

Submission of
New South Wales Young Lawyers

Environmental Law Committee and
Human Rights Committee



Office of the United Nations High Commissioner for Human
Rights

**HUMAN RIGHTS
AND
CLIMATE CHANGE
STUDY**

August 2008

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BY EMAIL: registry@ohchr.org

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Dear Mr Ulrik Halsteen,

Submission to the OHCHR study: Human Rights and Climate Change

New South Wales Young Lawyers is grateful for the opportunity to make a submission to the study into *Human Rights and Climate Change* being conducted by the Office of the United Nations High Commissioner for Human Rights. The focus of our submission is in response to item (c) of the terms of reference:

Views on the relationship between obligations arising out of international climate conventions and international human rights treaties, including international assistance and cooperation.

New South Wales Young Lawyers is an Australian professional organisation based in Sydney, made up of law students, and legal practitioners who are in their first 5 years of practice or under the age of 36. Hundreds of members participate on a volunteer basis in committees specific to particular areas of law. This submission was co-authored by members of the Environmental Law Committee and the Human Rights Committee of New South Wales Young Lawyers. The Human Rights Committee is concerned with a range of human rights issues in both Australia and abroad and aims to raise awareness and provide education to the legal profession and wider community on these issues. The Environmental Law Committee is concerned with educating and raising awareness in the community and the legal profession about the importance of environmental law and protection of the environment.

If you have any questions in relation to the matters raised in this submission, please contact Yvette Carr, Vice Chair of the Environmental Law Committee (elc.chair@younglawyers.com.au).

Yours faithfully,

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List of abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COHRE	Centre on Housing Rights and Evictions
CRC	Convention on the Rights of the Child
ECHR	European Court of Human Rights
ESC	Economic and Social Council
FAO	Food and Agriculture Organisation of the United Nations
GHG	Greenhouse gas(es)
IACHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IDP	Internally displaced person
IPCC	Intergovernmental Panel on Climate Change
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNFCCC	United Nations Framework Convention on Climate Change

1 Introduction

A general consensus has emerged that increases in global average temperatures since the middle of the 20th century have mostly been caused by increases in anthropogenic greenhouse gas (GHG) concentrations in the atmosphere.¹ Carbon dioxide comprises almost 50% of all anthropogenic GHG emissions,² and fossil fuels are responsible for about 75% of anthropogenic CO₂ emissions.³ It is predicted that without taking action to minimise CO₂ emissions, global average temperatures will increase by up to 6.4°C during the 21st century.⁴

Climate change directly threatens fundamental human rights. These various ‘rights’ include:

- The right to life;
- The right to development;
- The right to property;
- The rights of indigenous peoples;
- The right to health;
- The right to food;
- The right to water; and
- Civil and political rights.

As Kyung-wha Kang, the UN Deputy High Commissioner for Human Rights has stated:

*Global warming and extreme weather conditions may have calamitous consequences for the human rights of millions of people...ultimately climate change may affect the very right to life of various individuals...[countries] have an obligation to prevent and address some of the direst consequences that climate change may reap on human rights.*⁵

Climate change not only has serious consequences for human rights, it also has implications for emergency and disaster recovery, as well as refugee displacement and freedom of speech.

There has been growing momentum in the last decade to take serious action to reverse the onset of climate change. In 1992, the *United Nations Framework Convention on Climate Change*⁶ (UNFCCC) established an international framework to respond to global warming. The UNFCCC, to which Australia is a Party,⁷ aims to achieve “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the

¹ Intergovernmental Panel on Climate Change (‘IPCC’), *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (2007) p. 10.

² David Hunter, James Salzman and Durwood Zaelke, *International Environmental Law and Policy* (3rd ed, 2007) p. 635.

³ IPCC, *IPCC Special Report on Carbon Dioxide Capture and Storage. Prepared by Working Group III of the Intergovernmental Panel on Climate Change* (2005) p. 55.

⁴ *Ibid*, p. 13.

⁵ Laura MacInnis ‘Climate change threatens human rights of millions: UN’ *Reuters* 19 February 2008.

⁶ *United Nations Framework Convention on Climate Change*, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994).

⁷ Australia ratified the UNFCCC on 30 December 1992.

climate system.”⁸ It requires all Parties to promote the development, application and diffusion of technologies that control, reduce, or prevent anthropogenic emissions of greenhouse gases.⁹

While these obligations are an essential starting point to reduce the adverse impacts of climate change, decision-makers at the international and national levels need to recognise the specific impacts on climate change on fundamental human rights and take action accordingly.

Part 2 of this submission summarises the international climate obligations imposed on nations, such as the UNFCCC and the Kyoto Protocol.

Part 3 of this submission discusses various human rights obligations mentioned above. It summarises the source of those rights in international conventions and discusses the impacts of climate change on those rights.

Part 4 of this submission explores issues ancillary to the impact of climate change on human rights; namely, emergency response and disaster recovery issues, refugee displacement issues and freedom of speech.

⁸ UNFCCC, art 2.

⁹ UNFCCC, art 4(1)(c).

