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Submission on

**The Australian Government's Stronger Futures in the
Northern Territory Discussion Paper**

submitted by

Amnesty International Australia

October 2011

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Executive Summary



Since 2007, Amnesty International has provided comment to the Australian Government about major concerns regarding human rights violations occurring under the Northern Territory Emergency Response (NTER) and the subsequent policy modifications made since then.

Through the release of the discussion paper *Stronger Futures* the Hon Jenny Macklin MP has sought comment on the future of NTER policies and programs through the *Stronger Futures Discussion Paper*.

The development of the *Stronger Futures* policy is a good opportunity for the Australian Government to renew its commitment to Aboriginal People in the Northern Territory in a way that respects human rights. The *Stronger Futures* discussion paper sets out eight proposed areas for future action. Amnesty International has focused its comments on the four key areas for future action of housing, health, education and governance.

Amnesty International stresses the need to incorporate homelands into any future policy developments. There needs to be a commitment from the Australian and Northern Territory Governments to ensure that these communities, which support approximately 35 percent of the Northern Territory Aboriginal population, are provided with long-term funding to maintain their viability.

The most significant human rights instrument for Indigenous Peoples is the *United Nations Declaration on the Rights of Indigenous Peoples (DRIP)*. The declaration provides an authoritative framework for the full and effective protection and implementation of the rights of Indigenous Peoples. The principles enshrined in this declaration need to be at the forefront of any policy development. As well as incorporating the declaration into law, policy and practice, the Australian Government needs to implement the recommendations from previous inquiries including from the Little Children are Sacred Report and the 1991 Royal Commission into Aboriginal Deaths in Custody. Indigenous justice issues and high incarceration rates seriously hamper any efforts to close the gap.

Recommendations:

- **As a starting point the *Stronger Futures* policy needs to address Indigenous justice issues and high rates of Indigenous incarceration, which are a huge handicap to closing the gap. The Australian Government also needs to implement the recommendations from previous inquiries including the 1991 Royal Commission into Aboriginal Deaths in Custody and the Little Children are Sacred Report.**
- **The Australian Government must incorporate into its *Stronger Futures* policy a commitment to implement, in consultation with homeland communities, an overarching plan to ensure the long-term sustainability of homelands.**
- **The Commonwealth Government must ensure that all housing on homelands meets the standards for adequate housing under international law, and that effective, equitable and non-discriminatory processes are in place to ensure the rights of Aboriginal Peoples to their traditional lands and the right to adequate housing.**
- **Greater transparency is needed over the collection of fortnightly service fees, which are commonly thought of as rent. Local Service Agreements must be developed to ensure that the money from these service fees is being properly reinvested in local communities.**
- **In line with the *International Covenant on Economic, Social, and Cultural Rights* and the *Declaration on the Rights of Indigenous Peoples* there needs to be active participation of**



Aboriginal People in the design, delivery and control of health services. Homelands must be part of any health strategy, as people live longer and healthier lives on homelands.

- **The Australian and Northern Territory Governments need to support education on homelands by ensuring long-term funding for Homeland Learning Centres (HLCs).**
- **The Australian and Northern Territory Governments must support the development of HLCs and ensure there are no funding discrepancies between HLCs and other remote schools.**
- **The Australian and Northern Territory Governments should celebrate and publicise the unique nature of good homeland education, which is focused upon cultural, economic and environmental sustainability.**
- **Provisions should be made for government workers, particularly teachers, to be trained in cross-cultural communication and engagement skills, cultural awareness, and the languages, cultures and histories of the remote Northern Territory.**
- **The Australian Government must implement the *DRIP* into law, policy and practice. Any new policies must result from direct negotiations with and the free, prior and informed consent of, the Aboriginal and Torres Strait Islander People affected.**

About Amnesty International

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the *Universal Declaration of Human Rights (UDHR)* and other international instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights. Amnesty International is the world's largest independent human rights organisation, comprising of more than 3 million supporters in more than 150 countries and has over 140,000 supporters in Australia. Amnesty International is impartial and independent of any government, political persuasion or religious belief. It does not receive funding from governments or political parties. In August 2011 Amnesty International released *The Land Holds Us* report, which catalogues how Aboriginal Peoples' right to their traditional lands is being eroded in the Northern Territory. Amnesty International is committed to ensuring the *DRIP* is implemented locally and nationally through legislation, policies and programs.

