

**Submission on the 12 month Review
of the
Parliamentary Joint Committee on Human Rights'
Report on the Stronger Futures Law**

September 2014

In my discussions with Aboriginal people, I could sense the deep hurt and pain that they have suffered because of government policies that are imposed on them. I also saw Aboriginal people making great efforts to improve their communities, but noted that their efforts are often stifled by inappropriate and inflexible policies that fail to empower the most effective, local solutions. I would urge a fundamental rethink of the measures being taken under the Northern Territory Emergency Response. There should be a major effort to ensure not just consultation with the communities concerned in any future measures, but also their consent and active participation. Such a course of action would be in line with the UN Declaration. Navi Pillay UN Human Rights Commissioner.

Note: most of the measures under the NT Emergency Response are still in place in September 2014



Summary.

Human Rights. There is evidence that the Australian Government has not met all of the human rights obligations that it has signed or supported

Recommendation: That the Committee recommend to Government that the international Conventions and Covenants that it has signed and the UN Declaration on the Rights of Indigenous Peoples be followed to the letter and the spirit.

Consultations. The Australian Government has provided little evidence that people subject to the Stronger Future law provided wide consent to proposals made through the consultation process.

Recommendation: That the PJCHR recommend to Government that the term "consultation" be defined in Section 5 of the Stronger Futures Act and that it comply with the guidelines outlined in the UN Declaration on the Rights of Indigenous Peoples and to the Australian Human Rights Commission guidelines

Recommendation: That the PJCHR consider recommending in its review that the Aboriginal communities be provided with the capacity to employ their own advisors so that the implications of consultations can be fully appreciated by the target communities.

Special Measures.

In general, the Special Measures imposed on people subject to the Stronger Futures law appear to have been implemented without taking account of international human rights commitments leading to a sense of disempowerment and negative impacts on continuing cultural identity

Recommendation: That the PJCHR consider whether the on-going Special Measures have been introduced in accord with the Racial Discrimination Act and the International Convention for the Elimination of all forms of Racial Discrimination taking account of the UN Declaration on the Rights of Indigenous Peoples and to advise Government accordingly.

Recommendation: If the PJCHR finds that the limitations imposed by the on-going Special Measures do not have a rational connection to the Government objectives, that the Government be advised accordingly

Recommendation: If the PJCHR finds that the on-going Special Measures are not advancing Aboriginal people, or are not proportionate to the situation, not reasonable nor rational, that the Government be advised accordingly.

The Belconnen Amnesty International Action Group and its predecessor groups have been active in North Canberra for nearly 30 years. The initial focus was on the 3 original Amnesty International mandates: the release of Prisoners of Conscience, the prevention of torture and the elimination of capital punishment. The group's major achievement has been the founding of Canberra's torture and trauma rehabilitation service, Companion House. A sub-group of our members currently assists the settlement of Companion House clients into accommodation. Members have also sat on the Board of Companion House and one has acted as Chair.

Our current work focuses on writing letters on issues described as Urgent Actions, to maintain letter writing stalls and to speak out on matters of human rights. A major focus now, is to have the Government of Laos act on the disappearance of a human rights and community education worker from a police station. We have 45 members on our mailing list and 22 members on average attend monthly meetings.

This submission is written as a sign of our deep concern about the state of human rights in the Northern Territory following the so called Intervention and the introduction of the Stronger Futures law. We very much appreciate the initial report by the PJCHR and similarly appreciate the opportunity to provide this submission.

In fact, we see the establishment of the PJCHR as a potent agent in the maintenance of human rights in Australia.

This submission focuses on the international human rights Conventions that impact on indigenous populations especially over the past 12 months. The submission does not necessarily represent the views on Amnesty International Australia nor that of the London based Amnesty International Secretariat.

