Land and Indigenous Peoples’ rights
RESOURCE PACKAGE CONTENTS

The accompanying website, www.amnesty.org.au/wheredoyoustand, includes the following PDFs and worksheets:

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02 Indigenous rights: Starting points for discussion

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2.2 Where do you stand? Discussing the issues through cartoons
2.3 Investigating media coverage of Indigenous issues
2.4 Indigenous rights in the media
2.5 Telling the story of Indigenous rights in Australia
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03 The intervention and human rights

Worksheets:
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Aboriginal and Torres Strait Islander people are respectfully advised that this resource contains images of Aboriginal and Torres Strait Islander people who may be deceased.

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Do we continue to stay silent, and watch the continued destruction of our people, our culture, and our land taken away?

Do we watch our people forced from homelands into hub centres to create Ghettos, where there will be abuse, drugs, fights, jealousies, murders?

Do we stand strong and reconnect the link in the chain again with our brothers and sisters who long ago walked off WAVE HILL, who showed leadership, determination and a path of unity and recognition, and reconnection with land and people as one.

Our future is in our hands. We are the ones to bring change.

Let us stand united against the federal governments’ Northern Territory Emergency Response legislation and other racist policies, and the Northern Territory governments’ homeland policies by sending statements to govt and media, walking off communities, signing on to support groups, attend a gathering…

Don’t let the flame die down.

Aboriginal leader Richard Downs1
Discussion of Aboriginal rights in Australia today inevitably leads to the question of Aboriginal rights to land. Land has been and remains central to the relationship between Indigenous and non-Indigenous people in Australia. The issue of land brings into focus many of the unresolved human rights issues which have resulted from colonisation. For non-Indigenous people, facing these issues has often sparked a sense of guilt about what was done in the past, apprehension about economic issues and unfounded fears that their backyards are somehow vulnerable – that somehow what was done to Indigenous people will be done in return to those who have inherited the land that was taken away.

Facing the issues that arise from Australia’s past is important; however, it is also important to focus on the effects of government actions in the present. Aboriginal leader Professor Patrick Dodson, a Yawuru man and Chairman of the Lingiari Foundation, known as ‘the father of reconciliation’ has stated:

While large sections of Australian society can indulge in contemporary grief about past injustices inflicted on indigenous peoples, there is a pervasive silence about the policies of national, state and territory governments.

The article describes the implications of the intervention for Indigenous rights, particularly rights to land. Dodson argues that the government has used problems in Indigenous communities, including the needs of children, to justify a much broader agenda:

The welfare of our children and our families remains the key to our lives and future. But this priority is undermined by the government’s heavy-handed authoritarian intervention and its ideological and deceptive land reform agenda.

The agenda is to dismantle the foundations of the Northern Territory Aboriginal Land Rights Act. It seeks to excise residential community settlements from the Aboriginal land estate under special Commonwealth Government five-year leases, and the abolition of an authorisation entry protocol called the Permit System...

The government has not made a case in linking the removal of land from Aboriginal ownership and getting rid of the permit system with protecting children from those who abuse them.²

The article also focuses on government proposals to “transform indigenous larger settlements into mainstream towns and extinguish by attrition the capacity of indigenous people to maintain small homeland communities.”

The Federal Government’s actions under the NT intervention, such as taking control of Aboriginal land through leases, abolishing the Permit System and requiring Aboriginal people to give up their rights to land in order to receive basic government services are part of a long history of government actions affecting Aboriginal people’s property rights.
SECTION 04: LAND AND INDIGENOUS PEOPLES’ RIGHTS

ECONOMIC IMPORTANCE OF LAND

Indigenous control of land provides the opportunity to develop livelihoods and ensure a stable basis for economic development of Indigenous communities. The loss of land removes this livelihood, often pushing Indigenous Peoples off their land and into regional and urban centres.

Indigenous communities with rights to land use these rights in a variety of ways. In one example, the Jawoyn Association in the NT has accumulated $5 million from mining royalties and a tourism business that is being used to achieve social, cultural, training and employment goals.

CULTURAL AND SPIRITUAL SIGNIFICANCE OF LAND

In a statement protesting against the Northern Territory intervention, Aboriginal leader Richard Downs calls on non-Indigenous Australians to “release the chains of control; give us our freedom; let us walk once again as free human beings on this earth (our mother), with our ancestors, spirits, songs, and ceremonies”. (See the detailed extract from the statement below and the full text online.)

This quote, like several others in this resource, communicates something of what land means to Aboriginal people. Richard Downs refers to Indigenous ownership of land and systems of Indigenous land tenure, however he is clearly writing about something much more than what Western people mean by “owning” land.

People who are interested in understanding more can find a wide range of material on these issues on the internet.

Resources for finding out more

- Lore of the Land www.loreoftheland.com.au
- Aboriginal Australia Art & Culture Centre – Alice Springs http://aboriginalart.com.au

Aboriginal representatives placing a flag in front of Old Parliament House on the day of the National Apology to the Stolen Generations. © Fairfaxphotos/Andrew Taylor
European doubts about the justice of dispossession:

Secret instructions to Captain Cook for his 1770 voyage had stated the need for Aboriginal peoples’ consent: “You are … with the consent of the natives to take possession of the country in the name of the king of Great Britain. Or if you find the country uninhabited take possession for his Majesty by setting up proper marks and inscriptions, as first discoverers and possessors”.3

If it was not clear to Cook, it soon became clear to others that European occupation took place without Aboriginal consent.

