

**INQUIRY INTO THE REEVES  
REPORT ON THE ABORIGINAL  
LAND RIGHTS (NORTHERN  
TERRITORY) ACT 1976.**

*Submission to the House of Representatives  
Standing Committee on Aboriginal and Torres  
Strait Islander Affairs.*

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**Introduction.**

Community Aid Abroad welcomes the opportunity to provide input to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into the Reeves Report on the Aboriginal Land Rights (Northern Territory) Act 1976.

Community Aid Abroad works with indigenous people in approximately 21 countries around the world, including Australia, where we have run development programs for

many years focussing on cultural maintenance and rights to land. Given the breadth of our international experience, what is striking to Community Aid Abroad is the similarity of underlying problems that confront indigenous people globally. Usually indigenous people are the most marginalised of the poor, have the least political power and, because of their prior ownership of land, find themselves in conflict with commercial interests and dominant cultures wishing to exploit their natural resources.

Reluctance by dominant cultures to acknowledge often complex indigenous land ownership systems and spiritual relationships with land is nearly universal, and Australia is no exception. Many communities with which Community Aid Abroad works in the Asia Pacific region have become aware of the Aboriginal Land Rights Act and regard the legislation as a benchmark for good practice in recognising the rights of indigenous peoples. As such, Community Aid Abroad has a broader international interest in maintaining and promoting this legislation.

It is important to emphasise that Community Aid Abroad does not in this submission purport to represent the views of indigenous Australians. Instead, Community Aid Abroad's primary interest is in maintaining and enhancing the basic rights of indigenous peoples with whom we work - including indigenous Australians - and as such seeks in this submission to highlight aspects of the Reeves Report which impact, positively and negatively, on the basic rights of Aboriginal territorians.

Whilst Community Aid Abroad is supportive of a number of the recommendations in the Reeves Report, it is apparent that the Report proposes far reaching reforms to the Act which will overturn the entire concept upon which Land Rights has developed both under this Act and indeed internationally. This is to be "achieved" through the almost total disempowerment of traditional Aboriginal owners under the Act.

In addition, Community Aid Abroad finds that in many areas the Report lacks consistency and balance in analysis, fails to substantiate key assertions and conclusions, lacks academic rigor and, most importantly, manifestly fails to demonstrate even minimal support from Aboriginal territorians for the proposed reforms to the Act. Community Aid Abroad's specific comments on the Reeves Report are as follows.

## **1. Review Process.**

At face value the consultation process associated with the Review as outlined by Reeves appears extensive. Reeves (p 6) claims approximately 1,900 Aboriginal people attended community meetings conducted during the Review in December 1997 and February - March 1998 and that of these, about 400 people spoke to the Review. This represents a significant sample of Aboriginal territorians. Based on population statistics quoted in the Reeves report, (p 86), approximately 4.1% of the Aboriginal population of

the Northern Territory attended Review meetings, with about 1% of Aboriginal territorians speaking to the reviewer at these meetings.

However, upon detailed analysis of the Reeves Report, a number of matters associated with review process arise which, in the view of Community Aid Abroad, cast serious doubt on the adequacy and reliability of the findings of the Review. These matters are as follows;

Firstly, Reeves (p 103) implies bias on behalf of the Land Councils in the conduct of the community meetings central to the Review consultation process. Following quoting a number of speakers at community meetings strongly supporting the existing land councils, Reeves (pp 103-4) states;

"To put the above statements in their proper context, it should be noted that;

Most of the community meetings were organised by the two large land councils and they were generally conducted at a time and place of their choosing. Prior to most of the community meetings, land council staff spoke at length to those who were to attend the meetings about the issues involved in the Review.

Many of the people making these statements held, or had held, a position in one of the two large land councils"

Community Aid Abroad finds this to be an extraordinary allegation for the reviewer to make. If Reeves in any way suspected bias in community consultations associated with the Review process, then failure by Reeves to take control of the community consultation process represents a fundamentally flawed methodology on the part of the reviewer. The unsubstantiated implication of bias on the part of the Land Councils in facilitating the meetings or in briefing attendees is reprehensible in a report of this nature.

Secondly, assertions by the reviewer that there is widespread dissatisfaction with the Land Councils is not substantiated in the Review document, where of the 1900 Aboriginal people attending Review meetings, only 11 individuals are quoted by Reeves (pp114 - 116) as being critical of the role of the Land Councils. Further, no overall statistical analysis is provided by the Review as to the relative extent of support and criticism of the Land Councils expressed at community meetings or in submissions to the Review. This casts doubt as to whether far reaching recommendations made elsewhere in the Report indeed represent the views of Aboriginal territorians.

Thirdly, whilst many Aboriginal people gave testimony to the Review meetings in their own indigenous languages, it appears that such testimony was not translated into English in the transcripts of the meetings and was therefore not taken into account by Reeves to the extent of testimony provided in English which was recorded in transcripts.

Fourth, the timelines associated with the Review process appear to have been grossly inadequate. The NLC claims to have received Reeves' "Issues Paper" on the Review on

28 November 1997 - four weeks after it was planned to be circulated by Reeves and only two days before the first community meeting to discuss the Review.