2 International climate obligations imposed on nations

2.1 Customary international law

It is generally accepted that there is a duty under international law to control and/or regulate serious global pollution or transboundary harm. The duty originates from the Trail Smelter decision and the Corfu Channel case.¹⁰ It has recently been confirmed by the International Court of Justice (ICJ) in the Danube river case.¹¹

However, the content of this obligation is often difficult to define. It could certainly be argued that this general law duty is applicable to the climate change context. However, the lack of consensus between states about the causes and effects of the problem, together with the lack of any agreed standards as to how to measure the fault or contribution of individual states, makes the possibility of enforcement unlikely.¹²

2.2 UN Framework Convention on Climate Change (UNFCCC)

The UNFCCC is the principal international agreement creating obligations on member states to address climate change. UNFCCC was developed as part of the Rio Conference on Environment and Development in 1992. It sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. 192 countries have since ratified the Convention and it came into force on 21 March 1994.¹³

The Convention recognises that the climate system is a shared resource, that its stability can be affected by emissions of GHGs, and that countries need to cooperate to take steps to address this. Parties to the Convention commit to a number of generally aspirational goals for dealing with climate change and encouraging cooperation. The obligations it creates on States Party are generally limited to information gathering, conducting further research and implementing policies to address emissions.

The obligations include:

- Develop, periodically update and publish national inventories of anthropogenic emissions by sources and removals by sinks of all GHGs;
- Formulate and implement national and regional programmes containing measures to mitigate climate change and measures to facilitate adaptation;
- Promote and cooperate in the development and transfer of technologies, practices and processes that control, reduce or prevent emissions;
- Promote sustainable management of sinks and reservoirs of GHGs;
- Cooperate in preparing for adaptation to the impacts of climate change;
- Take climate change considerations into account in relevant social, economic and environmental policies and actions;
- Promote, cooperate in and exchange research related to the climate system;

¹⁰ *Trail Smelter* (1941) 35 AJIL 684; *Corfu Channel* case (1949) ICJ Rep 1.

¹¹ *Gabcikovo-Nagymaros* (Hungary v Slovakia) (1997) ICJ Rep 7.

¹² See R Lyster and A Bradbrook, *Energy Law and the Environment* (2006).

¹³ UNFCCC website, http://unfccc.int/essential_background/convention/items/2627.php, accessed on 22 August 2008.

- Promote and cooperate in education, training and public awareness related to climate change; and
- Communicate to the Conference of the Parties information related to implementation.¹⁴

In addition, developed countries have further obligations to:

- Adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of GHGs and protecting and enhancing GHG sinks and reservoirs;
- Communicate periodically detailed information on its policies and measures and on projected anthropogenic emissions and removals, with the aim of returning individually or jointly to 1990 levels;
- Provide financial resources, including for the transfer of technology, to meet the costs incurred by developing country Parties in complying with their obligations;
- Assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects;
- Take all practicable steps to promote, facilitate and finance the transfer of, or access to, environmentally sound technologies and know-how to other Parties.¹⁵

The UNFCCC does not, however, establish quantitative targets for reductions in emissions.

2.3 Kyoto Protocol

The Kyoto Protocol to the UNFCCC was developed in 1997 by signatories to the UNFCCC as a mechanism for advancing the goals of the UNFCCC. The major feature of the Kyoto Protocol is that it sets binding targets for 37 industrialized countries and the European community for reducing GHG emissions. These amount to an average of a five per cent reduction against 1990 levels over the five-year period 2008-2012.¹⁶

The other significant feature of the Kyoto Protocol is that Parties are able to achieve their emissions targets through market-based mechanisms that include joint implementation, the clean development mechanism and emissions trading.¹⁷ These facilitate compliance with UNFCCC obligations by allowing countries to receive credit for investing in emissions reduction projects in other countries, creating ‘carbon sinks’, and developing an international emissions trading scheme.

The Protocol entered into force on 16 February 2005. The detailed rules for the implementation of the Protocol were adopted at COP 7 in Marrakesh in 2001, and are called the “Marrakesh Accords”. 182 Parties of the Convention have ratified the Protocol to date.¹⁸ The United States remains yet to ratify.

Developing countries have not committed themselves to any binding targets. However in Marrakesh, new guidelines were adopted for developing countries regarding reporting of emissions and steps being taken to meet commitments under UNFCCC. The Protocol also

¹⁴ UNFCCC, Article 4.

¹⁵ UNFCCC, Article 4.

¹⁶ Kyoto Protocol, Article 3.

¹⁷ Kyoto Protocol, Articles 6, 12 and 17.

¹⁸ See UNFCCC website. Available at http://unfccc.int/kyoto_protocol/items/2830.php, 22 August 2008.

obliges developed countries to provide additional financial resources to assist developing countries to implement their commitments.

2.4 Summary of obligations

Under the UNFCCC and the Kyoto Protocol, parties are obliged to:

- Gather and share information on GHG emissions, national policies and best practices;
- Launch national strategies for addressing GHG emissions and adapting to expected impacts;
- Provide financial and technological support to developing countries;
- Cooperate in preparing for adaptation to the impacts of climate change;
- Report progress of measures taken to implement commitments;
- Reduce emissions in line with targets set by Kyoto Protocol.

