



CHAIRPERSON

WORKING GROUP ON INDIGENOUS POPULATIONS

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ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION (ATSIC)

"REVIEW OF DEVELOPMENTS IN AUSTRALIA"

GENEVA

JULY 1993

MADAM CHAIRPERSON,

DISTINGUISHED MEMBERS OF THE WORKING GROUP

INDIGENOUS BROTHERS AND SISTERS

LADIES AND GENTLEMEN

IT GIVES ME GREAT PLEASURE TO ADDRESS ONCE AGAIN THE WORKING GROUP.

THIS LAST YEAR, EVEN MORE THAN THE PREVIOUS ONE, HAS BEEN MARKED BY CONSTANT ACTIVITY IN INDIGENOUS AFFAIRS IN AUSTRALIA.

THE DEVELOPMENTS THAT I SPOKE OF HERE IN 1992 CONTINUE TO SHAPE ATSIK'S AGENDA, AND WILL FOR SOME YEARS TO COME.

### ATSIK

I AM HERE AS THE CHAIRPERSON OF THE ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION, A UNIQUE ORGANISATION FOUNDED IN MARCH 1990.

ATSIK COMBINES A REPRESENTATIVE STRUCTURE WITH DIRECT ADMINISTRATIVE, POLICY DEVELOPMENT AND ADVISING RESPONSIBILITIES.

IT IS AN INSTRUMENT OF INDIGENOUS SELF DETERMINATION. THROUGH ATSIK SINCE MANY OF THE DECISIONS THAT AFFECT ABORIGINAL AND TORRES STRAIT ISLANDER LIVES ARE NOW TAKEN BY INDIGENOUS PEOPLE THEMSELVES - BY A BOARD OF COMMISSIONERS OR BY ELECTED REGIONAL COUNCILLORS AROUND AUSTRALIA.

IT CANNOT BE TOO STRONGLY EMPHASISED THAT, WITHOUT EMPOWERMENT, THERE CAN BE NO GENUINE PROGRESS IN INDIGENOUS AFFAIRS.

WHEN I LAST SPOKE TO YOU I REVIEWED WHAT I THOUGHT WERE EXCITING DEVELOPMENTS IN INDIGENOUS AFFAIRS IN AUSTRALIA.

MANY OF THESE WERE DEVELOPMENTS THAT HAVE BEEN MADE POSSIBLE BY ATSIK, OR HAVE FLOWED NATURALLY FROM THE PHILOSOPHY WHICH THE COMMISSION EMBODIES.

THE VERY EXISTENCE OF ATSIK HAS SERVED TO HIGHLIGHT ABORIGINAL AND TORRES STRAIT ISLANDER ISSUES IN AUSTRALIA. AS AN INDIGENOUS-CONTROLLED ORGANISATION, THE COMMISSION ALSO HAS MORE LEGITIMACY AND CREDIBILITY THAN PREVIOUS BUREAUCRATIC ARRANGEMENTS.

ONE MEASURE OF THIS IS THE FACT THAT ATSIK HAS ATTRACTED INCREASED GOVERNMENT FUNDING TO ADDRESS ISSUES AFFECTING MY PEOPLE. IN 1992-93 THE COMMISSION'S BUDGET ALLOCATION WAS A\$ 834 m, 25 PER CENT MORE THAN IN THE PREVIOUS FINANCIAL YEAR. TOTAL COMMONWEALTH GOVERNMENT EXPENDITURE ON SPECIFIC INDIGENOUS PROGRAMS DURING THE YEAR WAS OVER A\$ 1 BILLION.

A SIGNIFICANT PROPORTION OF THIS SUM, HOWEVER, IS MONEY WHICH WOULD OTHERWISE HAVE BEEN PROVIDED BY MAINSTREAM GOVERNMENT

DEPARTMENTS IN AREAS SUCH AS HEALTH, HOUSING AND SOCIAL SECURITY.

IT MUST ALSO BE ACKNOWLEDGED THAT PROGRESS CANNOT BE JUDGED MERELY BY AMOUNTS OF MONEY ALLOCATED. IN MANY AREAS, OUTCOMES REMAIN POOR. THERE ARE A MULTITUDE OF REASONS FOR THIS: ADMINISTRATIVE, STRUCTURAL, CULTURAL AND POLITICAL. IT IS HOPED THAT ATSIK, WHICH IS AFTER ALL ONLY IN ITS THIRD YEAR, WILL SEEK THROUGH ITS OWN EVOLVING SYSTEMS AND STRUCTURES CONTINUED IMPROVEMENTS IN THE EFFECTIVENESS OF ITS PROGRAMS.

NEVERTHELESS ATSIK'S INCREASED BUDGET IS VERY SIGNIFICANT. IT SIGNALS THAT WE HAVE SUPPORT AT THE HIGHEST LEVELS OF THE AUSTRALIAN GOVERNMENT, AND THAT INDIGENOUS ISSUES ARE BEING PLACED HIGH ON THE NATIONAL AGENDA.

