THE NORTHERN TERRITORY INTERVENTION: THE ONGOING STORY OF WITHHELD INDIGENOUS MONEY

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Historical denial of rights and withholding of money

Since colonisation Indigenous Australians have been subject to discriminatory and restrictive policies. The overt racism embedded in these policies was written into law under the protectionist regimes in the early twentieth century. Under Aboriginal protectionist Acts, various State and Federal authorities restricted and controlled the movements, marriages, children, communities, employment and money of Indigenous peoples. For example, section 9 of the *Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (Qld) provided that, 'It shall be lawful for the Minister to cause every aboriginal … to be removed to, and kept within the limits of, any reserve…in such manner, and subject to such conditions, as may be prescribed'. The Northern Territory's *Aboriginals Ordinance 1918* (Cth) s 43(1) stated that, 'The Chief Protector may undertake the general care, protection, and management of the property of any aboriginal or half-caste'. The impacts of the *Protection Acts* have been described in the following terms:

> Unlike other Australians, any person classified as an Aborigine could be denied elementary human rights. In most states an Aborigine "under the Act" could be deprived of freedom of movement and association, have his or her children taken away, and lose control over personal property.[1]

In some remote areas, including the Northern Territory, the majority of workers in the prosperous cattle industry were Aboriginal people. From the early twentieth century the cattle industry was the Northern Territory's chief industry in terms of output and exports,[2] which depended upon Aboriginal peoples' skilful and yet unpaid labour. Aboriginal stockworker, Jack Jangari commented that Aboriginal people 'made Wave Hill [one of the largest stations in the Northern Territory] rich. They made every station…rich. And keep us fellows poor'.[3] The Chief Protector of Aboriginals stressed that, 'under present conditions, the majority of stations are largely dependent on the work done by black "boys"'.[4] Aboriginal people were removed forcibly by police and government officials from their lands and put to work on cattle stations. Often,

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1 Andrew Markus, 'Under the Act' in B Gammage and P Spearitt (eds), *Australians 1938* (Fairfax, Syme and Weldon, 1987) 48.

2 Australian Government, *The Year Book of Australia for 1911* (1912).

3 Deborah Bird Rose, *Hidden Histories: Black Stories from Victoria River Downs*, *Humbert River and Wave Hill Stations* (Aboriginal Studies Press, 1991) 156.

4 Baldwin Spencer, *Preliminary Report on the Aboriginals of the Northern Territory* (Department of External Affairs, 1913) 43.

whole families were made to work on the stations in various roles, including as stockworkers, fencers, gardeners, irrigators, road and infrastructure builders, domestic servants and sex workers. Everyone from children to the elderly had a role in the upkeep of cattle stations.[5]

Under the *Aboriginals Ordinances* 1918 and 1933 (Cth), cattle station employers could pay Aboriginal workers below Award wages or simply not pay them at all if their non-working dependants were provided with food, accommodation and clothing by the station management. Despite the minimal requirements of these legal provisions, employers nonetheless violated them and workers were virtually never paid, even though their dependants were working.[6] The food provided by employers was meagre and usually in the form of old flour and beef without vegetables.[7] Clothing was only provided as a loan,[8] and there was no accommodation; forcing Aboriginal workers to make humpies out of scraps.[9]

The protection legislation imposed on governments a duty to supervise conditions on the cattle stations and to ensure that station employers complied with regulations under the *Aboriginal Ordinances*. Where there were breaches through the non-payment of wages or poor working conditions, the government had an obligation to revoke the station manager's employment licence. This licence enabled the manager to employ an infinite number of Aboriginal workers on the station. However, government officials inadequately supervised the conditions on the stations, and often turned a blind eye when it was evident that managers were treating the workers poorly, or not paying them their entitlements.[10]

Winds of change

The post-World War II period marked a change in the attitudes of governments towards Indigenous people. Race-based discriminatory practices were 'seriously challenged' by emerging international human rights norms promoted by the United Nations.[11] In hindsight, the change was not radical, signalling a change from protectionism to assimilation. This change was supported by Article 2 of the United Nations Universal Declaration of Human Rights:

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5 Thalia Anthony, 'Unmapped Territory: Indigenous Stolen Wages on Cattle Stations' (2007) 11 (1) *Australian Indigenous Law Reporter* 4.
6 Ibid 4.
7 Winifred Wilson, *Dietary Survey of Aboriginals in the Northern Territory* (Commonwealth Department of Health, 1952) 106.
8 Julia Martinez, 'When wages were clothes: dressing down Aboriginal workers in Australia's Northern Territory' (2007) 52 *International Review of Social History* 271, 272.
9 Peter Sing and Pearl Ogden, *From humpy to homestead: the biography of Sabu* (Pearl Ogden, 1992) 59.
10 Anthony, above n 5, 6.
11 Anna Haebich, *Spinning the dream: assimilation in Australia 1950-1970* (Fremantle Arts Centre Press, 2008) 11.