The Northern Territory Emergency Response



To avoid a repeat of past failures, the Australian Government has to make sure any future strategies aimed at tackling Aboriginal disadvantage in the Northern Territory are owned and controlled by the people they affect.

Despite the Australian Government's claims the *Racial Discrimination Act* (1975) has now been fully reinstated, Amnesty International believes protection against racial discrimination remains inadequate and that the intervention still falls short of international human rights law standards. Practices do not meet the international legal definition of 'special measures', some discriminatory measures introduced at the outset continue, and redress for people whose rights have been violated remains out of reach.

In order to reinstate the *RDA* in full and comply with human rights obligations under *Convention on the Elimination of all forms of Racial Discrimination (CERD)*, the Australian Government must add a notwithstanding clause to the legislation. Failure to explicitly provide a notwithstanding clause in the *RDA* means that the Northern Territory Emergency Response legislation, as later legislation, will prevail where there is any inconsistency between the two. As a result, the discriminatory measures within the NTER will continue to be implemented.

In recent years, the Aboriginal communities Amnesty International has spoken to in the Northern Territory say they are angry, frustrated and anxious about a lack of accessible information from government about the intervention.

As the intervention legislation's expiration date approaches, we are calling for policies and programs to be brought in line with the minimum standards set out in the *DRIP* and grounded in the free, prior and informed consent of Aboriginal People living in the Northern Territory.

Recommendation:

The Australian Government must implement the *DRIP* into law, policy and practice. Any new policies must result from direct negotiations with and the free, prior and informed consent of, Aboriginal and Torres Strait Islander People affected.

Indigenous justice and high incarceration rates

Indigenous justice issues and high incarceration rates seriously hamper any efforts to close the gap.

Twenty years after Australia's most significant inquiry into Aboriginal deaths in custody, Amnesty International remains outraged at the tragic consequences of government inaction in implementing its recommendations.

In 1991, the Royal Commission into Aboriginal Deaths in Custody made 339 recommendations aimed at addressing the high number of deaths of Indigenous Peoples in custody. These recommendations included those directed at the underlying social, cultural and legal issues behind the deaths.

Amnesty International continues to call on all the Australian, State and Territory Governments to implement all outstanding recommendations through legislation or administrative procedures.

According to 2010 figures from the Australian Bureau of Statistics, Indigenous Peoples are 14 times more likely than non-Indigenous peoples to be incarcerated, a ratio that grew during the preceding decade.

**Recommendation:**

The Stronger Futures policy needs to also address Indigenous justice issues and the high incarceration rates, which are a huge handicap to closing the gap. The Australian Government needs to also implement the recommendations from previous inquiries including the 1991 Royal Commission into Aboriginal Deaths in Custody and the Little Children are Sacred Report.

Stronger Futures and homelands

Homelands support approximately 35 percent of Aboriginal People in the Northern Territory.¹ Evidence shows that homelands have important social and health benefits for Aboriginal People in the Northern Territory. As such, a plan for Stronger Futures in the Northern Territory should include concrete support for people who choose to live on their traditional lands. The many benefits of homelands are clear. The United Nations Special Rapporteur on the Rights of Indigenous Peoples noted the social and health benefits of living on homelands:

Homelands are widely understood to have lower levels of social problems, such as domestic violence and substance abuse, than more populated communities. According to reports, the health of Indigenous people living on homelands is significantly better than of those living in larger communities. Homelands are also used effectively as part of substance abuse and other programmes for at-risk Aboriginal youth living in more populated or urban centres.²

Homeland residents have participated in various health research projects over the last 20 years. These studies point strongly to significant improvements in health outcomes for Aboriginal Peoples in remote areas if they live in homeland communities, compared with Aboriginal Peoples who live in major towns.³ Homelands are seen as places of respite. Many play a role in rehabilitation of addicts and offenders.⁴

