

**United Nations Permanent Forum on Indigenous Issues  
Ninth Session - New York  
19-30 April 2010**

**Agenda Item 4B: Dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs**

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**JOINT INTERVENTION DELIVERED BY RODNEY DILLON ON BEHALF OF AMNESTY INTERNATIONAL:**

National Native Title Council (NNTC)  
Foundation for Aboriginal and Islander Research Action (FAIRA)  
New South Wales Aboriginal Land Council (NSWALC)  
National Indigenous Higher Education Network (NIHEN)  
Aboriginal Legal Service Western Australia (ALSWA)  
Aboriginal Legal Rights Movement (ALRM)  
Bullana, The Poche Centre for Indigenous Health  
National Aboriginal Community Controlled Health Organisation (NACCHO)  
Indigenous Peoples Organisation Network Youth Delegation  
Oxfam Australia  
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner  
Yarrabah Women's Group

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Mr Chairperson, Amnesty International's extensive consultations throughout the Northern Territory have highlighted the stigmatising and humiliating impact of the Northern Territory Emergency Response (NTER) on Indigenous peoples and their communities.

It continues to undermine the relationship between Indigenous people and the Australian government and legal protections against racial discrimination remain suspended.

Amnesty International thanks the Special Rapporteur on Indigenous Peoples, Mr James Anaya, for his recent report on Australia and we particularly welcomed his Annex on the NTER which was released early to coincide with the Parliamentary Inquiry on the NTER in January 2010.

**Reinstatement of rights protections**

The *Racial Discrimination Act (1975)* (RDA) was suspended in June 2007 to implement the NTER. The proposed amendments to the NTER legislation will not ensure the full reinstatement of the RDA.

The proposed amendments will not invalidate any racially-discriminatory actions already taken and will not provide remedy or redress for people whose rights have been violated to date by NTER measures.

The proposal to make compulsory income management compliant with the RDA, by imposing it on the basis of being a recipient of identified welfare benefits rather than membership of an Indigenous community, does not bring it into line with Australia's human rights obligations.

The proposed welfare reforms are likely to affect Indigenous Australians disproportionately which will result in these reforms not being compatible with how States need to implement the right to social security.

The NTER does not effectively address the human rights violations that contribute to the underlying causes of Indigenous disadvantage or the risk factors for violence against children. In many respects, NTER measures will continue to deepen the insecurity and deprivation of affected communities.

### **Consent**

The Intervention was imposed without either consultation with, or consent from, those whose lives it affects.

In an attempt to reinstate the RDA and redesign the NTER the government undertook consultations with communities across the Northern Territory. The limitations of the consultations were noted by the Australian Government in their Review. An independent review has found that this process was insufficient.

The proposed legislation followed these consultations, where the NTER measures have been deemed a special measure under the RDA and therefore do not constitute discrimination.

However, it is the opinion of the Special Rapporteur James Anaya that the discriminatory aspects of the NTER discussed above have not been shown to qualify as special measures for the purposes Article 1(4) of the International Convention on the Elimination of all Forms of Racial Discrimination. They infringe rights, they are not proportionate or timebound, and consent was not given by affected communities.

### **Evidence**

The NTER was introduced without an evaluation framework, without baseline measurements of the major population characteristics, and without any control group that would allow causal impact of measures to be assessed.

There is simply not enough data to assess whether many of the measures are having an impact on child abuse and neglect in the Northern Territory and whether it serves to build strong, resilient and safe communities. In his Observations on the NTER, James Anaya found ‘no evidence that the rights-impairing discriminatory aspects of the NTER have been necessary’ and the evidence was ‘at best ambiguous’.

In no way does it justify the continuation of punitive measures that discriminate directly or indirectly on the basis of race.

### **Recommendations**

1. The Permanent Forum urge States to ensure that protections against racial discrimination are incorporated in law and include mechanisms for redress and compensation when violations have occurred.
2. The Permanent Forum urge States to increase accessibility and participation of Indigenous Peoples in the development and implementation of social and economic programs, and develop mechanisms for obtaining free, prior and informed consent.
3. The Permanent Forum urge States to develop social and economic programs using evidence-based, best practice models, in compliance with their human rights obligations.