3 Human rights obligations

3.1 Right to life

3.1.1 What is the right to life?

The right to life forms part of customary international law, and is provided for in key international human rights agreements such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) as follows:

Article 3, UDHR:

Everyone has the right to life, liberty and security of person.

Article 6(1), ICCPR:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

The right to life is a fundamental human right, and one from which States cannot derogate their obligations for any purpose, even in times of public emergency (Article 4, ICCPR). The UN Human Rights Committee has previously warned that the right to life is a right that should not be interpreted narrowly, stating that “the protection of this right requires that States adopt positive measures” and that “it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy”.¹⁹

3.1.2 The impact of climate change on the right to life

Climate change has the potential to impact on this expanded definition of the right to life in a variety of ways, many of which are directly related to other internationally accepted rights, such as human rights to health, food and water, and the more specific rights of indigenous peoples and the rights of children. Every person’s life is affected by the conditions in which they live. The quality of the environment, then, directly affects the ability of people to enjoy the universally held right to life.

The impacts of climate change on the right to life may be direct or indirect. For example, increased incidents of natural disasters will directly impact on the lives of those affected by severe storms, flooding and sea level rise, while indirect impacts include poorer standards of health, nutrition, access to clean drinking water and higher exposure to disease, threatening the lives of those affected. Indirect impacts may also arise from some proposed solutions to climate change. For example, in the case of the development of ‘biofuels’, at a time when the world is already facing food shortages, it has been argued that this approach to reduction of carbon emissions may impact on world food supplies.

One of the most dramatic ways in which the right to life will be impacted by climate change is in the context of displacement of people and communities who will no longer be able to survive on their own land. Institutions such as the UN University have recently been calling on the international community to prepare for the impact of millions of ‘environmental refugees’ escaping worsening environmental conditions as a result of climate change, such as sea level rise, expanding deserts and catastrophic weather-induced flooding.

¹⁹ See UN Human Rights Committee, *General comment No. 6 – The Right to Life* (1982) UN Doc HRI/Gen/1/Rev.7 at 128, at paragraphs 1 and 5.

Environmental degradation as a result of human activity has been recognised judicially as impacting on the right to life itself. This approach has been applied by national courts, in particular in the context of interpreting national constitutions which provide for the right to life. For example, in the Indian case of *Subhash Kumar v State of Bihar* (1991) 1 SCC 598, the Supreme Court found that the right to life implied a right to “enjoyment of pollution-free water and air for full enjoyment of life”.

The Indian Supreme and High Courts have been among the most active in this area, however, other jurisdictions are also making this connection between maintaining a healthy environment and ensuring the right to life for individuals. Of note are comments made by Judge Weeramantry of the ICJ, who stated that the protection of the environment is “a vital part of contemporary human rights doctrine and a *sine qua non* for numerous human rights, such as the right to health and the right to life”.²⁰

Applying some of the judicial case law and commentary that has developed in connection with environmental quality and the right to life, it can be seen that the environmental impacts of climate change will also have an affect on the universally held right to life, particularly for those already vulnerable groups in our global community.

3.2 Right to development

3.2.1 What is the right to development?

The Declaration on the Right to Development (the Declaration) was adopted by the United Nations General Assembly in 1986.²¹ Further, the World Conference on Human Rights, held in Vienna in 1993, reaffirmed by consensus the right to development as a universal and inalienable right and an integral part of fundamental human rights.²² Article 1, clause 1 of the Declaration provides:

1. *The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.*
2. *The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.*

The Declaration recognises that the human person is the central subject of development (Article 2, clause 1). At the same time it also recognises the responsibility of each person in ensuring the full realisation of the right to development (Article 2, clause 2):

All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.

²⁰ Per C G Weeramantry J (separate opinion), *Gabcikovo-Nagymaros Project (Hungary v Slovakia)* 1997 ICJ 97 at 110; 37 ILM 162 at 206 (1998).

²¹ By resolution 4/128 on 4 December 1986.

²² UNHCR website. Available at <http://www.unhcr.ch/development/right-02.html>.

The Declaration also deals extensively with the responsibilities of States in relation to the right to development. Article 3, clause 1 provides:

States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.

The Declaration also provides for further specific responsibilities of States, such as the duty to formulate international development policies and to promote the establishment and maintenance of international peace and security.²³

3.2.2 The impact of climate change on the right to development

As recognised by the UNDP, climate change is the defining human development issue of our generation as it threatens to erode human freedoms and limit choice.²⁴ Broadly speaking, climate change has the potential to fundamentally alter the nature of our existence by:

- threatening agricultural production and food security;
- threatening water security;
- causing a decrease in the earth's landmass (though rising sea levels);
- causing drastic weather patterns (such as cyclones, floods and drought);
- fundamentally altering the biological balance of our planet, resulting in the destruction of ecosystems and the extinction of many species; and
- impacting upon human health through the outbreak of disease and epidemics.

It is submitted that the cumulative effect of the points outlined above will have a twofold impact on the right to development, in that:

1. the attainment of the right to development by developing countries will be severely impaired; and
2. the advances made in human development (in both developing and developed countries) may be reversed.

