

SOME HUMAN RIGHTS ARE WORTH MORE THAN OTHERS

The Northern Territory Intervention and the Alice Springs Town Camps

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Australia's legally binding obligations at international law to respect, protect and reinvigorate Aboriginal and Torres Strait Islander¹ cultural rights are unambiguously stated in numerous instruments. These include the United Nations' International Convention on the Elimination of All Forms of Racial Discrimination ('Race Convention'), International Covenant on Civil and Political Rights, Convention on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples. In particular, the United Nations Committee on the Elimination of Racial Discrimination ('CERD'), which monitors compliance with the Race Convention, has identified specific obligations of State parties, including Australia, as they apply to Indigenous peoples in General Recommendation 23, although Australia disputes that such obligations are binding. Importantly, Australia must 'recognise and respect Indigenous distinct culture, history, language, and way of life as an *enrichment of the State's cultural identity* and promote its preservation' and 'ensure that Indigenous communities can ... practise and revitalise their cultural traditions and customs' (emphasis added).² The right of Indigenous people to 'own, develop, control and use their communal lands, territories and resources' is also explicitly mandated.³

Notwithstanding such clear human rights obligations, the Northern Territory Emergency Response (commonly known as the 'Northern Territory Intervention' or the 'Intervention') has violated and continues to violate the cultural rights of Aboriginal people and peoples subject to its measures. Indeed, the Intervention was arguably implemented with the express objective of undermining certain cultural norms in order to 'normalise' the lives of Aboriginal people in remote Northern Territory communities. The current federal government (the 'Government'), while expressing mindfulness of the centrality of Aboriginal and Torres Strait Islander cultural considerations to any attempt to address disadvantage, nonetheless undermines cultural practice and integrity and hinders the fulfilment of cultural responsibilities in its ongoing support for the Northern Territory Intervention. One stark example was the Government's insistence on removing the authority of Aboriginal Housing Associations over Alice Springs Town Camps ('Town Camps'), which culminated in the threat of compulsory acquisition by the Government, exhibiting serious disregard for potentially irreversible harm to cultural integrity.

Impact of the Northern Territory Intervention

The Northern Territory Intervention was argued to be in response to the *Ampe Akelyernemane Meke Mekarle* 'Little Children are Sacred' Report, a report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse. It was imposed with astonishing haste, without consultation, in a top down, non-discretionary manner. The justification for the extraordinary and unprecedented measures of the Intervention was embedded in sensationalist language of dire emergency that characterised Northern Territory Aboriginal communities as 'nothing less than a war zone'.⁴ The need for urgent action to avoid 'red tape and talkfests'⁵ resulted in hasty formulation of the Intervention policy (reportedly in 48 hours) and the passage of 480 pages of legislation in ten days, thus precluding cooperation or consultation with, or even notification, to the affected communities.

Given the absence of engagement with affected Aboriginal communities and the haste of its implementation, it is unsurprising that the measures themselves and the means of their implementation have adversely impacted on Aboriginal social and cultural rights. In response, a group of senior Aboriginal people subject to the Intervention requested that CERD invoke its urgent action procedure ('CERD complaint'), alleging that Australia has breached international law and that, among other things:

- the measures in relation to Aboriginal land deliberately seek to undermine traditional communal ownership;
- removal of the future act regime under the *Native Title Act* explicitly prevents traditional owners from exercising their cultural obligations to speak for country;
- income quarantining has affected participation in ceremony and sorry business;
- removal of considerations of customary law and cultural practice in bail and sentencing prevents consideration of the totality of Aboriginal offenders' circumstances; and
- the unjustified conflation of sexual predation and violence with cultural practices and traditional law has eroded respect for Aboriginal culture.⁶

In fact, the undermining of cultural norms and practices appears inevitable when the ideological objectives underpinning the Intervention as first formulated are appreciated. The former Minister for Indigenous