ANOTHER PREOCCUPATION FOR ATSIK COMMISSIONERS THIS YEAR HAS BEEN REFORMING OUR OWN STRUCTURES - IN PARTICULAR, THROUGH A COMPREHENSIVE REVIEW OF THE ATSIK ACT, OUR FOUNDING LEGISLATION.

IN THIS PROCESS WE GAVE PARTICULAR ATTENTION TO EMPOWERMENT AND SELF DETERMINATION ISSUES, AS WELL AS TO THE ADMINISTRATIVE DIFFICULTIES THAT HAVE ARISEN FROM ATSIK'S COMPLEX STRUCTURE AND LEGISLATIVE RESTRICTIONS.

A FIRST ROUND OF CHANGES TO THE ACT HAS NOW BEEN LEGISLATED, RESULTING IN A REDUCTION IN THE NUMBER OF REGIONAL COUNCILS FROM 60 TO 36; PROVISION FOR 55 FULL-TIME PAID COMMISSIONERS AND REGIONAL COUNCIL CHAIRPERSONS; AND CHANGES TO THE COMPOSITION OF THE BOARD.

THE REVIEW OF THE ACT HAD PROPOSED A FULLY ELECTED BOARD, THAT IS, ONE WITH NO MINISTERIAL APPOINTMENTS. THIS PROPOSAL, THOUGH SUPPORTED BY THE COMMONWEALTH GOVERNMENT, WAS OVERTURNED IN THE SENATE. THERE THE OPPOSITION AND THE AUSTRALIAN DEMOCRATS INSISTED THAT TWO APPOINTED COMMISSIONERS SHOULD JOIN THE 17 ELECTED COMMISSIONERS, AND THAT THE MINISTER SHOULD CHOOSE THE CHAIRPERSON FROM AMONG THE 19 COMMISSIONERS.

A SECOND PACKAGE OF AMENDMENTS IS CURRENTLY BEING NEGOTIATED. THE MAIN THRUST OF THESE WILL BE TO GIVE MORE POWER AND ADMINISTRATIVE SUPPORT TO REGIONAL COUNCILS - IN OTHER WORDS, A SIGNIFICANT DEVOLUTION OF POWER TO SOME 600 ELECTED INDIGENOUS REPRESENTATIVES AROUND AUSTRALIA.

THE AMENDMENTS WILL ALSO REMOVE MANY OF THE LEGISLATIVE RESTRICTIONS ON THE DECISION-MAKING POWERS OF THE ATSIK BOARD. IN THE NEXT YEAR ATSIK WILL DEVELOP FURTHER AS A VEHICLE FOR SELF-DETERMINATION, AND FOR CONTROL OVER OUR OWN AFFAIRS. THE INDEPENDENCE WHICH ATSIK HAS DISPLAYED BOTH WITHIN AUSTRALIA AND AT THIS FORUM WILL BE CONFIRMED.

ATSIK HAS ALSO HAD WHAT I COULD DESCRIBE AS A CHANGE IN STATUS. IT HAS BEEN TAKEN FROM WITHIN THE EMPLOYMENT, EDUCATION AND TRAINING PORTFOLIO AND PLACED IN THE PRIME MINISTER'S OWN DEPARTMENT.

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

ATSIC IS NOW ADMINISTERING A LARGE PART OF THE COMMONWEALTH GOVERNMENT'S A\$ 400 m RESPONSE TO THE REPORT OF THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY, ANNOUNCED IN TWO STAGES IN MARCH AND JUNE LAST YEAR.

THE ROYAL COMMISSION'S FINAL REPORT, PUBLISHED IN 1991, WAS THE MOST COMPREHENSIVE ANALYSIS OF THE STATE OF ABORIGINAL AUSTRALIA THAT HAS EVER BEEN UNDERTAKEN.

AMONG OTHER THINGS, IT UNDERLINED HOW INDIGENOUS PEOPLES' CONTINUING LOW SOCIO-ECONOMIC STATUS - OUR POVERTY, OUR HIGH UNEMPLOYMENT RATES, OUR UNDER-DEVELOPED COMMUNITIES, OUR LOW PARTICIPATION IN EDUCATION - IS REFLECTED IN APPALLINGLY HIGH RATES OF INCARCERATION.

THIS IN TURN RESULTED IN THE DEATHS OF 99 PEOPLE IN PRISON OR POLICE CUSTODY BETWEEN 1980 AND 1989. THESE 99 DEATHS WERE DIRECTLY INQUIRED INTO BY THE ROYAL COMMISSION.

THE ROYAL COMMISSION CONCLUDED THAT IN MANY CASES THESE DEATHS WERE CONTRIBUTED TO BY 'SYSTEM FAILURES OR ABSENCE OF DUE CARE' ON THE PART OF THOSE IN AUTHORITY - IN OTHER WORDS BY NEGLIGENCE ARISING OUT OF A CONTEMPT FOR OR INDIFFERENCE TOWARDS ABORIGINAL PEOPLE.