Raising families on homelands means that people maintain their spiritual and economic connections to their land and waters or 'country'. It means they can raise their children within their own cultural context, away from the marginalisation and discrimination that confronts Aboriginal Peoples in larger towns and settlements. This gives Aboriginal People cultural security. One of the benefits of homelands is that Aboriginal Peoples have some measure of community control and agency and there are many examples of strong governance models and community-based decision making.⁵

However, despite the benefits of homelands, there has been no serious coordinated and comprehensive commitment to the long-term health and sustainability of Aboriginal Peoples' homelands.⁶ A 2008 Senate Select Committee report on regional and remote Indigenous communities concluded that it is the "ambiguity and even absence of policy ... that is having a large impact on the wellbeing of these communities". Stronger Futures provides the Australian Government with an opportunity to develop this strategy.

Recommendation:

The Australian Government must incorporate into its Stronger Futures policy a commitment to implement, in consultation with homeland communities, an overarching plan to ensure the long-term sustainability of homelands.



Housing

Australia's international obligations and the right to adequate housing

As a party to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* Australia has an obligation under Article 11 to take concrete steps, using the maximum available resources, to progressively fulfil the right to adequate housing. These steps must be targeted and directed towards the most expeditious, effective and full realisation of human rights possible. They should include legislative, financial, social, educational and administrative measures, including budgetary prioritisation.⁷

The UN Committee of Economic, Social and Cultural Rights (CESCR) has made clear that the right to adequate housing should not be interpreted narrowly to mean “merely having a roof over one’s head or view shelter exclusively as a commodity. Rather it should be seen as “the right to live somewhere in security, peace and dignity”.⁸ For Indigenous People, for whom land is an integral part of their cultural identity, the rights to land and to adequate housing are intimately connected.⁹

The Committee has also clarified that the concept of ‘adequacy’ is particularly significant in relation to the right to housing and provided specific guidance on what constitutes adequate housing for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, it has identified certain aspects of the right to housing that must be taken into account in any particular context. These include:

- a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Regardless of the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats;
- b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition, including safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;
- c) Affordability. States should ensure that the costs associated with housing should be affordable and not compromise other basic needs. Specifically, States should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance that adequately reflect housing needs;
- d) Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors. The physical safety of occupants must be guaranteed as well;
- e) Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources;



- f) Location. Adequate housing must be in a location that allows access to employment options, health-care services, schools, childcare centres and other social facilities;
- g) Cultural adequacy. Housing policy and the way housing is constructed or provided should be respectful of cultural identity.

The state of Aboriginal housing

Following a research mission to Australia in 2006, the UN Special Rapporteur on Adequate Housing came to the conclusion that as a result of a number of factors, including the housing conditions in Aboriginal and Torres Strait Islander Peoples' camps and other communities, Australia had, "failed to implement its international legal obligation to progressively realise the human right to adequate housing to the maximum of its available resources, particularly in view of its possibilities as a rich and prosperous country".¹⁰

The Special Rapporteur described Aboriginal and Torres Strait Islander Peoples' housing and homelessness as a "humanitarian tragedy" and "some of the worst in the world" and saw these issues as the main source of problems facing Aboriginal and Torres Strait Islander People.¹¹ Overcrowding and poor housing standards are central to this problem. An estimated one-third of Aboriginal and Torres Strait Islander households are overcrowded, which is a much higher proportion than other Australians.¹² Housing conditions witnessed by the Special Rapporteur had an evident impact on the health conditions of their inhabitants.

A lack of routine maintenance and poor initial construction are the major causes of inadequate housing standards for Aboriginal Peoples rather than, as is commonly believed, a failure to consider issues of cultural appropriateness or the longstanding myth that Aboriginal Peoples destroy their homes.¹³ An assessment from independent tradespersons who attended and categorised over 41,000 repair jobs in Aboriginal communities in remote and regional Australia, found that only 10 per cent of required repairs were due to householder damage, overuse, misuse or vandalism.¹⁴ Eighty-nine percent of houses examined in the assessment did not pass a national standard assessment for electrical safety.¹⁵

Housing and homelands

A serious shortage of decent housing in remote Northern Territory communities is the result of what the Australian Government itself has described as "decades of neglect".¹⁶ For homelands communities, current policies do not address historic underinvestment in housing and infrastructure on homelands, nor how housing on homelands will be brought up to a minimum standard required under international law or provide for the homeless.