REFERENCES

1. In this article, the term 'Indigenous' will be used when referring to Indigenous peoples internationally or to Aboriginal and Torres Strait Islanders in Australia, while the term 'Aboriginal' will be used in relation to Aboriginal people in the Northern Territory.
2. CERD, *General Recommendation 23: Rights of Indigenous Peoples*, 51st sess. [3], UN Doc A/52/18, annex V at 122 (1997) at [4].
3. *Ibid* [5].
4. Mal Brough, 'Northern Territory Intervention' (Speech delivered as the 40th Alfred Deakin Lecture, University of Melbourne, Melbourne, 2 October 2007) <formerministers.fahcsia.gov.au/malbrough/speeches/Pages/alfred_deakin_02oct07.aspx> at 5 February 2010. ('Alfred Deakin Lecture')
5. Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 18 (Mal Brough, Minister for Families, Community Services and Indigenous Affairs). ('Second Reading Speech')
6. Barbara Shaw et al, *Request for Urgent Action under the International Convention on the Elimination of All Forms of Racial Discrimination* (2009), 10 <jumbunna.uts.edu.au/research/submissions.html> at 5 February 2010. I was one of a team of lawyers who assisted the Authors to prepare their request to CERD.

Affairs, Mal Brough, was explicit in his condemnation of certain Aboriginal social and cultural values and rejected outright that difference between Aboriginal and non-Aboriginal Australians could be desirable or appropriate, instead advocating the necessary adoption of 'normal' values in 'normal suburbs'. He attributed the disadvantage faced by Aboriginal communities to the breakdown of 'normal community standards, social norms and parenting behaviours' where 'grog, pornography and gambling filled the void created where the 'natural social order of production and distribution' was lacking.⁷ In language later echoed by the current Minister for Indigenous Affairs (the 'Minister'), social norms were to be rebuilt.⁸ Brough's focus was on the individual, such that socioeconomic disadvantage amongst Indigenous Australians should be addressed by a focus on individual attainment of training and 'real jobs', home ownership, small business and taking responsibility for one's own welfare.⁹ Town Camps were to be turned into 'normal suburbs'.¹⁰ Reciprocal kinship obligations such as that of sharing resources were directly targeted as undesirable.

Connection to country is fundamental to Indigenous peoples throughout the world and expressly protected in international law. In contravention of this principle, Brough condemned the historic land rights decisions of *Mabo* and *Wik* as impoverishing Aboriginal people, rather than freeing or empowering them.¹¹ Brough criticised land rights decisions for locking people into collective tenure when we 'need to actually recognise that communism didn't work, collectivism didn't work'.¹² Aboriginal land tenure was described as working against 'developing a real economy', requiring transformation so that people can 'own and control' their own houses and obtain loans to establish small businesses.¹³ Land rights were described as one of two things that 'did more to harm Indigenous culture and destroy it than any two other legislative instruments ever put into the Parliament'.¹⁴ In a similar vein, the current Government's stated intention is to promote private ownership in Aboriginal communities.¹⁵

Threatened compulsory acquisition of the Alice Springs Town Camps

As detailed in the CERD complaint, a number of the Intervention measures directly target the cultural integrity and authority of Aboriginal people and communities. One further example is striking in its capacity to weaken cultural authority, prevent expression of the right to self-determination, undermine Aboriginal specific tenure and impact on cultural practice — the Government's insistence that tenancy management in Town Camps be removed from Aboriginal Housing Associations' authority. This insistence culminated in the Minister's threat to compulsorily acquire the Town Camps unless the relevant Housing Associations, which hold Special Purposes Leases or Crown Leases in perpetuity, entered into 40 year subleases with the Government. The Government contended that 'secure tenure' was necessary for a \$125 million investment in

infrastructure and essential services, and conditional on entry into the subleases.

