29DKNO885

Working Paper No. 4/Addendum 1

E/CN.4/Sub.2/AC.4/1985/WP.4/Add.1
5 July 1985

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of Discrimination and Protection of Minorities

Working Group on Indigenous Populations
Fourth Session
Geneva
29 July-2 August 1985

Items 4 and 5 of the provisional agenda

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS POPULATIONS

STANDARD-SETTING ACTIVITIES:

EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS
DRAFTING OF A BODY OF PRINCIPLES ON INDIGENOUS RIGHTS, BASED ON RELEVANT NATIONAL LEGISLATION, INTERNATIONAL INSTRUMENTS AND OTHER JURIDICAL CRITERIA

Material received from non-governmental organizations in consultative status with the Economic and Social Council

Page

Four Directions Council 2

International Fellowship of Reconciliation 13

Survival International 20

FOUR DIRECTIONS COUNCIL

[Original: English]
[30 May 1985]

SOURCES AND RECOMMENDATIONS FOR A DRAFT ARTICLE ON RIGHTS TO LAND

1. Resolution 1984/35(B), paras. 6-8, of the Sub-Commission on Prevention of Discrimination and Protection of Minorities mandates the Working Group on Indigenous Populations' consideration of a draft body of principles or declaration of rights. The work is to begin in 1985 with the issue of land rights.

2. This reply contains sources of texts within the United Nations system, including texts proposed by indigenous organizations, and a recommendation for review by interested Governments and organizations prior to the Working Group's 1985 session. An exchange of views in writing is encouraged. We will also organize an informal meeting of interested observers during the 41st session of the Commission on Human Rights at Geneva, February 1985, to seek consensus on a draft for submission to the Working Group in August.

3. Convention 107 (1957) of the International Labour Organisation provides:

> Article 11. The right of ownership, collective or individual, of the members of the population concerned over the lands which these populations traditionally occupy shall be recognized.
>
> Article 12. (1) The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations. (2) When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees. (3) Persons thus removed shall be fully compensated for any resulting loss or injury.
>
> Article 13. (1) Procedures for the transmission of rights of ownership and use of land which are established by the customs of the populations concerned shall be respected within the framework of national laws and regulations, in so far as they satisfy the needs of these populations and do not hinder their economic and social development. (2) Arrangements shall be made to prevent persons who are not members of the populations concerned from taking advantage of these customs or of lack of understanding of the laws on the part of the members of these populations to secure the ownership or use of the lands belonging to such members.

4. The Convention on the Elimination of All Forms of Racial Discrimination provides:

> Article 5. In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
>
> (d)(v) The right to own property alone as well as in association with others[.]

5. In the interpretation of the foregoing Convention's application to indigenous peoples, the 1978 World Conference to Combat Racism and Racial Discrimination (E.79.XIV.2)

> endorse[d] the right of indigenous peoples to maintain their traditional structure of economy and culture, including their language, and also recognize[d] the special relationship to their land and stresse[d] that land, land rights and natural resources should not be taken away from them.

The 1978 Conference's Programme of Action reiterated the right of indigenous peoples "to carry on within their areas of settlement their traditional economy and way of life," without derogating from their right "to participate freely on an equal basis in the economic, social and political development of the country."

6. In May 1982 the International Bank for Reconstruction and Development (the World Bank) stated the following policy in one of its publications:

> The Bank's policy is, therefore, to assist with development projects that do not involve unnecessary or avoidable encroachment onto territories used or occupied by tribal groups. Similarly, the Bank will not support projects on tribal lands, or that will affect tribal lands, unless the tribal society is in agreement with the objectives of the project, as they affect the tribe, and unless it is assured that the borrower has the capability of implementing effective measures to safeguard tribal populations and their lands against any harmful side effects resulting from the project. 1/

7. The International Covenant on Civil and Political Rights guarantees that:

> Article 1(2). All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

1/ Tribal Peoples and Economic Development, Human Ecology Considerations (Washington: World Bank, 1982), p.3.

8. The 1977 International NGO Conference on Discrimination Against Indigenous Populations adopted a Declaration of Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere, providing in part that:

> 8. Claims to territory. No State shall claim or retain, by right of discovery or otherwise, the territories of an indigenous nation or group, except such lands as may have been lawfully acquired by valid treaty or other cession freely made.

9. A statement containing Principles for Guiding the Deliberations of the Working Group on Indigenous Populations, submitted to the Working Group's 1st session with the endorsement of a number of indigenous organizations and transmitted to the Sub-Commission with its report (E/CN.4/Sub.2/1982/33), proposed that:

> 3. Indigenous peoples shall not be deprived of their rights of claims to land, property, or natural resources, without their free and informed consent. No State shall claim or retain, by right of discovery or otherwise, the territories of indigenous peoples, except such land as may have been lawfully acquired by valid treaty or other cession freely made. In no circumstance shall indigenous peoples or groups be subjected to discrimination with respect to their rights or claims to land, property, or natural resources.

> 4. Indigenous peoples shall be free from any action or course of conduct which directly or indirectly may result in the destruction or deterioration of land, air, water, wildlife, habitat, or other natural resources.

10. At the same session of the Working Group, the World Council of Indigenous Peoples introduced a draft International Covenant on the Rights of Indigenous Peoples, Part III of which provides:

> Article 1. Indigenous Peoples are entitled to the lands they use and to the protection of the extent of use in areas where the use of land is shared in a compatible manner with others, and to those parts of their traditional lands which have never been transferred out of their control by a process involving their free consent.

> Article 2. The need to protect the integrity of the lands of an Indigenous People is recognized. The land rights of an Indigenous People include surface and subsurface rights, full rights to interior and coastal waters and rights to adequate and exclusive coastal economic zones.

> Article 3. All Indigenous Peoples may, for their own ends, freely use and dispose of their natural wealth and resources, without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law. In no case may a people or a component unit of a people be deprived of its own means of subsistence.

> Article 4. Where an Indigenous People have an economy reliant in whole or in part on hunting, fishing, herding, gathering or cultivation, they have the right to the territory and the waters used and needed for those

> pursuits. States are bound to respect such territories and waters and not act or authorize acts which could impair the ability of such lands and waters to continue in such use.

11. At the Working Group's 3rd session, it was the consensus of indigenous participants (E/CN.4/Sub.2/1984/20, Annex III) that:

> Discovery, conquest, and unilateral legislation are not legitimate bases for States to claim or retain the territories or natural resources of indigenous peoples. In no circumstances should indigenous peoples or groups be subjected to adverse discrimination with respect to their rights or claims to land, property, or natural resources.

