

Chapter 2

Matters not dealt with by the committee's 2013 report

2.1 This chapter considers three Stronger Futures measures that raise human rights issues which were not considered in the committee's 2013 report:¹

- customary law in bail and sentencing decisions;
- food security; and
- land reform.

Customary law in bail and sentencing decisions

2.2 The *Northern Territory National Emergency Response Act 2007* (NTNER Act) amended the *Crimes Act 1914* to provide that, in all bail applications or sentencing under NT law, a court or bail authority must not take into consideration any form of customary law or cultural practice as a reason for excusing, justifying, authorising, requiring or lessening the seriousness of alleged criminal behaviour, or aggravating the seriousness of it.²

2.3 The Stronger Futures legislation amended the *Crimes Act 1914* to provide that customary law and cultural practices must not be taken into consideration unless the bail or sentencing decision relates to offences against laws that protect cultural heritage, including sacred sites or cultural heritage objects.³

2.4 The committee's analysis is confined to the amendments made by the Stronger Futures legislation. However, the committee notes the broader human rights concerns around the exclusion of customary law considerations raised in submissions to this inquiry, which are outlined briefly below.

2007 amendments

2.5 In 2009 the Supreme Court of the NT considered the application of the NTNER Act provisions relating to customary law considerations in bail and sentencing decisions.⁴ It held that their effect was that, while evidence about customary law and cultural practices cannot be considered for determining the objective seriousness of the crimes alleged, it could be considered to:

1 2013 report, 3.

2 See sections 15AB and 16A of the *Crimes Act 1914* amended by section 91 of the *Northern Territory National Emergency Response Act 2007*. Similar amendments in respect of Commonwealth laws were made the previous year by the *Crimes Amendment (Bail and Sentencing) Act 2006* in response to decisions made by the Council of Australian Governments on 14 July 2006 following the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities on 26 June 2006.

3 See Schedule 4 to the *Northern Territory (Consequential and Transitional Provisions) Act 2012*.

4 See *The Queen v Wunungmurra* [2009] NTSC 24.

- provide a context and explanation for the offender's crimes;
- establish the offender does not have a predisposition to engage in the specified crime and it is unlikely the offender will re-offend;
- establish the offender has good prospects of being rehabilitated; and
- establish the defendant's character.

2.6 The court held that '[t]he purpose and operation of [these provisions] is not to remove all consideration of customary law and cultural practice from the sentencing process'.⁵ However, the court also noted that the provision:

...might be considered unreasonable or undesirable because it precludes a sentencing court from taking into account information highly relevant to determining the true gravity of an offence and the moral culpability of the offender, precludes an Aboriginal offender who has acted in accordance with traditional Aboriginal law or cultural practice from having his or [her] case considered individually on the basis of all relevant facts which may be applicable to an important aspect of the sentencing process, distorts [the] well-established sentencing principle of proportionality, and may result in the imposition of what may be considered to be disproportionate sentences.⁶

2.7 The submission of the Law Society of New South Wales to the present inquiry endorses the submission of the National Aboriginal and Torres Strait Islander Legal Services to a 2012 inquiry, which, while supportive of the Stronger Futures legislation, stated that the measures precluding consideration of customary law or cultural practices runs counter to the principle of equality.⁷

2.8 Similarly, the submission of the Aboriginal Peak Organisations Northern Territory (APO NT) to the present review welcomed the changes introduced by the Stronger Futures legislation, but considered that sections 15AB and 16A of the *Crimes Act 1914* should have been wholly repealed as they devalue Aboriginal culture and customs and result in unjust outcomes for Aboriginal people.⁸

2.9 A review of the measures was conducted by the Attorney-General's department in 2009. The review noted numerous concerns about the amendments raised by stakeholders and in the academic literature, but recommended that the amendments be retained as there was not enough evidence available about the

5 *The Queen v Wunungmurra* [2009] NTSC 24, [29].

6 *The Queen v Wunungmurra* [2009] NTSC 24, [25].

7 Indigenous Issues Committee of the Law Society of NSW, submission 9.

8 Aboriginal Peak Organisations Northern Territory, submission 22.

impact of the amendments at the time of the review to demonstrate that the amendments were having unintended negative consequences.⁹

2.10 The committee considers that the prohibition on considering customary law for aspects of sentencing and bail decisions engages the right to a fair trial and the right to equality and non-discrimination.