On 24 May 2009, the Minister announced the commencement of the process of compulsory acquiring Alice Springs Town Camps under s 47(1) of the *Northern Territory Emergency Response Act*. The Housing Associations, represented by the Tangentyere Council ('Council'), had previously agreed to enter into the subleases subject to satisfactory negotiations on tenancy management to be undertaken with mutual goodwill. The threat of compulsory acquisition ended the protracted 'negotiations' when the Government presented the Council with the ultimatum that tenancy management be undertaken by the Northern Territory Government or Northern Territory Housing Association ('Territory Housing'). This reduced the role of Housing Associations to that of 'consultation' — the same ultimatum had been rejected when pressed by the former government two years earlier.

The Minister cited the failure of Tangentyere Council to agree to a 'fair and consistent tenancy management system' and its failure to fulfil obligations under the Agreed Work Plan, as a rationale for ending negotiations. The Minister claimed:¹⁶

The Australian Government cannot agree to a system where houses are not allocated on the basis of need, where upgrades and maintenance may not be delivered, or where tenancies may not be administered with objective standards of transparency and fairness.

Under threat of losing the land over which the Housing Associations had fought so tenaciously to secure tenure, all but two of the Housing Associations passed identical resolutions to enter into the subleases. However, in accepting the 'offer', lawyers for Tangentyere Council clarified that it was acceptance under duress 'for the simple reason that [the Minister had] threatened them with compulsory acquisition if they do not'.¹⁷ The letter of acceptance stated that 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'.¹⁸

A number of Town Camp residents unsuccessfully challenged the subleases and compulsory acquisition, concerned that the Housing Associations had been coerced into the subleases before the actual terms of the underleases — that residents must enter into with Territory Housing — were known.¹⁹ Territory Housing has a poor reputation with Aboriginal people in Alice Springs. Residents fear that culturally appropriate tenancy management will end and are concerned, in particular, about eviction for cultural and social practices as well as the loss of control over allocation of housing in Town Camps. The residents' concerns are more clearly understood when the history and the nature of the Town Camps are appreciated.

History of the Town Camps

The Town Camps' very existence is a firm expression of self-determination by Aboriginal people who have withstood resistance to their presence in Alice Springs and repeated attempts at removal or assimilation.²⁰

7. Second Reading Speech, above n 5, 6–11.

8. Ibid 9; ABC Television, 'Govt Responds to Northern Territory Intervention Review', *The 7:30 Report*, 23 October 2008 <abc.net.au/7.30/content/2008/s2399696.htm> at 5 February 2010.

9. Second Reading Speech, above n 5, 2–11.

10. Ibid 14.

11. 'Brough Questions worth of land rights', *The Age* (online), 15 August 2007 <theage.com.au/news/national/brough-slams-land-rights/2007/08/15/1186857579661.html?_cid=rss_news> at 5 February 2010.

12. Ibid.

13. Second Reading Speech, above n 5, 11.

14. Alfred Deakin Lecture, above n 4.

15. Patricia Karvelas and Nicola Berkovic, 'Aborigines told to buy homes by the Rudd Government', *The Australian* (online), 2 January 2009 <theaustralian.news.com.au/story/0,,24863938-2702,00.html> at 5 February 2010.

16. Jenny Macklin, 'Alice Springs town camps' (Media release, 24 May 2009) <jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/print/alice_springs_town_camps_24may09.htm> at 5 February 2010.

17. Chris Graham, 'Macklin's town camp takeover derailed by big guns', *Crikey* (online) <crikey.com.au/2009/07/31/macklins-town-camp-takeover-derailed-by-big-guns/> at 5 February 2010.

18. Ibid.

19. *Shaw v Minister for Families, Housing, Community Services and Indigenous Affairs* [2009] FCA 1397 (26 November 2009).

Indeed, the Intervention was arguably implemented with the express objective of undermining certain cultural norms in order to 'normalise' the lives of Aboriginal people in remote Northern Territory communities.