Fifth, the Land Councils claim that they were not provided with an opportunity to extend the deadline for their submissions to the Review beyond the due date of 31 December 1997. A number of other parties - including parties hostile to the Land Councils such as the Northern Territory Government and the Minerals Council of the Northern Territory - were provided with extensions of up to more than one month to lodge submissions.

## **2. Effectiveness of the Act in Achieving its Purposes.**

### ***2.1 Granting of Land.***

Community Aid Abroad agrees with Reeves that the Act has been very effective in granting traditional Aboriginal land. Currently 42% of land in the Northern Territory has been returned to traditional owners and - with a further 112 land claims still outstanding - ultimately up to 52% of the Northern Territory will eventually be granted to Land Trusts for the benefit of traditional Aboriginal owners.

It should be noted that Community Aid Abroad finds alarming the comment by Reeves (p 62) that the Act has enabled "landless" Aboriginal people to establish communities on their traditional lands. Such a conclusion would be offensive to most Aboriginal territorians. Throughout the life of the Act Aboriginal people have never regarded themselves as landless - only that their lands have been removed from their control without their consent.

### ***2.2 Recognising Aboriginal Interests.***

Community Aid Abroad also agrees with Reeves that the Act has been very effective in recognising traditional Aboriginal interests in and relationships to land. Reeves correctly points out that having title to their traditional lands is immensely satisfying to Aboriginal people, who have a unique spiritual relationship with their traditional lands.

However, Community Aid Abroad cannot agree with Reeves blanket conclusion that the Northern Territory Legislative Assembly has given adequate recognition to Aboriginal traditional interests in and relationships with land through various legislation. For example, a major criticism of the Northern Territory Pastoral Land Act in relation to the provision of community living areas on pastoral leases is that the eligibility criteria for Aboriginal people allow only for historical associations with the land in question and specifically excludes traditional affiliations with the land under application.

### ***2.3. Control of Land Use.***

Community Aid Abroad disagrees with Reeves that the Act has not been effective in providing Aboriginal people with effective control over activities on their land. It is clearly evident from the Review that Reeves does not understand decision making processes

as they currently occur under the Act and that this misunderstanding has led to erroneous conclusions in this area.

Reeves (p 59) quotes from Ian Viner's excellent second reading speech in the House of Representatives regarding the purpose of the Act being to ensure that the Land Councils;

"...act on the advice and with the consent of traditional owners so that primary control over Aboriginal land lies with the traditional owners. As indicated before, the basis of the arrangements in the Bill is that the traditional owners instruct the Land Councils and, through the Land Councils, the trusts on such matters as the grant of leases on Aboriginal land."

Reeves (p64) states

"Land decisions are therefore made by the Aboriginal people concerned at the community or regional level".

This is correct. However it is clear that Reeves incorrectly understands from this that all such decisions are taken only in the forum of the meetings of the full Land Councils and that traditional owners at a regional level are removed from the consultation process. This understanding is incorrect.

The Act makes clear that the Land Councils are to act on the advice and with the consent of traditional owners so that primary control over Aboriginal land rests with traditional owners. In reality, all decisions in relation to land are taken at a local or regional level by traditional owners identified and consulted by the land councils. For example, decisions in relation to exploration or mining are taken at meetings convened by the staff of the Land Councils and attended only by traditional owners of the lands under application. Such meetings, often involving lengthy discussions and always requiring consensus decision making as required under part IV of the Act, are always convened entirely independent of and separate to meetings of the full Land Councils.

Such consultations empower traditional owners and ensure that staff of the Land Councils take instructions from them. These instructions are then ratified at a subsequent meeting of the relevant full Land Council. Similar processes are followed for other land related matters.

#### ***2.4. Process of acquiring recognition of land and rights largely complete.***

Community Aid Abroad also cannot support Reeves sweeping statement (p 65) that the process of acquiring Aboriginal territorians land and other rights and entitlements is largely complete.

Despite 42% of land in the Northern Territory being returned to traditional owners under the Act there remain a substantial proportion - perhaps even a majority - of Aboriginal territorians whose rights to land have not been addressed under existing legislation. As

Reeves points out (p 62), these include traditional owners whose lands lie within a town boundary, whose lands are on pastoral leases or are in any other way alienated. It is disappointing that Reeves does not in any way touch on measures to address the basic rights of these Aboriginal territorians to have secure title to their lands.

### **3. Land Council's Performance of their Functions under the Act.**

#### ***3.1 Political Role of the Land Councils.***

Community Aid Abroad agrees with Reeves conclusion that the Land Councils have been successful in performing their political functions under the Act, however Community Aid Abroad is disappointed that Reeves fails to probe further into the reasons behind the current political divide in the Northern Territory.

Reeves (p 94) correctly states that under section 23 (1) of the Act the Land Councils are required, amongst other things, to;

"protect the interests of=85traditional Aboriginal owners"

Reeves goes on to conclude that the Land Councils have developed a significant political profile in which relations between them and the Northern Territory Government is acrimonious. It is disappointing that Reeves fails to investigate the source of this acrimonious relationship and the reasons behind the present unsatisfactory political environment in the Northern Territory. Community Aid Abroad believes that if he had done so, he is likely to have concluded that performance of this legitimate functions under section 23(1) of the Act has drawn the Land Councils into constant conflict with a Northern Territory Government hostile to upholding the rights of Aboriginal Territorians since the Act came into force.