12. As a result of the Working Group's 3rd session, this Council proposed six principles for consideration by the Sub-Commission in the evolution of a text (E/CN.4/Sub.2/1984/NGO/3):

> The right to continue peacefully in the use, enjoyment and occupation of ancestral lands without unwanted intrusion, supervision or development.
>
> The right to restitution for lands already taken or occupied by States under claim of discovery, _terra nullius_, or any other theory justifying the displacement of indigenous peoples on the basis of alleged racial or cultural inferiority.
>
> States should recognize indigenous land-tenure systems, so that rights of use, enjoyment and occupancy traditionally enjoyed by indigenous peoples under their own institutions of self-government may be protected and preserved.
>
> Identification and, wherever possible, return or substitution of lands taken from indigenous communities or occupied without their consent, under programmes developed in consultation with the indigenous peoples themselves.
>
> All States should abstain from encouraging or participating in commercial or military activities in territories from which indigenous peoples are being displaced or removed involuntarily.
>
> The United Nations should encourage universal acceptance of the competence of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination to review individual communications alleging infringements of indigenous peoples' land rights, whether individual or collective in nature.

13. Sub-Commission Resolution 1984/35(A), paragraph 2, decided to consider the conclusions, proposals and recommendations of the Study of the Problem of Discrimination Against Indigenous Populations (E/CN.4/Sub.2/1983/21/Add.8) as a source for the evolution of legal standards by the Working Group. Of the Study's 140 conclusions and recommendations relating to land rights, the following are the most applicable to the drafting of an international declaration:

513. Indigenous peoples have a natural and inalienable right to keep the territories they possess and to claim the lands which have been taken from them. In other words, they are entitled to the natural and cultural patrimony contained in the territory and to determine freely how to use it and benefit from it.

514. Recognition must be given to the right of all indigenous nations or peoples, as a minimum, to the return and control of sufficient and suitable land to enable them to live in an economically viable existence in accordance with their own customs and traditions, and to develop fully at their own pace.

516. Millenary or immemorial possession and economic occupation should suffice to establish indigenous title to land so occupied[.]

519. Land occupied and controlled by indigenous populations should be presumed to be indigenous land. In case of doubt or dispute the onus probandi of the ownership of land should not fall on the indigenous populations who descend from the original inhabitants of these territories, but rather on the non-indigenous populations who claim to have acquired a right to part of the land.

520. All indigenous reserved areas should be immediately handed over to the respective indigenous groups, and the land should be effectively controlled and owned by the indigenous peoples in that area under their laws and customs.

522. All sites of an historical or traditional significance to indigenous peoples that are located on private non-indigenous or public land, should be maintained in their original condition and must be open to the use of the indigenous peoples without fees or constraints.

523. All steps should be taken to protect, in law and in practice, the lawful property rights of indigenous populations by investigating, establishing, and obtaining registration of titles to land and water resources acquired by consuetudinary [customary] legal procedures.

524. Indigenous land ownership and control should be legally protected and regarded as inviolable. No intermediary institution of any kind should be created or appointed to hold the lands of indigenous peoples on their behalf.

532. Indigenous populations should be compensated for the loss of all designated reservations or reserved areas, indigenous lands and other lands that have been or may be taken.

536. There should be international and national recognition and full protection by law of the right of indigenous populations to own their land communally and to manage it in accordance with their own traditions and culture.

537. Acts involving the alienation or other disposal of indigenous land must in all cases, originate from within the indigenous community through genuinely endogenous procedures.

> 540. The principle of unrestricted ownership and control of land, including all natural resources, by indigenous peoples should be recognized. The lands, land rights and natural resources of indigenous peoples should not be taken, and these rights should not be terminated or extinguished unilaterally or without the full and informed consent of the indigenous peoples concerned.

14. All extant proposals generally agree that existing indigenous occupations should be respected. That is, where an indigenous group remains in actual possession of a territory, their legal title to that territory must be recognized. Discovery and similar theories based on racial or cultural superiority are insufficient in themselves to justify the removal of a community from its land.

15. Indigenous organizations generally believe that this right can best be protected by recognizing the indigenous land-tenure system. In this way, indigenous individuals continue to enjoy the rights assigned them by their own traditional laws and institutions before their territory came under external domination or control. Concerns about thereby entrenching oppressive feudal systems, reflected in article 13 of ILO Convention 107, are inapplicable to the groups that have been participating in the United Nations process.

16. Many States have adopted protectionist laws subjecting indigenous lands to administrative supervision. In practice, supervision rarely prevents the loss of land rights and, on the contrary, prevents the indigenous people from using their own lands as they choose. It is far preferable to leave the protection of indigenous lands, in the first instance, to indigenous institutions. In addition indigenous people should have access to national and international tribunals, without discrimination, for the enforcement of land rights.

17. Some States subject indigenous land rights to extinction in the interests of national economic development, a principle reflected in article 12(1) of the ILO Convention. This principle can be used to defeat indigenous rights completely, and is plainly unacceptable to indigenous organizations. Indigenous territories should be acquired solely by negotiation and purchase. Since the practical effect of the sale of an indigenous community's land may be to alter its political status as well, no sale should be effective until ratified by the community as a whole by democratic means consistent with their own sociopolitical traditions.

18. Lands already seized and occupied by States pose particular problems. In some instances these lands remain thinly settled and largely undeveloped, e.g. as national parks. Restoring these areas to indigenous control is both desirable and feasible. Where confiscated lands are already settled and developed, however, restoration may result in derivative injustices accompanied by resistance and the frustration of land-rights initiatives. In such cases the indigenous group should be given the opportunity to select comparable unsettled lands elsewhere. Compensation should be negotiated only if restitution in kind is rejected by the indigenous people themselves.

19. In any case, traditional sacred sites should be returned to indigenous communities on demand without exception. It is generally agreed that these places are essential to the survival of indigenous peoples as distinct groups, and can be neither replaced nor compensated.

20. All States should co-operate in discouraging future encroachments by abstaining from commercial and military activities in territories from which the indigenous population is being removed involuntarily. This would universalize the policy recently adopted by the World Bank.

21. Indigenous groups should also have access to international determination of disputed territorial boundaries, at least as a last resort. While redefining the International Court's jurisdiction is beyond the scope of a declaration of rights, lodging the declaration explicitly under article 1 of the International Covenant on Civil and Political Rights would vest the Human Rights Committee with limited review jurisdiction under articles 40 and 41 of the Covenant and the Optional Protocol. Lodging it likewise under article 5 of the Convention on the Elimination of All Forms of Racial Discrimination would vest limited review jurisdiction in CERD.