The disproportionate impact of climate change on developing countries is becoming increasingly apparent.

On the one hand, it is developed nations which have impacted most significantly on climate change as the standard of living attained by such nations has resulted in critical levels of greenhouse gas emissions. On the other hand it is developing nations which are likely to be much more severely affected by the effects of climate change - due to factors such as their increased and more immediate reliance on agriculture for their livelihood, as well as their limited resources in protecting themselves against the impacts of climate change.²⁵

It is in this context that the obligations imposed on States by the Declaration become central to promoting the right to development. It is submitted that the significant contribution of developed countries to climate change, coupled with the obligations upon States enshrined in the Declaration

²³ Articles 4 to 8 outline the further obligations of the State in connection with the right to development.

²⁴ UNDP, Human Development Report 2007/2008, *Fighting climate change: Human solidarity in a divided world*.

²⁵ Oxfam International, *Adapting to climate change*, Oxfam Briefing Paper, May 2007.

makes it incumbent upon developed countries to act without delay to create and implement policies which decrease GHG emissions.

It is also submitted that developed countries have a responsibility to assist vulnerable communities and countries in combating the effects of climate change. It is only when such policies are implemented and when nation-states co-operate at an international level that the right to development can be protected and fully realised.

3.3 Right to property

3.3.1 What is the right to property?

The right to property arises under Article 17 of the UDHR.

- 1. Everyone has the right to own property alone as well as in association with others.*
- 2. No one shall be arbitrarily deprived of his property.*

It does not, however, feature specifically in the ICCPR or the International Covenant on Economic, Social and Cultural Rights (ICESCR). Rights regarding property can be found in other international human rights instruments. For example, in the European Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 1.

Article 1 Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Similarly in the American Convention on Human Rights:

Article 21. Right to Property

- 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.*
- 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.*

These instruments are binding on member states and clearly create obligations in relation to the right of property. As both conventions have courts (European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights (IACHR)) to interpret and enforce these rights there is scope for rights to property under these instruments to become the subject of challenge.

Most national legal systems will deal with property rights in some form, but the content of a general “right to property” as a human right is less well defined. A common theme in the ECHR and the IACHR is the right to use and enjoyment and the right not to be deprived of one’s property without compensation. In both conventions this is to be balanced with the public interest.

3.3.2 The impact of climate change on the right to property

In terms of the impact of climate change, the right to property will overlap to some extent with other rights such as the right to a healthy environment, rights of displaced peoples and the right to development.

Effects of climate change may result in deprivation of property without compensation, particularly in respect of rising sea levels in coastal areas. This deprivation of property also leads into further problems involving displaced persons and refugees.

Rights to property provide a good basis for potential litigation on climate change grounds. Significantly, the native Inupiat village of Kivalina Alaska has recently brought an action against oil companies in public nuisance for damages related to climate change.²⁶ They are claiming that the melting of Arctic ice as a result of global warming caused by the actions of these oil companies will lead to the destruction of their village. It is foreseeable that many people will be deprived of their property in this way and rights to property, whether national or international, provide the potential for bringing actions against major emitters, which may include States.

The effects of climate change also have the potential to impact on the use and enjoyment of property where temperature changes affect weather patterns (including more droughts or more tropical storms) and consequently possible land uses. This in turn impacts on the availability of water as well as on agriculture and thus the production of food, again intersecting with other rights.

Efforts to combat the effects of GHG emissions by creating 'sinks' could potentially impact on property rights. This may be compatible with existing formulations of the right to the extent that it is in the public interest to do this. However, there is a concern that this may have a disproportionate impact on developing countries if they are put under pressure, particularly in the light of the Kyoto initiative, to create or reserve areas as sinks that might otherwise be used for other purposes, such as agriculture. Here there is an intersection with the right to development.

3.4 Rights of indigenous peoples

3.4.1 What are the rights of indigenous peoples?

Indigenous peoples are internationally recognised as holding unique rights in relation to developing their own political, religious, cultural and educational institutions. This includes being able to participate and consent to activities that impact on their peoples, property or territories and participate in conserving the environment.

These rights are comprehensively recognised in the Declaration on the Rights of Indigenous Populations, which sets out the individual and collective rights of indigenous peoples, including pursuing their development in keeping with their own needs and aspirations.²⁷ Although the Declaration is not legally binding, it is recognised as having a 'moral force'²⁸ in addition to

²⁶ *Kivalina v. ExxonMobil Corp., Et al.* (2008).

²⁷ UN News Centre, *United Nations adopts Declaration on Rights of Indigenous Peoples*. Available at <http://www.un.org/apps/news/story.asp?NewsID=23794&Cr=indigenous&CrI>.

