

**Mandate of the Special Rapporteur on the rights of indigenous peoples**

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 24/9.

In this connection, I would like to bring to your Excellency's Government's attention information that I have received about the **proposed Carmichael Coal Mine in the Galilee Basin, Queensland which, if constructed, would threaten the ancestral lands, sacred sites, and cultural identity of the Wangan and Jagalingou peoples.**

According to information received:

The Wangan and Jagalingou peoples' ancestral homelands in the Galilee Basin in Central Queensland, Australia, would suffer irreversible harm if the proposed Carmichael Coal Mine of the Indian owned Adani Mining Company were to be developed.

In 2004, the Wangan and Jagalingou peoples registered, under the Native Title Act, their claim to their ancestral homeland. The majority of the land they have claimed under the *Native Title Act 1993* lies within the area where the Carmichael Coal Mine is being planned.

Reportedly, the proposed Carmichael Mine would be the largest coal mine in Australia and among the largest in the world. It would consist of six open pits and five underground mines. The total area affected would be approximately 30,000 hectares. The proposed operation life span of the mine would be 60 years and estimations indicate that at maximum capacity the mine would produce some 60 million tonnes of coal a year.

Concerns have been expressed over the impact of the extensive coal extraction plant, waste rock dumps and associated infrastructure would have on the land. Reportedly, the carbon emissions associated with the extraction, transport and

combustion of coal from the mine during its proposed lifespan would amount to 4.73 billion tonnes of carbon dioxide.

Apart from the changes to the earth, the mines would allegedly require 12 billion litres of water per year. Such usage could affect the Carmichael River and likely dry up the sacred Doongmabulla Springs which are central to the affected peoples' creation story according to which the Rainbow Serpent (*Mundunjudra*), travelled through the springs and gave shape to the land.

The Wangan and Jagalingou peoples' conduct ceremonies and cultural rites on the land, monitor land use and educate their young people about their ancestry, history and connection to the land. Their sacred beliefs are based on where *songlines* run through their country. In their world view, the *songlines* connect them to Mother Earth and it is a sacred duty to protect their land. The trees, plants, waterholes and animals play a religious role in their culture; they constitute dreaming totems which provide protection and inform their social order and responsibilities. As Aboriginal peoples, the Wangan and Jagalingou depend on their land for their spiritual and physical wellbeing. They rely upon the land for their sense of belonging and consider themselves guardians of the land for their future generations.

The Wangan and Jagalingou peoples' relationship to their ancestral land and water is central to their culture and self-identity and would be severely affected by irreversible degradation of the Carmichael Mine. The environmental destruction caused by the mine would permanently rupture the Wangan and Jagalingou peoples' relationship with their ancestral land and water, deny their ability to transfer spiritual ties to their children and destroy their culture beyond repair.

According to information received, the Wangan and Jagalingou people have faced intense governmental and corporate pressure in relation to development of the mine.

Despite the pending Native Title Claim of the Wangan and Jagalingou, both the Queensland and the Federal Government approved the construction of the Carmichael Coal Mine, in May and July 2014 respectively.

Adani Mining has sought to negotiate with the Wangan and Jagalingou people since 2011 and has reportedly sought to manipulate members of the community by offering financial incentives and by putting pressure on the community to accept a negotiated outcome rather than risk the losing future compensation, should a mining lease be upheld. Allegedly, Adani Mining has attempted to undermine the Wangan and Jagalingou people's system of representation by challenging the legitimacy of their authorized senior spokesperson. By interfering with the internal decision making process of the Wangan and Jagalingou people, Adani Mining has sought to foment division between members of the community and has misrepresented the official position of the community to the public.

The Wangan and Jagalingou people have publically opposed the development plans for the mine and have rejected concluding Indigenous Land Use Agreements (ILUA) with Adani in December 2012, and again in October 2014.

In April 2015, the National Native Title Tribunal found that the mining lease for the Carmichael Coal Mine could be granted by the Queensland government under Australia's Native Title Act despite the Wangan and Jagalingou people's withholding their agreement.

According to information received, the National Native Title Tribunal only decides against the granting of mining licenses in a small minority of contested cases, and consequently many indigenous communities in Australia feel coerced into accepting negotiated agreements in order to avoid arbitration and litigation.

