
© Copyright 2008 Bridget M. Lewis, first publication rights are held by the Indigenous Law Bulletin.
INDIGENOUS HUMAN RIGHTS AND CLIMATE CHANGE
by Bridget Lewis

I. INTRODUCTION

Climate change is the biggest challenge currently confronting the international community. It has the potential to impact significantly on the enjoyment of human rights and in many cases the first people to feel this impact have been Indigenous communities. In attempting to fit climate change within the framework of international human rights law, this paper will identify relevant human rights instruments, particularly those which guarantee Indigenous human rights, and illustrate the threat that climate change poses to those rights. It will also consider some of the requirements of a human rights approach to climate change, and the benefits that such an approach offers. By considering climate change as a human rights issue, we can utilise human rights principles to evaluate our policies and strategies for mitigation and adaptation, and enrich our response beyond the usual disciplines of economics, science and diplomacy. We can also focus on the people who will be most affected by climate change, and address the major injustice of climate change: that it is the most vulnerable who will suffer most, when they have contributed least to the problem.\(^1\)

II. CONSTRUCTING CLIMATE CHANGE AS A HUMAN RIGHTS ISSUE

In order to discuss how climate change can be dealt with as a human rights issue, we need to think about how we can bring it within the framework of human rights. International human rights law, and Indigenous rights in particular, offers us a set of principles and guarantees which we can use not only to characterise the danger that climate change presents, but also to evaluate our responses to it.

Statements of Indigenous human rights can be found in a range of international instruments. International human rights law guarantees Indigenous peoples the right to

self-determination and the right to control their own natural wealth and resources.\textsuperscript{2} The right of minorities to enjoy their own culture, religion and languages is also protected,\textsuperscript{3} as are rights of Indigenous peoples to protect their traditional knowledge, and to contribute to environmental management and sustainable development.\textsuperscript{4} More generally, there is also a range of other rights to which Indigenous people are equally entitled, including the right to life,\textsuperscript{5} the right to health,\textsuperscript{6} the right to safe and healthy working conditions,\textsuperscript{7} to freedom from arbitrary interference with privacy and home,\textsuperscript{8} and to adequate food, clothing and housing conditions.\textsuperscript{9} Governments that have ratified the treaties which provide for these rights are under an obligation to take steps to respect, promote and protect the rights they contain.

In September 2007 the United Nations adopted the \textit{Declaration on the Rights of Indigenous Peoples}.\textsuperscript{10} While the Declaration is not binding on governments, and at this stage has not been signed by Australia, it is still a significant step towards cataloguing and guaranteeing the rights of Indigenous peoples.\textsuperscript{11} The Declaration provides for the protection of Indigenous peoples’ cultural rights, and also sets out specific environmental rights.\textsuperscript{12} A recent United Nations meeting of experts on Indigenous Peoples and Climate

\textsuperscript{3} ICCPR, Art 27.
\textsuperscript{5} ICCPR, Art 6.
\textsuperscript{6} ICESCR, Art 12. See also \textit{Convention on the Rights of the Child}, opened for signature 20 November 1989, UNTS Vol 1577, art 24 (2)(c) (entered into force 2 September 1990) which guarantees to all children the right to the highest attainable standard of health.
\textsuperscript{7} ICESCR, Art 7.
\textsuperscript{8} ICCPR Art 17.
\textsuperscript{9} ICESCR, Art 11.
\textsuperscript{12} Ibid Arts 5, 29.
Change recommended that the Declaration be used as the primary framework for considering climate change policies which impact on Indigenous peoples.\textsuperscript{13} 

A consideration of the impact that climate change has on Indigenous peoples clearly demonstrates the threat it presents to the enjoyment of these rights, and the necessity of viewing climate change as a human rights issue.

