
Oxfam Australia

Submission to

**Northern Territory Emergency
Response
12 Month Review**

15 August 2008



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Summary

1. Oxfam agrees with the analysis of the Social Justice Commissioner that:

“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”¹.

In this way we believe it is important to look holistically at the rights of Aboriginal communities. Of course, governments have a duty to protect children against the violation of their rights by other members of any community, but in doing so governments should seek to develop appropriate actions which avoid further undermining human rights. After all, what is in the best interests of a community as a whole is in the best interests of children within that community. Our analysis of the impacts of the NTER has been undertaken with this in mind.

2. This submission is not intended to comprehensively address each measure comprising the NTER. Rather, it draws on relevant aspects of Oxfam Australia’s work in Indigenous Australia for more than thirty years, and our support for a range of partner organisations engaged in monitoring and evaluating the impacts of the NTER. It also draws on our experience in community development around the world over 50 years to illustrate ways in which we believe the NTER could be improved.
3. This submission is split into three parts. Section A explains the nature of Oxfam Australia’s work in Indigenous communities and around the world; Section B looks at specific aspects of the NTER and the unintended consequences that they have given rise to; and Section C, through analysis and case studies, examines the process by which the intervention has been implemented and how it could be adapted to facilitate a rights-based approach and achieve long-term, effective development in Aboriginal communities in the Northern Territory (NT).

Specific measures

4. Oxfam Australia believes there have been some significant investments made into the lives of Aboriginal People in the NT as a result of the NTER. While we welcome increased resources, we believe some of the measures that have been implemented are unrelated to the safety and wellbeing of children and may have an adverse effect, compromising efforts to lay a foundation for a sustainable and better future for residents of remote communities in the NT.
5. Of specific note is the potential for more effective use of resources in relation to income management and a need to assess whether the current regime has or is likely to contribute to lower alcohol use and increased school attendance. International experience suggests it will not. There is also evidence to suggest that it has created a black market so that people still have access to alcohol. Another instance in which evidence suggests resources could have been used more effectively is in relation to children’s health checks, given they duplicated existing services in some instances. We encourage the Government to increase investment in existing primary, secondary and specialist health care infrastructure, including full support of community controlled healthcare organisations.
6. Oxfam is concerned about the potential for undermining both community resilience and environments that enable economic sustainability, through the blanket removal of CDEP

¹ Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Social Justice Report 2007

and introduction of Government Business Managers (GBM). We welcome the Government's commitment to reinstate and review the CDEP programme.

7. There have been many unintended consequences of this intervention, including population movement into urban settings, separation of families and the heavy administrative burden associated with income management schemes. Moreover, it has caused significant hardship and impacted the social and emotional wellbeing of many of those involved. Evidence from the Central Land Council indicates that many people are experiencing loss of self esteem and heightened experiences of racism. We note that many of these risks were raised during the Senate Legal and Constitutional Legislation Committee's inquiry into the bills associated with the intervention.

Effective development

8. Our submission makes reference to a number of international instruments and best practice, including the United Nations Declaration on the Rights of Indigenous People and, in particular, the importance of the right to free, prior and informed consent. It also references the principles adhered to by the Red Cross and other agencies in providing emergency assistance.
9. Oxfam Australia's experience in international development shows that elements of the NTER may be counter-productive to relieving poverty and protecting children and communities. Of particular concern is the way in which the intervention was initially implemented. We have offered suggestions as to how this could be improved to achieve more effective community development by ensuring participation, transparency, monitoring and evaluation, and redress and complaints mechanisms.
10. Our experience and research by Reconciliation Australia indicate that participation, beyond consultation and information sharing, of NT Aboriginal peoples on a community by community basis will be most effective in bringing about sustainable changes. We provide a case study of large scale community participation in Indonesia.
11. With respect to transparency, we are concerned that communication regarding the introduction of the NTER led to heightened concerns, misunderstanding and fears amongst Indigenous people and communities. International experience is increasingly demonstrating that the provision of timely comparative information to communities can become a key driver of more efficient and effective services
12. We have also provided examples of the provision of mechanisms for complaint, review and remedy as these are basic rights for citizens, underpinning our democratic systems and the rule of law. No government, however democratic and participatory, is beyond making mistakes in the application of policy and legislation. Even in crisis situations globally these mechanisms exist and should also be available in the case of the NTER.
13. Finally, we examine various models of monitoring, evaluation and learning. This is an important part of any program cycle and evidence suggests that, if done well, monitoring, evaluation and learning can improve governance, increase development effectiveness, and empower communities. We provide an example from Uganda which illustrates that these processes can not only provide timely information and link different levels of intervention, but can also generate community specific evidence and indicators of performance.

Recommendations

- A. We recommend that the Australian Government specifically look at the Centrepay scheme and the potential for it to replace compulsory income management in the NT.**
- B. We recommend that the Australian Government immediately change the compulsory nature and racial basis of income management and provide increased resources for financial assistance for families not based on compulsory measures.**
- C. We recommend redirected or increased funding to child welfare services and rehabilitation and counselling services in communities, including with provision to full outreach facilities.**
- D. We recommend that the Australian and Northern Territory governments replace the 'emergency response' with a long term, comprehensive, evidence and rights-based plan to combat poverty in Aboriginal communities.**
- E. We recommend that Aboriginal community organisations and individuals be included in effective ways to respond to issues related to child abuse; and also be provided adequate resources to be able to adapt solutions to local needs;**
- F. We recommend governments look at ways to implement the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples and its various protections with a particular focus on the Free, Prior and Informed consent.**
- G. We recommend immediate reinstatement of access to complaints mechanism for all aspects of the NTER including the Social Security (Administration) Act 1999 and the Racial Discrimination Act 1975 (Cth).**
- H. We recommend the Australian and Northern Territory governments immediately implement the 12 recommendations regarding the NTER outlined in the HREOC Aboriginal and Torres Strait Islander Social Justice Commissioner's 2007 Social Justice Report.**
- I. We recommend that the Government develop an inclusive monitoring, evaluation and learning process for the next phase of the intervention which allows for the effective engagement of Indigenous communities and their representatives, produces disaggregated information and evidence which allows for differences in impacts between different groups and communities to be properly captured, and provides dynamic and real-time feedback.**

