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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of Discrimination and Protection of Minorities
Working Group on Indigenous Populations
Third session
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

CONSIDERATION OF THE EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Report of the Secretary-General

GE.84-11952

Introduction

1. In its resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions to the Sub-Commission. It further decided that the Working Group should give special attention to the evolution of standards concerning the rights of indigenous populations.

2. Accordingly, appropriate communications requesting such information were addressed by the Secretary-General to Governments and to organizations referred to in the resolution.

3. The present document contains the replies received from non-governmental organizations up to 14 May 1984. Additional replies, if any, will be published as addenda to this document.

Information communicated by non-governmental organizations */

Inter-Parliamentary Union

[Original: FRENCH]
[17 February 1984]

The Inter-Parliamentary Union transmitted the following paragraphs from the resolution entitled "The role of parliaments in promoting the process of decolonization and in promoting the political, economic, social and cultural rights of ethnic groups within multi-ethnic States, particularly with a view to encouraging inter-ethnic co-operation and justice", which was adopted at the 70th Inter-Parliamentary Conference, held in Seoul, Republic of Korea, in October 1983:

> "Urges all Parliaments and Governments to contribute to the success of the Decade of Struggle against Racism and Racial Discrimination;
>
> .....
>
> Reaffirms the right of persons belonging to national, ethnic, religious and linguistic minorities to the enjoyment of all human rights and fundamental freedoms without any discrimination as to national or ethnic origins, language, religion or sex;
>
> Stresses that any activity which may threaten the existence of these minorities, discriminate against them or impede their right to freedom of expression and development on an equitable basis is incompatible with the fundamental principles of the United Nations Charter and should be condemned;

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*/ International Council of Women and Socialist International have communicated to the Centre for Human Rights that at present they have no information to be submitted to the Working Group.

Calls upon the Parliaments and Governments of all States in the world to prevent and eliminate any discrimination based on race, religion, colour, descent or national or ethnic origin;

Requests Parliaments and Governments to ensure the right of national, ethnic, religious and linguistic minorities to use and be educated in their mother tongue, as well as to develop their own culture and to participate, on an equal footing, in the cultural, social, economic and political life of the country in which they live;

Strongly encourages all Parliaments to draft, in their respective countries, legislation aimed at guaranteeing to ethnic minorities political, economic, social and cultural rights, as well as representation in the national Parliament, notwithstanding any restrictive clauses;

Urges all Governments and Parliaments to encourage and enable minorities to maintain and develop cultural and social contacts with people of their national or ethnic origin, on the basis of strict respect for the sovereignty, territorial integrity and political independence of the country in which they live;

Welcomes the work being done in the United Nations on the drafting of the text of a declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities;

Calls upon all Governments and Parliaments to support these efforts of the United Nations concerning the elaboration of that declaration."

World Council of Churches

[Original: ENGLISH]

[28 February 1984]

The Commission of the Churches on International Affairs of the World Council of Churches has submitted a document entitled "Land Rights for Indigenous People" 1/, the contents of which are as follows:

Preface; Introduction; Land Rights for Indigenous People; Case Studies; Appendices; Selected Resources on Land Rights; Selected Indian Organizations; Announcements.

The Minority Rights Group

[Original: ENGLISH]

[5 March 1984]

The Minority Rights Group submitted a copy of its report No. 60 on indigenous peoples, entitled "The Inuits (Eskimo) of Canada" 2/, the contents of which are as follows:

1/ The full text of the document is available for consultation at the Secretariat.

2/ A copy of this report is available for consultation at the Secretariat.

Introduction; Origins; Colonization; Governmental Interest and Involvement; The Growth of Inuit political consciousness; The Road to Nunavut; The quiet revolution; The Aftermath of James Bay; Labrador and the Western Arctic; The Economy; The Future; Conclusion.

Select Bibliography; Map.

World Federation of Trade Unions

[Original: ENGLISH]
[14 March 1984]

The problem of discrimination against indigenous populations is undoubtedly part and parcel of a wider context of persisting state of the present international situation in which the principles of equality and the right to self-determination, justice and real democracy have not yet been fully realized by many nations. In particular, the process of decolonization has not yet been completed and transnational corporations continue to deplete the natural resources of those countries which have not yet acceded to political independence thus creating fundamental constraints for the full exercise of national sovereignty.

The WFTU has always been in the forefront of the struggle for equal rights and against any discrimination based on race, sex, language or creed, that the Charter of the United Nations seeks to eliminate through the collaboration of States. At present WFTU is especially preoccupied by the worsening position of indigenous populations in the fields of work and social policy generally. The acute problems of the second generation of migrant workers indicate the urgent need to provide more efficient protection to indigenous peoples wherever they are through concerted international action supplemented by additional measures to be taken on national level.

In order to improve the present position of indigenous populations WFTU proposes the following measures to be considered for action by the international community:

Efforts in this respect should be concentrated on the pertinent organs of the United Nations with a view to elaborating necessary priority programmes suited to the respective regions;

Implementation without delay of a preliminary assessment of basic needs of indigenous populations including their right to education, right to health, medical help and other social services and the right to social security and to protection of work;

The elaboration of an international convention with a view to disseminating world-wide basic information on the most important needs of indigenous peoples and requiring all States to recognize the indigenous people as a special stratum requiring more efficient protection;

Recognition of the right of indigenous peoples and migrant workers to join trade union organizations of their own choosing without any restriction.

Survival International

[Original: ENGLISH]
[9 May 1984]

LAND, NATURAL RESOURCES AND TRIBAL PEOPLES

Tribal societies are unusual among the world's societies in that their particular economic, social, political and religious organizations have evolved in direct relation to specific habitats and localities, on which they depend for their subsistence almost exclusively. The immediacy and intimacy of their relations with their natural environment mean that their disruption places in jeopardy the survival of the society in a way not true of more trade-dependent societies whose relations with the environment are neither so direct nor so controlled.

Because access to land is such a basic need of tribal society, their systems of land ownership are both varied and subtle, but rarely treat land as a commodity or individual's property. More usually, tribal concepts of land ownership approximate to western concepts of communal ownership, temporary usufruct or common land. For many societies the idea of individual land ownership is alien and even incomprehensible. Consequently, as tribal societies come into contact with invading societies, the incompatibility of their traditional concepts with regard to land with the property concepts of the newcomers aggravates the ensuing conflicts over resource use.

Land conflict underlies the majority of the problems being faced by indigenous peoples world-wide. Without ownership of their ancestral lands, deprived of access to their traditional resources, indigenous peoples' economies are undermined; they lose their autonomy and the chance of determining their own futures; their cultural demise inevitably follows.

LAND RIGHTS AND INTERNATIONAL LAW

The right of tribal peoples to the ownership and use of their land is enshrined in international law. This right is most unequivocally recognized in article 11 of the International Labour Organisation's Convention No. 107, on Tribal and Indigenous Peoples, which states that "the right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized." The Convention, originally formulated in 1957, has since been ratified by 26 countries (see also Bennett, 1978).

Although the rights of tribal peoples to the ownership of their traditional lands is not specifically mentioned in any of the charters, covenants, and conventions adopted by the United Nations, nevertheless the free access of tribal peoples to their traditional means of subsistence is implicit in a number of these documents. Because tribal societies, their economies, social systems, political organizations and religious beliefs, depend to a large extent on their maintaining their links with their traditional environment, breaking these links implies the violation of their economic, social, political and religious rights. These rights have been recognized in the Universal Declaration of Human Rights (see especially articles 17(2), 18, 22, 23(1), 25(1), 27(1)), the International Covenant on Economic,

Social and Cultural Rights (see especially articles 1, 2, 6, 10, 11, 15(1), 15(2) and 25 which acknowledges "the right of all peoples to enjoy and utilize freely their natural wealth and resources"), the International Covenant on Civil and Political Rights (see especially articles 1, 17, 18, 27), the Optional Protocol on the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination (see especially articles 1(4), 2(2), 5). Under certain circumstances the conditions imposed on tribal populations due to the breaking of their ties with their traditional resource bases may be considered as tantamount to genocide under article II(c) of the Convention on the Prevention and Punishment of the Crime of Genocide (see annex 7).