Right to a fair trial and fair hearing rights

2.11 The right to a fair trial and fair hearing are protected by article 14 of the International Covenant on Civil and Political Rights (ICCPR). The right applies to both criminal and civil proceedings, to cases before both courts and tribunals and to military disciplinary hearings. The right is concerned with procedural fairness, and encompasses notions of equality in proceedings, the right to a public hearing and the requirement that hearings are conducted by an independent and impartial body. Circumstances which engage the right to a fair trial and fair hearing may also engage other rights in relation to legal proceedings contained in article 14, such as the presumption of innocence and minimum guarantees in criminal proceedings.

Right to equality and non-discrimination

2.12 The right to equality and non-discrimination is protected by articles 2 and 26 of the ICCPR.

2.13 This is a fundamental human right that is essential to the protection and respect of all human rights. It provides that everyone is entitled to enjoy their rights without discrimination of any kind, and that all people are equal before the law and entitled without discrimination to the equal and non-discriminatory protection of the law.

2.14 The ICCPR defines 'discrimination' as a distinction based on a personal attribute (for example, race, sex or religion),¹⁰ which has either the purpose (called 'direct' discrimination), or the effect (called 'indirect' discrimination), of adversely affecting human rights.¹¹ The UN Human Rights Committee has explained indirect discrimination as 'a rule or measure that is neutral on its face or without intent to discriminate', which exclusively or disproportionately affects people with a particular personal attribute.¹²

9 Attorney-General's Department, *Review of customary law amendments to bail and sentencing laws*, November 2009, 4. Available at <http://www.aph.gov.au/DocumentStore.ashx?id=dae3aee2-4fb3-49fd-b147-aa9dc7dc77e0>.

10 The prohibited grounds are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Under 'other status' the following have been held to qualify as prohibited grounds: age, nationality, marital status, disability, place of residence within a country and sexual orientation.

11 UN Human Rights Committee, *General Comment 18*, Non-discrimination (1989).

12 *Althammer v Austria* HRC 998/01, [10.2].

2.15 Articles 1, 2, 4 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) further describes the content of these rights and the specific elements that state parties are required to take into account to ensure the elimination of discrimination on the basis of race, colour, descent, national or ethnic origin.

Compatibility of the Stronger Futures measure with the right to a fair trial and the right to equality and non-discrimination

2.16 The Hon Jenny Macklin MP, former Minister for Families, Housing, Community Services and Indigenous Affairs (former minister) provided the committee with her assessment of the human rights compatibility of the customary law measures in the Stronger Futures legislation.¹³ In that assessment the former minister stated that the policy objective for the measure was to 'enable customary law and cultural practice to be considered in bail and sentencing for certain offences against Commonwealth and NT law that protect cultural heritage, including sacred sites or cultural heritage objects.' The former minister noted that the Stronger Futures measures were intended to tailor the effects of the original NTNER Act amendments as these had 'produced unintended effects in some instances' regarding cultural heritage.

2.17 The former minister also noted that the measures were not discriminatory as they applied to all people and all cultural backgrounds, and that, where the prohibition was removed by the measure, it left the question of how customary law would be considered to the discretion of the court.

2.18 The committee wrote to the current minister in June 2015 requesting an updated assessment of the human rights compatibility of the Stronger Futures measures.¹⁴ In relation to the general prohibition on considering customary law in bail and sentencing for federal and NT offences, the committee sought an assessment of the compatibility of the prohibition with the right to a fair trial, the right to freedom from arbitrary detention and the right to equality and non-discrimination.

2.19 In concluding that the prohibition was compatible with the right to a fair trial, the current minister stated:

The relevant provisions of the Crimes Act do not place limitations on any of the procedural guarantees set out in Article 14. Further, there is no international jurisprudence suggesting that the right to a fair trial includes a right to be tried under customary law, or the right to have customary law

13 See letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (dated 27 June 2012), available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Inquiries/strongerfutures/background/index.

14 See Appendix 3, Letter from the Hon Philip Ruddock MP to Senator the Hon Nigel Scullion, Minister for Indigenous Affairs (dated 23 June 2015).

taken into account. In fact, trial by customary law would be incompatible with the ICCPR to any extent that it was inconsistent with the requirements of Article 14.¹⁵

2.20 In relation to the right to freedom from arbitrary detention, the current minister's response stated:

The Crimes Act provisions create a general exclusion on the consideration of customary law and cultural factors. This ensures and promotes certainty and predictability in criminal trials, and should not result in a person being unjustly or inappropriately detained.

