

THE IMPACT OF CLIMATE CHANGE ON THE HUMAN RIGHT TO FOOD, WATER AND SHELTER

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Climate Change

The Rights of Indigenous People

Development Priorities in Nepal

Human Rights Litigation

Challenges in the Arctic

Human Rights Defender

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Front Cover Artwork

Ian Bracegirdle, *Long way from the Siene*, Oil on Linen, 110 x 140cm. Courtesy of the artist and Dickerson Gallery, Melbourne.

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Editorial

Janice Gray and Justine Nolan

The theme of this edition of the Human Rights Defender is climate change and human rights. This edition discusses these issues in the context of climate change as a regional issue and its impact on particular human rights. Articles adopting a regional focus consider climate change impacts in the United States, Australia, Nepal, the Arctic and the Pacific. The potential of climate change to impact on a number of human rights is generally acknowledged and this issue focuses on the rights to life, food, water, health and housing and the rights of indigenous peoples. Developments in climate change litigation are also discussed. The last article in this edition is a stand alone piece on child protection and deportation in the context of Australian immigration.

Ilona Millar and Emma Wartski discuss developments in climate change litigation as viewed through the case of the Inuit in the U.S. They examine how the Inuit sought to bring an action for infringement of human rights in the context of the *American Declaration of the Rights and Duties of Man*, and the difficulty that was encountered in proving the causal relationships between the U.S. actions and the damage suffered by the Inuit. Millar and Wartski also analyse whether a similar case of human rights infringement on climate change grounds could be brought in Australia.

Kirsty Ruddock and Gillian Duggin take several examples from their work at the Environmental Defender's Office to highlight how human induced climate change impacts on human rights. In particular, they examine how the burning of fossil fuels such as coal is impacting on the right to health, food, water and culture. Ruddock and Duggin suggest that in considering any new mechanisms in Australia to protect and promote human rights better, the debate must take into account what role the law can play in limiting the impacts of climate change, particularly in relation to coal affected communities and indigenous communities.

Emma Partridge's article focuses on the need to place human rights at the centre of climate change discussions, through policies based on the international human rights framework. In particular, she

argues that climate change has profound human rights impacts on indigenous people, further increasing vulnerability through threats to their health and wellbeing, and their connection with the land.

The article by Avigail Shai begins by outlining the economic, social and political context of Nepal, and discusses how despite the negligible percentage of global emissions contributed by Nepal, the country is affected severely by climate change. This is demonstrated through the impact on Nepal's ecosystem, its healthcare and services, and its reliance on natural resources. However, these consequences can be mitigated by raising awareness, government intervention, and community-led management initiatives.

David Leary investigates how climate change presents significant environmental and human rights difficulties in the context of the people in the Arctic, including threats to the environment, food, infrastructure and general socio-economic progress. Leary also discusses the climate change impact on indigenous peoples in the Arctic and the need to adapt in response to these emerging issues.

Kosi Latu's article deals with the challenge of climate change for small island countries and territories in the Pacific. He discusses the need for relocation within existing borders but also points out that in some cases whole countries and territories may disappear. Latu argues that while several previous human calamities and catastrophes have been dealt with by reliance on human rights enforcement mechanisms, the complexity and scale of the issues raised by climate change may require new approaches and different ways of thinking. The starting point, he suggests, should be to accelerate the reduction of greenhouse gases on a global scale and to increase assistance for adaptation.

The article by Carmen Chung examines the relationship between climate change and human rights, and the controversy over the extent to which the right to life, food and water, as well as adequate housing are affected by climate change. Chung argues that human rights and climate change should not be viewed as mutually exclusive, but should together unite the international community in the quest to find a sustainable solution.

In the context of Australian immigration law, Gregor Heissl's article discusses the issues of family protection and the interests of children in assessing the legitimacy of deportations. In particular, the inadequacy of domestic law to deal with issues such as the protection of the family, the rights enshrined in international instruments, Ministerial Directions, and citizenship, demonstrate the need to balance community security with the rights of immigrants.

We hope you enjoy this issue.

Janice Gray is a senior lecturer in the Faculty of Law, UNSW.