#### ***3.2 Land Claims.***

Community Aid Abroad agrees with Reeves that the Land Councils have been successful in the performance of their functions in relation to the pursuit of land claims under section 23 (1) of the Act.

#### ***3.3 Performance of other representative functions.***

Community Aid Abroad does not support the basis of Reeves analysis that the Land Councils have not performed a number of other representative functions under section 23(1) of the Act.

Reeves (p 116) correctly describes the scheme of the Act relating to the control of Aboriginal land whereby the Land Councils are required to act under the instructions of traditional Aboriginal owners of land and affected communities or groups in consenting to or withholding consent to any matter in connection to land held by a Land Trust.

Reeves however then goes on to conclude (p118) that it is the statutory definition of "traditional Aboriginal owners" that is a key source of discontent with the Land Councils and that the Land Councils have operated in such a way as to make the definition of "traditional Aboriginal owners;

" paramount, subordinating local understandings of Aboriginal tradition."

This conclusion is not substantiated by the oral evidence quoted in the report (pp 114 - 116) in which only one of the 11 people quoted as being dissatisfied with the Land Councils indicate that the precedence required under the Act to be provided to traditional owners is the source of discontent with the Land Councils.

#### **4. Addition of a Preamble and Purposes Clause to the Act.**

Reeves (p 77) recommends that a preamble and purposes clause be inserted in the Act expressing the future purposes of the Act to be, amongst other things;

"To encourage the formation of a partnership between Aboriginal people in the Northern Territory and the Government and people of the Northern Territory.

To provide Aboriginal people with effective control over decisions in relation to their lands, their communities and their lives."

Given the overall context of the Reeves Report, Community Aid Abroad does not support the insertion of either of these clauses as objectives of the Act. Our reasons are as follows;

Firstly, in recommending the insertion of a partnership objective in the Act, Reeves (p 73) advocates that traditional Aboriginal owners sacrifice rights won under the current Act - such as the right to control use of their lands; rights to prevent compulsory acquisition of their land by the Northern Territory Government and rights to control access to their land - in order to secure basic services in the areas health, housing and education from the Northern Territory Government.

Such an approach of trading rights for services which are a legitimate function of Government for all citizens of the Northern Territory is a disgraceful proposition and should be dismissed by Government at all levels.

Reeves himself concludes (p 91) that Aboriginal territorians are relatively disadvantaged in the areas of health, housing and education when compared to other Aboriginal Australians and this in itself should be sufficient to prompt the Northern Territory Government to provide adequate services in these areas to Aboriginal territorians. The reality is that Aboriginal territorians are entitled to Government services on an equal basis to any other citizen of the Northern Territory and should not have to sacrifice their hard won land rights in order to receive these services.

Secondly, the implication in the proposed partnership objective is that the onus should be placed on Aboriginal territorians to form a partnership with the Northern Territory Government when in reality this particular Government remains opposed to upholding their rights under the Act. It is therefore apparent to Community Aid Abroad that there is a fundamental conflict between the two proposed objectives to be inserted in the Act - a conflict that will not be resolved until there is a significant change of attitude on behalf of the Northern Territory Government. It would therefore be more appropriate for such an objective to be imposed on the Northern Territory Government rather than Aboriginal territorians.

Thirdly, it is apparent to Community Aid Abroad that the behavior of the Northern Territory Government during the life of the Act has been and remains in conflict with the second of Reeves proposed objectives to be inserted in the Act. The Northern Territory Government remains fundamentally opposed to enabling Aboriginal people to have meaningful control over the use of their lands, this being reflected in their submission to the Review advocating measures such as the removal from the Act of the current consent provisions in relation to exploration and mining.

Reeves correctly concludes that Aboriginal territorians deeply resent and mistrust the Northern Territory Government but specifically fails to make comment on the validity of this mistrust - only referring to the;

"alleged failure of successive Northern Territory Governments to accept the legitimate rights and interests of Aboriginal Territorians"(p70).

Community Aid Abroad is disappointed that Reeves fails to explore the validity of these claims as we believe that any objective analysis will conclude that both the past and present behavior of the Northern Territory Government in relation to Aboriginal Land Rights has been and today remains a national disgrace. Examples of this behavior include;

- constant opposition to and litigation against land claims conducted during the life of the Act;
- adoption of hostile measures to stymie land claims under the Act, such as the expansion of town boundaries to prevent claims such as the Warumungu Land Claim from proceeding;
- opposition to the Native Title Act 1993,
- use of anti Land Rights propaganda during election campaigns, notably the election linked claim that access to Uluru would be denied following the handback of title to traditional owners,
- a documented history of seeking to override traditional owners views in relation to infrastructure projects; notably the decision to proceed with the proposed Alice Springs flood mitigation dam despite advice from the Aboriginal Areas Protection

Authority of traditional owner concerns over sacred sites - a situation ultimately requiring Commonwealth intervention through the Heritage Protection Act 1984;

- the denial of recognition of Aboriginal customary law and traditional rights in the proposed constitutional arrangements for Northern Territory statehood;
- aspects of the Northern Territory Government submission to this Review including proposals to diminish the provisions of the Act in relation to exploration and mining.

