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**United Nations Permanent Forum on Indigenous Issues  
Twelfth Session – New York  
20 - 31 May 2013**

**Agenda Item 8: Future Work – Study on the Impact of the Mining Boom on Indigenous Communities in Australia**

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**Joint Intervention Delivered by Mr Brian Wyatt on behalf of the National Native Title Council (NNTC) of Australia:**

Indigenous Peoples Organisation Network of Australia  
National Congress of Australia's First Peoples (Congress)  
National Aboriginal Community Controlled Health Organisation (NACCHO)  
National Aboriginal and Torres Strait Islander Legal Services (NATSILS)  
Foundation for Indigenous Recovery and Development, Australia (FIRDA)

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Thank you Mr Chairperson,

**Recommendations**

**The Indigenous People Network Organisation of Australia recommends that the Permanent Forum urge the State of Australia to:**

- 1. Adopt the conclusions and recommendations outlined in the Study on the impact of the mining boom on Indigenous communities in Australia;**
- 2. Engage with Indigenous peoples, communities and their representative institutions to make free prior and informed consent a reality with mining companies in Australia; and to**
- 3. Consider and adopt principles of access and benefit sharing between the mining industry and Indigenous communities in Australia as outlined in the Nagoya Protocol as auspiced in the Convention on Biological Diversity.**

The Indigenous Peoples Organisations (IPO) Network of Australia welcomes the Study on the impact of the mining boom on indigenous communities in Australia. The present study has provided a brief overview of the impact of the current Australian mining boom on indigenous peoples and their communities. The impact is both negative and positive. Mining activity occurs mostly on indigenous lands and the literature reveals that the redistribution of the wealth from the mining boom to indigenous communities is inequitable.<sup>2</sup> Moreover, how indigenous peoples prepare for the future is important, given that they need the benefits of the mining boom — employment, training, education, business investment and community development

The rights of Indigenous Peoples to maintain their traditional lifestyle is threatened by corporations, Governments and multilateral financial institutions, a situation that is particularly true when it comes to the activities of the mining industry. As noted in the report, there are a number of legal instruments that safeguard the rights of

Indigenous peoples<sup>1</sup>, including the UN Declaration on the Rights of Indigenous Peoples is considered to be the instrument to protect Indigenous peoples' rights and is the framework that sets out the minimum standards to ensure their dignity, survival and well-being (E/C.19/2013/16, para. 18) and **II Relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples** (E/C.19/2013/20 para 5). In particular the Declaration sets out the rights of Indigenous Peoples to self-determination, participation, consultation and free, prior and informed consent. The report notes that States have a duty to consult, ensure participation and obtain the free, prior and informed consent of Indigenous Peoples. This also applies to the activities of corporations, including the mining industry.

Mr Chairman, it is incumbent on states to protect against potential human rights abuses by business entities against Indigenous peoples. The Mining industry also has the obligation to respect international human rights standards within their framework of due diligence (E/C.19/2013/16, para. 39). (E/C.19/2013/20)

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

Some of these concerns have slowly dissipated over time, and the mining 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 mining industry to negotiate with Indigenous peoples for access to land, which 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 mining industry.

Mr Chairman, the Native Title Act was proclaimed with full and proper recognition that it was a special measure under both the United Nations Convention on the Elimination of All Forms of Racial Discrimination and Australia's Racial Discrimination Act 1975.

This special measure has provided the mining industry with the environment under which to undertake negotiations with Indigenous peoples. Yet, the right to free, prior and informed consent remains to be fully operationalised by the State of Australia.

Article 32 of the Declaration 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.

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<sup>1</sup> Such instruments include, but not limited to, the Universal Declaration of Human Rights (1948), the International Labour Organisation (ILO) Indigenous and Tribal Populations Convention (1957), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights (1976), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Biological Diversity.

60% of mining activity neighbours Indigenous communities and the mining 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.

It is with this in mind that Australia's Indigenous peoples continue to appreciate the opportunity to raise these matters through the mechanisms of the United Nations including the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples.

Thank you Mr Chairman