ABOVE ALL THE REPORT HIGHLIGHTED THE INSIDIOUS EFFECTS OF RACISM ON ABORIGINAL LIVES, AND OF THE BIAS IN AUSTRALIA'S INSTITUTIONS.

ADDRESSING THE SITUATION DESCRIBED IN THE ROYAL COMMISSION REPORT REPRESENTS A CONSIDERABLE CHALLENGE FOR GOVERNMENTS AND FOR ATSIC.

THE COMMONWEALTH'S A\$ 400 m WORTH OF FUNDING OVER FIVE YEARS IS DESIGNED TO ADDRESS BOTH THE MORE IMMEDIATE CAUSES OF CUSTODIAL DEATHS AND THE PROFOUND DISADVANTAGE THAT BRINGS TOO MANY INDIGENOUS PEOPLE INTO CONTACT WITH THE JUSTICE SYSTEM.

IN THE 1992-93 FINANCIAL YEAR A\$ 40 m OF THE NEW ROYAL COMMISSION MONEYS HAS BEEN MADE AVAILABLE FOR A RANGE OF ACTIVITIES, INCLUDING:

- \* ADDITIONAL SUPPORT TO ABORIGINAL LEGAL SERVICES;
- \* SUPPORT FOR INNOVATIVE COMMUNITY-BASED ACTION TO PREVENT ALCOHOL AND DRUG ABUSE, PARTICULARLY AMONG YOUNG PEOPLE;
- \* THE SETTING UP OF YOUTH BAIL HOSTELS AS AN ALTERNATIVE TO POLICE CUSTODY;
- \* REFORMS TO POLICING AND CUSTODIAL ARRANGEMENTS, INCLUDING CULTURAL AWARENESS PROGRAMS; AND
- \* INCREASED FUNDING FOR EMPLOYMENT AND ECONOMIC DEVELOPMENT PROGRAMS, INCLUDING LAND ACQUISITION.

A FURTHER DEVELOPMENT THIS YEAR HAS BEEN THE APPOINTMENT - AS A RESULT OF A ROYAL COMMISSION RECOMMENDATION - OF AN ABORIGINAL

AND TORRES STRAIT ISLANDER SOCIAL JUSTICE COMMISSIONER, MR. MICK DODSON, WITHIN AUSTRALIA'S HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION. IT IS AN APPOINTMENT WHICH ATSIK WELCOMES.

MR. DODSON WILL PRODUCE AN ANNUAL STATE OF THE NATION REPORT WHICH, AMONG OTHER THINGS, WILL LOOK AT COMPLIANCE WITH AUSTRALIA'S INTERNATIONAL HUMAN RIGHTS COMMITMENTS, AND AT PROGRESS IN ACHIEVING SELF DETERMINATION AND LAND RIGHTS. IN SHORT, THE REPORT WILL MONITOR AUSTRALIA'S PERFORMANCE, BOTH NATIONALLY AND INTERNATIONALLY, IN THE AREA OF INDIGENOUS HUMAN RIGHTS.

### RECONCILIATION

LAST YEAR I ALSO REFERRED TO THE FOUNDING OF THE COUNCIL FOR ABORIGINAL RECONCILIATION, WHICH FIRST MET IN FEBRUARY 1992.

IT IS HOPED THAT THE PROCESS OF RECONCILIATION WILL ADDRESS SOME OF THE MORE INTANGIBLE ASPECTS AFFECTING THE STATUS OF INDIGENOUS PEOPLE IN AUSTRALIA, SUCH AS THE RACISM THAT THE ROYAL COMMISSION FOUND TO BE SO PERVASIVE.

THE COUNCIL'S GREAT MISSION IS TO BRING NON-ABORIGINAL AUSTRALIANS TO A BETTER UNDERSTANDING OF ABORIGINAL AUSTRALIANS BY TELLING THEM ABOUT ABORIGINAL HISTORY, CULTURES, DISPOSSESSION AND OUR CONTINUING DISADVANTAGE.

IT IS A MISSION TO CHANGE THE VERY ENVIRONMENT IN WHICH WE LIVE, TO CHALLENGE THE ASSUMPTIONS THAT ARE TOO READILY MADE BY NON-ABORIGINAL AUSTRALIANS, AND TO COUNTER THE STEREOTYPES WHICH ARE TOO EASILY ADOPTED.

THE PROCESS IS NECESSARILY A LONG-TERM ONE. IT WILL IDEALLY CONCLUDE IN 2001, THE CENTENARY OF AUSTRALIAN FEDERATION.

IN ADDITION TO ITS PUBLIC EDUCATION AND COMMUNITY CONSULTATION PROGRAMS, THE RECONCILIATION COUNCIL HAS ESTABLISHED A NUMBER OF COMMITTEES AIMED AT CREATING UNDERSTANDING AND CLEAR COMMUNICATION BETWEEN ABORIGINAL AND TORRES STRAIT COMMUNITIES AND VARIOUS INDUSTRY SECTORS - IN PARTICULAR THE MINING INDUSTRY AND THE PASTORAL INDUSTRY.

