



THE LAND HOLDS US

ABORIGINAL PEOPLES' RIGHT
TO TRADITIONAL HOMELANDS
IN THE NORTHERN TERRITORY

AMNESTY
INTERNATIONAL





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BOTTOM: Arlparra, Utopia homelands.
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FOREWORD

Rosalie Kunoth-Monks

Alyawarr/Anmatyerr elder, Utopia homelands

I can look back over 70 years on this part of the land. There was a richness of the relationships between people so you felt never alone. You felt secure, you felt you belonged. You also felt, from an early age, your responsibility; not only to the flora and fauna but to the song lines that tied you to the land. We always said pmerel atnyenem, we never said pmer nhenh tha atnyenem. That means, country owns or holds you, not you holding the country and becoming master of the land. The land was your mother, your father and everything else.

To the Alyawarr Peoples, the land owning you means that through your song lines, you've got to know where you are responsible for the wellbeing of that earth. From time immemorial there had been an order in existence where nobody queried who was who, who had the right to speak, who had the right to be a ceremonial leader and everything was orderly, yet inclusive.

Jump forward from that, this country here, it became a cattle station. Aboriginal Peoples lived still on land, the songs are intact; the country more or less is intact. In the 1970s it was purchased by the government on behalf of Aboriginal Peoples. We then became aware of Aboriginal Affairs really having an impact on our culture. People started feeling second grade and degraded. Into that came being destabilised for the first time for centuries. Into that came access to alcohol and other substance abuse.

We became aware of the racist attitudes. One of the most remarkable things my mother's sister said to me, in the 1980s when she was visiting Alice Springs for the first time in her life, was, "I feel poor and naked in this town". Within the culture, in the security of our land, she had never felt that she needed anything outside of her heritage.

Somehow at Utopia this seemed to have happened more slowly, simply because the things we needed were still on our lands. The 1990s saw us still living on our lands. By this time we had established homelands which we still live on now, within the lease of Urapuntja. We still felt that carrying out our laws – carrying them out as our forefathers did – was holding us together and the community was still cohesive and strong. We were floundering a bit, thinking, "Where to from here?"; we wanted two-way education. We still feel that strongly. Education is very important in modern-day Australia.

In the year 2000 there was pressure for us to conform. Ali Curung had been established quite well, that's the next big place to us. We were well and truly aware of dysfunction in communities, of people dying in their 20s and 30s because of alcohol and other abuses and in car accidents, and also of being arrested and taken into Alice Springs to stand trial. These were new experiences, relatively new to this area. Everything then began to merge and our young people started to want to go into Alice Springs, Mt Isa, Tennant Creek, and even further afield.

Fast forward to 2007, we had the visit from departmental staff, the army and the police. I clearly recall the day when the people came and



ABOVE: Rosalie Kunoth-Monks.

© AI Photo credit: April Pyle

told us we were now under the Intervention. We didn't know what the Intervention was. Suddenly there was a policy in the Northern Territory that took away our rights and on top of that they also wanted to take away our land, through what they called a lease. They wanted it for five years and to make Arlparra the centre. I can still hear Lena Pwerl, one of our ladies, yelling out, "No lease, no lease, not for one minute, not for one second, no lease, this is our land".

It was assault. Assault to such an extent that it traumatised all of us, so we looked around to see what made sense. What made sense was at all costs to hang onto the land. On that day when they said we want your land, there was an outcry all over Australia, I believe, from Aboriginal Peoples. By 2008 it became so unbearable that I remember absolutely reeling in shock and it appeared to me like we were made enemies of the state, of our country. We had not been in an aggressive relationship with anyone throughout the world, let alone in Australia, let alone in the Northern Territory.

Nevertheless, we believed that we would work together to be accepted and to accept each other. In 2008 I spoke in Alice Springs and I asked where we go for help and who can help us to work through this absolute terror. I said, "Where's organisations such as Amnesty International?" And a gentleman in the crowd heard this call. So I met this wonderful person and I felt there was a hand reaching out and saying, "We can help". From there, we formed a relationship and a partnership and an agreement, with Amnesty International. Without over-exaggerating, Amnesty International held us together and really helped us think through the trauma that we faced.

As we go into 2012, we realise that the Racial Discrimination Act was removed by the government so they could put us under what they termed the Intervention. We see that there are certain Aboriginal communities earmarked as growth towns. Let me assure anybody who cares for the Aboriginal Peoples of Australia that once we are moved from our place of origin, we will not only lose our identity, we will die a traumatised tragic end.

The fact is our body paint cannot be put on by just anyone or just anywhere or on anybody's country. We only can do that on our land. We cannot have identity if we are put into these reservations that are now called 'growth towns' because we will not only be second-class, we will become third-class, non-existent human beings.

This is a tragedy that is unfolding through the policies of an uncaring government. We must stop this and we must remain on our country. It seems sentimental and – I can't find the other word in English – about attachment to the land. It's not attachment to the land, it's survival of a cultural practice that is still alive in spite of what has been thrown at it.

What we now need to do is to access all of the richness of Australian life and of global life as citizens of Australia but also as citizens of humanity. The country is our lifeblood; that land that might just be filled with spinifex¹ has a depth that the majority of Australian brothers and sisters don't understand and it's so fragile. We need to stop the destruction of the oldest living culture in Australia.

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EXECUTIVE SUMMARY

All Indigenous Peoples have the fundamental human right to their traditional lands. This right enables Indigenous Peoples to fully enjoy their economic, social and cultural human rights. For Aboriginal Peoples of Australia, this connection to traditional lands or ‘country’ is of central importance to Aboriginal identity and culture. This report documents the efforts of the Alyawarr and Anmatyerr Peoples of the Utopia homelands in Central Australia to assert their identities and connection to their traditional homelands. It shows Alyawarr and Anmatyerr Peoples’ ongoing struggle to live a healthy life on their homelands despite a series of legislative and policy changes made at a national, state, territory and local level over the last decade that have been detrimental to the rights of Aboriginal Peoples to live on their ancestral lands.

During her *Closing the Gap* speech before parliament on 9 February 2011, Australia’s Prime Minister Julia Gillard spoke of her government’s efforts to “overcome decades of underinvestment in services and infrastructure” in Aboriginal communities.² Through the National Indigenous Reform Agreement, the Closing the Gap policy includes substantial investment aimed at improving the living standard of Aboriginal Peoples. However, the parameters within which the policy is being delivered mean that remote homeland communities in the Northern Territory do not benefit and in some cases, the policies are deepening the challenges Aboriginal Peoples face in remaining on their traditional lands.

A central part of the new policies is the development of key priority or growth communities throughout Australia. This prioritises a small number of selected larger communities or ‘hubs’ and targets resources and the delivery of services such as health, housing and related infrastructure to those centres. Called ‘Territory Growth Towns’ in the Northern Territory, the policy concentrates investment into 21 of the largest settlements. However, there are some 500 other Aboriginal communities across the Northern Territory representing more than a third of the Aboriginal population. The additional resources provided under the Closing the Gap agenda are simply not available to a significant number of Northern Territory Aboriginal communities.

Non-priority communities, including homelands, are being left behind. The governmental resources provided to homelands are barely sufficient to maintain existing levels of infrastructure and services. They do not provide for replacement, expansion or growth. This situation has led to a feeling of uncertainty and unease within these communities. It is difficult for them to plan for the future.

Irrespective of these policies and their long-term effect, Aboriginal Peoples from homeland communities like Utopia are determined to remain on their traditional lands. These policy initiatives fall below international human rights standards, in particular the standards of protection in the United Nations Declaration on the Rights of Indigenous Peoples. Central to the declaration are the rights of Indigenous peoples to own, live on and develop their lands; to consultation and free, prior and informed consent; and to culture. The themes of land, culture, and informed consent are the subject of this report.

This report highlights the struggle of Aboriginal Peoples to remain on their homelands in the face of policies that have the effect of drawing them away from their ancestral lands into larger communities and urban areas.