Justine Nolan is a senior lecturer in the Faculty of Law, UNSW and the Deputy Director of the Australian Human Rights Centre.



Jason Cordero, *Nothing lasts forever*, Oil on Linen, 92 x 92cm. Courtesy of the artist and Dickerson Gallery, Melbourne.

Climate Change and Indigenous Peoples' Human Rights

Emma Partridge

Climate change has long been characterised and debated as an environmental or scientific issue. More recently both domestic and international debates have shifted towards an economic focus. From Stern¹ to Garnaut,² to carbon pricing and trading, the dominant 'framing' of climate change is now an economic one. Until recently, little attention has been paid to the likely human, social and cultural impacts of climate change, and in particular, to human rights concerns. The International Council on Human Rights Policy (ICHRP) attributes this 'vacuum in the literature' to a 'mutual disinterest' among human rights and climate change professionals in each others' disciplines.³ Whatever the reason, this disinterest needs to be overcome.

There are now increasing calls to examine the social costs of climate change, and in particular the impact of these costs on human rights.⁴ The implications are dramatic – climate change threatens fundamental human rights: to life, food and a place to live and work.⁵ Human Rights Commission President, John Von Doussa refers to climate change as ‘a human rights tragedy in the making’.⁶ Aside from the moral imperative to respond, Australia has specific legal obligations in both international and domestic law to ensure that human rights are protected. Not only should human rights be central to climate change debates, but international human rights standards should form a normative framework for assessing responsive policies and strategies.⁷

Indigenous people and climate change

A human rights-based approach to climate change has particular implications for indigenous peoples. While climate change potentially threatens everyone’s human rights, the worst effects will be felt ‘by those individuals and groups whose rights protections are already precarious’.⁸ Such populations are caught in a vicious cycle where they are ‘less well-equipped to understand or prepare for climate change effects; less able to lobby effectively for government or international action; and more likely to lack the resources needed to adapt to expected alterations of their environmental and economic situation’.⁹ This observation certainly applies to indigenous peoples, whose rights protections are especially fragile. As the United Nations states, ‘assessment of the adaptive capacity of indigenous peoples and their communities must take into account not only their inherent resiliencies,

Peoples¹² is highly significant in this context, because the Declaration forms part of the international framework for addressing climate change.¹³ It recognises distinct rights and interests that indigenous peoples have, in particular in relation to lands and waters, natural resources and culture. It reinforces the existing rights of Indigenous people to give free, prior and informed consent before certain actions affecting them can occur. Critically, it also asserts their right ‘to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures’ (Article 18). By extension then, support for the Declaration demands an increase in dialogue and collaboration with Aboriginal and Torres Strait Islander people about climate change, something that Gerrard¹⁴ has pointed out, has been accorded little space to date.

Indigenous vulnerability

Enabling indigenous peoples’ meaningful participation in decision-making about climate change is critical, not just as a matter of principle, but also because, as the UN has stated, indigenous peoples ‘will bear the brunt of the consequences of climate change even though they have contributed the very least to greenhouse emissions’¹⁵. In Australia, Indigenous communities will indeed ‘bear the brunt’ of climate change.

Some indigenous people are particularly vulnerable because they live in areas projected to suffer the most extreme impacts of

Enabling indigenous peoples’ meaningful participation in decision-making about climate change is critical, not just as a matter of principle, but also because, as the UN has stated, indigenous peoples ‘will bear the brunt of the consequences of climate change even though they have contributed the very least to greenhouse emissions’.

but also differential rights, discrimination and other social processes that limit access to resources, power and decision-making’.¹⁰

Applying these frameworks to assess the vulnerability of Australian Indigenous peoples means acknowledging the impacts of colonisation. Aboriginal and Torres Strait Islander peoples have demonstrated incredible adaptive capacity and resilience to environmental change over tens of thousands of years, and implemented sophisticated land and sea management or ‘caring for country’ practices as custodians of their lands and waters.¹¹ However, for many, the ability to access, use and maintain traditional knowledge, and exercise rights over and responsibilities for country, has been completely undermined. Dispossession and dislocation have severed connections between people and their lands all over the country. The extreme levels of disadvantage that now characterise many Australian Indigenous communities further reduce adaptive capacity and leave Indigenous people more vulnerable to the impacts of climate change.