While section 15AB (3A) of the Crimes Act creates an exception to the rule against considering 'any form of customary law or cultural practice', the exception is narrowly confined to a small range of Acts for the purposes of protecting cultural heritage, an obligation incumbent upon Australia under Article 27 of the ICCPR and Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the Convention for the Elimination of All Forms of Racial Discrimination (CERD).¹⁶

2.21 In relation to the right to equality and non-discrimination, the current minister's response stated:

The prohibitions excluding consideration of customary law in bail and sentencing decisions in the Crimes Act are universal and apply throughout Australia to all people and all cultural backgrounds. They ensure that all persons are subject to the same legal rules, except in a limited range of circumstances.

Those limited circumstances allow for the consideration of customary law in relation to bail and sentencing decisions for offences under a small number of Acts protecting cultural heritage. Under international human rights law, differential treatment such as this will not constitute discrimination if the differentiation is reasonable and objective and the aim is to achieve a legitimate purpose.

The exceptions for offences relating to the protection of cultural heritage recognise customary law or cultural practice in domestic law for the legitimate purpose of preservation of minority culture and ensure relevant cultural practice can be taken into account in relation to bail and sentencing decisions for offences which relate to practices that are inherently cultural. They ensure the adequate development and protection of Indigenous peoples in Australia, as required under Article 2(2) of the

15 Appendix 3, Letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP, Attachment A (received 25 August 2015) 5.

16 Appendix 3, Letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP, Attachment A (received 25 August 2015) 6.

CERD, and protect cultural rights under Article 27 of the ICCPR and Article 15 of the ICESCR.¹⁷

2.22 The committee thanks the current minister for his response, and considers that the amendments to the customary law prohibition made by the Stronger Futures measures are likely to be compatible with the right to a fair trial, the right to freedom from arbitrary detention and the right to equality and non-discrimination.

2.23 However, the committee notes that the prohibition on consideration of customary law introduced by the NTNER Act engages and limits a number of human rights, including the right to a fair hearing and the right to equality and non-discrimination. This is because the prohibition constrains the ability of courts to exercise their discretion to consider all relevant matters when making bail and sentencing decisions relating to people from culturally diverse backgrounds, including Indigenous people. As the prohibition in the NT extends to all offences, the committee considers that Indigenous people are disproportionately affected by the prohibition, despite the current ministers' assurances that the measures apply universally.

2.24 While the committee considers that the NTNER Act amendments raise human rights concerns, the Stronger Futures measures, by providing an exception to the prohibition imposed by the NTNER Act, improve the compatibility of the measure with the right to a fair trial and the right to equality and non-discrimination.¹⁸

2.25 The committee considers that the amendments relating to customary law in the Stronger Futures legislation are likely to be compatible with the right to a fair trial and the right to equality and non-discrimination.

2.26 Noting the broader concerns raised in relation to the reduced scope for consideration of customary law in bail and sentencing decisions for Commonwealth and NT offences, the committee recommends that a review be undertaken into the operation of these provisions, with specific emphasis on the impact of the prohibition on the right to a fair trial and the right to equality and non-discrimination.

17 Appendix 3, Letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP, Attachment A (received 25 August 2015) 6-7.

18 See subsections 15AB(3A) and 16A(2AA) of the *Crimes Act 1914* as amended by the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*.

Food security

2.27 The NTNER measures of 2007 created the legislative framework for community stores in prescribed communities to be licensed.

2.28 The 2012 Stronger Futures measures renewed the scheme for a further ten years (until July 2022). A community store is often the primary source of food and other goods in remote communities, and the intention behind licensing was to enhance the contribution of community stores to achieve access to a range of reasonably priced and healthy grocery items. Food security is defined in the legislation as meaning there is a reasonable ongoing level of access to a range of food, drink and grocery items that is reasonably priced, safe and of sufficient quantity and quality to meet nutritional and related household needs.¹⁹

2.29 The licensing scheme provides for licensing procedures, license conditions, business registration requirements, assessment criteria for stores and a penalty scheme for breaches of licenses, including fines, injunctions and withdrawal of a license in some circumstances.