'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour …'

The Minister for the Territories (1951-63), Paul Hasluck, embraced the emerging human rights norms with fervour and in 1951 the Commonwealth adopted 'assimilation' as 'official policy'.[12] According to Minister Hasluck, the paramount problem of protectionist legislation was the legal separation of Aboriginal people. Protectionism was misguided because, by adopting the methods of 'keeping apart', it failed to bring Aboriginal and non-Aboriginal people together.[13] At the 1952 Native Welfare Conference, the Minister announced a 'new system' that provided 'citizenship as a birthright' to all Australians.[14]

Universal rights and the policy of assimilation 'meant a refusal to acknowledge difference' by enforcing uniformity.[15] The most inhumane aspect of this enforced uniformity was the policy of removing Indigenous children from their families, now known as the 'Stolen Generations', so that they would be incorporated into non-Indigenous families and institutions. Indigenous children were being 'removed through a combination of the ideals of assimilation and the perceived need to rescue them from poor living conditions or harm from tribal law – rationales which seem to have been closely entwined in the minds of officials of the day'.[16] The Stolen Generations exemplifies the dovetailing of protectionist and assimilationist approaches based on a common perception of the inferiority of Indigenous people and their need for improvement through 'white' ways.

Due to Minister Hasluck's influence, the Federal Government sought to improve conditions in the Northern Territory and made the payment of wages to Aboriginal workers compulsory, including those on cattle stations. However, Aboriginal wages fell below the Award rate reflecting the Government's view that Aboriginal workers had a lower work value because of their 'semi-tribalised' state. This view was later articulated by the counsel for the Commonwealth in the *Equal Wages Case.*[17]

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[12] Anna Haebich, *Broken circles: fragmenting Indigenous families 1800-2000* (Freemantle Arts Centre Press, 2000) 445.
[13] Russell McGregor, 'Avoiding "Aborigines": Paul Hasluck and the Northern Territory Welfare Ordinance, 1953' (2005) 51(4) *Australian Journal of Politics and History* 513, 515.
[14] Ibid.
[15] Marilyn Lake, 'Paul Hasluck's horror of the two-headed calf' in Tim Rowse (ed), *Contesting assimilation* (API Network, 2005).
[16] Haebich, above n 12, 468.
[17] Transcript of Proceedings, *In the matter of the Conciliation and Arbitration Act 1904-1965 and of The Cattle Station Industry (Northern Territory) Award, 1951, Nos. 397 and 553 of 1950 (C No. 830 of 1965)* (Equal Wages Case) (Commonwealth Conciliation and Arbitration Commission, Kirby CJ, 20 July – 29 September 1965), 177.

Cattle station managers however, still managed to avoid paying workers by recording payment in the form of credits at the station store. This process was known as 'booking down'. For other workers, their incomes were held in government accounts. This was consistent with the official view that although there should be no discrimination against Indigenous people as a group, where the behaviour of individuals fell short of expected standards and norms, their incomes should be managed:

> … some Aboriginal wards of the State are not sufficiently advanced to be left completely in charge of the whole of their earnings … some control and guidance should be exercised in the application for the aborigine's own welfare (Meeting of Commonwealth and State Ministers for Native Welfare, 1951).[18]

This practice of putting Indigenous workers' income in government accounts was widespread throughout Australia well into the twentieth century.[19] The placement of Indigenous workers' income in government accounts or as credit on cattle station stores meant they rarely saw any money at all. This contrasted with their non-Indigenous counterparts, who were often paid above Award wages, as well as being provided with food and accommodation. The policy of withholding wages kept Indigenous people subservient and at the mercy of employers and government officials.