The report focuses on the Aboriginal Peoples of Utopia; it describes the policy initiatives that remove financial and infrastructure support for Aboriginal homelands in the Northern Territory and that direct the majority of support to 21 'growth towns'. The report outlines Australia's international obligations under relevant human rights instruments and how current government policies in relation to homelands contravene the rights of Indigenous Peoples to land, consultation and informed consent. The report further outlines the egregious state of housing in the Utopia homelands demonstrating the impact of years of underinvestment. The result is significantly overcrowded houses that are poorly constructed and badly maintained. The situation is likely to get worse with the policy decision to refuse funding for new and replacement housing on homelands in the Northern Territory. The report sets out Amnesty International's recommendations to the Commonwealth and Northern Territory governments of Australia.



This page.

Top: Gypsie Jones Pwerl making a sand painting as she tells a story to her grandchildren on the Utopia homelands.

© AI Photo credit: April Pyle

Bottom: Brother and sister Jermono Kemarr and Joseline Kemarr at Mountain Devil Lizard Dreaming country close to their home. © AI. Photo credit: April Pyle

Opposite page.

Top: Joseline Kemarr on her homelands.

© AI Photo credit: April Pyle

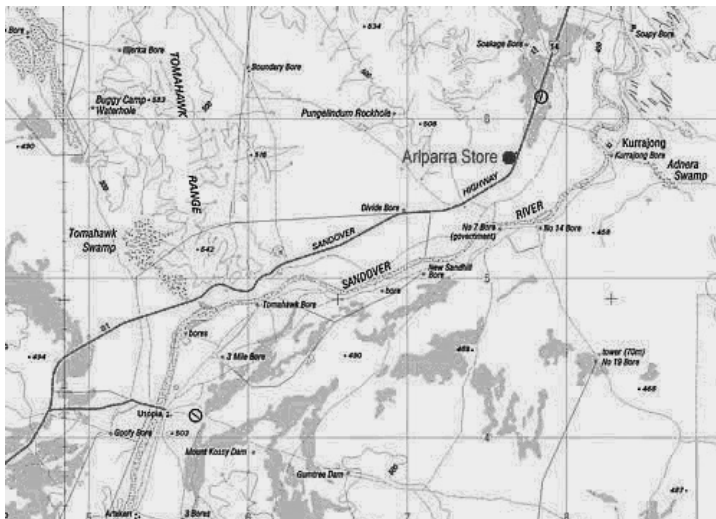
Bottom: The Petyarr sisters at Mosquito Bore in the Utopia homelands.

© AI. Photo credit: April Pyle



RECOMMENDATIONS

1. The Australian Commonwealth and Northern Territory governments recognise and fulfil the rights of Aboriginal Peoples to their traditional lands.
2. The Commonwealth and Northern Territory governments apply the Closing the Gap policies to all Aboriginal Peoples in the Northern Territory, not only to those living in Territory Growth Towns.
3. Closing the Gap funding is equitably distributed to include homelands. Criteria for funding must reflect the importance of homelands to Aboriginal Peoples and the significant backlog in housing as a result of historical underinvestment.
4. The Commonwealth Government must ensure that all housing on homelands meets the standards for adequate housing under international law and that effective, equitable and non-discriminatory processes are in place to ensure the right of Aboriginal Peoples to their traditional lands and the right to adequate housing.
5. The Commonwealth and Northern Territory governments engage with homeland communities to secure their free, prior and informed consent on all housing policy and plans for homelands given the significance of these policies for homeland communities.
6. The Commonwealth and Northern Territory governments take into account the above recommendations when re-negotiating the 2007 Memorandum of Understanding on Indigenous Housing, Accommodation and Related Services.



Map showing the 16 communities of the Utopia homelands.

HOME LANDS

AN ABORIGINAL
PEOPLES'
MOVEMENT

Introduction

Aboriginal and Torres Strait Islander Peoples have occupied Australia for millennia and belong to the world's longest-surviving continuous culture. Over many thousands of years, Aboriginal Peoples developed a rich culture and way of life. Aboriginal Peoples have their own distinct laws and customs and a unique relationship with their traditional lands. As Rosalie Kunoth-Monks explains, land is of central importance to Aboriginal Peoples:

All of the components of our identity hangs on the land. There's the land in a circle. There's the language from that land. In this region it's the Alyawarr and Anmatyerr language. It incorporates family lineage, family groups. It incorporates our sacred lands. It incorporates our law. The law is L-A-W as well as L-O-R-E. Break any one of those arms and sever it from the land, you are committing the death of a race of people. It is so vitally important for our identity and the continuation of that, one of the oldest races in the world, that government are mindful not to sever, not to kill.³

Definition of homelands and outstations

The terms 'homelands' and 'outstations' can be used interchangeably to define 'small decentralised communities of close kin, established by the movement of Aboriginal Peoples to land of social, cultural and economic significance to them'.⁴

This report favours the term homelands because this is the term used by the Alyawarr and Anmatyerr Peoples. Homelands is the term that they believe most strongly reflects their traditional, ancestral and spiritual links to the language, kin and land that forms part of their home.

The report acknowledges that for some Aboriginal communities in the Northern Territory 'outstations' is the preferred or generally-used term. The Commonwealth and Northern Territory governments use outstations/homelands as a generic description and use them interchangeably as appropriate to each location.⁵

In addition to homelands, there are also many small- to medium-sized communities on areas excised from pastoral leases (a particular type of leasehold that allows Crown land to be used for grazing stock). These communities are essentially the same as homelands or outstation communities.

Homelands can be contrasted with medium- to large-sized communities, of which there are roughly 70 in the Northern Territory.

The assimilation policy and the homelands movement

From the late 1930s through to the late 1960s, a network of Aboriginal settlements and missions was set up in the Northern Territory. Although they have different histories, these settlements were basically an exercise in social engineering with the objective of transforming remote, nomadic, traditionally-oriented Aboriginal Peoples into a settled, community-based society. This is the foundation of the assimilation policy in the Northern Territory.⁶ The main legacy of the assimilation era in the Northern Territory are major remote communities, such as Yuendumu, Maningrida, Yirrkala and Papunya. Aboriginal Peoples were moved from their lands to these missions, settlements and towns. The other important influence from this period was the dramatic increase in the population of settlements on the fringes of pastoral country (such as Warrabri, now Ali Curung, mentioned by Rosalie Kunoth-Monks in the Foreword) and in fringe camps around urban areas such as Alice Springs and Katherine, following the introduction of equal wages in the pastoral industry in the 1960s.⁷

The policy of concentrating Aboriginal Peoples in large settlements was a failure. The settlements rapidly faced serious problems of overcrowding, conflict, violence, family breakdown, deteriorating health, substance abuse and loss of morale.⁸ They brought together peoples of different clans, family groups and language groups to live in close proximity on other clans' land. Disputes arose between clans and tribal groups who now were living together where they had previously lived separately. The major settlements and missions became 'pressure cookers' and Aboriginal Peoples were often under considerable stress.⁹ Traditional authority structures were undermined. These tensions continue today.

As noted in the 1987 report, *Return to Country: the Aboriginal Homelands Movement in Australia*:

For Aboriginal Peoples the perceptions of these communities were as "no good", "too much trouble", "people fightin", "too much worry" and "too much sick there". By contrast, outstation life offered a return to "a healthy social and physical environment", away from the tensions and trouble associated with large communities of mixed groups.¹⁰

In sum, the post-war period saw a major displacement of the Aboriginal population both to settlements and to urban fringes. To this day, a significant proportion of Aboriginal Peoples do not live on their traditional country as a result of these major changes, which were very destabilising. Consequently, those who do still live on their homelands or have returned to them do not want to be displaced from their lands once again.

Despite dispossession, disempowerment and relocation through assimilation and similar policies, Aboriginal Peoples' desire to stay connected to their country has remained strong. The homelands movement in the Northern Territory demonstrates this. The homelands movement began in the late 1960s and gained momentum through the

1970s and 1980s when small Aboriginal groups, often families or other closely-related people, left a larger community and relocated on, or closer to, their traditional lands and waters. Homelands represent an attempt to reject the assimilation policies of the past.