The legitimacy of taking Indigenous land has been questioned since colonisation began. One example is a letter to the editor of the Hobart Town Gazette in 1824, at the time that Aboriginal Peoples were being driven off their lands in Tasmania:

We ought to feel that we have invaded a domain from which our invasion has expelled those who were born, bred, and providentially supplied in it; that we have driven by our usurpation, families from their birthplace, and then completed our cruelty by destroying in sport, and consuming for profit, the principal means of their subsistence.4

First contact between Aboriginal Peoples and Europeans ranged from dancing together on the beach to violent encounters.5 Armed opposition to European occupation became widespread: some well known examples are the Wiradjuri uprising in Bathurst in 1824, the guerilla warfare led by Pemulwuy in the Sydney region from 1790–1802 and the campaign by Yagan in the 1830s in the area that is now Perth. In 1828, Lieutenant Governor of Van Diemen’s Land (Tasmania), George Arthur, wrote about the Tasmanian Aboriginal Peoples, saying “They already complain that white men have taken possession of their country, encroached upon their hunting grounds and destroyed their natural food, the kangaroo, and they doubtless would be exasperated to the last degree to be banished together from their favourite haunts”.6 This was the same year that he declared martial law in response to Aboriginal attacks and the Black War in Tasmania began.

In 1840, the missionary Francis Tuckfield reported on what Aboriginal people in Victoria were telling him:

They are conscious of what is going on – they are driven from [their land] and threatened if they do not leave immediately they will be lodged in gaol or shot … My country all gone, gone … The White men have stolen it.7
The Gurindji Strike

One of the first major steps forward in recognising Aboriginal rights to land was the Land Rights (Northern Territory) Act 1976. This Act was passed after years of attempts by Aboriginal Peoples to get their land back. One of the most notable protests was the strike (also known as the Wave Hill walk off) by the Gurindji people in 1966, lead by spokesman Vincent Lingiari.

The Gurindji people were paid little or nothing by British Lord Vestey for the work they did that made him wealthy. They were not allowed to control their finances even when they were paid, and they were fed and housed in appalling conditions.

The Gurindji campaign turned into Australia’s first successful land rights claim when they demanded the return of their traditional lands. In 1975, Prime Minister Gough Whitlam formally handed the Gurindji people title deeds to lands that their ancestors had occupied for tens of thousands of years. The following year the Fraser Government passed the Land Rights Act.

Their nine year protest became the subject of the song ‘From little things big things grow’ by Paul Kelly and Kev Carmody.8
A landmark achievement: 
the return of Uluru to its traditional owners

In 1985, after years of campaigning to regain their land, Anangu – the traditional owners of the land where Uluru-Kata Tjuṯa National Park is located – received the title deed to the park area from the then Governor General of Australia, Sir Ninian Stephen. Hundreds of Aboriginal and non-Aboriginal people participated in the ceremony at the base of Uluru which was held to celebrate the event.

In turn, Anangu leased the land back to the Federal Government for 99 years to be managed jointly. The Northern Territory government of the time felt so threatened by the Handover that it withdrew from the management arrangements. Yami Lester, an Anangu leader, land rights campaigner and the first chair of the Board of Management, lightheartedly joked at the time that the Governor General was “able to come here today to see the rock. By tomorrow the rock will be missing, the Aboriginal people going to take it away.”

The story of the controversy at the time about the return of Uluru to its traditional owners, and how they overcame a strident scare campaign against the Handback is told online at http://www.clc.org.au/media/releases/2010/A_bitter_struggle.html

Since 1985 Anangu have been managing Uluru-Kata Tjuṯa National Park, together with the Director of National Parks. This process of working together has come to be known as ‘joint management’. Joint management is the foundation for all management decisions and activities at Uluru-Kata Tjuṯa National Park.

This means that in all park operations and future directions Anangu are esteemed for the depth of their cultural knowledge and their place as owners of the land which has been their home for countless generations. In 1994 the cultural values and traditional land practices of Anangu were recognized by UNESCO when the park was given World Heritage listing for its cultural values. The listing recognised Anangu as being one of the oldest continuous cultures in the world and gave international recognition to Tjukurpa (Anangu traditional law) as a major religious philosophy and a tool for caring for country. In 1995 the Director and the Uluru-Kata Tjuṯa Board of Management were awarded the Picasso Gold Medal, the highest award given by UNESCO, for setting new international standards for World Heritage management and for outstanding efforts to preserve the landscape and Anangu culture. For further information, valuable online resources include ‘World Heritage and International Significance’: www.environment.gov.au/parks/uluru/culture-history/heritage/index.html and ‘Uluru-Kata Tjuṯa National Park Knowledge Handbook’: www.environment.gov.au/parks/publications/uluru/pubs/handbook.pdf
THE MABO DECISION

In 1992, the Mabo decision of the High Court recognised that Aboriginal and Torres Strait Islander Peoples’ right to land existed before colonisation and that this right continues today. Opponents of the decision ran a scare campaign declaring that people’s backyards were under threat from land claims. In fact, Australian law recognises the security of private property, including people’s backyards. Native title claims cannot be made on land which is fully owned by someone else. It can only be recognised in the following areas:

- Vacant land owned by the government (crown land).
- Some national parks and forests.
- Some pastoral leases (where the pastoralist rents a cattle or sheep station from the government without owning the land).
- Indigenous reserves.
- Beaches, seas, lakes and rivers that are not privately owned.

Some extracts from the Mabo decision:

[Dispossession according to the theory of *terra nullius* was] the darkest aspect of the history of this nation. The nation as a whole must remain diminished unless and until there is an acknowledgment of, and retreat from, those past injustices …

The lands of this continent were not *terra nullius* or ‘practically unoccupied’ in 1788 …

The British acquisition of sovereignty over the colony of New South Wales was regarded as dependent upon the settlement of territory that was *terra nullius* …

The fiction by which the rights and interests of Indigenous inhabitants in land were treated as non-existent was justified by a policy which has no place in the contemporary law of this country … The common law of this country would perpetuate injustice if it were to continue to embrace the … notion of *terra nullius* …

If it were permissible in past centuries to keep the common law in step with international law, it is imperative in today’s world that the common law should neither be nor be seen to be frozen in an age of racial discrimination …

Whatever the justification advanced in earlier days for refusing to recognise the rights and interests in land of the Indigenous inhabitants of settled colonies, an unjust and discriminatory doctrine of that kind can no longer be accepted.