The Town Camps have their origin in 'illegal' fringe camps on the outskirts of Alice Springs, inhabited by Aboriginal people since the establishment of a telegraph station in 1872. From the 1860s, pastoral stations were established around permanent water sources, forcing Aboriginal people from their traditional lands. In some cases they were ordered from their hunting grounds because they camped near waterholes to the detriment of cattle. Families were also drawn into fringe camps by the removal of 'mixed race' children to the Bungalow, an institution in Alice Springs. Dispossession continued with the inclusion of Aboriginal workers into the NT Cattle Industry Award in 1968. Ironically, that expression of equality resulted in mass retrenchment of Aboriginal stock workers, many of whom were evicted from the pastoral stations that had been their homes for generations, or were denied the rations previously given instead of wages, forcing their relocation to Town Camps.

The tenacity of town campers to secure tenure cannot be overstated, occurring within the context of concerted efforts that continued until the 1970s, to restrict Aboriginal people from Alice Springs and to remove Town Camps. At least four times, and as late as 1960, Town Camps were destroyed and residents forcibly removed. Aboriginal people were ostracised from Alice Springs, including prohibited entry between 1928 and 1964 when only Aboriginal people with employment permits were allowed to enter the town and then only during daylight hours. In 1979, NT Government plans for mainstream housing were derailed by the Citizens for Civilised Living which opposed an Aboriginal housing project in Alice Springs, again concentrating residence in Town Camps.

Living conditions on the fringe camps were appalling. Without legal tenure and treated as 'illegal' settlements, fringe camps were not eligible for housing, power, water or sewerage services. Until the 1970s, people lived in humpies and old car bodies without basic facilities, and then residents formed incorporated Housing Associations to apply for leases over the land. Yet ironically, the neglect and disregard of Town Camps provided a source of attraction to Aboriginal people. In contrast to the systematic cultural destruction imposed by church run missions and government settlements, children were not placed in dormitories, Aboriginal languages were not forbidden, cooking was not restricted to communal dining rooms and life was not regimented.

Unique, not Brough's 'normal'

Alice Springs Town Camps are anything but Brough's 'normal suburbs'. Geographically, they map the distribution of Aboriginal language groups of the Northern Territory and South Australia. Under Aboriginal law, people have understood rights and responsibilities over certain land. Thus, in itself a form of cultural expression, Town Camps are not randomly sited but were positioned according to the direction of traditional country, dreaming tracks and sacred sites; traditional, social and historical factors; and advice of the traditional owners, the Arrente. Western Arrente camps are west of the town, eastern Arrente, east of the town, Warlpiri, north-east, Alyawarr and Anmatjira, north-west, and Pitjatjantjara, south. Importantly, permission to use particular land for a permanent camp was granted by the traditional owners.

Internal planning of Town Camps is complex and differs markedly from statutory planning schemes. Whereas planning and administration of Town Camps may appear haphazard or uncontrolled to non-Aboriginal eyes, they reflect specific concerns. Town Camps are populated by interdependent groups of people, bound by kinship allegiances linked to defined territory. Strong ties to traditional country are maintained and kinsmen exercising reciprocal obligations are unequivocally welcome. Planning must account for different family groups, visitor camping, ceremonial areas and sacred site protection such that the location of roads, houses, community facilities and visitor camping sites are affected by the relationships of residents. This has caused ongoing dispute with the Northern Territory Government, which claims that it was wasteful for the provision of essential services that the land was not being fully utilised. In 1981, the Northern Territory Government declared a moratorium on further applications for land tenure until 'adequate and rational use is made by Aboriginals of existing land grants'.²¹

Housing Associations effectively operate as institutions between two normative systems. They are incorporated under Commonwealth and NT legislation and have been granted statutory leases to provide housing and housing services. However, cultural legitimacy is fundamental to Housing Associations where adherence to Aboriginal law is explicitly enshrined in their constitutions. For example, among the objects and purposes of the Mount Nancy Housing Association Constitution, are those to develop programs to advance living conditions, develop social cohesion and community development and improve