²⁸ International Work Group for Indigenous Affairs, *Background information on the Declaration on the Rights of Indigenous Peoples*. Available at <http://www.iwgia.org/sw356.asp>.

affirming many existing rights²⁹. These include rights to protection of culture, values and economic and social activities assured by existing International Conventions.³⁰ International law also recognises the vital role and right to participation and protection of indigenous peoples and their knowledge in environmental management and sustainability.³¹

3.4.2 The impact of climate change on the rights of indigenous peoples

The rights of indigenous populations are often vulnerable to climatic changes because of indigenous peoples' close relationship with the environment, a reliance on the land and sea for subsistence purposes, the fact that they are more likely to inhabit areas of more severe impact such as coastal regions, often have lower socioeconomic status, are more socially marginalised, and have less access to quality health care services.³² However, in particular, not only do Indigenous peoples rely on natural systems to sustain their livelihood, but it is the basis for their cultural practices and identity.³³ Significantly the impact of climate change may damage a whole environment and effectively deny indigenous peoples the ability to continue with their culture as is demonstrated in the examples below.

Indigenous inhabitants of low lying islands, such as those in the Torres Strait Island are particularly vulnerable to the effects of climate change because these communities face inundation as the sea levels rise. The salt water can contaminate fresh water supplies, poison crops and make the soil unsuitable for plant life.³⁴ This can have a devastating impact on the life of the inhabitants whose culture is directly linked to the harvest of natural resources and the use of such resources for certain cultural purposes.³⁵ Climate change is likely to significantly disrupt the marine environment, which is of great significance to Torres Strait Island culture which depends to varying degrees on seafood for protein.³⁶

There is reasonable concern that climate change will lead to the reduction in the number of these animals through habitat loss.³⁷ This means that animals that Torres Strait Islanders have traditionally relied on for food may no longer survive in numbers sufficient to sustain them. Finally, it is important to note that since these communities have long-established customs that are tied directly to their homelands, if they are forced out of their land as a result of inundation, they will not only lose their place in the world but also a direct link to their culture.³⁸

²⁹ Les Malezer, Statement to the General Assembly on the Declaration on the Rights of Indigenous Peoples, Chairman of the Global Indigenous Caucus, 13 September 2008.

³⁰ See Article 27 of the *International Covenant on Civil and Political Rights 1966* and Article 5 of the *Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries*.

³¹ See Article 8(j) of the *Convention on Biological Diversity*; Principle 22 of *The Rio Declaration on Environment and Development* and Chapter 26 of *Agenda 21*.

³² Christopher Furgal and Jacinthe Seguin, 'Climate Change, Health, and Vulnerability in Canadian Northern Aboriginal Communities' (2006) 114 *Environmental Health Perspectives* 1964, 1968.

³³ Donna Green, *Climate Change and Health: Impacts on Remote Indigenous Communities in Northern Australia*, CSIRO Marine and Atmospheric Research Paper 012, Commonwealth Scientific and Industrial Research Organisation, Australia, November 2006, 1. Available at www.cmar.csiro.au/e-print/open/greendl_2006.pdf.

³⁴ Environmental Defender's Office NSW, *Climate Change* (2007) 63 Hot Topics 1, 11.

³⁵ Ibid.

³⁶ Donna Green, *How Might Climate Change Affect Island Culture in the Torres Strait?* CSIRO Marine and Atmospheric Research Paper 011, November 2006, 5.

³⁷ Ibid.

³⁸ Environmental Defender's Office NSW, *Climate Change* (2007) 63 Hot Topics 1, 11.

Like Torres Strait Islanders, the Arctic Inuit's way of life is also threatened by climate change. The Inuit inhabit a region that is at serious risk of collapse due to global warming.³⁹ Some of the critical issues affecting the Inuit of Canada's North as a result of climate change include impacts on food security because of changes in sea-ice access routes to hunting areas or ice-road stability and effects on reliable transport of market food stuffs; combined impacts on mental health due to reduced ability of individuals to practice aspects of traditional lifestyles; and impacts to infrastructure and threats of community disruption or relocation.⁴⁰ In December 2005 the Chair of the Inuit Circumpolar Conference, filed a petition against the US with the IACHR. The petition alleges that the US, through its "failure to restrict greenhouse gas emissions" and the resulting effects of climate change, has "violated Inuit's human rights, including their rights to their culture, to property, to the preservation of health, life and physical integrity".⁴¹ Similar challenges are faced by other Indigenous people who live in the Arctic as their culture and livelihood depend on the ice.

Commentators⁴² have noted that indigenous peoples are rarely considered in public discourses or reports on climate change. This right to participation is not only recognised by international instruments, but indigenous peoples are recognised as holding specialised knowledge of their environment and ability for ecological sustainability. A failure to acknowledge a right to participation of indigenous cultures may further entrench breaches of rights. The right to use traditional lands and engage in traditional rituals can be affected by government policies which, although they ostensibly attempt to assist indigenous groups cope with changes to the land, may in fact worsen the problem if indigenous groups are not consulted. For example, in Guyana, the Makushi traditionally leave their main settlements and temporarily migrate to rain forests during times of drought. However, government settlements policies have prohibited the Makushi from temporary migration and although food aid is provided, the Makushi are unable to obtain seeds from the forest to re-establish agriculture.⁴³

3.5 Right to health

3.5.1 What is the right to health?

The right to health is referred to in various international covenants, most notably in the UDHR and the ICESCR. Article 25 of the UDHR states that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and his family".⁴⁴ The Article enunciates some of the entitlements that exist under this right, which include "food, clothing, housing and medical care and necessary social services, and the right to security in the event of ... sickness".