Although the property rights of non-Indigenous landowners are secure under Australian law, Aboriginal property rights are currently being undermined under measures introduced as part of the intervention.
“What has Native Title done for me lately?”

For Aboriginal people whose lands were colonised first, Native Title has offered little, if anything at all. Tom Calma, the former Aboriginal and Torres Strait Islander Social Justice Commissioner, comments, “Native title is at the bottom of the hierarchy of Australian property rights … The more an Indigenous community has been affected by white settlement the less likely the law will recognise their native title rights.”

He adds, “Despite the High Court’s landmark decision, Australian courts, governments and non-Indigenous people have struggled to accept fully the rights of Indigenous peoples to their lands, waters and territories. In successive court decisions, our cultures have been viewed through a non-Indigenous lens, with our rights separated and eliminated one by one. The result, as former Federal Court judge Murray Wilcox observed, is that for many Aboriginal people ‘native title has become a mirage’.”

The Yorta Yorta people, whose lands are located on both sides of the Murray River in the area of modern Echuca and Wangaratta, were one of the first Aboriginal Peoples to make a Native Title claim. Their claim was rejected, with a judge asserting that the ‘tide of history’ had ‘washed away any real acknowledgement of traditional law and any real observance of traditional customs.’

The article by Yorta Yorta leader Monica Morgan “What has Native Title done for me lately?” tells the story of the case from an Aboriginal point of view. Read the article online at http://www.onlineopinion.com.au/view.asp?article=8923&page=0

Activities
1. Discuss what stands out to you most from reading this article.
2. What happened in the story of Kaia, Edward Curr and Undarnying? How is this story relevant to claims made today by Yorta Yorta people for the land that they have occupied for tens of thousands of years?
3. How did the judge argue that Native Title came to be extinguished? How does Morgan respond?
4. “Olney dismissed the claimants’ own self recognition and oral history as not being reliable …” Explain why Morgan states that his views represent an “antiquated, backward notion of Indigenous peoples”.
5. Given that the Yorta Yorta/Bangerang native title application was not recognised by Australian courts, what solution does Morgan suggest? Discuss your views of what this would mean.

NATIVE TITLE AND LAND RIGHTS: SOME ONLINE RESOURCES


Foley, Gary, 1997, ‘Native Title is not Land Rights’ www.kooriweb.org/foley/essays/essay_2.html


National Native Title tribunal website http://www.nntt.gov.au
Activities

1. Spend a few minutes completing the following statements.
   a. For Indigenous people, land means ...
   b. For other people, land means ...
2. Share your answers. What seem to be the biggest issues? How are your responses linked to issues of human rights?
3. What examples are there in Australian history of progress in recognising Indigenous rights to land?
4. In what ways does your local council/local school recognise traditional ownership of the land on which it is located?
5. What factors lead to opposition to land rights? What do some people fear that land rights might mean?
6. Discuss the following quote from Australian author Xavier Herbert:
   “Until we give back to the black man just a bit of the land that was his and give it back without provisos, without strings. To snatch it back, without anything but complete generosity of spirit in concession for the evil we have done him – until we do that, we shall remain what we have always been so far, a people without integrity; not a nation, but a community of thieves.”
7. Explain how supporters of land rights would see the link between rights to land and the task of overcoming poverty in Aboriginal and Torres Strait Islander communities.
8. Discuss the proposition: “Issues of Aboriginal rights to land will not go away. They will continue to haunt non-Aboriginal Australians until there is real justice.”
9. What else might ‘real justice’ involve?
   a. Compensation?
   b. Recognition of Indigenous Peoples in the preamble to the Constitution?
   c. Greater legal protection for Indigenous rights in the Constitution?
   d. Recognition of Aboriginal and Torres Strait Islander Peoples at local and regional level?
   e. A treaty?
10. Research what happened during the dispossession of Indigenous Peoples in the state or region of Australia where you live.
    a. Do local history books focus on how dispossession happened? What picture do they give of European and Indigenous perspectives?
    b. List the actions of Indigenous Peoples, non-Indigenous people and governments.
    c. Make a timeline of key events.
    d. Where you can, find quotes which represent different points of view which people held at the time.
    e. Has any land in your part of Australia been returned to Indigenous people?

Aboriginal people protesting at the construction of Reconciliation Place in Canberra. © Fairfax News/Jacky Ghossein
The intervention and land rights – some key issues

While the Northern Territory intervention has been justified in relation to meeting the needs of women and children, it has included far-reaching changes that affect Aboriginal rights to land.

Changes made under the intervention allow the Federal Government to:

- acquire land compulsorily in areas affected by the intervention under renewable five-year leases, which give the government exclusive possession of the land while the lease is in force and deprive traditional owners of the right to make decisions about the use of the land
- abolish the permit system, which enabled Aboriginal communities to control who came onto their land
- pressure Aboriginal organisations to sign away control of their land under leases that run from five to forty years as a condition for receiving government services such as housing.

Governments are now proposing that small Aboriginal communities living in homelands in the Northern Territory and other parts of Australia be relocated to larger towns.

Aboriginal leader Patrick Dodson (right) during an Aboriginal smoking ceremony at Cabramatta High School in Sydney, 2008. © AAP/Dean Lewins
Claiming possession of Aboriginal-owned land: reversing land rights progress

Despite some progress in recognising Aboriginal land rights in Australia, government policies in recent years have undermined Aboriginal rights to land. The Federal government has imposed compulsory five year leases on land in areas affected by the intervention. This has deprived Aboriginal owners of the right to make decisions about their land, because all decision-making power about its use has been given to the Australian Government. This over-rides rights held by Aboriginal Peoples under the Land Rights (Northern Territory) Act 1976, a historic law which represented a major step forward in recognising rights to land.  