20. This overview of the history and character of the Alice Springs Town Camps is taken from comprehensive accounts in Frances Coughlan, *Aboriginal Town Camps and Tangentyere Council: The Battle for Self-Determination in Alice Springs* (Master of Arts Thesis, La Trobe University, 1991) <desertknowledgecrc.com.au/publications/educationreports.html> at 5 February 2010; Michael Heppel & Julian Wigley, *Black out in Alice. A history of the establishment and development of town camps in Alice Springs* (1981); Mpwetyerre & Ors v Alice Springs Town Council [1996] NTSC 30 (14 May 1996, Kearney J); *Tangentyere v Commissioner of Taxes* (1990) 21 ATR 239 (4 May 1990, Angel J).

21. Coughlan, above, n 20, 117.

the environment 'in accordance with Aboriginal law'.²² Even individual residential tenancies with the Housing Associations are culturally determined with rules for 'house bosses' sanctioned by the Four Corners Committee; senior Aboriginal law people who advise the Council on traditional law.

Town Camps are not a 'stepping stone' to assimilation and mainstream society but provide a constructed environment, allowing retention of their cultural and social values for people living at the interface of two different cultures.²³ Vitaly, town campers choose to live in Town Camps and have rejected mainstream alternatives. Indeed, Collmann describes Aboriginal people in Alice Springs rejecting mainstream housing and other 'comforts' to maintain their relative independence achievable by living in Town Camps.²⁴

Negotiation at cross purposes

The failure of the Government to appreciate the depth of the social and cultural significance of the Town Camps to the residents is revealed in many ways, for example, in the Minister's assertion that Town Camps are forms of mainstream property. On announcing the commencement of the compulsory acquisition process, the Minister observed that the current leases were not granted under Northern Territory land rights legislation and are not based on traditional ownership, so acquisition could be addressed by adequate monetary compensation.²⁵ However, such a characterisation, while correct at law, denies the unique nature of the Town Camps where Aboriginal people have utilised mainstream statutory tenure for the express purpose of protecting and sustaining cultural and social legitimacy.

When the Town Camps are understood as a lived manifestation of Aboriginal social and cultural values, the stalemate between Government and the Housing Associations seems inevitable. Crucially, there is no dispute between the Council, the Housing Associations and the Government as to the urgent necessity for repairs, maintenance, and housing construction to alleviate overcrowding and living conditions unacceptable in a developed country. Indeed, the promised \$125 million is essential to begin redress for dramatic under-spending in key social welfare areas, estimated by the Northern Territory Council of Social Service ('NTCOSS') at \$542 million in 2006/2007 alone.²⁶

On its face, the Minister's requirements may appear reasonable to provide accountability for public funds. However, putting to one side the reservations of the Housing Associations and residents as to Territory Housing's capacity to provide effective maintenance, the removal of control over housing allocation is one example of the undermining of the very social and cultural values that the Housing Associations exist to protect. As described above, Town Camps consist of small groups of Aboriginal people with a shared identity bound by defined kinship rules and laws and customs not obvious to non-Aboriginal people. That the town campers may be moved from one Town Camp to another 'on the basis of need' or that people be allocated housing with a different language

group is anathema to residents who relate the violent consequences of Territory Housing's placement of feuding families in the same street.

A further concern, based on the experience of Aboriginal tenants of Territory Housing in Alice Springs, is the fear of eviction for families staying for extended periods, cooking kangaroo in the backyard, having too many cars or producing too much noise. A common narrative is of Aboriginal people evicted by Territory Housing who relocate to Town Camps, which raises the obvious question as to the fate of those evicted from housing on Town Camps. Residents are concerned that people evicted from Town Camps may ultimately live on the riverbed or camp on the outskirts of town, which ironically recreates the circumstances under which Town Camps originated.