## **5. Regional Decision Making and Regional Land Councils.**

Community Aid Abroad does not support Reeves' proposal for the establishment of 18 Regional Land Councils and that Regional Land Councils become the trustees of the 18 proposed Land Trusts (p 486). Community Aid Abroad notes that such a proposal will further disempower traditional Aboriginal owners and undermine the entire basis of Land Rights.

In leading to the presentation of this proposal, Reeves (p 204) makes a number of unsubstantiated sweeping statements in relation to "traditional Aboriginal owners" presumably in order to justify the proposed 18 regional land councils to replace the existing Land Councils. These statements include;

That "traditional Aboriginal owners are not organised to take any action relevant to the secular interests of Aboriginal people"

That "the role of traditional Aboriginal owners in the present scheme of the Act is essentially a passive one. They wait to be consulted by the CLC or NLC on any matters but they are not a group that is organised to take action at its own initiative";

That traditional Aboriginal owners "are disconnected from the daily life and concerns of the community."

Community Aid Abroad regards each of these unsubstantiated sweeping conclusions as utter nonsense. Throughout the Northern Territory traditional Aboriginal owners remain the cornerstone of Aboriginal community life and are becoming increasingly active in a wide range of enterprises including pastoralism, exploration, mining, construction, health and education.

Reeves (p 210) advocates a process for decision making and consent which gives enormous discretionary power to proposed Regional Land Councils and removes the current rights enjoyed by traditional Aboriginal owners under the Act to control the use of their lands.

Reeves advocates that;

"a Regional Land Council shall have regard to the best interests of Aboriginal people of its region and shall consult with, and if necessary, obtain the consent of, those Aboriginal people whom it believes, in the particular circumstances, it is required to, in accordance with Aboriginal tradition."

Community Aid Abroad does not agree with this proposed consent provision under the Act for the following reasons;

Firstly, the proposed consent provisions remove the existing rights of traditional owners under the Act to control the use of their lands and as such removes the ancient property rights of traditional Aboriginal owners. Decision making powers are transferred from traditional owners to other people without the authority of Aboriginal law. Community Aid Abroad believes this is tantamount to the destruction of the essence of Land Rights.

Secondly, the discretionary powers proposed for the Regional Land Councils are likely to result in land related decisions being made without consultation with or the consent of traditional Aboriginal owners - or for that matter any other Aboriginal people. It is clear from statements made by Reeves in other sections of the report that this is the situation envisaged.

Reeves (pp 252 - 253) states;

"There are, of course, some benefits associated with being identified as a traditional Aboriginal owner of land under the Act, including the right to give consent to certain dealing with the land and to receive some benefits associated with activities on the land. If the recommendations made elsewhere in this report are adopted, those benefits will not necessarily be available to traditional Aboriginal owners".

In addition, Reeves (p253) states;

"the process of identifying particular traditional Aboriginal owners=85.will not in the future lead to that group obtaining any particular benefits under the Act."

Thirdly, severing the connection between the proposed Regional Land Councils and traditional owners removes the main point of accountability of the Land Councils to their constituents under the current Act. The potential exists under this proposed provision for unilateral action taken by a Regional Land Council against the wishes of either traditional owners or Aboriginal residents of a region to be lawful.

Fourth, the proposed provision creates a fundamental inconsistency between Reeves recommendation (p 170) that the identification of traditional Aboriginal owners remain the threshold test for Aboriginal Land Commissioners when making a recommendation to grant land and the proposed removal (p210) of the existing powers of traditional Aboriginal owners to control the use of their lands once these lands have been granted

to them as a result of the land claim process. It is a key failing of the Review that Reeves fails to explore the implications of this inconsistency. One such implication is the likelihood that traditional owners may question the value of devoting their energies to future land claims given the proposed provision will severely limit their subsequent control over their traditional lands.

Fifth, Reeves does not substantiate in any way that this provision nor the Regional Land Council proposal has the support of Aboriginal territorians. Community Aid Abroad believes that such a dramatic reduction of the rights of traditional Aboriginal owners should only occur through a Commonwealth Government conducted plebiscite involving Aboriginal territorians.

Sixth, no criteria are provided defining what may constitute being "in the best interests" of Aboriginal people supposedly represented by the Regional Land Council. Community Aid Abroad supports the current Land Council regionalisation policies and encourages decentralisation of decision making powers through these mechanisms. Community Aid Abroad also recognises and supports the right of traditional owners to seek the Minister's approval to form their own land councils under the Act if dissatisfied with the performance of the existing land councils.

## **6. Exploration and Mining.**

### ***6.1 Interpretation of Statistical Analysis.***

Community Aid Abroad believes that Reeves analysis (p 514) of conflicting statistics covering the levels of exploration and mining on Aboriginal land presented to the Review by the Northern Territory Government, Department of Primary Industries and Energy and the Land Councils is inconsistent and illogical. Reeves comments in footnote 1123 (p 514) that;

"whilst this Review is not in a position to decide who is right, it is obvious that both sides cannot be"

are inconsistent with his conclusion that;

"the record of exploration and mining on Aboriginal land has been poor" (p514).