Aboriginal Peoples see the establishment of homelands as the result of Aboriginal initiatives, not those of the government or officials. It is a deliberate strategy by Aboriginal Peoples to improve their own health and wellbeing and demonstrate customary responsibility to look after their traditional country.¹¹ Homelands allow Aboriginal Peoples to hunt, gather traditional foods and to be close to sacred sites, burial places, song lines and dreaming trails. It is not a rejection of modernity but an attempt by Aboriginal Peoples to embrace the benefits of citizenship rights on their own terms, within their own value system and own worldview.¹²

A key factor that supported the homelands movement in the Northern Territory was the Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA). The ALRA provided for the return of large areas of lands to Aboriginal Peoples in the Northern Territory.¹³ Half the land in the Northern Territory is owned by Aboriginal Peoples through Aboriginal Land Trusts under the ALRA.¹⁴ The majority of homelands are on ALRA land. Others are on excisions from pastoral leases or are in national parks. The homelands based on excisions from pastoral leases are an important part of the homelands pattern as in some cases Aboriginal communities have never been displaced, despite the appropriation of land for use by other land users.

The benefits of homelands

The many benefits of a return to lands are clear to Aboriginal Peoples. The United Nations Special Rapporteur on the Rights of Indigenous Peoples noted the social and health benefits of living on homelands:

Homelands are widely understood to have lower levels of social problems, such as domestic violence and substance abuse, than more populated communities. According to reports, the health of Indigenous people living on homelands is significantly better than of those living in larger communities. Homelands are also used effectively as part of substance abuse and other programmes for at-risk Aboriginal youth living in more populated or urban centres.¹⁵

The evidence is particularly strong and growing in relation to health outcomes. Homeland residents have participated in various health research projects over the last 20 years or so. These studies point very strongly to significant improvements in health outcomes for Aboriginal Peoples in remote areas if they live in homeland communities, compared with Aboriginal Peoples who live in major towns.¹⁶ Homelands are seen as places of respite. Many play a role in rehabilitation of addicts and offenders.¹⁷

Raising families on homelands means that people maintain their spiritual and economic connections to their land and waters or 'country'. It means they can raise their children within their own cultural context,

away from the marginalisation and discrimination that confronts Aboriginal Peoples in larger towns and settlements. One of the benefits of the homelands is that Aboriginal Peoples have some measure of community control and agency and there are many examples of strong governance models and community-based decision making.¹⁸

While there are many success stories, some homelands have failed. Some people on homelands remain dependent on welfare payments. But there are opportunities for people to participate in the mainstream economy, while remaining on their homelands. People living on homelands have engaged in economic activities, including Indigenous art, eco-tourism, natural resource management or 'caring for country' programs.¹⁹ Homelands also form a central component of the Northern Territory tourism industry, contributing \$775.78 million per year, some 5.8 per cent, to the Northern Territory economy.²⁰

However, despite the benefits of homelands, there has been no serious coordinated and comprehensive commitment to the long-term health and sustainability of Aboriginal Peoples' homelands.²¹ A 2008 Senate Select Committee report on regional and remote Indigenous communities concluded that it is the "ambiguity and even absence of policy ... that is having a large impact on the wellbeing of these communities".

My paintings are 'maps' of our country ... through my art I am educating the world about my country and my culture. I cannot paint when I'm not on my land. My art exists because of my connection to my homelands. I would like my grandchildren to have the chance to live on their country, to know the stories.

Kathleen Ngal, Anmatyerr elder and artist

The Utopia homelands

The Utopia homelands are 260 km northeast of Alice Springs in the Northern Territory. They are the traditional homelands of the Alyawarr and Anmatyerr Peoples. The pastoral settlement of the region began in the 1940s and Utopia was taken up as a pastoral lease at that time. The Alyawarr and Anmatyerr Peoples stayed on their country and many worked on the pastoral stations. In 1976 the Aboriginal Land Fund Commission purchased Utopia station on behalf of the Alyawarr and Anmatyerr Peoples. In 1979 Alyawarr and Anmatyerr Peoples gained permanent legal title to the Utopia leasehold. Prior to the land claim, Aboriginal Peoples originally lived close to the main homestead area

now known as Three Bores homeland. After the land claim was completed, Alyawarr and Anmatyerr families moved back to their traditional lands.

The people who occupy the Utopia homelands live in communities that reflect their ancestral connections to specific pieces of country. The Utopia homelands are made up of 16 dispersed communities with a population of around 1,400 people. These communities are separated from each other by rough, corrugated dirt roads and, in some instances, by the dry and sandy riverbed of the Sandover River. The most central community is Arlparra because it is close to the Sandover Highway and the most distant from Arlparra is Antarrrengey which is around 70 km away. Most of the communities are about 30 km apart. During the wet season, which usually occurs in the hot summer months of December to March, the roads, the Sandover Highway and the river itself are often impassable. At such times the only link to the major centre of Alice Springs is a small airstrip situated close to the Urapuntja Health clinic at Amengernterneh.

There are two primary schools, one high school, a health service and one general store in the central community of Arlparra. Living close to their ancestral land means that the Alyawarr and Anmatyerr are able to maintain a spiritual and practical knowledge of their country. A significant proportion of the Alyawarr and Anmatyerr diet comes from the land on which they live. Artists from the area are internationally-renowned for their painting and batik. There is limited access to alcohol.

The health benefits that come from life on homelands are exemplified on the Utopia homelands. A longitudinal study by the Medical Journal of Australia published in 2008 found that despite the steady rise of obesity and diabetes among Aboriginal Peoples nationally, the people living on the Utopia homelands were significantly healthier than other Aboriginal and Torres Strait Islander Peoples. The Alyawarr and Anmatyerr Peoples have worked to address the problems of obesity, diabetes and smoking so successfully that adult mortality rates from all causes have been consistently 40 per cent lower in Utopia than among Aboriginal Peoples in the Northern Territory generally. Deaths from cardiovascular disease are 50 per cent lower.²²

The study concludes that contributors to lower than expected morbidity and mortality are likely to include the nature of primary healthcare services as well as the decentralised mode of living with its attendant benefits for physical activity, diet and limited access to alcohol. Connectedness to culture, family and land are also cited as important factors. The study further found that the evidence shows that genuine partnership with Aboriginal Peoples in the design, delivery and control of services has tangible health outcomes.

Merekartwey: a snapshot of belonging to country

The Alyawarr and Anmatyerr Peoples' homelands are linked by dirt roads and are carefully selected because they are close to ancestral homes. For the Alyawarr and Anmatyerr Peoples a house is not the same as a home. Home is the landscape in which they live.



TOP: Alyawarr elder Motorbike Paddy Ngal points to the stencilled hand painting on a rock shelter on the Utopia homelands. Paddy describes this stencil as a 'letter box' – the hand denotes that the shelter is someone's home.
© Mervyn Bishop/Al



MIDDLE: Motorbike Paddy teaches his interpreter Jeffrey Pepperill Kemarr about an important dreaming story expressed in the rock art. Paddy is responsible for teaching the stories, dreaming and law for his country. He is also a stockman, artist and mechanic. © Mervyn Bishop/Al



BOTTOM: Motorbike Paddy, the local 'bush mechanic', fixes a motorbike.
© Mervyn Bishop/Al



LEFT: Jeffrey Pepperill Kemarr points to a grinding stone on the homelands. Such objects cannot be removed from the landscape. © Mervyn Bishop/Al

RIGHT: Kathleen Ngal is a world-renowned artist born around 1933. She is one of the senior women of the Utopia homelands. Her art has been exhibited both nationally and internationally in Milan, Tokyo and London. When asked about what home means to her she talks immediately about her sisters, her kinship lines and how they relate to the land and the altyerr, or dreamings, of her country. Kathleen says, "I cannot move, my home and everything it means cannot be moved or rebuilt elsewhere. My art exists because of my connection to my homelands. I cannot paint when not on my own land". © Rusty Stewart/Al





LEFT: Indigenous art is an important economic and cultural activity on the homelands. © Mervyn Bishop/Al

This is a special place, I don't want to go to no other place, it's where I'm gonna stay forever. It's all family sitting down here. This is one country, one family.