### III. The Implications of Climate Change for Indigenous Rights

The most recent report of the Intergovernmental Panel on Climate Change describes the effects of climate change that are already being observed, including rises in sea levels, changes in precipitation and temperature, and melting sea ice. These trends are likely to lead to desertification, floods, droughts, loss of species, decreased fertility and increased frequency and severity of extreme weather events.\textsuperscript{14} The human impact of climate change is likely to include loss of livelihood, loss of hunting and fishing areas, increased spread of disease, forced relocation and increased environment-related conflict.\textsuperscript{15}

Indigenous peoples have been among the first to feel the impact of climate change, not only because many Indigenous communities live in areas where climate change is already being observed, but also because they are often more susceptible to environmental degradation generally.\textsuperscript{16} Indigenous peoples are more likely to rely on the environment for subsistence, placing them at risk of a wider variety of human rights violations in the


\textsuperscript{16} Permanent Form on Indigenous Issues, Climate Change: An Overview (2007); Henriksen, above n 4; Wolfgang Sachs, ‘Environment and Human Rights’ 47(1) Development 42, 43.
event of environmental change. Also, the environment often plays a more significant cultural and social role in Indigenous communities, increasing the potential for violations of cultural and social rights, especially where the response to environmental changes would entail relocation. The existing relative socio-economic disadvantage that many Indigenous communities experience can restrict their capacity to adapt to rapid changes in their environment, and result in disproportionate impacts on Indigenous communities in comparison to the non-Indigenous population.

In Australia, communities in the Torres Strait are already experiencing the impacts of climate change, most notably in the form of saltwater inundation caused by rising sea levels. Inundation impacts upon potable water supplies and subsistence gardening, and damages infrastructure such as roads, airstrips, jetties, waste dumps and sewage plants. Changes in ocean salinity and temperature are already having an impact on fish stocks, affecting subsistence hunting and commercial fishery activities. Sea grass beds are also diminishing and rising sea levels are destroying turtle nesting beaches, threatening dugong and turtle numbers, species which have important totemic significance for Islanders. Related health impacts are expected to emerge, including increases in heat-related illness, and mosquito-borne and water-borne diseases. Climate change is also expected to exacerbate other existing health problems, many of which are already disproportionately present in Indigenous communities.

These impacts threaten a range of human rights, including the right to health, to an adequate standard of living, to adequate housing, even the right to life. The rights of Torres Strait Islanders to manage and conserve their environment, to control their own natural wealth and resources and to enjoy their own culture are also under threat. Torres

17 Sachs, above, n 16, 43.
20 Green, above n 19; Gerrard above n 15, 11; IPCC Working Group 1, above n 14.
21 Green, above n 19;
22 Ibid.
Strait Islanders enjoy a close cultural connection with their natural environment, to the extent that cultural integrity and the mental and physical well-being of the Islanders themselves depends upon the health of land and sea country. In this sense, climate change threatens the very existence of Island custom. 24

It is important to note however that Indigenous peoples should not be considered as ‘passive victims’ of climate change. 25 While socio-economic factors might present practical obstacles to effective adaptation, and might exacerbate the impact of climate change on Indigenous communities, it must be recognised that in many cases Indigenous communities have already endured past incidents of climate change and have adapted successfully. Knowledge of these experiences can be drawn upon to inform our responses. IV. CONCLUSION: WHAT DOES A HUMAN RIGHTS APPROACH REQUIRE?

Human rights give us a framework of norms which we should utilise to evaluate policy and set priorities. We must ensure that, in developing our responses to climate change, we carefully consider the implications for the people who most directly affected. Human rights principles also require that our responses to climate change are non-discriminatory, transparent and inclusive. 26 In the particular context of Indigenous peoples, we must involve Indigenous communities as key actors in developing strategies for mitigation and adaptation. 27 International law recognises the value of seeking Indigenous perspectives on environmental management and sustainability, 28 and the same benefits should be acknowledged in our response to climate change. Effective engagement with Indigenous communities can help to ensure that we don’t lose sight of the various implications that climate change will have for their enjoyment of human rights.

Bridget Lewis is an Associate Lecturer in the Law School at the Queensland University of Technology, Brisbane. Prior to her appointment at QUT, Bridget completed a Masters of International Human Rights law at the University of Nottingham, UK. Bridget’s research

24 Green, above n 19.
26 Von Doussa, above n 13.
27 Permanent Forum on Indigenous Issues, above n13, 8.
interests include international law and human rights, and in particular the impact of climate change and other forms of environmental degradation on environmental and indigenous rights.