Surely this is the point at issue on which Reeves considers the Review is not in a position to decide? It is clear that from the fact that Reeves then goes on to quote extensively from statistics provided by Department of Primary Industries and Energy (p 518, 519, 520), Reeves attaches greater validity to the Department of Primary Industries and Energy statistics than to those provided by the Land Councils, whose statistics one would assume at face value are credible given the Land Councils pivotal role under Part IV of the Act.

The extent of the disparity in statistics provided to the Review by the above parties and the flawed logic used by Reeves to deal with this matter leads Community Aid Abroad to

conclude that this matter requires re-examination by the Committee before any recommendations are made. Community Aid Abroad therefore recommends that the matter of accurately ascertaining statistical information covering levels of exploration and mining on Aboriginal land under the Act be re-examined by the Committee and that Reeves analysis be dismissed as flawed.

## **6.2 Retention of the Veto Provision.**

Community Aid Abroad agrees with Reeves that it is notable that only one submission to the review - that of the Northern Territory Government - advocated removal of the veto and that no submission of any mining company to the Review advocated removal of the veto provision of the Act. This latter fact is a result inconsistent with what one would expect if one were to accept the statistics provided by Department of Primary Industries and Energy regarding the failure of the exploration and mining provisions of the Act. As such, this reinforces the importance of the Committee adopting Community Aid Abroad's above recommendation to re-examine the validity of all statistics provided to the Review on this matter.

Community Aid Abroad endorses the views of Woodward in that to deny Aboriginal people the right to prevent mining is to deny the reality of their land rights. As such, Community Aid Abroad welcomes the recommendation of the review that the current consent or veto provisions of the Act should remain in place.

Community Aid Abroad points out to the Committee that retention of the existing consent provisions of Part IV of the Act is in line with current international thinking in relation to resource exploitation of lands vested in indigenous peoples. This is reflected in Articles 26 and 30 of the United Nations Draft Declaration on the Rights of Indigenous Peoples which state;

Article 26. Land. Indigenous peoples have the right to own and control the use of their land, waters and other resources. Indigenous laws and customs shall be respected.

Article 30. Resource Development; Indigenous peoples have the right to determine strategies for the development of their land and resources. Governments must obtain the consent of indigenous peoples before giving approval to activities affecting their land and resources, particularly the development of mineral, water and other resources. Just compensation must be paid for such activities.

Community Aid Abroad notes that Reeves (p 524) compares the right of veto available to traditional owners with the lack of such rights for pastoralists in the Northern Territory and points out to the Committee that such comparative analysis is inappropriate because it fails to take into account the fundamental spiritual relationship Aboriginal people have with their land - a relationship to land of a substantially different nature to that held by Europeans and justifying the retention of the current consent provisions.

### **6.3 Reconnaissance Exploration Licences.**

Community Aid Abroad opposes Reeves recommendation (p 540) that the Aboriginal Land Rights (Northern Territory) Act 1976 and the Northern Territory Mining Act be amended to allow for access to Aboriginal land for reconnaissance exploration without the consent of traditional Aboriginal owners or the Land Councils. The reasons for this are as follows;

Firstly, this represents a further reduction of the rights of traditional Aboriginal owners to control access to and the use of their lands and contravenes international best practice in relation to the rights of indigenous peoples to control the resource exploitation of their lands, as reflected in Articles 26 and 30 of the United Nations Draft Declaration of the Rights of Indigenous Peoples.

Secondly, the proposal will serve to undermine the trust that has developed between traditional Aboriginal owners and mining companies under the current consent provisions of the Act. Under Reeves proposal it is clear that traditional Aboriginal owners will have no control over the terms and conditions of reconnaissance exploration on their land and in reality will most likely become aware of the presence of explorers on their land by accident - perhaps whilst hunting or visiting country - much the same situation as occurred prior to the passage of the Aboriginal Land Rights (Northern Territory) Act 1976 and which fostered distrust of the industry.

This recommendation is perplexing given that Reeves himself admits (p 519) that distrust of the mining industry based on the experiences of Aboriginal people prior to the passage of the Aboriginal Land Rights (Northern Territory) Act 1976 has been a factor in limiting exploration and mining activity on Aboriginal land. Even more perplexing is that Reeves also admits (p520) that this mistrust "may now be dissipating" under the current consent provisions of the Act! The evidence submitted to the Review (p519) by the CLC illustrates the benefits to both traditional owners and the mining industry flowing from the current consent provisions of the Act where rights previously denied to traditional owners and now recognised are facilitating the building of trust and greater exploration activity.

Thirdly, the recommendation does not provide for the adequate protection of sacred sites. Although Reeves states (p529) that the holder of an exploration reconnaissance licence should be required to obtain any details of sacred sites on the land from the Aboriginal Areas Protection Authority and should not enter or remain on a sacred site, this system will still manifestly fail to protect sacred sites. It is a matter of fact that only a very small proportion of sacred sites on Aboriginal land are recorded by the Aboriginal Areas Protection Authority and therefore available to explorers. The vast majority of sacred sites are not recorded in Aboriginal Areas Protection Authority records and sacred site infringement and desecration will be rampant under this model.