22. The following succinct restatement of the foregoing principles is suggested for the text of the draft declaration:

Bearing in mind the obligations of States with regard to land rights under article 1 of the International Covenant on Civil and Political Rights and article 5 of the Convention on the Elimination of All Forms of Racial Discrimination,

Recognizing the special relationship of indigenous peoples with lands they traditionally occupied,

1. Discovery, conquest, and unilateral legislation are never legitimate bases for States to claim or retain the territories or natural resources of indigenous peoples. States' claims may only be based on the free and informed consent of the indigenous population concerned as evidenced in a valid treaty or instrument of cession.

2. Indigenous communities are entitled to the continued enjoyment of territories they traditionally occupied, under their own laws and institutions, and without involuntary supervision. This includes adjacent coastal waters, inland streams, wildlife and minerals. Any future alienation of indigenous territory must be ratified by democratic means consistent with the indigenous people's own traditions.

3. In cases where lands taken in violation of this article have already been settled and developed, the indigenous people concerned are entitled to immediate restitution in the form of comparable and equivalent land, or, if they choose, compensation. Indigenous peoples' desire to regain possession and control of sacred sites must always be respected.

4. No State shall participate financially or militarily in the involuntary displacement of indigenous populations, or in the subsequent economic exploitation or military use of their territory.

PROPOSALS FOR A DECLARATION OF PRINCIPLES REGARDING THE RIGHTS OF INDIGENOUS PEOPLES

1. The Working Group has been given a mandate to prepare a "body of principles" on indigenous rights (Commission resolution 1985/21, Sub-Commission resolution 1984/35B). Several drafts have already been circulated by indigenous organizations, including the World Council of Indigenous Peoples, Indian Law Resource Center, and the International Indian Treaty Council.

2. The right to life. The WCIP draft makes no direct reference to the right to life, or freedom from genocide, nor is this right included in the IITC and ILRC drafts. Situations in various parts of the world suggest that reiteration of this right, in language drawn from the Convention on the Prevention and Punishment of the Crime of Genocide.

3. The right to self-determination. The WCIP draft declares that "all indigenous peoples have the right of self-determination". In language borrowed from article 1 (1) of the Covenant on Civil and Political Rights, this includes the rights to "freely determine their political status, and freely pursue their economic, social, religious and cultural development", and in particular "to determine the form, structure and authority of [their] institutions". Adding the term "religious" to the Covenant formulation reflects the importance of spiritual traditions in many indigenous communities.

4. The ILRC draft similarly declares that indigenous peoples are "peoples possessing the right of self-determination", and as such "to possess whatever degree of self-government in their territories [they] choose". The IITC draft refers to indigenous peoples' right to "such degree of independence as they may choose", and States are forbidden to "assert or claim" any political jurisdiction over indigenous communities except under a "valid treaty or agreement freely made with the lawful representatives" of the people.

5. Use of the term "self-determination" is important, but it also is important to define its meaning in the indigenous context. While the WCIP definition is drawn directly from the Covenant, the ILRC text is clearer. "Self-government" or, perhaps, "autonomy", is more to the point than, e.g., "social development". There is also great merit in addressing, as does the IITC text, the means by which States may acquire control of indigenous communities lawfully, since this gives us an opportunity to evaluate the applicability of self-determination to particular States and indigenous peoples.

6. To the extent that an indigenous community chooses to remain part of a State, it must be protected from political discrimination. Regional autonomy does not eliminate the need for an effective voice in national politics. The WCIP draft properly includes the right "to participate in the political life of the State".

7. A related question is the status of indigenous law within the national legal system, in situations where autonomy rather than full independence is chosen. Under the WCIP text indigenous "traditions and customs must be respected" and "recognized as a fundamental source of law". A more artful phrasing should be attempted to make clear that what is required is the incorporation (enforcement) of indigenous laws, rather than some vague notion of "respect". This is especially important in respect of indigenous systems of land tenure, which we feel should be given explicit attention.

8. International relations. The status of indigenous peoples under international law is particularly controversial, and referring to their right to self-determination does not necessarily resolve it. The IITC text requires recognition of indigenous groups as "nations" if they meet the familiar criteria for statehood (permanent population, defined territory, government, and the ability to enter into relations with other States). This adds nothing to existing law.

9. The WCIP version directs States to "recognize the population, territory and institutions" of indigenous peoples. The effects of "recognition" are not defined. By comparison, the ILRC text simply reminds States that "some" groups classified as "indigenous" are, in fact, "colonial" in the classic sense (and, we might add, others may be "states").

10. Treaties are important to indigenous North Americans. The WCIP draft proposes that treaties "freely entered into" be "given full effect under national and international law". This is less precise than IITC's proposed requirement that these treaties be "recognized and applied in the same manner" as other treaties, and be enforced without regard to municipal legislation or changed circumstances - defences limited by the Vienna Convention on the Law of Treaties.

11. The WCIP text adds reference to indigenous peoples' right to cross national frontiers freely to "maintain relations" with one another. This will be important wherever national borders continue to divide traditional indigenous territories arbitrarily. While the best remedy in such cases is the political reunion and emancipation of the indigenous people, freedom of movement should be available as an alternative where reunion is not possible.

12. The right to land. The WCIP draft would guarantee "exclusive rights to traditional lands and resources", including subsurface, water and marine rights. States would be forbidden to interfere with indigenous resources, by confiscation or environmental degradation, without the indigenous people's "free and informed consent", and resources formerly taken without consent "shall be returned".

13. The IITC text similarly forbids States to assert any claim, "by right of discovery or otherwise", to indigenous territories, except under valid treaties or agreements freely made, or to permit any kind of environmental degradation, "directly or indirectly". The ILRC text adds to this a prohibition against "discrimination with respect to [indigenous peoples'] rights or claims".

14. All three texts should be combined to include (1) exclusive territorial rights expressly defined to include minerals, wildlife and the sea, (2) the requirement of free and informed consent by treaty or otherwise, (3) express condemnation of the pretence of discovery, (4) restoration of lands taken unlawfully, and (5) non-discrimination.

15. Cultural rights. The WCIP text declares indigenous cultures to be "part of the cultural heritage of mankind", secures the "original rights" of indigenous peoples to their "archaeological sites, artifacts, designs, technology and works of art", and forbids research without indigenous consent and access to the results. The approach taken follows UNESCO precedents on movable cultural property.

16. By comparison, the IITC text condemns ethnocide, prohibiting anything that "directly or indirectly results in the disintegration or destruction" of indigenous communities, such as the imposition of alien political or religious

institutions. The ILRC draft puts the same concern in the positive language of UNESCO's 1966 Declaration of Principles of International Cultural Co-operation: indigenous peoples are "entitled freely and independently to practise, develop, and perpetuate their own religions, languages, cultures, traditions, social systems, and ways of life".

17. A positive statement of the right to cultural development should be combined with a more artful reference to cultural property based on the WCIP draft. Defining certain indigenous products as cultural property has the attraction of giving indigenous communities legal standing to seek the recovery of objects through the courts.

