



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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14 December 2018

Excellency,

I would like to inform you that in the course of its 97th Session, the Committee on the Elimination of Racial Discrimination considered information received related to the Carmichael Coal Mine and Rail Project in Queensland, Australia, and its impact on the Wangan and Jagalingou indigenous people.

The information received indicates that the Wangan and Jagalingou people have registered native title claim under the Native Title Act 1993 (Native Title Act), which constitutes the recognition of the traditional rights and interests in their ancestral lands. In this regard, the 2017 Federal Court decision *McGlade v Native Title Tribunal* confirmed that agreements with indigenous peoples on the use of their lands, namely Indigenous Land Use Agreements (ILUAs), require the signatures of all members of the registered native title claimants.

The Committee is concerned about the allegations that the consultation on the ILUA for the Carmichael Coal Mine and Rail Project might not have been conducted in good faith, notably by not including all the members of the Wangan and Jagalingou native title claim group. The Committee is further concerned about the allegations that the development of the Carmichael Coal Mine and Rail Project on the ancestral lands of the Wangan and Jagalingou people does not enjoy the free, prior and informed consent of all their representatives.

The Committee is also concerned that ILUAs could lead to the extinction of indigenous peoples' land titles. In this regard, the Committee is particularly concerned by the adoption of the Native Title Amendment in 2017, introduced by the government in Parliament, recognizing the validity of ILUAs even when these agreements are not signed by all native title claimants, which appears to be in contradiction with the decision of the Federal Court mentioned above.

Her Excellency Ms. Sally Mansfield
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Accordingly, the Committee is concerned that, if the above allegations are corroborated, the realization of the Carmichael Coal Mine and Rail Project would infringe the rights of the Wangan and Jagalingou people's rights that are protected under the International Convention on the Elimination of All Forms of Racial Discrimination.

Therefore, the Committee requests the State party to provide information on the steps taken to:

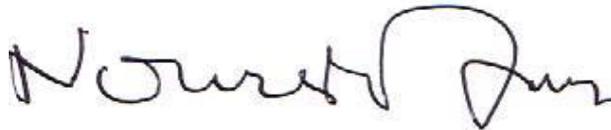
1. Ensure the right to consultation and free, prior and informed consent regarding the Carmichael Coal Mine and Rail Project, in accordance with indigenous peoples' own decision-making mechanisms;
2. Consider suspending the Carmichael Coal Mine and Rail Project until free, prior and informed consent is obtained from all indigenous peoples, including the Wangan and Jagalingou Family Council, following the full and adequate discharge of the duty to consult.

In this regard, the Committee encourages the State party to consider engaging with the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) that is mandated by the Human Rights Council (resolution 33/25, paragraph 2), to provide States with technical advice on the rights of indigenous peoples and facilitate dialogue between States, indigenous peoples and/or the private sector.

In accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party to submit its response before 8 April 2019.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of Australia, with a view to ensuring the effective implementation of the Convention.

Yours sincerely,



Nouredine Amir
Chair

Committee on the Elimination of Racial Discrimination