_evidence.

organisations. Ultimately, such intentions will never find a sustainable basis until the government supports these communities to control their own destinies.”¹⁹⁷

In her speech Professor Behrendt also mentioned one of her key points: “Indigenous policy is always targeted at intervention, at emergency. It rarely seeks to look at the underlying issues. Addressing disadvantage requires long term solutions, not just interventions. Rather than always reacting to a crisis, a long-term sustained approach requires addressing the underlying causes of disadvantage. This means resourcing adequate standards of essential services, adequate provision of infrastructure and investment in human capital so that communities are developing the capacity to deal with their own issues and problems and have the skill sets necessary to ensure their own well-being. There are no short-cuts, quick fixes or panaceas here.”¹⁹⁸

MAJOR-GENERAL Dave Chalmers, former head of the NT emergency response “finds himself believing that the most important thing Aborigines can do to find their future is to maintain their culture. “Over time, we as a society have undervalued indigenous culture and in many places it's been lost,” he says. “And where it's been lost, people have lost their compass, they've lost their framework of life. It's not being replaced by a mainstream Australian framework, and people are in limbo. We need to be paying a lot more attention to traditional healers and traditional lawmakers, the role they played, and play, in people's lives.” Most of all, Chalmers says, governments need to offer hope. “There's nothing worse than going to a community where the level of apathy is profound, (where) people see no point in engaging with government because government continually changes its mind, government is confusing and, anyway, I've got no job and I've got no prospects. “Giving people a sense of purpose and hope is important. None of it is simple, but that doesn't mean that it's not something we shouldn't attempt... He says he has developed the same level of respect for Aborigines. “Absolutely. Personally, I've come on a journey. My understanding was superficial and -- I have to say it -- my lack of respect for them was (the same as that of) many Australians.”¹⁹⁹

¹⁹⁷ ANTaR Victoria, The Intervention under Rudd: Are we any closer to protecting Aboriginal Children in NT?, <http://www.antarvictoria.org.au/ntintervention.html>.

¹⁹⁸ Speech by Prof. Larissa Behrendt, 1 June 2009, Juanita Nielson Lecture, 2009 - Indigenous people and human rights: a litmus test for social policy, <http://lee.greens.org.au/index.php/index.php/index.php/index.php/content/view/2962/113/>.

¹⁹⁹ Paul Toohey, The Australian, 22 November 2008, Soldier's sympathy intervenes, <http://www.eniar.org/news/NTintervention51.html>.

GetUp! Action for Australia refers to Tom Calma's "10 point plan to improve NT intervention" of 2008 in stating "what is needed is a coherent community development plan developed by the Government in conjunction with community representatives. A permanent program which aims to address social inequality and disadvantage in remote communities would allow for repeated review and analysis as well as development of localised, community sensitive and appropriate programs."²⁰⁰

10.6 Too many failed issues

There are many issues like the deceit by the government regarding the "*Little Children are Sacred*" report, the to date not kept promise of building new houses with intervention money, the repackaging of Income Management (IM, initially called Income Quarantining), the Outstations policy, defunding of successful Aboriginal organisations, moving towards calling the NT Intervention "Closing the Gap", the closure of CDEP and other issues which would definitely be worth further exploration in a separate report. All of these things were done under the pretext of "protecting children". The continuation of these practices are a recipe for another era of pain and dysfunction.

²⁰⁰ GetUp!, What you should know about the Northern Territory Intervention, http://www.getup.org.au/files/campaigns/intervention_fact_sheet.pdf.

11 Conclusion

Future generations and the international community may be judging the passing of blatantly discriminatory laws and a continuous failing of Aboriginal people. All Australians will be diminished if we are unable to achieve dignity, respect, equality and social justice for the first peoples of this beautiful country.

One very wise man once said that each one of us has the responsibility to speak up against any form of racism and discrimination.

Reflecting back on what has actually been achieved through the NT Intervention so far, its “evidence-based” results, its impact on the Aboriginal people affected by it, the human rights violations and massive Human Rights breaches of both declarations - UNDRIP and the Universal Declaration on Human Rights - the consequences and implications of the suspension of the RDA, the enormous amounts of money being spent on the implementation and execution of the NT Intervention, the quickly designed plan to save and protect the children from sexual abuse and family violence, the current drastically higher anaemia rates in children as compared to before the Intervention having nearly trebled in the Sunrise Health Service region - as reports from Sunrise Health show, the cut backs of bilingual education, the announcement of the homeland policy, etc. – can we truly say that the end justifies the means?

Well, given that the means are immoral and may be even unlawful and that the ends are as of yet, non-existent, the answer would appear to be no.

As Irene Fisher said before “You be the judge”!