THESE INDUSTRIES HAVE BEEN TARGETED BECAUSE THEY OPERATE IN MANY OF THE MORE REMOTE AREAS OF AUSTRALIA WHERE ABORIGINAL PEOPLE ARE LIKELY TO FORM A HIGHER PROPORTION OF THE LOCAL POPULATION, OR EVEN WHERE ABORIGINAL PEOPLE MAY OWN, OR HAVE CLAIMS ON, THE LAND.

### THE HIGH COURT DECISION ON NATIVE TITLE

THIS LAST POINT BRINGS ME TO THE MOST IMPORTANT DEVELOPMENT OF 1992 - THE HIGH COURT DECISION ON NATIVE TITLE, USUALLY REFERRED TO AS THE MABO JUDGEMENT. I MENTIONED THIS BRIEFLY AT OUR LAST MEETING. THEN WE WERE AWARE OF ITS GREAT POLITICAL AND SYMBOLIC IMPORTANCE, ITS HISTORIC IMPORTANCE.

NOW WE ARE GRAPPLING AS A NATION WITH HOW TO GIVE EFFECT TO THE PRINCIPLES SET OUT IN THE JUDGEMENT.



IN AUSTRALIA, MABO HAS BECOME A HOUSEHOLD WORD.

THE NAME ITSELF BELONGS TO EDDIE MABO, WHO DIED BEFORE THE JUDGEMENT WAS HANDED DOWN. IN 1982 HE AND FOUR OTHER PEOPLE FROM MURRAY ISLAND IN THE TORRES STRAIT INSTITUTED PROCEEDINGS IN THE HIGH COURT TO CONFIRM THEIR TRADITIONAL LAND RIGHTS.

TEN YEARS LATER THEIR CLAIMS WERE UPHELD. IN EFFECT THE COURT OVERTHREW THE DOCTRINE OF "TERRA NULLIUS" UNDER WHICH AUSTRALIA HAD BEEN SETTLED BY EUROPEANS. TERRA NULLIUS IS LATIN FOR "NO ONE'S LAND". FROM 1788 TILL 1992, IT WAS ASSUMED IN LAW THAT, UNTIL THE ARRIVAL OF EUROPEANS AND DESPITE THE PRESENCE OF INDIGENOUS PEOPLES, AUSTRALIA HAD BEEN VACANT AND UNOCCUPIED.

IT WAS A CONVENIENT LEGAL FICTION AND A CRUEL RE-WRITING OF THE HISTORY OF DISPOSSESSION. WE ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES, WITH OUR DEEP ATTACHMENT AND SPIRITUAL RELATIONSHIP TO OUR LAND, NEVER ACCEPTED IT.

THE HIGH COURT DECISION AT LAST BROUGHT AUSTRALIA INTO LINE WITH OTHER COUNTRIES - SUCH AS NEW ZEALAND, CANADA, AND THE USA - WHO HAVE A SIMILAR COLONIAL HISTORY AND LEGAL BACKGROUND, BUT WHICH HAVE RECOGNISED NATIVE TITLE TO LAND FOR A LONG TIME, IN THE CASE OF CANADA SINCE 1763.

WHILE LAYING DOWN GENERAL PRINCIPLES, THE HIGH COURT DID NOT GIVE ANY GUIDANCE AS TO HOW THESE PRINCIPLES MIGHT BE PUT INTO PRACTICE. SOME GROUPS IN AUSTRALIA POINT TO THE "UNCERTAINTIES" WHICH THE DECISION HAS BROUGHT TO AUSTRALIA'S SYSTEM OF LAND TENURE. OTHERS, INCLUDING SOME STATE PREMIERS, HAVE SOUGHT TO TRANSLATE THAT UNCERTAINTY INTO FEAR FOR SHORT-TERM POLITICAL GAIN.

MOST OF THESE UNCERTAINTIES ARE OVERSTATED. THE DECISION IS IN MANY RESPECTS QUITE LIMITED. IT ESTABLISHES THAT INDIGENOUS AUSTRALIANS MAY HAVE RIGHTS IN THEIR TRADITIONAL LAND, BUT ONLY SO LONG AS THAT LAND HAS NOT BEEN ALIENATED BY GOVERNMENTS AND ONLY WHERE THEY HAVE MAINTAINED CONTINUING LINKS WITH THAT LAND UNDER TRADITIONAL LAW. IMPORTANT THOUGH THE DECISION IS LEGALLY AND POLITICALLY IT IS ESSENTIALLY CONSERVATIVE AND RESTRICTIVE.

THE HIGH COURT DID FIND THAT NATIVE TITLE IS TO A CERTAIN EXTENT PROTECTED BY AUSTRALIA'S RACIAL DISCRIMINATION ACT 1975. THIS ACT ENSURES THAT, TO EXTINGUISH NATIVE TITLE, GOVERNMENT MUST NOW FOLLOW THE PROCEDURES APPLYING TO THE EXTINGUISHMENT OF OTHER INTEREST IN LAND. TO EXTINGUISH NATIVE TITLE ALONE WOULD BE RACIALLY DISCRIMINATORY. THAT IS WHY OUR PEOPLES WILL FIGHT STRONGLY TO RETAIN THAT ACT UNAMENDED.

