



Yamatji Marlpa
ABORIGINAL CORPORATION

High Court decision disenfranchises nation's Indigenous people

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Yesterday's decision by the High Court of Australia to dismiss an appeal by Pilbara Traditional Owners against mining company, Fortescue Metals Group (FMG), will potentially disenfranchise thousands of Indigenous people across the nation.

The matter covers a FMG mining application, encompassing 4,320 hectares of land in the west Pilbara. The area is the traditional country of the Puutu Kunti Kurrama and Pinikura (PKKP) people, represented by Yamatji Marlpa Aboriginal Corporation (YMAC).

In 2008, the National Native Title Tribunal (NNTT) found that FMG failed to negotiate in 'good faith' with the PKKP people and fulfill its obligations under section 31 of the *Native Title Act 1993*. However in 2009, FMG appealed and won the case in the Full Federal Court. The finding was based upon the court's interpretation of the *Act*, which states that as long as the party has negotiated within a period of six months "with a view to" reaching an agreement, the party has met its obligations.

Simon Hawkins, Chief Executive Officer of YMAC, stated that the High Court's dismissal of PKKP's 'right to negotiate' case means that Traditional Owners will be limited in their participation in the nation's economy.

"The 'right to negotiate' section of the *Act* is instrumental in enabling Traditional Owners to secure compensation for loss of their country. The High Court's dismissal of this case now means that mining companies are no longer required to have substantial negotiations with Indigenous people regarding the use of their land. This will further economically disenfranchise Indigenous people and render them powerless against big business.

While FMG promotes their 'Indigenous Employment Covenant' and the Federal Government wants to 'Close the Gap', Indigenous people in the Pilbara are still living in third world conditions. Considering \$16 billion dollars is generated annually in the Pilbara, this decision is deplorable."

Nyaparu Jeffries, PKKP Traditional Owner, is disheartened by the decision.

“While mining companies make billions of dollars out of our traditional county, we are still living below the poverty line.

FMG never began any substantial negotiations towards an agreement with our people; they just went through the motions. We'd only just finished agreeing a protocol on how the negotiations would take place. Agreeing to the protocol for the negotiations isn't actually beginning the real nuts and bolts of a negotiation. It makes our people sad that a company that promotes itself as helping Indigenous people was putting a case to the courts to make us powerless in our own country.”

Mrs Doris Eaton, YMAC Pilbara Chairperson and NAIDOC female elder of the year, is worried about the effect the Court's decision will have on the future of her people.

“As a Njamal person who's be part of many 'good faith' negotiations with mining companies I'm worried that this will stop all the positive things we have achieved for our younger generation. I am really worried for our future and what this means for all native title groups across Australia.”

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