The Federal government has argued that the leases are necessary because it needs “secure tenure” in order to build infrastructure in Aboriginal communities. These arguments are dismissed in a 2009 report by the Aboriginal and Torres Strait Islander Social Justice Commissioner. He observes that governments have frequently built infrastructure such as schools, police stations, and housing in Indigenous communities in the past without obtaining a lease. He cites arguments that Labor raised when it was in Opposition, although it later supported the policy of leases. On 13 June 2007, Jenny Macklin MP (then Shadow Minister for Indigenous Affairs) told the House of Representatives:

‘The government is arguing that land rights have not delivered economic outcomes, and is therefore seeking to construct a Hobson’s choice for Indigenous people. Choose between your rights to land and your rights to economic development. I do not believe that it is beyond the wit of traditional owners and the government to devise land tenure arrangements... without fundamentally undermining Indigenous ownership and control of their land.’

During consultations about the future of the intervention held in 2009, a member of the Bagot community made the following comments to government officials:

[The intervention] started in 2007... Then later on... Kevin Rudd stood in national television and said ‘sorry’. Okay, so we were expecting that sorry was for both, stolen generation and intervention. And then, now you guys come in, second time. Well why? Why are you coming here? What for? What next? Can you tell me? Why are you coming here?

You should close the gap first then come and visit ... You know, you widen the gap ... Then you are coming in, another consultation, another consultation, carry on and carry on and carry on ... You try to go and talk to people, getting a five-year lease, you know, a land-grabbing thing. That is what you people are doing – land-grabbing.

The Law Council of Australia has voiced its concerns about government plans to acquire Indigenous land:

We regard the compulsory acquisition of land as an extreme measure which conflicts with the fundamental rights to land ownership.

Community dysfunction is now understood as the fault of the colonised and their persistent cultural practices, rather than as a result of violent dispossession, brutal colonisation and authoritarian state Intervention...

In the absence of any consultation with affected communities or any real debate in the Australian Parliament, the Government took control of communities, compulsorily acquired land and imposed administrative and statutory management over people’s lives that no other Australians, free from prison, endure.

The suspension of the Racial Discrimination Act, which accompanied the Intervention, hardly ruffled the nation’s conscience...

Professor Patrick Dodson, a Yawaru man from the Kimberley known as the ‘father of reconciliation’, former director of the Central Land Council and the Kimberley Land Council.
Indigenous permit system should be restored: Amnesty International

Amnesty International's consultations with communities in the NT found the permit system to be something communities want in order to protect culture and land. Researcher Lucas Jordan said:

The permit system is an enabling system – it enables Aboriginal people to live among their family, cultural and language groups, often close to traditional country; it offers a respite from the pressures of town life and is often the inspirational base of much of the art and music that is beloved by many Australians.19

The organisation said that removing the permit system contrary to the wishes of the community violates the rights of community members, except where it is necessary for a legitimate public purpose such as public health or national security. It also said that a strong body of research on Indigenous communities has not identified the permit system as a risk factor in child abuse in such communities.20

The NT Police Association also expressed concern, saying, “the permits help police officers in the bush with their efforts to keep alcohol and drugs out of communities that are supposed to be dry.”21
Many Aboriginal and Torres Strait Islander communities around Australia are urgently in need of basic services including housing and healthcare. State and Federal governments have been aware of these needs for decades but have consistently failed to respond on the scale that is needed. The NT Anti-Discrimination Commissioner writes: "Federal and NT governments have known about this disadvantage for decades yet they have continued to neglect, systematically underfund and impose policy from afar."

Following the intervention, the Federal Government offered to build houses and provide other services to Indigenous communities if they gave up their rights to land by leasing it back to the government for periods between five and forty years.

The government says that this would provide it with the secure control of the land it needs in order to undertake construction projects.

Ensuring sufficient tenure to support substantial government investment in housing and infrastructure on Indigenous held land must be the first priority in order to allow housing projects to proceed quickly ... The Australian Government minimum requirements in this regard are ... government must have access to and control of the land on which construction will proceed for a minimum period of 40 years.

What the government has not explained is why it is not prepared to negotiate agreements with Aboriginal landowners that enable houses to be built without transferring control of the land to governments.

The issue of services in exchange for giving up rights came to a head in the conflict between the government and residents of town camps in Alice Springs. Tangentyere (pronounced Tungen-jerra) Council in Alice Springs was offered urgently-needed services on the condition that they sign away their land under a 40-year lease. Given a choice between the services and the lease, they eventually felt forced into choosing the services. They signed late in 2009.

No other person or group in Australia has to surrender their property rights to gain basic government services, including policing.

The policy is discriminatory. It is racist.

It is the responsibility of the Commonwealth and NT governments to ensure that the Alice Springs town camps are policed and proper housing, education, health and social services are provided to camp residents. They should be able to meet these responsibilities without requiring the compulsory lease back of Indigenous land.

After all, they manage to provide those things for all other Australians without requiring the surrender of any property rights.

Aboriginal lawyer and academic Larissa Behrendt.
Leases policy extended beyond the NT

The system of offering services in exchange for leases is being extended to other regions of Australia as well. The ABC’s Message Stick program spoke about the issues with Des Jones, the Chair of Murdi Paaki Regional Housing Corporation of western New South Wales and Percy Neal, the Mayor of Yarrabah in Far North Queensland:

Des Jones: You talk about 40-year leases, well, we’ve just had 43 years of state involvement and Commonwealth involvement and it hasn’t improved much on the ground for housing. So I think it needs a real engagement process with the community …

Percy Neal: There’s no need for a 40-year lease in Yarrabah … they’re just trying to take autonomy away from Aboriginal people on our own lands and that. We’re in a position to determine our future; we don’t need them to actually do it. It’s not rocket science. You know, we should be able to actually determine our own future and that’s the way we’re going so it’s just not on, you know. It’s just paternalism …

Miriam Corowa: What do you think is going to happen for a community like Yarrabah if you choose not to go along with signing a 40-year lease?