Remote Aboriginal communities in the Northern Territory are increasingly being separated into different layers or tiers, and differentials in living standards between the tiers are likely to increase. Although the overall picture is somewhat complex and confusing, the basic tiers are outlined below.

Tiers of disadvantage:

- For those of the 15 Commonwealth 'hub' towns that have come to a leasing arrangement with the Commonwealth: new and refurbished housing will be provided under SIHIP.
- For the remaining hub towns: refurbishments and housing when leases agreed.



- For the balance of the NTER ‘prescribed’ communities, comprising a range of communities from large down to medium-sized communities: refurbishments but no new houses for the foreseeable future.
- For town camps, where sub-leases have been signed: new houses and refurbishments.
- For small communities classed as outstations, including homelands and most excision communities: no new houses, no refurbishments and a low level of maintenance funding.

The lowest tier, which is the most disadvantaged, is that of small communities.

Housing on homelands categorised as private

Equally concerning is the classification by the Northern Territory Government’s 2009 Working Future policy, which lists housing on outstations/ homelands covered by the Aboriginal Land Rights (Northern Territory) Act 1976 as “privately owned by the relevant land trust, on behalf of the Traditional Owners”¹⁷. As a result, people who previously had access to social housing have been arbitrarily told that they are no longer eligible to receive this entitlement. In recent conversations with Northern Territory Government representatives¹⁸, it was confirmed to Amnesty International that housing on homelands, as it is classified as private, does not fall under the Northern Territory Residential Tenancy Act, which mandates minimum standards for social housing.

This housing classification also adds to a lack of transparency over the collection of ‘rent’ from every occupant and further obscures who is responsible for providing housing maintenance. The fortnightly collection of service fees of \$50 per occupant needs to be more transparent and accompanied by local service agreements. Given that this fortnightly fee is in many cases automatically taken out of Centrelink payments, the Australian Government is equally responsible for ensuring greater transparency in where this money goes and what services are delivered with this money.

Recommendations:

The Commonwealth Government must ensure that all housing on homelands meets the standards for adequate housing under international law, and that effective, equitable and non-discriminatory processes are in place to ensure the rights of Aboriginal Peoples to their traditional lands and the right to adequate housing.

Greater transparency is needed over the collection of fortnightly service fees which are commonly thought of as rent. Local Service Agreements must be developed to ensure the money from these service fees is being properly reinvested in local communities.

Health

Australia’s international obligations and the right to health



All people have the right to the highest attainable standard of physical and mental health under Article 12 of the *ICESCR*. The right to health does not necessarily translate as a right to be healthy, but States do have obligations to provide the conditions and services to ensure that people have the best chance to be healthy.

The CESCR defines how this right should be implemented:

- The state has a duty to make available adequate healthcare facilities, with trained professionals and essential medicines.
- Health facilities, goods, services and information on health must be physically and economically accessible to everyone without discrimination.
- Health facilities, goods, services and information on health must also respect medical ethics, be culturally appropriate and sensitive to gender and life-cycle requirements.
- Delivery of health services requires, among other things, skilled medical personnel, scientifically-approved and unexpired drugs and hospital equipment, safe and potable water and adequate sanitation.

Indigenous Peoples' right to health

Under international law Indigenous Peoples have rights to specific measures to improve their access to health services and care:

- Services need to take into account traditional preventive care, healing practices and medicines – recognising and protecting the vital medicinal plants, animals and minerals necessary for the full enjoyment of health for Indigenous Peoples.
- In Indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. Any displacement of Indigenous Peoples from their traditional lands against their will denies them sources of nutrition and breaks their connection with the land. This has a deleterious effect on their health.
- Importantly, resources should be provided for Indigenous Peoples to design, deliver and control health services.