Indigenous people as rights holders

As well as underlining the particular vulnerability of indigenous peoples, a human rights-based approach to climate change draws attention to their status as *rights-holders*. The recent statement of support by the Australian Government for the Declaration on the Rights of Indigenous

climate change. In particular, remote indigenous communities in the Torres Strait and Northern Australia are predicted to be hit hard by increased temperatures, higher rainfall, rising sea levels and various other environmental changes – and by the health, social and cultural impacts associated with these changes.¹⁶ Some of these effects are already being experienced – as the Torres Strait Island case study in the latest *Native Title Report* illustrates¹⁷.

However, whether or not they live in Northern Australia, the vulnerability of indigenous communities is magnified, because as Green¹⁸ points out, the health and wellbeing of Indigenous people and communities is inextricably linked to the health of ‘country’ – the very land and marine ecosystems that are threatened by climate change. As Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma writes, ‘understanding the significance of the impacts of climate change on Indigenous peoples requires an understanding of the intimate relationships we share with our environments: our lands and waters; our ecosystems; our natural resources; and all living things’.¹⁹ Calma describes the potential for climate change to prevent indigenous communities from being able to care for country and maintain culture and traditional responsibilities as a ‘disconnect’ that will have both negative environmental outcomes and adverse impacts on health and wellbeing.²⁰

[A]s the original custodians of our lands...[our] rights are currently under threat from climate change. We have a window of opportunity to get engaged in the development of strategies to mitigate and adapt to the impacts of climate change. The stakes are high for us as Indigenous peoples and we should not sit back and watch this process unfold without our voices being loudly heard.

Opportunities that arise from climate change

It should be acknowledged that climate change may bring some opportunities for indigenous people. Some communities may be able to achieve economic development goals by engaging in developing carbon markets and using parts of the Indigenous land estate for carbon offsets. The Western Arnhem Land Fire Abatement project is an example.²¹ However, these opportunities will not be available to the vast majority of indigenous people, who have no access to land. Even those who are landholders face many barriers to entry into emerging carbon markets, as the recent *Native Title Report* points out.²² Without far greater government support and investment in the capacity of indigenous people to manage the Indigenous land estate, and an acknowledgement of the value of traditional knowledge in informing responses to climate change, indigenous involvement in such opportunities will be seriously limited.²³

Recommendations

At the United Nations Permanent Forum on Indigenous Issues in 2008, indigenous nations from around the world raised their concerns about the impacts of climate change on their peoples. The Forum made numerous recommendations, including many that stressed the importance of a human rights-based approach and asserted the Declaration on the Rights of Indigenous Peoples as fundamental.

These assertions matter because while climate change is undoubtedly an environmental emergency and an enormous economic challenge, it is also a potential human rights tragedy, and an imminent crisis for Indigenous peoples. As Calma has put it,

[A]s the original custodians of our lands...[our] rights are currently under threat from climate change. We have a window of opportunity to get engaged in the development of strategies to mitigate and adapt to the impacts of climate change. The stakes are high for us as Indigenous peoples and we should not sit back and watch this process unfold without our voices being loudly heard.²⁴

Now that Australia has stated its support for the Declaration, the obligation to make sure indigenous voices are heard in the climate change debate is stronger than ever.

Emma Partridge is a Research Director at the Institute for Sustainable Futures, a research and consulting organisation at the University of Technology, Sydney. Her work focuses on the social dimensions of sustainability and the interrelationship between environmental and social/cultural issues. She also works on gender issues, and recently co-authored the gender and sexuality reports for the Democratic Audit of Australia (2007).

Endnotes

- 1 Nicholas Stern, the UK government's chief economic advisor, produced the influential 'Stern report' on the economics of climate change. HM Treasury/Cabinet Office, *Stern review report on the economics of climate change*, 2006.
- 2 Economist Ross Garnaut, conducted a government-commissioned review into the impacts of climate change on the Australian economy. Commonwealth of Australia, *Garnaut Climate change review*, 2008.

