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## **From Native Title to Land Rights**

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In September 1997 the Communist Party of Australia issued a leaflet entitled: *13 Points on LAND RIGHTS for Aboriginal People*. This leaflet argued:

1. For at least 40,000 years Aboriginal people lived on this continent, **owning, caring for and being sustained by the land**. With their deep knowledge of nature and respect for the environment in which they lived, they developed a successful economy and a rich spiritual and cultural life.
2. In 1788 the British invaded this land and **used military force** to begin the land grab which continues to this day. **The Aboriginal people fought back** to protect their lands. Aboriginal people suffered murder on a huge scale, death through new diseases and poverty, and the destruction of much of Aboriginal traditional society.
3. Despite having to fight a war for the land, the British declared this continent **terra nullius** — that the land was empty and belonged to no-one when they colonised it.
4. For over 200 years the lie of **terra nullius** was the cruel and brutal cover for the mass murder, for the refusal to recognise Australia's indigenous race as a people, for the forced removal of children from their families, for the inhuman exploitation of the labour of Aboriginal people, for the racist treatment and apartheid Aboriginal people have been subjected to. **Terra nullius** was the justification for the denial of **Land Rights**.
5. **But the Aboriginal people have survived** and their struggle for **land and justice** has never ceased.
6. In June 1992, the High Court of Australia recognised the concept of **Native Title**, stating it had existed **before** settlement and had continued **after** colonisation. However, it said **Native Title was extinguished** whenever land had been sold or set aside for some other purpose.
7. The Howard Government's amendments to the Native Title Act will open the way for another **massive land grab** by mining and pastoral corporations — including Kerry Packer, Janet Holmes a Court and the Sultan of Brunei — as their leases are converted to freehold.
8. This may bring "**certainty**" to mining and pastoral interests, the certainty of knowing their ill-gotten wealth and profits are secure. But for Aboriginal people

it will be, as Northern Land Council Chairman Galarrwuy Yunupingu said, “**the final drink from the poisonous water hole**”.

9. Even though **Native Title** opens the way for only a small number of Aboriginal people to make land claims, it should nonetheless be protected from efforts to destroy it.
10. The High Court’s extremely narrow interpretation of **Native Title** in effect cuts off most Aboriginal people from making legitimate claims to land.
11. Aboriginal people **should not be forced** to accept the **racist legal fiction** that land they have been **forcibly prevented** from maintaining a “continuing association” with is therefore the property of the colonisers for all time.
12. In addition to **Native Title for the few**, there should be **Land Rights for all** Aborigines.
13. **Land Rights** mean recognition of Aboriginal prior ownership of all the continent of Australia. There must be legislation to return land to its traditional owners on the basis of traditional ownership, religious association, long occupancy and/or need, including full rights to minerals and other natural resources.

As we face the possibility of a double dissolution and Federal election triggered partly by the Federal Senate’s refusal to accept the Liberal Government Wik legislation, it is useful to look at the developments in the fight for Aboriginal Native Title and Land Rights.

### **Invasion, colonisation and land grab**

From the beginning of the invasion and colonisation (not “settlement”) of the Australian continent in 1788, the land of Aboriginal communities has been systematically stolen. It continues to be taken from them. The British Government invented the lie that the Australian continent was “empty”; (terra nullius) to justify the theft of all Aboriginal lands.

To make this fiction a reality and to consolidate their theft of the land, the colonisers set out systematically to destroy the Aboriginal people, their traditional economy, social life, religious beliefs and culture. Thousands were cruelly murdered. Those who remained were herded into “reserves” and “settlements” to be used as cheap — virtual slave — labour.

Recent revelations that tens of thousands of Aboriginal children were forcibly removed from their families have exposed the policies of Australian governments, churches and so-called “welfare” agencies. The systematic removal of children from their families to break up Aboriginal society, and to deny them their culture, religion and language is genocide.

Just 30 years ago, on May 27 1967, the Australian people in a referendum gave power to the Federal Government of Australia to make laws affecting the Aboriginal people.

In the period since 1967, only partial progress has been made to right the wrongs of the past. Only very limited rights to land have been extended. Educational opportunities for many Aboriginal children remain sub-standard, unemployment is disproportionately high, health services and housing are inadequate, and a section of the community continues to adopt racist attitudes to justify the inhuman discrimination and deprivation inflicted on the First Australians.