CASE STUDIES

In spite of the existence of this large body of international laws and regulations, the right of tribal peoples to the use and ownership of their traditional lands (and other rights) is being consistently violated. Since the submissions presented to the Working Group on Indigenous Peoples last year (1983), Survival International has drawn attention to a number of urgent situations where the survival of tribal societies are under immediate threat. The most pertinent of these cases are the following:

(a) Chittagong Hill Tracts: Bangladesh (see annex 2 for details)

For several years ready access to the Chittagong Hill Tracts of Bangladesh has been prohibited and details of the situation of the area have been slow to reach the international media. Nevertheless, substantial documentation indicates that the tribal peoples of the area who number between 340,000 and 600,000 are suffering severely from government policies to develop the area and settle it with Bengalis. Massive military involvement has led to a number of massacres.

The area of the Chittagong Hill Tracts has been for millenia inhabited by tribal people. Their existence was formally recognized by the British during the colonial era though the passing of the Chittagong Hill Tracts Regulation of 1900. Successive regimes since the granting of independence have neglected the special situation of the tribal minorities in the Chittagong Hills and their land rights have been denied. Though Bangladesh has ratified both the International Convention on the Elimination of all Forms of Racial Discrimination and ILO Convention No. 107, the terms of these Conventions have been consistently violated in its treatment of the minority peoples of the Chittagong Hill Tracts. The evidence available to Survival International indicates that the local authorities and Bangladesh Government are guilty of the crime of genocide as defined by the Convention on the Prevention and Punishment of the Crime of Genocide.

(b) Chico Dams: Philippines (see annex 3 for details)

The Chico Valley in the northern Philippines forms part of the traditional homelands of the Kalinga, Bontoc, and Kankanai tribal peoples. In defiance of the local population the Government has instituted a massive programme of dam building, partly financed by the World Bank, which threatens to flood the lands of 85,000 tribal peoples. The intransigence of the Government in its dealing with the tribal peoples has forced them into armed insurrection in defence of their ancestral lands.

The pursuit of these damming schemes can only be accomplished at unacceptable social cost in violation of the International Covenant on Economic, Social and Cultural Rights and in contravention of the World Bank's own principles guiding its actions in areas inhabited by tribal peoples (World Bank 1982).

(c) Repression of Tinggian Tribes people: Philippines (see annex 4 for details)

In August 1983 Survival International reported on the military repression of Tinggian tribal peoples being forcibly evicted from their traditional lands to make way for a major logging and pulp mill operation run by the Cellophil Resources Corporation. This violation of the Tinggian's territorial rights not only contravenes the International Covenant on Economic, Social and Cultural Rights but also breaks national Philippine law according to which tribal territory is exempt from such projects.

(d) Polonoroeste Development Project: Brazil (see annexes 5 and 6 for details)

The rights of tribal peoples in Brazil to the use of their traditional lands is recognized in the Brazilian Constitution, on the Statute of the Indian and through Brazil's ratification of the International Labour Organisation's Convention No. 107. The National Indian Foundation (FUNAI) is the government body charged with ensuring that the rights of tribal peoples are respected. The Polonoroeste Development Project is a massive road-building, colonization and agricultural development project in west-central Brazil which threatens the survival of some 8,000 Indians of 25 ethnic groups. In spite of international protest and in spite of the subsequent introduction of an "Amerindian component" into the World Bank's funding, the Indians of the area are still being alienated from their lands and decimated by introduced diseases.

(e) Pichis-Palcazu Development Project: Peru (see annex 7 for details)

In 1980 the Peruvian Government announced an initial plan for settling 150,000 families in the three valleys of the Pichis, Palcazu and Pachites river valleys, an area actually inhabited by Amuesha and Campa (Ashaninca) Indians. Following prolonged protest, US AID halted their funding of the project, initiated a special investigation of the situation and insisted that titles to "tribal lands" should be furnished to the Amuesha as a "condition precedent" to their funding the project. However, the titles so far provided to the 13 Amuesha communities to be effected directly by the modified project are not their "tribal lands", and are much too small for the needs of the communities. If the project goes ahead the survival of the Amuesha as a distinct people will be in jeopardy.

(f) Indians Murdered, Justice Undermined: Brazil (see annex 8 for details)

During the latter half of 1983 a number of Indian leaders in Brazil were assassinated but the Government took few effective steps to have those responsible brought to trial. The Indians' rights were simultaneously undermined by the passing of various legislative measures including one opening Indian territories to private mining companies. Further legislation currently before Congress threatens to further diminish the Indians' few recognized rights.

(g) Indian Massacre in Colombia (see annex 9 for details)

The effective denial of Indian rights to their traditional land in Colombia has led to severe land conflicts. Powerful landowners have been supported by armed forces in the take-over of Indian territory. In January 1984 in the Cauca area, this led to the massacre of at least seven Indians including a seven year old girl. More recent reports indicate further military repression of the Indians of the Cauca area. Denial of the Indians' rights to land contravenes all the international covenants, protocols, conventions and declarations noted above, all of which have been ratified by Colombia.

(h) Tin Mines Threaten Yanomami: Venezuela (see annex 10 for details)

The rights of Venezuela's Indians to protection and to their traditional lands and other natural resources are explicitly recognized in the Venezuelan Constitution and the Agrarian Reform Law. Moreover, Venezuela has ratified all the United Nations charters, conventions, protocols, and convenants mentioned above. In spite of these provisos, concessions were granted last year to allow cassiterite mining in the heartland of the Yanomami Indians, one of the largest and least-contacted Indian groups in Amazonia.

(i) Government Resists Yanomami Land Claim: Brazil (see annexes 11 and 12 for details)

The Yanomami Indians in Brazil have suffered severely from the uncontrolled invasion of their lands. The construction of the BR-210 highway through their territory in the early 1970s followed by the invasion of settlers and the continuing intrusions of miners into many areas, have caused the death of hundreds of Indians and serious disruption of their way of life. In December 1980, Survival International, Survival International (USA) together with the American Anthropological Association, the Anthropology Resource Center and the Indian Law Resource Center submitted a report to the Inter-American Commission on Human Rights of the Organization of American States asserting serious human rights violations. In 1982 the Brazilian Government decreed the "interdiction" of 7.7 million hectares of Yanomami land, but accompanying assurances that definitive "demarcation" would soon follow have not been honoured. Instead, moves have been made to open the area to mining interests.

(j) Txukarramae Land Claims: Brazil (see annex 13 for details)

The duplicity in the National Indian Foundation's (FUNAI) treatment of the Txukarramae Indians of the Xingu area of central Brazil provoked them recently into taking hostages in an attempt to force the Government into keeping its promises. In spite of the statements signed in 1980, assuring the Txukarramae of territorial security, subsequent land invasion has proceeded unchecked. Consequently the Indians took nine officials hostage in March and April of this year and in late April the Government acceded to the Indians demands. It is lamentable that in spite of the Government's own Constitution, Statutes, International Law and promissory notes issued directly to the Indians all of which guarantee the Indians their land, the only means by which the Indians can gain effective redress to their grievances is through violence.

SUMMARY AND CONCLUSIONS

The access of tribal peoples to the land and natural resources which they have traditionally used is basic to their survival. International law recognizes the right of tribal peoples to the ownership of their traditional lands. It is of supreme importance that the Working Group on Indigenous Peoples unequivocally upholds this right if it is to fulfil its mandate of promoting "the protection of the human rights and fundamental freedoms of indigenous populations".

The 10 case studies summarily presented to the Working Group illustrate the central place that land conflict plays in the destruction of tribal peoples. Lack of respect for tribal peoples and their rights to their land is leading to their gradual elimination. The case studies illustrate that numerous factors are implicated in this process including specific government policies, unilateral aid programmes, multilateral aid programmes, development by multinational corporations and other industrial and mining interests, and direct pressure from the majority populations of the nation States concerned. The violation of tribal peoples' land rights is occurring in defiance of both international and national legislature. Moreover, existing legislation is not only being ignored but actively modified in order to deny tribal peoples their future.

