

**Statement by the
National Congress of Australia's First Peoples
to the
Expert Mechanism on the Rights of Indigenous Peoples
8-12 July 2013, Geneva**

Item 4: Follow-up to thematic studies and advice

Statement delivered by Geoff Scott on behalf of the National Congress of Australia's First Peoples.

The National Congress of Australia's First Peoples provides this statement as follow-up to the EMRIP studies on:

- lessons learned and challenges to achieve the implementation of the right of Indigenous Peoples to education
- the role of languages and culture in the promotion and protection of the rights and identity of Indigenous Peoples
- the right to participate in decision-making, including with a focus on extractive industries.

The National Congress of Australia's First Peoples (Congress) is a national representative body for Aboriginal and Torres Strait Islander Peoples in Australia. The United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) provides the foundation and guide for Congress to uphold and strengthen the collective and individual rights of Aboriginal and Torres Strait Islander Peoples.¹

Congress has done considerable work within the theme areas of education, languages and culture, and participation in decision-making.

Lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education

Indigenous Peoples value successful lifelong education. We aspire a return to proficiency in our own cultural ways of being, knowing and doing. We also aspire to be equally educated in the formal or Western system in order to successfully participate in the societies in which we choose or have been forced to live. However, meaningful, empowering and culturally sustaining education for our Peoples will only be possible when Indigenous Peoples have the choice to determine, as well as the resources to develop and deliver, curriculum and pedagogy that are culturally sustaining.²

Congress has worked with its members and Aboriginal and Torres Strait Islander educators to develop a policy approach to Indigenous Education that is consistent with the guidance provided in Expert Mechanism Advice No. 1 (2009) on the Right of Indigenous Peoples to Education.³

The Congress Education Policy seeks to address the key challenges Aboriginal and Torres Strait peoples are facing in terms of realising their right to education. This includes that:

¹ National Congress of Australia's First Peoples, *Education Policy: About Congress*, June 2013, p 3, Available at: <http://nationalcongress.com.au/wp-content/uploads/2013/06/CongressEducationPolicy.pdf>, (Accessed July 4, 2013).

² National Congress of Australia's First Peoples, *Education Policy: Executive Summary*, June 2013, p 4, Available at: <http://nationalcongress.com.au/wp-content/uploads/2013/06/CongressEducationPolicy.pdf>, (Accessed July 4, 2013).

- mainstream educational institutions must be culturally-affirming and suitably equipped to meet the needs of Indigenous students
- Indigenous communities must have a strong hand in curriculum design, planning and delivery
- there must be a strong presence of Indigenous teachers and school principals, and schools must collaborate with parents, carers, elders and leaders
- recognition that better integration of the teaching of Indigenous histories and cultures into educational institutions and curricula, including Indigenous languages, is the cornerstone for a positive strengths based approach to Indigenous education
- urging governments and policy makers to ascribe importance to building understanding and respect to cultural methods of teaching and learning.⁴

Critical to the EMRIP Advice No. 1 is the need for schools and other educational institutions to provide environments in which students are free from prejudice and discrimination, and in which Indigenous cultures are understood, honoured and respected.⁵

In this regard Congress strongly advocates:

- for the establishment of adult educational institutions including universities that focus on the maintenance, transmission and development of Indigenous cultural knowledge's using Indigenous expertise, concepts and categories and which include as options, alternative pedagogies, curriculum and assessment techniques
- the importance of bilingual education in Aboriginal and Torres Strait Islander communities and has recommended to Parliamentary Committee's that bilingual education be reinstated in those communities that have requested it
- that partnerships are vital to our success and to securing positive change. For this reason Congress commits to continue working with and supporting existing organisations active at the state, territory and national levels involved in education for our Peoples
- that all States ratify and give effect to the Convention against Discrimination in Education.⁶

Congress asserts that the Australian Government's endorsement of the Declaration requires that it take a new approach to the provision of education for Aboriginal and Torres Strait Islander families

3 United Nations Office of the Higher Commissioner for Human Rights, *Expert Mechanism Advice No. 1(2009) on the Rights of Indigenous Peoples to Education* (Geneva: 2009), Available at: <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/ExpertMechanismDocumentation.aspx>, (Accessed July 4, 2013).