The resistance of the Aboriginal people focusses on the land. The long-running Aboriginal campaign for land and civil rights has involved land occupations, petitions, the longest running strike in Australia’s industrial history, tent embassies, the dramatic and powerful marches in the bicentennial year, poetry and other cultural forms of protest, and much more — in short, a national liberation struggle of growing strength, sophistication and influence.

The key to the recognition of the rights of the Aboriginal people remains land rights. Until the prior ownership and occupation of this continent by the Aboriginal people is acknowledged and until rights to land are restored, there will not be nor can there be genuine reconciliation between black and white in Australia.

### **Gains from the Mabo decision**

The Mabo decision by the High Court of Australia in June 1992 to reject the concept of "terra nullius" and to recognise "Native Title" was a step forward in the fight for their land which has been going on for over 200 years.

The common law of Australia recognised that Aboriginal and Torres Strait Islander rights of ownership existed before colonisation and may still exist where the connection with the land has been maintained and Aboriginal title has not been extinguished.

This was a change in Australian political and legal thinking: Aboriginal land claims no longer depended on the charity of governments. They could be asserted as a right on the basis of prior ownership and continuous occupation of the land since colonisation. In both cases, the level of struggle for land rights would be the decisive factor.

The High Court stated that "Native Title" is defined according to the traditional laws and customs of the people having the relationship with the land. The recognition of another source of law is a very significant development in itself.

### **Mabo is not land rights**

However, the Mabo judgement contained a contradiction: it had political and symbolic importance for Aborigines but it was also used to legalise the theft of their lands.

According to the High Court, "Native Title" was extinguished (eliminated) whenever the Crown (a legal term for the government) granted another kind of title. So every State or Federal Government sale of freehold land since 1788 has destroyed the original Aboriginal title.

Paul Coe, Chairman of the National Aboriginal and Islander Legal Services Secretariat, commented: "The High Court has held in Mabo that up to 1975, the Australian States could lawfully take away the land of an Aboriginal group simply by drawing up a piece of paper saying that someone else owned it."

Even in the rare cases where an Aboriginal title claim might still be possible, it would be extremely difficult for Aboriginal communities to prove continuous association with their land going back hundreds of years, given the violent history of colonisation, the herding of Aborigines into reserves, forced removals and other such policies,

Aboriginal activist Irene Watson pointed out: "Of the 300,000 Aboriginal people in Australia, only a very small percentage would be likely to succeed in their claim to Aboriginal title by being able to argue that they were still in continuing occupation of the same lands that they had a traditional relationship with in 1788."

### **Land rights are "dangerous"**

Despite the limitations of the Mabo decision, its recognition of Aboriginal rights to land infuriated the mining, pastoral and other monopolies and their political representatives and they responded with a well-orchestrated campaign of scare tactics, racism and economic blackmail.

For the owners of capital, land rights are both an immediate threat to their economic interests — and also a dagger aimed at the very heart of capitalism.

Land is a major source of wealth — its use for sheep, cattle and farming, the natural resources in and on it (gold, oil, bauxite, copper, diamonds, timber and so on), as real estate and for tourism. All this and more makes land one of a country's most valuable assets.

To return some part of this valuable asset to the people as community property sets a dangerous precedent for monopoly corporations who are intent on owning or leasing all the resources of this country in order to make the most profit possible.

Aboriginal land is owned communally, by a whole community. Private ownership for private profit would no longer be the only way things are done — there would be an alternative of collective ownership for the benefit not of an individual but of a group.

It's not a big step from this to suggesting that all the valuable assets in Australia could become the collective property of all the people and be used not for private profits but to meet the needs of the people.

Is the major and preferred form of land ownership in our society to be private ownership by individuals and corporations or can we create a form of communal ownership by groups of Aboriginal — and other working — people?

### **The Wik decision**

Then in 1996, the High Court in its Wik judgement ruled that leases issued under two Queensland Acts did not extinguish Aboriginal Native Title which may continue to co-exist with the leaseholders rights.

This confirmation of Native Title brought government and vested capitalist interests out fighting, demanding the extinguishment of Native Title.

Pastoralists, mining conglomerates, tourist companies and their politicians are fighting for unrestricted control of the land and its riches which provide them with such large profits. They want no interference from Aboriginal land claimants. Nothing less than the destruction of the whole concept of "Native Title" will satisfy them. They are wholehearted in their support of monopoly rights and confrontationalist in the tactics they use.