The state of Aboriginal and Torres Strait Islander health

In Australia, the life expectancy of Aboriginal and Torres Strait Islander People is around 17 years lower than that of non-Indigenous Australians. The infant mortality rate for Aboriginal and Torres Strait Islander Peoples is twice that of all Australians. Aboriginal and Torres Strait Islander Peoples are three times as likely to report some form of diabetes than non-Indigenous Australians.¹⁹

The Australian Government has committed to improving the health outcomes of Aboriginal and Torres Strait Islander People and closing this life expectancy 'gap' within a generation. Significant political and financial investments in one-size-fits-all solutions have been rolled out, but research proves that blanket policies cannot deliver the desired results. Instead, an integrated human rights solution/s – one that empowers people and engages them to take responsibility for the solutions – is required. The success of this approach is exemplified by the Urapuntja Health Service, a community-controlled Aboriginal health service provider on the Utopia homelands in remote Australia.



Health and homelands

The health benefits that come from life on homelands are significant. A longitudinal study by the *Medical Journal of Australia* published in 2008 found that despite the steady rise of obesity and diabetes among Aboriginal Peoples nationally, the people living on the Utopia homelands were significantly healthier than other Aboriginal and Torres Strait Islander Peoples. The Alyawarr and Anmatyerr Peoples have worked to address the problems of obesity, diabetes and smoking so successfully that adult mortality rates from all causes have been consistently 40 per cent lower in Utopia than among Aboriginal Peoples in the Northern Territory generally. Deaths from cardiovascular disease are 50 percent lower.²⁰

The study concludes that contributors to lower than expected morbidity and mortality are likely to include the nature of primary healthcare services as well as the decentralised mode of living with its attendant benefits for physical activity, diet and limited access to alcohol. Connectedness to culture, family and land are also cited as important factors. The study also found that genuine partnership with Aboriginal Peoples in the design, delivery and control of services has tangible health outcomes.

Recommendation:

In line with the *International Covenant on Economic, Social, and Cultural Rights* and the *Declaration on the Rights of Indigenous Peoples* there needs to be active participation of Aboriginal People in the design, delivery and control of health services. Homelands must be part of any health strategy, as people live longer and healthier lives on homelands.

Education

Australia's international obligations and the right to education

All people have the right to free and compulsory quality basic education. Increased educational levels are associated with better health, social and economic outcomes across all populations. The Committee on the Convention of the Rights of the Child (CCRC) recognises that education of Indigenous children contributes both to their individual and community development as well as to their participation in the wider society.²¹ Further, it sees quality education as an essential means of achieving individual empowerment and self-determination of Indigenous Peoples.²²

To accord with human rights obligations, governments must ensure that education is adequately available, accessible (financially as well as physically), acceptable (it should respect cultural rights and the human rights of learners), and adaptable. States must ensure free and compulsory primary education as a matter of priority as well as freedom of education which is the right of parents to ensure education in conformity with their religious and philosophical convictions.

States have an obligation to promote and develop the right of every person to enjoy access to education of good quality, without discrimination or exclusion. This requires fulfilling the governmental obligation to encourage attendance,²³ notably by adapting education to ensure that it is in the best interests of all children,²⁴ including through promoting the culture, language and religion of minority and Indigenous children.²⁵ This requires that



representatives of minorities and Indigenous Peoples be present in participatory processes of designing, re-designing or re-thinking educational systems.

The state of Indigenous education

There are significant gaps between educational achievements of Indigenous and non-Indigenous children:

- Indigenous children have been shown to underperform non-Indigenous children in tests administered in grades 3, 5, 7 and 9.
- Indigenous students are between 10 and 30 percent less likely to meet nationally agreed minimum acceptable standards of literacy and numeracy.²⁶

The Indigenous/non-Indigenous educational gap also extends beyond test scores:

- One in eight Indigenous Australians between five and nine years of age have never attended school or are frequently transient between schools.
- Only 17 percent of Indigenous Australians have completed year 12, compared to 38 percent of non-Indigenous Australians.
- Indigenous Australians also have significantly lower levels of post-secondary schooling than non-Indigenous Australians.²⁷

In the Northern Territory Department of Education and Training 2010-11 Budget, the target for primary school students attending over 80 percent of the time is 100 percent for non-Indigenous students and 33 percent for Indigenous students. Similarly, targets around minimum standards for reading, writing and numeracy are on average 10 percent lower for Indigenous than non-Indigenous students.²⁸

There is also a discrepancy in how and where the education services are delivered to Indigenous and non-Indigenous students. There is a clear distinction between expectations, targets and resources for non-Indigenous and Indigenous students in the Northern Territory, particularly students who live on homelands.