Alyawarr elder Motorbike Paddy Ngal

THREAT

TO

HOME

LANDS

POLICIES OF

EXCLUSION

Over the last five years, the Commonwealth Government has made a considerable financial and political investment in Aboriginal affairs in the Northern Territory. This investment has enjoyed bi-partisan support. However, as detailed below, in parallel with this investment a number of changes to law and policy have significantly undermined the rights of Aboriginal Peoples in the Northern Territory and their ability to remain on homelands. Additionally, changes to local government structures have left Aboriginal Peoples with less control over decisions that affect them.

Whereas government had provided a degree of support for homelands over many years, more recently, support for people living on traditional homelands has been incrementally reduced. In 2005 the Federal Minister for Indigenous Affairs, Senator Amanda Vanstone, questioned the viability of homeland communities, suggesting that they were “cultural museums that are too small to warrant government support”.²³ These comments were among the first signals that ongoing government support for the right of Aboriginal Peoples to live on traditional homelands was doubtful, despite Aboriginal Peoples’ aspirations to remain.

Common across these changes has been the lack of any meaningful consultation with Aboriginal Peoples affected by the changes or any process to secure their consent (which is a requirement under international human rights standards that the government of Australia has endorsed). Where there have been consultations, these have been inadequate. Aboriginal communities have had little opportunity to determine among themselves the best way forward and then to engage with government on policy and programs. Despite Aboriginal Peoples’ desire to stay on country, homelands have been largely excluded from the national plans.

The 2007 Northern Territory Emergency Response: ‘the Intervention’

The rights of Aboriginal Peoples were removed in a dramatic way in 2007 with the Northern Territory Emergency Response (NTER) or Intervention. The NTER was implemented in reaction to the publication of the report of the Northern Territory Government’s Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, titled *Little Children are Sacred*.²⁴ Through the NTER the government implemented wide-ranging measures including alcohol bans, new powers for police, and child health checks. It also changed the policy and legislative framework of Aboriginal affairs.

If the Intervention was so good for us, why did they remove the *Racial Discrimination Act*?

Utopia homelands resident from Arlparra²⁵

The legislation to support the NTER suspended the action of the Racial Discrimination Act as it applied to Aboriginal communities in the Northern Territory so that legal protections against discrimination were no longer available to Aboriginal Peoples. It exposed more than 45,000 people across 73 communities to discrimination based on their race. The Australian Human Rights Commission described the NTER as “punitive” and the NTER legislation as unnecessarily creating “barriers to the exercise of basic rights for Indigenous peoples – and only for Indigenous peoples – in the Northern Territory”.²⁶ The commission also said “it is blatantly discriminatory and has no place in the laws of a modern democratic nation”.²⁷

In June 2010, legislation amending the NTER was passed that reinstated the Racial Discrimination Act, however, discriminatory measures remain in place, designated by the Commonwealth Government as ‘special measures’.

An overriding recommendation of the *Little Children are Sacred* report was the “critical importance of governments committing to genuine consultation with Aboriginal Peoples in designing initiatives for Aboriginal communities” to address the issues outlined in the report.²⁸ Despite this recommendation the NTER was initially designed and implemented without consultation or the consent of the Aboriginal Peoples it affected.

The ongoing impact of the Intervention was summed up by a group of Aboriginal elders in February 2011:

Under the Intervention we lost our rights as human beings, as Australian citizens, as the First People of the Land. We feel very deeply the threat to our languages, our culture, and our heritage. Through harsh changes we have had removed from us all control over our communities and our lives. Our lands have been compulsorily taken from us. We have been left with nothing. The legislation under which we now live does not comply with international law. It is discriminatory. We are no longer equal to other Australians. We are no longer equal to you.²⁹

Closing the Gap in the Northern Territory and the Working Future policy

In 2009 the NTER was renamed Closing the Gap in the Northern Territory. This was brought under the National Indigenous Reform Agreement ‘Closing the Gap’, the overarching national plan to address Indigenous disadvantage in Australia.³⁰ Closing the Gap is implemented through a series of National Partnership Agreements. The agreements commit state and territory governments to a common framework of outcomes, progress measures and policy directions, and provide funding. Although Closing the Gap demonstrates commitment by governments to addressing some of the serious problems experienced by Aboriginal Peoples, the value of that commitment is undermined by the fact that Aboriginal Peoples have not been included as a party to any of the National Partnership Agreements, nor have there been national consultations in the development of these agreements.³¹

A key National Partnership Agreement for people living in remote communities is the agreement on Remote Service Delivery. This agreement establishes the priority or 'hub' town model, which involves supporting a few selected, larger economic centres, relying on them to act as servicing hubs for outlying areas where many Aboriginal Peoples live. In the Northern Territory there are 21 hubs, which are known as 'Territory Growth Towns'. These hubs are expected to service 500 remote homelands communities. The additional resources provided under Closing the Gap are directed to the growth towns. While there are some limited provisions for Aboriginal engagement and participation in the implementation of the Remote Service Delivery agreement, in the Northern Territory this only applies to the 21 growth towns, not to homelands communities.

The Northern Territory Government is implementing the agreement on Remote Service Delivery through the Working Future policy. Because the agreement is focused on growth towns, the Northern Territory Government additionally developed the outstations/homelands headline policy statement, as part of the Working Future policy. Three key elements of this policy are:

1. It outlines how government services will be delivered to homelands – mostly through remote delivery from growth towns.
2. It defines housing on Aboriginal land as privately owned.
3. It states that no new housing on outstations/homelands will be built by the Northern Territory Government.³²

Dr Kamanandra Suraswati from the Urapuntja Health Service talks about the effects of the changes:

The funding is going into building these towns [growth towns] with infrastructure and people moving into towns ... so that's the government policy ... but that doesn't mean they [Utopia homelands] should be therefore left, and [government] say, 'Oh well, they've proved they can live in the bush, so we just leave them'. They actually need support. They need housing, they need sewerage and water and all kinds of facilities but they need them supplied to their outstations [homelands]. And so it's not an excuse to think, 'Oh well, we'll let them go and we'll proceed with our plan in all these other places'. They actually have to have support to keep this model working. You can't just pull the plug on them.³³

Housing policy for homelands communities

One area where the lack of support for homelands is most evident is housing. Since the 1960s, the Commonwealth Community Housing and Infrastructure Program provided grants to Indigenous community housing organisations, Northern Territory government agencies and local governments to deliver housing, including for homeland communities. The maintenance of housing was funded under a 1978 Memorandum of Understanding (MOU) between the Commonwealth and Northern Territory governments, which gave the Commonwealth overall responsibility for Aboriginal affairs, including responsibility for homelands. The management of the maintenance budget was the responsibility of

the local government council and in some cases the local outstations or homelands resource centre. In the case of Utopia, the Urapuntja Council was the responsible authority. The Urapuntja Council also collected rents from the occupiers and this rent also contributed to the housing management and maintenance budget.

Despite clear evidence that homelands housing was highly inadequate, in 2006, the Commonwealth Government established a moratorium on funding for homelands housing.³⁴ This moratorium resulted in an even greater backlog in housing and related infrastructure and the increasingly dilapidated state of homelands housing. A review of Indigenous housing in 2007 then recommended a shift away from building new housing on homelands.³⁵ According to policy analyst Greg Marks, this report was instrumental in “turning the moratorium on outstation housing into a permanent policy setting”. Additionally, the report’s recommendations included examining, “the benefits of providing mobility incentives” to encourage families to move to more centralised locations.³⁶

Following the 2007 review, a new MOU was signed between the Commonwealth and Northern Territory governments that handed responsibility for municipal and local government services for 500 homeland communities to the Northern Territory Government, reversing the 1978 MOU.³⁷ The 2007 MOU provided for transitional Commonwealth support of \$20 million for municipal and essential services and \$7.1 million for housing maintenance to the Northern Territory Government but did not include any funding for new or replacement housing.

While support to housing on homelands was substantially curtailed under the MOU (and associated policies), significant funding is directed to the 73 communities prescribed under the Northern Territory Intervention (with the lion’s share going to the 21 growth towns). The Strategic Indigenous Housing and Infrastructure Program (SIHIP) is a five-year program introduced concurrently with the NTER to improve housing in the Northern Territory. The program provides \$672 million from the Commonwealth, with an additional \$100 million from the Northern Territory Government, to build 750 new houses, rebuild 230 existing houses and refurbish 2,500 houses. New housing has been restricted to priority communities.

