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United Nations Permanent Forum on Indigenous Issues
Wednesday, 29 May 2013

Future work of the Permanent Forum (extractive industries)

Statement by Mandy Doherty, Branch Manager, Reconciliation and Relationships Branch, Department of Families, Housing, Community Services and Indigenous Affairs.

(Check against delivery)

Agenda item 8 – Australian intervention

We would like to acknowledge the traditional owners on whose land we meet today and pay our respects to elders past and present.

I would like to begin by congratulating Professor Megan Davis on her recent re-election as an expert member to this Forum and to pay tribute to the work she undertook in her first term. This work included the study by Professor Davis on the impact of Australia's mining boom on Aboriginal and Torres Strait Islander communities in Australia – the issue on which we would like to focus our intervention today.

Much of the mining Professor Davis describes takes place on land either owned or held by Aboriginal and Torres Strait Islander peoples, or claimed under land rights or native title legislation. The issue of good faith engagement is very much alive in the native title context. The Australian Government has legislated procedures for good faith consultation with Indigenous peoples, consistent with our commitment to good faith engagement, and the principles in the Declaration on the Rights of Indigenous Peoples.

An example of this is seen in Australia's *Native Title Act 1993*, which establishes the 'right to negotiate' – a procedure that ensures certain future acts, such as mining or exploration, can be validly carried out on native title land.

The 'right to negotiate' requires the miner, developer or Government to negotiate with the registered native title party 'in good faith' for at least six months, with a view to obtaining their agreement to the act being done. If agreement cannot be reached after this time, any of the parties can apply, for a determination, generally to the National Native Title Tribunal, about whether the act can be done, or done with conditions. If the Tribunal however establishes that negotiations have not been conducted in good faith, a

determination cannot be made and the parties must continue their negotiations in order for good faith agreement to be reached. The Australia Government has introduced into Parliament a range of reforms to further clarify these provisions.

Most Australian state and territories have additional Indigenous land rights legislation which provide for Indigenous ownership of land through various forms of tenure. In the Northern Territory, this includes communally held inalienable freehold title under the *Aboriginal Land Rights (Northern Territory) Act 1976*. Under this Act, Aboriginal landowners have a right of veto over mineral exploration on their land. The Act requires that independent Land Councils obtain the consent of Aboriginal landowners, consult with other Aboriginal people affected, and determine whether the terms and conditions of any agreement are reasonable, before mining exploration can occur.

Where mining occurs on Aboriginal land in the Northern Territory, an amount equal to royalties received by the Government is credited to the Aboriginals Benefit Account. Funds from this account are distributed to organisations representing affected Aboriginal landowners, to Northern Territory Land Councils to fund their continuing operations, and to other organisations to fund initiatives of benefit to Aboriginal people living in the Northern Territory.

Internationally, Australia has supported efforts to promote consultation with Indigenous peoples on decisions affecting them, including in the area of extractive industries. In 2011, Australia co-sponsored the Human Rights Council resolution on the UN Guiding Principles on Business and Human Rights. Australia also recently joined the Voluntary Principles on Security and Human Rights which specifically focus on the extractive industry and has endorsed the UN Global Compact. Australia is actively engaged in international debate on the post-2015 development framework — a framework which should promote ‘development for all’, including Indigenous peoples. Indigenous peoples should be a partner in the post-2015 conversation.

Great gains have been made in establishing formal rights mechanisms to facilitate negotiation between Indigenous peoples, Governments and business, in Australia and internationally. These will continue to be crucial to ensuring that Aboriginal and Torres Strait Islander peoples benefit from the extractive industry.