4 National Congress of Australia's First Peoples, *Education Policy: Executive Summary*, June 2013, p 4, Available at: <http://nationalcongress.com.au/wp-content/uploads/2013/06/CongressEducationPolicy.pdf>, (Accessed July 4, 2013).

5 United Nations Office of the Higher Commissioner for Human Rights, *Expert Mechanism Advice No. 1 (2009) on the Rights of Indigenous Peoples to Education* (Geneva: 2009), <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/ExpertMechanismDocumentation.aspx>, (Accessed 4 July 2013).

6 National Congress of Australia's First Peoples, *Education Policy*, June 2013, p 3, 4, Available at: <http://nationalcongress.com.au/wp-content/uploads/2013/06/CongressEducationPolicy.pdf>, (Accessed July 4, 2013).

and communities. Only when this occurs are we likely to begin to close the gap in education outcomes for Indigenous people.⁷

The role of languages and culture in the promotion and protection of the rights and identity of Indigenous Peoples

Congress understands that language is central to Aboriginal and Torres Strait Islander cultures and identities. The two are intertwined. Prior to colonisation, there were more than 250 distinct Indigenous languages across Australia which can be divided further into more than 600 dialects.⁸ Due to the impact of colonisation, Indigenous languages in Australia are now critically endangered. There are approximately 100 Indigenous languages which still exist in some form in Australia, while only 18 of these are spoken by all generations of people within a given language group.

'In 2001, 11.1% of Aboriginal and Torres Strait Islander people over the age of five spoke a First Peoples language, whilst in the 2006 census this figure was only 9.2 percent.'⁹ Congress expects to see a continued decline due to a range of factors, including the lack of sufficient funding for Aboriginal language programs, lack of coordination and strategic approach to language maintenance and revival efforts, and the cessation of bilingual education in the Northern Territory in 2010, where the largest numbers of speakers of 'strong' languages reside.

Evidence suggests that without intervention Indigenous languages will cease to exist in the next 10-30 years.¹⁰ This trend of decline is of deep concern to Congress.

Congress asserts that while efforts to address the decline in Indigenous languages have assisted in identifying the issues, they have not made significant headway in improving the situation. It is of great concern to Congress that there have been multiple reviews and recommendations made in relation to the maintenance, revitalisation and revival of Aboriginal and Torres Strait Islander languages, and to the benefits of bilingual education, and yet a strategic approach to language education, maintenance and revival has not been progressed.

Action is urgently required to develop a new and strategic approach to the implementation of Aboriginal and Torres Strait Islander language, learning, maintenance and revival efforts in Australia if our Indigenous languages are to survive.¹¹

7 National Congress of Australia's First Peoples, *Education Policy: Culturally Affirming Institutions*, 2013, p 15, Available at: <http://nationalcongress.com.au/wp-content/uploads/2013/06/CongressEducationPolicy.pdf>, (Accessed July 4, 2013).

8 Bianco, J L., *Organising for Multilingualism: Ecological and Sociological Perspectives A TESOL Symposium on Keeping Language Diversity Alive*, 2008, p 11, Alice Springs, Northern Territory, Australia, July 9, 2008.

9 Obata, K. and Lee, J., "Languages of Aboriginal and Torres Strait Islander Peoples – An uniquely Australian heritage" in Australian Bureau of Statistics, Year Book Australia 2009-2010, as cited by National Congress of Australia's First Peoples, *Statement to the Australian Government on the Inquiry into Language Learning in Indigenous Communities conducted by the Aboriginal and Torres Strait Islander Affairs Committee*, December 2011, p 3, Available at: <http://nationalcongress.com.au/wp-content/uploads/2011/12/111214-CongressSubmissionLanguageIndigenousCommunities.pdf>, (Accessed 4 July 2013).

