

EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

12TH SESSION GENEVA 15-20 July 2019

AGENDA ITEM 9: Future work of the Expert Mechanism, including focus of future thematic studies.

Intervention delivered by Cathryn Eatock, on behalf of the Indigenous Peoples Organization-Australia

Thank-you Madam Chair, Brothers and Sisters. I am a Gayiri and Budtjula woman and Co-Chair of the Indigenous Peoples Organisation-Australia.

I'd like to again recognize the important role of the Voluntary Fund in supporting my attendance at EMRIP.

Land is central to the survival of Aboriginal people. In 1992, the Mabo decision overturned the legal fiction of terra nullius. In response the Australian Parliament enacted the Native Title Act, though onerous to achieve and limited in application, its protections have continued to be watered down, so it fails to protect Aboriginal lands from extractive industries.

In Western Australia, Shanghai Zenith holdings, which leases the Nyikina traditional lands from the government, has illegally cleared native vegetation over 24 kilometres in length, and 50 meters wide, destroying sacred sites and ripping a massive scar through the country.

Despite Native Title being recognised in 2014 and an Indigenous Land Use Agreement developed, obligations to consult with the traditional owners have been ignored! Sacred Boab trees and medicine trees have been pushed over.

The land clearing breaches the Aboriginal Heritage Act, the Environmental Protection Act, the Land Administration Act and the Commonwealth Environmental Protection and Biodiversity Conservation Act. No required approvals were sought by Zenith Holdings.

The work was only stopped by the Nyikina Mangala Traditional Owners who established a blockade at the entrance to the property.

Auntie Rosita Shaw asserted, *'Our old people walked this country, All of this has meaning to us... It was passed down to us from our ancestors. We still practice that today. ..bring our young ones out onto country'*.

The lease had been sold in 2016, after securing Native Title, where these lands could have provided culturally aligned, economic opportunity for the Traditional Owners.

However, the government has undertaken further amendments to weaken Native Title to support approval of the Adani Carmichael Coal Mine, the third largest coal mine in the world, on the ancestral lands of the Wangan and Jagalingou people of central Queensland.

Some Traditional Owners have refused to agree, claiming it will destroy their lands, way of life and a sacred spring near the site. While there is no veto over mining, further proposed legislation will require the approval of only one Traditional Owner.

There remain serious concerns regarding the native title regime, including:

- The rights recognised under the NTA are racially discriminatory in not providing any tenure or ownership of land, water or bio-resources.
- The Racial Discrimination Act(1975) was suspended in 1998 to enable amendments to Native Title that discriminated against Indigenous People.
- Indigenous Peoples' ability to benefit from their lands are tied to their consent to developments in a way that is inconsistent with the right to free, prior and informed consent.
- The NTA allows the deferral of compensation to a later date, whereas all others are compensated at the time.
- The NTA is inconsistent with the ICERD and the Declaration.

Recommendation:

That EMRIP, in follow up to its 2018 report on Free Prior and Informed Consent, undertake an audit, on Indigenous land rights legislation against set ICERD and UNDRIP and provide that report within 12 months.