Education on homelands

The national Aboriginal and Torres Strait Islander Education Action Plan aims to assist education providers to accelerate improvements in the educational outcomes of Aboriginal and Torres Strait Islander children and young people. It is part of a broader COAG reform agenda for school education that will contribute to closing the gap between the educational outcomes of Aboriginal and Torres Strait Islander students and their peers.²⁹ In the Northern Territory the program is implemented in line with the Working Future policy, which focuses on providing services to 20 larger towns designed to act as service hubs for their region. This effectively excludes homelands schools.

The current Northern Territory Department of Education and Training Education Provision Policy and Guidelines make no mention of homeland centres.³⁰ In fact, all the old policies that included reference to homelands have



been removed from the NT DET website and have been replaced by a new policy on educational provision that focuses on “access to learning” rather than access to school.

Mainstream education plans also exclude homelands. The \$17 million to be provided for “improved education related communications networks in regional communities across the Northern Territory and New South Wales,” which provides distance learning through satellite technology to all remote schools and students on cattle stations, specifically excluded homelands from funding.³¹ The Gillard Government’s \$16.2 billion education revolution with around 24,000 projects to be delivered in “every community across Australia” also excludes homelands.³²

There are also glaring inequalities in funding and staffing allocations between HLCs, which exclusively cater for young Indigenous People, and other small remote non-Indigenous schools. Currently in the Northern Territory there are about 15 schools with attendances below 20, all of which receive full government funding. Yet, 45 remote Aboriginal school populations with at least comparable, and in many cases greater, numbers of students are unable to access the same level of schooling facilities and service as non-Indigenous schools because they are classified as HLCs³³.

All homelands residents speak languages other than English as their first language. Keeping language and culture strong into the new generation is often the reason why parents and grandparents live on homelands. Many hub schools do not actively involve homeland community members in developing and implementing a curriculum that engages with, respects and values traditional language and knowledge. The most successful HLCs, with continual high attendance, adopt the philosophy of ‘both-ways’ education. It is holistic in that it includes both Western and traditional practices; involves the community and the environment, as well as the cultural and spiritual connections which are encoded in ancestral song, art and performance.³⁴

Jackie Duluwidi from the Mäpuru Homeland School describes the importance of education on homelands:

We must have schools on our homelands because on country our young people are guided and instructed by their elders. We know what we are doing and where we’re going. We understand each other and work together. Homelands are close and cohesive communities where all residents are well behaved and respectful. These are safe places for children to be educated. Elders and teachers work together so the children grow up knowing how to behave and learning how to work in the balanda world. That’s why all children go to school. They have a future here. Look, here all the businesses are run by Yolŋu, not balanda . Here on their homeland young people have the best chance of a future.

If they [children] leave and go to the [growth] towns they won’t have any work or opportunity, they won’t have a future. In the towns there are too many different people living together, all mixed up. If we send the children to these places they learn bad things, they learn other [unhealthy] ways. In those towns young people are distracted by bad influences from Western culture. Over there, there is substance abuse, teenage pregnancy, suicide, and no discipline. Over there in the towns children do not learn to respect their heritage, they will not perform during ceremonies. They are only interested in discos. When there are discos they ‘twist’, that’s what they learn.

Here at Mäpuru they learn about good things, like how to work for their future, and they learn their true identity and their kin connections to other people and the land, and the grasses, trees, and everything else in the environment. In homelands children become [educated and respectful]‘people’, only here, here in homelands. They learn about ceremony and their heritage, who they are. These are the things that will sustain them in the future. Like I am following in the footsteps of my elders, later the children will



follow in my footsteps. They learn these things in homelands because they are living with elders, elders who are wise, well behaved, compassionate and respectful. Here children are taught to be good citizens, behave properly and be confident so they can have a real future.'

Recommendations:

The Australian and Northern Territory Governments need to support education on homelands by ensuring long-term funding for HLCs.

The Australian and Northern Territory Governments should support the development of HLCs and ensure there are no funding discrepancies between HLCs and other remote schools.