Dissent

In the early to mid-twentieth century, unionists, activists such as Daisy Bates and Mary Montgomerie Bennett, and Aboriginal organisations challenged the conditions for Aboriginal people on cattle stations. The earliest of these claims, in 1933, argued that the conditions on the cattle stations violated the *Slavery Convention* that prohibited the owning and trading of people.[20] Although the claim sent a powerful message to the Federal Government, there were other potential international labour laws that Australia had ratified, such as the International Labour Organisation's *Convention concerning the Creation of Minimum Wage-Fixing Machinery 1928*, which would have been equally relevant. The Convention obliges States to create machinery for minimum wage rates in consultation with workers. Another possible avenue available to the claimants was the International Labour Organisation's *Forced Labour Convention*. This treaty creates obligations to suppress forced or compulsory labour in all its forms and prohibits public authorities from imposing

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[18] Susan Greer, '"Unfinished Business": Accounting and the enslavement of Aboriginal children' (Presentation at the Koori Centre, Sydney University, 26 August 2008).

[19] Committee on Legal and Constitutional Affairs, Senate, *Unfinished business: Indigenous stolen wages* (2006).

[20] Daisy Bates, *The passing of the Aborigines: a lifetime spent among the natives of Australia* (Murray, 1940) 115; R Henderson, *Interview with Daisy Bates* (Australian Broadcasting Commission, Mortlock Archives OHH 543, 1941) 194; Alison Holland, 'Feminism, colonialism and Aboriginal workers: an anti-slavery crusade' (1995) 69 *Labour History* 52, 64.

'compulsory labour for the benefit of private individuals, companies or associations'.[21]

In 1963, the Australian Workers' Union and the Australian Council of Trade Unions moved a motion that Indigenous workers' rights should be consistent with Article 23(2) of the Universal Declaration of Human Rights, which provides that 'Everyone, without any discrimination, has the right to equal pay for equal work'.[22] The Unions claimed that the exclusion of Indigenous workers from the Pastoral Industry Award 1956 was inconsistent with the Declaration.[23] Article 23(1) of the Declaration also provides for 'free choice of employment and to just and favourable conditions of work' and '[e]veryone, without any discrimination, has the right to equal pay for equal work'. References to the Declaration were again made in submissions put by the Australian Workers' Union to the Commonwealth Conciliation and Arbitration Commission in the *Equal Wages Case*.[24]

The 1960s marked a change in Indigenous policy that materialised in Indigenous rights to vote, to public schooling and to the payment of Award wages. Such changes had a profound impact on notions of Australian citizenship: 'Treating Aborigines as citizens without rights fundamentally compromised Australian citizenship in the past because, to allow discrimination, citizenship had to be an empty concept, even a deeply hypocritical one.'[25] Aboriginal people in the Northern Territory have attested to the fact that access to money and rights over their land in the 1970s reinstated their sense of human dignity.[26] However, citizenship would cease to be meaningful when parliaments sought to legislate against the rights of Indigenous people.

Emergency measures and the reinvention of withholding money

The election of the Howard Government in 1996 saw the abandonment of the policy of self-determination, in favour of 'practical reconciliation'. Thus began another round of moves against Indigenous rights, including the abolition of the

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[21] *Convention (No 29) Concerning Forced Labour*, opened for signature 28 June 1930, 39 UNTS 55 (entered into force 1 May 1932) arts 1, 4(1)-(2), 6. Australia ratified the Forced Labour Convention on 2 January 1932.

[22] B Christophers, 'Australian Workers' Union: Historic Step' (Report of the Secretary for Equal Wages for Aborigines Committee, Subcommittee of the Federal Council for the Advancement of Aborigines and Torres Strait Islanders, 1964).

[23] Ibid.

[24] Transcript of Proceedings, *In the matter of the Conciliation and Arbitration Act 1904-1965 and of The Cattle Station Industry (Northern Territory) Award, 1951, Nos. 397 and 553 of 1950 (C No. 830 of 1965)* (Equal Wages Case) (Commonwealth Conciliation and Arbitration Commission, Kirby CJ, 20 July – 29 September 1965), 25.

[25] John Chesterman and Brian Galligan, *Citizens Without Rights: Aborigines and Australian Citizenship* (Cambridge University Press, 1997) 30.