The document, submitted by Survival International, has the following annexes: */

1. Tabulation of Ratifications of Conventions by Nations mentioned in text.
2. Chittagong Hill Tracts: Bangladesh.
3. Chico Dams: Philippines.
4. Repression of Tinggian Tribespeople: Philippines.
5. Polonoroeste Development Project: Brazil.
6. The Impact of World Bank Policies on Indigenous Peoples.
7. Pichis-Palcazu Development Project: Peru.
8. Indians Murdered, Justice Undermined: Brazil.
9. Indian Massacre in Colombia.
10. Tin Mines Threaten Yanomami: Venezuela.
11. Government Resists Yanomami Land Claim: Brazil.
12. Violations of the Human Rights of the Yanomami People in Brazil.
13. Txukarramae Land Claims: Brazil.

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*/ The text of the annexes will be available for consultation at the Secretariat.

Friends World Committee for Consultation
Society of Friends (Quakers)

[Original: ENGLISH]
[11 and 14 May 1984]

Indigenous Populations: Treaties, Rights to Land and Self-Management: The Current Situation in Australia.

TREATIES

In 1979 the National Aboriginal Conference (made up of Aboriginal and Torres Strait Islander representatives from around Australia) called for a Treaty to be negotiated between the Aboriginal people and the Commonwealth Government. A group of white Australians under the sponsorship of a small group of well-known and respected people, formed an Aboriginal Treaty Committee, chaired by Dr. H.C. Coombs (former Governor of the Reserve Bank of Australia).

The Aboriginal Treaty Committee produced a number of discussion papers, a regular newsletter, and a publication called It's Coming Yet ... An Aboriginal Treaty Within Australia Between Australians. The word "Makarrata", meaning "a coming together after struggle", has been proposed by the National Aboriginal Conference for use in place of "treaty". In September 1981, these initiatives were taken up at Parliamentary level with the establishment of a Senate Committee of Inquiry to examine the "feasibility, whether by constitutional amendment or other legal means, of securing a compact or 'Makarrata' between the Commonwealth Government and Aboriginal Australians". (Two Hundred Years Later, p.1)

The Senate Committee published its report in 1983. It recommends that the Government consider inserting provisions in the Constitution which would confer power to enter into a compact; and that if the compact proposal is pursued that the National Aboriginal Conference should co-ordinate Aboriginal opinion and negotiation, and conclude the compact on behalf of the Aboriginal people.

In a recent discussion with Friends in Canberra, the Federal Minister for Aboriginal Affairs expressed doubt about the viability of such a compact. In December 1983, he tabled a resolution which he suggests takes policy forward in a way which makes a treaty unnecessary. The resolution is due to be debated in the coming month and the Minister had been hopeful of obtaining agreement to it in advance but no longer seems to be optimistic about attaining such agreement. He has publicly refuted the possibility of any formal recognition of Aboriginal sovereignty in the future.

LAND RIGHTS

Federal Government Initiatives

The Minister for Aboriginal Affairs sees the proposed resolution as paving the way for the smooth passage of legislation relevant to Aboriginal and Islanders' issues, such as a proposed national land rights bill. On taking office in March 1983, the Minister enunciated five goals which he sees as fundamental to Aboriginal land rights. These are:

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

(b) Protection of Aboriginal sites;

(c) Aboriginal control in relation to mining of Aboriginal land;

(d) Access to mining royalties;

(e) Compensation for lost land to be negotiated.

Towards the end of 1983 a process was set in motion to work for the achievement of these goals. It has included setting up a steering committee consisting of representatives of the National Aboriginal Conference, the Federation of Land Councils, the Aboriginal Development Commission and the Department of Aboriginal Affairs. A panel of lawyers (two of whom were to be nominated by the National Aboriginal Conference and two by the Land Councils) is to assist with the drafting of legislation, and with negotiations with the States. The Minister has asked the National Aboriginal Conference to research the needs and aspirations of Aboriginals throughout Australia.

To this end, the National Aboriginal Conference has sponsored the publication of a discussion paper which addresses the following areas:

The form which legislation should take;

The kinds of land available to become Aboriginal land;

The procedures to be adopted for determining land claims;

The type of title to land which is desirable;

The uses to be made of Aboriginal land;

Issues of preservation of sites and objects.

The questions presented in each of these areas are pertinent and serve to bring the issues into clearer focus. Examples of some of the questions are:

What types of land should be available to become Aboriginal land; should it, for example, include reserves, Crown land, privately-owned land, national parks, Aboriginal-owned land?

Should the type of land available vary depending on whether it is in urban, rural or remote areas?

Where land is not available for an Aboriginal group should that group be compensated? If so what forms should that compensation take?

Who should own (or hold title to) Aboriginal land?

Who should control what happens on Aboriginal land?

The Minister initially scheduled debate on the land rights legislation for the Budget Session of Parliament this year. However, the issues raised by the legislation are complex and time is needed to consider them fully. Although the National Aboriginal Conference is an elected body, its members do not always enjoy the full confidence of all the Aboriginal groups it is supposed to represent. Inevitably, there are a variety of views about directions which should be taken by the proposed legislation. Discussion and consultation has had a wider base in some areas than in others. There is some consternation at the role given to the National Aboriginal Conference as the sole voice of Aborigines and Islanders at the level of Federal Government.

At first the Minister was determined to push ahead with legislation, arguing that it may well be the only opportunity to do so. However, in his recent discussion with Friends, he now indicates that he is prepared to follow a schedule more in accord with the Aborigines' perceptions of the time needed to develop satisfactory legislation. The over-all concept is for each state to develop its own legislation, with Federal legislation taking precedence over state law where there is conflict.

Existing Federal Legislation

It should be noted that some relevant Federal Legislation already exists. In 1967 the Constitution was amended to allow the Federal Government to "legislate for peace, order and good government of the Commonwealth with respect to the people of any race for whom it was deemed necessary to make special laws". (Aboriginal Past: Australia's Future. p.1). In 1975 the Racial Discrimination Act was passed, together with legislation to override some of the discriminatory laws existing in the State of Queensland at the time. Then in 1978 the Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-Management) Act was also passed to counter discriminatory practices in Queensland. Subsequent challenges through the Courts (Koowarta v. Bjelke Petersen and Others, and the Tasmanian Dams Case) have clearly upheld the authority of the Federal legislation in these areas. This point is relevant to the discussion of the situation in Queensland later in this paper.

One further piece of Federal legislation is relevant at this point. The Aboriginal Land Rights (Northern Territory) Act 1976 was the first Federal attempt at legislating for land rights for Aborigines. The Act has recently been the subject of a review by Mr. Justice Toohey. (Seven Years On). He recommends a number of changes to the Act, particularly in relation to Aborigines living on pastoral leases and in town camps. He expresses a need for greater emphasis on agreement and group decisions for those taking part in land claim discussions, and for clarification of access to lands for purposes such as mining and mineral explorations. However, he concludes

> Given the legislative novelty of the subject-matter of the Act and the need to marry complex notions of traditional Aboriginal law and culture with European institutions and administrative procedures, the Act has worked surprisingly well. But it is inevitable that after seven years cracks in the edifice have started to show. This report seeks to show how those cracks might be mended while leaving the over-all structure intact. (Seven Years On. p.139)

Taking into account Justice Toohey's recommendations, it is possible that this Act may serve as a model for future legislation.

LAND RIGHTS AND SELF-MANAGEMENT IN QUEENSLAND

Land Act (Aboriginal and Island Land Grant) Amendment Act 1984

In 1982 the Land Act 1962-1981 was amended to enable the granting of reserve lands to Aboriginal and Torres Strait Islander Communities under an arrangement known as Deeds of Grant in Trust. This particular arrangement fell far short of the desired inalienable freehold title and was rejected by the Aboriginal and Islander Community Councils. In February this year that Act was again amended so that variations in the boundaries of Trust lands would require Parliamentary approval. This is an improvement on the earlier provision which allowed the Governor-in-Council to make such variations without reference to Parliament. However, it should be noted that as yet no land has been granted

to Aborigines or Islanders under the provisions of this Act. Indeed, the areas to be granted have not been delineated at all. This is a cause of anxiety for community residents who fear that only residential land will be granted, rather than the full reserve lands as they currently understand them.

