AGENDA ITEM 4(a):  

Review of Developments

I refer to the continued exercise of racial discrimination in Australia against the Aboriginal Peoples and Torres Strait Islander Peoples by the Australian Government.

The Native Title Amendment Act 1998 has not been suspended, amended or removed from Australian legislation. Therefore the Australian Government continues to be in breach of the International Convention on All Forms of Racial Discrimination, as determined by the CERD committee in decisions 2(54) of March 1999, 2(55) of August 1999, and the Concluding Observations on Australia in April 2000.

Further, the Australian Government, apparent by its actions to stand in defiance of the Convention, the role of the CERD committee, and its international obligation to prevent racial discrimination and to eliminate racial discrimination against all peoples in Australia, including the Aboriginal and Torres Strait Islander peoples, has declined to present the periodic reports to CERD due on October 2000 and October 2002.

The CERD committee expressed its concern over 'the absence from Australian law of any entrenched guarantee against racial discrimination that would override subsequent law of the Commonwealth, states and territories'. The Australian Government defies the CERD recommendation that appropriate measures be taken 'to ensure the consistent application of the provisions of the Convention, in accordance with article 27 of the Vienna Convention on the Law of Treaties, at all levels of government, including states and territories, and if necessary by calling on its power to override territory laws and using its external affairs power with regard to state laws'.

The Australian Government has taken no action since the Secretary General of the UN presented to the last session of the General Assembly his report on Racism, document A/57/204, which states:

"... the question of reconciliation with the Aboriginal peoples remains outstanding, because it affects the foundations of the Australian State and conflicting cultural values... this State is a manifestation of colonization, whose consequences remain to this day, notably through the limitation of their land rights, the tragedy of the..."
abducted children, cultural clashes and highly precarious living conditions outside the wealth of the majority of Australians... The land question remains crucial and is the key to the Australian problem. (para. 17. UN document A.57/204)

In this environment of overt racial discrimination, the courts in Australia have recently made rulings which claim that Indigenous Peoples do not hold, and never did hold, ownership rights over the resources under the surface of the lands, the resources on the surface of the lands, the waters and other key aspects of our territories. These recent rulings effectively wind back the gains made in the Mabo case of 1992, and return the values of terra nullius.

The national body established to protect human rights in Australia, the Human Rights and Equal Opportunity Commission (HREOC) has, like the Racial Discrimination Act, been ignored by the Australian Government in its findings.

The Working Group is not a complaints body, and my organization does not ask the Working Group to deal with this situation as a complaint. That has already been done by CERD.

We are presenting an update on the progress or lack of progress in Land Rights in Australia. We will be recommending in future interventions that the Working Group must now take up the challenge to pursue the establishment of a mechanism for Indigenous Peoples to register disputes with States over land, and to achieve an outcome which prevents discrimination against Indigenous Peoples, and promotes the Protection of our rights.

We are aware that the United Nations is reviewing the processes of the treaty bodies, and considering ways to make it easier for States to comply with the reporting requirements under the various human rights conventions. We believe there exists in the review process the opportunity to examine the access that Indigenous Peoples have to these mechanisms under the Conventions and, most importantly, to identify, develop or strengthen the means available to deal with and end acts of discrimination against Indigenous Peoples.