[26] Australian Broadcasting Corporation, 'Ripples from Wave Hill', *Message Stick* 2007.

peak Indigenous representative body, the Aboriginal and Torres Strait Islander Commission ('ATSIC') and its Indigenous-specific services across Australia in 2005.[27] This shift in approach culminated in the Northern Territory Intervention in 2007.

The Intervention was the Commonwealth's response to the report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle, 'Little Children are Sacred'*.[28] The report was preceded by a raft of sensationalised media reports.[29] At the time, commentators noted that this was not a new problem, nevertheless the Federal government responded as if confronted with a *new* 'emergency' situation, which resulted in the *Northern Territory National Emergency Response Act 2007* (Cth). These laws were directed at controlling broad-ranging aspects of Indigenous communities well beyond child welfare, including their land, governance and expenditure of income support payments. They served to undermine the rights of Indigenous people in prescribed Northern Territory communities – both in terms of their rights to equality stipulated under the United Nations Universal Declaration of Human Rights and their more specific rights in the United Nations Declaration on the Rights of Indigenous Peoples.

The Northern Territory Intervention effectively reinstated policies that resembled those under the Protection Acts, which had led to ongoing grievances over 'stolen wages'. A key feature of the original emergency measures was the blanket quarantining of welfare payments in 73 prescribed communities, comprising 90 per cent of Indigenous communities in the Northern Territory and affecting up to 20,000 Indigenous people.[30] A member of a prescribed community cannot escape the income quarantining as the provisions will follow them if they leave the community. Under the *Social Security Amendment Act 2007* (Cth) the Federal Government controls 50 per cent of welfare expenditure in government accounts, including unemployment benefits, disability pensions, sickness benefits, old-age pensions, veteran entitlements, maternity allowances, ABSTUDY payments and family tax benefit instalments. Also subject to income management are advances, lump sums, baby bonus instalments and income support payments to families whose children have a record of unsatisfactory school attendance.[31] The quarantined money can be used to purchase 'priority items' approved by Centrelink staff,

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[27] Thalia Anthony, 'Aboriginal self-determination after ATSIC: reappropriation of the "original position"' (2005) 14(1) *Polemic* 4.

[28] Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Little Children Are Sacred* (2007).

[29] Australian Broadcasting Corporation, 'Paedophile rings operating in remote communities: Brough', *Lateline*, 16 May 2006 (Tony Jones).

[30] Department of Families, Housing, Community Services and Indigenous Affairs, Government of Australia, Northern Territory Emergency Response – One year on (2008) <http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/nter_review.pdf >

[31] *Social Security Amendment Act 2007* (Cth) ss. 123UC-123UE, 123XD, 123XH-123XL.

such as food, rent and clothing in stores that have facilities for the BasicsCard. The need for specific facilities sometimes involved Indigenous people queuing in separate lines. Indigenous people are also required to ask permission to buy white goods in excess of $1500 and have their welfare income taken to pay for their children's school breakfasts and lunches.[32]

In the original legislation, in order to implement the Emergency Acts, the Federal Parliament suspended the *Racial Discrimination Act 1975* (Cth) because the legislation applied exclusively to Indigenous people.[33] Originally, the decision that an individual was subject to the income management regime could not be appealed to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal.[34] The right to an external review by a tribunal is afforded to non-Aboriginal Australians and those Aboriginal people not resident in prescribed areas. The suspension of the *Racial Discrimination Act* breaches obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, whose preamble adopts the Charter of the United Nations and the Universal Declaration of Human Rights. Article 2 of the Declaration provides:

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The stated intention of income management was to deal with 'the scourge of passive welfare' and 'to reinforce responsible behaviour'.[35] Minister Brough said the legislation 'limits the discretion that individuals exercise over a portion of their welfare and prevents them from using welfare in socially irresponsible ways'.[36] In other words, Indigenous people needed restrictions on their welfare expenditure because of their incapacity to exercise the freedoms of non-Indigenous citizens to spend their money. The Government's blanket approach to income quarantining was intended to stabilise and normalise the behaviours of individuals.[37] This approach directed to 'normalisation' reflects the assimilationist values before the 'rights' era, but enforced through the protectionist interventions of the preceding period. In the words of Ron Merkel

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[32] Ibid div 6.

[33] See: *Northern Territory National Emergency Response Act 2007* (Cth) s 132(2); *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth) s 4(2); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) ss 4(3), (5), 6(3).

