

United Nations Permanent Forum on Indigenous Issues
Eleventh Session – New York
7-18 May 2012

Agenda Item: Future Work

Joint Intervention Delivered by Brian Wyatt on behalf of:

National Native Title Council
More organisations to be added as they endorse ...

Recommendations:

Mr Chairman

We are active in the Indigenous Peoples and Extractive Industries Network formed following the conference and Permanent Forum Expert Workshop that took place in Manila in 2009. One of the ongoing initiatives of this network is to critically examine the implementation or not of the UN Declaration on the Rights of Indigenous Peoples and particularly the principle of Free Prior and Informed Consent among extractives corporations and on the basis of research and dialogue press for the genuine adoption and speedy implementation of the declaration by extractive corporations. It is clear to us that while change is coming and must come to the extractive industry sector there are many continuing and serious and unresolved problems affecting indigenous communities in Australia, the Pacific and elsewhere. These are some of the gravest problems raised each year in this forum.

We therefore call on the UN Permanent Forum of Indigenous Issues to:

- Continue to give priority attention to the grave and varied issues related to Extractive Industries as they affect Indigenous Peoples.
- Specifically we urge the Permanent Forum to allocate a half day discussion at next year's forum and prepare an expert report as an input to that session That the Permanent Forum welcome the important focused examination of these issues of the UN Special Rapporteur Professor James Anaya, the Expert Mechanism on the

Rights of Indigenous Peoples and others including the newly formed UN Working Group on the issue of human rights and transnational corporations and other business enterprises and invite the participation of these bodies in a half day session in the 12th meeting of Permanent Forum 2013

- That the Permanent Forum urge the UN Working Group on Business and Human Rights to give priority attention to the issue of impacts of extractive industries on indigenous peoples and urge that the working group pay due attention to the need to ensure that indigenous voices particularly those of peoples with direct experience of the impacts of business enterprises upon their peoples and territories are facilitated to participate in and be heard in the deliberations of the Working Group.

Mr Chairman

Extractive Industry activity in the State of Australia is increasing in response to growing demands for resources from the dominant unsustainable development thrusts of our national and global economy. Major projects contribute significant funds to the Australian budget. The impacts on Indigenous communities, particularly in remote and regional areas, can and do sometimes bring important benefits. Many Indigenous people are entering the market, some for the first time, and more and more Indigenous entrepreneurs are taking advantage of business opportunities that are relieving the disadvantage of families for future generations.

This is a good thing.

Such benefits where they occur are being made possible through comprehensive agreements negotiated between traditional land owners and major companies in the extractive industry for access to land.

But in other cases there remains the experience of projects being seriously detrimental to people, sacred sites and the environment. Traditional lands and traditional knowledge are being sacrificed because the State of Australia wants to grow its mining sector for increased revenue. This means that true principles of consultation, or free, prior and informed

consent are being ignored. Indigenous groups do not have the full right to determine the future of their lands in particular to protect their sacred sites. Nor do Indigenous groups get to really share the benefits of those natural resources being extracted from traditional lands. Reports on the impacts of mining operations in other States, also makes clear that despite the passage of the UN Declaration of the rights of Indigenous Peoples five years ago, the practice of the mining and other extractives network is still often a matter for serious concern and unacceptable behaviour.

The only power to veto in Australia is in the *Aboriginal Land Rights Act (Northern Territory) Act 1976* where Indigenous land owners can object to any extractive industry activity for a period of up to 5 years, however once this period has elapsed the companies can re-apply and negotiations must take place. (Ref: Part IV Mining Sections 40 – 48J)

The State of Australia has seemingly stringent legislative frameworks in place, yet there are still major concerns and deficiencies in the treatment of native titleholders and other land indigenous land owners in relation to their rights and interests. Under the Native Title Act those indigenous peoples that have their native title claims in the system have the right to negotiate, which provides the right to enter into agreements. These provide benefits such as employment and business development, but there are no provisions for the protection of water resources and no allowances for the sustainable development of communities for their children and grand children. Traditional Owners struggle to gain the recognition of their rights through the just settlement of native title, with claims taking many years to settle.

Foreign companies are also setting up operations in Australia with major extractive industry activity occurring in remote areas of the state. How can there be guarantees that peoples rights are being recognised and traditional lands are being protected when their own human rights' records are less than exemplary?

Indigenous Australians along with all indigenous peoples are entitled to the full recognition and protection of their rights. This is recognised in the UN Declaration on the Rights of Indigenous Peoples. Yet corporations who can have massive impacts are often foot dragging

in its full implementation. We therefore welcome the efforts of the UN Special Rapporteur to further study and make recommendations for effective protection for indigenous rights to determine the future of their territories in relation to mining developments and where appropriate to properly benefit from any agreed projects.

Thank you Mr Chairman