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Dear Colleagues

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The following is the Aboriginal Legal Rights Movement's (ALRM) comments in relation to Australia's combined 6th & 7th Report on the implementation CEDAW.

ALRM's comments are specific to accessing justice for Australia's Aboriginal (Indigenous) peoples. Whilst I may make some comments on other issues the main commentary will relate to accessing justice for Aboriginal women as a basic human right.

The methodology I will follow is that I will refer to the relevant paragraphs contained in the Australian Government Report of 2008 followed by a commentary on any relevant earlier concluding comments from the CEDAW Committee.

- 1.1 If the Australian Government was committed to improving and enriching Aboriginal women it would not deny Aboriginal women access to justice. This Government continues the discriminatory practices of:
- Maintaining the same level of funding for Aboriginal legal aid in 2008 as it did in 1996 whilst mainstream legal aid has had increased funding by over 120%. This has resulted in Aboriginal women, whilst making up 2% of the general female population make up 32% of the women's prison population. The disparity of funding is a result of a demarcation on responsibility between the Federal and State Governments.
 - The Family Violence Prevention Legal Service (which incorporates a specific women's legal service) is only available to Aboriginal women in some regional and remote communities yet is not available in major cities due again to a demarcation on responsibilities between the Federal and State Governments. Most Aboriginal women live in the major cities.

The impact of these funding issues is Aboriginal women are denied access to services that are available to the wider non-Aboriginal community.

- 1.7 The Australian Labor Opposition also gave a commitment to increase Aboriginal legal aid funding prior to its election so that Aboriginal people would have access to justice to the same degree as non-Aboriginal people. This commitment was not honoured so the Prime Minister's commitment as stated in para 1.7 to the principles of equality and non-discrimination and to improving the lives of Australian women has not been honoured. To deny access to justice by negative legal aid funding by the Australian Government does not simply breach CEDAW Article 2 (paras c, d, e, f & g) but it is also in breach of Article 1 of the Universal Declaration on Human Rights.
- 1.12 The Governments commitment to the safety of Aboriginal women is disappointing. Please refer to comments on the FVPLS at 1.1 dot point 2 above. This zero tolerance statement by the Rudd Government appears to only apply to non-Aboriginal women otherwise why else is Aboriginal Family Violence programs so restricted?
- 1.13 The Government has continually denied ALRM funding under the Indigenous Women's Program which is an advocacy role on behalf of Aboriginal women. It is suggested ALRM's "Interventions" in 2006 and 2007 at the United Nations Permanent Forum on Indigenous Issues (UNPFII) is the reason we have not been funded for this program.
- 1.16 Whilst I note the Senate's review of the Sex Discrimination Act 1984, I refer the CEDAW Committee to the same Senate Committee's report on legal aid which recommended an immediate increase in funding for Aboriginal legal aid. This recommendation has NEVER been implemented as are various other Government and Agency report recommendations dealing with Aboriginal legal aid.
- 1.19 ALRM notes reference to the Crime Prevention and Criminal Justice and Violence against Women comments. The State of South Australia has denied any support for Restorative Justice and is very tight fisted in regard to crime prevention. ALRM has again submitted for early intervention funding which has been denied. It also grossly underfunds the FVPLS as detailed earlier by not funding programs in major cities due to a responsibility demarcation with the State Governments.
- 1.25 The Australian Government has a history of threatening organisations that make public complaints against it. The threat of defunding has hung over the Aboriginal legal aid service providers for a number of years. ALRM with other sister organisations in other States were agreed to lodge a complaint to the UN under CERD however ALRM went it alone in this complaint because our interstate counterparts were concerned they would be defunded by lodging a complaint. The Australian Government is not anxious for international scrutiny for fear of not being endorsed to the UN Security Council.
- 1.26 This is the first time that ALRM as become aware that the Australian Government has funded NGOs to conduct consultations in regard to

CEDAW. ALRM has not been approached nor has our national forum of Chairpersons and CEOs. There used to be a Government funded national secretariat however this was defunded because it was critical of the Australian Government at the UN where it held status (and still does although it has been defunded).

