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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of  
Discrimination and Protection  
of Minorities

Working Group on Indigenous Populations  
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STANDARD-SETTING ACTIVITIES

EVOLUTION OF STANDARDS CONCERNING THE RIGHTS  
OF INDIGENOUS POPULATIONS

Material received from Governments

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Australia .....

AUSTRALIA

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UNITED NATIONS WORKING GROUP ON INDIGENOUS POPULATIONS: AUSTRALIAN  
GOVERNMENT'S COMMENTS ON THE DRAFT PRINCIPLES

The Australian Government has consistently supported the activities of the Working Group on Indigenous Populations (WGIP) in reviewing developments relating to the promotion and protection of the human rights and fundamental freedoms of indigenous populations and in particular its role in the development of international standards concerning the rights of indigenous populations.

The Australian Government views the mandate of the Working Group to develop a set of standards on indigenous rights as being of particular interest. These standards should aim to harmonize with and build upon existing international instruments.

Australia welcomes the progress made on standard setting at the WGIP's Fourth Session in 1985 and its adoption of seven draft principles as contained in Annex II of its report. While Australia supports the overall thrust of the draft principles, there are some specific problems which arise in relation to certain terms and concepts they employ. Australia also notes the need for consistency in interpretation and suggests that the draft principles should be worded as closely as possible to the provisions of the international instruments on which they may be modelled. There is a need to include acknowledgement, in a number of the Principles, of the obligation to ensure that the practice of the rights they contain does not adversely influence the rights of others. There would be advantage in incorporating this in a preambular paragraph (whether in a Declaration or a Convention) which could also note that the rights involved should be consistent with international human rights instruments.

Australia provides the following specific comments on the seven draft principles developed at the Fourth Session of the WGIP.

Principle 1 confirms rights which are enshrined in existing international instruments including the United Nations Charter and the Universal Declaration of Human Rights. It is an underlying philosophy of the Australian Government that the Aboriginal and Torres Strait Islander people should have the same rights and obligations and enjoy the same standards of living as the wider Australian community. Therefore Australia could support this principle.

Principle 2 is also modelled on the language of major standard setting instruments which Australia has endorsed. However, the phrase "discrimination of any kind" would need to be clarified. It is presumably not intended to exclude programmes of positive discrimination for the advancement of indigenous populations. It is also presumed that discrimination of any kind on the ground of indigenous status is the target of this Principle. Australia would prefer that these points be expressly covered in Principle 2 and would propose: "adverse discrimination of any kind on the ground of indigenous status".

The language of Principle 3 is also drawn largely from the same instruments as Principle 2. The content of the collective right to exist may be difficult to determine. It may for example be more meaningful to express such a right as a right not to be deprived of collective existence by others, although such a right may be difficult to distinguish from the right to be protected against genocide. The use of the phrase "physical integrity" in this principle may also be unclear, since it is often used in a wide sense to cover all the rights referred to here. However, it is presumed that in this context it refers to freedom from torture and other physical ill-treatment.

Principle 4 follows closely the language of the same international instruments used in the previous principles. However, it introduces a right to "maintain, protect and have access to sites for these purposes". It should be noted that there is an equal obligation to ensure that the practice of any of the rights mentioned in the above principle does not infringe unduly upon the rights of others. Australia seeks to have legislation in place which will be fair and equitable, to take into account the concerns of a number of competing interests in land and resources.

In respect of Principle 5, the right to education appears in the Universal Declaration and the International Covenant on Civil and Political Rights. However, Principle 5 proposes the right to all forms of education, and a right of indigenous populations to be educated in their own languages and to have their own educational institutions. While the general objective of the principle could be supported, this would need to be reconciled with the need to uphold equality with the rest of the community.

The Australian Government encourages full access to Aboriginals and Torres Strait Islanders to all levels of education, and in a number of tradition-oriented Aboriginal communities has supported the establishment of bilingual education programmes. A number of independent Aboriginal schools have been established in Australia. These schools place heavy emphasis on community involvement and control and follow a curriculum which reflects traditional Aboriginal culture and teaching methods.

Principle 6 extends what is usually seen as a right to participate in cultural activities or enjoy one's own culture to a right to preserve a cultural identity and traditions. As in Principles 4 and 5, a reference such as "without prejudice to the rights and freedoms of others" is important and should be taken into account in the drafting of this Principle.

The Australian Government encourages the understanding by all Australians of the history and culture of Aboriginals and Torres Strait Islanders. The Government is also considering the report of the Australian Law Reform Commission on the recognition of Aboriginal Customary Law in the Australian legal system, which recommends that such customary law be recognized where possible. A significant trend among tradition-oriented Aboriginals in Australia during the past decade has been the voluntary movement from settled communities to their traditional tribal lands or "homelands".

Principle 7 expresses a right to seek, receive and impart information and ideas regardless of frontiers. It is within the rights set forth in the Universal Declaration and guaranteed in the International Covenant on Civil and Political Rights. The present wording could be supported, bearing in mind the obligation not to infringe upon the rights and freedoms of others.