Moreover, people are only able to access the new housing if they have agreed to sign a lease to the Commonwealth Government for the land on which the housing is located. The government’s rationale for leasing arrangements is that it needs the “security of a lease over land in order to invest in communities” (ie to build new housing or for refurbishments).³⁸ It states that unless it has a lease, it has “no legal right to access or control land or buildings”.³⁹ The government has leases on 64 communities under the NTER. These were compulsorily acquired. They expire in 2012 and will be replaced with a voluntary system.

Despite the fact that independent assessments of remote Aboriginal housing cite “extraordinarily poor performance of Aboriginal houses”⁴⁰ and the Commonwealth Government’s own acceptance that “many houses in remote communities are overcrowded and in poor condition, impacting on the living conditions of many Indigenous Territorians,”⁴¹ funding allocation demonstrates the difference in commitment between larger remote communities and homelands.

Funding allocations for housing in the Northern Territory

Type of community	Budget allocation for housing and/or housing maintenance (overall)	Number of communities	% population (approx) of Aboriginal Peoples in the NT ⁴²
Homeland	\$7.1 million (maintenance only, no new housing) ⁴³	500	35
Growth town	\$672 million (Plus \$100m Northern Territory Government) ⁴⁴	21	24

As a result, remote Aboriginal communities in the Northern Territory are increasingly being separated into different layers or tiers, and differentials in living standards between the tiers are likely to increase. Although the overall picture is somewhat complex and confusing, the basic tiers are seen below.

ABOVE source: Northern Territory Government Department of Housing, Local Government and Regional Services Housing Management and Maintenance Programs guidelines 2010–2011

Tiers of disadvantage

1. For those of the 15 Commonwealth 'hub' towns that have come to a leasing arrangement with the Commonwealth: new and refurbished housing will be provided under SIHIP.
2. For the remaining hub towns: refurbishments and housing when leases agreed.
3. For the balance of the NTER 'prescribed' communities, comprising a range of communities from large- down to medium-sized communities: refurbishments but no new houses for the foreseeable future.
4. For town camps where sub-leases have been signed: new houses and refurbishments.
5. For small communities classed as outstations, including homelands and most excision communities: no new houses, no refurbishments and a low level of maintenance funding.

The lowest tier, that is, the most disadvantaged, is that of homelands.

As noted by Greg Marks:

The major implication is no new housing for outstations [homelands]. Some satellite communities close to larger settlements might get under the radar and get funded, but otherwise the huge investment in housing on Indigenous outstations and homelands to date is basically

to be left to depreciate to worthlessness. There is no replacement program, let alone additional housing. The significant unmet demand and backlog, and the rapidly growing population, are all to be ignored. The only way to obtain housing in future will be to move back to the large communities. The message to Aboriginal Peoples is clear.⁴⁵

The creation of mega-shires in the Northern Territory

Concurrent with the national and state level policy and legal changes described above, changes have been made to local government structures that impact homeland communities. In July 2008 small town councils, community government councils, Aboriginal corporations and associations and other local government structures were amalgamated into larger regional or mega-shires. On homelands, shires are now responsible for the on-the-ground delivery of the essential and municipal services provided under the Northern Territory outstations/homelands policy. Territory-wide, this amounts to \$27.1 million.⁴⁶ The UN Special Rapporteur on the rights of Indigenous Peoples received information related to several concerns about shire amalgamation, including:

a potential loss of representation and control at the local level; the employment of shire staff without knowledge of local issues; the channelling of formerly community-based programmes and services through shires; the location of shire offices in urban centres; and the implementation of an electoral system that may result in communities with low populations being either under- or unrepresented in the shire political structures.⁴⁷

In the case of the Alyawarr and Anmatyerr Peoples of the Utopia homelands, their own Urapuntja Council was dissolved and replaced by a larger regional shire – the Barkly Shire Council. Each of the 16 wards at Utopia was represented on the Urapuntja Council. This has decreased to three representatives under the shire system.

The Barkly Shire Council covers an area of 323,514 km² and has a population of around 7,500 people. Approximately 70 per cent of the population in the shire is Aboriginal.⁴⁸ The Barkly Shire is responsible for the delivery of essential services such as road maintenance, waste management, housing and infrastructure maintenance, power, water and sewerage. Other government services are also delivered through the shires. These include airstrip maintenance, night patrol, economic development support, employment and training, sport and recreation, youth services, aged and disability care and Centrelink services (welfare).⁴⁹

The amalgamations of local or community-based councils throughout the Northern Territory brought together a wide variety of regional and disparate interests from pastoral, mining, Indigenous and non-Indigenous town-based and remote representatives on shire boards. Aboriginal communities believe that the previous model was more representative of Aboriginal interests. The Aboriginal voice, despite being the dominant demographic in the region, has been diluted by the amalgamation into mega-shires.





Opposite page.

Top: Collecting bush medicine to make a medicinal wash on Utopia homelands.

© AI Photo credit: April Pyle

Bottom: Two generations of women from the Utopia homelands community of Mosquito Bore. They enjoy the country near the track of the Dreaming story of the Mountain Devil Lizard, that inspires much of the famous art of the Petyarr sisters. (Left to right) Leevina Kngwarrey, Renita Loy Kemarr, Violet Petyarr and Myrtle Petyarr. © AI. Photo credit: April Pyle

This page.

Top: The sun rises over the Utopia homelands. © AI Photo credit: April Pyle

Bottom: Turn-off from Sandover Highway – the sign marks the road to four Utopia homelands communities that reside in the Gidgee tree and River Gum country, close to the banks of the Sandover River.

© AI. Photo credit: April Pyle

HOME LANDS LEFT TO WITHER

VIOLATION OF RIGHTS
TO ANCESTRAL LANDS
AND FREE, PRIOR AND
INFORMED CONSENT

Despite the clear significance of homelands to Aboriginal Peoples and despite the Commonwealth Government's commitment to addressing and redressing the historical injustices affecting Aboriginal Peoples in Australia, both policies and commitments to homelands have been weak.

Close scrutiny of homelands policies in the Northern Territory present a clear picture of exclusion and it has become increasingly worse over the years. As noted in the previous section, from 2006 onwards, policy in relation to housing on homelands has resulted in the cessation of financial support for new housing and very limited support for housing maintenance or the delivery of services. Once the 2007 MOU and SIHIP program expire in 2012, it is not known what funding arrangements will be put in place. At the same time, the Commonwealth has relinquished responsibility over homelands, leaving them in the hands of the Northern Territory Government, which has few resources to support homelands and little history of responsibility in relation to homelands.

The Northern Territory's Working Future policy states that "government services to outstations/homelands will in most cases involve a form of remote delivery, based from the closest or most accessible hub town".⁵⁰ While the Working Future policy does not seek to directly or immediately remove Aboriginal Peoples from homelands into growth towns, the medium- to long-term implication of the policy is the declining viability of homelands. By establishing 21 growth towns and ensuring that the majority of resources are directed to these towns, the government has established a context of increased pressure for homelands community members to move to the larger towns to access services.

The people of the Alyawarr and Anmatyerr communities of Utopia are determined to remain on their ancestral land but they are deeply concerned by the implications of the new policies. Their concern is shared by the Aboriginal and Torres Strait Islander Social Justice Commission, which stated:

Various policies now collude to move homeland residents into large townships. Health, housing and education services to homeland communities are now being severely restricted. This means that people will have to live in townships if they want their children to receive a school education or if they want access to housing.⁵¹

The policies being pursued at federal and territory level are placing the future of Aboriginal Peoples on homelands in the Northern Territory in jeopardy. While governments face difficult issues in funding Aboriginal communities, including homelands, any policy affecting Aboriginal and Torres Strait Islander Peoples needs to recognise the fundamental importance of Aboriginal Peoples' connection to land, and the historical inequities that have forced them to leave their lands. These are issues that are central to Aboriginal Peoples' identities. The fear of displacement was summed up by one Arlparra resident:

Aboriginal land. 'Im [government] can't take it away! You know we can't go. It is Aboriginal land! That's right. 'Im can't take 'im away! We stay here. Arlparra; Aboriginal land.⁵²

For these communities, current government policies and associated funding structures herald a return to the years of assimilation policy

from the 1930s to the 1960s when Aboriginal Peoples were removed from their land and herded into settlements and cities. Assimilation is now widely viewed as a failed and racist policy. Learning from the past and given its obligations under international human rights law, the government should be encouraging homelands rather than pursuing policies that have the effect of undermining the capacity of Aboriginal Peoples to remain on their homelands.