Fourth, Reeves fails to define (p 529) "low level" exploration associated with the proposed licences to be issued without the consent of traditional owners. Presumably Reeves includes activities such as rock sampling in his definition of "reconnaissance

exploration", an activity which can in certain circumstances constitute desecration of a sacred site.

Fifth, as outlined above, Reeves analysis (p 514) of conflicting statistics covering the levels of exploration on Aboriginal land presented to the Review by the Northern Territory Government, Department of Primary Industries and Energy and the Land Councils is inconsistent and illogical and the facts associated with whether Part IV of the Act has stymied exploration must be re-examined by the Committee.

#### **6.4 Abolition of the "First in the Queue" System.**

Community Aid Abroad agrees with Reeves recommendation (p 532) that the 'first in the queue' system should be abolished as this is inappropriate when combined with the veto provision, effectively limiting traditional Aboriginal owners to negotiating with one applicant, who remains 'first in the queue' once the veto period expires.

#### **6.5 Role of the Regional Land Council's in exploration and mining.**

As highlighted elsewhere in this submission, Reeves (p210) advocates a process for decision making and consent which gives enormous discretionary power to the Regional Land Councils and removes the current rights enjoyed by traditional Aboriginal owners under the Act to control the use of their lands, presumably including those rights currently enjoyed in relation to exploration and mining.

Reeves advocates that;

"A Regional Land Council shall have regard to the best interests of Aboriginal people of its region and shall consult with, and if necessary, obtain the consent of, those Aboriginal people whom it believes, in the particular circumstances, it is required to, in accordance with Aboriginal tradition."

Community Aid Abroad does not agree with this proposed consent provision as it would apply to exploration and mining under the Act for the following reasons;

Firstly, the proposed consent provisions remove the existing rights of traditional owners under the Act to be consulted and consent to exploration and mining activity on their lands. Decision making powers are transferred from traditional owners to other people without the authority of Aboriginal law. Community Aid Abroad believes this is tantamount to the destruction of the essence of Land Rights.

Secondly, the discretionary powers proposed for the Regional Land Councils are likely to result in land related decisions being made without consultation with or the consent of traditional Aboriginal owners - or for that matter any other Aboriginal people. It is clear from statements made by Reeves in other sections of the report that this is the situation envisaged. Reeves (pp252 - 253) states;

"There are, of course, some benefits associated with being identified as a traditional Aboriginal owner of land under the Act, including the right to give consent to certain

dealing with the land and to receive some benefits associated with activities on the land. If the recommendations made elsewhere in this report are adopted, those benefits will not necessarily be available to traditional Aboriginal owners".

In addition, Reeves (p253) states;

"the process of identifying particular traditional Aboriginal owners=85.will not in the future lead to that group obtaining any particular benefits under the Act."

Thirdly, Reeves does not substantiate in any way that this provision has the support of Aboriginal territorians. Community Aid Abroad believes that such a dramatic reduction of the rights of traditional Aboriginal owners should only occur through a Commonwealth Government conducted and monitored plebiscite involving Aboriginal territorians.

Fourth, no criteria are provided defining what may constitute being "in the best interests" of Aboriginal people supposedly represented by the Regional Land Council.

### **6.6 Removal of Section 41 (6) of the Act.**

Reeves (p 537) advocates removal of sections 41 and 42 of the Act. Community Aid Abroad opposes removal of section 41 (6) of the Act on the grounds that this section is crucial to traditional Aboriginal owners being in a position to provide informed consent to proposals. Section 41 (6) requires applicants to provide detailed information to the Land Council and subsequently to traditional owners, upon which basis traditional owners consider the proposal from the applicant. Denying such information to landowners is a further erosion of their land rights.

## **7. Sacred Sites and Sacred Objects.**

Community Aid Abroad opposes Reeves recommendation that the Aboriginal Areas Protection Authority have sole responsibility for the protection of sacred sites throughout the Northern Territory and disagrees with Reeves analysis that the Northern Territory Sacred Site Protection Act 1989 represents best practice per se. The primary reasons for this position are as follows;

Firstly section 32 (1) b of the Northern Territory Sacred Site Protection Act 1989 allows the Northern Territory Minister to permit entry to, works on or the desecration of a sacred site contrary to the wishes of Aboriginal custodians. Reeves dismisses this concern, stating that this provision "has rarely been invoked"(p 280). Community Aid Abroad believes that it is worth outlining to the Committee the circumstances under which the provision was invoked in the case of the Nyiltye/Tnyere Akerte (Junction Waterhole) dam north of Alice Springs, supposedly protected under this =91best practice' legislation.

Under this best practice legislation, the Northern Territory Aboriginal Areas Protection Authority refused on two separate occasions in October 1991 and January 1992 to issue

a work certificate the Northern Territory Power and Water Authority for the construction of the flood mitigation dam north of Alice Springs, following procedures under the Northern Territory Aboriginal Sacred Sites Act (1989).