- 2.18 I am gobsmacked by the statements in this para. ALRM has been a vocal critic of the Australian Government on human rights issues. It has not been consulted by the AGD or the DFA&T as an NGO. In fact it is the two Government agencies mentioned that have denied ALRM funding to attend the UNPFII yet when the now defunded ATSIC was in existence, there was a budget available to enable organisations like ALRM to attend the UNPFII. Our two attendances to the UNPFII in 2006 and 2007 were funded by independent sources because both the AGD and the DFA&T refused funding supposedly on budget grounds. If that is the case where has the previous budget allocations gone that were previously available from ATSIC?
- 2.19 The Australian Human Rights Commission has been starved of funds over recent years. Its effectiveness is questionable on existing funding, which is something the Commissioner has consistently voiced his concerns over recent years.
- 2.25 By removing the Office for the Status of Women from the Prime Minister's Office has diminished its effectiveness, irrespective of the statements made about Ministerial status. Its effectiveness in influencing policy has diminished rather than being enhanced.
- 2.40 I am finding what I am reading in this para and all those up to and including 2.55 difficult to accept. When a Government has denied access to justice for Aboriginal women by starving organisations like ALRM of funds, then the statements are at least questionable. Aboriginal women do not ENJOY the same rights of non-Aboriginal women simply because of the institutionalised discrimination against Aboriginal people generally. Why else is there gross underfunding of legal aid and FVPLS? I note in particular where the truth on sanitising of Aboriginal disadvantage starts to become clear where it is acknowledged there is a problem with the Commonwealth/State responsibilities issue (para 2.43). But this has been an issue since 1996 from what I am aware and certainly at least in 2000 when I joined ALRM, because it is the reason for the unsustainable funding of Aboriginal services delivered by ALRM and others.
- 2.44 The NT Intervention is nothing more than to provide access to Aboriginal land by Mining Companies and for a Uranium dump. It has nothing to do with Aboriginal children. Remember the IRAQ invasion: first it was WMD, then installing a democracy, and then we found out it was about oil. Why else would it be that the same intervention in the NT is not in WA, SA, and Queensland. It is because the Commonwealth cannot override the States to access Aboriginal land. WE as a nation are committed to take uranium waste from overseas and it has to be dumped somewhere.

2.48 There are 4 FVPLS in South Australia. The city of Adelaide has no FVPLS or does major regional centres of Murray Bridge and the Riverland. The problems stems from this demarcation of responsibilities between the Federal and State Governments mentioned earlier. There has been no progress in this area of FVPLS. The appointment in South Australia of a Commissioner for Aboriginal Engagement is just that, an appointment. The Commissioner has no powers and no real funding. The Social Exclusion Board in South Australia is simply that, a Board that excludes Aboriginal issues otherwise it would have influenced the State Government in the funding of Aboriginal legal aid and FVPLS in Adelaide.

ALRM has grave reservations as to the effectiveness of a Commissioner for Aboriginal Engagement and the Social Exclusion Board. The SA Aboriginal Advisory Board is not known and has been ineffective since its inception. The SA Government will not engage with organisations like ALRM which is pursuing an agenda for an ICAC, an Inspector of Custodial Services, funding for Aboriginal legal aid, which are contrary to the States right wing “rack, em, stack em and pack em” mentality of incarceration. The State Attorney-General refuses to meet with ALRM to discuss an appropriate compensation scheme for members of the stolen generations therefore denying our women access to justice. The State is however preparing for a compensation scheme for members of the child abuse under State care, yet this will again in all probability deny being available for Aboriginal victims based upon past behaviour by the Government.

In reading sections 2.40 through to 2.55 I can't help but start to believe that Aboriginal people live in a Utopia and that our appalling state of disadvantage is simply a mirage. Then again I do believe in Santa Clause.

3.21 Funding for men's leadership in awareness of family violence is extremely questionable. There is no such program in Adelaide. I am aware however that such programs are available in some remote or regional communities.

5.23 The State of South Australia has a policy of NOT appointing Aboriginal women to Boards. ALRM has pursued the appointment of an Aboriginal person on the Legal Services Commission for a number of years. Whilst we received some initial degree of encouragement many years ago, the LCS continues to be devoid of an Aboriginal person and there is certainly no Aboriginal woman on the Commission. The commitment to appoint Aboriginal women on Government Boards is absent irrespective of what the Report claims.