The Australian and Northern Territory Governments should celebrate and publicise the unique nature of good homeland education, which is focused upon cultural, economic and environmental sustainability.

Provisions should be made for government workers, particularly teachers, to be trained in cross-cultural communication and engagement skills, cultural awareness, and the languages, cultures and histories of remote Northern Territory.

Governance

Australia's international obligations and Indigenous consent and participation

Indigenous Peoples have strong rights to consent and participation in international law. In all matters affecting Aboriginal Peoples' lands, communities and housing, there needs to be a robust process of consultation that recognises the specific traditions and circumstances of those affected. Article 19 of the *DRIP* says that "States shall consult and cooperate with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them". According to the UN Special Rapporteur on the Rights of Indigenous Peoples, "without the buy-in of Indigenous peoples, through consultation, at the earliest stages of the development of government initiatives, the effectiveness of government programmes, even those that are intended to specifically benefit Indigenous peoples, can be crippled at the outset".³⁵

The CESCR has provided a clear articulation of the rights of effective participation and informed consent and see it as a fundamental aspect of non-discrimination. This is set out in the Committee's General Recommendation XXIII, which requires States to "ensure that members of Indigenous peoples have rights in respect of effective participation in public life and that no decisions relating to their rights and interests are taken without their informed consent".³⁶

The content of the right to free, prior and informed consent – what it means in any specific case – is a matter to be determined by Indigenous Peoples and the State. This will vary according to local context and factors such as the relevant subject matter (for example, resource management or enactment of legislation). But there is increasing recognition of the view that consent will be mandatory in those cases where an activity, law or policy has a major impact on Indigenous Peoples.

Recommendation:



The Australian Government must implement the *DRIP* into law, policy and practice. Any new policies must result from direct negotiations with and the free, prior and informed consent of, Aboriginal and Torres Strait Islander People affected.