Despite this conclusive and independent advice, Max Ortmann, then Northern Territory Minister for Lands and Housing, announced in the Northern Territory Legislative Assembly on 4 March 1992 that he had decided to use his powers under section 32 (1) b of the Northern Territory Aboriginal Sacred Sites Act(1989) to override both the views of Aboriginal custodians and the Aboriginal Areas Protection Authority and issue a Minister's certificate enabling construction of the dam. The Minister's speech to the Assembly acknowledged that sacred sites would be destroyed and that custodians opposed the dam.

In this instance it was only the actions of the Commonwealth Minister for Aboriginal Affairs issuing an emergency declaration under section 9 of the Aboriginal and Torres Strait Islander Heritage Protection Act (1984) on 20 March 1992; a 30 day extension of that emergency protection order on 22 April 1992 and, on 16 May 1992, a 20 year declaration of protection for the site complex under section 10 of the Aboriginal and Torres Strait Islander Heritage Protection Act (1984), that ultimately prevented destruction of the sacred site complexes.

This is an unambiguous instance where the Northern Territory Government manifestly failed to afford proper protection for the site complex despite the advice of its own heritage protection agency, the Aboriginal Areas Protection Authority.

Secondly, proposed amendments to the Aboriginal and Torres Strait Islander Heritage Protection Act (1984), tabled in Parliament subsequent to publication of the Reeves review and currently before the Senate, will substantially weaken this Act and will effectively restrict Commonwealth protection of sacred sites to national interest cases - hence Reeves argument that sacred sites will be afforded protection under the Aboriginal and Torres Strait Islander Heritage Protection Act (1984) is no longer valid.

## **8. Compulsory Acquisition of Aboriginal Land.**

Community Aid Abroad is opposed to Reeves recommendation (p383) that the Act be amended to provide the Northern Territory Government with the powers to compulsorily acquire Aboriginal land.

The current Act prevents the Northern Territory Government from compulsorily acquiring Aboriginal land. Whilst noting the concerns expressed by the Northern Territory Government in relation to the provision of services for public purposes, Community Aid Abroad is concerned that in making the recommendation to allow the Northern Territory Government the powers to compulsorily acquire Aboriginal land, Reeves fails to analyse whether or not section 67 of the Act has over the last 23 years prevented any single public purpose project in the Northern Territory from proceeding, nor whether Aboriginal

people have ever prevented to provision of public services to either their or any other communities in the Northern Territory.

As such, until it can be objectively demonstrated that section 67 of the Act has prevented public purpose projects from proceeding, Community Aid Abroad is opposed to Reeves recommendation (p383) that the Act be amended to provide the Northern Territory Government with the powers to compulsorily acquire Aboriginal land.

In addition, Community Aid Abroad notes that Reeves recommendation that any compulsory acquisition should be effected by a special Act of the Northern Territory Legislative Assembly (p 383) in order to provide public scrutiny fails to acknowledge the fact that the Northern Territory political system does not have an upper house or house of review.

## **9. Dealing with Outstanding Land Claims.**

### ***9.1 Conservation Land Corporation and Northern Territory Land Corporation Lands.***

Community Aid Abroad notes and agrees with Reeves conclusion (p 240) that it is hard to escape the conclusion that the Northern Territory Government deliberately transferred lands to the Northern Territory Land Corporation in order to prevent land claims being made over those areas.

Legal decisions notwithstanding, Community Aid Abroad believes that Northern Territory Corporation land is and should be claimable under the Act and therefore disagrees with Reeves recommendation (p248) that the Act be amended to eliminate the right of traditional Aboriginal owners of these lands to gain title to their lands - which are, after all, currently held by the Northern Territory Land Corporation as a consequence of the duplicity of the Northern Territory Government in removing this right. It is clear that traditional interests exist in lands held by the Northern Territory Land Corporation and that these interests and overall park values can be enhanced through the active involvement of traditional Aboriginal owners in park management.

Community Aid Abroad notes the criticisms leveled at the Parks and Wildlife Commission of the Northern Territory by ATSIC and the Land Councils, namely the marginal role of traditional owners relative to their role in the management of the Commonwealth controlled National Parks in the Northern Territory.

The contrast between management committees with a limited advisory role in the management of Northern Territory parks and boards of management comprised of a majority of Aboriginal people in the Commonwealth parks is stark. As such, it is apparent that there are clear advantages to traditional owners in obtaining sole title to National Parks and that under such regimes the rights of Territorians and the broader Australian community to access these areas are not infringed.

### **9.2 Beds and Banks of Rivers.**

Community Aid Abroad agrees with Reeves recommendation (p223) that outstanding claims to the beds and banks of internal rivers should be without further delay and expense.

### **9.3 Repeat and Supplementary Land Claims.**

Community Aid Abroad agrees with Reeves conclusion (p 245) that the provisions for repeat and supplementary land claims under section 50(2) of the Act remain.

### **9.4 Inalienable Freehold Title.**

Community Aid Abroad supports Reeves recommendation (p 477) that inalienable freehold title is the most appropriate form of title for Aboriginal land and is the form of title most likely to protect the interests of Aboriginal people. Community Aid Abroad supports Reeves recommendation (p 485) that provisions preventing the sale, transfer or perpetual lease of Aboriginal land should be retained in the Act.