On 12 April 1984, the Queensland Government introduced and passed the Community Services (Torres Strait) Act and the Community Services (Aborigines) Act. These two Acts replace the existing Aborigines Act 1971 and Torres Strait Islanders Act 1971, and effectively control the provision of services to the Aboriginal and Islander communities covered by the Deeds of Grant in Trust. At time of writing the legislation has still not been printed (copies will be forwarded when they become available). This discussion is based on the draft bills which were the subject of debate on 12 April.

Queensland Parliamentary Procedure

In order to understand something of the current frustration and despair felt by those affected by these bills, and others who also seek justice in this State, some background knowledge of the procedure followed in adopting this legislation is necessary.

First, despite repeated assurances of full consultation and adequate time to discuss a draft of the legislation (see Consultation Document No.8 pp. 2-4) no draft was available prior to the tabling of the legislation in Parliament. Second, the Queensland Government recently adopted standing orders which require that legislation be laid on the table at least two full days prior to being debated.

However, the timing of events surrounding the tabling, debate and passing of these two Bills was as follows:

(a) The Community Services (Torres Strait) Bill was tabled on the afternoon of 11 April.

(b) Debate of the bill commenced at 9.00 p.m. on 12 April and continued throughout the night of the 12th and into the morning of the 13th.

(c) The Community Services (Aborigines) Bill was laid on the table at 11.00 p.m. on 12 April, during the debate of the Torres Strait Bill.

(d) Debate of the Torres Strait Bill, which contained 84 separate clauses, was halted at 7.30 a.m. when the Aborigines Bill was introduced.

(e) One hour was allowed for the debate of the 83 clauses in the Aborigines Bill.

(f) At 8.30 a.m. on 13 April, both bills were passed by the House which then went into recess until July.

Self-Management and the Community Services Legislation

The actual provisions made under the Community Services legislation are disappointing in a number of respects.

(a) They give little, if any recognition of the wishes expressed by the residents of the affected communities.

Yarrabah Community Council, for example, stated in January of this year that Trustees under the Deeds of Grant in Trust should hold all land presently used by government Departments, and all buildings presently used by Aboriginal people or for enterprises in which they are employed. The legislation (Clause 24) states that "personnel and property of the Department (of Community Services, formerly the Department of Aboriginal and Islander Advancement) shall not be utilized for the Council's purposes except with the Executive Officer's approval first had and obtained". The Executive Officer, it should be noted is "that officer of the Department charged with the responsibility for personnel and property of the Department" (Clause 23). In effect this means the person who is currently known as the Manager and is employed by the Government, not the local council. There are no Aboriginal or Islander Managers in Queensland at present, and the Department currently owns all significant property and buildings on all reserves. Thus, this seems to be saying that councils can only do what the government employed Executive Officer will allow them to do, which is quite contrary to the expressed wishes of the residents of Yarrabah, and does not appear to be calculated to foster opportunities for self-management.

Similarly Yarrabah Community Council expressly requested that "The Government ought not to have the power to remove Trustees ... Trustees ought to be subject only to the power of their electors to remove them by petition". The legislation, however, states that "The Governor in Council may ... in his absolute discretion ... dissolve an Aboriginal Council" (Clause 20). Under the legislation, the Aboriginal councillors will be the Trustees referred to in the Yarrabah document.

The residents of Palm Island also expressed their desire for self-management publicly, and to the Queensland Minister. They asked, for example, that Aboriginal police receive proper training. The Bill only comments on the appointment of Aboriginal police as follows

> An Aboriginal Council, with the Minister's approval, may appoint such number of persons as it considers necessary for the peace and good order of its area and the council shall equip the persons appointed with a uniform and such other marks of authority as it thinks fit to enable them to discharge their function. (Clause 39)

This particular clause does not seem to suggest an intention that such police receive training, or fulfil entry requirements similar to those required for other police in Queensland. It does not appear to be in accord with the wishes of the residents of Palm Island.

(b) In a number of respects the legislation contains provisions similar to those in the superseded Acts which had already been deemed undesirable by Aboriginal and Islander Reserve residents.

An example of this is the retention of the provision for a visiting Justice. The Justice is to be appointed by the Governor in Council subject to the following requirements (Clause 11)

> At least once in every period of three months the visiting justice shall visit every trust area to which he is visiting justice and shall -
>
> > (among other things) report to the Under Secretary (Head of the Department of Community Services and formerly Director of the Department of Aboriginal and Islander Advancement) as soon as is practicable after the completion of his visit on -

(i) administration of the area; and

(ii) matters that in his opinion affect the welfare of residents in the area; and

(iii) such other matters as the Under Secretary requests.

It seems difficult to understand why such provisions should be retained in a Bill which the responsible Minister claimed "reflects the Government's desire to unfetter the Aboriginal and Islander people in formulating decisions which affect their Communities" (Second Reading Speech).

(c) In fact, the Bills offer little scope or encouragement for the development of responsible self-management.

Clause 29 of the Aborigines Act, for example, requires Aboriginal Councils to present a budget, not to their electors, but to the Minister who may approve or reject it. No similar provision is included in the Local Government Act which regulates the activities of local councillors for all other Queenslanders. Where the Local Government Act requires the Clerk (a council employee) to submit monthly reports to the local authority, the Community Services Bills require such reports to be made to the Minister. There seems to be little here to encourage Aboriginal and Islander Community Councillors to accept responsibility to their electors.

(d) The Acts are vague, or silent, on a number of key issues.

The rights of persons who are not resident within the Deed of Grant in Trust areas to enter those areas are not clear. This is a matter of concern where past practice has been to exclude persons, including former residents, on what appear to be political grounds.

The provision of education and health services are not discussed. Under the previous legislation the State Department of Education serviced Aboriginal communities, while Islander communities were served by the Department of Aboriginal and Islander Advancement. It is not clear now what provisions will now operate for either group, nor how any transition in the provision of services is to be achieved.

This consideration of the provision of services to communities in Deed of Grant in Trust areas is not comprehensive, but it does serve to highlight some of the conflicts and uncertainties currently confronting Aboriginal and Islander communities in Queensland. Predominant in this is the sense of powerlessness in seeking to have their views heard and given cognizance.

Seeking Ways Forward

The inability of the Queensland Government to respond adequately to the wishes of Aborigines and Torres Strait Islanders in regard to the granting of land rights, and the provision of opportunities for self-management, forces these people to seek alternative ways forward. One such way is through requesting the Federal Government to exercise the various powers which it holds in this area.

The Federal Government may have power to intervene in the interests of these people within the terms of either the Aborigines and Torres Strait Islanders (Queensland Reserves and Communities Self-Management) Act 1978, or the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975. Alternatively, the Federal Government may seek to enact land rights

legislation which would take precedence over the Queensland laws and which may, through its provisions, ensure these people the right to autonomy and self-determination which they desire.

The actual course which the Federal Government may take is open to conjecture as they have largely been reluctant to infringe on what is seen to be an area of "States' Rights". However, as Frank Brennan commented at a recent conference, "there are no States' rights, only people's rights".

The Queensland episode is only part of an ongoing saga, but through it we may, perhaps, be better able to understand some of the barriers which face indigenous groups seeking the right to their own way of life. Hopefully we may also come to understand some of the strategies which are effective in advancing the cause of indigenous peoples across the world.