[34] *Social Security (Administration) Act 2007* (Cth) s 144(ka).

[35] Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 7 (Mal Brough, Minister for Families, Community Services and Indigenous Affairs and Minister assisting the Prime Minister for Indigenous Affairs). The sections that suspended the operation of the *Racial Discrimination Act* include: *Social Security Amendment Act* s 4.

[36] Ibid.

[37] Ibid.

QC, the Government's agenda is one of 'social engineering, seeking to fundamentally change Aboriginal society'.[38]

With the election of the Labor Government in late 2007, there was a shift in the discourse framing the Northern Territory Intervention. In 2009 the Government declared that it sought to reset its relationship with Indigenous people and endorsed the United Nations Declaration on the Rights of Indigenous Peoples, which provides for collective rights of Indigenous peoples. However, changes to the legislation came reluctantly. After criticism from the United Nations Human Rights Committee, the United Nations Committee on Economic, Social and Cultural Rights and the United Nations Special Rapporteur on Indigenous Rights, the Labor Government introduced legislative amendments to the Emergency Acts.[39] In 2010 the Government removed the suspension of the *Racial Discrimination Act* for the Emergency Acts*,* reinstated Indigenous peoples' rights to appeal to the Social Security Tribunal and broadened the application of income management.[40] Income management now applies to all Northern Territory welfare recipients who are between 15 and 24 years old, or are long-term unemployed (for more than 12 months), or are referred by a Centrelink Social Worker or Child Protection Authority.[41] All Indigenous people who were compulsorily on income management under the old regime will be assessed to determine if they will continue under the current scheme. Exemptions may apply where the recipient is a full-time student or apprentice, or working for at least 15 hours per week, or demonstrates to Centrelink that their children are attending school.[42] The legislation is unlikely to significantly reduce the number of Indigenous welfare recipients subjected to income management, especially given the lack of jobs in their communities.

The neutral application of income management coheres with the approach to removal of Indigenous children under the assimilation policy in the 1950s. In

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[38] Lindsay Murdoch, 'Macklin quarantines welfare, calls summit on intervention', *The Age* (Melbourne) 11 December 2007, 3.

[39] The criticism is contained in the following UN reports: *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant; Concluding Observations on Australia, 95th session,* UNHCR, CCPR/C/AUS/CO/5 (2 April 2009); *Consideration of Reports Submitted by States Parties Under Article 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia,42nd session*, CESCR, E/C.12/AUS/CO/4 (12 June 2009) 3-4 [15]; James Anaya, Special Rapporteur, *Observations on the Northern Territory Emergency Response*, A/HRC/15/ (4 March 2010).

[40] The legislative amendments reinstate the *Racial Discrimination Act* by repealing: *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory Emergency Response and Other Measures) Act 2007* (Cth) ss4 - 5; *Northern Territory National Emergency Response Act 2007* (Cth) ss132-133; *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) ss4-7. All sections of the *Social Security (Administration) Act 1999* specific to a 'NT Relevant Area (the 73 prescribed areas) are repealed.

[41] *Social Security (Administration) Act 1999* (Cth) s123UC - 123UCC.

[42] *Social Security (Administration) Act 1999* (Cth) s123UGC - 123UGD.

common with Indigenous children, non-Indigenous children were also removed under child protection legislation. Indigenous children who were removed from their families were also placed in mainstream institutions.[43] Both created the appearance of equality while camouflaging the disproportionate impacts of such policies on Indigenous children and families and the adverse impacts on Indigenous cultures and identities. The following passage elucidates the detrimental effects of subsuming Indigenous people into mainstream regimes in order to conceal the overtly discriminatory elements of assimilation policies:

> The 'apparatus of assimilation' grew out of existing practice and resources. Its instruments remained legal controls, surveillance, punishment and tutelage of families, and removal of children … Aborigines would be drawn into full membership of the wider community through a contradictory process of 'curtailing rights' and then, as they proved worthy, gradually extending to them the rights of citizenship. …
> The gradual transfer of Aboriginal child welfare tasks to mainstream departments … carried out in accordance with the policy ideal of assimilation – brought children into the ambit of concepts and practices in professional child care and family management and brought new assimilatory forces to bear on them. … Cultural difference was frequently overlooked in these arrangements, and psychologists and social workers seemed to be more willing to intervene to remove Aboriginal children.[44]