HOWEVER, A MAJORITY OF ABORIGINAL AUSTRALIANS CANNOT BENEFIT DIRECTLY FROM MABO. THIS IS BECAUSE IN THE PAST THEY HAVE BEEN DISPOSSESSED - THEIR LAND HAS BEEN ALIENATED, THEIR TIES HAVE BEEN BROKEN AND THEIR TRADITIONAL LAND LORE HAS BEEN LOST.

NEVERTHELESS, THE SYMBOLIC IMPORTANCE OF THE DECISION HAS AROUSED CONSIDERABLE EXPECTATIONS AMONG INDIGENOUS AUSTRALIANS WHEREVER THEY MAY LIVE. THE MABO JUDGEMENT IS SEEN AS A VINDICATION OF OUR POSITION, WE WHO HAVE ALWAYS REGARDED "TERRA NULLIUS" AS THE

FUNDAMENTAL INJUSTICE UPON WHICH AUSTRALIA WAS BUILT.

ABOVE ALL MABO BEGS THE QUESTION - WHAT ABOUT THE DISPOSSESSED? WHAT ABOUT THOSE WHOSE RIGHTS, NOW AT LAST RECOGNISED BY AUSTRALIA'S COMMON LAW, WERE SO THOROUGHLY IGNORED IN THE PAST?

THE CHALLENGE FOR ATSIAC IS TO ENSURE THAT REAL BENEFITS ARE ACHIEVED FOR ALL AUSTRALIA'S INDIGENOUS PEOPLES AS A RESULT OF THE JUDGEMENT - AND NOT JUST THOSE PEOPLES, MOSTLY IN REMOTE AREAS, WHO CAN PROVE NATIVE TITLE TO THEIR LAND.

THERE IS A UNITY AMONG AUSTRALIA'S INDIGENOUS PEOPLES WHICH REFUSES TO ACCEPT THAT SOME ABORIGINAL AND TORRES STRAIT ISLANDERS WILL BENEFIT BY A LEGAL RECOGNITION OF OUR HISTORY WHILE OTHER WILL BE DENIED. WE CANNOT - WILL NOT - TOLERATE DISTINCTIONS OF STATUS AMONG OUR PEOPLES.

THE CHALLENGE FOR GOVERNMENTS IS TO COME UP WITH A COMPREHENSIVE RESPONSE WHICH, WHILE TAKING INTO ACCOUNT CONFLICTING INTERESTS, ACTIVELY SEEKS TO REDRESS TWO CENTURIES OF INJUSTICE.

TO DO THIS THE COMMONWEALTH GOVERNMENT INITIATED A CONSULTATION PROCESS IN OCTOBER LAST YEAR, OVERSEEN BY A MINISTERIAL COMMITTEE.

ATSIAC MADE ITS VIEWS KNOWN DURING THESE CONSULTATIONS. AMONG OTHER THING THE COMMISSION CALLED FOR A STREAMLINED PROCESS TO DETERMINE NATIVE TITLE CLAIMS, AND HIGHLIGHTED THE LAND NEEDS OF THE DISPOSSESSED.

NATIONAL LAND RIGHTS LEGISLATION, INCREASED FUNDING FOR LAND ACQUISITION, A COMPENSATION FUND - ALL ARE NECESSARY. THIS IS BECAUSE DISPOSSESSION LIES AT THE HEART OF OUR PROBLEMS. IT IS A MAJOR CAUSE OF OUR SOCIO-ECONOMIC DISADVANTAGE. THIS HAS BEEN ACKNOWLEDGED IN INNUMERABLE GOVERNMENT REPORTS, INCLUDING THAT OF THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY.

ON 3 JUNE THIS YEAR, THE FIRST ANNIVERSARY OF THE DECISION, THE COMMONWEALTH GOVERNMENT RELEASED A DISCUSSION PAPER BASED ON ITS CONSULTATIONS.

ATSIAC HAS RESERVATIONS ABOUT THIS DOCUMENT. TO AN UNACCEPTABLE EXTENT IT TREATS MABO AS A LAND MANAGEMENT ISSUE, RATHER THAN AN ISSUE OF INDIGENOUS HUMAN RIGHTS. WE ARE WORRIED THAT THE RACIAL DISCRIMINATION ACT MAY YET BE AMENDED UNDER THE GUIDE OF MAINTAINING ITS "INTEGRITY". WE WANT THE RIGHT OF CONSENT OVER DEVELOPMENTS ON NATIVE TITLE LAND. AND WE WANT THE SOCIAL AND ECONOMIC DISADVANTAGES WHICH HAVE RESULTED FROM DISPOSSESSION TO BE VIGOROUSLY ADDRESSED.

