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Discrimination and Protection of Minorities

Working Group on Indigenous Populations  
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CONSIDERATION OF THE EVOLUTION OF STANDARDS  
CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

STATEMENT OF THE NATIONAL ABORIGINAL CONFERENCE - AUSTRALIA

Madam Chair, the National Aboriginal Conference welcomes this opportunity to assist the deliberations of the Working Group. In considering the matter of the evolution of standards concerning the rights of indigenous peoples we wish to draw attention to the crucial matter of Aboriginal land rights.

The basis of Aboriginal rights to land in Australia is the original ownership and occupation of the entire continent by the Aboriginal people. It is on that basis also that the Torres Strait Islanders claim rights to land in the islands of the Torres Strait separating Australia from New Guinea.

Aboriginal people occupied Australia without challenge for at least fifty thousand years prior to British settlement in 1788. That occupation is aptly described in the terms of the law of nations as the exercise of Aboriginal sovereignty over Australia. Sovereignty was exercised by up to five hundred tribal governments throughout the continent. Each self-governing unit had a defined territory and

population and had developed laws governing the relations between tribes and between the tribes and other peoples.

The Aboriginal and Torres Strait Islander peoples of Australia assert that the failure of the British and successive Australian governments to recognise Aboriginal sovereignty does not diminish original sovereignty as the source of Aboriginal land rights. We do not accept that Aboriginal rights in land are merely those which the Crown may choose to grant under the feudal doctrine that the root of title to all land in England and its colonies is held by the Crown. Land titles which recognise merely possessory or usufructuary rights do not accord with the Aboriginal reality of land as the source of all being, law and religion.

The present Australian Labor Government has also explicitly and firmly rejected Aboriginal claims to sovereignty. Speaking to a resolution which he moved in the Australian Parliament in December 1983 the Minister for Aboriginal Affairs, Mr Clyde Holding, stressed that the issue of Aboriginal sovereignty was not negotiable; "Sovereignty is vested in the Crown and Parliaments, for a single people united in the Commonwealth".

There is no recognition in Australia that Aboriginal people have been denied the right to real and effective self-determination, a fundamental human right guaranteed in numerous instruments of the United Nations. Aboriginal people have not been accorded the right to decide if there is to be in fact "a single people" in Australia. Without recognition of Aboriginal land rights there can be no possibility of Aboriginal people exercising freely the right of self-determination.

Whilst the Australian Government and some State Governments have legislated for the return of some lands to the Aboriginal people; this has not been done in recognition of Aboriginal sovereignty or as a basis for the exercise of Aboriginal self-determination under international law. At best, legislative schemes have been adopted in theory as a recognition of prior occupation and ownership of territory in Australia. The resolution introduced but not voted on in the Australian Parliament last December acknowledged original Aboriginal and Torres Strait Islander ownership of Australia and the subsequent total disregard of indigenous rights upon colonisation. It recognised that one of the special measures which must be taken to rectify the injustice is Parliamentary recognition of Aboriginal and Torres Strait Islander people's rights to land, in accordance with five stated principles as outlined by the Minister yesterday.

However, already there are indications that the Commonwealth Government will follow the States in not giving full effect to general principles. State legislation has been passed "in recognition of prior Aboriginal ownership" but allowing only for Aboriginal communities to claim unalienated Crown land not required for other public purposes and without a guaranteed source of funds in the form of compensation or reparation to enable economic and social development.

Similarly, the Minister for Aboriginal Affairs has indicated that Aboriginal communities will need to persuade a judicial Claims Tribunal that they traditionally own or have long occupied certain categories of land before a claim can be established. This will disentitle many communities where dispossession and dispersal have been greatest. If past legislative practice is followed it will also entail Aboriginal land rights being dependent upon the ability of lawyers and anthropologists

to persuade other white professionals that Aboriginal interests in land should outweigh competing commercial interests. The Minister for Aboriginal Affairs has responded to the anti land rights lobby of mining companies and pastoralists by giving assurances that so called "private" land will not be claimable under Federal land rights legislation. The Federal Government's concern to accommodate the different State legislative and administrative structures poses the threat that Aboriginal people in different parts of the country will receive different forms of title to their lands and that not all will receive the inalienable title which is demanded by Aboriginal people.

The National Aboriginal Conference supports the purposes of the UN Working Group on Indigenous Populations and states that the attainment of Indigenous Rights for populations such as the Aboriginal and Torres Strait Islanders of Australia will only be achievable if international standards are defined, and if non-indigenous governments remain under scrutiny in terms of their domestic and foreign dealings with Indigenous Peoples.