³⁹ Ibid, 13.

⁴⁰ Christopher Furgal and Jacinthe Seguin, 'Climate Change, Health, and Vulnerability in Canadian Northern Aboriginal Communities' (2006) 114 *Environmental Health Perspectives* 1964, 1968.

⁴¹ Tiuloma Neronie Slade, 'Climate Change: The Human Rights Implications for Small Island Developing States' (2007) 37 *Environmental Policy and Law* 215, 216.

⁴² For example see Jan Salick and Anja Byg (eds), *Indigenous Peoples Climate Change*, Tyndall Centre for Climate Change Research, Oxford, May 2007, at p 4; and Secretariat of the United Nations Permanent Forum on Indigenous Issues, *Climate Change: An Overview*, November 2007, at p 4. Available at: http://www.un.org/esa/socdev/unpfii/documents/Climate_change_overview.doc.

⁴³ Jan Salick and Anja Byg (eds), *Indigenous Peoples Climate Change*, Tyndall Centre for Climate Change Research, Oxford, May 2007, at p 22.

⁴⁴ *UDHR*, Article 25(1).

Article 12(1) of the ICESCR recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.⁴⁵ The Article also requires parties to the Covenant to take steps necessary for “the prevention, treatment and control of epidemic, endemic, occupational and other diseases”.⁴⁶ The *Convention on the Rights of the Child (CRC)*⁴⁷ and the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*⁴⁸ contain similar provisions for the right to health.

3.5.2 The impact of climate change on the right to health

The effect of climate change on the environment, that is the expected rise in average global temperatures of between 2 and 3°C over the next fifty years, is anticipated to lead to “many severe impacts, often mediated by water, including more frequent droughts and floods”.⁴⁹ These impacts are likely to have a significant effect on the health of the global population and could challenge the right to health as a result. As outlined in the Stern Report, climate change is expected to:

*increase worldwide deaths from malnutrition and heat stress. Vector-borne diseases such as malaria and dengue fever could become more widespread if effective control measures are not in place. In higher latitudes, cold-related deaths will decrease.*⁵⁰

Climate change is likely to cause “changes in the variability and distribution of rainfall”⁵¹ and therefore to alter traditional sources of, and access to, clean water. If clean water, which is a “requirement for good health and sanitation”,⁵² becomes a scarcity, there is likely to be a severe impact on the health of the global population.

Infectious diseases pose one of the greatest threats to the health of the global population, particularly through the transmission of diseases via mosquitoes that will find a warmer planet a much more hospitable environment. Dupont and Pearman explain that, “[a]s the planet heats up, mosquitoes will move into previously inhospitable areas and higher altitudes, while disease transmission seasons may last longer.”⁵³

As with the effect of climate change on other rights, it is important to remember that “[t]he impacts of climate change are not evenly distributed – the poorest countries and people will suffer earliest and most.”⁵⁴ Given that developing countries currently “suffer from inadequate health

⁴⁵ ICESCR, Article 12(1).

⁴⁶ ICESCR, Article 12(2)(c).

⁴⁷ Article 24, for example, states that parties must ensure that every child enjoys the “highest attainable standard of health.”

⁴⁸ Article 12 of the CEDAW provides for equality for women in relation to issues concerning health and health care provision.

⁴⁹ Nicholas Stern et al, *The Economics of Climate Change* (2006), at p. 56. Available at http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm.

⁵⁰ Nicholas Stern et al, *The Economics of Climate Change* (2006), at p. 56.

⁵¹ Dupont and Pearman, *Heating up the Planet: Climate Change and Security* (2006), at p.32. Available at http://lowyinstitute.richmedia-server.com/docs/AD_GP_ClimateChange.pdf.

⁵² Nicholas Stern et al, *The Economics of Climate Change* (2006), at p. 62.

⁵³ Dupont and Pearman, *Heating up the Planet: Climate Change and Security* (2006), at p.36.

⁵⁴ Nicholas Stern et al, *The Economics of Climate Change* (2006). .

provisions,”⁵⁵ the populations of less developed countries may face greater health risks and therefore greater threats to their right to health.

Developing countries face particularly severe health risks in relation to malnutrition. Malnutrition is a health issue in and of itself,⁵⁶ however it also weakens the immune system, rendering the sufferer more vulnerable to contracting infectious diseases. Climate change could “exacerbate this vulnerability as a greater number of malaria carrying mosquitoes move into previously uninfected areas,”⁵⁷ as explained above. The result is likely to be “higher morbidity and mortality rates among people suffering from malnutrition than among food-secure people.”⁵⁸

3.6 Right to food

3.6.1 What is the right to food?

The right to food is recognised in a number of international conventions. The right to food is most comprehensively addressed in Article 11 of the ICESCR, which provides as follows:

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*
2. *The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:*
 - (a) *To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;*
 - (b) *Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.*

The Special Rapporteur on the Right to Food to the Commission on Human Rights (the Special Rapporteur) defined the right to food in the following terms:

*[T]he right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.*⁵⁹

⁵⁵ Center for Human Rights and Environment, *Human Rights, Development And Climate Change Negotiations: Why a Structural Shift in Negotiations towards Adaptation and Mitigation Makes Sense*, at p.18. Available at http://www.cedha.org.ar/en/initiatives/climate_change/docs/human_rights.pdf.