THE DISCUSSION PAPER WAS TAKEN TO A SPECIAL MEETING BETWEEN THE COMMONWEALTH AND AUSTRALIA'S VARIOUS STATES AND TERRITORIES ON 8 JUNE. THIS MEETING, HOWEVER, FAR FROM ARRIVING AT A CONSISTENT NATIONAL POSITION, BROKE UP IN DISARRAY.

TOO MANY HEADS OF STATE GOVERNMENTS HAVE SOUGHT TO MAKE POLITICAL CAPITAL OUT OF THE COMPLEXITIES OF MABO. NATIVE TITLE IS DEPICTED AS THREATENING NATIONAL ECONOMIC DEVELOPMENT. ITS MORE

EXTREME OPPONENTS WOULD LIKE IT LEGISLATED OUT OF EXISTENCE.

AND OUR CASE HAS NOT BEEN HELPED BY SOME ABORIGINAL GROUPS WHO HAVE RECENTLY LODGED EXTRAVAGANT AND UNREALISTIC LAND CLAIMS.

IF THE SEEDS OF FEAR ARE SOWN THEN ALL AUSTRALIANS - NOT LEAST INDIGENOUS PEOPLES - WILL REAP A HARVEST OF DESPAIR. AUSTRALIANS, TOGETHER, MUST NOT ALLOW THAT TO OCCUR.

THE MABO JUDGMENT HAS BROUGHT INDIGENOUS ISSUES TO THE FOREFRONT OF NATIONAL AFFAIRS. AND SOME PEOPLE, AS ALWAYS, DON'T LIKE IT.

THERE IS A GREAT DEAL OF MISINFORMATION BEING DISTRIBUTED. SOME APPEARS TO BE PURPOSEFUL DISINFORMATION. ATSIK IS DOING ITS BEST TO COUNTER THIS. WE HAVE OPENED A TELEPHONE HOTLINE ON MABO. WE HAVE ALREADY SENT OUR MORE THAN 6,000 KITS EXPLAINING THE JUDGEMENT AND REBUTTING SOME OF THE MORE PERVASIVE MYTHS THAT HAVE ARISEN. WE HAVE ALSO BEEN TALKING DIRECTLY TO THE MEDIA.

I UNDERSTAND THAT THE COMMONWEALTH HAS NOW DRAFTED INSTRUCTIONS FOR LEGISLATION WHAT WILL GIVE EFFECT TO NATIVE TITLE, AS WELL AS VALIDATE OTHER EXISTING TITLES.

THE PRIME MINISTER, MR. KEATING, IS CURRENTLY HOLDING INDIVIDUAL DISCUSSIONS WITH STATE PREMIERS AND TERRITORY CHIEF MINISTERS IN AN ATTEMPT TO NEGOTIATE A WAY FORWARD.

MADAME CHAIRPERSON, ATSIK DOES NOT DOUBT THE PRIME MINISTER'S COMMITMENT TO ACHIEVING A PROPER OUTCOME FROM THE MABO JUDGEMENT. HIS PUBLIC STATEMENTS HAVE BEEN UNEQUIVOCAL.

HOWEVER, I DO WANT TO BE QUITE EXPLICIT, AT THIS INTERNATIONAL FORUM, ABOUT WHAT ATSIK BELIEVES TO BE A PROPER OUTCOME. YOU WILL NOTE THAT OUR VIEW REFLECTS THE PROPOSITIONS PUT FORWARD IN THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES, WHICH HAVE BEEN CONSIDERED SO CAREFULLY OVER THE LAST WEEK.

IT IS IMPERATIVE THAT THE LEGISLATIVE RESPONSE TO MABO CONTAIN FOUR ELEMENTS:

FIRST, IT MUST RECOGNISE THE SPECIAL ATTACHMENT OF AUSTRALIA'S INDIGENOUS PEOPLES TO THEIR LAND, NOT JUST TO THEIR SACRED SITES;

SECOND, IT MUST MAKE PROVISION FOR CONSENT RIGHTS WHICH RECOGNISE THAT SPECIAL ATTACHMENT TO NATIVE TITLE LAND;

THIRD, ON THE BASIS OF THE NEED TO GIVE CONSENT, NATIVE TITLE HOLDERS MUST BE FREE TO NEGOTIATE THE DEVELOPMENT OF THEIR LAND AS FULL PARTNERS; AND

FOURTH, THE LEVEL OF COMPENSATION FOR ANY EXTINGUISHMENT OR IMPAIRMENT OF NATIVE TITLE MUST BE ASSESSED BY AN INDEPENDENT TRIBUNAL, TAKING INTO ACCOUNT THAT SPECIAL ATTACHMENT.



IT IS EQUALLY IMPORTANT THAT THE COMMONWEALTH GOVERNMENT'S RESPONSE GO BEYOND LAND MANAGEMENT CONSIDERATIONS AND SEEK TO REDRESS SOCIAL JUSTICE FOR THOSE DISPOSSESSED ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES WHO WILL NOT BE ABLE TO PROVE NATIVE TITLE.

