GOVERNING THE BLACK COMMONS THROUGH COMMUNITY-BASED ENTERPRISES

by Seán Kerins

INTRODUCTION

In August 2012, after over a decade in opposition, the Country Liberal Party ('CLP') won the Northern Territory ('NT') election. The CLP came back to power after Indigenous voters in the 'bush seats' shifted their votes from Labor back to Indigenous candidates standing for the CLP. Labor painted their defeat as a protest against the Howard Government's 2007 Emergency Response ('the Intervention'), and its continuation under the federal Labor government as the 'Stronger Futures' policy.[1] Others put the defeat down to NT Labor's unjust and languid treatment of Indigenous voters since it came to power in 2001.[2] This historic shift of power did not go unnoticed. On election night, Chief Minister for the NT Terry Mills,[3] in his victory speech, deliberately paused to acknowledge those in remote regions of the Territory, saying '[w]e have heard from you and we are here to support you. This is my pledge of this proud Territory party. … I'm saying tonight, traditional people, we respect you and we'll work with you.'[4]

In June 2013, the CLP Government released its *Draft Indigenous Economic Development Strategy* ('*IEDS*').[5] Alison Anderson, the Minister for Regional Development, championed the new CLP *IEDS* as one 'about empowering Indigenous people to take charge of their own destiny and contribute to the economy by participating in it.'[6]

The release of the *Draft IEDS* provided an opportunity for the CLP Government to do two things. First, as the Minister said, to empower Indigenous people to take charge of their own destiny. Second, to do so in a way that builds on long-standing Indigenous community-based enterprises that play an important role in supporting homeland communities while also providing public good benefits through environmental service provision to wider Australia.

Despite the opportunity to work with Indigenous people and build on their development aspirations, early signs suggest the CLP Government has failed to grasp this chance. Instead, the Government is using its *IEDS* as a legitimising strategy for its own development agenda.[7] An agenda that focuses on a model which gives primacy to the market—mining and energy resources, tourism, and food export—while not allocating a role to Indigenous common property regimes, and to the customary users of these resources—who are seen as contributing little or nothing to development.

WHAT ARE COMMON PROPERTY RESOURCES?

'Freedom in a commons brings ruin to all' wrote Garret Hardin in his 1968 essay *The Tragedy of the Commons* in which he portrayed 'common property' as a model where people seemed helpless and unable to co-operate for the greater good of the community.[8] This led many to conclude management of common property should be removed from local communities to be either privatised or controlled by a state authority to ensure optimum use. However, in his analysis, Hardin erred by conflating common property with open access.

Despite this confusion, common property continues to be viewed negatively with advocates of market liberalism claiming 'communal land ownership and the absence of private property rights more generally have been insurmountable barriers to Indigenous enterprise.'[9]

There are four types of property rights regimes loosely ordered along a spectrum from a regime where no property rights are defined, to one where all the property rights are held by individuals. These are: open access; state property; common property; and private property.

Common property resources ('CPRs') are resources which some, but not necessarily all, of the property rights—rights of access, use, exclusion and regulation, or the transfer of these rights—are held in common by several people or groups of people (the co-owners).[10] CPRs share two characteristics: exclusion of, or control of access to, potential users is difficult; and each user is capable of subtracting from the welfare of other users.[11] In essence, CPRs are 'private' property for a bounded group in the sense that it is the group who decides who shall

be excluded. CPRs can include, amongst other things, land, water, fisheries, forests and biodiversity. 'Property encourages labor and investment',[12] and, as such the sustainable management of CPRs requires co-ordination and co-operation among the co-owners. This occurs through forms of governance institutions that are vital to the sustainable management of both the resource and the community of resource users.[13]

CPR governance institutions are the locally devised systems of rights, processes and obligations that guide the decision-making of the resource users. They often define the boundaries of the resource, its users, as well as the rules, regulations and the process for use of the resource. They form complex social phenomena not only among people but also between people and the resource.[14] They include formal constraints (rules, laws, and constitutions), informal constraints (norms of behaviour, conventions and self-imposed codes of conduct) and enforcement characteristics.[15]

COMMUNITY-BASED ENTERPRISES AND COMMON PROPERTY RESOURCES

In some places, CPR institutions have been in operation for millennia where they have been continually adapting in response to local needs and national and global economic opportunities and threats.[16] In other places they are relatively recent phenomena that have come about as co-owners begin to organise themselves to conserve, protect or better utilise their CPRs.