"Indigenous People's Land Rights: The Case of the Maoris of New Zealand"

Land is fundamental to the maintenance and preservation of Maori identity. The New Zealand Maori Council in December 1980 stated its significance as follows:

> "Maori land has several cultural connotations for us. It provides us with a sense of identity, belonging and continuity. It is a proof of our continued existence not only as a people, but as the tangatua whenua of this country. It is proof of our tribal and kin group ties. It conceptualizes turanawaewae. It is proof of our link with the ancestors of our past, and with the generations yet to come. It is an assurance that we shall forever exist as a people for as long as the land shall last."

The Treaty of Waitangi (6 February 1840) is the Treaty that is supposed to safeguard Maori Land for succeeding generations. In this Treaty many Maori Chiefs ceded sovereignty (kwanatanga) to the Crown and in return the Queen guaranteed "Full and exclusive, undisturbed possession of their land and estates, forests and fisheries and other properties which they may collectively or individually possess". Chiefs and tribes were given the rights and privileges of British subjects and the Crown was to be the sole purchaser of such land as the Maori wished to sell.

This Treaty has been subject to considerable erosion over the past 144 years and Maori land has not been protected. On the contrary it was very rapidly absorbed by the European population as colonial settlement proceeded.

What follows is a basic chronology demonstrating events and legislation facilitating the loss of Maori land and a brief statement of the current position:

1840 SYDNEY LAND ACT (January)

Declared all purchases made directly from the Maoris invalid, until validated by a Commissioner of Land Claims.

1842

William Spain appointed Commissioner. 31 March 1845 he made his final award, the Nelson deed. However many of his recommendations and findings were never acted upon. For example, the site of Wellington was shown to have been an invalid purchase, but the area was not returned to the Maoris who had consistently refused to sell, nor was compensation paid.

The settlers thought they could get the land cheaper by buying direct from the Maori people. In 1844 Governor Fitzroy broke the Treaty by allowing settlers to buy land directly from Maori people.

1846

Governor Grey changed the law back. To keep the settlers happy, he encouraged his land agents to increase Crown purchases. However, buying Maori land was a lengthy and complicated business, because of the Maoris' "beastly communism" (i.e. their communal land ownership). Individual titles to specific pieces of land would facilitate alienation, and were what the settlers sought.

1840-1860

It is not well known that up until 1860 the Maori people co-operated extensively with the settlers. Times were prosperous, and the Australian gold rush increased the market for New Zealand produce, especially wheat and meat. Maoris invested capital in farm equipment - ploughs and carts - built mills, and bought ships to transport produce to markets both within the country and overseas. In 1848 there were 53 Maori-owned vessels of over 14 tons registered in Auckland. Tribes owned horses, cattle and pigs, and grew wheat and vegetable crops.

In 1848, out of 433 convictions for petty crime, only nine were Maori. Half the European population could not write and nearly one third could not read - while most Maoris could read or write in Maori.

1852 CONSTITUTION ACT

This was the first major breach of the Treaty - in fact, it was at this point that the Treaty disappeared legislatively speaking because it was signed between Britain and the Chiefs and was not made binding on the settler (responsible) Government.

Adult European males who owned a small amount of property got the vote and were eligible for election, but the equal rights and privileges of Maori males were denied because their land was owned communally.

This first Government, in which Maori people had no say, was largely made up of land grabbers and speculators who were eager for more Maori land.

1856

In this year Maori people contributed almost half the government revenue from Customs and three quarters of the Government Land Fund came from the sale of Maori land.

Because Maori tribes had plenty of labour, communal capital and their own land, European farmers could not compete in arable farming. It was costing European settlers about 60 per acre to clear land - it was too dear. So because of Maori competition and the 1856 slump in wheat prices, settlers turned to sheep farming. Sheep farming needed less capital to get started, but it needed larger areas of land. Thus many settlers "squatted" on thousands of acres of Maori land, and pushed for ownership of their illegally leased plots through the settler Government.

1858

Many Maoris began to dig their toes in, and land sales were banned in many areas. After a series of intertribal meetings, the Maori King Movement was formed, and based in the Waikato.

1859

Only 7 million out of 26 million acres in the North Island had been "acquired", and Governor Gore-Brown reported to the Colonial Office about the feelings of the settlers:

> "The European covet these lands and are determined to enter in and possess them - recte si possint, si non, quocunde modo - rightly if possible, if not, then by any means at all."

War was seen as the likely means. Now that Europeans outnumbered the Maori and had the backing of the British Imperial Army, they wanted to provoke the Maori into rebellion, so that they could confiscate the lands of the "rebels". The excuse for war was not long in coming - the sale by Government of disputed land at Waitara. Justifiably, Taranaki Maori people fought back courageously for one and a half years, backed by some Waikato Maori.

1861

Grey replaced Gore-Brown as Governor, as settlers began to agitate about what further action Waikato Maori might take.

In April, Frederick Whitaker, as Attorney-General, advised the Governor that the Waikato King Movement should be disbanded. But Whitaker was hardly neutral. During this period, two men wielded immense political and economic power. Whitaker, who would later become Premier, was Attorney-General in the Ministry led by Dommett. He was also solicitor for the Bank of New Zealand, and its co-owner with Thomas Russell. The Bank of New Zealand held the Government account. Thomas Russell was Minister of War in the Dommett Ministry. They also owned the Whitaker and Russell land agency, the biggest in the colony. Both Whitaker and Russell, along with other members of the settler business community, stood to become very much richer if the Waikato lands (their sales blocked by the King Movement) came on to the market.

But Britain was paying for the war and supplying the troops, and many of the officers were saying openly that the "war" was nothing more than a device got up to rob the natives. Governor Grey was the meat in the sandwich between the British Colonial Office who wanted him to prevent this expensive war from growing, and the settlers, whose greed for Maori land which Maori people refused to sell inevitably led to more war. Grey played a dirty game by talking peace to the Maori while preparing for war. To keep the Colonial Office on side, it was in Grey's interests to convince them that the Maori were the aggressors.

This was done by successfully whipping up public hysteria about the constant threat of Waikato ravaging Auckland; and after a series of minor incidents, Waikato was invaded. In present times, it has come to be spoken of as if the crossing of the Mangatawhiri River marked entry into Waikato territory, but this is not true. Waikato territory extended to the Manukau Harbour as its northern boundary, and crossing the isthmus to the east, to the southern base of the Kohimarama ridge, somewhere near where the railway line now runs. The King Movement had given warning that crossing the Mangatawhiri would be regarded as a declaration of war by the army, which was already quartered in Waikato territory at Drury for example.

Although greatly outnumbered, and with vastly inferior weaponry, the Maori fought back heroically. They sued THREE TIMES for peace. However, anybody opposing the war would have their lands confiscated. So the tokens of surrender were rejected twice because in order to maximize confiscation, it was important to the settlers that the war be as long and as widespread as possible. Landgrabber reasoning: the longer the fighting, the more "rebels" involved: the more rebels involved, the more the confiscation: the more the confiscations, the more land available for Whitaker, Russell and Co., to buy and resell.

Even the General of the British Troops, Cameron, was so disgusted at the job that he and his troops were being ordered to carry out (evicting Maori people from "confiscated" lands) that he wrote to the War Office in Britain. No bones were made about his and his officers' opinions that they were fighting an immoral and dirty war. He was allowed to resign in 1968 ... Thereafter the conflict was led, on the Pakeha side, by settlers, without the restraint of professionals like Cameron.

Some of the most unfair legislation New Zealand has ever seen was passed during this decade by Governments representing squatter and financial interests! The land grab was legalised by a series of new laws, all breaching the Treaty.

1862

Native Lands Act

To break up communal ownership which was making Maori land hard to buy, a Land Court was set up to individualize Maori land ownership. An amendment, moved by Russell, also allowed Maori owners to sell land to whoever they wanted. The Crown's right of sole purchase was cast aside.

1863

Suppression of Rebellion Act

Based WORD FOR WORD on the Irish Act of 1799 (used to put down the rebellion of Irish people to British rule) it suspended the right of trial before imprisonment, constituted military courts to deal with offences, and threatened "death or prison" to those brought before the courts. The wording of the Act clearly states its intention to punish "certain aboriginal (Maori) tribes of the colony" for rebelling against the Crown (settler Government).