Percy Neal: Well, exactly what they’ve said to us – if there’s no 40-year lease, you won’t be getting funded. That’s just straight-out blackmail, well, where I come from anyhow …27

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MYTH: “INDIGENOUS PEOPLE DESTROY THEIR HOMES”

Paul Pholeros, an architect who works with Indigenous communities, conducted a survey of 4,343 houses in 132 communities. The research showed that 60 per cent of housing problems arose from poor maintenance, 25 per cent from poor initial construction and only 8 per cent from damage and abuse by tenants.

He observes that “if you have in your head that Aboriginal people trash the houses, everyone else gets off the hook … Almost a quarter of the money we spent in the last 10 years on over 6,500 houses around Australia has been due to poor initial construction, faulty work. That’s a toilet without a drain attached, a tap without water attached.”

To find out more

- ‘Myth: Aboriginal people destroy houses’
  www.creativespirits.info/aboriginalculture/land/indigenous-aboriginal-housing.html
- ‘Australian government fails to deliver promised Indigenous housing’
  www.radioaustralia.net.au/connectasia/stories/200907/s2635442.htm
For many decades, government policies forced Aboriginal and Torres Strait Islander Peoples off their traditional lands and into government-run reserves, church-run missions and bigger towns and cities. Governments and non-Indigenous Australians treated Western culture as the model which everyone should fit into.

Despite the dispossession and relocation that they experienced, Aboriginal Peoples continued to remain connected to their country. In the 1960s, small groups of Aboriginal people who wanted to determine their own destiny began relocating back to and establishing communities on their traditional lands and waters. This became known as the homelands movement.

Today, one-third of Aboriginal people in the Northern Territory live on homelands (also referred to as outstations). There are approximately 500 homelands in the Northern Territory.

**GROWTH TOWNS: STRIPPING SERVICES FROM HOMELANDS**

In 2009, the Northern Territory Government announced plans that will strip services from homelands in favour of larger towns and cities, effectively forcing Aboriginal Peoples to move in order to access basic services. The NT government’s media release heralded the prospect of “towns like anywhere else in Australia” and “real towns, real jobs and real opportunities.”

This approach was supported by the Federal Government, which announced plans to prioritise funding and services for 15 selected ‘growth’ towns in the Northern Territory, relying on them to act as servicing hubs for outlying areas.

These policies exclude the 500 homelands where one-third of Aboriginal People in the Northern Territory live.

**For more information on homelands visit www.amnesty.org.au/homelands**
June 21, 2007, may well be seen as a defining date in Australian history. That day changed government/indigenous relationships profoundly when Prime Minister John Howard announced that his Government planned to seize control of 64 Aboriginal communities in the Northern Territory…

There is no argument that the urgent immediate priority is to protect children. The welfare of our children and our families remains the key to our lives and future. But this priority is undermined by the Government’s heavy-handed authoritarian intervention and its ideological and deceptive land reform agenda.

The agenda is to dismantle the foundations of the Northern Territory Aboriginal Land Rights Act. It seeks to excise residential community settlements from the Aboriginal land estate under special Commonwealth Government five-year leases, and the abolition of an authorisation entry protocol called the permit system.

The Government has not made a case in linking the removal of land from Aboriginal ownership and getting rid of the permit system with protecting children from those who abuse them. What is becoming increasingly clear is that the Howard Government has used the emotive issue of child abuse to justify this intervention in the only Australian jurisdiction in which it can implement its radical indigenous policy agenda …

The fundamental changes proposed for the land rights act that mandates Commonwealth Government control of the Northern Territory communities would be a devastating setback for Aboriginal rights.

The Northern Territory ALRA is the iconic declaration of the Australian nation’s intent to restore to Aboriginal people the dignity of their traditional lands.

Under the Land Rights Act, all Aboriginal reserves gazetted during the protection and control era were transferred to Aboriginal ownership and the Northern Land Council and Central Land Council were established as statutory bodies to help traditional owners prepare claims and represent their interests.

The act liberated Aboriginal people in the Northern Territory from their subordinate and colonial status and became an inspiration for much Aboriginal land legislation that has been passed in every Australian jurisdiction with the exception of Western Australia.

More than half the Northern Territory land mass is Aboriginal land containing more than 700 indigenous communities, the vast majority of which are small homeland communities.

There should be no doubt about what is at stake here. The Government’s agenda is to transform indigenous larger settlements into mainstream towns and extinguish by attrition the capacity of indigenous people to maintain small homeland communities.

These settlements have become the lifeblood of cultural regeneration as indigenous people, by their own determination, relocated in extended family groups to traditional country after the collapse of the feudal pastoral industry regime and closure of church missions in the 1960s and 1970s.

A few years ago, assimilation was comprehensively rejected by mainstream Australian society as racist. That it should be back in vogue as this Government’s indigenous public policy direction reflects the paucity of intellectual and philosophical discussion about the position of indigenous people in Australian nation building.

While large sections of Australian society can indulge in contemporary grief about past injustices inflicted on indigenous peoples, there is a pervasive silence about the policies of national, state and territory governments.
I bring with me many voices of concern, from my leaders who are custodians of our traditions and customs, passed down over generations, for many thousands of years; leaders who are the caretakers of our lands through our dreaming, mother earth, and spirits – still with us to this day, watching over all of us…

Since colonization we have endured much hardship, cruelty, theft, genocide, and destruction of our culture, traditions, customs and laws.

We are people who are very easy to forgive and move on; this we have done for over 200 years, with no resentment and hatred, but always willing to extend our hands and welcome our fellow human beings to embrace them as one with our spiritual lands.

Yet the governments and the agencies have always continued their false pretence of charity, giving a little, while still retaining the power and taking away everything they could with the other hand.

Indigenous people have always put people of different races and cultures first; above selfishness, above any personal wishes.

We have always put our children alongside us so they may learn the ways of our people through teaching, listening, and stories from their elders. They learned about life, the interconnection of all living things, breeding cycles of all animals on our lands, and the songs that go with each animal; so they too have a place on earth …

Today, and since the introduction of the “Intervention” in 2007, Indigenous people across the Northern Territory are facing a renewed and sustained level of destruction and denial of our basic human rights under the Federal government’s Northern Territory Emergency Response, introduced under the guise of protecting children.