5.31 The stated engagement with Aboriginal women in the community is almost non-existent. At 5.32 the Government talks about Women's Secretariats. These relate to non-Aboriginal women. The Australian Government defunded the National Aboriginal & Islander Legal Services Secretariat some years back so Aboriginal women have no national advocacy voice on legal aid except the recently convened Aboriginal legal aid forum which meets with the Attorney-General's Department. ALRM has attempted to secure funding under the Indigenous Women's Program without success to date.

- 5.56 The Indigenous Women's program is in name only. No funds have been provided to ALRM for this program. It is fine to say that the program exists but it has to be operational as well.
- 6.11 The Australia Government refuses through both the Foreign Affairs and Attorney-Generals Departments to fund ALRM on its pursuit of justice for Aboriginal women at international forums. To state otherwise is misleading and indeed a fabrication. I note reference at 6.14 to States and Territory Governments supporting women at international forums. The State of South Australia refuses to send Aboriginal women to any forum, whether it's national or international. The State Government of South Australia continues to not recognise that Aboriginal women exist and continues to deny access to justice for our women in legal aid and as members of the stolen generations. To quote just two examples implies that all Governments are supportive of women is again misleading and mischievous by a Government, particularly as it relates to Aboriginal women. I note at 6.14 reference is made to access philanthropic support for two women to go to South Africa. Why wasn't there Federal or State support provided to Aboriginal women to attend? That is a question needing answering.
- 9.42 Indigenous women's employment is being discouraged particularly in regional and remote centres by the gross underfunding of ALRM. To have static funding from 1996 to the present day is an appalling situation and denies Aboriginal women access to justice. It also diminishes Aboriginal women's opportunities for employment by ALRM. Government employment strategies look good on paper but invariably fail because Government refuses to allocate sufficient dollars to organisations like ALRM which have a positive program of employing Aboriginal people. The appalling unemployment statistic for Aboriginal women is an international disgrace and for the Government to assert otherwise is extremely disappointing.
- 11.39 Aboriginal women continue to be denied access to financial literacy programs. ALRM delivers a Low Income Support Program in Adelaide however such a program for Aboriginal people outside the metropolitan area is non-existent. The State Government refuses to acknowledge it has a responsibility for anyone outside Adelaide and particularly Aboriginal women. I note reference to the South Australia Social Inclusion initiative. Within the Aboriginal community it is referred to the Social Exclusion initiative. You have to be white to be included.
- 13.1 The Australian Government says Australian women are equal before the law. It forgot to say 'except if you are Aboriginal then we simply lock you up'. Aboriginal women make up 2% of the women in South Australia yet make up 32% of women incarcerated and incarceration is even higher than for men. By continually denying Aboriginal women access to justice this international human rights issue is a disgrace. The Government says it is improving access to justice for women, again except if you are an Aboriginal woman. The Australia Government has maintained Aboriginal legal aid at the same level as 1996. Here it is in 2009 and the figure stays the same yet the same Government, indeed the same Government agency, discriminates against Aboriginal women

by increasing mainstream legal aid by over 120% since 1996 yet keeps Black legal aid grossly underfunded. In fact Aboriginal legal aid has fallen in real terms by over 40% for the same period. For the Australian Government to say it is improving access to the legal system is a fabrication and must be challenged and held accountable. The claim by the Australian Government that women are equal is a total fabrication.