New Zealand Settlement Act

After establishing the hysteria of imminent invasion from the Waikato, this Act empowered confiscation of any district where any "considerable number" of natives were believed to be in rebellion. Not just the land of the individual "rebel", but whole districts were taken. As a direct result of this Act, more than 3 million acres of Maori land was confiscated. Knowing what we do about the positions held by people like Whitaker and Russell, it is impossible to escape the conclusion that the war was deliberately engineered by those who most stood to gain.

1864

Native Reserves Act

Before leaving power, this Government introduced an Act which placed ALL remaining native reserves under settler control. The land was then leased out to squatters at ridiculously low rentals. The squatters were often already on the land under very dubious pretences.

At this time, New Zealand was in debt to the tune of £3 million. In Britain, the Colonial Office was becoming increasingly unhappy about using the British taxpayers' money to pay for British troops to push Maori people off their land just to make a small number of individuals richer. The Domett/Whitaker/Russell Government could not raise the necessary loan, and was then replaced by another, led by Weld, who promised Britain that in future the New Zealand Government would pay for the cost of the war. Between 1864 and 1868 British troops were withdrawn and replaced by a Colonial Militia. But nothing had really changed. Weld's settler Government was still after Maori land.

1865

Native Land Act

Now anybody could apply for a land title, even scavenging European settlers. This Act required Land Court hearings to determine ownership, a lengthy and costly business. Maori owners were forced to spend months at a time in town where the court was sitting. If they did not appear, their right to the land was taken away. During this time, they built up huge debts which the local land agents and businessmen then exacted from the land the Maori had just won claim to. Surveying expenses were also charged to the Maori owners. Many Maori owners sold, rather than be put through the humiliation of a land court sitting. Land agents often threatened lengthy hearings if they refused.

Amendment: if the disputed land was less than 5,000 acres, then only 10 names appeared on the title, no matter how many owners there were. It was a much simpler matter for the land agents to rob 10 than it was to rob 500 or more.

Furthermore, a certificate of title could not be "annotated": this meant that only names could be written on the title, and no mention of whether they were "trustees" or "beneficial owners". This led to a situation whereby 25 or 30 years later, the Land Court would be asked for a ruling. If was difficult after the passage of time to prove that those named were trustees, despite the fact that they were generally thought to be such. The Court generally found them beneficial owners, and therefore able to sell the land on behalf of their families. Land agents were quick to exploit occasions when families fell out and might be induced to alienate land in which they had no important ancestral interest.

Under this legislation, claims for the return of land unjustly confiscated were heard. Land which had been under communal title when confiscated was returned under individual title, and could thus be more readily alienated.

Between 1865 and 1875 10 million more acres of Maori land were alienated. Even the so-called "friendly Maoris", who had been neutral or had even fought for the settlers lost land. By 1873, nearly 4 million acres of Ngati Kahungunu's prime land had been swindled/purchased. Many Maori regarded the white man's peace as being worse than his war!

1867

Although Maori people paid £45,000 in taxes, and still owned much of the North Island, they were not represented in Parliament. So much for equal rights and privileges.

Maori Representation Act

This Act set up the four Maori seats as we know them, though certainly not in the interests of the Maori people. Pakehas were becoming alarmed that, as a side effect of individualization of title, Maori with a property qualification to vote might come to outnumber the settlers in certain electorates. The original proposal was that Maori could vote in these four electorates, but for European candidates! The North Island settlers were becoming concerned that power was concentrating in the South Island, and proposed the seats to balance things up. The seats were therefore born out of settler greed and fear, and have forever restricted Maori representation in Parliament.

Between 1875 and 1890 a struggle for power was fought between squatters after huge blocks of land, and those settlers who wanted to be small farmers. In 1880, 250 men owned 7½ million acres throughout New Zealand. For example, in Canterbury:

1 per cent of land owners held 40 per cent of the land value.
50 absentee landowners held 1 million acres.
13 companies owned 163 sheep runs.
Less than 100 people owned nearly 1½ million acres.

1877

Legislation was introduced to allow direct purchase of Maori land, in direct contravention of Article 2 of the Treaty. The legislation was introduced by supporters of the big landholders.

1879

George Grey, retired from the Colonial Office and now Prime Minister, amended the Native Land Act to make it easier for small farmers to get Maori land. Investigations of title were speeded up, and laws about trusteeship and giving evidence to the Land Court were amended. Maori land alienation was increased threefold through this amendment. Grey's amendment pleased the small farmers, who were more able to secure land, but it angered the large landholders who eventually engineered the fall of Grey. This meant nothing to Maori people though - whoever was in power represented a threat to their land.

Peace Preservation Bill (August)

Provided for one year's hard labour for Maori people who refused to "withdraw from their abodes".

Maori Prisoners' Trial Act

Rushed through in August, all three readings in one sitting. Standing Orders were breached because all legislation affecting Maori people were supposed to be printed in Maori before the second reading. This law was required because the Parihaka ploughmen who had been arrested might be "liberated by the Supreme Court" if brought to trial.

According to this new law, they were to be brought to trial within 30 days of the opening of the next session of parliament. But in December ...

Confiscated Lands Enquiry and Maori Prisoners' Trials Act

Provided that while three commissioners investigated West Coast (North Island) land grievances, "the ordinary course of law should be suspended", and the trial of the ploughmen was put off for up to 60 days after yet another parliamentary session opened.

1880

Maori Prisoners Act

Said that it was not necessary to try the ploughmen and undesirable to release them - this was a year after their arrest.

> "All the said natives committed for and waiting trial as aforesaid and all the other natives so detained in custody aforesaid, for default of entering into sureties to keep the peace, shall be deemed and taken to have been lawfully arrested and to be in lawful custody and may be lawfully detained."

> "No Court, Judge, Justices of the Peace or other person shall during the continuance of this Act discharge, bail, or liberate the said Natives ... any law or statute to the contrary notwithstanding."

This law went far beyond simple suspension of habeas corpus - surely one of the keystone rights of British subjects!

Maori Prisoners Detention Act

This was again rushed through without benefit of translation, and provided that the arrested fencers of Parihaka were deemed to be detained under one of the acts which held the ploughmen "as effectually" as if they had been included within the terms of that act.

West Coast Settlement (North Island) Act

This created a great array of new offences whereby any Maori could be arrested in Taranaki without warrant. If he erected or dismantled a fence or building, if he cut, broke or removed survey pegs or if he "digs up, ploughs, breaks or disturbs the surface of any land" so that peace "may be endangered" or the occupation of the land "may be hindered", he could be jailed for two years with hard labour, after which he was to be released only by paying a surety of whatever sum the court decided, to keep the peace "for such further time as the court shall think fit". If was sufficient to intend to do any one of these things or be suspected of intending to do them. A clause provided for arrest without warrant by any constable for

> "any persons who assemble together, armed or unarmed, or with or without tools or implements, for any of the purposes or objects aforesaid, or are present at the commission of any such offences or acts as aforesaid for the purpose of aiding, assisting, or countenancing the commission of any such acts or offences as aforesaid, or, being present, may reasonably be suspected to be present for all or any of such purposes or objects."

All of this burst of legislation attempted to facilitate the settler occupation of land whose title was in dispute, and which was later acknowledged to have been wrongly alienated by confiscation and by purchase from those who had no right to sell.

1881

Nevertheless, on 5 November, the "equal rights and privileges" guaranteed under article 3 of the Treaty was smashed when the squatter Government of Bryce and Rolleston used 2,500 armed troops to push the peaceful followers of Te Whiti off the land.

1882

The introduction of refrigeration encouraged the development of more meat and dairy farms. No big deal in itself, except that it meant that the ever spreading hordes of small farmers wanted more land. Maori land.

1886

The new Government of John Ballance was considered rather "radical", advocating prohibition, labour laws, old age pensions etc.

Native Lands Administration Act

This act neglected the right of communal ownership, and turned Maori land into the hands of small groups of Trustees with right of sale. Maori people were bitterly opposed to this move, declaring the Government to be the "greatest land shark of all". Once the Government had got their hands on the land, they rented it out at cheap rates to small farmers. This angered the big landholders, and so the Ballance Government was dumped.