### **9.5 Rapid Settlement of Outstanding Land Claims.**

Community Aid Abroad agrees with Reeves that it is time to move away from such costly litigation in settling the 112 outstanding remaining land claims under the Act and supports his recommendation that measures be taken to settle all outstanding claims within the next three years. Community Aid Abroad notes that this will require a substantial change of attitude on behalf of the Northern Territory Government.

Community Aid Abroad is however staggered by Reeves claim (p 260) that because the remaining 112 land claims under the Act relate to;

"only 10% of the Northern Territory"

and are, in Reeves opinion (!);

"only of marginal benefit to Aboriginal people"

that therefore;

"the Land Councils should not be bound to pursue absolutely every claim to every area of land possible because some Aboriginal group has asked them to do so."

This statement and subsequent recommendation (p 260) that ATSIC "take these matters into account" when making funding allocations for outstanding land claims to the proposed NTAC is tantamount to amending the Act to deny the right of traditional Aboriginal owners to claim land under the Act and providing ATSIC with the discretionary power to decide on this right for them. This recommendation should be dismissed out of hand.

### **9.6 Traditional Aboriginal Owners and Land Claims.**

Community Aid Abroad agrees with Reeves conclusion (p 170) that the identification of traditional Aboriginal owners should remain the threshold test for Aboriginal Land Commissioners when making a recommendation to grant land. Community Aid Abroad agrees with Reeves and Toohey that the flexible construction given to the definition of traditional Aboriginal owners has enabled a broad range of Aboriginal territorians to successfully obtain title to land under the Act.

As touched on elsewhere in this submission, Reeves recommendation (p 170) that the identification of traditional Aboriginal owners remain the threshold test for Aboriginal Land Commissioners when making a recommendation to grant land and the proposed removal (p210) of the existing powers of traditional Aboriginal owners to control the use of their lands once these lands have been granted to them as a result of the land claim process creates a fundamental inconsistency in the Act.

It is a key failing of the Review that Reeves fails to explore the implications of this inconsistency. One such implication is the likelihood that traditional owners may question the value of devoting their energies to future land claims given the proposed provision will severely limit their subsequent control over their traditional lands.

### **10. Permits and Access to Aboriginal Land.**

Community Aid Abroad disagrees with Reeves recommendation that the permit system for access to Aboriginal land be abolished through repeal of section 70 of the Act.

Reeves asserts that a reason for the lack of support for the Aboriginal Land Rights (Northern Territory) Act 1976 is the costs imposed by the Act on Territorians. He lists these costs as including "red tape to get permits" and "exclusion from vast areas of the Northern Territory". Neither of these claims are substantiated in any way by Reeves.

In addition, Reeves statement (p 304) that there is opposition to the current permit system from Aboriginal territorians is unsubstantiated in the report and regarded by the Land Councils as a dishonest representation of the evidence put before the Review by Aboriginal people.

This recommendation further disempowers Aboriginal systems of land ownership and property rights. In responding to the argument that traditional Aboriginal owners have as part of their land title the right to control access to their land, Reeves argues (p302) that traditional Aboriginal owners are not the owners of the land and that it is the Land Trusts who hold the land. Whilst this may be technically correct, it is clear that the spirit of the legislation is to recognise the property rights of traditional Aboriginal owners through the permit system.

The recommendation to use the current Northern Territory Trespass Act would give traditional owners a considerably weaker right to control access, as this Act requires

signage, formal notice and constant monitoring. As a result, traditional owners will only be able to keep people off their land once they have entered their land and notice is given.

## **11. Northern Territory Aboriginal Council.**

Community Aid Abroad rejects Reeves proposal for the creation of the Northern Territory Aboriginal Council on the following grounds;

Firstly, it is a centralised and politically appointed body which in turn politically appoints the CEO's of each of the 18 Regional Land Councils. Appointments to NTAC are proposed to be approved by the Commonwealth and Northern Territory Ministers who also approve the choice of CEO. This is in stark contrast to the current system of the direct election of Land Council delegates by communities within Land Council regions.

Secondly, the management of the Aboriginal Benefits Reserve by the proposed Northern Territory Aboriginal Council is an outright attack on the rights of traditional Aboriginal owners to control the use of income derived from activities on their lands, as is the prescription of purposes for which ABR monies can be used.

Thirdly, there is no proposal for NTAC to pay compensation to existing Royalty Associations for the acquisition of their assets.

## **Conclusion.**

As referred to earlier in this submission, Community Aid Abroad's primary interest is in maintaining and enhancing the basic rights of indigenous peoples with whom we work - including indigenous Australians. Whilst Community Aid Abroad agrees with some of the recommendations of the Reeves Review, the overall thrust of the Report seeks to almost completely disempower traditional Aboriginal owners of their hard won rights under the existing Act. In essence, the Report is not proposing any form of land rights for future generations of traditional Aboriginal owners.

Community Aid Abroad concludes that the Report lacks consistency and balance in analysis, fails to substantiate key assertions and conclusions, lacks academic rigor and, most importantly, manifestly fails to demonstrate even minimal support from Aboriginal territorians for the proposed reforms to the Act.