2.30 The licensing scheme appears to engage the right to an adequate standard of living, including the right to food.

Right to an adequate standard of living

2.31 The right to an adequate standard of living requires that the state take steps to ensure the availability, adequacy and accessibility of food, clothing, water and housing for all people in Australia.

2.32 Australia has two types of obligations in relation to this right. It has immediate obligations: to satisfy certain minimum aspects of the right; not to unjustifiably take any backwards steps that might affect living standards; and to ensure the right is made available in a non-discriminatory way. It also has an obligation to take reasonable measures within its available resources to progressively secure broader enjoyment of the right to an adequate standard of living.

Compatibility of the measure with the right to an adequate standard of living

2.33 The former minister provided the committee with her assessment of the human rights compatibility of the food security measures.²⁰ In that assessment, the former minister stated that the policy objective of the food security measure was to

19 Subsection 37(3) of the *Stronger Futures in the Northern Territory Act 2012*.

20 See letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (dated 27 June 2012), available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Inquiries/strongerfutures/background/index.

improve the quality and availability of fresh healthy food in Aboriginal communities.²¹

2.34 The committee acknowledges that improving the quality and availability of fresh healthy food is a legitimate objective for the purposes of international human rights law. If the measures are capable of producing this outcome the committee considers that the measures are likely to promote the right to an adequate standard of living, which includes a right to access affordable, nutritious and safe food.

2.35 In 2012, the NT Government reported that there were improvements in store governance, and the availability and affordability of fresh fruit and vegetables as a result of the licensing scheme.²²

2.36 In 2014, the Australian National Audit Office (ANAO) reported on issues of food security in remote Indigenous communities.²³ It found there had been some problems with the implementation of the licensing scheme, however, as at late 2014, the vast majority of stores had been licensed with attention focused on ongoing regulation.²⁴ The report found through anecdotal evidence that people were generally positive about the impact of the licensing scheme on remote community stores in relation to the range of healthy foods being made available by a licensed store.²⁵ However, the ANAO noted that there were difficulties in measuring broader outcomes as a result of food security initiatives.²⁶ It concluded that, on the basis of the available evidence, 'the Community Stores Licensing Scheme is likely to be achieving food security outcomes' (though it noted the difficulties in making accurate assessments).²⁷

21 Attachment to the letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (dated 27 June 2012), Assessment of Policy Objectives with Human Rights, 7.

22 See Senate Community Affairs Legislation Committee, *Stronger Futures in the Northern Territory Bill 2011 and two related bills* (14 March 2012) paragraph [3.68].

23 The Auditor-General, ANAO Report No. 2 2014-15, Performance Audit, *Food Security in Remote Indigenous Communities*, Department of the Prime Minister and Cabinet (2014).

24 The Auditor-General, ANAO Report No. 2 2014-15, Performance Audit, *Food Security in Remote Indigenous Communities*, Department of the Prime Minister and Cabinet (2014) paragraph [3.49].

25 The Auditor-General, ANAO Report No. 2 2014-15, Performance Audit, *Food Security in Remote Indigenous Communities*, Department of the Prime Minister and Cabinet (2014) paragraph [3.42].

26 The Auditor-General, ANAO Report No. 2 2014-15, Performance Audit, *Food Security in Remote Indigenous Communities*, Department of the Prime Minister and Cabinet (2014) paragraph [3.46].

27 The Auditor-General, ANAO Report No. 2 2014-15, Performance Audit, *Food Security in Remote Indigenous Communities*, Department of the Prime Minister and Cabinet (2014) paragraph [3.52].

2.37 In August 2015 the current minister provided further information to the committee as to whether the food security measures had improved the accessibility and affordability of food in the NT:

There is a range of evidence suggesting that the licensing scheme has contributed to its objective of promoting a reasonable ongoing level of access to a range of food, drink and grocery items that are reasonably priced, safe and of sufficient quantity and quality to meet nutritional and related household needs in Aboriginal communities in the NT. An evaluation by the Cultural and Indigenous Research Centre in 2011 found that store licensing has had a positive impact on food security, including the ongoing access to food that is safe and of sufficient quality and quantity to meet household needs. More recently, the Northern Territory Market Basket Survey 2014 showed the average number of varieties of fresh fruit and vegetables available in remote NT stores was 29 in 2014, compared with only 22 in 2007 when the licensing scheme was not in place.²⁸

2.38 The committee considers that the food security measures continued under the Stronger Futures legislation are likely to promote the right to an adequate standard of living (including the right to food).