The policies that were developed, passed through parliament quickly, implemented with martial law, and which were supported by the Labor party while in opposition, are having serious and detrimental effects on Aboriginal people across the NT….

Release the chains of control; give us our freedom; let us walk once again as free human beings on this earth (our mother), with our ancestors, spirits, songs, and ceremonies.

Let us share our richness of cultures with others. We are all one blood and connected through our spiritual dreams of pathways, Earth, Water, Trees, Sky, and Wind, which carry our thoughts and spirits across all continents.

Let us once again embrace our younger generation into our folds to show and give them guidance, as these are our next generation of leaders who are lost between two worlds (cultures) but are at the cross roads between light and darkness.

We have an opportunity and one chance in our life time to get it right. Let your hearts guide you, not your government policies which are at the core of the destruction of Aboriginal people.
Comments from members of Indigenous communities during government consultations on the NT intervention

That’s the message, very strong. We will not stop being Aboriginal People, with our language, with our rituals, through our rituals, our responsibilities to the land, and furthermore, holding that land as the underpinning of everything we are.

We’re not interested in anybody dictating to us how we’re going to live on this land, on Utopia. You heard it loud and clear…

Future directions of the Australian Aboriginal persons will come at our pace. We’ll own that journey. We’ll not be dictated to from edicts coming down like bullets from Canberra. This land is much older than white settlement. Your values are entirely different to ours. Entirely different. If you’re going to have generosity of heart and good will, you take into consideration, one of the oldest living cultures in the world, in the whole wide world.

Why are you coming here? What for? What next? Can you tell me? Why are you coming here? … You should close the gap first then come and visit…

You try to go and talk to people, getting a five years lease, you know, a land grabbing thing. That is what you people are doing – land grabbing.

Member of the Bagot community

Aboriginal land! ‘im can’t take it away! You know, we can’t go. It is Aboriginal land. We got grown up here. We sit down here. Aboriginal land! Aboriginal land! That’s right. ‘im can’t take ‘im away! We stay here – Arlparra. Aboriginal land! Old one, this one, Aboriginal land! This is strong…

This is strong Aboriginal land. Nobody is to erase it or take it away from us. This is strong Aboriginal land.

Resident of Arlparra in the Utopia homelands

Rosalie Kunoth-Monks, President of Urapuntja Council, Barkley Shire President and resident of Arlparra in the Utopia homelands, speaking at a meeting with government officials.
The Barunga statement: a call for Aboriginal rights

On the 12 June 1988, during Australia’s bicentennial year, the Prime Minister Bob Hawke was presented with the Barunga Statement by Aboriginal leaders.

Written on bark, the Statement called for Aboriginal self-management, a national system of land rights, compensation for loss of lands, respect for Aboriginal identity, an end to discrimination, and the granting of full civil, economic, social and cultural rights. The Prime Minister replied “That there shall be a treaty between the Aboriginal people and the government on behalf of all the people of Australia”. This promise has not been fulfilled.

THE BARUNGA STATEMENT

We, the Indigenous owners and occupiers of Australia, call on the Australian Government and people to recognise our rights:

• to self-determination and self-management, including the freedom to pursue our own economic, social, religious and cultural development;
• to permanent control and enjoyment of our ancestral lands;
• to compensation for the loss of use of our lands, there having been no extinction of original title;
• to protection of and control of access to our sacred sites, sacred objects, artefacts, designs, knowledge and works of art;
• to the return of the remains of our ancestors for burial in accordance with our traditions;
• to respect for and promotion of our Aboriginal identity, including the cultural, linguistic, religious and historical aspects, and including the right to be educated in our own languages and in our own culture and history;
• in accordance with the universal declaration of human rights, the international covenant on economic, social and cultural rights, the international covenant on civil and political rights, and the international convention on the elimination of all forms of racial discrimination, rights to life, liberty, security of person, food, clothing, housing, medical care, education and employment opportunities, necessary social services and other basic rights.

We call on the Commonwealth to pass laws providing:

• A national elected Aboriginal and Islander organisation to oversee Aboriginal and Islander affairs;
• A national system of land rights;
• A police and justice system which recognises our customary laws and frees us from discrimination and any activity which may threaten our identity or security, interfere with our freedom of expression or association, or otherwise prevent our full enjoyment and exercise of universally recognised human rights and fundamental freedoms.

We call on the Australian Government to support Aborigines in the development of an international declaration of principles for indigenous rights, leading to an international covenant.

And we call on the Commonwealth Parliament to negotiate with us a Treaty recognising our prior ownership, continued occupation and sovereignty and affirming our human rights and freedom.
Town camps acquisition seen as ‘step backwards’:  
7.30 Report

This transcript from the 7.30 Report on 30 July 2009 provides an overview of the debate about basic government services being offered in exchange for leases on Aboriginal land.  
Watch at www.abc.net.au/7.30/content/2009/s2641518.htm

The segment features Jenny Macklin, Indigenous Affairs Minister; William Tilmouth, Tangentyere Council; Professor Larissa Behrendt, University of Technology Sydney; and Barbara Shaw, Town Camp resident.

Introduction: The Federal Government’s recent offering of one hundred million dollars to upgrade Aboriginal town camps in Alice Springs comes with a catch; the Tangentyere Council has to give up their land. Not ready to cave in to the government’s demands, the acquisition is now being challenged in court.

Kerry O’Brien, presenter: The Federal Government has finally achieved a breakthrough in the long standoff with Tangentyere council, the organisation that runs Aboriginal town camps in Alice Springs. And the brawl has been over the future of the camps.

The government’s offered $100 million to upgrade the camps, but only on the condition the council gives the Commonwealth a 40-year lease over the tracts of land that the camps are on.

After the council rejected her offer two months ago, Indigenous Affairs Minister Jenny Macklin threatened compulsory acquisition of the leases under the umbrella of legislation supporting the Northern Territory intervention.