Beginning in the 1970s with land rights and the homeland movement, many Indigenous groups in remote regions of the NT began to adapt their customary governance institutions to protect CPRs that are vital to their livelihoods. This development occurred as part of the Caring for Country movement,[17] when some Indigenous groups began to form new institutional arrangements with neighbouring groups, so together they could better co-operate in protecting and managing their CPRs across wider cultural and geographic regions. An example of this type of co-operation can be seen in West Arnhem Land where Indigenous land-owning groups formed Warddeken Land Management Limited ('WLM Ltd'), a not-for-profit company, to protect and sustainably manage their land. WLM Ltd is a community-based enterprise designed to deliver environmental services and create jobs for people living on country. Its constitution sets out a series of rules that define resource boundaries, membership, and directors' responsibilities, as well as what the company will do (the process for use of the resources). While the company is established under Australian law, its members and directors draw on Aboriginal custom (norms of behaviour, local conventions and codes of conduct) in making their decisions.[18] While operating in a very remote region of Australia the community-based enterprise sustainably manages the co-owners' CPRs and simultaneously provides social, cultural, economic and environmental benefits to its members by tapping into national and global economic opportunities through, for example, a carbon farming initiative.[19] This is an example of co-owners utilising their property to encourage labour, and investment in their land, biodiversity and communities.

Community-based enterprises can be strictly commercial or operate as a form of social enterprise. As a social enterprise they are 'not based on utilitarian-economic models but rather an economic model in which resources provide for broader goals, economic, social, cultural and political.'[20] They include the creation of jobs and the strengthening of social capital by supporting people who have been inactive back into the wider activities of the community.[21] While social enterprises can have a profit motive, their primary aim is to provide social and/or environmental dividends to community members, and in some cases to the wider public. They rarely distribute financial profit to individuals, with any surplus being reinvested for the long-term benefit of the community.[22] Through community-based enterprises some Indigenous groups aim to 'break from the practice of relying entirely on government funding rounds for operational funds and move toward financial self-determination.'[23] Others have also been able to formalise their relationships with, and draw on the skills, expertise and financial contacts of, conservation and philanthropic organisations operating both nationally and internationally.

Relationships with conservation and philanthropic organisations have been an important development in the evolution of Indigenous community-based enterprises. This is because they recognise that heterogeneous and complex Indigenous communities in remote regions are not isolated but are embedded within larger systems and can play a role in problem solving, for example combating climate change, minimising species extinction and ensuring ecosystem maintenance. They also acknowledge that Indigenous people in remote regions maintain a competitive advantage in providing these environmental services. Collaborative relationships provide an opportunity for Indigenous groups to further develop new skills and new knowledge and to combine these with their existing knowledge systems to deal with a growing array of environmental threats. Importantly,

these relationships create new funding opportunities to ameliorate the challenge of an overreliance on government funding and state domination of community-based projects.[24]

POLICY LINKAGES AND POLICY-MAKING PROCESSES

While some conservation and philanthropic organisations recognise the wide range of social, cultural, economic and environmental benefits that community-based enterprises based on cultural and natural resource management provide, and have begun to work with and invest in them, whole-of-government support remains risk averse.

Within the wider Indigenous policy framework, community-based enterprises such as those described above are consigned to the Australian Government's environment portfolio. Here, they are reliant predominantly on the Indigenous Protected Area and the Working on Country programs, as well as a myriad of other competitive short-term grant schemes. The social, cultural, economic and environmental benefits they provide Indigenous groups and wider Australia are largely overlooked within the Council of Australian Governments' Indigenous policy framework. The 'National Indigenous Reform Agreement (Closing the Gap)' focuses on 'the mainstream economy – real jobs, business opportunities, economic independence and wealth creation.'[25] There is also little evidence in the NT Government's Indigenous policy framework that demonstrates its support for the community-based enterprises operating across the NT.

In its 'Homelands Policy—A Shared Responsibility' ('Homelands Policy'), the Government 'acknowledges the importance of Aboriginal people's cultural connections to their traditional lands, and the contribution that homelands and outstations make to the economic, social and cultural life of the Northern Territory'.[26] Two of the seven policy principles that underpin the Homelands Policy seek to:

> Promote the health, well-being and economic benefits associated with homelands living and recognise the holistic benefit of outstations/homelands; and

> encourage homelands residents to participate in education and economic development to increase employment, business participation, ownership and wealth, self-sufficiency and independence.[27]

There is little detail to indicate how these principles will be put into practice other than a general statement that the 'government will target support from relevant programs to foster initiatives that create jobs and provide economic independence for homelands.'[28]

In its *Indigenous Business Development Program* designed to 'assist Indigenous people entering into or expanding commercial business arrangements that will develop employment and income opportunities', the NT Government suggests the program is also about 'finding solutions to enable the conduct of business on collectively owned land.'[29] Yet again, no details are provided about how this policy will assist the community-based enterprises operating on Indigenous owned lands.

