Disempowerment in NT Communities Driven by Arrogant Policy and Inept Processes

The Intervention rolls on and with it the inevitable community 'consultations'.

Jenny Macklin has announced[1] that FaHCSIA will take responsibility for changes to the leases of Community Living Areas in the Northern Territory. A Discussion Paper[2], thirteen-pages long and written in English, has been released to the Communities. Responses will be accepted in the form of submissions by 12 April, 2013. We are also told that SELECTED communities will be consulted.

Why will only some communities be consulted? Will the consultations in Community Living Areas be recorded and made public? Will the Discussion Paper be translated into local languages? What independent legal advice will communities have access to? Here we are, asking the same old questions.

From the Senate Hearings, we know that very few people in the NT have understood the changes brought about by the Stronger Futures legislation. It is unlikely that many people living on CLAs are aware of Sections 35(4) and 35(5) of the legislation and how their rights regarding future development on their land will be affected. The legislation was passed by Government with the knowledge that consultation with the people had not occurred.

The Land Reform element of the Stronger Futures legislation addresses the need to change the restrictive nature of the Community Living Area (CLA) leases. While there appears to have been general agreement on the need for change by NT and Commonwealth governments there has been virtually no discussion on the offending sections 35(4) and 35(5)[3] of the legislation. These sections allow the Commonwealth (the Minister) to take control over development on CLAs specifically without requiring the consent of the owners.

The Senate Committee View of this section of the legislation was recorded:

3.66 The committee acknowledges the regulation making power for the Commonwealth as outlined in clause 34 and 35 of the bill is broad, however based on the evidence provided, considers these powers will only be drawn on should the Northern Territory Government not progress amendments.[4]

In other words, the Committee agrees to support legislation which, on the evidence provided, it believes may not be used! It is almost beyond belief that a decision as serious as this, which affects the lives of thousands of Aboriginal people, can be based on the whims of the NT government rather than discussion with the people who will be directly affected by it.

As we now know, the evidence was clearly misinterpreted and it will in fact be the Commonwealth that will take responsibility for the lease changes.

Of this part of the legislation Alastair Nicholson said, "*The effect of this legislation is to give the Minister almost unlimited control over the uses of town camps and community living areas to enable their development for private purposes, presumably for profit."*[5]

While Greg Marks, specialist in international human rights law commented, "*The legislation provides a virtual blank cheque for Government officers".*[6]

The Australian Government ratified the Convention on the Elimination of Racial Discrimination in 1975 and in doing so has a duty to ensure that no decisions directly relating to their (Indigenous) rights and interests are taken without their informed consent.[7]

Clearly, when it comes to the issue of informed consent, people living in Community Living Areas have not yet provided any consent. Of over one hundred CLAs only a very small number were included in the 2011 Consultations and there is no record of any discussion where land owners asked to have their right of consent removed from them.

In 2009, the Australian Government endorsed the Declaration on the Rights of Indigenous Peoples. Article 3 determines that Indigenous Peoples must be able to "*freely determine their political status, their economic, social and cultural development".*[8]

In Articles 19 and 32 of the Declaration, it plainly states that not only is there a need to *obtain free, prior and informed consent before adopting and implementing legislation or administrative measures that may affect them*[9], but they also have *the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*[10]

Sections 35(4) and 35(5) of the Stronger Futures legislation simply ride roughshod over Australia's commitment to its international obligations and in doing so trash all pretence of respect for human rights while the sheer disregard for the rights of Aboriginal people living in CLAs is breathtakingly brutal.

There are over a hundred Community Living Areas in the Northern Territory and around 6000 inhabitants. When some Aboriginal communities did not benefit from the Aboriginal Land Rights Act, small incisions of land were purchased by Government from pastoral leases and provided to these groups, now under the Part 8 of the Pastoral Law Act.

The average population of a CLA is quite small. Many are referred to as Family Outstations and can be in quite isolated locations. Overall there may be only as many as a dozen CLAs with populations of 200 or more people. Literacy levels are low and when English is spoken it is often as a third or fourth language.

No doubt some of the larger CLAs would like to see more flexible leases. While Community Living Area leases allow for normal community living where traditional culture can flourish, they do not extend to allow for economic development. With assistance from Government, relaxation of restrictions can be negotiated but it is the communities that must make the decisions as to what kinds of changes they are wanting and when they may wish to implement such changes.

The recently released Discussion Paper fails to *directly* inform Aboriginal people living on CLAs of the implications of the new legislation. It is not until page 11 in Appendix B[11] that there is any reference to this. This unprincipled approach to consultation is simply a continuation of the flawed process employed by Government during the Stronger Futures consultations.

Federal Government throughout the Intervention has been obsessed with taking control from Aboriginal peoples, shamelessly disempowering them. When, in this instance, changes to leases could not only address the identified concerns but they could, and should, also include securing ownership of land for those living on CLAs and creating, as was originally intended, the certainty that is so greatly desired. Instead it is prepared to violate its commitments to international law and remove from the people their right to self-determination. It is disgraceful legislation.

We call on Government to re-think and to remove s.35 (5) from the legislation and to make appropriate amendments to s.35 (4) to ensure the requirements of consultation with, and consent from, owners who should also be provided with access to free and independent legal advice. Ultimately, residents on Community Living Areas must be in a position where they can make informed choices about their futures. To do this communities require access to independent advice. As we were reminded at the Darwin Hearing of the Senate Inquiry by Olga Havnen, "*....any proposals about land tenure reform really have to be premised on the basis that land owning groups need to be properly resourced and provided with the necessary financial, professional and technical expertise in order to make free, prior and informed decisions about their land."*[12]

Michele Harris with 'concerned Australians'

References:

[1] Macklin Media release http://jennymacklin.fahcsia.gov.au/node/2273
[2] Discussion Paper http://www.fahcsia.gov.au/community-living-area-land-reform-in-the-northern-territory
[3] SF Legislation – Discussion Paper on page 11 http://www.fahcsia.gov.au/community-living-area-land-reform-in-the-northern-territory
[4] Senate Committee Report – Stronger Futures in the Northern Territory Bill 2011- Land Reform Page 30 http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/completed_inquiries/2010-13/strong_future_nt_11/report/index.htm
[5] Alastair Nicholson – page 7, 'concerned Australians' submission (87) to the Stronger Futures Senate Inquiry http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/completed_inquiries/2010-13/strong_future_nt_11/submissions.htm
[6] Greg Marks – Community Living Areas and the Stronger Futures 2011 Bill. Questions and Answers
[7] CERD 1997, 4(d)
[8] Declaration on the Rights of Indigenous Peoples Article 3
[9.] Declaration on the Rights of Indigenous Peoples Article 19
[10] Declaration on the Rights of Indigenous Peoples Article 32
[11] Appendix B from the Discussion Paper http://www.fahcsia.gov.au/community-living-area-land-reform-in-the-northern-territory
[12] Olga Havnen Darwin Consultation - Transcript for Darwin Senate Committee Hearing Page 19. http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/972a940c-7b6a-4391-b931-70c8112af27b/toc_pdf/Community Affairs Legislation Committee_2012_02_23_836_Official.pdf;fileType=application/pdf