Section A - Background

Oxfam Australia's Role in Indigenous Affairs in Australia

14. Oxfam Australia has supported opportunities for Aboriginal and Torres Strait Islander peoples to exercise their rights to basic social services, sustainable livelihoods, a strong voice and cultural diversity, for more than 30 years. Our program has a particular focus on Western Australia and the Gulf of Carpentaria in Queensland, as well as nationally through our initiatives to support the Close the Gap campaign, Indigenous young people and the right of Indigenous people's to self-determination.
15. As part of this work, we have sought to address the different issues faced by Indigenous men and women and have supported organisations that focus on issues of abuse. For example, we work with the Yorgum Aboriginal Corporation to help provide a culturally safe healing environment with programs addressing child sexual abuse, family violence and community development.
16. More recently, we have worked with and supported NT-based organisations to monitor and evaluate the impacts of the NTER including Larrakia Nations Aboriginal Corporation, Tangentyere Council and some in kind support to Central Land Council.

Our Experience in Development

17. Oxfam Australia is an independent, not-for-profit, secular international development agency. We are a member of Oxfam International, a global confederation of 13 Oxfam affiliates that work together to fight poverty and injustice in more than 100 countries around the world. We have worked with local communities around the world to combat poverty and injustice for over 50 years.
18. Our organisation undertakes long-term development projects, provides emergency response during disaster and conflict, and conducts campaigning and advocacy for policy and practice changes which promote human rights and justice. We support over 400 long-term development projects in 30 countries across Africa, Asia, the Pacific and Indigenous Australia.
19. Our experience confirms that effective development relies on the key principles of participation, transparency, collaboration and coordination, monitoring and evaluation, respect for human rights and establishment of mechanisms for review.

Rights-based Approach

20. Oxfam Australia adopts a rights-based approach (RBA) to community development. This approach focuses on the full achievement of the rights of human beings and looks at the drivers of inequality, poverty and conflict, rather than focusing on an immediate needs analysis alone. Oxfam's experience is that RBA has the potential to have a far greater impact within various levels of society because it uncovers and proposes solutions to multi-levelled barriers.

21. Significantly, rights-based approaches are no less 'practical' than other approaches and they look holistically at both rights and responsibilities.

“RBA programs emphasise not only needs and rights, but also responsibilities, in particular the government’s legal obligations to promote and protect people’s rights. RBA projects also build the capacity of rights bearers, so that they can insist on their rights and on government accountability”.²

22. The human rights obligations of governments include the duty to protect against the violation of rights by others, which includes taking action to ensure the safety, security, access to adequate food and other fundamental human rights of women, men and children where these rights are being denied by the actions of other members of a community. In so doing, however, governments must develop appropriate actions to avoid further undermining human rights.

² Rights-based Approaches learning project, CARE and Oxfam America, 2007.

Section B - Specific aspects of the Northern Territory Emergency Response

Income management

23. There have been mixed views on the current income management scheme in communities. Oxfam's view is that measures to assist families manage their income may, if carefully implemented, enhance child and family welfare and provide incentives for improved caring and parenting. However, we believe the Government should avoid compulsory systems of income management which undermine the fundamental rights of individuals. A blanket system, addressing a whole geographic area and/or particular group in the population fails to provide any effective incentive or build self reliance. We believe better outcomes could be achieved by a non-discriminatory and rights-based approach that empowers communities to better financially manage their incomes.
24. An immediate impact of the existing income management scheme has been significant hardship and distress in the way in which it has been implemented in the Northern Territory. There are a range of administrative and procedural problems, including the complexity of the system, problems with identification procedures and movement of people, lack of clear information and inadequate training and resources to underpin implementation.
25. Oxfam's partner organisations report the following impacts of income management in the NT:
- - quarantined income cannot be used for some types of loans and fines, and this is leading to people defaulting and being put on blacklists;
 - the pre-conditions that were meant to be in place in many communities before the roll out of income management (e.g. police, well functioning community stores and the availability and pricing of goods) were not put, and in some cases are still not, in place;
 - there are reports of increased stresses in larger towns, but also reports that in some remote communities some stresses have been reduced;
 - there are reports of store cards being traded, and at times for inflated prices;
 - there are indications that store cards mean more people are travelling to larger towns and with larger amounts to spend when in these centres;
 - people who are not living in prescribed areas are nevertheless being income managed – for example, because their postal address is in a prescribed area even if they don't live there. This is complex and time-consuming to redress.
26. We are also concerned by the linking of income management with children's participation at schools. An analysis of international examples by Ruth McCausland suggested that:

'programs linking welfare payments to school attendance are based on assumptions of questionable validity, including the fact that they implicitly define the problem as one of parental or student negligence'³.