- ¹ At the time of the census in 2006, these figures were an approximate representation of the population of these regions but they are elastic due to high levels of mobility between growth towns, large centres like Alice Springs and Darwin and homelands communities.
- ² Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, James Anaya, *Situation of Indigenous peoples in Australia*, Addendum A/HRC/15/37/Add.4. (J Anaya, Situation of Indigenous peoples in Australia).
- ³ CP Burgess, FH Johnston, DMJS Bowman, PJ Whitehead, 'Healthy Country: Healthy People? Exploring the Health Benefits of Indigenous Natural Resource Management', *Australian and New Zealand Journal of Public Health*, 2005, Apr; 29(2): p 117–22.
- ⁴ Aboriginal and Torres Strait Islander Social Justice Commissioner *The Social Justice report* Australian Human Rights Commission, 2009, p 127. www.hreoc.gov.au/social_justice/sj_report/sjreport09/pdf/sjr_ch4.pdf.
- ⁵ S Kerins, 'The Future of Homelands/Oustations' *Dialogue*, 2010: 29(1) p 52–60. For more information see caepn.anu.edu.au/poc/index.php (S Kerins, The Future of Homelands/Oustations).
- ⁶ Senate Select Committee on Regional and Remote Indigenous Communities, *Select Committee report on regional and remote Indigenous communities First Report*, September 2008 p 33. www.aph.gov.au/senate/committee/indig_ctte/reports/2008/report1/report.pdf.
- ⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No 3: The Nature of States Parties' Obligations*, Article 2, Para 1, UN Doc HRI/GEN/1/Rev.5, 2001.
- ⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing*, Art. 11 (1), (1991), E/1992/23. www.unhcr.org/refworld/docid/47a7079a1.html
- ⁹ UN Human Rights Council, *UN Human Rights Council: Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, 2007, A/HRC/4/18. www.unhcr.org/refworld/docid/461f35472.html
- ¹⁰ UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mission to Australia (31 July to 15 August 2006)*, 2007, A/HRC/4/18/Add.2. www.unhcr.org/refworld/docid/46652ba52.html (Special Rapporteur on Housing, Mission to Australia)
- ¹¹ Special Rapporteur on Housing, Mission to Australia
- ¹² Special Rapporteur on Housing, Mission to Australia
- ¹³ P Torzillo, The state of health hardware
- ¹⁴ P Torzillo, The state of health hardware
- ¹⁵ P Torzillo, The state of health hardware
- ¹⁶ FaHCSIA, Stronger Futures
- ¹⁷ Northern Territory Government, *Outstations/ homelands policy: Headline Policy Statement*, May 2009. www.workingfuture.nt.gov.au/Homelands/docs/Headline_Policy_Statement.pdf (NTG, Headline policy statement)
- ¹⁸ Information provided to Amnesty International in September 2011
- ¹⁹ Australian Human Rights Commission 2008 Face the Facts AHRC, Sydney.
- ²⁰ KG Rowley, K O'Dea, I Anderson, R McDermott, K Saraswati, R Tilmouth, I Roberts, J Fitz, Z Wang, A Jenkins, JD Best, Z Wang and A Brown, 'Lower than expected morbidity and mortality for an Australian Aboriginal population: 10-year follow-up in a decentralised community' *Medical Journal of Australia* 188 (5): 2008, p 283–287.
- ²¹ Committee Rights of the Child General Comment No. 11 Indigenous children and their rights under the Convention, UN Doc CRC/C/GC/11 (2009) p13, para 57. Indigenous children and their rights under the Convention.
- ²² Committee Rights of the Child General Comment No. 11 Indigenous children and their rights under the Convention, UN Doc CRC/C/GC/11 (2009) p13, para 57.
- ²³ CRC, Art. 28 (1) (e).
- ²⁴ CRC, Atr. 3.
- ²⁵ CRC, Art. 30 and ICCPR, Art. 27. That these standards require 'positive measures of protection' was recognized by the HRC, in its General Comment No. 23, The Rights of Minorities (Article 27), UN doc. CCPR/C/21/Rev.1/Add.5, para. 6.2.
- ²⁶ Andrew Leigh and Xiaodong Gong *Estimating Cognitive Gaps Between Indigenous and Non-Indigenous Australians* Centre for Economic Policy Research Discussion Paper. 578, April, 2008. Available at: <http://econrssh.anu.edu.au/pdf/DP578.pdf> Accessed: 25 September 2011.
- ²⁷ Andrew Leigh and Xiaodong Gong *Estimating Cognitive Gaps Between Indigenous and Non-Indigenous Australians* Centre for Economic Policy Research Discussion Paper. 578, April, 2008. Available at: <http://econrssh.anu.edu.au/pdf/DP578.pdf> Accessed: 25 September 2011.
- ²⁸ Ministerial Council for Education, Early Childhood Development and Youth Affairs *Aboriginal and Torres Strait Islander Education Action Plan 2010 – 2014* Available at: http://www.mceecdya.edu.au/verve/resources/ATSIEAP_web_version_final.pdf Accessed: 27 September 2011.



²⁹ Reform directions are detailed in the National Indigenous Reform Agreement, the National Education Agreement, the Early Childhood Education National Partnership, the Indigenous Early Childhood Development National Partnership, Remote Service Delivery National Partnership, the Smarter Schools - Improving Teacher Quality National Partnership, the Smarter Schools - Low Socio-economic Status School Communities National Partnership and the Smarter Schools - Literacy and Numeracy National Partnership, the Youth Attainment and Transitions National Partnership and other agreements. Commitments made in these national partnerships and agreements are brought together in the Plan with a number of new and continuing complementary measures to close the gap between the educational outcomes of Aboriginal and Torres Strait Islander students and other students.

³⁰ <http://www.det.nt.gov.au/about-us/policies/documents/schools/education-provision>

³¹ http://www.richardalston.dcita.gov.au/Article/0,,0_4-2_4008-4_109945,00.html

³² <http://www.deewr.gov.au/Schooling/BuildingTheEducationRevolution/Pages/default.aspx>

³³ http://www.culturalsurvival.org.au/docs/Case%20Study_Unequal%20Schools.pdf

³⁴ For writing by Yolŋu educators and philosophers, see <http://www.cdu.edu.au/centres/yaci/resources.html>

³⁵ Special Rapporteur, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN Doc A/HRC/1234 (15 July 2009) p 12, para 36.

³⁶ CERD Committee, *General Recommendation XXIII: Indigenous Peoples*, 51st sess 1997, annexV [4(d)], UN Doc A/52/18.