28 Appendix 3, Letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP, Attachment A (received 25 August 2015) 1-2.

Land reform measures

2.39 Part 3 of the Stronger Futures Act enabled the Commonwealth to make regulations modifying any law of the NT relating to the use of or dealings in land, planning or infrastructure (or anything else prescribed by the regulations) to the extent that the law applies to an Aboriginal town camp or community living area.²⁹

2.40 The Stronger Futures in the Northern Territory Regulation 2013 (the regulation) was subsequently made on 25 July 2013.³⁰ This regulation modifies NT law to:

- allow community living area title holders to grant leases and licences over their lands for a broader range of purposes, including for commercial, infrastructure and public purposes; and
- require that consent be sought from the relevant NT minister only for leases on community living area lands for terms greater than 10 years, as opposed to leases with terms greater than 12 months.

2.41 The committee considers that the land reform measure engages and may promote the right to self-determination.

Right to self-determination

2.42 The right to self-determination is protected by article 1 of the ICCPR and article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

2.43 The right to self-determination includes the entitlement of peoples to have control over their destiny and to be treated respectfully. This includes peoples being free to pursue their economic, social and cultural development. It is generally understood that the right to self-determination accrues to 'peoples'.

2.44 The UN Committee on the Elimination of Racial Discrimination has stated that the right to self-determination involves 'the rights of all peoples to pursue freely their economic, social and cultural development without outside interference' and that 'Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin'.

2.45 Accordingly it is important that individuals and groups, particularly Aboriginal and Torres Strait Islander peoples, should be consulted about decisions likely to impact on them. This includes ensuring that they have the opportunity to participate

29 See sections 34 and 35 of the *Stronger Futures in the Northern Territory Act 2012*. A town camp is defined as one leased primarily for residential, community or cultural purposes for Aboriginal people and a community living area is defined as an area granted or created as an Aboriginal community living area under a law of the NT.

30 The Stronger Futures in the Northern Territory Regulation 2013 [F2013L01442]. This instrument was deferred in the committee's *First Report of the 44th Parliament* for consideration as part of the Stronger Futures review.

in the making of such decisions through the processes of democratic government, and are able to exercise meaningful control over their affairs.

Compatibility of the measure with the right to self-determination

2.46 The explanatory memorandum for the Stronger Futures bill set out the objective behind the land reform measures. It stated that the amendments to facilitate voluntary long term leasing 'give[s] effect to the Commonwealth's commitment to provide a platform for secure tenure which then can enable economic development and home ownership opportunities in Aboriginal communities'.³¹ The statement of compatibility for the Stronger Futures regulation stated:

...the Regulation is being made for the sole purpose of securing adequate advancement for residents of Aboriginal community living areas. This Regulation is required as a first step in providing a platform for secure and meaningful land tenure in community living areas so as to assist in securing members of those communities full and equal enjoyment of human rights and fundamental freedoms by removing land tenure impediments that uniquely restrict community living areas.³²

2.47 The committee notes that the right to self-determination includes a right for peoples to freely pursue economic, social and cultural development. The Declaration on the Rights of Indigenous Peoples (the Declaration) also provides that Indigenous peoples have the right to be secure in the enjoyment of their own means of subsistence and development and to engage freely in economic activities.³³ The committee reiterates the views expressed in its 2013 report that the Declaration is an important and relevant instrument for the work of the committee and provides specific guidance on the content of the rights in the human rights treaties which fall within the committee's mandate.³⁴

2.48 The committee notes that the Central Land Council (CLC), which provides legal and administrative support to title holding bodies of community living areas in the NT, made a submission to government that argued that opportunities for economic and social enterprise development had been limited by constraints on the use of community living area land.³⁵ While the CLC argued there was a need for broader reform beyond that contained in the regulation, it stated that there was a

31 Revised explanatory memorandum to the Stronger Futures in the Northern Territory Bill 2012, 2.

32 Explanatory statement, statement of compatibility [3].

33 See article 20(1) of the Declaration on the Rights of Indigenous Peoples.

34 See 2013 report, 16.

35 Central Land Council, *Community Living Area Land Reform in the Northern Territory Discussion Paper- Central Land Council Response*, 3.