⁵⁶ Malnutrition is a major health issue in Africa; for example, approximately 40% of the sub-Saharan African population is undernourished: World Health Organisation (2005): ‘Malnutrition: Quantifying the health impact at national and local levels’. *Environmental burden of diseases series*, No. 12, Washington DC: WHO.

⁵⁷ Nicholas Stern et al, *The Economics of Climate Change* (2006), at p. 97.

⁵⁸ Nicholas Stern et al, *The Economics of Climate Change* (2006), at p. 97.

⁵⁹ Ziegler, Jean, *The Right to Food*, Report by the Special Rapporteur on the Right to Food to the Commission on Human Rights 57th sess, UN Doc UN Doc E/CN.4/2001/53 (2001).

Integral to the right to food is the concept of ‘food security’. According to the Special Rapporteur:

The corollary of the right to food is food security. This is the definition given in the first paragraph of the World Food Summit Plan of Action: “Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.”⁶⁰

The Food and Agriculture Organisation of the United Nations (FAO) defines food security in four dimensions:

1. Food availability;
2. Access to food;
3. Stability of food supply; and
4. Utilisation of food.⁶¹

3.6.2 The impact of climate change on the right to food

The nexus between climate change and the right to food is evident when one examines the components of the right to food. The right to food has a number of components, including:- (i) physical and economic access at all times to adequate food or means for its procurement, (ii) nutritional adequacy, and (iii) sustainability.⁶² These components are interrelated. The Committee on Economic, Social and Cultural Rights, in General Comment No. 12 adopted in May 1999, said:

The notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations. The precise meaning of ‘adequacy’ is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while ‘sustainability’ incorporates the notion of long-term availability and accessibility.⁶³

The Special Rapporteur’s report identified the following “main macroeconomic obstacles that hinder or prevent the realization of the right to food”:

1. Problems linked to developments in world trade;
2. External debt servicing and its impact on food security;
3. Developments in biotechnology and their impact on access to food and its availability and security;
4. Wars and their destructive impact on food security;
5. Corruption;
6. Access to land and credit;
7. Discrimination against women and its impact on the realization of the right to food.⁶⁴

⁶⁰ Ibid at p. 7.

⁶¹ High-Level Conference on World Food Security: The Challenges of Climate Change and Bioenergy, *Climate Change Adaptation and Mitigation: Challenges and Opportunities for Food Security*, p. 2, UN Doc HLC/08/INF/2, Rome, 3-5 June 2008.

⁶² Ziegler, Jean, *The Right to Food*, Report by the Special Rapporteur on the Right to Food to the Commission on Human Rights 57th sess, UN Doc E/CN.4/2001/53 at p. 7. (2001).

⁶³ Ibid at p. 8.

⁶⁴ Ibid at p. 21.

Having regard to the components of the right to food (noted above), it is submitted that climate change is another critical macroeconomic obstacle to the realisation of the right to food. At the recent High-Level Conference on World Food Security: The Challenges of Climate Change and Bioenergy (the High-Level Conference), it was recognised that:

*Agriculture, rural livelihoods, sustainable management of natural resources and food security are inextricably linked within the development and climate change challenges of the twenty-first century. Indeed, not only is food security an explicit concern under climate change; successful adaptation and mitigation responses in agriculture can only be achieved within the ecological, economic and social sustainability goals set forth by the World Food Summit, the Millennium Development Goals and the UNFCCC.*⁶⁵

At the High-Level Conference, it was said that climate change will have the following negative impacts on the four dimensions of food security identified above:

- *availability of food – will be reduced by a drop in food production caused by extreme events, changes in the suitability or availability of arable land and water, and the unavailability or lack of access to crops, crop varieties and animal breeds that can be productive in conditions have lead to changes in pests and diseases;*
- *access to food – will be worsened by climate change events that lead to damages in infrastructure and losses of livelihood assets as well as loss of income and employment opportunities;*
- *stability of food supply – could be influenced by food price fluctuations and a higher dependency on imports and food aid;*
- *utilisation of food – can be affected indirectly by food safety hazards associated with pests and animal diseases as well as the increased presence of human diseases such as malaria and diarrhoea.*⁶⁶

Climate change in the twenty-first century will exacerbate existing problems with food security. Despite overall reductions in hunger projected by the end of this century, many developing countries will continue to experience serious poverty and food insecurity due to localised high population growth rates, poor socio-economic capacity and continued natural resource degradation.⁶⁷ This will particularly be the case for regions that already suffer from resource scarcity and high exposure to climatic extremes such as drought and flooding.

It is submitted that decision-makers at the international, national and regional levels need to develop adaptation and mitigation strategies that help reduce the potential negative impacts of climate change on food production systems, with a focus on rural livelihoods in poor developing countries.⁶⁸ Possible strategies include:

- avoided deforestation;
- forest conservation and management;
- agroforestry for food of energy;
- land restoration;
- recovery of biogas and waste; and

⁶⁵ High-Level Conference on World Food Security: The Challenges of Climate Change and Bioenergy, *Climate Change Adaptation and Mitigation: Challenges and Opportunities for Food Security*, at p. 1, UN Doc HLC/08/INF/2, Rome, 3-5 June 2008.