18. Linguistic rights. WCIP proposes the "right to receive education in their own language or to establish their own educational institutions", combined with the right to deal with the State in their own language "on a basis of equality". Indigenous languages would thus have official status. This addresses a widespread concern of indigenous peoples, although States will object that compliance would be costly and impractical because of the great number of indigenous languages.

19. Identification and definition. No draft attempts to define "indigenous", although IITC refers to "identifiable groups having bonds of language, heritage, tradition, or other common identity". Instead, WCIP emphasizes indigenous peoples' "right to determine who are included", and the IITC refers to each people's "sovereign power to determine its own membership". The idea that indigenousness is a matter of self-identification and group recognition has already won general acceptance at meetings of the Working Group.

20. Respect for human rights. WCIP proposes that indigenous "institutions and decisions" be "in conformity with internationally accepted human rights" norms, responding to the widespread argument that indigenous self-government will lead to abuses. Admittedly, the International Bill of Rights reflects Western individualism. Conflicts with indigenous traditions are possible, although they will always be matters of interpretation.

21. Other rights. Both the IITC and ILRC texts make it clear that the special rights of indigenous peoples are "in addition" to the rights they may enjoy, chiefly as individuals, under more general instruments such as the Covenant on Civil and Political Rights. Any suggestion that the rights of indigenous people are "separate" from those of the rest of humanity should be avoided. Our concern has been "discrimination against" indigenous populations, and no new instrument should incorporate new kinds of adverse discrimination.

22. Procedural measures. Only the IITC draft contains a procedural requirement: States are obliged to establish "fundamentally fair" means of resolving disputes with indigenous peoples, in consultation with the indigenous peoples themselves. International instruments are always strengthened by specific directives for national-level legislation, because it is particularly easy to monitor compliance. The final text might refer specifically to means of restoring lands and acknowledging indigenous self-government, and also require the entrenchment of indigenous status in national constitutions.

23. We propose a consolidation of the WCIP, ILRC and IITC texts to accommodate the best points of each:

1. Indigenous peoples have, in common with all humanity, the right to life, and to freedom from oppression, discrimination, and aggression.

2. Indigenous peoples have the right to self-determination, and to whatever degree of autonomy and self-government they choose. By virtue of this right they freely determine their political status, and freely pursue their own economic, social, religious and cultural development.

3. Indigenous peoples also have the right to participate fully and equally in the political life of States exercising any degree of legitimate authority over them. Indigenous laws and customs, particularly those relating to land tenure, shall be incorporated into the municipal laws of the State.

4. Indigenous peoples have the right freely to use and enjoy their traditional lands and resources, including the surface and subsurface, interior and coastal waters, and terrestrial and marine wildlife. In no case shall they be deprived of the resources upon which they depend for subsistence.

5. No State shall claim or retain, by right of discovery or otherwise, any lands or resources of indigenous peoples, except as may have been acquired by a valid treaty or other agreement freely made. Lands or resources taken from indigenous peoples without their free and informed consent shall be returned.

6. Treaties and other agreements freely made between indigenous peoples and States shall be applied and interpreted in accordance with the Vienna Convention on the Law of Treaties and customary international law.

7. Indigenous peoples have the right to control or withhold the use of the knowledge, artworks, and artifacts of their ancestors, and to approve and have free access to the results of any research conducted among them.

8. Indigenous peoples have the right to be educated and conduct business with the State in their own languages, and to establish their own educational institutions if they choose.

9. Indigenous peoples have the right to determine their own membership, provided that in this and other exercises of the right to self-determination, they shall respect the human rights of all persons subject to their authority.

10. In addition to these rights, indigenous peoples are entitled to the enjoyment of all of the human rights and fundamental freedoms enumerated in the International Bill of Rights and in other United Nations instruments. In no circumstances shall they be subjected to adverse discrimination.

11. All States shall take immediate steps, in consultation with indigenous peoples, to guarantee these rights in their fundamental national laws and constitutions.

12. All States shall abstain from contributing financially or militarily to the displacement or disenfranchisement of indigenous peoples anywhere in the world.

INTERNATIONAL FELLOWSHIP OF RECONCILIATION

[Original: English]
[30 April 1985]

The International Fellowship of Reconciliation welcomes the interest of the Working Group on Indigenous Populations in considering more fully the fate of the indigenous populations and tribal societies of Asia - in particular the tribal societies that stretch from China through Laos, Vietnam, Kampuchea, Thailand, Burma, Bangladesh and India. In nearly all cases the tribal communities are marginalized and viewed with suspicion. A spiral of violence and counter-violence is too often the order of the day. As an organization devoted to non-violence as a principle of life and as a technique of social change, the Fellowship stresses firmly that violence and coercion is not the way to protect cultural diversity.

The Fellowship is guided by the ideals of one of its early associates, Mahatma Gandhi, who said "Civilization is the encouragement of differences; civilization thus becomes a synonym of democracy. Force, violence, pressure or compulsion with a view to conformity, is both uncivilized and undemocratic."

In the light of the high degree of violence and coercion found in certain conflictual situations, the Fellowship wishes to draw particular attention to two indigenous populations:

(1) The Hmong and related tribes of Laos;

(2) The Chakma and other tribes of the Chittagong Hill Tracts of Bangladesh.

I

The Hmong of Laos

The Hmong of Laos, an estimated 350,000 people prior to the refugee exodus following the change in government in 1975, are part of a wider community of related populations found in parts of Burma, China, Laos, Thailand and Vietnam. This indigenous population of some 3 million are referred to as Yao, Meo, Miao and Man, as well as by other terms indicating their tribal identification (See P. Kunstadter (ed.), Southeast Asian Tribes, Minorities and Nations (Princeton University Press, 1967) and F. Le Bar, G. Hukey, J. Musgraue, Ethnic Groups of Mainland Southeast Asia (New Haven: Human Research Area Files, 1964)).

The Fellowship will use the term Hmong, which is the general term used by this population for itself, although the Hmong usually use the name of their subdivision: Hmong Vert, Hmong Blanc, etc. Hmong society is based on patrilineal clans, and a person's first self-identification is on a clanic basis. For a discussion of traditional Hmong social structure, see J. Lemoine, Un Village Hmong Vert du Haut Laos (Paris: CNRS, 1972).

The most recent analysis of the situation of the Hmong is found in Martin Stuart-Fox (ed.), Contemporary Laos (St. Lucia: University of Queensland Press, 1982), especially the chapters by Gary Wekkin "The Rewards of Revolution: Pathet Lao Policy towards the Hill Tribes since 1975" and by Gary Lee "Minority Policies and the Hmong".