27. Moreover, she suggested that this approach results in disproportional resource allocation for monitoring school attendance rather than addressing the underlying causes of poor attendance, including poverty. The Halls Creek Engaging Families Trial Evaluation Report⁴ on a similar school program recommended that the pilot program not continue as the management of income did not increase children's schooling. However, "the evidence pointed to the pivotal role that teachers and the school 'culture' itself plays in a community where children decide their own time use patterns from a very early age."
28. Oxfam notes that the Combined Aboriginal Organisations of the NT (CAO) released a blueprint⁵ in August 2007, highlighting the success of the Centrepay scheme - a financial management system voluntarily introduced in some Aboriginal Communities.

Recommendation A:

We recommend that the Australian Government specifically look at the Centrepay scheme and the potential for it to replace compulsory income management in the NT.

Recommendation B:

We recommend that the Australian Government immediately change the compulsory nature and racial basis of income management and provide increased resources for financial assistance for families not based on compulsory measures.

Community Development Employment Program (CDEP)

29. Oxfam is concerned about measures which take people from paid employment (CDEP) to unemployment benefits, noting that 7000 workers were taken from paid employment to unemployment benefits during the implementation of the NTER.⁶
30. CDEP has provided a sustainable basis for both income and livelihoods for many Aboriginal communities. Any blanket approach that does not take into account the economic benefits for individual communities will not work. It is our belief that CDEP should be reinstated until a case-by-case analysis can be done. We welcome the new Government's decision to retain and look at reform of CDEP.

The role of Government Business Managers

31. The role of external staff located within Aboriginal communities is challenging. Placement of external staff has had mixed results in the Northern Territory, and their role and contribution is still unclear within many of these communities. External workers require, at a minimum, an understanding of the need for participatory approaches, high-level skills in communication and appropriate cultural knowledge. External 'experts' can be perceived as imposing solutions, undermining the confidence and development of

³ Ruth McCausland School attendance and welfare, Online Opinion, <http://www.onlineopinion.com.au/view.asp?article=7564>

⁴ Department of Employment and Workplace Relations, Halls Creek Engaging Families Trial Evaluation Report, September 2006,

⁵ Combined Aboriginal Organisations of the Northern Territory, A proposed *Emergency Response and Development Plan* to protect Aboriginal children in the Northern Territory, August 2007.

⁶ Paul Toohey, 'Last Drinks', Quarterly Essay, Issue 30, 2008.

local expertise and impeding communication and development through cultural misunderstanding. Even the best prepared external worker will not be fully aware of complex cultural relationships and practices in any local community.

32. Oxfam believes that it is possible to build upon local capacity to determine what is best for communities and have provided some case studies below that demonstrate processes to achieve this.

Land Tenure and Permits

33. Oxfam Australia has previously expressed its strong opposition to the partial abolition of the permit system.⁷ There is no evidence to suggest that this measure, which predated the *Little Children are Sacred* report, is in any way related to preventing child sex abuse, yet it could in fact exacerbate the problem. Moreover, the measure was at direct loggerheads with a number of other measures in the NTER, thereby compromising the effectiveness and consistency of the overall approach.
34. Oxfam Australia is also opposed to the compulsory acquisition of leases over townships. There is no justification for a shift from voluntary leases to compulsory leases and no evidence that this will encourage child safety. Rather, there is a risk that it will contribute to the vulnerability of communities to have control over their own lives. It is also the antithesis of good, 'people focused' practice in community development.
35. Oxfam Australia agrees with the Government's intention to reinstate the permit system thus giving Aboriginal communities control over visitors to their land and continuing necessary access for police and public officials. The permit system gives effect to the property rights of traditional owners on their land, protects the privacy of Indigenous residents and supports expression of their culture and their control over cultural sites and activities.

Health, Safety and Wellbeing

36. Oxfam welcomes increased focus on and investment in the health and wellbeing of Aboriginal communities living in the NT and, more broadly, the commitment made by Federal, State and Territory governments to 'close the gap' in Aboriginal and Torres Islander life expectancy.⁸ We have worked over the past year with a diverse range of partner organisations to develop a set of National Indigenous Health Equality Targets, which were presented to the Federal Government and Opposition in July 2008.⁹ Those targets represent the combined expertise and recommendations of the many organisations participating in the Close the Gap campaign and, importantly, reflect our view that a comprehensive, long-term, evidence-based approach to Indigenous health is required to 'close the gap'.
37. By contrast, the health checks instituted as part of the NTER do not reflect a comprehensive, long-term approach. We note there is mixed evidence regarding the effectiveness of the health checks, with some communities reporting an unnecessary duplication of resources, while others found the health checks picked up children who

⁷ See, Altman J, *The 'National Emergency' and Land Rights Reform: Separating fact from fiction*, Oxfam Australia, 7 August 2007, available at: <http://www.oxfam.org.au/campaigns/indigenous/docs/land-rights-altman.pdf>

⁸ At the Council of Australian Governments meeting in December 2007.

⁹ The National Indigenous Health Equality targets are available at: http://www.hreoc.gov.au/social_justice/health/targets/health_targets.pdf

had not previously been screened.¹⁰ While it is pleasing to see some follow up care has resulted from initial health checks, Oxfam is concerned that vital funds have been wasted as a result of this poorly planned and rapidly implemented measure. For example, there was no need to fund health checks for children in the Titjikala community, given the local health clinic had conducted health checks of each child just a month earlier. In any future stages of development, we would expect there to be adequate investments in workforce development and the expansion of culturally appropriate health care services, consistent with the National Indigenous Health Equality Targets.