But Tangentyere council buckled this week and Jenny Macklin says the way’s now clear to begin work to transform the appalling living conditions in the camps.

But the Federal Government may yet be thwarted by legal challenges filed in the Federal Court today. Murray McLaughlin reports.

Murray McLaughlin: It’s been high brinksmanship for more than two years now as successive governments have sought to remedy the squalor of town camps in Alice Springs - a need that’s long stirred the nation’s conscience.

Jenny Macklin, Indigenous Affairs Minister: What we have in these town camps is something that looks like it might be a war zone or a refugee camp. Severe over-crowding, terrible levels of violence, shocking conditions of the houses and we knew that we really had to act.

Murray McLaughlin: But it’s the way the Government’s acted that aroused protest today outside the ALP’s annual conference in Sydney.

Protester: It’s a disgrace Jenny Macklin.

Murray McLaughlin: The Government moved on Alice Springs town camps under the cloak of the intervention into Aboriginal communities in the Northern Territory. It’s threatened to compulsorily acquire the town camps unless their residents agree to lease the land to the Commonwealth.

And the Government’s refused to release funds to improve the camps till the lease deal is struck.

Aboriginal people have always occupied permanent camps in Alice Springs. They used to be beyond the fringes of town. But as Alice Springs has grown, many of the camps have been virtually surrounded by industry and housing.

Through the 1960s and ’70s, and in the face of hostility from the town’s white population, residents struggled to secure permanent leasehold title over 19 camps. Their permanent population is around 1600 but the pressure of large numbers of visitors from remote communities needing to access services in Alice Springs has been a constant burden, more than doubling the regular population.

William Tilmouth, Tangentyere Council: The population is actually around 3500. We’ve never been funded to that capacity yet we’ve always been inundated by the movement of people.

Murray McLaughlin: Tangentyere council comprises representatives of each of the town camps. The council’s responsible for servicing the camps and blames decades of neglect by governments for the rundown conditions.
William Tilmouth: It’s a condition that’s been created from long-term lack of funding, appropriate funding, long-term bureaucratic bungle after bureaucratic bungle. We’ve always had to do things on the cheap. We’ve always tried to do it on the cheap.

Murray McLaughlin: The Federal Government’s put up $100 million to improve the Alice Springs town camps. But its prerequisite was that Tangentyere council had to assign the leases in perpetuity over to the Commonwealth for the next 40 years.

Jenny Macklin: It’s critical that the Australian Government and the Northern Territory Government take responsibility as a result of holding the tenure for the future maintenance of these homes. That hasn’t been clear in the past because there was no secure tenure. So these are the critical reasons for tenure and we normally require it in any public housing environment.

Murray McLaughlin: Larissa Behrendt, herself an Indigenous woman, is part of a legal team that’s challenging the Federal Government’s imposition of 40-year leases over the town camps.

Professor Larissa Behrendt, UTS: It’s very disappointing that we’re now seeing a policy approach that sees governments refusing to fix problems in places like the town camps unless land is surrendered and not being at all willing to negotiate on that particular principle before they’ll put resources into housing or other infrastructure needs.

Murray McLaughlin: Tangentyere council agreed on Tuesday to lease the town camp’s lands, but it was with a heavy heart. For the past two months, Tangentyere has weighed up the Federal Government’s proposal under the threat that their leases would be seized.

William Tilmouth: We’ve had the gun at our head ... compulsory acquisition is the last resort. At the end of the day it’s something that we’ve been threatened with, and it’s a pretty high thing to consider. I think at the end of the day we need to work with what we have got and make some agreement.

Jenny Macklin: We have the authority to compulsory acquire under the Northern Territory Emergency Response Act. That was quite clear. But as I say, I’m very pleased that we haven’t had to go down that path, that we’ve been able to secure an agreement.

Murray McLaughlin: But agencies like the NT Council of Social Service say that Territory housing does not have a good record of managing Aboriginal tenants.

Jonathan Pilbrow, NT Council Of Social Service: Dealing with a large bureaucracy can be very confronting for some people. There’s lots of paperwork involved, at times meetings, and, yeah, it can be a difficult process for people to negotiate.

Murray McLaughlin: Tangentyere council members expected to sign tomorrow the lease agreements with the Commonwealth. But an urgent action brought on the Federal Court in Melbourne this afternoon has delayed that timetable. It’s been brought on behalf of this town camp resident Barbara Shaw and others.

Barbara Shaw, Town Camp resident: We don’t know the future plans for us as town campers and our leases, our special purpose leases that is we have got in perpetuity, a lot of people don’t know, and a lot of people would want Tangentyere to stay as their landlord or the housing associations. There’s been a lot of talk especially on Territory Housing, like Aboriginal people really don’t have faith in Territory Housing.

Ben Schokman, Human Rights Law Resource Centre: We have been concerned all along that Barbara Shaw and other town camp residents are voices – haven’t been heard in this debate, in negotiations between the Federal Government and Tangentyere council. So we have been taking this action in order to preserve those rights of interests – rights and interests of the town camp residents and to ensure that their place is heard at the negotiating table.

Murray McLaughlin: The Federal Court case was adjourned late this afternoon till a full hearing Tuesday. At least until then the Commonwealth won’t be able to sign off on any lease agreement with Tangentyere council and its members.

The Commonwealth’s legal team made clear in court this afternoon that the upgrade program is ready to be rolled out across the Alice Springs town camps immediately after legal issues are involved. Indigenous Affairs Minister Jenny Macklin said this evening she was disappointed about the delay.

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Land and Aboriginal and Torres Strait Islander rights

Activities and research projects

Current government policies and Indigenous Peoples’ rights to land

1. Investigate the impact of current government policies on Indigenous rights to land, focusing on the points below:
   a. The permit system.
   b. Five-year leases over land affected by the intervention.
   c. Leases being used as a condition for receiving government services.
   d. Government proposals to move Indigenous people from small homeland communities in the Northern Territory to larger towns. This issue is addressed in Pat Dodson’s article “An Entire Culture is at Stake.” For the full text, see www.theage.com.au/news/opinion/an-entire-culture-is-at-stake/2007/07/13/1183833765256.html.