For background on the relationship between politics, life-style and agricultural practices see Alfred McCoy, The Politics of Heroin in Southeast Asia (1972).

A. The right to life, to physical integrity and to security

War is the prime violation of the right to life, and war brings in its wake endless violations of other human rights.

Since 1941 when Laos was occupied by Japanese troops and the Hmong joined French and Lao guerrilla forces against them, the Hmong have been rather constantly involved in war and guerrilla action, in particular in what has been called the "First Indochina War" which led to independence from France.

Then from 1955 until 1975 Laos was the scene of constant struggle between the Royal Lao Government and the Pathet Lao. There were Hmong forces on both sides in this civil war, in which other countries participated as well. In December 1975 the Royal Lao Government was abolished, and the Lao People's Democratic Republic was proclaimed.

Since 1975 some 116,000 Hmong, a third of the Hmong population of Laos, have left for Thailand, 67,000 of whom have been resettled in other countries, largely France and the United States of America. Although the majority of the remaining Hmong have tried to reconstruct their lives within the framework of the new Lao Government's policy, there has continued armed resistance to the Government under the leadership of the religiously-inspired Chao Fa (King from Heaven) movement in the mountainous Phu Bia area.

Thus it is reported that the Lao Government considers the Hmong as unreliable citizens, that many are arrested and sent to "re-education" camps. Families considered "pro-American" have had their homes burned and farm animals killed. Some villages are abandoned as people retreat into more inaccessible areas.

B. The right to land and to natural resources: the economic and social rights of indigenous populations

The Hmong engage primarily in "slash and burn" itinerant agriculture. The staple food is dry mountain rice and corn. Opium has been the major cash crop and was grown for export. Such itinerant agriculture requires frequent moves, and entire villages move every five to seven years. Despite such mobility - or perhaps because of it - Hmong villages have been highly organized and cohesive structures. Decision-making authority resides with the elder males of the clans, and other clan members follow their decisions.

There are indications of efforts by the Lao Government to prevent "slash and burn" agriculture to protect trees desired for the export of timber. While this may be a worthwhile goal, it seems that it is done with a high degree of coercion and without training programmes in other agricultural techniques. The shift from a "slash and burn" agriculture to one more ecologically sound requires a good deal of discussion, of popular participation, and of field tests of new agricultural techniques and crops. None of these measures seems to have been taken.

There are also indications of movements of hill tribes to the low lands in order to cultivate wet rice. The "Second Indochina War" (1955 to 1975) has

created manpower shortages in the low lands; more men are needed for wet rice production. While a policy of labour migration may be in order, the degree of coercion used raises human rights consideration.

There have been efforts from 1975 to 1980 to develop "collective" agriculture based on State-run farms or State-created "co-operatives". This policy created widespread resistance including among the Hmong and seems to have been dropped or left in abeyance.

C. The right to autonomy, political institutions and representation of indigenous populations

For the past 10 years there has been no Constitution for Laos, no Parliament, nor a basis for a legal structure. Thus it is impossible to state what degree of autonomy will be granted when a Constitution is drawn up.

Prior to 1883, Laos had a governmental system of largely autonomous zones, each with its own rights and obligations. In 1895 the French Colonial administration designed a centralized and standardized administration by dividing the State into counties and provinces. The successive Lao Governments have kept the French administrative divisions. However, political and social realities never fitted the administrative divisions. Greater or lesser degrees of autonomy continued, often depending on the distance from the capital.

Political and administrative autonomy was always to have been one of the "rewards" the Hmong were to have been granted by the groups for which they fought: the French, the Royal Government, the Pathet Lao, the United States. In practice, autonomy has been promised by all and granted by none.

D. The right to develop their own cultural traditions, language, religious practices and way of life

The Hmong have had a culture largely separate from that of the Lao majority. During the period of the colonial and royal governments, the Hmong culture was neither encouraged nor systematically discouraged. The Lao majority consider the Hmong inferior and of interest only because of their fighting ability and their cultivation of opium.

The Hmong have a traditional religion based on the spirits of nature and partly divine culture heroes. Shamen (healers and intermediaries with the spirit world) have played a large role among the Hmong.

The majority Lao are Buddhists, and Buddhism was the religion of the State at the time of the Royal Government. However, Buddhism in Laos has little proselytizing drive, and few, if any, efforts were made to convert the Hmong to Buddhism. Prior to 1975, there were a few foreign Christian missionaries among the Hmong and a small percentage of the Hmong have become Christian. Buddhism is no longer considered the State religion, and there is no discernable government policy toward traditional Hmong religious life.

As religious observances and cultural rituals among the Hmong are carried out by older family members and clan heads rather than by a specialized clergy, it is the breakdown of family life through war, exile, "re-education" camps that is the major hindrance to the development of cultural life.

Recommendations

The first need is a new governmental policy of national reconciliation based on respect for cultural diversity. Its application must be an end to systematic repression against the Hmong, an end to the break up of the family, to forced migration and forced changes in agricultural policy.

Laos is one of the United Nations' designated "least developed States" and as such should be granted certain facilities for financial aid, trade preferences, and technical assistance. Thus there is a need, in co-operation with the Government of Laos, for a systematic study by United Nations experts of the Hmong area so that a more comprehensive analysis may be made and a development policy with due regard for human rights principles can be suggested.

The Chakma and Other Tribal Societies of the Chittagong Hill Tracts of Bangladesh

Since the analysis of the Chakma and associated tribal societies of Bangladesh presented to the Working Group by the Fellowship of Reconciliation in 1984 (E/CN.4/Sub.2/AC.4/1984/4/Add.1), there have been three useful studies of the situation published. A great deal of information that was dispersed in journal articles, talks to anthropological and geographic societies, newspaper interviews, appeals of Buddhist societies is now brought together in the following three studies: (1) Wolfgang Mey (ed.), Genocide in the Chittagong Hill Tracts, Bangladesh (International Work Group for Indigenous Affairs, Fiolstraede 10, DK-1171. Copenhagen K, Denmark); (2) The Chittagong Hill Tracts: Militarization, Oppression and the Hill Tribes (Anti-Slavery Society for the Protection of Human Rights, 180 Brixton Road, London SW9 6AT, England); and (3) Genocide in Bangladesh, "We want the Land and not the People" (Annual Review of Survival International, 29 Craven Street, London WC2N 5NT, England).

At the 1984 session of the Working Group, the representative of the Fellowship of Reconciliation called for a two-step approach toward a political settlement so as to bring to an end the cycle of violence and counter violence:

(1) A cease-fire as a sign of a mutual desire to find non-violent approaches to conflict resolution.