The Wangan and Jagalingou people have filed a challenge in the Federal Court of Australia to the National Native Title Tribunal's decision. Despite that the Native Title claim remains pending since 2004 and the community has contested the National Native Title Tribunal's decision regarding mining project at the Federal Court, reportedly the Queensland government is currently seeking to extinguish the Native Title rights of the Wangan and Jagalingou through compulsory acquisition of their ancestral lands.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments.

Australia is party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides that States recognizes the right of everyone to take part in cultural life (Art. 15); and the International Covenant on Civil and Political Rights (ICCPR) which provides that members of minority groups "shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, and to use their own language (Art. 27)."

According to the Committee on Economic, Social and Cultural Rights article 15 of the ICESCR (General Comment No. 21, para. 49), all States parties "must respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life".

Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007, reflects existing legal obligations sourced in international human rights treaties. The Government of Australia gave its official support to the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP or "the Declaration") in 2009 and declared its intention seek "a new era of relations between states and Indigenous peoples grounded in good faith, goodwill and mutual respect".

The Declaration affirms the right of indigenous peoples to enjoy and preserve their culture, including their traditional and sacred lands. The Declaration specifically recognises their right to “maintain, protect, and develop the past, present and future manifestations of their cultures”, such as historical sites and ceremonies as well as their right not to be subjected to the destruction of their culture (Arts. 8 and 11).

The Declaration underlines the importance that indigenous peoples give their free, prior and informed consent before the development of extractive industries on their ancestral homelands. Specifically, Article 32 of the Declaration recognises the right of indigenous peoples “to determine and develop priorities and strategies for the development or use of their lands or territories and other resources” and to be consulted in good faith “through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

As noted by the previous Special Rapporteur on the rights of indigenous peoples; “given the invasive nature of industrial-scale extraction of natural resources, the enjoyment of these rights is invariably affected in one way or another when extractive activities occur within indigenous territories – thus the general rule that indigenous consent is required for extractive activities within indigenous territories” (A/HRC/24/41, para. 28).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above mentioned allegations.
2. Kindly provide information on the current status of the Native Title claim lodged by the Wangan and Jagalingou people in 2004.
3. Please elaborate on how the National Native Title Tribunal consults with indigenous peoples, and how it was undertaken in this specific case, to ensure the free and informed consent prior to the approval of any project affecting their lands or territories and other resources.

4. Please elaborate on how the Federal and State/Territories governments consult with indigenous peoples, and how it was undertaken in this specific case, to ensure the free and informed consent prior to the approval of any project affecting their lands or territories and other resources.
5. Kindly explain what safeguards the Government has taken to ensure that indigenous peoples are not unduly subjected to pressure and external interference by private corporations in general, and in this case in particular, in the context of negotiations regarding mining licenses.
6. Please elaborate on the procedural rights afforded registered Native Title claimants, notably those relating to ‘future acts’, and how these are being guaranteed in the present case.
7. Please provide information on the number and percentage of disputes regarding mining licenses in which the National Native Title Tribunal has decided in favour of the mining license being issued.
8. If an indigenous community, having refused to agree to an ILUA, is subsequently brought to court and loses the case, what are the implications for the right to reparation for damage to their ancestral homelands? What safeguards protect indigenous communities from being coerced into accepting ILUAs in order not to lose subsequent litigation?
9. Please provide information on any social and environmental impact assessment(s) of the proposed Carmichael Coal Mine which have been undertaken by the Government.
10. Please indicate whether the Government has or intends to conduct a national strategy on implementation of the United Nations Declaration on the Rights of Indigenous Peoples in order to promote awareness and respect for the provisions of this Declaration.

While awaiting your Excellency’s response, we would like to urge your Excellency’s Government to take all necessary interim measures to halt alleged violations and review critically the current legislation and practices imposing restrictions on the right to free and informed consent prior to the approval of any project affecting the ancestral land of aboriginal people, with specific attention to the present case.

Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Victoria Lucia Tauli-Corpuz  
Special Rapporteur on the rights of indigenous peoples