One would expect the *IEDS* to be the most appropriate policy document in which to set out relevant programs to foster initiatives that create jobs and provide economic independence for homelands. However, in the *Draft IEDS* no such programs have been set out. Instead, the CLP Government has chosen to take a very limited view of economic development.

The *Draft IEDS*, in replicating the Australian Government's *Indigenous Economic Development Strategy*,[30] equates Indigenous economic development solely with increasing monetary wealth. It states:

> While the definition of wealth in an Indigenous context encompasses financial wealth, connection to land, family and holistic health (physical, spiritual and emotional), the draft Indigenous Economic Development Strategy 2013–20 refers to financial wealth.[31]

By excluding long-standing Indigenous community-based enterprises based on CPRs, and focusing instead solely on financial wealth, the *Draft IEDS* rejects the successful alternate Indigenous economic development models that are already operational in many regions of the NT. By rejecting community-based enterprises as a model of economic development the CLP Government is using its *Draft IEDS* as a policy tool not so much for assisting Indigenous peoples achieve their own development aspirations, but as a legitimising strategy for its own 'open for business' developmental agenda.[32] The *Draft IEDS* with its narrow focus on 'the three hub areas of mining and energy, tourism and education, and food exports',[33] not only excludes community-based enterprises as an economic development model but potentially threatens many of the CPRs that underpin these enterprises and the benefits they provide. For example, mining and energy extraction, pastoral developments and irrigated agriculture all use water and may impact on land, waterways, biodiversity and wildlife harvesting for livelihood in ways which compromise the health of Indigenous CPRs.

Such a narrow approach to Indigenous economic development is unhelpful and in all likelihood will do little to improve the circumstances of Indigenous land owners living in remote regions of the NT. To remedy this, the CLP Government needs to create opportunities for the Indigenous groups who operate community-based enterprises to participate in the drafting of the *IEDS* rather than merely seeking comment on a severely limited pre-determined policy. Following this, it should redraft its *IEDS* so that it encompasses a broader form of economic development that recognises development as a social process that can enhance Indigenous peoples' capacity and improve their well-being. Consideration also needs to be given to using the *IEDS* to broaden the institutional setting in which the community-based enterprises operate and build on the competitive advantage that Indigenous people hold including in the provision of environmental services. Some options include: payment for environmental services;[34] biodiversity banking and offset schemes;[35] cultural tourism and conservation hunting. These can provide opportunities for Indigenous community-based enterprises to sustainably manage their CPRs while at the same time engaging with national and international markets in a similar fashion to carbon farming initiatives.

CONCLUSION

Community-based enterprises, which recognise and utilise Indigenous CPRs and cultural knowledge, can produce benefits. They can strengthen customary law, create employment and introduce new knowledge, skills and partnerships, and market opportunities to Indigenous communities while at the same time protecting the environment. Many of Australia's Indigenous peoples, especially in remote locations, are striving to govern and utilise their CPRs, and in the process, are looking to define and control their own livelihoods and futures. Indigenous common property is not a barrier to Indigenous enterprise, but rather an asset that can encourage labour and investment.

Political parties in the NT who do not recognise and support alternate development models increasingly embraced by Indigenous peoples across the NT, and instead choose to focus on mainstream development, may find themselves back in the political wilderness when Indigenous voters reflect back on the 2012 election and the 'proud Territory party' that pledged to respect and work with them.

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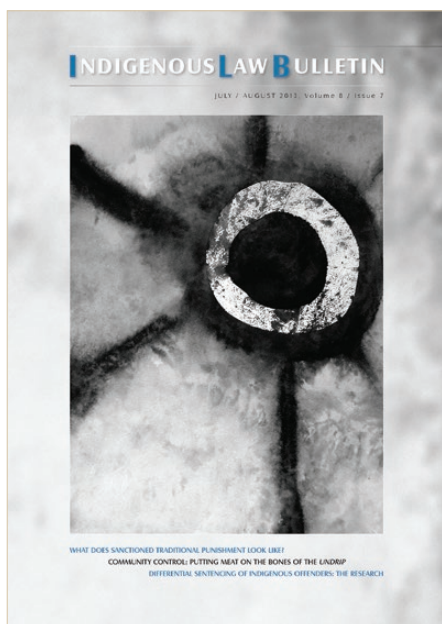
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