



Introduction

This is my fourth *Social Justice Report* as the Aboriginal and Torres Strait Islander Social Justice Commissioner. The focus of this year's report is family violence and child abuse in Indigenous communities.

Issues related to family violence and child abuse have dominated public discussion of Indigenous affairs over the past eighteen months. Beginning with the distressing picture painted by the NSW Aboriginal Child Sexual Assault Taskforce's, *Breaking the Silence, Creating the Future* report¹ and then escalating with the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse report, *Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred'*,² the plight of many Indigenous women and children has been vividly exposed.

These reports reinforced that serious action needs to be taken. On 21 June 2007, the Australian Government announced a 'national emergency response to protect Aboriginal children in the Northern Territory' from sexual abuse and family violence.³ I welcomed this announcement to protect the rights of Indigenous women and children in the Northern Territory (as well across the the rest of Australia) but have argued that it needs to be done in a manner consistent with Australia's international human rights obligations and in particular with the *Racial Discrimination Act 1975* (Cth).⁴

The announcement of the NT intervention brought the attention of the nation to the grave problem of family violence and abuse with an intensity that we have never seen before. Despite this new interest, we know that family violence and child abuse in Indigenous communities are not new problems. Indigenous individuals and communities have long been telling their stories of violence and abuse and calling for action. Most of the time, sadly, these calls have fallen upon deaf ears. There are no shortage of reports and inquiries outlining the problem but there has

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- 1 Aboriginal Child Sexual Assault Taskforce, *Breaking the silence: creating the future: addressing child sexual assault in Aboriginal communities in NSW*, NSW Attorney General's Department, Sydney, 2006.
 - 2 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007.
 - 3 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *National emergency response to protect children in the NT*, Media Release, 21 June 2007, available online at: http://www.fahcsia.gov.au/internet/minister3.nsf/content/emergency_21june07.htm , accessed 1 February 2008.
 - 4 Human Rights and Equal Opportunity Commission, 'A human rights based approach is vital to address the challenges in Indigenous communities', Media Release, 26 June 2007, available online at: http://www.humanrights.gov.au/about/media/media_releases/2007/45_07.html , accessed 9 November 2007.



been a severe shortage of concerted, long term action by governments working in partnership with communities.

In my role as the Social Justice Commissioner, I have been working hard to engage with Indigenous people about their experiences of family violence and abuse and advocating a human rights based approach to develop solutions. On 19 June 2006 the Human Rights and Equal Opportunity Commission (HREOC) and Australians for Native Title and Reconciliation (ANTaR) hosted a forum of experts on ending Indigenous family violence. This was accompanied by my publication, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities- An overview paper of research and findings by the Human Rights and Equal Opportunity Commission, 2001-2006*.⁵ This document sets out the key messages and challenges that need to be met in addressing family violence and child abuse. These messages provide the genesis of this year's Social Justice Report.

Given that there is already so much that we do know about Indigenous family violence and child abuse, I did not want this Social Justice Report to be going over old ground. Our Indigenous communities have been subject to research without real consultation or follow up action for too long and the last thing we need is another report gathering dust on the politicians and bureaucrats bookshelves. However, what we don't know so much about is what does actually work to reduce family violence and abuse in Indigenous communities.

In meeting Indigenous individuals and community groups through my work I come across many positive success stories about communities tackling family violence and abuse. These stories are seldom heard in the mainstream media but nonetheless these individuals and communities go on with their work, achieving great outcomes often with the odds stacked against them. To start to fill this void, this report identifies a selection of case studies that show interventions to address Indigenous family violence and child abuse that are working well.

This is an opportunity to celebrate success but also learn from experiences. I am a firm believer that the answers to Indigenous problems can be found in Indigenous communities. This is why it is so crucial to learn from successes, as well as challenges, rather than reinventing the wheel every time a new policy or program is announced. Tomorrow's national strategy should come out of today's success stories as we consolidate knowledge and experience.

The successes of the case studies were built on good processes, partnership and consultation – the foundations for a human rights based approach to family violence and child abuse.

This brings me back to the Northern Territory intervention. Fundamentally I support the government's **intentions** to protect women and children, but have some deep concerns about the actual **methods** used as part of the Northern Territory intervention.

⁵ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues*, HREOC, Sydney, 2006.



The crucial question that this report will seek to answer is does the Northern Territory emergency response legislation comply with human rights standards? This is obviously a very complex area and any analysis is preliminary given that many of the measures have not been fully implemented yet. However, I draw attention to two important points:

1. The government has an obligation to take action to address violence and abuse, particularly where there is evidence that it is widespread. Governments that fail to do so are in breach of their obligations under the *Convention on the Rights of the Child (CROC)*, the *International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)* and the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*.
2. Human rights are universal and indivisible. This means that they apply to everyone, everywhere, all the time and that different sorts of rights have equal importance. Governments should not privilege the enjoyment of one right over that of another, as if different rights are in competition with each other or subject to a hierarchy of 'more important' and 'less important' rights.

Aside from Australia's international obligations, these issues are important because measures that violate human rights are more likely to work in ways that undermine the overall well-being of communities in both the short and long term. For example, the Government has clearly stated that the Northern Territory intervention seeks to address a breakdown in law and order in Indigenous communities. And yet it potentially involves introducing measures that undermine the rule of law and do not guarantee Indigenous citizens equal treatment to other Australians.

