

From: [REDACTED]
To: [CHA Review](#)
Cc: [REDACTED]
Subject: Protecting Culture
Date: Wednesday, 30 March 2022 11:29:37 AM

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Dear QLD Govt.,

I am an Australian citizen currently residing overseas for study.

In light of the recent destruction of the cultural heritage of the Traditional Owners of the land in Australia (specifically regarding the Carmichael Mine for Adani), I would like to highlight

1. Had the destruction occurred in a time of war, such an offence would be considered as a war crime under article 8(2)(e)(iv) of the Rome Statute; a statute that has been signed and ratified by Australia.

2. Given the competing claims of sovereign of Australian land, to my mind, there is little difference between the centuries long oppression of Aboriginal peoples and war; in fact it is worse than war: it's settler colonialism.

3. With this in mind, I would point the gov't attention to the following academic works, the UNESCO declaration on the destruction of cultural property as well as a prosecution by the ICC, with the specific context of Australian destruction of Aboriginal culture in mind,

i) "This chapter examines how modern international law is protecting world heritage ('the cultural heritage of all humanity') by criminalising the intentional destruction of cultural heritage.

[...]

these developments [in international law] were extended to crimes against humanity and genocide which enabled deliberate, targeted destruction of cultural heritage to be viewed as intrinsic to gross violations of international humanitarian law and systematic abuses of human rights.

[...]

Modern international law has prohibited the deliberate seizure, destruction or damaging of cultural property from the first codifications of the laws and customs of war in the nineteenth century. These earliest efforts made clear that although cultural and religious sites and monuments, and works of art and science, may be bounded to the territory of a state, they attracted international protection because of their importance to all humanity, such acts constituted war crimes, and perpetrators of such acts would be held to account. These basic tenets have been reiterated repeatedly in successive multilateral instruments for over 150 years."

https://www.ohchr.org/Documents/Issues/CulturalRights/DestructionHeritage/NGOS/A.P.Vrdoljak_text1.pdf

See also <https://academic.oup.com/jicj/article/17/2/391/5523016>

ii) Prosecution of Ahmad Al Faqi Al Mahdi under article 8(2)(e)(iv) <https://www.icc-cpi.int/CaseInformationSheets/Al-MahdiEng.pdf>

iii) "A State that intentionally destroys or intentionally fails to take appropriate measures to prohibit, prevent, stop, and punish any intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization, bears the responsibility for such destruction, to the extent provided for by international law."

<https://en.unesco.org/about-us/legal-affairs/unesco-declaration-concerning-intentional-destruction-cultural-heritage>

4. And urge the government to investigate the matter, and recommend prosecution of the relevant Australian business leaders and political officials who destroyed Aboriginal heritage, as well as to make relevant amendments to the Aboriginal and Torres Strait Islander Cultural Heritage Acts, specifically:

i) Amend the definition of 'Aboriginal party' so that Traditional Owners with cultural connection to Country can be involved in consultation and negotiation processes, regardless of their status as a native title party.

ii) Create greater enforcement powers for First Nations, so that we aren't reliant on the State to protect our cultural heritage if it is in imminent danger of harm or destruction.

iii) Establish an independent First Nations-led decision-making body that is responsible for dispute

resolution and mediation, and for assessing who the right people to speak for Country are.

Sincerely,

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From Albert Zhou