

***INQUIRY INTO THE NORTHERN TERRITORY  
EMERGENCY RESPONSE BILLS PACKAGE***

The Australian Government's assertion that Indigenous land rights must be suspended even in the short-term to combat child abuse requires further consideration and clear justification.

The Emergency Response has been developed on the basis of extremely limited consultation, particularly with the Indigenous peoples affected. At the very least, the right to self determination under Article 1 of both the International Covenant on Civil and Political Rights, and of the International Covenant on Economic, Social and Cultural Rights, means the right of peoples to have a say in matters concerning their own welfare.

The Committee on the Elimination of Racial Discrimination General Recommendation No. 23 of 18 August 1997 calls on States parties to:

"Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;"

By seeking exemption from the RDA, the Government has signaled that it doubts all measures

in the Bill would qualify as "special measures". I am concerned that the bills package as currently drafted contains discriminatory measures that have no demonstrated role in protecting Indigenous children. The most notable of these are proposed changes to the permit system and land tenure arrangements. Land rights are of particular importance to Indigenous peoples in Australia for cultural and spiritual reasons and also because their enjoyment of other rights has been so limited. Interventions that affect Indigenous people's control and use of their land thus require the strongest justification. The United Nations Committee on the Elimination of Racial Discrimination in its General Recommendation No. 23: Indigenous Peoples called upon States parties: "to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands".

Changes to the permit system or other aspects of Indigenous land control do not appear amongst the 97 recommendations of the *Little Children are Sacred* Report on which the Australian Government has based the need for the emergency provisions.

In reaching a judgment about the justification for the permit and land use measures, that the communities affected by the legislation are particularly affected by, or vulnerable to child abuse, the distribution of cases of children at risk throughout Australia is worth noting. According to the Australian Health and Welfare Institute publication *Child Protection 2004-05* there were 319 cases of substantiated protection notifications of Northern Territory Indigenous children in that period, a rate of 13.7 children per thousand, which was lower than the rate for Indigenous children in all other states or territories except Tasmania, and equal to the rate for non-Indigenous children in Queensland. The rate of substantiated notifications was certainly higher for Indigenous children than for non-Indigenous children in all states and territories except Tasmania, and in Victoria it was more than 10 times higher. The highest number of affected children was in Queensland - 1,186 Indigenous and 11,700 non-Indigenous children. Although official notifications and substantiations may not accurately reflect real prevalence, these figures do indicate that serious problems of child protection are not confined to the Indigenous

population, or to Indigenous communities living on  
Indigenous controlled land.