Family violence and child abuse causes immense hurt in our Indigenous communities. The difficulty for a report that focuses on this is that it can easily emphasise the negatives and the challenges, but then place insufficient attention on identifying strengths and possible solutions. I hope that this report can balance the overwhelmingly negative portrayal of Indigenous communities and family violence and child abuse by highlighting success stories and demonstrating that Indigenous peoples are taking control of these issues in many communities. This offers hope as well as valuable evidence and learning to inform better service delivery in the future. It is intended to also restore some confidence and dignity to Indigenous Australians who have suffered from the wholesale negative portrayal of Indigenous society by some politicians and media.

Secondly, I provide a comprehensive analysis of the Northern Territory intervention and critique of some of the problematic aspects through a human rights based approach. Human rights are a positive tool for ensuring human dignity and are above political partisan considerations. The recommendations set out ways forward to protect women and children in the Northern Territory that are consistent with human rights.



Contents of the *Social Justice Report 2007*

Chapter 2 of the report looks at promising practices in addressing family violence and child abuse in Indigenous communities through 19 case studies. The case studies are supplemented by information about the challenges for addressing family violence and abuse, including key definitions; information on the incidence of family violence and child abuse; causes of violence and child abuse; and an outline of a human rights based approach to family violence and child abuse.

These case studies are organised around the themes of:

- Community education and community development;
- Healing;
- Alcohol management;
- Men's groups;
- Family support and child protection;
- Safe houses; and
- Offender programs.

A brief review of the issues around each of these areas precedes the case studies to give the overview of important contextual information, including international comparisons where relevant. Each of the case studies includes a description of the program; evidence of the impact of the program; and lessons from the implementation of the program.

The chapter then goes on to draw together commonalities between the case studies to identify lessons for success and indicators to ensure that programs are consistent with a human rights based approach.

Chapter 3 then provides a thorough overview of the Northern Territory intervention. It provides background to the announcement of the intervention, tracking back to the findings of the *Little Children are Sacred Report* that prompted the Government announcement.

It then provides an overview of the legislative package to implement the intervention, information on the scrutiny processes prior to passage of the legislation, and an overview of the initial responses to the NT emergency response measures and legislation.

The human rights impact of the legislation is considered with reference to Australia's international obligations and specifically, the *Racial Discrimination Act 1975* (Cth). Finally, suggestions are made to ensure that any measures taken to protect Indigenous women and children are consistent with human rights.

In part IV of the chapter I set out a ten point action plan to ensure that the NT intervention is consistent with Australia's human rights obligations and provides Indigenous children and their families with equality before the law. In the next report I will critically review the impacts of the legislation twelve months from its promulgation and how the report's recommendations have been addressed.

The report provides 14 recommendations and one follow up action for dealing with family violence and child abuse in Indigenous communities.



Appendix 1 of the report contains a chronology of important events in Indigenous affairs from 1 July 2006 to 30 June 2007, with a particular focus on family violence initiatives.

Appendix 2 of the report then provides an overview of existing government initiatives to address family violence and child abuse in Indigenous communities based on information I requested from all State, Territory and relevant Australian government departments.

The appendix sets out the Council of Australian Government (COAG) frameworks and initiatives to address family violence and child abuse, as well as Australian government responses reporting against the commitments arising from the 2006 *Intergovernmental Summit on Indigenous Family Violence and Child Abuse*. It then provides supplementary information on other policies and programs that address family violence and child abuse at the federal level.

The appendix also provides an overview of relevant State and Territory initiatives, including background information on major reports in each of the state and territories.

By providing details about existing programs, policies and inter-governmental cooperation arrangements; case studies of promising practices and lessons for the future; detailed analysis of Australia's human rights obligations in relation to addressing family violence and child abuse; and scrutiny of the legislative measures underpinning the NT intervention, the report provides a valuable resource for our communities, Indigenous people and governments in dealing with these most difficult and confronting of issues.

As I note in chapter 3 of the report – no one wants to see children abused, families destroyed, and the aspirations for a bright future dulled because hope has been overwhelmed by despair.

Aboriginal children – wherever they live in Australia – deserve a future in which they have the same opportunity as other children to thrive, develop and enjoy life. They are entitled to such a future for no other reason than that they are human, born with dignity and in full equality to all other Australians.

Such equality involves being able to live and grow in safety, without fear of violence or intimidation, within a thriving, caring and loving family unit, and according to your culture. It is about being able to access quality health services to treat both physical and mental health issues in a culturally secure and timely manner.

It also involves living in an environment where individuals are able to exercise control over their own lives. Where they are able to make decisions and are responsible for those decisions and their impact on their family and the community in which they live. And where their choices are meaningfully backed up by the means to achieve them, such as access to basic services and the provision of education to both build dreams and hope, and create the personal capacity to achieve these.

For many Indigenous children across Australia, such equality is a pipedream. For some, overwhelmed by environments of dysfunction, it is not even dreamed of.



It is a tragic fact that an Aboriginal or Torres Strait Islander child born today does not have the same life chances as other Australian children.

This is something that should not exist in 21st century Australia. And it is the defining challenge for our nation.

All Australian governments should be committed to ensuring an equal start in life for Indigenous children. Without this, the most vulnerable members of our society are required to overcome adversity merely to access what others take for granted.

It is with this challenge in mind that this report has been prepared.