The most significant human rights instrument for Indigenous Peoples is the United Nations Declaration on the Rights of Indigenous Peoples. The declaration provides an authoritative framework for the full and effective protection and implementation of the rights of Indigenous Peoples. One hundred and forty-three states voted for the declaration in 2007 in the UN General Assembly. The Australian Commonwealth Government endorsed the United Nations Declaration on the Rights of Indigenous Peoples in 2009, expressing its desire to “reset the relationship” between Aboriginal communities and the state.⁵³

Core to the declaration is the right of Indigenous Peoples to their traditional lands. It recognises that Indigenous Peoples require an adequate land base to maintain their communities, distinctive identities, cultural practices and way of life, and economies. The right to traditional lands is essential to fulfilling a broad range of human rights for Indigenous Peoples.⁵⁴ This fundamental principle has been repeatedly endorsed in the decisions of regional and international treaty bodies.⁵⁵ In international jurisprudence, the right of Indigenous Peoples to their land is recognised and protected irrespective of whether local domestic laws recognise Indigenous Peoples’ property.⁵⁶

Today’s Commonwealth and Northern Territory government policies were established without the adequate participation and consent of Aboriginal Peoples. Article 19 of the UN Declaration on the Rights of Indigenous Peoples states that: “States shall consult and cooperate with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them”. According to the UN Special Rapporteur on the Rights of Indigenous Peoples, “without the buy-in of Indigenous Peoples, through consultation, at the earliest stages of the development of government initiatives, the effectiveness of government programmes, even those that are intended to specifically benefit Indigenous Peoples, can be crippled at the outset”.⁵⁷

The UN Committee for the Elimination of All forms of Racial Discrimination has provided a clear articulation of the rights of effective participation and informed consent and sees it as a fundamental aspect of non-discrimination. This is set out in the Committee’s General Recommendation XXIII, which requires states to, “ensure that members of Indigenous peoples have rights in respect of effective participation in public life and that no decisions relating to their rights and interests are taken without their informed consent”.⁵⁸

The content of the right to free, prior and informed consent – what it means in any specific case – is a matter to be determined by Indigenous Peoples and the state. This will vary according to local context and factors such as the relevant subject matter (for example, resource

management or enactment of legislation). But there is increasing recognition of the view that consent will be mandatory in those cases where an activity, law or policy has a major impact on Indigenous Peoples. What is clear in relation to the suite of policies affecting Aboriginal Peoples on Northern Territory homelands, is that the policies have a major impact on these communities. But in all matters affecting Aboriginal Peoples' lands, communities and housing, there needs to be a robust process of consultation that recognises the specific traditions and circumstances of those affected.

In relation to homelands, there is a clear and consistent pattern. The decision to stop funding homelands was made without consultation with Aboriginal Peoples. When the implications became clear, homelands associations and advocates became vocal. In response, the Northern Territory Government released an Outstation Policy Discussion Paper and invited submissions. Forty-three submissions were received and these were never made public.⁵⁹ Consultations about the policy occurred after written submissions were received. Only 17 of the 500 homelands communities were consulted and the results of this community engagement were published in the Our Home Our Homeland report in January 2009.⁶⁰ However, the final headline statement bears no clear link to either the Outstation Policy Discussion Paper or to the 20 recommendations emerging from the community engagement report.⁶¹

The decision to establish growth towns was made with minimal Aboriginal involvement. Aboriginal Peoples were not consulted on the implementation of the NTER, which set the policy platform for Closing the Gap policies. The National Partnership Agreements which implement the core aspects of the Closing the Gap policy were negotiated between the governments of Australia without Aboriginal and Torres Strait Islander Peoples' involvement. Under the Remote Service Delivery National Partnership Agreement (and Working Future) there are provisions for Aboriginal engagement and participation but this only applies to the 21 growth towns, not to homelands communities. Aboriginal Peoples' participation and representation has been significantly reduced with the amalgamation of shires. This has the effect of disempowering Aboriginal Peoples, by reducing their capacity to provide input into decisions on the delivery of municipal and other services.

These policies have had a cumulative effect on the state of infrastructure and housing in the homelands of the Northern Territory. There is now a backlog of demand for suitable and appropriate housing on homelands, severe overcrowding and housing that falls below both international and national standards. Current levels of funding do not address this historic underinvestment. Current policies, particularly the Northern Territory's Working Future policy and the Commonwealth's Closing the Gap policies in housing do not address the housing conditions on homelands.

THE
VIOLATION
OF THE
RIGHT
TO ADEQUATE
HOUSING ON THE
UTOPIA HOMELANDS

Following a research mission to Australia in 2006, the UN Special Rapporteur on Adequate Housing came to the conclusion that as a result of a number of factors, including the housing conditions in Aboriginal and Torres Strait Islander Peoples' camps and other communities, Australia had, "failed to implement its international legal obligation to progressively realise the human right to adequate housing to the maximum of its available resources, particularly in view of its possibilities as a rich and prosperous country".⁶²

The Special Rapporteur described Aboriginal and Torres Strait Islander Peoples' housing and homelessness as a "humanitarian tragedy" and "some of the worst in the world" and saw it as the main source of problems facing Aboriginal and Torres Strait Islander Peoples.⁶³ Overcrowding and poor housing stock are central to this problem. An estimated one-third of Aboriginal and Torres Strait Islander households are overcrowded, which is a much higher proportion than for other Australian households.⁶⁴ Housing conditions witnessed by the Special Rapporteur had evident impact on the health conditions of its inhabitants.

The major causes of housing failure for Aboriginal Peoples are a lack of routine maintenance and poor initial construction; not, as commonly attributed, a failure to consider issues of cultural appropriateness or the longstanding myth that Aboriginal Peoples destroy their homes.⁶⁵ In an assessment from independent tradespeople who repaired and categorised over 41,000 jobs in Aboriginal communities in remote and regional Australia, only 10 per cent were due to householder damage, overuse, misuse or vandalism.⁶⁶ Eighty-nine per cent of houses did not pass a national standard assessment for electrical safety.⁶⁷

This section of the report describes the extent and impact of years of neglect and underinvestment in the housing of the Utopia homelands, a policy which has resulted in "a serious shortage of decent houses in remote Northern Territory communities" after what the Commonwealth Government itself has described as "decades of neglect".⁶⁸ This inadequate housing poses a threat to Alyawarr and Anmatyerr aspirations to stay on their homelands. Current policies do not address historic underinvestment in housing and infrastructure on homelands, how housing on homelands will be brought up to a minimum standard required under international law or provide for the homeless.

The right to adequate housing under international law

Australia is party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11 of ICESCR recognises the right of all people to adequate housing and commits state parties to take appropriate measures to ensure the realisation of that right. Under the covenant, Australia is obliged to take concrete steps, using the maximum available resources, to progressively fulfil the right to adequate housing. The steps taken must be targeted and directed towards the most expeditious, effective and full realisation of human rights possible. They should include legislative, financial, social, educational and administrative measures, including budgetary prioritisation.⁶⁹

The UN Committee of Economic, Social and Cultural Rights has made clear that the right to adequate housing should not be interpreted narrowly to mean “merely having a roof over one’s head” or view shelter exclusively as a commodity. Rather it should be seen as “the right to live somewhere in security, peace and dignity”.⁷⁰ For Indigenous Peoples, for whom land is an integral part of their cultural identity, the rights to land and to adequate housing are intimately connected.⁷¹

The Committee on Economic, Social and Cultural Rights has also clarified that the concept of ‘adequacy’ is particularly significant in relation to the right to housing and provided specific guidance on what constitutes adequate housing for the purposes of the covenant.

