

MAY 28, 2024

UN committee finds Australian and WA governments potentially breached racial discrimination convention

A prominent United Nations committee has made serious findings against the Australian and Western Australian governments in relation to their handling of Indigenous cultural heritage issues and related legal reforms.

The committee goes so far as to say the behaviours appear to constitute a breach of the *International Convention on the Elimination of All Forms of Racial Discrimination*.

The United Nations Committee on the Elimination of Racial Discrimination (CERD) wrote to Australia's UN Representative in Geneva in late April [1] saying the committee had found the Australian and Western Australian governments had:

- Failed to seek free, prior and informed consent from Indigenous people in relation to changes to Indigenous cultural heritage legislation; and
- Failed to adequately protect Indigenous cultural heritage;
- Potentially breached the International Convention on the Elimination of Racial Discrimination.

The committee concluded by “insisting” that all work that negatively impacted Indigenous cultural heritage in Western Australia “cease and desist”.

CERD also called for all permits issued to mining and development under section 18 of the WA *Aboriginal Cultural Heritage Act* since November 2023 be revoked or reviewed to ensure compliance with the UNCERD, a binding treaty.

The findings are a damning indictment of the performance of the state and federal governments, who have failed to progress the reforms promised in the wake of Rio Tinto's destruction of the Juukan Gorge caves in WA, which had evidence of human occupation dating back 46,000 years.

It is now up to the Federal Government to respond to the CERD's findings and outline steps it will take to address the issues identified. The CERD is also indicating that the Australian Government should seek advice from the UN Expert Mechanism on the Rights of Indigenous Peoples to ensure compliance with international human rights.

The matter was referred to the UN CERD in 2021 by five First Nation leaders: Clayton Lewis, Dr Hannah McGlade, Kado Muir, Slim Parker, and Dr Anne Poelina.

Dr Hannah McGlade said: “For decades, Aboriginal people in WA have suffered under a racially discriminatory law that has facilitated widespread damage and destruction of Aboriginal culture and heritage sites.

“Finally, the UN CERD has now looked at this law and considers it racially discriminatory and a breach of the Convention on the Elimination of Racial Discrimination.

“They also call on the state to immediately revoke and review all the section 18 permits issued since last November and without the consent of Indigenous peoples.

“The government cannot allow this to stand. The convention is binding on all Australian governments and the prohibition of racial discrimination must be upheld.

“We have committed to the system of international law, moreover, now have a Indigenous foreign affairs policy.

“Indigenous rights must be respected. This is about our culture and survival as Indigenous people.

“We also call on Federal Government to implement all the recommendations of the the Senate Inquiry into Juukan Gorge and the UN Declaration on the Rights of Indigenous Peoples, especially through the development of a national action plan.

“The days of states flagrantly violating Indigenous peoples’ fundamental rights, including our right to free, prior and informed consent, and at the behest of mining corporations, must end.”

Mr Clayton Lewis said: “Perth has always been an administrative hub for the resources sector and when the state government says it is genuinely valuing Aboriginal cultural heritage, they are lying.

“I believe the WA Government is ‘owned’ by big mining, farmers and pastoralists and suspect good investigative journalism could tell an interesting story when it comes to the procession of state Aboriginal Affairs Ministers since 1972.”

[Read Dr McGlade’s article in the National Indigenous Times](#)

REFERENCES

- 1. 2024 – [CERD letter to Australia](#) (findings)
- 2. 2021 – [Initial complaint lodged](#) with the United Nations Committee on the Elimination of Racial Discrimination (CERD)

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