38. Oxfam also notes that despite the measures being aimed at combating child abuse there have been a disproportionate levels of funding and support aimed at the very institutions and professions that could support those children, including child welfare, psychologist to support for the emotional, social and cultural wellbeing of children and their communities

Recommendation C:

We recommend redirected or increased funding to child welfare services and rehabilitation and counselling services in communities, including with provision to full outreach facilities.

Unintended Consequences

39. Alcohol management includes banning of alcohol in all communities in the prescribed areas as well banning of public consumption of alcohol in many towns, including Katherine, Alice Springs and large areas of Darwin. Evidence from Larrakia Nations, the North Australian Aboriginal Justice Agency (NAAJA) and other community organisations suggest that this has simply pushed people to the outskirts of towns where they have little or no access to other services, compounding their marginalisation and efforts to support healthier communities.

40. NAAJA¹¹ also outlines the 'black market' trading of store cards for less than their value by people with alcohol dependency issues. This highlights concerns about whether income management is achieving its aim of directing money to food and children.

41. Many organizations, in monitoring the progress of the intervention on community members, describe the impact on their emotional wellbeing. This includes the loss of self-esteem due to inaccurate portrayal of their communities, the experiences of heightened racism and general lack of control of their lives.

Adherence to Human Rights Standards

42. Oxfam is also concerned about the inconsistent approach to the protection of the rights of Aboriginal people in the Northern Territory, compared with the rights of other Australians. The protection of rights is not only a fundamental aspect of a government's duty to its citizens but also a crucial element of best practice in poverty and inequality alleviation. As Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, has pointed out "measures that violate the human rights of the intended

¹⁰ Central Land Council, Northern Territory Emergency Response: Perspectives from Six Communities, July 2008.

¹¹ Joint submission by CAALAS and NAAJA to the Senate Select Committee on Regional and Remote Indigenous Communities, 2008 May.

beneficiaries are more likely to work in ways that undermine the overall well-being of these communities in both the short and longer term”¹²

43. We are particularly concerned about legislative amendments which prevent recourse to Federal and Northern Territory anti-discrimination legislation in the context of the NTER. We are also concerned about the impact of the National Indigenous Violence and Child Abuse Taskforce of the Australian Crime Commission, particularly given its ability to exercise coercive powers. Given that child abuse is a problem throughout Australia, it is not clear why these powers applicable to just one racial group. In our view, this is both discriminatory and unjustified.
44. We believe a strong human rights framework and adherence to international and domestic human rights obligations will help to achieve more effective and sustainable outcomes for Aboriginal people in the NT, as is suggested by best practice below.

¹² Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Social Justice Report 2007', Human Rights and Equal Opportunity Commission, p248.

Section C – Long-term, effective development

Whilst a number of agencies report a mixed picture on the impact of some of the measures of the NTER, there seems to be greater unanimity across communities and agencies that the process and involvement of indigenous people in the design, implementation and monitoring of the intervention has been extremely poor.

The following section looks at how the NTER has measured up to what is considered good international development and emergency practice, in this regard, and what might be done differently in the future.

Oxfam notes that, in the international context, a range of standards and principles apply to emergency assistance, even in times of crisis. Of particular note are the Principles of Conduct for The International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes¹³.

The Principles make commitments to avoid using crisis situations for 'a particular political or religious standpoint' and commit organizations to 'respect culture and custom'; 'attempt to build ... response on local capacities'; 'involve programme beneficiaries in the management of relief aid'; 'reduce future vulnerabilities to disaster as well as meeting basic needs'; 'be accountable to those they seek to assist', and 'recognise disaster victims as dignified human beings, not hopeless objects'.

The following section provides an integrated analysis of the four key elements of effective development and emergency processes, commonly identified in a rights-based approach and the international aid field¹⁴. These include;

- Participation;
- Transparency
- Capacity for redress; and,
- Monitoring, evaluation, learning and adjustment

Participation

45. Participation is critical to development. It enables ownership, whereby people and communities can take responsibility for their own development and build their leadership capacity. Oxfam Australia's global experience, and that of many other development agencies, demonstrates that the meaningful engagement of communities and their representatives in the decisions and processes that affect their lives is a critical pre-requisite to effective and sustainable outcomes.

46. Oxfam Australia urges the Government to establish and resource effective and long-term processes of participation, capacity building and dialogue at all levels of Indigenous society, including continuing engagement with Indigenous leaders and representatives at a national level.

47. Many of the previous government's processes concerning Indigenous affairs, and particularly those relating to the NTER, failed to encourage or support genuine engagement and participation of Indigenous people, communities and organisations.

¹³ <http://www.ifrc.org/publicat/conduct/code.asp>

¹⁴ See for example the One World Trust's Global Accountability Project Framework, which is currently being used to compare the accountability of International NGOs, Multilateral Agencies and Private Companies at <http://www.oneworldtrust.org/?display=gapframework>, or the Humanitarian Accountability Partnership standards at [http://www.hapinternational.org/pool/files/hap-2007-standard\(1\).pdf](http://www.hapinternational.org/pool/files/hap-2007-standard(1).pdf)

Moreover, the way in which the NTER was implemented was widely perceived as discriminatory and degrading.