What is adequate housing?

While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the UN Committee on Economic, Social and Cultural Rights has identified certain aspects of the right that must be taken into account in any particular context. These include:

Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Regardless of the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition, including safe drinking water, energy for cooking, heating & lighting, sanitation & washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

Affordability. States should ensure that the costs associated with housing should be affordable and not compromise other basic needs. Specifically, States should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance that adequately reflect housing needs.

Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors. The physical safety of occupants must be guaranteed as well.

Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources.

Location. Adequate housing must be in a location that allows access to employment options, health-care services, schools, childcare centres and other social facilities.

Cultural adequacy. Housing policy and the way housing is constructed or provided should be respectful of cultural identity.

Violation of the right to adequate housing

Utopia's community housing program comprises 114 dwellings on 16 homelands.⁷² There are severe overcrowding problems throughout the Utopia homelands. As a consequence, approximately 85–100 people live in improvised shelters, known as humpies, with no power, running water or sanitation.

Working alongside Alyawarr and Anmatyerr co-researchers⁷³ and health professionals from the Anmatyerr- and Alyawarr-controlled Urapuntja Health Service, 56 of 114 houses in Utopia were surveyed by Amnesty International to examine whether they met basic standards of adequacy. This research found that housing in Utopia does not comply with UN Committee on Economic, Social and Cultural Rights standards for housing adequacy across a number of areas. A summary of the main issues is presented below.

Availability of services

Unlike many homelands communities, Utopia is on an electricity grid which is powered by a diesel generator. Each house has electricity but there were electrical faults in one-third of the houses, exposing residents to danger.

No houses in any of the communities had garbage collection, which meant that garbage was spread throughout each community.

Each community in Utopia has water from a bore so most houses have potable water. However, bore pumps often break down and communities can be left for weeks before they are fixed by the shire. Since the establishment of shires, maintenance of bores has reportedly got worse. For example, in May 2011, the bore pump at Mosquito Bore was broken for three weeks before it was fixed. In that time, children could not bathe, so were too embarrassed to go to school. Plumbing is degraded across all communities surveyed.

While all houses had sanitation facilities, toilets were not working in half the homes surveyed and malfunctioning sewerage systems in houses is an endemic problem. There are incidents of raw sewage leaking from inadequate systems.

Humpies have no electricity, water or sanitation.

Habitability

Almost all houses across communities were in a dilapidated state with significant structural problems in each house visited by the researchers, including holes in the roofs, broken or no windows and no insulation. They provided minimal protection from cold, damp, heat, rain, wind and dust.

With 114 houses for a population of approximately 1,400 people, each house is overcrowded. In some cases as many as 15 people were found to be living in a two-bedroom house. The spread of disease because of overcrowded conditions in Aboriginal Peoples' houses is well-documented.⁷⁴

CASE STUDY 1: Camel Camp

Bessie Petyarr and her family live in a corrugated iron house. Bessie's house has two rooms and a small toilet area. She shares it with her husband Jeffrey Pepperill Kemarr and their three adult daughters, Stephanie Pwerl, Andreane Pwerl and Miranda Pwerl and her sons-in-law Clinton Penangk and Kalvin Penangk and their small children.

In all, 11 people live in this house. Their income comes from a mixture of social security payments, the sale of art (Bessie is a renowned Utopia artist) and the men's seasonal work on cattle stations and employment opportunities that arise in Arlparra, an adjacent homeland community some 30 km away. Most of the family's money is spent on food, fuel and rent to the government.

The family own a utility vehicle that they use for trips to the local store 30 km away, and for trips to the 'bush supermarket' to hunt kangaroo, goanna and echidna and gather bush tucker. Sometimes they drive 250 km to Alice Springs for shopping, events, family visits, healthcare and vehicle licensing requirements.

Their tin home is typical of 62 others like it on the Utopia homelands. Built 30 years ago, the house is overcrowded and presents risks to the occupants' health. An inadequate housing management and maintenance budget has led to no ongoing or cyclical maintenance strategy being put in place. Instead, a small overworked team employed by the local shire council do temporary fix-up jobs where and when they can.



ABOVE: Bessie Purvis Petyarr and Jeffrey Pepperill Kemarr. © AI Photo credit: April Pyle

RIGHT: Bessie and Jeffrey's two-bedroom corrugated iron house with no insulation. It is freezing in winter, when overnight temperatures fall below 0°C, and unliveable in summer, when daytime temperatures reach 45°C. Eleven people live in this house. © AI/Lucas Jordan





TOP: Cement block for a verandah with makeshift corrugated iron structure for shade. People sleep on the verandah to stay cool in hot weather and because of overcrowding. © AI/Lucas Jordan

MIDDLE: Ongoing sewerage problems including effluent overflow in shower recess, bathrooms and toilets due to blockages. © AI/Lucas Jordan

BOTTOM: Faulty plumbing overdue for repairs. © AI/Lucas Jordan

CASE STUDY 2: Antarrengeny

Albert Bailey Kemarr and his wife May Petyarr are senior elders of the Alyawarr/Anmatyerr homeland called Antarrengeny. Albert is also a senior custodian of the iconic Devils Marbles and the chairman of the Urapuntja Health Council Board.

Antarrengeny is a small community of 10 houses, a small church and clinic. The other houses are occupied by relatives of Albert and May including their children and grandchildren. Albert is a highly regarded champion of Alyawarr and Anmatyerr knowledge of country and law. Yet Albert and his family live in extreme poverty.

The former Northern Territory Shire Services Manager describes the condition of housing in the region:

I'd say on average you've got between 15 and 18 people living in each house. And some of those houses don't have a toilet, don't have running water, have very temporary power supply. Houses are deteriorating more rapidly than what we envisaged. Most of these houses aren't insulated or lined. A lot of them don't have fans or air coolers, a lot don't have stoves ... really they should make sure that people have a toilet, a shower, kitchen area; that the dwelling is lined; it has a cooling and heating system, because of the diverse temperatures with summer and winter; and that it's secure.⁷⁵

The three tin houses at Antarrengeny inspected by Amnesty International showed hazardous construction with failures in electrical wiring, hot water systems and plumbing that put families at risk of disease or injury.

RIGHT: Albert Bailey Kemarr's brother Casey Holmes Kemarr showing the faulty wiring and in his home at Antarrengeny.
© AI/Lucas Jordan





TOP: Albert Bailey Kemarr at home with his grandchildren. © Lucas Jordan/Al

MIDDLE: Broken hot water system at Antarrengeny. © Lucas Jordan/Al

BOTTOM: Chipboard inappropriately installed as flooring, easily damaged and affected by rising damp. © Lucas Jordan/Al

Affordability

Housing on homelands in the Northern Territory was originally developed as social housing by the Commonwealth Government. While there were no formal agreements between the government and Aboriginal Peoples living on homelands, the 1978 MOU between the Commonwealth and Northern Territory governments placed responsibility for maintenance of housing with the Commonwealth Government. This was reversed with the 2007 MOU, which shifted the responsibility to the Northern Territory Government. As noted earlier, under this MOU, the Commonwealth Government will not provide funding to construct any new housing on homelands in the Northern Territory.⁷⁶

As part of the Working Future policy, the Northern Territory Government's 2009 outstations/homelands policy went a step further. It classifies housing on Aboriginal homelands covered by the *Aboriginal Land Rights (Northern Territory) Act 1976* as "privately owned by the relevant land trust, on behalf of the Traditional Owners".⁷⁷ As a result, people who had social housing have been arbitrarily told that they are no longer entitled to social housing.

In interviews with staff at the Barkly Shire Council and the Northern Territory Department of Housing, Local Government and Regional Services, Amnesty International found that what is meant by "privately owned" is unclear. Who is legally entitled to collect rents, and is therefore legally responsible for the housing stock, is also unclear to the people who are responsible for the delivery of those services.

This has effectively privatised homelands housing. Without proper consultation with affected communities and a proper assessment of the human rights impact and financial implications for the communities, the government has moved from a social housing model to simply calling housing "private". By so doing they have effectively denied Aboriginal Peoples on homelands access to social housing benefits and have done so despite clear indications that this would leave them exposed to human rights violations.