It should be noted that reference will be made to the UN Declaration on the Rights of Indigenous Peoples in this submission, not as a Convention adopted in Australian law but as a specific and formal guideline to the adopted Conventions. The Australian Government has formally endorsed the UN Declaration on the Rights of Indigenous Peoples and it is considered by the UN Human Rights Special Rapporteur in a report to the General Assembly (A/HRC/15/37/Add.4) to provide the detail for the Conventions, especially the International Convention for the Elimination of all forms of Racial Discrimination. (*As a party to both the ICCPR and the ICESCR, Australia must respect the human rights protected by these treaties, in addition to being bound to the provisions of the Convention to Eliminate Discrimination; and, having declared its support for the Declaration on the Rights of Indigenous Peoples, it should also adhere to the principles of that instrument.*)

Also providing more detail of the intent of the International Convention for the Elimination of all forms of Racial Discrimination is the UN Committee on the

Elimination of Racial Discrimination General Recommendation 23: Indigenous Peoples

- 4. The Committee calls in particular upon States parties to: (a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation; (b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity; (d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent; (e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.*
- 5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources*

It is possible that the UN Committee felt that it was important to provide this extra detail to ensure that the Convention would be interpreted correctly.

Human Rights

The sole aim of the Belconnen Amnesty International Group in regard to the PJCHR Review is to support the human rights of Aboriginal people in the Northern Territory. The Australian Government has conducted an exercise in racial discrimination that does not benefit Aboriginal people. This is not just our view but it is also the view of the UN Special Human Rights Rapporteur for Indigenous Peoples

The Government has nevertheless been careful to minimise this perception by misusing the Special Measures mechanisms available to it through the International Convention for the Elimination of all forms of Racial Discrimination, by using difficult to understand bureaucratic language and by reporting support by Aboriginal people affected by the Stronger Futures law for the Measures when there is no broad evidence of this.

The Governments announced original reasoning for an Intervention based on the Little Children are Sacred report was false as it did not adopt a single recommendation from that report. It ignored the refrain within the report that consultations must be a 2 way exchange and that current practices were disempowering the people. The Government at the time stated that there were paedophile rings operating in Aboriginal settlements but no evidence was offered and

the claims have since found to be false in a report by John Lawler, Deputy Commissioner Australian Crime Commissioner in 2009.

Recommendation: That the Committee recommend to Government that the international Conventions that it has signed and the UN Declaration on the Rights of Indigenous Peoples be followed to the letter and the spirit.

Consultations with Aboriginal people

Consultation requirements are referred to in a number of UN Declarations and Conventions. The consultations between the Government and Aboriginal people prior to the PJCHR report of June 2013 did not meet the suggested format of the Australian Human Rights Commission nor the guidelines provided in the UN Declaration on the Rights of Indigenous Peoples to achieve prior informed consent to any racially discriminatory policy initiatives.

Some land reform consultations have occurred since the introduction of the Stronger Futures law but have continued to ignore the basic rights indicated in the UN Declaration on the Rights of Indigenous Peoples

The Stronger Futures Act does not attempt to define consultations even though there are adequate guidelines in the UN Declaration on the Rights of Indigenous Peoples which the Australian Government endorsed with some fanfare in 2009. Instead, the Government ignored its own endorsement and has relied on, and still relies on consultations that seem to be flawed. They do not take account of the capacity of many for whom English is a second language to understand the implications of the proposals put forward by Government. In the land reform area consultations are now done under the truly offensive Section 35 (4) (5) of the Stronger Futures Act whereby the Government has essentially awarded itself the capacity to ignore the need to consult. This Section only requires the Government to consult if an Aboriginal land owner requests consultation in the matter of land reform but then allows the Government to ignore even this requirement. This is surely not in accord with the International Convention for the Elimination of all forms of Racial Discrimination Article 1 nor the International Covenant on Economic, Social and Cultural Rights Article 1(1) that provides for self determination.

Information received in the last 12 months from Aboriginal people in the Northern Territory is that consultations have occurred on land reform, but only for 15 of the 100 plus affected communities living in Community Living Areas.

The consultations in the past were problematic and there is no suggestion that this has changed. The standard response from Government was that the consultations associated with the introduction of Special Measures were extensive thus implying that they were adequate. Private audio recordings of 9 consultations during this

period released to *concerned Australians* indicated strong opposition from the community to the Special Measures. Nevertheless, the Government reporting indicated that there was wide support for the proposals quoting independent Government funded consultants. Public access to written reports or audio recordings of the consultations in the prescribed communities were not provided by Government. The only tangible evidence of what the people thought of the Government proposals is in the transcript of the Senate Legislations Committee thanks to Hansard and the 9 private reports covered in *concerned Australians* publications.