48. It is evident from international practice and research in Australia that good community governance is essential to the effectiveness of any government programs. Further, research on Indigenous community governance within Australia also supports the application of international community development principles within Indigenous contexts. This includes: supporting leaders in communities, using Indigenous governance principles and institutions, capacity development designed by communities which ensure a cultural match to their particular community context and the need for governments to improve their governance.¹⁵
49. For participation to be meaningful, different stakeholders need to be clear about what they mean by participation and what levels might be considered satisfactory. There are a number of tools available to determine different levels of participation that could be usefully employed in coming to greater consensus between stakeholders about what meaningful participation might look like in the next phase of the NTER. Perhaps the most important change in how participation is defined is to shift the concept of participation from something broader than being concerned with 'beneficiaries' and 'the excluded' to a concern with broad forms of engagement by citizens in policy formulation and decision-making in key arenas which affect their lives. For example, see the Participation Ladder in the Appendix.
50. It has been noted¹⁶ that programs in Indigenous Australia need to be more clearly tailored to specific locations and groups, and the needs of individual communities. Experiences with 'bottom-up' planning from other parts of world are therefore instructive. Indonesia's Kecamatan Development Program (KDP) illustrates the potential of such processes and provides some useful lessons which are germane to future processes in the NT (see case study below).

Recommendation D:

We recommend that the Australian and Territory Government replace the 'emergency response' with a long term, comprehensive, evidence and rights-based plan to combat poverty in Aboriginal communities.

Recommendation E:

We recommend that Aboriginal community organisations and individuals be included in effective ways to respond to issues related to child abuse, and also be provided adequate resources to be able to adapt solutions to local needs.

¹⁵Summary of Year Two Research Findings: Indigenous Community Governance Project, Reconciliation Australia, July 2007

¹⁶ See ANAO audit report of Whole of Government Indigenous Service delivery Arrangements which notes that programs are insufficiently able to respond flexibly to Indigenous needs at least in part because of the tendency to stick to program guidelines and reporting as 'rigid rules' (ANAO p.34, Audit Report no.10 2007-8).

Case Study: Indonesia's KDP

Case Study: Indonesia's KDP Bottom-Up planning that has been successfully scaled up

Indonesia's Kecamatan Development Program (KDP) involves a community-based planning process which has provided a powerful and efficient way to build large amounts of simple productive infrastructure using mechanisms that mobilize and develop the capacities of rural communities themselves. As community capacities develop, they have also taken a more active role in improving the quality of other social services. KDP has expanded from a small pilot operation in 25 villages in 1997 to more than 28,000 villages in 2003.

Indonesia, until relatively recently, had an extremely centralized, top-down development strategy. KDP's flexible structure, which gives power to communities by placing funds and the planning and decision-making process directly in the hands of the villagers, provided a strikingly robust way to deliver resources to the rural poor in the face of the centre (central government/agency?) being unable to provide local context specific solutions.

KDP is in fact highly centralized at the level of policy, but it is highly decentralized at the level of execution. It is able to adapt to local requests in ways that standard projects cannot. Six design features have been critical in KDP's successful rapid scale -up.

- 1) The project provides a direct financial transfer to the end user,
- 2) KDP builds on nearly ten years of field-tested community development experience,
- 3) Management functions have been devolved from the centre to the regional level allowing for decentralized, autonomous decision making
- 4) KDP provides both incentives and sanctions for local government involvement.
- 5) Villages procure and manage their own technical assistance for projects from lists of pre-qualified service providers; at this level, KDP experiences none of the lengthy procurement delays that often delay other projects.
- 6) KDP's high level of transparency and long participatory planning cycle are also keys to its success as they serve to limit local elite capture. Nongovernmental organizations (NGOs) and the media have been used as independent monitors.

A limitation to date of the KDP model is that technically difficult activities, or activities that involve recurrent costs, are not as easily addressed through the system as it is currently designed. Examples include large-scale health provision, or providing teachers for schools. However, participatory planning is now spreading *horizontally* to primary education, health, and natural resource management, with similarly positive results.

It is worth noting that scaling up KDP required overcoming several constraints in World Bank and government procedures, notably devising a fiduciary system that provided adequate controls but did not introduce extensive delays.

Summarised and adapted from Indonesia's Kecamatan Development Program: A Large-Scale Use of Community Development to Reduce Poverty, case study presented to the Shanghai Poverty Conference 2004

See: <http://info.worldbank.org/etools/reducingpoverty/casestudy.asp?type=case>

Transparency

51. Transparency is underpinned by ensuring there is full participation as described above. In addition, open access to information helps provide the establishment of checks and balances on administrative and executive power as well as enabling unintended consequences to be addressed earlier.

52. Our understanding, derived from our partner organisations in the Northern Territory, is that inadequate communication regarding the introduction of the NTER led to heightened concerns, misunderstanding and fears amongst Indigenous people and communities. Elderly and young people have been particularly vulnerable to changes¹⁷ and, without adequate provision of information about the reforms, are at greater risk of going without food and basic services.

¹⁷ CLC, Northern Territory Emergency Response: Perspectives from Six Communities, July 2008.

53. The legislative changes which established the NTER significantly increased the Commonwealth Minister's discretionary powers in relation to Indigenous affairs in the Northern Territory, including over Indigenous lands, community management and governance, funding and personal expenditure – without establishing corresponding checks and balances. Such an increase in discretion is not in the interests of accountable, transparent government.
54. International experience is increasingly demonstrating that the provision of timely comparative information to communities can become a key driver of more efficient and effective services¹⁸. This requires communities to have information about what standards of service they can expect as well as publicly available information on the aims, objectives and strategies of government departments and initiatives. In this way communities are able to monitor and control what happens in their own communities. (see example from Uganda below)

Recommendation F:

We recommend governments look at ways to implement the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples and its various protections, with a particular focus on the Free, Prior and Informed consent.