- 13.8 Legal aid is said by the Government to be a core element in promoting access to justice. It forgot to say except for Black women. The State of South Australia does not even fund ALRM although in 1991, the then Minister for Aboriginal Affairs and now Premier, Mike Rann said in Parliament he will ensure ALRM is funded to ensure Aboriginal people have access to justice. In 2009 Rann denies he has any responsibility to fund ALRM. What he is saying is Aboriginal people are not citizens of South Australia. He does not recognise Aboriginal people as people. His view appears to be that he still regards Aboriginal people as flora and fauna similar to the system pre 1967. The Australian and State Governments must be held accountable for the appalling state of funding for Aboriginal legal aid.
- 13.14 The South Australian Government initiative for support to women in domestic violence and abuse is only available for non-Aboriginal people. There are no services in Adelaide for Aboriginal victims of domestic violence. A recommendation of the Royal Commission into Aboriginal Deaths in Custody was about access to Aboriginal legal aid and related services. Both the Australian and State Governments ignore the RCIADIC recommendations because of this demarcation on responsibilities. Aboriginal specific services was a key recommendation as mainstream services are unwelcome to Aboriginal people, particularly as it relates to legal aid and family violence yet these same Governments continue after all this time over responsibilities. It is no wonder our women are so traumatised, incarcerated and abused.
- 13.25 Finally a bit of honesty by the Australian Government saying Aboriginal women's incarceration rate has increased. The penny must drop one day when the Government will realise that there is a correlation between Aboriginal women's incarceration and underfunding of Aboriginal legal aid. The statistics reported in this section are disturbing to say the least yet the Government continues on its journey of gross underfunding of Aboriginal legal aid. It is discriminatory to the extent that ALRM has formally lodged a complaint under CERD Article 2 in September 2008 against the Australian Government. This is the same Government that is seeking a seat on the UN's Security Council. The Australia Government cannot secure equal access to justice for Aboriginal women then how can it expect the UN member nations to invite Australia to be involved in the security of the world?
- 13.26 I note the Government reports on its funding of Aboriginal legal aid. It is disappointing it has not reported that it is starving Aboriginal legal aid of funds by maintaining funding levels the same as that in 1996. That is correct, 13 years, yet the same Government has increased mainstream legal aid by over 120%. This is an appalling situation and

one that the CEDAW committee should hold Australia to account. This institutionalised discrimination has resulted in ALRM lodging a complaint to the UN CERD committee.

- 13.27 Whilst I am supportive of the Government's funding of the FVPLS, these are only located in regional and remote communities. Our women in cities like Adelaide are ignored. Where do most Aboriginal women live? In cities. Where is the most family violence? In the cities. The reason why there is such a gap in services is because of a demarcation on funding between the States and the Federal Government. Until this demarcation is resolved Aboriginal women will continue to be denied access to basic services. This is a disgrace that should not continue.
- 13.30 I note only one State is referenced. There are no other references to Aboriginal women because services do not exist for them. I also note there is no Aboriginal woman on the South Australian Legal Services Commission although ALRM has sent a number of nominations.
- 14.24 The Australian Government says it has a zero tolerance towards violence against women, except if they are black there is a large degree of tolerance. Why else would it not fund FVPLS programs for Aboriginal women in cities like Adelaide. The more I read this self-praising report the more frustrated I become.
- 14.36 The South Australian Government does not fund programs to assist Aboriginal women in the prevention of violence and legal aid. This statement is misleading.
- 14.74 The Government acknowledges there is significant destruction of Indigenous communities due to family violence however the Commonwealth Government will NOT fund programs to assist organisations like ALRM provide services. In fact the Minister responsible for Aboriginal Affairs Jenny Macklin has a view that Aboriginal legal aid services like ALRM only provide services to perpetrators which is clearly incorrect. We have tried to meet with the Minister without success. We have concerns that the Minister is starving Aboriginal legal aid of resources because of this misguided view. The end result is Aboriginal women and for that matter men, continue to be denied access to justice.
- 14.77 This para and up to 14.81 are extremely misleading. Most Aboriginal people reside in major cities and they do NOT receive any family violence services. Whilst the programs in regional and remote communities are provided, they are failing because the Commonwealth Government will NOT listen or consult with Aboriginal people or organisations like ALRM. They have applied an approach that is regional and remote community based and is the complete opposite of that for Aboriginal legal aid which is state-wide which was forced upon Aboriginal legal aid. This inconsistency is having a devastating effect and the Government continues to ignore advice from organisations like ALRM.
- 14.84 It is interesting that the Government is said to be active in international forums to address violence against women. It would be appropriate if

it addressed violence in its own backyard first before addressing it elsewhere. Australia has a reputation of bullying smaller regional countries much the same way it bullies Aboriginal people.