There is no evidence that the consultations in the lead up to the passage of the Stronger Futures law complied with UN Declaration on the Rights of Indigenous Peoples Article 19 (*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*)

There is no clear evidence that in accord with UN Declaration on the Rights of Indigenous Peoples Article 19, the majority of Aboriginal people in the NT have agreed to, or have provided consent to racially discriminatory Special Measures. There is no evidence that the majority of Aboriginal people understood the content of the consultations to the extent they were able to appreciate the implications arising

Aboriginal and Torres Strait Islander Social Justice Commissioner has suggested an approach to consultations that dovetail with the UN Declaration on the Rights of Indigenous Peoples articles on consultation. The Commissioner suggested that the consultations should be entered into to obtain consent or agreement and the consultations should take the form of a negotiation, that is, that each of the parties has equal status.

Recommendation: That the PJCHR recommend to Government that the term "consultation" be defined in Section 5 of the Stronger Futures Act and that it comply with the guidelines outlined in the UN Declaration on the Rights of Indigenous Peoples and to the Australian Human Rights Commission guidelines

Recommendation: That the PJCHR consider recommending in its review that the Aboriginal communities be provided with the capacity to employ their own advisors so that the implications of consultations can be fully appreciated by the target communities.

Special Measures

Special Measures for positive racial discrimination are provided for in the International Convention for the Elimination of all forms of Racial Discrimination Article 1(4) "*Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection ... shall not be deemed racial discrimination*

The Special Rapporteur in his report to the UN General Assembly said in his opinion, *"the discriminatory aspects of the (Northern Territory Emergency Response) NTER discussed above have not been shown to qualify as "special measures" that may be deemed not to constitute racial discrimination for the purposes of the Convention"*. The NTER occurred before the introduction of the Stronger Futures Bill, but essentially all of the Special Measures have since remained intact.

Special Measures should have a clear objective – a result and a timeline. The Government has never to our knowledge indicated what these elements are for any of the Measures beyond suggesting that they will be for the advantage of the Aboriginal people. The Measure should cease as soon as the objective is reached.

There is no fully independent evidence that the majority of Aboriginal people have agreed to any of the Measures nor indeed understood their implications. Under the Racial Discrimination Act the law can only be complied with if Special Measures to racially discriminate meet the requirements of Article 1 of the International Convention for the Elimination of all forms of Racial Discrimination. The evidence as assessed by ourselves and indeed the UN Special Rapporteur suggests that this is not the case. This in turn has serious implications for compliance with the Racial Discrimination Act.

We appreciate that the Special Rapporteur made his statement to the UN General Assembly before the Stronger Futures Law came into effect but the essence of the ongoing Measures has not changed.

We cannot imagine why a whole community of Aboriginal people would agree to a Special Measure that would have their Land handed over to private interests as is suggested is possible under Section 35 of the Stronger Futures Act. Land is the basis of traditional Aboriginal culture. Land is owned by the whole community (not a select group of individuals). Any transfer of traditionally owned community Aboriginal land to Government or to private interests must only be done with the full agreement of the whole community and not a select few.

As is indicated in Article 26 of the UN Declaration on the Rights of Indigenous Peoples

- 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*
- 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.*
- 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.*

We cannot imagine why whole communities could agree to compulsory income management, or other compulsory controls. There is no compelling evidence

produced by Government that these Special Measures were agreed to by the affected communities and thus the associated Special Measures must be considered in doubt.

Recommendation:

That the PJCHR consider whether the on-going Special Measures have been introduced in accord with the Racial Discrimination Act and the International Convention for the Elimination of all forms of Racial Discrimination taking account of the UN Declaration on the Rights of Indigenous Peoples, and to advise Government accordingly.

Recommendation: If the PJCHR finds that the limitations imposed by the on-going Special Measures do not have a rational connection to the Government objectives as stated in the Stronger Futures Act, that the Government be advised accordingly

Recommendation: If the PJCHR finds that the on-going Special Measures are not advancing Aboriginal people, or are not proportionate to the situation, not reasonable nor rational, that the Government be advised accordingly.