The Federal Government responded with its Wik 10 Point Plan which is intended to destroy Native Title.

Aboriginal communities have some form of land title over only eight per cent of Australia, 95 per cent of which is in barren areas of the Northern Territory and South Australia. Over 76,000 square kilometres were granted to the Yalata people — but these are the highly radioactive lands of the Maralinga atomic testing ground.

Howard's Wik plan includes conversion of pastoral and other leases to freehold. This would give away nearly half the continent to just 0.05 per cent of the population. It would also dispossess all Native Title holders.

### **The real conflict**

The fight that is going on at the moment takes many forms but at its heart is the struggle over who will own the land — the main means of production.

Aboriginal control of land and natural resources would make it harder for monopoly corporations to rip out Australia's wealth for private profit just when and where they please. Land rights would help reduce foreign ownership of Australia's resource wealth. Profits from developing these resources on Aboriginal lands will flow back into the Australian economy instead of being sent overseas.

Aboriginal land and mineral rights won't stop mining. The campaigns run by the mining monopolies try to suggest that land rights will end the mining industry but there's not a shred of evidence to support this claim.

Aboriginal people generally agree to mining provided that their sacred sites are protected, Aboriginal control is guaranteed and appropriate royalties and compensation are paid.

Mr Galarrwuy Yunupingu, Chairman of the Northern Land Council, has explained why there may be delays in starting mining projects on Aboriginal land. He said:

If the holy city of Jerusalem sat atop the richest gold mine in the world, if the earth beneath the Melbourne Cricket Ground contained the largest known deposit of silver, or if one of the war graves of Europe or Southeast Asia was found to be a huge nickel deposit, would you want time to make a decision about the mining of it?

Aboriginal land owners will be more interested in the land than in quick profits. This will help to protect the environment and to control such dangers as widespread erosion from uncontrolled grazing and pollution of water by poisonous chemicals from mining.

By the revival of Aboriginal culture, land rights will enrich Australia's cultural heritage.

By bringing Australia into line with international conventions on the rights of indigenous people, land rights will improve Australia's international image and prestige.

Returning their land to Aboriginal and Torres Strait Islander communities will contribute to overcoming the racism which divides Australian society and perpetuates inequality and injustice.

Economic development and increased power and self-respect will mean Aborigines can contribute freely and equally with other Australians.

## **CPA policies**

The Communist Party's program gives priority to winning communal, inalienable land rights for Aborigines as their right and based upon traditional ownership, religious association, long occupancy and/or need.

Aboriginal land titles must include full rights to minerals and other natural resources as well as to all sacred sites, heritage areas and areas of traditional significance.

Another essential feature is the establishment of autonomous areas for communities on the basis of their communally owned land where they can develop their own economic, social and cultural life.

Land Councils are needed in all States with the necessary legislative powers to allow them to research and determine land claims and, where desired by local communities, to administer Aboriginal lands.

Progress must also be made in such areas as the extension of legal rights and services; the protection of prices and copyright for Aboriginal and Islander works of art, the funding, expansion and Aboriginal control of health services, the funding and planning of housing programs, and the provision and content of education programs at primary, secondary, tertiary and technical training levels.

The Communist Party insists that the special position and inherent rights of the Aborigines and Torres Strait Islanders as dispossessed, indigenous minorities in

Australia must be recognised and that this recognition must be based above all on the return of Aboriginal and Islander lands.

## **Conclusion**

Winning the fight to retain Native Title is an important step in the fight for land rights which has been going on for 209 years. We will have to build on Native Title for the few to win land rights for all Aborigines.

Ultimately, there must be acknowledgement of Aboriginal prior ownership of the whole continent of Australia together with legislation to return land to Aboriginal communities on the basis of traditional ownership, religious association, long occupancy and/or need, including full rights to minerals and other natural resources.

The working people of Australia suffer at the hands of the same rapacious transnationals and monopolies, the same political forces which have inflicted so much injustice on the Aboriginal and Islander people. We have a common struggle.

Aborigines battling for land and mineral rights, white workers fighting to save their jobs — two sides of the one coin, two groups fighting the same battle against the same enemy. It's not a question of "helping" or "supporting" Aborigines. It's a matter of solidarity in the common struggle.

Aboriginal land rights challenge capitalism. They are a significant element in the struggle for socialism and lay the basis for the transition to social ownership by all the people, black and white, of land and other resources in a socialist Australia.

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