10 Australian Institute of Aboriginal and Torres Strait Islander Studies and the Federation of Aboriginal and Torres Strait Islander Languages, *National Indigenous Languages survey 2005*, p 67, as cited by Australian Human Rights Commission, *Social Justice Report 2009*, p 58.

11 National Congress of Australia's First Peoples, *Statement to the Australian Government on the Inquiry into Language Learning in Indigenous Communities conducted by the Aboriginal and Torres Strait Islander Affairs Committee*, December 2011, p 3, 4, Available at: <http://nationalcongress.com.au/wp-content/uploads/2011/12/111214-CongressSubmissionLanguageIndigenousCommunities.pdf>, (Accessed 4 July 2013).

The right to participate in decision-making, with a focus on extractive industries

Participation in decision making is critical to Indigenous peoples being able to exercise self-determination.

While the capacity of Aboriginal and Torres Strait Islander peoples to engage in the negotiation of agreements with extractive industries is increasing, we 'are not able to fully experience the benefits of free, prior and informed consent'¹².

Despite numerous reform processes to federal native title legislation, the requirement to obtain our free, prior and informed consent over our lands, territories and resources as outlined in the Declaration, has not been given serious consideration.¹³

In September 2012, Congress conducted a forum with representatives from industry, government and Aboriginal and Torres Strait Islander Peoples to consider our engagement with extractive industries. This forum addressed a range of issues including our involvement in the negotiation of agreements; land management and cultural heritage protection including the impact of damage to cultural sites, social impacts of living near mines as well as the lack of adequate rehabilitation measures of land; and developing appropriate mechanisms for redress. This forum was informed by the EMRIP Study on participation in decision-making with a focus on extractive industries and was attended by the Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya.

Delegates at the Forum stressed the need for governments and industry stakeholders to be informed about the rights of Indigenous peoples, and they also affirmed their responsibility to be better informed about their rights, and to insist that Governments and companies adhere to the requirements set out in the Declaration.¹⁴

Congress has also engaged in consultations on the Global Compact which seeks to increase awareness of corporate social responsibility, particularly as it relates to the protection and promotion of the rights of Indigenous Peoples; and we have pursued strategic litigation as a mechanism to develop domestic jurisprudence that currently upholds that while consultation (not free, prior and informed consent) is desirable it is not essential.¹⁵

All States and transnational corporations including extractive industries must take steps to include the Declaration on the Rights of Indigenous Peoples in all judicial, administrative, legislative and policy processes to ensure Indigenous Peoples have genuine decision making authority and power over their lives and futures.¹⁶

¹² Indigenous Peoples Organisations Network of Australia, *Paper submitted to the Pacific Indigenous Peoples Preparatory Meeting for the World Conference on Indigenous Peoples, Lands Territories and Resources*, 19-21 March 2013, Sydney, Australia, p 2.

¹³ Indigenous Peoples Organisations Network of Australia, *Paper submitted to the Pacific Indigenous Peoples Preparatory Meeting for the World Conference on Indigenous Peoples, Lands Territories and Resources, Exploitation, Devastation, Commercial, Exploration and Cultural Heritage Protection*, 19-21 March 2013, Sydney, Australia, p 1.

¹⁴ National Congress of Australia's First Peoples, *First Peoples and Extractive Industries Round Table Forum: Day One Summary*, 2013, p 1, Available at: <http://nationalcongress.com.au/wp-content/uploads/2012/08/Day1Summary.pdf>, (Accessed July 4, 2013)

¹⁵ See High Court of Australia, *Affidavit of Lindon Coombes* affirmed on 27 November 2012, No B57 of 2012; and *Aurukun* [80] (McMurdo P), [195]-[208] (Keane J), [249] (Phillipides J), *Morton* [31] (McMurdo P), [114] (Chesterman JA), [39] (Holmes JA agreeing).