CEDAW Concluding Comments Jan/Feb 2006

Para 10 The Federal Government has a demarcation between the States and Territories on who has responsibility for Aboriginal legal Aid and Aboriginal Family Violence Prevention Legal Services. This demarcation has been in existence since at least 1996 which has resulted in organisations like ALRM having static funding for its legal aid program. Furthermore, the FVPLS are only funded in the regional and remote communities by the Federal Government because it says the States and Territories should fund the major centres and cities. Again Aboriginal women and children are denied access to justice in major centres and cities. Since the last CEDAW report these two issues continue to be ignored by the Federal Government.

Para 16 The Federal Government abolished the Aboriginal & Torres Strait Islander Commission (ATSIC) in 2004 as a decision making body and has not replaced this organisation. It also defunded the National Aboriginal & Islander Legal Services Secretariat (NAILSS) and has NOT reinstated the funding to this body. With the abolition of ATSIC and the defunding of NAILSS there is no national decision-making body for Aboriginal women. In fact the Government continues to deny Aboriginal people attendances at international forums such as the UN Permanent Forum on Indigenous Issues to silence the growing concerns of Aboriginal women and men in international forums. The Government does not want international scrutiny of its appalling underfunding and institutionalised discrimination and continuing marginalisation of Aboriginal people. The one incarceration statistic of Aboriginal women and men should be enough for the Australian Government to be condemned both domestically and internationally.

Para 18 The comments contained in para 14.77 above should be noted in response to this para 18. The fact remains the Government's position since the last report to the CEDAW committee remains the same. It continues to underfund Aboriginal legal aid and FVPLS which contributes to the increasing incidence of family violence against our women. The Government can flower its report up as it chooses however the facts remain Aboriginal people continue to be denied access to justice. There is no funding or reduced funding in Aboriginal legal aid, FVPLS and stolen generations. I note the current Government report does not address the reporting issues of Para 19.

Para 20/21 The Federal Government has not initiated one program to address the prostitution concerns Aboriginal communities have.

Para 30/31 The Federal Government on being elected in 2007 gave a commitment to ALRM that it would increase Aboriginal legal aid. It has failed to do so. In fact it has reduced its funding in real terms. This is why ALRM has grave concerns about the credibility of the Federal Government's report to the CEDAW Committee. Furthermore Aboriginal women are denied access to compensation as members of the Stolen Generations. The now famous Trevorrow Test case established rights of members of the Stolen Generations. These rights continue to be denied to Aboriginal women and men. In fact the South Australian Government is appealing the Supreme Court decision in the

Trevorrow case and the Federal Government will not fund ALRM to seek access to justice for members of the Stolen Generations. In fact the denial of access to justice in 2009 is even worse than when the last report was considered by the CEDAW Committee. The incarceration of our women has increased not decreased since the last report.

Para 32 This recommendation to increase funding has been ignored by the Australian Government. ALRM's funds are still the same as they were in 1996, that is correct 1996, not 2006. The whole report by the Australian Government lacks credibility and evidence that it has done anything to improve the access to justice for Aboriginal women, prevention of violence and reduced discrimination. Under the current and previous Federal Governments, the situation has gotten worse, and has not improved. The increased incarceration rate is systemic as to the problems faced by Aboriginal women.

Para 37 The request by the Committee that the Federal Government disseminate to human rights organisations the Committee's recommendations and other instruments has been ignored. To the contrary the Australian Government has done its best to hide the fact that it received a negative report from the Committee. It refuses to fund human rights organisations like ALRM to attend international conferences and forums for fear of open criticism. If the Committee reviews the remarks of the Chairperson of the UNPFII on Australia's refusal to support the Draft Declaration on the Rights of Indigenous Peoples, members will recognise the hypocrisy of the current report submitted to the Committee, particularly as it relates to Aboriginal women.

Para 38 The absence of a report to the Committee in 2004 suggests that the Australian Federal Government holds the Committee, Australia's international human rights obligations, and Aboriginal women in contempt.

I am available to discuss any and all comments made in this Submission by telephone on 08 8113 3702 or mobile 0417 086 025 or email neilg@alrm.org.au

I look forward to my comments being included in the NGOs Shadow Reports.

Yours sincerely,

Neil E Gillespie

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