Case Study: Uganda

Case Study: Uganda

The Power of Information and Transparency

Uganda provides an example of a successful government strategy to reduce corruption by providing information to the public on the resources provided to schools.

The central government had a program of capitation grants to schools that were paid through local governments. A 1995 survey found that the average school received only 24 per cent of the funds paid by the central government with the remainder being misappropriated at the local level.

The central government responded with an information campaign where the amounts granted were published in local newspapers and actual amounts received by schools were posted on school doors. This provided head teachers and parents with the necessary information to complain when funds did not reach the schools. Complaints were backed up by a government crackdown on officials that were found to have misused public funds.

A repeat survey in 2001 found that the average school received 82 per cent of the funds allocated. More strikingly, while the median school received nothing in 1995 it received 82 per cent in 2001. A study using the data from these surveys found that access to newspapers of schools themselves and wider school communities were closely related to increases in the grant amounts actually reaching schools (Reinikka and Svensson, 2003).

The World Bank, in its 2004 World Development Report, notes that the Ugandan information campaign was successful because the information was specific and could be easily understood by schools and the wider community and used to seek redress and because there was a strong political interest in the central government in the correcting the leakage of funds after the President had made education a key issue in the previous election campaign. The Ugandan example therefore provides an example of how a government information campaign can facilitate social accountability to address corruption at a different level of government.

Review of Social Accountability Initiatives, AusAid, May 2006

¹⁸ World Bank (2004) World Development Report 2004: Making Services Work For Poor People

Capacity for Redress – Review and Complaints Mechanisms

55. The provision of mechanisms for complaint, review and remedy are basic rights for citizens, underpinning our democratic systems and the rule of law. No government, however democratic and participatory, is beyond making mistakes in the application of policy and legislation.
56. In Australia, the Social Security and Administrative Appeals Tribunals are amongst a range of mechanisms which can provide remedy for unreasonable decisions. The Government should restore all rights to procedural fairness and external merits review in the Northern Territory and elsewhere.
57. Australia's full commitment to the international architecture intended to uphold human rights is critical to the protection of our citizens at home and abroad, to our democratic systems and the rule of law, and to our standing in the international community. The *Racial Discrimination Act 1975* (RDA) is a key plank of the domestic implementation of our human rights commitments, including under the International Convention on the Elimination of Racial Discrimination.
58. Article 5(c) of the International Convention on the Elimination of Racial Discrimination refers to the right of everyone to enjoy their "[p]olitical rights, in particular the right to participate in elections, ...to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service".¹⁹ The United Nations Committee on the Elimination of Racial Discrimination, which interprets the Convention, has recommended that to fulfill their obligations under the Convention, states should "ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent".²⁰ In interpreting Inter-American Human Rights law, the jurisprudence of the Inter-American Court of Human Rights has echoed these statements, with several decisions stating that Indigenous Peoples' informed consent is required in relation to activities that affect their traditional territories.²¹
59. Oxfam Australia urges the Government to amend all legislation which is not fully consistent with the spirit and intent of the RDA, in line with Australia's international commitments. Oxfam believes that those elements of the intervention contravene the 'special measures' clause in the RDA and therefore Aboriginal people should have the right to redress in these situations. We support the 2007 Human Rights Commission Social Justice report that notes measures must have the participation of the community affected and have a positive benefit of those whom it seeks to affect.

¹⁹ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969), Art 5(c).

²⁰ *General Recommendation XXIII (51) concerning Indigenous Peoples*. Adopted at the Fifty-first session, 1997, 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4, para 4(e). See similar statements made in, among others, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia 24/03/2000*. CERD/C/56/Misc.42/rev.3, at para. 9; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Costa Rica. 20/03/2002* and, *Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America. 14/08/2001*.

²¹ See for example, *Report N° 75/02*, Case N° 11.140, Mary and Carrie Dann (United States), Dec. 27, 2002. OEA/Ser.L/V/II.116, Doc. 46; The Mayagna (Sumo) Awas Tingni Community Case, Judgment on the Preliminary Objections of 1 February 2000, Series C, No. 66; Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans (Suriname), 2 March 2006; Report No. 40/04, Maya Indigenous Communities of the Toledo District, Case 12.053 (Belize), 12 October 2004. See also discussion in Forest Peoples Programme and Tebtebba Foundation, *Indigenous Peoples' Rights, Extractive Industries and Transnational and Other Business Enterprises: A Submission to the Special Representative of the Secretary General on Human Rights and Transnational Corporations and Other Business Enterprises*, 29 Dec 2006, available at www.business-humanrights.org.

60. Oxfam's experience through the work of its Mining Ombudsman, and experience in the humanitarian sector,²² suggests a number of principles for effective review and complaints mechanisms which are relevant – see below.

Recommendation G:

We recommend immediate reinstatement of access to complaints mechanism for all aspects of the NTER including the Social Security (Administration) Act 1999 and the Racial Discrimination Act 1975 (Cth).

Recommendation H:

We recommend the Australian and Northern Territory governments immediately implement the 12 recommendations regarding the NTER outlined in the HREOC Aboriginal and Torres Strait Islander Social Justice Commissioner's 2007 Social Justice Report.