In the Utopia homelands, the responsibility for housing now rests with the Alyawarr and Anmatyerr Peoples, who are among the poorest Aboriginal Peoples in Australia.⁷⁸ The Alyawarr and Anmatyerr families who contributed to this report told Amnesty International researchers and interpreters that one of the main reasons for living on the homelands was because they provide security and peace. However, they also said that the government's approach renders them voiceless, and policies exclude them or punish them for remaining on their homeland. They believe while the housing situation remains unaddressed, they live without dignity.

CONCLUSION

The Commonwealth Government has transferred the responsibility for homelands to the Northern Territory Government, whose own policy clearly states no new homes on homelands in the Northern Territory. Instead the Commonwealth and Northern Territory governments are focusing attention on 21 Territory Growth Towns. In this report, Amnesty International has argued that Aboriginal Peoples have the right to live on their traditional homelands without being effectively denied access to services like public housing and related infrastructure.

Both the Commonwealth and the Northern Territory governments need to address this problem with the full and equal participation of those directly affected – the Aboriginal Peoples occupying the homelands of the Northern Territory. As Rosalie Kunoth-Monks says:

What we need and demand is our dignity and rightful situation in Australia. We are Australians. We are not reluctant to take up the challenge and own a journey which might take us closer to closing the gap which the Prime Minister talks about. But he does not have to destroy the spirit or the ethos of who we are. We want that to continue into generations after generations. And Australia is in the unique position of safeguarding and assisting us to continue into the next century.⁷⁹

Recommendations

- 1. The Australian Commonwealth and Northern Territory governments recognise and fulfil the rights of Aboriginal Peoples to their traditional lands.**
- 2. The Commonwealth and Northern Territory governments apply the Closing the Gap policies to all Aboriginal Peoples in the Northern Territory, not only to those living in Territory Growth Towns.**
- 3. Closing the Gap funding is equitably distributed to include homelands. Criteria for funding must reflect the importance of homelands to Aboriginal Peoples and the significant backlog in housing as a result of historical underinvestment.**
- 4. The Commonwealth Government must ensure that all housing on homelands meets the standards for adequate housing under international law and that effective, equitable and non-discriminatory processes are in place to ensure the right of Aboriginal Peoples to their traditional lands and the right to adequate housing.**
- 5. The Commonwealth and Northern Territory governments engage with homeland communities to secure their free, prior and informed consent on all housing policy and plans for homelands given the significance of these policies for homeland communities.**
- 6. The Commonwealth and Northern Territory governments take into account the above recommendations when re-negotiating the 2007 Memorandum of Understanding on Indigenous Housing, Accommodation and Related Services.**

RESEARCH METHODOLOGY

The development of this research has been a partnership between the Alyawarr and Anmatyerr communities of the Utopia homelands in Central Australia and Amnesty International Australia. The Alyawarr/Anmatyerr Peoples have their own traditional lands with responsibilities shared between family groups according to distinct laws. The Utopia homelands are unique. They are a dispersed and relatively large population of about 1,400 people living across several hundred kilometres. While there is some mobility across homelands in the Northern Territory, Utopia is permanently occupied.

After a series of broad-ranging consultations, Amnesty International engaged in a partnership with the Alyawarr and Anmatyerr Peoples, with the aim of using a participatory human rights-based approach to research and campaigning. The research took place over three years.

In May 2008 at the request of Amnesty International Australia's board members, the Indigenous Rights research team visited the Northern Territory on a scoping study aimed at understanding the human rights implications of the Commonwealth Government's latest policy in relation to Aboriginal Peoples in the Northern Territory – the Northern Territory Emergency Response or Intervention. The team also scoped other human rights issues of concern to Aboriginal Peoples of the Northern Territory, with the view to forming partnerships and networks that might lead to long-term participatory research and activism in line with Amnesty International's global Demand Dignity campaign.

The first trip began with a roundtable discussion chaired by Amnesty International in Alice Springs on 20 May 2008. A number of Aboriginal representative bodies from the health, legal, land rights, social services and media sectors attended this roundtable, as well as local traditional owners from the language group of the land on which the meeting was held, community action groups and local Amnesty International activists. Similar meetings were held in Tennant Creek and Darwin on 22 May and 29 May 2008.

From these initial roundtable discussions, further focus group meetings were organised and further networks and contacts established. At all times Amnesty International research staff sought to gain the widest perspective from a diverse range of views in the Northern Territory.

The research team returned to the Northern Territory with the aim of meeting with various remote communities, different language groups and individuals, and leaders from across the political spectrum. The team focused on 'persistent messages' from the communities, organisations and individuals who were interviewed or who attended the focus group sessions. These messages were analysed from a human rights perspective.

A series of recommendations led us to approach the Alyawarr and Anmatyerr Peoples of the Utopia homelands. An initial meeting with four community members (men and women) was held in Alice Springs. From this, Amnesty International was invited to visit the community to discuss a research partnership. The Alyawarr and Anmatyerr Peoples had faced a series of rapid changes to policies, governance processes

and laws that had affected them in profound and troubling ways. Their approach to partnering with Amnesty International is best summarised in the words of Anmatyerr/Alyawarr elder Rosalie Kunoth-Monks:

The emotional pain we are going through is more painful than a swift physical death. We need emotional and mental health yet the government policies cripple both of these. We have been demonised, the assimilationist attitude has intensified yet there is a small ladder by which you can climb into the white man's world. But I have had my journey sung to me, my journey is not just me, it goes back thousands of years, our indigeneity is reviving and coming, it touches and loves every one of our people. People are going back to what made them strong over thousands of years; people are not moving off their land. Outside of that to assist us we need professional people, such as Amnesty International.⁸⁰

With the partnership settled, we began fieldwork trips to the Utopia homelands. The work, guided by the priorities set down by the Alyawarr and Anmatyerr Peoples, focused on rights to land, to free, prior and informed consent and to housing. This report summarises the key issues and findings and is a key output of the research process, which will continue to inform work by Amnesty International and the Alyawarr and Anmatyerr Peoples, in support of the recommendations for change that are made in this report.

ENDNOTES

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3. Rosalie Kunoth-Monks in conversation with Amnesty International, Utopia homelands, November 2009.
4. CA Blanchard, *Return to Country: The Aboriginal Homelands Movement in Australia*, Report of the House of Representatives Standing Committee on Aboriginal Affairs, March 1987, xvi. (CA Blanchard, *Return to Country*)
5. Northern Territory Government *Outstations/homelands policy Headline Policy Statement Northern Territory Government*, May 2009. www.workingfuture.nt.gov.au/download/Headline_Policy_Statement.pdf, accessed 3 February 2011.
6. The Assimilation Policy was the government policy with regards to Aboriginal and Torres Strait Islander people from the 1930s to the early 1970s. The assimilation policy was defined by the Native Welfare Conference of 1961 as follows: The policy of assimilation means that all Aborigines and part-Aborigines are expected eventually to attain the same manner of living as other Australians and to live as members of a single Australian community enjoying the same rights and privileges, accepting the same responsibilities, observing the same customs and influenced by the same beliefs, as other Australians.
7. In 1964 the North Australian Workers Union presented a case for equal wages for Aboriginal pastoral workers. Until the 1960s, the pastoral industry was not legally required to pay Aboriginal workers the same wage as white workers, who could earn five times as much for doing the same job.
8. CA Blanchard, *Return to Country*, p 14.
9. CA Blanchard, *Return to Country*
10. CA Blanchard, *Return to Country*
11. The homelands movement has been very much an Aboriginal initiative, distinguishing it from many other residential situations of Aboriginal Peoples that have been the result of direct or indirect government influence. It is a clear statement by the Aboriginal Peoples involved of the sort of future they wish for themselves and their children, a future on land to which they have spiritual and economic ties and a future over which they have much greater control.
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19. For examples see: caepr.anu.edu.au/sites/default/files/Publications/topical/Topical_Kerins_outstations_0.pdf
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28. R Wild, P Anderson, Little Children are Sacred
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