



Recommendations for a Treaty between the Government
and the Indigenous Aboriginal People of Australia

Madame Chairperson, Members of the Working Group,

I am speaking on behalf of the Minority Rights Group, a London-based human rights research organization which includes in its work the conditions of Indigenous Peoples.

The subject of this submission is the legal validity of the claim to ancestral land, physically taken through European conquest, by the Aboriginal people of Australia. Two hundred years after European "discovery" Australia remains the only former British colonial possession which does not recognize the land rights of its Indigenous People through a treaty. Recently the Prime Minister of Australia has indicated a willingness to do so. M.R.G. strongly encourages the negotiation of a national treaty. Such a treaty is supported by historical land claims as well as both domestic and international law.

Today the Aboriginals represent 1.5% of the Australian population. When whites arrived in 1788 they encountered a culture that preceded them by 40,000 years. The Aboriginals had a system of law and society shaped to the contours of the land. That land was also intimately related to their religion.

Perhaps a million and a half Indigenous People inhabited the whole of Australia when whites "discovered" it. The Aboriginal population, however, was decimated by European disease and genocidal assault. Furthermore, Aboriginals were stripped of their land rights.

Because land continues to be the well-spring of Aboriginal sustenance and society, the effects of the loss of those rights is evident today. The indigenous infant mortality rate is four times the white rate. One in four Aboriginals dies before age 30, compared to one in fourteen for Euro-Australians. In the mid-eighties only 4% of the indigenous minority were educated beyond the third form of secondary education (about 15 years of age). Aboriginal

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unemployment is nine times that of the majority population. Indigenous People suffer in housing as well. Urban Aboriginals occupy the worst housing stock, while Aboriginals in rural towns often live in shacks offering a semblance of shelter without basic sanitation facilities.

Indigenous People have tried to improve their conditions by reclaiming their land and its abundant mineral resources. They sought redress from the courts. Notwithstanding some judicial victories, the courts maintain that Australia was settled as terra nullius, an uninhabited and uncultivated land, free for the taking under British common law. Aboriginals as the descendants of inhabitants of an ostensibly uninhabited land did not inherit original title. History and anthropology make it clear, however, that there was a fairly large Aboriginal society present in 1788. Moreover, it is apparent that the land and the people were violently conquered. Vanquished people retain ownership of their land unless otherwise specified by treaty or royal proclamation under common law.

Australian law and the government can provide a remedy for Aboriginal claims. A 1967 referendum amended section 51 of the constitution to empower the federal government to legislate for Aboriginals. In 1975 the Senate, the federal upper house, passed a resolution recognizing original indigenous ownership of Australia. During the early 1980's there was an attempt to enact national land rights legislation. Recently, Prime Minister Robert Hawke called for a national treaty to be signed by 1990.

A legally binding agreement would do much to reverse the arbitrary deprivation of property proscribed by Article 17 of the U.N. Declaration of Human Rights. Furthermore, a treaty could insure that Aboriginals could practice their land-based religion without mining companies illegally desecrating their sacred sites. The religious freedom guaranteed to Aboriginals by Article 18 of the U.N. Convention on Civil and Political Rights would enjoy some protection by a treaty safeguarding the land.

M.R.G., based on legitimate Aboriginal land claims, calls on the Australian government to take the following steps:

1. A commission of government officials, Aboriginal leaders, and international experts in treaty law should be formed. This body should draft a treaty and a timetable for enactment.
2. Any treaty draft should draw upon the best features of Indigenous People's treaties elsewhere. Moreover, it should provide for the restoration of land; the authority to control resource development to insure the provision of employment; and some self-management of government programs for Aboriginals.
3. Prior to a constitutional referendum, the government and the Aboriginal community should initiate a yearlong campaign to educate the electorate about Aboriginal land rights. A moderate budget should be allotted to conduct local public forums through out the nation. Through public discussions with Aboriginal and non-Aboriginal citizens misperceptions about a treaty may be reduced and create grassroots support. The input of all sectors of Australian society should be solicited. This input, however, should not undercut the substance of the treaty.
4. Government and the Aboriginal community should create an independent body headed by Aboriginals to monitor and insure that mineral revenues are efficiently used to provide employment, educational, social, or cultural programs.