Complaints Principles

Six guiding principles for an effective complaints mechanism:

1. Standards should correspond with universally accepted human rights standards,
2. Enforcement through legislation and the power to sanction non-complying companies and their suppliers, contractors, agents and subsidiaries, government departments, employees and directors.
3. Independence from stakeholders, especially government departments, contractors, consultants and associations.
4. Funding should be transparent to ensure independence and impartiality, and it should be free of charge to complainants.
5. Accessibility of information in the appropriate language for communities, available at all stages.
6. Accountability and transparency including public disclosure of investigation results to ensure transparency, trust and accountability. Compliance should also be monitored regularly.

Adapted from Oxfam Australia Mining Ombudsman Annual Report 2004

<http://www.oxfam.org.au/campaigns/mining/ombudsman/>

Monitoring, Evaluation, Learning and Adjustment

61. Oxfam Australia welcomes the Rudd Government's commitment to evidence-based public policy based in part on rigorous monitoring and evaluation, including of the NTER. Oxfam Australia is concerned that up to \$1.6 billion of public money was allocated by the previous government to the NTER without a comprehensive monitoring and evaluation framework, nor a demonstrated evidence base for some of the measures. Within the international community such action by a developing state would be viewed as a failure of governance and of the important principles of public fiscal management.

²² See for example <http://www.hapinternational.org/projects/complaints-handling.aspx>

62. International experience²³ would suggest that a number of important principles would inform the development of an effective monitoring and evaluation process for the next phase of the intervention (see appendix). Amongst the most important of these would be: effective engagement of indigenous communities throughout the process so that they have an effective voice in assessing outcomes and process; allowing for disaggregated information and evidence to be collected which allow for differences in outcomes between groups to be properly captured and represented; building a program logic map which clearly links what the intervention is trying to achieve overall with how this will be done; the need for the process and findings to be transparent, and easily communicated; and creating a system which provides 'real-time' feedback where appropriate.
63. Recent international experience around social accountability²⁴, which refers to a broad range of actions that citizens can use to hold governments, NGOs and others accountable, have proved to be particularly effective in improving governance, increasing development effectiveness, and in empowering communities. Any approach to monitoring and evaluation of the next phase of the intervention will need to explore how best such mechanisms might be integrated. The example from Uganda cited below illustrates that these processes can not only provide timely information and link different levels of intervention, but can also retain community specific evidence and indicators of performance.

Recommendation I:

We recommends that the government develop an inclusive monitoring, evaluation and learning process for the next phase of the intervention which allows for the effective engagement of indigenous communities and their representatives, produces disaggregated information and evidence which allows for differences in consequences between different groups and communities to be properly captured, and provides dynamic and real-time feedback.

²³ Towards a Revised Approach to Accountability, Monitoring and Evaluation of the NT intervention, Chris Roche and Janet Hunt, December 2007

²⁴ See material from the World Bank at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTPCENG/0,,contentMDK:20509424~menuPK:1278120~pagePK:148956~piPK:216618~theSitePK:410306,00.html>

Case Study: Uganda

Case Study: Uganda

Participatory Monitoring and Evaluation - The Uganda Participatory Poverty Assessment Project (UPPAP) and Uganda Debt Network

The Uganda Debt Network (UDN) was established 1996, and UPPAP in 1998. UDN had been instrumental in campaigning for debt relief as well as developing a civil society response to holding the government to account for spending that debt relief in an accountable manner. This was assisted by ensuring that debt relief was allocated to a ring-fenced Poverty Action Fund established in 1997/8. UDN established Poverty Monitoring Committees in the first instance in 12 out of 45 districts, and then in 17. This then developed into community based monitoring and evaluation systems which included communities carrying out monitoring using their own developed tools and indicators to collect quantitative and qualitative data, to establish Performance Monitoring Scorecards and provide feedback to sub-county and district levels

UPPAP on the other hand was developed as a partnership between the Ugandan government, international donors and NGOs. Oxfam seconded staff into the Ministry of Finance and Planning to establish the Unit. UPPAP conducted two Participatory Poverty Assessments in 1998/9 and 2002. These set a qualitative and quantitative poverty baseline based on communities' own understanding of poverty.

The complementary nature of these two processes indicate that through a combination of civil society driven processes and innovative government partnerships, a representative sample of the input-output-impact chain can be created which can permit a sound triangulation of findings at different levels. For example the PPAs revealed that, although in much of the country education had improved and that this was welcome, in the conflict areas of the North the major pre-occupation remained personal security. What is particularly important is how mechanisms were developed for feedback from the local to national level, complementing traditional reporting processes which can often lead to overly aggregated data which loses a level of detail and richness, and which can mean that important extremes of performance are not captured in a timely way.

This experience suggests:

- ❖ Monitoring and evaluation processes with an important level of citizen engagement can be scaled up and provide important elements to district or national level processes,
- ❖ Civil society organisations can play a complementary and distinct role in promoting accountable development processes, under the right conditions,
- ❖ Tracking change at several levels at the same time, and investigating patterns of correlation and plausible association, can reduce uncertainty in decision making and provide real-time feedback, whilst longer term processes that can be more certain about causality are established,
- ❖ The sequencing and coordination of processes to effectively influence and feed into policy and budget decisions in a timely manner are critical
- ❖ Leadership from within government and civil society was important and the fact that UPPAP was part of the Ministry where this leadership was strongest is no coincidence,

Towards a Revised Approach to Accountability, Monitoring and Evaluation of the NT intervention, Chris Roche and Janet Hunt, December 2007

Conclusions

64. Whilst Oxfam Australia welcomes aspects of the intervention we believe that, in particular, not enough focus has been given to the implementation process. As numerous humanitarian responses around the world demonstrate, even in emergency interventions it is possible to ensure the meaningful participation and protection of the rights of those affected, and failing to do so not only limits the impact but can also undermine their dignity and self-esteem.
65. The evidence slowly becoming available from those agencies working on the ground in the Northern Territory with many years experience in engaging communities suggests that:
- a. what they have learnt about what 'works' and what does not needs to be better integrated into any future plans; and
 - b. the intervention could also be firmly based on what is best practice in the International development and humanitarian arena.
66. Oxfam Australia hopes that the Review Panel will seriously consider how the lessons from many years of international development practice, as well as community development in Australia, using a rights-based approach might be better factored in to making a sustainable future for the Indigenous populations of the Northern Territory.

