

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

**Agenda Item: Lands, Territories and Resources**

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**Paper submitted by the Indigenous Peoples Organisation (IPO) Network of  
Australia - prepared by National Native Title Council.**

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The Australian government introduced the Native Title Act in 1993 in response to the Mabo decision. Through this Act, it was hoped to establish a social justice package for indigenous peoples that included a raft of measures such as the purchase of land and the potential to benefit from those lands.

The relationship between Indigenous peoples and the extractive industry in Australia has had a complex and varied history since the introduction of Native Title Act. Initially, there were concerns raised by extractive industries particularly the mining industry, that the additional impost of native title delayed timeframes and increased their costs.

These concerns have slowly dissipated over time, and the extractive industry has increasingly entered into negotiations with native title groups under the right to negotiate provision of the Native Title Act. This provision allows for the extractive industry to negotiate with Indigenous peoples for access to land and includes those groups with registered claims yet to be resolved as well as those with fully determined rights and interests. This provision has allowed for a "seat at the negotiating table" resulting, in some cases, with significant economic benefits for Indigenous peoples, their families and communities.

With over 400 native title claims yet to be determined, the right to negotiate continues to provide a fundamental right for Indigenous people to access and share in benefits for what will inevitably mean access to their lands by the extractive industry.

Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples provides for the right of Indigenous peoples to determine their own priorities for the development or use of their lands as well as the right to free, prior and informed consent for any project affecting their lands or territories. 60% of mining activity neighbours Indigenous communities and the extractive industry has become one of the biggest employers of Indigenous peoples outside the Government sector.

Like self-determination, free, prior and informed consent reinforces all of the rights contained within the Declaration. According to the Human Rights Council, free, prior and informed consent has been identified as a 'requirement, prerequisite and manifestation of the exercise of our right to self-determination'.

In Australia, free, prior and informed consent has formed a significant platform for fair and reasonable decision making, particularly in relation to the negotiation of

comprehensive agreements with the extractive industry. Negotiating agreements are becoming common practice and Indigenous peoples are gaining confidence in determining their own beneficial outcomes.

Agreements negotiated between mining companies and indigenous communities or other land connected peoples are increasingly important in terms of formalising the conditions upon which mining can take place on indigenous lands, as well as the compensation and benefit sharing arrangements that flow from mining.

However Indigenous peoples are not able to fully experience the benefits of free, prior and informed consent. Indigenous peoples do not have genuine decision-making authority and power over their lives and futures. That power and authority continues to rest in the hands of governments.

Currently there are no examples of indigenous people having negotiated royalty contributions or ownership rights over corporations. Article 26 of the Declaration provides that Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, as well as the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership.

Economic sustainability of Indigenous communities is critical to the future of their communities and it's critical for health and well being. At the same time and just as critical is Indigenous cultural sustainability. For Indigenous peoples this relates to how they can maintain their cultural identity.

According to a follow-up report of the Human Rights Council there are three pillars of the Guiding Principles on business and human rights as they relate to indigenous peoples and the right to participate in decision making.

- State's duty to protect against human rights abuse by third parties;
- Corporate responsibility to respect human rights; and
- Access to remedy

States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, when human rights abuses occur, those affected, including Indigenous peoples, have access to remedy.

## **Recommendations**

We recommend that:

1. the WCIP encourage and urge States to develop mechanisms that will encourage extractive industries to engage with Indigenous peoples to implement the UN Declaration on the Rights of Indigenous Peoples; and
2. the WCIP acknowledge and address the Rio+20 Indigenous Peoples Declaration on Sustainable Development to access and share in the benefits from their lands, territories and resources.