(2) The creation of a Peace Observation Team inspired by the Nagaland Peace Observation Team of the 1960s-1970s in India in which there were representatives of Gandhian non-violence, Indian military and Naga tribal leaders. The task of the Peace Observation team was to reduce tensions especially by keeping channels of communication open, by preventing situations in which violence might erupt, and by investigating objectively cases of violence.

Unfortunately, in the light of our information and analysis, there has been no improvement in the situation. In the oral statement to the 1984 session of the Working Group the representative of the Fellowship stressed "the common long-range interest for all governments to allow serious anthropological and social science investigation to be done by persons who realize that there are

no easy solutions to difficult problems. Without such study, it is difficult to evaluate trends. Moreover when an area is closed even to journalists and the representatives of non-governmental organizations, it is natural to imagine that the worst is going on;".

The Chittagong Hill Tracts is not the only area of Bangladesh in which there are tribal populations. In all the "border belts" with India and Burma there are tribal societies on whom attention may be usefully focused in the future. In fact relations of tribal groups across the existing nation-state frontiers is an important aspect of the question.

A. The right to life, to physical integrity and to security

Within the Chittagong Hill Tracts are some 600,000 indigenous people often referred to as tribals (upajatis). They are members of 13 ethnic groups, the three largest being the Chakma (350,000), Marmas (140,000) and Tripuras (60,000). The majority of this population is Buddhist with Hindus, Christians and "animists" making up a much smaller number.

From 1860 to 1947, the area was under British colonial administration. In 1900 the British designated the area an "Excluded Area" and placed limitations on new settlers as well as providing for elements of autonomy. Since 1947 the area has been part first of independent Pakistan and then from 1972, of Bangladesh. After 1958 when a military government came to power in Pakistan, the Chittagong Hill Tracts has been largely opened to new settlers, mostly Bengali from the plains.

Bangladesh as a whole has a high population density, a fast growing population, and a large number of landless rural workers. Farm holdings tend to be small so that there is little possibility of creating new farms by subdividing existing ones. Thus it became government policy to settle landless families in the Hill Tracts, often giving them money, seeds and other facilities.

In addition in 1963 the Kaptai hydroelectric dam was built submerging high quality farm land and uprooting populations. Some of the tribal population migrated to India and Burma. Others went to look for unskilled work in the cities. Moreover the dam created for the first time a landless class in the Hill Tracts - always an element of instability.

Inevitably tensions arose in the Hill Tracts between populations having different land tenure systems, different life styles and unequal access to elements of power. The tribal populations felt increasingly exploited and menaced as more and more new settlers were brought in.

For a long time the representatives of the indigenous peoples followed a policy of non-violence, of peaceful and democratic negotiations in keeping with their dominant Buddhist values.

In 1972 negotiations concerning a ban on the influx of non-tribal people into the area broke down and since 1972 the Chittagong Hill Tracts has been the scene of a spiral of violence and counter-violence. Military and police forces have been sent into the area, and new Bengali settlers have been organized into irregular units - the Ansar (Islamic Guards).

Members of the Hill Tracts tribes have also organized guerrilla groups, the most powerful being the Shanti Bahini (Peace Force). Although the Shanti Bahini began as irregular groups basically to protect villages, they have now developed into a guerrilla operation with training in the use of arms, ideological indoctrination - the whole pattern that makes for guerrilla warfare. There have been Shanti Bahini operations against new settlers and the police. In order to raise money for arms and supplies, they have raided banks and kidnapped persons for ransom.

Violence has led to a militarization of the whole area with the Armed Forces taking increasing decision-making authority away from the civilian administration.

Thus there is a cycle of violence and counter-violence, of raids and reprisals. The majority of the population is caught between the Army and the Shanti Bahini and many suffer terribly from the consequences.

B. The right to land and to natural resources, the economic and social rights of indigenous populations

The right to land, linked to the influx of new settlers is the most important element in the tensions of the Hill Tracts area.

Some of the tribal populations who live in the valleys farm rice with a plough and have a land tenure pattern much like the Bengali farmers. Other tribal farmers, especially those living on the hill slopes, have a "slash and burn" shifting agriculture, here called jhum. The usual jhum pattern is for the small plots currently being worked to be considered private land; larger areas to be cultivated later are considered group or communal land. The Bangladesh Government now seems to consider all non-private land as "State property" that it may redistribute to whom it sees fit. Such distribution of common lands to new outside settlers makes social friction inevitable.

Although the population density in the Hill Tracts is low in contrast to other districts of Bangladesh, the carrying capacity of the hill land may be low, making the area already well-populated. A rise in population density may lead to large-scale erosion.

C. The right to autonomy, political institutions and representation of indigenous populations

Under British colonial rule, there was a high degree of autonomy, largely a form of indirect rule through local chiefs, a police force drawn from the tribal population and limitations on new settlers in the area. The reasons for this colonial policy would require a detailed analysis. However, many tribal leaders now look to these provisions of the 1900 "Excluded Areas" decision as a model, and they have made repeated demands for similar provisions.

The nature of adequate political autonomy can only be negotiated by the people of Bangladesh themselves. The just representation of the Hill Tracts populations should be part of a restored democracy in Bangladesh. However, guidelines and standards developed within the Working Group can be useful to all in establishing new forms of autonomy and co-operation.

D. The right to develop their own cultural traditions, language, religious practices and way of life

War, violence and chronic insecurity are prime factors in the breakdown of a cultural tradition. Peace and mutual respect are the only ways that a right to cultural traditions can be maintained.

The family which is the base for the transmission of cultural values is being dislocated. Whole villages are displaced. Families are divided as some members seek refuge in India and Burma.

Buddhist monks, prime transmitters of cultural values, have been killed, and temples destroyed. It is not possible to ascertain motivations for such actions. Some see in these acts a religious-based prejudice on the part of the Islamic majority; others see such destruction as the inevitable result of general fighting.

Recommendations

The International Fellowship of Reconciliation is dedicated to reconciliation between individuals and groups now separated and hostile. The Fellowship is concerned with helping governments and groups to do away with the causes of intergroup antagonism, to use non-violent methods to safeguard rights, and to adopt measures to promote co-operation in a spirit of mutual respect.

The elimination of tension cannot be achieved if the realities of cultural, religious, and linguistic differences between components of the society are not respected. Thus the variety of historical and socio-economic conditions under which minorities have been formed and developed may require a diversified approach to the protection and promotion of their human rights.

(1) We again affirm the need for a political settlement so as to bring an end to the spiral of violence and counter-violence. There is a need to bring together moderates from the Government and respected leaders of the tribals to bring an end to violence and repression and to begin to work out a new and just socio-political pattern for the area.