2. For the issues above, describe:
   • what Indigenous people are saying
   • what non-Indigenous media commentators and the Federal Government are saying
   • your views about what should happen.

Land rights and the Town Camps in Alice Springs

3. Read the transcript of the 7.30 Report ‘Town camps acquisition seen as ‘step backwards’ for land rights’.
   a. Why is there opposition to the Government’s proposal to compulsorily acquire the leases on lands held by the Tangentyere Council?
   b. Draw up a table describing:
      • the views of the Minister for Indigenous Affairs
      • key points made by opponents of the government’s plans.
   c. Discuss whether you think the government’s approach is necessary or whether there are other ways to achieve the same goals.
   d. Research how Indigenous Affairs Minister Jenny Macklin’s attitudes to leases changed since she was in opposition. Read the speech by Jenny Macklin in the House of Representatives, Hansard, 12 June 2007 where she opposes government proposals for leases:

4. In small groups, create a scenario where government services, such as policing, health and education are provided to your community only on the condition that your community gives up rights. What rights are you asked to give up? What happens? Discuss your scenarios in class.

Respect, Dignity and Hope: Mabo oration by Tom Calma

5. In his Mabo oration ‘From self-respect comes dignity, and from dignity comes hope’, Tom Calma, then Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights Commission, makes the following statements:

   “Eddie Mabo’s fight was not a popular one. It was not about working within the confines of the system as it existed. It was about challenging a fundamental premise on which our society operated.”

   “A system built on discrimination or dispossession is a house of cards. It is not a stable basis for a society.”

   “Over the past decade we have seen a convenient but very destructive approach utilised by the Australian Government. This is to treat protections against racial discrimination as expendable and not a necessary precondition for government action.”

   “The end result is a native title system which some say has simply formalised dispossession … However native title has done what no other law did. It recognised the truth of our history and started the path forward.”

Using your existing knowledge and what you have learned from the materials above, discuss what you think he might mean by these statements. What are your views?

   List key points, using the statements above as headings.

7. What does Tom Calma mean in saying that “the ‘promise’ of the Mabo case has not been met”?

8. What are Tom Calma’s key concerns and what are the key elements of moving forward that he outlines?

9. What would it take for Australia to move forward in the way that he outlines? What stands in the way, and how can this be overcome?
Aboriginal views of land

10. Using the readings on pages 18–23, discuss:
   - how the readings communicate an Aboriginal view of land
   - what these perspectives add to your understanding of: Aboriginal values and world views; and the changes in Australian society that the people making these statements are calling for.

11. What are the similarities and differences between Aboriginal dispossession in the past and the ways in which Aboriginal rights to land are affected by current government policies?

12. Are current government policies a continuation of the process of taking away rights to land that began with colonisation in 1788? What different views might people hold on this question? Where do you stand?

Researching campaigns to regain rights to land

13. Research case studies of Indigenous people campaigning to reclaim their land, such as:
   - the story of the Gurindji people and the strike at Wave Hill
   - the story of the Aboriginal Tent Embassy
   - the return of Uluru.
   - The campaign by the Yorta Yorta people in NSW and Victoria for Native Title to their land, which was denied in the courts, where a judge argued that ‘tide of history’ had extinguished their native title rights.
   - The story of Eddie Mabo and land in the Torres Strait.
   - Wreck Bay on the south coast of New South Wales.
   - Campaigns for land by the people of Framlingham in Victoria
   - Native Title claims described on the website of the National Native Title Tribunal, www.nntt.gov.au.

Describe:
   - The history of Indigenous people in this area.
   - The history of non-Indigenous people in this area (it may be useful to search using newspaper resources at the National Library of Australia’s ‘Historic Australian Newspapers, 1803 to 1954’ website: http://newspapers.nla.gov.au).
   - Campaigns by Indigenous people to claim their land.
   - The situation today.
Additional resources

For the life story of Eddie Mabo and how the Mabo decision came about, watch the DVD *Mabo: Life of and Island Man*.


The series *First Australians* “chronicles the birth of contemporary Australia as never told before, from the perspective of its first people. *First Australians* explores what unfolds when the oldest living culture in the world is overrun by the world’s greatest empire. Over seven episodes, *First Australians* depicts the true stories of individuals – both black and white – caught in an epic drama of friendship, revenge, loss and victory in Australia’s most transformative period of history.”

*First Australians* is available online and on DVD. Look for the DVD in your library or watch episodes online at www.sbs.com.au/firstaustralians.

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**DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

The Declaration on the Rights of Indigenous Peoples provides an internationally-agreed framework for approaching Indigenous rights.

In April 2009 the Australian Government stated its support for the Declaration. Like the Universal Declaration of Human Rights, this statement of rights does not have legal force in Australia, but the government has now recognised this Declaration as setting the standard for how government actions affecting Indigenous rights should be assessed.

There is a focus on land throughout the declaration, including:

- **Article 8**, which focuses on the obligations of governments when Indigenous people’s rights are violated.
- **Article 10**, which addresses removal of Indigenous people from their lands.
- **Article 26**, which addresses Indigenous Peoples’ rights to their land.
- **Article 28**, which specifies Indigenous People’s right to redress (such as compensation) when their rights to land have been violated.
- **Article 32**, which outlines Indigenous people’s rights to determine how their land is used.38

For the full text of the Declaration go to: www.hreoc.gov.au/social_justice/declaration

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Myrtle and Violet Petyarr on their ancestral land at Mosquito Bore, Utopia, Northern Territory. © AI.

Photo credit: April Pyle
Endnotes


12 Xavier Herbert, quoted in Monahan, S, 2003, ‘A long and winding road: Xavier Herbert’s literary journey’ Nedlands University of Western Australia, p304