The breakdown in negotiations reveals the contradictory positions held by the parties as to what should properly underpin decision-making — Aboriginal social and cultural norms based on relationships or western norms with an emphasis on individualised solutions. Despite the Minister's protestations, transparent alternatives were available that could have entrenched Aboriginal law, respecting, protecting and promoting Indigenous culture and self-determination. Instead, the Minister's preference has been to mainstream service provision, posing an ultimatum that requires the abandonment of cultural and social legitimacy as central to tenancy management.

Implications of the Government's approach

In the preliminary observations concerning his August 2009 visit to Australia, the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People ('Special Rapporteur') reminded Australia of its obligation to conform to 'international standards requiring genuine respect for cultural integrity and self-determination'.²⁷ The Special Rapporteur powerfully condemned the measures of the Northern Territory Intervention that 'overtly discriminate against Aboriginal peoples, infringe their right of self-determination and stigmatise already stigmatised communities'.²⁸ Advocating a more holistic approach to Indigenous disadvantage — one that 'addresses not just social and economic well being, but also the integrity of Indigenous communities and cultures, and their self-determination' — the Special Rapporteur called on the Government to be

fully respectful of the rights of Aboriginal and Torres Strait Islander peoples to maintain their distinct cultural identities, languages, and connections with traditional lands, and to be in control of their own destinies under conditions of equality.²⁹

Relevantly, and given the centrality of land to Indigenous peoples' socio-economic development, self-determination and cultural integrity, 'government initiatives to address the housing needs of Indigenous peoples should avoid imposing leasing or other arrangements that would undermine Indigenous peoples' control over their lands'.³⁰

Unfortunately, Australia has previously ignored United Nations' findings of violations of international law and it

22. Mt Nancy Housing Association Incorporated Constitution – 30 November 2006 item 1.3, Schedule 1.

23. Mpwetyerre & Ors v Alice Springs Town Council [14] [18]

24. Jeff Collmann, *Fringe Dwellers and Welfare: The Aboriginal Response to Bureaucracy*, (1988).

25. Macklin, above n 16.

26. Northern Territory Council of Social Service, 'Submission to the Inquiry into Government Expenditure on Indigenous Affairs and Social Services in the Northern Territory' (October 2008) <aph.gov.au/senate/committee/clac_ctte/gov_exp_indig_affairs/submissions/sublist.htm> at 5 February 2010.

27. James Anaya, *Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, as he concludes his visit to Australia* (27 August 2009) <unhcr.ch/hurricane/hurricane.nsf/view01/313713727C084992C125761F00443D60?opendocument> at 5 February 2010.

28. *Ibid.*

29. *Ibid.*

30. *Ibid.*

Town Camps are not a 'stepping stone' to assimilation and mainstream society but provide a constructed environment, allowing retention of their cultural and social values for people living at the interface of two different cultures.

is apparent that Professor Anaya's comments have not prompted reconsideration of the Intervention. However, the need for the Government to implement Professor Anaya's recommendations is required for more than fulfilling legal obligations. Rather, extensive evidence discloses the centrality of 'culture' to the achievement of the very socioeconomic parameters with which the Northern Territory Intervention is said to be concerned. Further, evidence suggests that policies and programs that do not embody cultural legitimacy will ultimately fail. Given the expenditure on the Intervention of an estimated \$1.4 billion over five years,³¹ the public interest in adopting evidence based policy is essential.

Culture can be defined as a:

complex and diverse system of shared and interrelated knowledge, practices and signifiers of a society, providing structure and significance to groups within that society and ultimately an individual's experience of their personal, social, and physical and metaphysical worlds.³²

Halloran describes the correlation between the undermining of cultural autonomy and the intergenerational transmission of cultural trauma manifest in high rates of incarceration, suicide, alcoholism, accidental death and the normalisation of violence and aggression.³³ He observes that the evidence supports 'rebuilding a world of Indigenous cultural meaning and relevance' to address 'the poor health and ill-being problems' of Aboriginal people.³⁴