(2) We affirm the need for discussions in good faith between government planners, tribal representatives and the Bengali already settled in the area on development policies for the benefit of all. There should be a freeze on new migration or settlement in the area until agreed upon policies can be drawn up and explained to all. There should be a new up-to-date land-use survey so that discussion and planning can be carried out on a solid factual basis.

(3) We affirm the need to assure greater benefits to the tribals than heretofore of development projects, increased employment possibilities and the sale of natural resources found in the area.

(4) We stress the need to open the area to humanitarian relief and non-governmental organization development efforts, both national and foreign and to provide special rehabilitation possibilities to the victims of violence.

SURVIVAL INTERNATIONAL

[Original: English]
[21 June 1985]

INTRODUCTION

This submission from the National Federation of Land Councils to the Working Group on Indigenous Populations is being made in order to bring to the attention of the Working Group, the Commission on Human Rights and the United Nations in general, the concerns of Australia's Aboriginal and Islander population about the Australian Government's policies on Aboriginal affairs.

Recognizing the agenda agreed to at the meeting of the Working Group held in Geneva in August 1983, the Federation is aware that the Working Group has a special interest in the matter of land rights for indigenous peoples and ways of recognizing such rights both internationally and domestically.

This submission therefore focuses its attention on some problems of the Australian Government's current position and intention to undermine recognition of Aboriginal land rights and the subsequent implications for indigenous peoples living in the seven different Australian States and Territories, where in some cases basic rights are neither recognized nor guaranteed.

Australia was first invaded by the British in 1788. The colonization and oppression of Aboriginal and Islander people in Australia has been continuous since that date.

A British colonial administration, controlled from London imposed its rule over the continent until 1901 when Australia was given its own constitution and became a Federation. This Federation now comprises six States and two Territories, which come within the general control of a Federal Government based in Canberra.

The powers of this Government are specified within the Constitution.

In 1967 the Constitution was amended to give power to the Federal Government to make laws for Aboriginal and Islander people throughout Australia.

It was not until 1976, that the Federal Government legislated to address the question of land rights for Aboriginal and Islander Australians. This legislation, the Aboriginal Land Rights (Northern Territory) Act 1976, restricted to Aborigines who live within the Northern Territory (N.T.).

This legislation which provides Aboriginal people in the N.T. with some basic rights including a limited power, subject to the will of the Government, to control access to and developments on their land, remains the only piece of federal legislation dealing with the land rights of Aboriginal and Islander people.

The majority of our people in Australia have few if any basic rights to their land, which is of fundamental and primary importance to the maintenance of our culture and heritage which has been in existence for in excess of 40,000 years.

In making this submission, the Federation is conscious of the fact that the Australian Government's Minister for Aboriginal Affairs, the Honourable Clyde Holding MP, addressed the Working Group in Geneva, on 30 July 1984. In this address the Minister dealt at length with the Australian Government's policy on land rights for Aboriginal and Islander people.

Australian Aboriginal and Islander people regard the following principles as fundamental to the resolution of the land rights question in Australia:

- recognition of Aboriginal sovereign rights and prior ownership of Australia;
- the right to claim all unalienated land, including public purpose lands;
- the right to control access to Aboriginal land;
- the right to refuse permission for mining and other developments on Aboriginal land;
- the right to negotiate terms and conditions under which developments take place;
- the right to compensation for lands lost and for social and cultural disruption;
- the right to convert Aboriginal properties to inalienable freehold title;
- the right to excisions on pastoral leases.

Recognition of these rights is regarded by Aboriginal and Islander people as intrinsic to resolving the question of our self determination.

Australia remains the only former British colony that has not negotiated any proper settlement with the indigenous population. The indigenous people of other countries subjected to British invasion and colonization, shared our fate of being subject to acts of genocide, dispossession, alienation from land and culture, and marginalization into a minority group, but unlike them, we are yet to achieve proper recognition as the original owners of our continent. No Australian administration during the colonial period prior to Federation in 1901, or since, has sought to formally recognize and come to terms with the rights of Aboriginal and Islander people through a treaty or other recognized constitutional or judicial means.

In the past 196 years Aboriginal and Islander people in Australia have never ceded their sovereign rights.

Aboriginal and Islander people continue to demand that the Australian Government give recognition to these rights when framing its land rights legislation

Our Land has been, and continues to be appropriated from us, without our consent or agreement and without any compensation being paid to us.

Our people live in the most oppressed conditions, similar to those of many third world communities where among other things:

- morbidity rates are excessive, gastro-intestinal and respiratory diseases and trachoma are highly endemic and diabetes and hypertension are increasing at an alarming rate;

- infant mortality rates are four times the Australian average; adult mortality rates are also alarming; life expectancy is low at about 50 years.

- housing is inadequate and many people are without the basic essential services of water and power;

- education services provided to our people are inadequate with only an extremely small minority completing formal education;

- unemployment rates are excessive in some places higher than 75 per cent;

- Aboriginal people are proportionately dramatically over represented in Australia's gaols; in 1981 Aborigines had the world's highest recorded imprisonment rate.

AUSTRALIAN GOVERNMENT'S OBLIGATIONS

On 20 February 1985 the Australian Government released a paper which outlined its proposals for national land rights legislation. This paper was called the Government's Preferred National Land Rights Model (PNLRM).

Aboriginal people from throughout Australia, have expressed unanimous opposition to these proposals which are in direct conflict with:

- the national and international obligations of the Australian Government to recognize Aboriginal sovereign rights;

- the platform on which the Australian Government was given its mandate in 1983 and 1984;

- the undertakings given by Minister Clyde Holding in his address to the Working Group in 1984;

- previous undertakings given by the Australian Government to Aboriginal people in Australia.

The public undertakings made by the Australian Government during the 1984 general election included the undertaking that the following key principle would be incorporated by the Government in any land rights legislation:

"Aboriginal and Islander people should have the right to refuse permission for mining on their land or to impose conditions under which mining may proceed. To set aside a refusal, or conditions imposed shall require an Act of Parliament."

Aboriginal people regard this as an important recognition of the basic right of Aboriginal people to have control over access to and what takes place on their land.

It was also regarded as an unequivocal commitment by the present Australian Government. It was an understanding which was endorsed publicly before an international forum when Mr. Holding told the Working Group on Indigenous Populations on 30 July 1984 that:

"Acknowledging the disadvantaged position of Aboriginal people as a group in Australian society and respecting the spiritual affinity Aboriginal people have with the land, the Australian Government recognizes their rights to land in accordance with five basic principles. Those principles are:

(1) Aboriginal land to be held under inalienable freehold title;

(2) Protection of Aboriginal sites;

(3) Aboriginal control in relation to mining on Aboriginal land;

(4) Access to mining royalty equivalents;

(5) Compensation for lost land to be negotiated."

