MEGAN DAVIS is Director of the Indigenous Law Centre at the University of New South Wales, and is an occasional columnist for The Koori Mail. Here, she argues that the Australian policy is moving further away from addressing unfinished business with Indigenous and Torres Strait Islander Australians.

The Rudd Government is considering its response to the report of the National Human Rights Consultation written by a committee headed by Françoise Brossard. The consultation is the culmination of a decade-long national movement for a bill of rights to address Australia's lack of human rights protection. The delay in the Federal Government's response is reportedly influenced by churches that have whipped themselves up into a frenzy over the impact of a Charter of Human Rights upon their institutions. There is no such hysteria about the recognition of Indigenous-specific rights because, unsurprisingly, they are not even in the mix. The recognition of Indigenous-specific rights was dismissed by the report as essentially unsettled and controversial. Insanely, the Indigenous chapter concludes that the 'limited response from the Indigenous community on this point' means that they were not seriously considering a recommendation for the specific rights of Indigenous Peoples. This was an extraordinary insensitivity to a community that is under-funded, under-resourced and by our own admission, poor, weak and supported out of begging bowls. It novo,text and should be distributed widely in communities. It represents a massive step backwards to terms of Indigenous people's rights and our struggle as the Australian state and reminds us of the amount of work that lies ahead of us.

The position that Indigenous-specific rights are unsettled and controversial is inaccurate for a number of reasons, not the least the adoption in 2007 by General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples. According to the report, the adoption of an international legal instrument is not satisfactory enough to establish that Indigenous Peoples have distinct rights - only that it was an attempt to resolve the issue.

Inaccurately, it emphasizes the position that Indigenous rights are far from settled by making reference to the opposition of Canadas, Australia, New Zealand and the United States (CANZUS) at the time because they have 'sizeable Indigenous populations' ignoring the fact that CANZUS have minority Indigenous populations, especially when compared with the key supporting states of the 143 who voted in favour of the Declaration.

Too much weight Worryingly, it seems that too much weight was given to these members of the Australian community who were 'consulted' who believe that Indigenous rights do not exist, should not be recognized and - if you do - you are giving something to others that ordinary Australians do not want.

Here, the committee noted the sentiments of the majority of survey and focus group participants that the recognition should be in the media and enjoyment of same rights, rather than the enjoyment of differing rights. The interesting contradiction here is that the strength of this report is the importance of human rights education in Australia because of the overwhelming evidence of poor understanding and misunderstanding of human rights and citizenship.

Yet, at the same time, the chapter gives excessive weight to those who undervalue and misunderstand the community as being unreasonably demanding. Indigenous specific rights are not inherent and are not only recognized as fundamentally important to states to protect in the UN Declaration, but also binding conventions, including Convention on the Rights of the Child and the 1966 Convention on the Elimination of All Forms of Racial Discrimination.

Continued next page

A file photo of a rally held in Alice Springs earlier this year to protest the Northern Territory Intervention's suspension of the Racial Discrimination Act.

THE KOORI MAIL, WEDNESDAY, DEC 2, 2009

WHAT CONSTITUTIONAL RIGHT WILL THEY TAKE NEXT?
Are we back here again?

E VER heard the term "coyote"? It's the name given to much older urban youth who like to date young men. They are called coyotes because they snarl and lick their prey. It's not as well-known, but older men who date younger women are called "pupping." And here I am, calling them slyly on the line. Shame on me.

My names

As a homeless and proud Aboriginal woman, I think it's my duty to come up with a more suitable term for this group of men, so we can start to reclaim the most amazing wildlife in Australia—squirrels—we could come up with our own terms.

Well guess what I did! After much researching (thanks to back-up-aboriginal-secrets.com) and pouncing, I have come up with the perfect Aboriginal term.

I reckon we should call our older women who date younger men "Patriotes." After the freshwater crocodile, the freshwater croc has a distinctive look (just like our beautiful Aboriginal women), they eat fish and any other small thing in that area (don't mess with a black woman or she will eat you up), and although freshwater crocs aren't aggressive, they will attack when disturbed (I say eat you). Now for the older black man who dates younger women, I could have chosen the dingos or even thins with longer legs. But no. Only one animal is perfect for our lovely men—Sasabs—after the saltwater crocodile.

If you are an older person who likes to date younger people, do you like to be called a Patriote or a Sasab? Call us online at www.mskoori.love and tell us.

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Indigenous rights have also been recognised in varying ways in the Australian legal system, whether through the common law or explicit legislative frameworks, including the Native Title Act, the Aboriginal Land Rights Act Northern Territory, the Family Law Act and not to mention many State-based statutory schemes covering land, heritage, iniquity etc.

In fact, today, we now have bipartisan support for the acknowledgement of the distinct nature of Indigenous rights in the preamble to the Constitution.

So why do we have this debate? Is there an indisputable empirical basis in support of the acceptance of Indigenous rights as legal rights? Maybe it is because Aboriginal and Torres Strait Islander peoples have borne the brunt of the policies of the past and present as well as cultural diversity, including a screening-over-emphasising on consultation, with some cases of the admitted few knowledge of the human rights or Indigenous peoples.

It does appear that the rights of the hard-working human rights industry has been minimised and pragmatised.

This is because the process operated essentially on two assumptions. First, our political class is not courageous and the current leadership is not going on a limb for human rights; let alone Indigenous rights—thus the statistical analysis and pie charts floating around as proof of consultation with ordinary Australians.

Secondly, to monitor the cost benefit analyses—because we would not want fundamental human rights to cost the taxpayers too much—although I do not doubt for one minute that this emphasis was because it is critical to convincing the Australian political system.

The second assumption appears to be that the areas of Australia's vital interests and national security should not be in danger and therefore we are not going to come to the party on Indigenous rights, so let's just resign ourselves to the life of a corrupt political reality.

One notable observation about the consultation is that in the human rights sector's submissions, there is a large group, legal and political university academics, human rights organisations, who made very few any substantial argument on the importance of Indigenous rights.

This is significant given the current Northern Territory Intervention supports what is probably the most important human rights treaty in the Australian legal system.

In fact, exhaustively for a human rights report, the committee very consistently predicts future suspension of all human rights.

Recommendation

Incredibly, there is a recommendation for a statement of intent to be provided by the Federal Parliament for future acts that suspend human rights—effectively emboldening in Australia's human rights culture a commitment to racial discrimination (although) our Constitution already tells us that.

As a human rights lawyer, I would welcome a Human Rights Act, primarily because of the important educative role it will play in influencing the Australian public.

The report's commitment to human rights education is absolutely critical to the future development of Indigenous rights in the Australian legal system. A national human rights program is something Aboriginal and Torres Strait Islander communities can celebrate.

Yet, similar to this week it was revealed that 124,000 people thought the country would go ahead with the W.A. Treaty rather than the Indigenous issues as well as delivering on the Redfern Speech—the greatest speech ever given in the Australian Prime Minister on Indigenous issues.

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