ATSIC WELCOMES THE FACT THAT THE PRIME MINISTER HAS NOW DETERMINED TO DEVELOP A "SOCIAL JUSTICE PACKAGE". BUT UNTIL WE HAVE FIRM COMMITMENTS ON BOTH THE CONTEXT AND TIMING OF THAT PACKAGE ATSIC REMAINS CONCERNED THAT SOCIAL JUSTICE TO INDIGENOUS PEOPLES WILL BE SEEN AS A LOWER PRIORITY THAN ECONOMIC CERTAINTY TO DEVELOPERS.

FINALLY, IT IS IMPORTANT TO ATSIC THAT THE COMMONWEALTH GOVERNMENT DOES NOT SEEK TO APPEASE THE STATE GOVERNMENTS AT THE EXPENSE OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES. HUMAN RIGHTS MUST COME BEFORE STATES RIGHTS. THE COMMONWEALTH GOVERNMENT MUST ASSERT STRONGLY AND UNEQUIVOCALLY ITS SPECIAL RESPONSIBILITY FOR ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS.

IN A SENSE MABO HAS BEEN THE AIR THAT WE HAVE BREATHED THIS YEAR, THE WAY THE ROYAL COMMISSION WAS LAST YEAR. IT HAS PROVIDED A NEW CONTEXT, A NEW LEGAL FRAMEWORK, A NEW URGENCY, FOR MANY INDIGENOUS ISSUES.

IN AUSTRALIA, TODAY, WE ARE ALL 100 % MABO !

THE JUDGEMENT HAS ALSO HIGHLIGHTED A FURTHER ISSUE - SELF-GOVERNMENT WITHIN THE NATION FOR CERTAIN INDIGENOUS GROUPS. THE PEOPLE OF THE TORRES STRAIT ARE CURRENTLY DISCUSSING THIS ISSUE, CONSIDERING MODELS FROM ELSEWHERE IN AUSTRALIA AND OVERSEAS. MY COLLEAGUE, COMMISSIONER GEORGE MYE FROM THE TORRES STRAIT, WILL BE SPEAKING ABOUT THIS IMPORTANT TOPIC IN MORE DEPTH.

#### **MARALINGA**

RECENTLY, ANOTHER LONG-RUNNING, LAND-RELATED ISSUE HAS REACHED AN OUTCOME OF SORTS. IN THE 1950s AND 1960s BRITISH NUCLEAR TESTING IN THE MARALINGA LANDS OF REMOTE SOUTH AUSTRALIA RESULTED IN WIDESPREAD CONTAMINATION OF LARGE AREAS, CONTAMINATION THAT HAS RENDERED THE LAND UNUSABLE BY ITS TRADITIONAL OWNERS. THESE PEOPLES HAVE BEEN AGITATING FOR A CLEAN-UP AND FOR COMPENSATION. THE AUSTRALIAN GOVERNMENT HAS IN TURN BEEN NEGOTIATING WITH THE BRITISH GOVERNMENT TO ACKNOWLEDGE RESPONSIBILITY AND TO CONTRIBUTE FINANCIALLY TO THE CLEAN-UP.

IN JUNE THIS YEAR, AFTER TALKS WITH AUSTRALIAN MINISTERS, THE BRITISH GOVERNMENT OFFERED A\$ 45.25 MILLION TOWARDS THE A\$ 100 MILLION NEEDED TO DECONTAMINATE SOME OF THE TEST SITES. IN OUR OPINION THIS A WELCOME, BUT ONLY PARTIAL, RESPONSE TO THE SITUATION. THE ISSUE OF COMPENSATION HAS NOT YET BEEN ADDRESSED.

#### **CONCLUSION: A NEW SENSE OF NATIONAL IDENTITY**

EARLIER I MENTIONED THAT ABORIGINAL AND TORRES STRAIT ISLANDER ISSUES HAD BEEN MOVED TO THE PRIME MINISTER'S PORTFOLIO. IT IS

MY EARNEST HOPE THAT THIS REFLECTS THE PRIME MINISTER'S PERSONAL COMMITMENT TO ACHIEVING SOCIAL JUSTICE FOR INDIGENOUS AUSTRALIANS. IF SO IT MEANS THAT WE NOW HAVE THE MOST POWERFUL VOICE IN THE NATION SPEAKING FOR US.

CERTAINLY AT PUBLIC FORUMS MR. KEATING HAS RECENTLY MADE MANY INSPIRATIONAL STATEMENTS ON INDIGENOUS AFFAIRS.

IN A GROUND-BREAKING SPEECH AT THE AUSTRALIAN LAUNCH OF THE INTERNATIONAL YEAR OF THE WORLD'S INDIGENOUS PEOPLE IN REDFERN LAST DECEMBER, MR. KEATING SPOKE ON THE NEED TO BRING THE DISPOSSESSED OUT OF THE SHADOWS, TO RECOGNISE THAT THEY ARE PART OF US, AND THAT WE CANNOT GIVE INDIGENOUS AUSTRALIANS UP WITHOUT GIVING UP MANY OF OUR OWN MOST DEEPLY HELD VALUES..."