The Government's PNLRM is a dramatic departure from this, and dishonours the undertakings made to us, the Australian people in general and to the international community.

THE PRESENT POSITION

Some existing Federal and State legislation in Australia goes towards meeting the requirements of principled restitution. But these legal rights vary in different States and Territories.

The Australian Government's previous commitment was to ensure a consistent national approach to Land Rights for Aboriginal people in terms of the five principles, Mr. Holding outlined to the Working Group.

Recent events have shattered the Aboriginal and Islander people's belief that the Australian Government was sincere in its intention to pursue a meaningful reconciliation between Aborigines and Islanders and those who sought to conquer them.

Aboriginal and Islander people will not be satisfied with less than already established basic principles, minimal as they are. We are putting our case before you to help prevent the retrograde step of indigenous rights being taken away or diminished. It is especially urgent as so much more needs to be achieved, that to go backwards at this stage, is unthinkable.

The Aboriginal and Islander people of Australia are appalled at the prospect of a new national land rights law which would deny existing and future rights. It would mean the Australian Government is actively ignoring its obligations to the international community.

THE PREFERRED NATIONAL LAND RIGHTS MODEL

The Government's PNLRM is completely unsatisfactory to Aboriginal and Islander Australians because:

- it fails to recognize prior Aboriginal ownership and sovereignty over Australia before the invasion of the continent by non-Aborigines;

- it seeks to amend the existing Australian Government legislation dealing with land rights, the Aboriginal Land Rights (Northern Territory) Act 1976, so that it is consistent with the PNLRM; this means removing the right, which Aborigines in the Northern Territory (N.T.), have to refuse permission for mining and other developments on their land, or to impose conditions under which developments take place, as well as their general ability to control access to these lands;

- where Aborigines refuse permission or impose conditions which are unacceptable to developers it seeks to impose a system of compulsory arbitration by tribunal; the emphasis in the tribunal being on the commercial interests of developers rather than the interests and wishes of Aboriginal landowners;

- it provides a Government Minister the power to override tribunal recommendations, so that the question of whether or not mining or other developments take place and the terms under which they take place become a political prerogative;

- it removes the right of Aborigines in the N.T., and denies the right of Aborigines elsewhere in Australia, to negotiate royalties as compensation for developments on their land;

- it denies the right of Aboriginal Australians to compensation for lands lost and for the destruction of their society and culture;

- it allows the decisions over Aboriginal community living areas (excisions) on pastoral leases to become a political prerogative, by giving State/Territory Government's in Australia power to deal with this question by administrative arrangement without any overriding Federal legislation.

- it makes no provision for the needs of these Aboriginal people who have been dispossessed and alienated from their traditional lands and now live in urban communities.

The draft model foreshadows changes to existing land rights law. The changes if implemented will diminish and take away rights that Aboriginal and Islander people have fought hard to obtain, rather than improve upon these meagre gains of the past.

The proposed changes will accommodate the vested interests of powerful mining consortiums and the pastoral industry who over the last 12 months have waged a concerted racist attack against the rights of Aboriginal and Islander people.

State Governments in Australia have co-operated with these vested interests, who have waged a million dollar media campaign, in their attempts to dispossess Aboriginal and Islander people of the small areas of land over which they have achieved some semblance of control.

Many of the companies involved are international corporations among them some who have been at the forefront of the dispossession of indigenous peoples elsewhere in the world. There are also those who as hosts to similar development proposals in their home countries would regard them as unconscionable.

Yet when dealing with Aboriginal and Islander people in Australia these same companies refuse to recognize, and use every means to deny us, our basic rights.

In the face of this onslaught upon the fundamental human rights of Aboriginal and Islander people the Australian Government should be taking action, for which it has been given a constitutional responsibility, to safeguard and protect these fundamental rights.

Instead, concerned with increasing non-Aboriginal opposition to land rights, and aware of the implications of this opposition for their own mandate it has found it easier to put forward proposals which will assist developers in their pursuit of the wealth from Aboriginal land rather than to safeguard the rights of Aboriginal and Islander people and live up to their moral and legal obligations to us.

The Government's PNLRM seeks to further qualify the right and ability of Aboriginal people to safeguard their basic sovereign rights. It is seeking to diminish further the rights of Aboriginal people that are enshrined in the existing federal legislation, where the ability of Aboriginal people to control what takes place on their land is limited by the political and administrative discretion of the Government of the day.

The Government's intention to change the Northern Territory Land Rights Act in this way has met with universal opposition from Aboriginal people throughout Australia.

CONCLUSION

Australian Aboriginal and Islander people regard the Australian Government's proposals for land rights as an abrogation of its responsibilities and obligations to them. The Government appears intent on removing what limited rights are available to a minority of Aborigines in Australia, in the N.T., on the basis that it is not prepared to provide these limited rights to all Aboriginal and Islander Australians.

Instead of using the existing rights as a basis on which to build and to legislate to provide Aboriginal and Islander people throughout Australia with justice and equity the Australian Government has given in to mining companies, pastoralists and other vested interests.

The Australian Government's PNLRM if it were to form the basis of any land rights legislation would result in the further alienation and exploitation of Aboriginal and Islander people and lead inevitably to our destruction of the society and culture.

The Australian Government promotes itself as a champion of the rights of oppressed peoples elsewhere in the world.

The Government's supportive attitude to our oppressed brothers and sisters in Azania and the comments on colonialism within the Pacific region are but two examples.

It is essential that if Aboriginal and Islander people are to achieve justice and equity that the Australian Government accepts its primary responsibility to ensure that the principles that Aboriginal and Islander people believe are fundamental to adequate land rights are enshrined in legislation.

To do less this will condemn Aboriginal and Islander people to further exploitation and oppression.

We believe it is not acceptable for the Australian Government to argue that to give in to Aboriginal and Islander demands will thwart economic development and Australia's long-term economic and trade prospects.

It is of crucial importance that the Australian Government recognize its responsibilities towards Aboriginal and Islander people and act accordingly.

We believe that it is very important that the world community be made aware of the essential contradiction that exists between the public posturing that the Australian Government demonstrates at an international level and its lack of integrity when dealing with the concerns of the Aboriginal and Islander people of Australia.

In this way the Australian Government is merely perpetuating past colonial practices the aims of which have been to deny to Aboriginal and Islander people of most fundamental and basic rights, and to alienate and appropriate their land.

We have minimal political influence with an Australian Government prepared to divest itself of moral leadership and adopt a pragmatism which allows policy to be determined by media campaigns sponsored by vested interests and subsequent opinion polls.

We urge the Working Group on Indigenous Populations, the Commission on Human Rights and all nations represented at the United Nations to support the legitimate demands of Aboriginal Australians for justice and equity.

We urge you to express this demand to the Australian Government.