Other provisions that accompanied the Northern Territory Intervention, relating to alcohol and pornography restrictions, conversion of leasehold to five-year leases, community store licensing, and law enforcement powers, have been re-designed to be 'special measures' under the *Racial Discrimination Act*. Restrictions on publicly funded computers and the oversight of Indigenous community matters by Government Business Managers will remain unchanged. The United Nations Committee on the Elimination of Racial Discrimination ('CERD') has already stated that any tinkering will not sufficiently class the legislative provisions as special measures.[45] Special measures under Article 1(4) of the Convention on the Elimination of All Forms of Racial Discrimination must confer a *benefit* on members of a (racial) class, and the measures must be for the *sole purpose* of securing *adequate advancement* of the beneficiaries in order that they may enjoy equal human rights and the protection given by the special measures must be necessary. Without objective evidence that the Intervention has benefitted Indigenous people in the Northern Territory, the Government will find it difficult to prove that the amendments comply with the *Racial Discrimination Act*.

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[43] Haebich, above n 12, 476.
[44] Ibid 459-460.
[45] *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention; Concluding Observations on Australia, 77th session*, CERD/C/AUS/CO/15-17 (13 September 2010) 4-5 [16].

Concluding remarks: the new rules and old ways of the Intervention

The legacy of withheld wages in the early twentieth century, and the loss of dignity from being controlled by protectors in this period, has left deep scars for Indigenous Elders in the Northern Territory. They were subject to legislation that presumed Indigenous people were incapable of looking after themselves. The Aboriginal Protection Acts handed paternal governments the power to 'undertake the care, custody, or control of any aboriginal'.[46] The Federal Parliament in 2007 replicated the approach underpinning protectionist legislation. It provided new forms of controlling Indigenous moneys and lives through the *Emergency Acts*. Indigenous communities were accused of falling short of 'normal community standards and parenting behaviours'.[47] They required 'new rules' in which the Government will be able to 'stabilise the communities'[48] and remove the Indigenous 'blight from Australian society'.[49] These new rules of the Intervention applied distinctly to Indigenous peoples.

The incumbent Labor Government has attempted to place these rules in a human rights framework. However, Indigenous people in communities have overwhelmingly remained subject to income management, as well as other land and governance restrictions. This differential reality has come to the attention of international observers who have seen through the 'rights' facade. In May 2011, the United Nations High Commissioner for Human Rights, Navi Pillay, pointed to the 'imperialist attitude' that government staff in Indigenous communities imparted on Indigenous people.[50] The High Commissioner urged the Government to do a 'fundamental rethink' of the measures under the Northern Territory Emergency Response in a manner that not only ensured consultation with the communities affected, 'but also their consent and active participation'.[51]

While the current Federal Government's approach of embracing the language of human rights while maintaining the controlling aspects of the Intervention in fundamental ways can be accused of being hypocritical, it also opens up opportunities for the Government to be held to account. The Government's refashioning of the *Emergency Acts,* and its most recent reincarnation in the

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[46] *Aboriginal Ordinance* 1918 (Cth) s 6(1).
[47] Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 2 (Mal Brough, Minister for Families, Community Services and Indigenous Affairs and Minister assisting the Prime Minister for Indigenous Affairs) 2, 12.
[48] Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007 (Mal Brough, Minister for Families, Community Services and Indigenous Affairs and Minister assisting the Prime Minister for Indigenous Affairs) 19.
[49] Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007 (Mal Brough, Minister for Families, Community Services and Indigenous Affairs and Minister assisting the Prime Minister for Indigenous Affairs) 25.
[50] Milanda Rout, 'Intervention needs rethink: UN High Commissioner for Human Rights Navi Pillay', *The Australian*, 26 May 2011, 7.
[51] Ibid.

Stronger Futures in the Northern Territory Act 2012 (Cth) that replicates the substantive measures of the intervention, should be judged against the human rights standards that Australia claims to uphold. This includes not only the Universal Declaration on Human Rights but also the United Nations Declaration on the Rights of Indigenous Peoples. International human rights standards provide important benchmarks for measuring Indigenous justice, and must include both the civil and collective rights of Indigenous peoples, and ensure the ongoing survival of Indigenous communities and cultures. For this to evolve, Indigenous policy needs to be foremost concerned with self-determination, so as not to reinvent the policies of protectionism and assimilation.