IN ANOTHER KEYNOTE SPEECH MR. KEATING LINKED A PROPER OUTCOME FROM THE MABO JUDGEMENT WITH RECONCILIATION, AND I QUOTE:

"MABO PRESENTS US WITH A MORE SUBSTANTIAL AND BINDING BASIS FOR RECONCILIATION - A LEGAL AND HISTORICAL BASIS... WE NOW HAVE A CHANCE TO DO SOMETHING REAL. BECAUSE LAND GOES TO THE CORE OF THE DISPOSSESSION, MABO MAY HAVE THE POTENTIAL TO WORK THE MIRACLE".

IN HIS REDFERN SPEECH MR. KEATING CALLED FOR A LARGE EFFORT OF UNDERSTANDING, OF LEARNING, AND OF IMAGINATION ON THE PART OF NON-INDIGENOUS AUSTRALIANS.

AND IT SEEMS TO ME THAT AN ENVIRONMENT IS DEVELOPING IN OUR COUNTRY THAT WILL ASSIST THIS. PARTICULARLY IN THE LIGHT OF THE HIGH COURT DECISION ON NATIVE TITLE. IT IS A TIME OF HOPE. AUSTRALIA IS PRESENTLY ENGAGED IN AN EFFORT TO REDEFINE ITSELF AS A NATION, TO SET NEW DIRECTIONS FOR THE FUTURE.

UNLESS THE PROCESS OF RECONCILIATION IS SUCCESSFUL THIS VISION OF NATIONAL RECONSTRUCTION CANNOT BE ACHIEVED. THE RICHNESS VITALITY AND DIVERSITY OF ABORIGINAL AND TORRES STRAIT ISLANDER CULTURES NEED TO BE FULLY ACCEPTED. THE HISTORICAL TRUTH OF THE DISPOSSESSION UPON WHICH AUSTRALIA'S DEVELOPMENT WAS BUILT NEEDS TO BE RECOGNISED, NOT AS A MATTER OF GUILT BUT AS A BASIS OF GENUINE RECONCILIATION.

SUCH RECONCILIATION CANNOT BE ACHIEVED BY A PROCESS OF COMMUNITY EDUCATION AND IMPROVED EDUCATIONAL CURRICULA ALONE. IT REMAINS ATSC'S VIEW THAT IT WILL BE NECESSARY TO DEVELOP A FORMAL INSTRUMENT OF RECONCILIATION BETWEEN THE AUSTRALIAN COMMONWEALTH GOVERNMENT AND AUSTRALIA'S INDIGENOUS PEOPLES.

IT WILL ALSO BE NECESSARY TO ACHIEVE CONSTITUTIONAL REFORM. WE ARE APPROACHING THE YEAR 2001, THE CENTENARY OF THE AUSTRALIAN FEDERATION AND OF OUR CONSTITUTION. WE ARE ALREADY ACTIVELY EXAMINING THE RELEVANCE OF THE CONSTITUTION AS A REFLECTION OF AUSTRALIAN SOCIETY TODAY AND AUSTRALIA'S NEW PLACE IN THE WORLD. I, MYSELF, AM DIRECTLY INVOLVED IN EXAMINING THE POSSIBILITY OF AUSTRALIA BECOMING A REPUBLIC WITHIN THE COMMONWEALTH, SYMBOLICALLY LOOSENING OUR TIES WITH AN OLD WORLD WHICH COLONISED AUSTRALIA'S INDIGENOUS PEOPLES.

EQUALLY IMPORTANT TO ABORIGINAL AND TORRES STRAIT ISLANDERS, THE AUSTRALIAN CONSTITUTION NEEDS TO BE AMENDED TO ACKNOWLEDGE, IN A POSITIVE AND UNAMBIGUOUS MANNER, THAT INDIGENOUS PEOPLES LIVED ON OUR GREAT CONTINENT FOR AT LEAST 50,000 YEARS BEFORE EUROPE "DISCOVERED" AND DISPOSSESSED US.

AS IT STANDS, OUR CONSTITUTION DOES NOT MENTION ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE AT ALL. WE ASK THAT IT SPECIFICALLY ACKNOWLEDGE OUR SPECIAL STATUS AS THE FIRST AUSTRALIANS, AS THE ORIGINAL OWNERS OF THE LAND.

AT THE MOMENT, IN THIS INTERNATIONAL YEAR OF THE WORLD'S INDIGENOUS PEOPLE, OUR POSITION CONTINUES TO BE AN AMBIGUOUS ONE. THE POSITIVES AND THE NEGATIVES ARE PRECARIOUSLY BALANCED. THE QUESTION IS: WHICH WILL DOMINATE?

WE LIVE IN A TIME OF GREAT CHANGE, OF GREAT CHALLENGE, OF GREAT PROMISE WITHIN AUSTRALIA.

I CAN ONLY HOPE THAT THE PROMISES OF THE PRESENT WILL TRANSLATE INTO A BETTER FUTURE FOR MY PEOPLE.

THANK YOU