1887

Native Land Act

Rampant direct purchase of Maori land was again the order of the day. Under this legislation, even the reserves began slipping away into Pakeha hands.

1890

The big squatter Governments were finally swept from power by the Liberals, who were to last for 22 years. But their allegiances were not to the Maori people. They established their promised "efficient rural sector" by purchasing more land from Maori rather than by breaking up big squatter holdings. Between 1893 and 1912:

1.3 million acres purchased from squatters;

5.7 million acres purchased from Maori people.

The Liberals freely used the host of Draconian laws introduced since 1852. The Government paid the Maori owners only five shillings per acre (for 3 million acres) when the market price was £30 per acre.

Maori people lost more land under the Liberal Government than they lost during the land-war confiscations.

1893

Native Land Purchase and Acquisition Act

Although Crown sole purchase was reintroduced, power was taken to declare any area of Maori land "suitable for settlement".

When suspicious Tuhoe Maori pulled up surveyors pegs, Seddon quickly dispatched heavily armed troops to put down the "resistance".

As a natural consequence of such standover tactics, another 2 3/4 million acres passed out of Maori hands between 1893 and 1900.

Also during this period, a gunboat, two field guns, machine guns and 120 soldiers were dispatched to the Hokianga to arrest a small, unarmed group of Maori who had refused to pay a ridiculous "Dog Tax" introduced for nothing more than harassment. Not content with just having them arrested, the Government then had them charged with TREASON!

The Maori response was the Kotahitanga Movement, trying to regain control over their lands and livelihoods, but their efforts only steeled the resolve of the small farmer population to grab even more of the land.

1894

Advances to Settlers Act

Specifically excluded Maori, but provided low interest loans to white settlers to buy land from the Government and develop it. It was not until the 1930s that Maori landowners gained access to Government development finance.

Native Land Court Act

Provided for declaration of names on certificate of title to be declared trustees or beneficial owners.

Validation of Invalid Land Sales Act

By this amazing piece of legislation, unjust deals were able to be made, at a stroke of a pen, valid and therefore legal. The effect was to legitimize past misdealings by Pakehas.

1904

Maori Land Settlement Act

> "There is no getting over the inherent detestation of the white races and especially of British people towards anything that savours of rule by coloured or native races."

Under this kind of pressure, Maori land was compulsorily placed under Land Councils, WITH NO MAORI REPRESENTATION, if it "was not required or not suitable for occupation by the Maori owners".

The population was exploding, and the pressure of Europeans for land was insatiable.

1911

The rule of the Liberals was finally brought to an end by Bill Massey and his Reform Party, who won the election on a platform of transferring Maori land to European ownership.

1912

Land Laws Amendment Act

This freed land restrictions to such an extent that between 1911 and 1912 land owned by Maori in the North Island fell from 7 million to 4 million acres. The South Island had already gone save a few thousand acres here and there. "A people who had once owned 66 million acres in 1840 had seen their estates reduced to a paltry 4 million acres in a single lifetime, and had been powerless to prevent it."

1923

Wiremu Tahupotiki Ratana went with grievances against the Treaty of Waitangi to see King George. He was snubbed.

1925

The Ratana religion/political organization officially forged links with the Labour Party of Micky Savage.

1932

A petition calling for the ratification of the Treaty of Waitangi, and signed by over 30,000 people, was presented by Ratan MPs to Parliament. It sat gathering dust for 30 years. It was never actioned.

During the Depression, Maori received half the unemployment benefit given to Europeans, single Maori 7/6d; single Pakeha 15/- per week.

1943

The four Ratana MPs finally captured all the Maori seats, fulfilling a Ratana prophecy and consolidating a limited alliance with Labour. Labour legislation in 1945 allowed some Maori land to be returned to Maori owners after leases expired, but continued European control of all land transactions.

1953

Maori Affairs Act

Exit Labour, and the National Government introduced an act setting up the Maori Affairs Department, descendant of the Native Affairs Department of the previous century, to act as the Maori Land Purchase Agent for the Government.

Now the State could compulsorily purchase Maori land at State valuation if it was "uneconomic".

The Maori Trustee, a European, was given the power to purchase Maori land worth less than $50 to do what he wanted with it without the owners' consent. If the owners couldn't or wouldn't develop the land according to European standards then the Trustee could insist that the land be used or developed by someone else. The Act allowed the local rating authority to apply to the Land Court to have the unused land put to use by the Trustee. This land would then be leased at its unimproved value, and the owners were made to pay compensation for any improvements. As many Maori could not raise the capital to pay back European land developers for any work done to the land, many were unable to get their land back. The notorious Section 438 of this act provided for Trusts.

Under this Act, tens of thousands of acres were leased to forestry companies who have continued to rape the land for maximum profit.

INCORPORATION was the Maori response to this Act. It meant that the land could be developed as a total economic unit. Titles were kept separate, but interests pooled. Incorporations are managed by a Trust Board of owners. No owner could sell without consulting all the owners. The Maori Trustee can't dispose of the less than $50 interests he obtains, except to other members of the Incorporation. Incorporations can get loans far more easily from banks and stock agents.

Banks rarely lend money to owners of communally-owned land that is not incorporated because the tangled state of titles makes them useless for security. These owners are forced to get assistance from the State, usually at very poor terms.

As more Maori land went into incorporation, supplies of Maori land began to dry up. This was politically unacceptable to the pro-farmer National Party who passed new legislation to break the growth of Incorporations.

1967

Maori Affairs Amendment Act

This Act allowed anyone, not just landowners, to get on to an Incorporation Trust Board. This includes the Maori Trustee, who is now the largest shareholder in many Incorporations. This means that many Incorporations are now controlled by a body that does not want Maori people to have effective control over their own land. Under this Act, the Maori Trustee has the right to ask individuals to sell their interests to the Crown ... Once the Crown gets its hands on the shares, the land is then made available to whoever leased the land as freehold.

Also under this Act, land owned by fewer than four persons is required to go under one title (although this is totally unnecessary). Unless it is done through the Land Court, this piece of land is then kept out of the Incorporation. Obviously it is then practically impossible to develop an area of land when little chunks of it aren't included in the larger area.

Rating Act

Maori freehold lands are liable for rates under section 148. Sections 153-155 provide for the recovery of rates arrears from Maori lands by allowing such lands in default to be alienated by way of Section 438 of the Maori Affairs Act 1953.

The position of land in New Zealand today is as follows:

50 per cent is owned by the Crown or reserved for public purposes;

47 per cent is freehold land under European definition and title;

3 per cent is Maori land, owned by thousands of Maori shareholders, hamstrung by law from developing it.

The fight over Maori land continues, with Maori land grievances having as their root cause legislation which broke the Treaty of Waitangi.

THE POSITION OF MAORI PEOPLE IN NEW ZEALAND TODAY

If Maori people had been given the "equal rights and privileges of British subjects" they were promised under the Treaty of Waitangi, statistics like these would be very different.

EMPLOYMENT:	Maoris are 7 per cent of the labour force but 23 per cent of the unemployed	
EDUCATION:	80 per cent Maoris leave school with no qualifications 40 per cent Pakehas leave school with no qualifications	
JUSTICE:	Young Maori men are convicted four times more than Pakehas Young Maori women are convicted six times more than Pakehas	
INCOME:	Male Maori workers receive 20 per cent less than non-Maori workers Maori per capita income is 50 per cent of that of Europeans	
POPULATION:	1783 Non-Maori .0001 per cent	Maori 99.9999 per cent
	1983 Non-Maori 91 per cent	Maori 9 per cent

The above mentioned laws are only a few of those that have resulted in the expropriation of Maori land and the creation of highly structured inequality. To these must be added the hundreds of specific land vesting and empowering acts which allocate specific pieces of land away from the Maori community and major pieces of legislation such as the Public Works Act which confers very wide-reaching powers on the State to purchase land if it is in the national interest to do so.

