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Australia's compliance with CERD FACT SHEET 2

Aboriginal and Torres Strait Islander Peoples Northern Territory Intervention

The Northern Territory Intervention (NTI) is a package of legislation, targeted directly at Aboriginal peoples but passed without adequate consultation with those peoples, that restricts and removes a range of human rights with the purported aims of improving development outcomes and protecting children from abuse.¹ The NTI has a broad discriminatory impact on affected Aboriginal people, limiting their rights to property, social security, adequate standards of living, health and education, self-determination, work, child rights and remedies. From 2007 until December 2010, the NTI legislation suspends the operation of Australia's legal protection from racial discrimination, the *Racial Discrimination Act 1975* (Cth) (RDA), to acts done under, or for the purposes of, the NTI.

In June 2010, the Australian Parliament passed legislation to amend the NTI. While the amendments mean that the RDA is no longer suspended, restrictions continue on the use of the RDA to challenge NTI measures as racially discriminatory. Despite the June 2010 amendments, many of the original NTI measures will continue and compulsory quarantining of welfare payments will be extended to other communities across the Northern Territory and the rest of Australia.

The NTI is 'punitive and racist', and inconsistent with international human rights conventions and the RDA.² International human rights treaty bodies and Special Procedures of the Human Rights Council have called for the full, immediate and unconditional reinstatement of the RDA.³

Northern Territory Intervention Measures

The Northern Territory Intervention restricts the following rights of affected Aboriginal peoples:

- *Freedom from racial discrimination*: the measures are targeted at Aboriginal communities and, until December 2010, suspend the operation of the RDA for measures made under, or for, the NTI. However, although the RDA is being reinstated, it is in a way that restricts its use to challenge any of the Intervention measures as racially discriminatory (see 'Special Measures' below).
- *Property rights*: the Government can compulsorily acquire and control specified Aboriginal land and community living areas through renewable five-year leases without compensation.
- *Social security, adequate standard of living, health and education*: the NTI introduced a compulsory income management scheme which includes measures such as quarantining 50% of welfare payments and 100% of lump sum payments of affected Aboriginal peoples for food and other essentials, and links welfare payments to children's school attendance.
- *Self determination*: there was no consultation with affected Aboriginal communities prior to the implementation of the Intervention measures. In 2009, the Federal Government consulted with Aboriginal peoples in the Northern Territory about the future of the NTI.⁴ However, there are serious concerns about significant procedural and substantive failures of the consultation process, including lack of

independence and absence of interpreters and adequate explanations of the NTI and complex legal concepts.

- *Right to work*: the Intervention abolished Community Development Employment Projects (subsequently partially reinstated), which employed Aboriginal people in a wide variety of jobs directed towards meeting local community needs.
- *Child rights*: the Government failed to use a children’s rights framework to address the complex issues of the protection of children from sexual abuse in Aboriginal communities.
- *Remedies*: the measures limit consideration of Aboriginal customary law and cultural practice in criminal proceedings for all offences in bail and sentencing hearings.

Special Measures

The Government previously tried to justify the NTI measures simply by stating that the measures in the NTI legislation were ‘special measures’ under the RDA.⁵ However, the NTI amendment legislation repealed those provisions and inserted an ‘objects’ clause enabling the NTI measures to be taken, and deeming them to be ‘special measures’. Merely altering the objects clause rather than substantively redesigning the measures themselves does not however, satisfy the criteria necessary for the measure to be a ‘special measure’.⁶

The amended legislation operates to exclude affected individuals from challenging the intervention measures or seeking remedies for the harm they have suffered as a result of these measures. Whilst the government has passed legislation to reinstate the RDA in December 2010, it will not be done in a manner which ensures the rights of affected persons to challenge or seek adequate remedies.

TABLE OF CROSS-REFERENCES

Issue	Relevant CERD Articles	References to Issue in CERD NGO Report
Northern Territory Intervention	1 and 2	CERD Report Part B.1

Endnotes

¹ Northern Territory National Emergency Response Act 2007 (Cth); Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (Cth); Families, Community Service and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007 (Cth).

² AHRC, *Social Justice Report 2007* (11 February 2008) pages 215-19, available at http://www.hreoc.gov.au/social_justice/sj_report/sjreport07/index.html.

³ See UN Committee on the Elimination of All Forms of Racial Discrimination, *Urgent Action Letter to the Australian Government dated 13 March 2009 in relation to the Northern Territory Emergency Response*, available at <http://www.hrlrc.org.au/files/cerd-letter-to-australia130309.pdf>; Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia* (March 2009) UN Doc CCPR/C/AUS/CO/5; Committee on Economic, Cultural and Social Rights, *Concluding Observations on the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/AUS/CO/4 (May 2009); *Statement of James Anaya, the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, (27 August 2009); James Anaya, United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, *Observations on the Northern Territory Emergency Response in Australia*, UN Doc A/HRC/15 (February 2010) paras [15]-[16], Anand Grover, United Nations Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, *Addendum: Mission to Australia*, UN Doc A/HRC/14/20/ADD.4 (3 June 2010) para [64].

⁴ Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, *Report on the Northern Territory Emergency Response Redesign Consultations* (November 2009) at 7 available at http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Pages/report_nter_redesign_consultations.aspx.

⁵ Northern Territory National Emergency Response Act 2007 (Cth) s 132(1); Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (Cth) s 4(2); Families, Community Service and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007 (Cth) s 4(1).

⁶ CERD Committee, *General Recommendation No 23: Indigenous Peoples* (18 August 1997) para [18].