genuine and urgent need for reform of NT legislation to allow the residents of community living areas to have more control over their land.³⁶

2.49 In addition, the committee notes that the Northern Land Council (NLC), which assists Aboriginal people in the Top End of the NT to acquire and manage their traditional lands, also supported the land reform measures contained in the Stronger Futures bill. The NLC submitted that legal restrictions on communities living on community living area land were unjustifiable and there needed to be capacity for secure tenure to be appropriately granted for commercial and government activity.³⁷

2.50 The committee considers that allowing Aboriginal community living area title holders to grant leases and licences over their lands for a broader range of purposes, including for commercial, infrastructure and public purposes, on a voluntary basis, engages and may promote the right to self-determination, as it allows Indigenous people greater opportunity to use their lands as they determine.

2.51 However, the committee notes the importance of ensuring proper consultation with Indigenous groups and other affected communities in order for the right to self-determination to be realised.³⁸ In that respect the committee looks to what consultation with affected communities was undertaken prior to the regulation being made.

2.52 The statement of compatibility for the regulation stated that, before it was made, the government released a Discussion Paper and undertook consultation, including meetings in community living areas and with community living land owners, residents and representatives from the relevant land councils. Views provided in these meetings were summarised in an Outcomes Paper released by the Australian Government on 21 June 2013.³⁹ The Outcomes Paper noted that 17 written submissions had been received in response to the Discussion Paper and these were used to inform discussions at consultation meetings. Consultation meetings were held across the NT in 16 selected community living areas and with a number of cattle station owners and/or managers. Plain English communication materials were distributed in advance of, and used during, in-community meetings

36 Central Land Council, *Community Living Area Land Reform in the Northern Territory Discussion Paper- Central Land Council Response*, available at: http://www.clc.org.au/files/pdf/CLA_Reform- CLC_Submission_.pdf.

37 Northern Land Council, submission 361 to the Senate Community Affairs Legislation Committee (10 February 2012) 2.

38 See 2013 report, 31-34.

39 Australian Government, *Community Living Area Land Reform in the Northern Territory Outcomes Paper*, available at Appendix 3, Attachment A to the letter from Senator Nigel Scullion, Minister for Indigenous Affairs, to the Hon Philip Ruddock MP (received 25 August 2015).

and interpreters attended a majority of in-community meetings.⁴⁰ The current minister further advised the committee that the 16 areas chosen for consultation were the largest population centres:

All community living area communities were potentially affected by the regulation. There are over 100 community living areas in the Northern Territory. They range in size from towns to small family outstations. The 16 communities consulted are the largest (by population) community living areas. The 16 communities were selected in consultation with the Central and Northern Land Councils.⁴¹

2.53 Following this consultation a draft of the regulations was released and comment sought before the final regulations were made.

2.54 Two submissions to the present review stated that information received from Aboriginal people in the NT is that consultations have occurred on land reform, but only for 15 of the 100 plus affected communities, and suggested this consultation was inadequate.⁴²

2.55 The committee notes that the relevant power in the Stronger Futures legislation does not specifically require consultation with land owners, only that consultation be undertaken if it is requested by a land owner.⁴³ However, based on the information available to the committee, it appears relatively extensive consultation was undertaken with land owners and relevant land councils prior to the regulation being made.

2.56 The committee considers that the land reform measures engage the right to self-determination, including the right of peoples to freely pursue economic, social and cultural development, under article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights. The committee considers that expanding the purposes by which Indigenous peoples can voluntarily decide to lease their community land has the capacity to promote the right to self-determination.

40 See Australian Government, *Community Living Area Land Reform in the Northern Territory Outcomes Paper*, 2 and letter from Senator Nigel Scullion, Minister for Indigenous Affairs, to the Hon Philip Ruddock MP (received 25 August 2015), Attachment A, 1.

41 Appendix 3, Letter from Senator Nigel Scullion, Minister for Indigenous Affairs, to the Hon Philip Ruddock MP (received 2 October 2015) 1.

42 See Belconnen Amnesty International, Submission 1 and Digby Habel, Submission 2.

43 See paragraph 35(4)(b) of the *Stronger Futures in the Northern Territory Act 2012*.