All of these phenomena add up to a very systematic assault on the Maori people and one which severely challenges harmonious race relations in New Zealand. The New Zealand Race Relations Conciliator highlighted this in his 1982 Report when he stated that

> "Decisions affecting Maori land have been the major challenge to harmonious Maori/Pakeha relationships. We would take our definition of Maori Land - that land which is 'mainly but not exclusively land which has never been alienated by its Maori owner and has been held since pre-European times. Much of this dispute has arisen because of the differing cultural philosophies regarding land. The philosophy of the Maori elders is that you do not own the land, you are only custodians of the land, and must maintain the land in trust for future

generations. Thus land is administered and controlled through multiple rights or through family or tribal connections or, in Pakeha terms, multiple ownership. Ownership remains within one family of tribe and is handed on to the next generation. The Pakeha philosophy is the reverse. That is you own the land; it is a commodity to be bought and sold. There are many Pakeha people who have an affinity for the land but, by and large, it is basically commodity oriented. Until some of these values are reconciled in the law, it could be argued that there will always be Maori/Pakeha clashes on land issues."

It is to be hoped that this Working Group on Indigenous Populations might work out some formula whereby the cultural meaning of land for indigenous people in New Zealand and elsewhere might be articulated for all those who have a more rapacious approach and that international attention and concern might be focused on ways and means whereby the continuing alienation of the land of indigenous peoples might be stopped and reversed.

The Organization also submitted one copy each of the following documents: 3/

- Discussion Paper, prepared in February 1984, entitled "National Aboriginal Land Rights Legislation", the contents of which are as follows:

  Basic Issues, Form of Legislation; Land Available to Become Aboriginal Land; Procedures; Title of Land; Ownership and Control of Land; Use of Aboriginal Land; Sites and Objects.

- Document entitled "Aboriginal Past: Australia's Future", containing the texts of a resolution, moved in the Parliament by the Minister for Aboriginal Affairs, The Hon. Clyde Holding, MP on 8 December 1983, and a speech by the Minister in the Parliament on the same date.

3/ The copies are available for consultation at the Secretariat.

World Young Women's Christian Association

[Original: ENGLISH]
[14 May 1984]

A number of our national associations are concerned about discrimination against indigenous peoples and work in different ways to overcome this and to integrate these peoples in the community on a basis of equality of rights and treatment. The YWCA of Australia conducted, and published the results of, an investigation of human rights issues in the country, the first part of which dealt with human rights for aboriginal people (access to education, employment and housing, equality before the law and land rights). The YWCA of Canada is working in favour of the rights of its aboriginal population, encourages their activities and has an aboriginal affiliate. The YWCA of the United States of America is increasingly concerned about discrimination against minorities, including American Indians, and evermore active in support of their rights. The YWCA of Peru works with indigenous peoples, especially in the slum areas (barrios) of the larger cities. And the YWCA of New Zealand is more and more involved in the activities directed towards safeguarding the status and rights of its indigenous people.

In the light of article 7 of the Universal Declaration of Human Rights local associations were asked:

Whether they have any personal contact with Aborigines living in their area?

How many Aborigines live in their area?

Whether they live in a particular locality?

Whether they have adequate access to education, employment, and other community services?

Whether standards of Aboriginal housing are the same as the rest of the community, and if not, why not?

Whether the Aborigine in trouble with the law is treated in the same way as other members of the community in the same situation?

RESPONSES

Those local committees who responded to this survey appear to have very little contact with Aborigines. Some have relied on newspaper reports; others appear to have sought the views of professionals working in the field; others have used Government reports. However there were some individuals who did have contact with Aborigines through working with them on the Aboriginal Education Council.

ACCESS TO EDUCATION

A report from a N.S.W. committee advises that Aboriginal children are accepted in State schools, and are now staying longer at school, a small number proceeding to Higher School Certificate level. Scholarships are provided at pre-school, primary, and secondary levels both by the Government and by private donors/organizations through the Aboriginal Education Council. The Sydney YWCA played a prominent part in the establishment of this scholarship scheme.

Aboriginal Teaching Assistants' Courses are held within the Adult Education Department of Sydney University, and are funded by the Federal Government. Graduates are employed in State Government schools run by the Education Department. This course has meant a stimulus to the better education of Aboriginal children in country towns especially.

A less optimistic view is given in a series of newspaper articles about the educational needs of Aboriginal children living in fringe camps near Alice Springs. Few of these children attend schools because they feel uncomfortable in the European education system. The children are teased for their dirty, ill-fitting clothes, their lack of shoes, their state of health, and their difficulty with English which for them is a second language.

Aboriginal communities, in the Northern Territory and Western Australia particularly, are seeking alternatives to the Government education system, which, in their view, undermines the traditional authority and strengths of communities and denigrates/erases Aboriginal culture. Their efforts to establish innovative schools compatible with their own needs have been severely hampered by the paucity/absence of Government funding.

Nevertheless some projects are managing to operate, notably:-

Yipirinya (the caterpillar), a mobile school which operates within the Alice Springs fringe camps, blending formal education with social and cultural conditions.

Strelley, an Aboriginal-owned cattle station in Western Australia, where the bilingual programme imparts literacy and numeracy skills as well as pride in the knowledge of Aboriginal ceremonies and lifestyle.

ACCESS TO EMPLOYMENT

Aboriginal employment nation-wide is 45-50 per cent, and in some rural communities may be as high as 80 per cent; it is generally higher among women than men. The majority of Aborigines are living below the poverty line.

Discrimination within the education system means that most Aborigines are unable to reach the standard required to allow them to become employable. A large majority of Aborigines are "unskilled". White prejudice manifests itself in the unwillingness of shopkeepers and other employers to hire Aboriginal staff.

In the teaching profession, in New South Wales at least, there seems to be more hope for qualified Aboriginal teachers to obtain employment. However cost-cutting by both Federal and State Governments is not helping the situation.

The Final Report of the Senate Select Committee of the Legislative Assembly upon Aborigines, and the Report of the World Council of Churches, placed stress on self-determination, the rights of Aboriginal people to retain their culture, set their own priorities, and participate fully in the development of policies that affect their communities. Action along these lines and on the subject of Aboriginal Land Rights and Sacred and Significant Sites is necessary if social injustice is to be overcome and discrimination abolished.

ACCESS TO HOUSING

It is reported that Aboriginal housing is totally inadequate, marked by overcrowding and the lack of adequate sanitation or water supply. In 1980, the Federal Department of Aboriginal Affairs estimated that one quarter of the 40,000 Aborigines in New South Wales were living in substandard accommodation or shanties. One contributing factor is that governments tend to create and maintain top-heavy administrative structures, with land council money going to the bureaucracy rather than directly to community councils. There are still reports of real-estate agents and landlords refusing accommodation/housing to Aborigines.

On the other hand, there are a total of 111 Aboriginal hostels throughout Australia funded by the Commonwealth Government. The hostels are used for a variety of purposes, including employment training, education, and accommodation for transients and aged persons and for those seeking alcohol rehabilitation.

EQUALITY BEFORE THE LAW

There was little response to this question. One member reported that there seems to be great discrimination against Aborigines in small country towns. The Anti-Discrimination Board has reported that Aborigines in North West New South Wales are 32 times more likely to be arrested for street offences than whites because of discrimination by police and magistrates. A census of New South Wales prisons in 1974 showed that the Aboriginal rate of imprisonment was 17 times that of the rest of the community. Commenting on the high rate of detention for drunkenness, the President of the Anti-Discrimination Board has stated that "the situation can only be understood in the context of Aborigines being dispossessed of their land, and facing racism and social inequalities in their daily lives".

LAND RIGHTS

The National Committee asked no questions about land rights for Aborigines, despite the fact that this is seen by many as an essential prerequisite to restoring a sense of dignity and purpose. Out of the fragmentation and isolation resulting from the loss of tribal land arise many of the problems besetting the Aboriginal peoples in white Australian society. It could be appropriate for the National Committee to give this issue specific attention.