

**Pacific Indigenous Peoples Preparatory meeting for the  
World Conference on Indigenous Peoples  
19 - 21 March 2013, Sydney Australia**

**Agenda Item:** Lands, territories and resources, exploitation, devastation, commercial, exploration and cultural heritage protection

---

**Paper submitted by the Indigenous Peoples Organisation (IPO) Network of Australia - prepared by the National Congress of Australia's First Peoples.**

---

## **Introduction**

Building on its study on the right of Indigenous peoples to participate in decision-making, the United Nations Human Rights Council requested that the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) in coordination with the Special Rapporteur on the Rights to Indigenous peoples (Special Rapporteur) extend this study to focus on extractive industries.

In July 2011 the Special Rapporteur on the Rights to Indigenous Peoples submitted to the Human Rights Council his report on Extractive Industries operating within or near Indigenous territories. The report included the results of a questionnaire distributed to governments, Indigenous peoples, corporations, academic experts and community members. The questionnaire was designed to collect and understand the views, concerns and recommendations relating to extractive industries operating within or near Indigenous territories. The Special Rapporteur concluded that:

- there is a lack of understanding about the effects of the extractive industries and about the role of and responsibility of the State to ensure protection of Indigenous Peoples' rights
- that there is a need to operationalise the rights of Indigenous people in the context of natural resource extraction affecting Indigenous territories
- that there is a need to continue the study on the impacts of extractive industries operating on or near Indigenous territories in order to present a set of guidelines or principles to the United Nations by 2013.

As a contribution to this study, the National Congress of Australia's First Peoples invited the Special Rapporteur, James Anaya to Australia in August 2012 to a roundtable to meet with Aboriginal and Torres Strait Islander traditional owners as well as with representatives from peak organisations and communities about 'First Peoples and Extractive Industries: Good Practices'. He also spoke with NGOs, government and industry as part of his international study on extractive industries.

The roundtable focused on the rights that Australia's First Peoples derive from the United Nation's Declaration on the Rights of Indigenous People (the Declaration), and from relevant state and federal laws, especially the federal Native Title Act (NTA). The discussion dealt with ways to derive practical benefits for Australia's First

Peoples from their rights under these laws and treaties. While law reform is one avenue, the discussion focused on options for Aboriginal and Torres Strait Islander Australians to use these rights when interacting with extractive industries.

## **Roundtable on First Peoples and Extractive Industries: Good Practices**

### *Participation of Indigenous Peoples*

Communities can make a difference by being better informed about their rights, and by insisting that companies adhere to the requirements set out in the Declaration. Global companies are now faced with communities who are informed of their right to free, prior and informed consent everywhere they operate.

The key challenge for Indigenous people is how to make these rights real at the community level. Such measures might involve community governance structures, best practice guidelines, and a framework that involves informing and mobilising communities faced with the challenges and opportunities of resource extraction on or near their land.

Community engagement with industry should go beyond the corporate entity and extend to the big investment banks and the super funds that own substantial holdings in these companies. Participants felt that Australia's First Peoples should be focusing more on "following the money trail".

Companies should be educated about cultural heritage and sites in order to achieve an attitude change. But rather than focusing on government alone, participants felt that Aboriginal and Torres Strait Islander people should seek to directly influence company boards and investors, and the wider community, to change their understanding. Indigenous peoples should explain why they protect sites and why they value them. This education process also involves industry stakeholders engaging with communities to establish legitimate processes to deal with restoration.

### *Challenges Identified*

While acknowledging the opportunities extractive industries have presented for some communities including for example employment and other social and economic outcomes, participants noted these industries have also had a detrimental impact, especially on Aboriginal and Torres Strait Islander land and water resources. Some participants outlined the impact of damage to cultural sites, social impacts of living near mines as well as the lack of adequate rehabilitation measures of land in some instances. Participants felt very strongly about the poor state of cultural heritage protection in Australia. Aboriginal and Torres Strait Islander communities faced the threat of substantial damage to their land and heritage without having any lawful ability to protect it.

The experience of native title in Australia is different depending on whether country is located in developed area's or regional or remote areas. This difference has created a situation where there are have's and have not's within the Aboriginal and Torres Strait Islander community.

A number of issues and challenges were identified by participants at the roundtable including that:

- the rights enshrined in the Declaration, including the right to self-determination, the right to free, prior and informed consent, and the right to pursue economic, social and cultural development are not given appropriate weight or consideration in Australia; and that there is a need to transform these rights into actual results and tangible outcomes including by:
  - ensuring that industry and governments accept, respect and enforce these rights and principles in their activities on the ground and at the highest levels
  - achieving a fair balance in negotiations and overcoming the failure of the NTA to offer a right of veto; and given the inherent limitations in the right to negotiate under the NTA, ensuring that good faith negotiations are enforceable with extractive industries and other third parties
  - building capacity of communities so that they can ensure that these rights are respected and exercise their rights to self-determination
  - securing redress for past injustices and damage to traditional lands including restitution or just compensation for land taken or damage without free, prior and informed consent.
- a key concern was finding meaningful ways for Aboriginal and Torres Strait Islander peoples to exercise sovereign rights and avoid relying on government and resource companies; and that while some were of the view that the right to negotiate under the NTA gave Aboriginal and Torres Strait Islander peoples a seat at the bargaining table, others expressed concerns about the failure of native title law in Australia to afford rights for commercial transactions.
- there is a need to overcome the power imbalance created by the NTA, which clearly prioritises the interests of extractive industries and other non-Indigenous or third party interests over the interests of traditional owners; and the process for dealing with the rights of Aboriginal and Torres Strait Islander peoples is long, complicated and expensive, thereby reinforcing further industry's strong bargaining position.
- there is a need to address the current inconsistency between land management and heritage protection regimes across jurisdictions and to ensure that all legislation and policy is consistent with human rights laws and standards.
- Industry stakeholders must be educated on the historical disadvantages experienced by Aboriginal and Torres Strait Islander peoples, cultural heritage and site protection, corporate social responsibility and international human rights law.

## **Recommendations**

We recommend that:

1. States and Industry stakeholders work with Indigenous peoples nationally to develop a set of agreed and achievable principles for implementing the Declaration, that ensure that the human rights of Indigenous peoples are understood, promoted and observed where extractive industries operate.

2. States work with Indigenous peoples and Industry stakeholders to develop policies and procedures for working with Indigenous peoples that comply with the standards set out in the Declaration; and establish at the highest levels a statement on the rights of Indigenous peoples that respects and promotes their rights.
3. States work with Indigenous peoples to develop redress mechanisms that enforce good faith negotiations, are informed by best practice standards and practices, and include legitimate processes to remediate damage to country, and restitution or compensation for lands taken and or damaged without free, prior and informed consent.