3 International Council on Human Rights Policy (ICHRP), *Climate change and human rights: a rough guide*, Verso, Switzerland, 2008, p.2-3.

4 See ICHRP (ibid), and in an Australian context, Human Rights and Equal Opportunity Commission (HREOC), *Human rights and climate change*, 2008.

5 HREOC, ibid, p.1.

6 John von Doussa, *Human Rights and Climate Change: a Tragedy in the Making*, paper presented at the HREOC Seminar Series for the 60th Anniversary of the Universal Declaration of Human Rights, 20 August 2008 <http://www.hreoc.gov.au/legal/seminars/speeches/john_von_doussa08.html>.

7 On the benefits of a human rights-based approach to climate change, see ICHRP, HREOC and von Doussa.

8 ICHRP, n 3, p.1.

9 Ibid.

10 United Nations Department of Economic and Social Affairs, Division for Social Policy and Development, *Climate change: an overview*. Paper prepared by the Secretariat of the United Nations Permanent Forum on Indigenous Issues, November 2007, p.27.

11 See for example, *Sharing Knowledge*, which combines traditional and scientific knowledges to explore likely impacts for Northern Australia; www.sharingknowledge.net.au. Also the Bureau of Meteorology's Indigenous weather knowledge website. <www.bom.gov.au/iwk>

12 When the the United Nations General Assembly voted to adopt the Declaration in 2007, Australia was one of 4 countries to vote against it. In April 2009 the Australian Government changed its position on the Declaration, issuing a formal statement of support and accepting the document as a framework for recognising and protecting the rights of Indigenous Australians.

13 Aboriginal and Torres Strait Islander Social Justice Commissioner, *2008 Native Title Report*, Australian Human Rights Commission, 2009, p.99.

14 Emily Gerrard, 'Impacts and opportunities of climate change: Indigenous participation in environmental markets', Issues paper v.3, no.13, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2008.

15 United Nations Department of Economic and Social Affairs, n 10, p.4.

16 For an analysis of how climate changes projected by the CSIRO will impact upon indigenous communities in Northern Australia, see: www.sharingknowledge.net.au. Also, Donna Green, 'Climate impacts on the health of remote northern Australian Indigenous communities', paper prepared for Garnaut Climate Change Review, February 2008, p.4. <<http://www.garnautreview.org.au/CA25734E0016A131/pages/all-reports--resources-commissioned-reports>>.

17 Aboriginal and Torres Strait Islander Social Justice Commissioner, n 13 p. 229-259.

18 Green, n 16, p.2.

19 Aboriginal and Torres Strait Islander Social Justice Commissioner, n 13, p. 115.

20 Aboriginal and Torres Strait Islander Social Justice Commissioner, n 13, p. 117.

21 The WALFA is reducing the Northern Territory's carbon emissions by controlling and managing dry season fires using traditional Indigenous land management techniques. On the debate about carbon trading opportunities, see Aboriginal and Torres Strait Islander Social Justice Commissioner, n 13 pp.132-139.

22 Aboriginal and Torres Strait Islander Social Justice Commissioner, n 13, pp. 119-120.

23 Aboriginal and Torres Strait Islander Social Justice Commissioner, n 13, p. 120.

24 Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, Speech at the Indigenous Climate Change and Land Use Management Conference, Garma Festival of Traditional Culture, 7 & 8 August 2008, Human Rights and Equal Opportunity Commission. <http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/20080807_garma.html>.

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We must not lose sight of existing human rights principles in the tug and push of international climate change negotiations. A human rights lens reminds us there are reasons beyond economics and enlightened self-interest for states to act on climate change. - Mary Robinson



Alison Langley, *Archiomeny*, Lightjet Print on Flex Paper, 30 x 100cm. Courtesy of the artist and Dickerson Gallery, Melbourne.



Alison Langley, *Archipelancholy*, Lightjet Print on Flex Paper, 30 x 100cm. Courtesy of the artist and Dickerson Gallery, Melbourne.