Appendix 1

The Participation ladder

In the international development field a distinction is often made between information exchange, involvement and empowerment as different forms or 'levels' of participation. Oxfam would contend that full participation (as described in the Free, Prior and Informed Consent article of the UNDRIP) could and should be focused on the Second and Third Rungs of the ladder below, which includes increasingly supporting communities' own processes of self mobilisation and empowerment rather than engaging them in external interventions.

Third Rung	PEOPLE'S INITIATIVES 1. Self-mobilization 2. Empowerment	INITIATIVES INDEPENDENT OF PROJECT MANAGEMENT OR ANY OTHER EXTERNAL AGENCY <ul style="list-style-type: none"> • Collective response of a community or group with the initiative coming from them • Self-initiated mobilization of poor and disadvantaged aimed at increasing freedom of choice and bargaining power in relation to more powerful groups
Second Rung	PROJECT-RELATED ACTIVITIES 3. Instrumental involvement 4. Functional involvement 5. Negotiation 6. Externally initiated organisation 7. Conflict resolution	ACTIVITIES INITIATED BY EXTERNAL AGENCIES <ul style="list-style-type: none"> • One-off involvements for project needs e.g. giving employment, using various services, • Involvements aimed at sustainability of project activities e.g. management committees • Bargaining about project options between people and project management • Organizing people by external agencies or activists for pre-determined project objectives, • Resolving conflicts between groups of people and concerned agencies - preferably through a decision making process which is accepted as legitimate by all concerned
First Rung	INFORMATION PROCESS 8. Unilateral announcement 9. Listening 10. Consultation 11. Data collection	PROJECT RELATED INFORMATION FLOWS <ul style="list-style-type: none"> • Telling people what is going to happen • Giving project information and listening to people's views about the problem and possible solutions etc, • Dialogue regarding project options, without people having a share in decision-making, • Gathering information for project purposes

Principles for Monitoring, Evaluation, Learning and Adjustment

Ten Key Principles for Monitoring and Evaluation

Below are some principles and criteria for an accountable monitoring and evaluation process which reflects key dimensions of accountability and best practice in M&E internationally. Any process must:

1. **Engage Aboriginal communities** and their representatives, along with other stakeholders where appropriate, in genuine participation throughout the process so that they have an effective voice.
2. **Allow for disaggregated information and evidence** to be collected which allow for differences in consequences and perceptions between men and women, youth and older people, and between different communities to be properly captured and represented,
3. **Be realistic and build from existing experience** – recognising that measuring some things may be too difficult, too expensive, or simply not very useful; that some community groups and support organisations have processes of monitoring and evaluation, and community dialogue, already in place which can be strengthened and built upon; this should include providing the capacity for communities and support organisations to publicly report on progress made, and on the performance of government agencies,
4. **Be built on a clear program logic map which clearly links what the intervention is trying to achieve overall with how this will be done.** This needs to make explicit how it is assumed that certain measures will achieve specific outcomes, including the processes of stakeholder engagement, so that these can be tested;
5. **Be simple, transparent, easy to communicate and avoid duplication** – this can sometimes mean 'less is more', proxies may be more appropriate where the real thing is too hard or too expensive to measure; visual and simple means of gaining and providing feedback are established; budget information and expenditure is publicly available in simple formats; data and reports are publicly available for independent review; and different departments work more effectively together to reduce administrative demands on Aboriginal communities and service providers,
6. **Be useful and provide real-time feedback where appropriate** – the framework must serve the purpose of improving accountability. It must provide government agencies with 'real-time' feedback so that they can be aware of unintended and detrimental consequences and adjust activities and policy on an ongoing basis. It should allow the government to improve the quality of what it does and demonstrate what it is doing differently as a result of better learning and feedback,
7. **Meet the needs of multiple stakeholders** and help balance these appropriately – in particular ensuring accountability to those whom the intervention seeks to benefit, and in so doing strengthen the government's legitimacy and the trust that others have in them.
8. **Be evidence based and mix quantitative and qualitative measures as appropriate** – allowing for 'open-system' feedback (i.e. where feedback on performance is sought based on 'open' questions¹) as well as indicator driven processes. This means having effective processes of triangulating different forms of evidence – including communities' perceptions - from different sources in ways that involve meaningful dialogue with different stakeholders,
9. **Be consistent with other processes** – i.e. it should assist or capture adherence (or non-adherence) to national (e.g. COAG Overcoming Indigenous Disadvantage) and international policies, standards, legal frameworks and Human Rights.
10. **Be cost-effective** - there should be an appropriate balance between what is invested in the development and implementation of monitoring and evaluation and the benefits achieved for communities.

Towards a Revised Approach to Accountability, Monitoring and Evaluation of the NT intervention, Chris Roche and Janet Hunt, December 2007