Not limited to important health outcomes, evidence gathered over two decades by the Harvard Project on American Indian Economic Development in North America confirms the significance of cultural integrity to economic development and achievement of social and cultural goals. Indeed, the originators of the research, Kalt and Cornell, identify the irony in the tendency to view Indigenous culture as an obstacle to development, except as a commercial resource, marketable through tourism or arts and crafts.³⁵ Preliminary research findings in Australia by the Indigenous Community Governance Project ('ICGP') appear to support the principles arising from Harvard Project in identifying strong culturally legitimate institutions of governance as necessary to positive socioeconomic outcomes. Crucially, 'processes, relationships and cultural institutions' are fundamental to Indigenous notions of legitimacy, such that that the means may be more important than the end.³⁶

Such research highlights an elementary flaw underpinning government policy that tends to view Aboriginal people in terms of disadvantage in need of

improvement against measurable indicators rather than a 'separate society, or domain, with its own distinctive laws.'³⁷ As Blagg describes:³⁸

While there are many intricate crossing points, hybrid zones and liminal spaces between Aboriginal and non-Aboriginal domains, there are aspects of Aboriginal cultural, cosmological and social reality that remain profoundly incommensurate, which have to be accepted, and respected, *in difference*. (emphasis in original)

Instead, the failure to appreciate and respect Aboriginal culture, processes and institutions and attendant failure to implement policy and programs engendering cultural distinctiveness has the potential to entrench the 'collective existential despair' and widespread sense of helplessness, hopelessness and worthlessness reported as arising from the Northern Territory Intervention.³⁹

Conclusion

Consistent with Government policy focussed on socioeconomic indicators, exemplified in the Closing the Gap targets and key indicators of disadvantage, the Government's stated ambition of bringing the Northern Territory Intervention within a human rights framework concentrates on the 'right to healthy and affordable food; to a quality education and health care; to adequate housing; to the full protection of the law; and to live free from violence and abuse'.⁴⁰ There is no controversy as to the importance of such rights, but the absence is notable of the human rights obligations to preserve and invigorate Aboriginal cultural rights and responsibilities.

International human rights standards are legally binding because they protect the most fundamental of rights possessed by all men and women. Yet, too often, they are treated as luxuries or second tier rights, able to be traded against other concerns or ranked in importance. Current Government policy exemplified by the Northern Territory Intervention and removal of Aboriginal control of the Alice Springs Town Camps illustrates disregard for the protection of Aboriginal cultural and social norms. This is of deep concern, especially in light of reports of humiliation, despair and lack of trust in Government arising from the Intervention. Furthermore, contrary to the evidence of what works, it doesn't make sense.

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32. Michael Halloran, 'Cultural Maintenance and Trauma in Indigenous Australia' (2004) 11(4) *E Law – Murdoch University Electronic Journal of Law*

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33. *Ibid* [14]–[17].

34. *Ibid* [20].

35. Stephen Cornell and Joseph P Kalt, 'Two Approaches to the Development of Native Nations: One Works, the Other Doesn't' in Miriam Jorgenson (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (2007), 12–13.

36. Janet Hunt & Diane Smith, 'Building Indigenous community governance in Australia: Preliminary research findings' (Working Paper No 31/2006, CAEPR, Australian National University, 2006), 16.

37. Harry Blagg, 'Colonial Critique and Critical Criminology: Issues in Aboriginal Law and Aboriginal Violence' in Thalia Anthony and Chris Cunneen (eds), *The Critical Criminology Companion* (2008), 132.

38. *Ibid*.

39. Australian Indigenous Doctors' Association, *Submission to the Northern Territory Emergency Response Review Board* (2008) at [17] <aida.org.au/pdf/submissions/Submission_8.pdf> at 5 February 2010.

40. Australian Government, *Future Directions for the Northern Territory Emergency Response: Discussion Paper* (2009) 1 <fahcsia.gov.au/sa/indigenous/pubs/nter_reports/future_directions_discussion_paper/Documents/discussion_paper.pdf> at 5 February 2010.