⁶⁶ Ibid at pp. 2-3.

⁶⁷ Ibid at p. 1.

⁶⁸ Ibid at p. 7.

- in general, a wide set of strategies that lead to conservation of soil and water resources by improving their quality, availability and efficiency of use.⁶⁹

3.7 *Right to water*

3.7.1 **What is the right to water?**

The right to water has not been expressly mentioned in the original UN human rights documents, however the Economic and Social Council (ESC), in General Comment 15 on the Right to Water, makes clear that they consider that the right to water is inherent in many of the other explicit rights. They set out that the right to water should be considered as part of Article 11 of ICESCR on the right to an adequate standard of living, noting:

*The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.*⁷⁰

The ESC further notes that the right to water is also inherent in many other explicitly mentioned rights such as the right to health (art 12, paragraph 1), adequate housing and adequate food (art 11, paragraph 1), as well as the right to life as set out in the UDHR.

The ESC even goes as far as linking the right to water to the right to earn a living through work, although this proposition has support from organisations such as WHO, the High Commissioner for Human Rights, Water Aid, COHRE and the Committee on Economic and Social Rights (Right to Water Coalition).⁷¹

However, the right to water is also explicitly mentioned in two covenants – the CRC at article 24 and CEDAW at article 14.

The Right to Water Coalition notes that “[e]nsuring that access to sufficient safe water is a human right constitutes an important step towards making it a reality for everyone”.⁷² It goes further to note that it would ensure “fresh water is a legal entitlement, rather than a commodity or service provided on a charitable basis...and the means and mechanisms available in the United Nations human rights system will be used to monitor the progress of State Parties in realizing the right to water and hold governments accountable.”⁷³

The right to water comprises the following components:

1. the obligation to respect and maintain the current levels of access;
2. the obligation to protect such access from arbitrary interference by 3rd parties such as government agencies, corporations or individuals; and
3. the obligation to work towards full realisation of the right to water for all citizens of a State Party.

⁶⁹ Ibid at p. 8.

⁷⁰ Economic and Social Council, General Comment 15 (2002), *The right to water (arts 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/2002/11 at paragraph 3.

⁷¹ WHO, COHRE, OHCHR, CESR and WaterAid ‘*The Right to Water*’.

⁷² Ibid at page 9.

⁷³ Ibid.

3.7.2 The impact of climate change on the right to water

One of the main issues facing the right to water in the context of climate change is that water is an already scarce and finite resource. Commentators on the right to water such as Maude Barlow have already noted that we have effectively disrupted the closed hydrological system on which the earth operates, which means that the discussion must focus on how we ensure a more equitable distribution of a finite resource. A rights based analysis assists in this process, meaning that the main impact of climate change on the right to water is that it makes it all the more urgent and pressing to ensure its observation.

The impact of climate change has been well documented, in particular by the Intergovernmental Panel on Climate Change (IPCC) who has recently released a technical report on Climate Change and Water.⁷⁴ In section 2 of the report, the IPCC noted:

*Climate warming observed over the past several decades is consistently associated with changes in a number of components of the hydrological cycle and hydrological systems such as: changing precipitation patterns, intensity and extremes; widespread melting of snow and ice; increasing atmospheric water vapour; increasing evaporation; and changes in soil moisture and runoff.*⁷⁵

In laymen's terms, weather becomes less predictable and more extreme, resulting in rainfall patterns changing from those known and relied upon by agricultural communities as well as increased floods and droughts. The impact of droughts on the right to water is self evident, however in addition, floods can also lead to the contamination of water sources, as was seen after the 2004 Asian tsunami.

In the past, this has been mostly relevant to developing nations whose populations either live great distances from secure or potable water sources or the sources located close to them are not secure or potable. In addition, development of impoverished countries through industry has meant that many previously safe water sources have become polluted. For those communities, the right to water is something immediate and necessary as they seek access to a fundamental need to which they have no or limited access.

However, the advent of climate change has not only heightened the vulnerability of already vulnerable populations but also meant that access to water will most likely become an issue for many people in the developed world. Looking solely at the capital cities of Australia who have been subjected to water restrictions of varying levels, together with the devastating impacts of long term droughts on Australia's rural communities, it can be seen that access to water is quickly becoming a live issue for citizens of the developed world.

In the developing world, in addition to the most obvious concerns about access to water, when droughts increase or rainfall patterns change beyond recognition, rural communities are forced to gravitate towards urban centres, putting increased pressure on an already scarce and over drawn resource.

Therefore, one of the main impacts of climate change on the right to water is that it effectively unites the developed and developing world to secure future access for a fundamental need.

⁷⁴ IPCC, *Climate Change and Water*, Fourth Assessment Report, Technical Paper, June 2008. Available at www.ipcc.ch.

⁷⁵ Ibid at p. 15.

While there has not been litigation on the right to water, it is interesting to contemplate what it could be used for. In a developing world context, it could be used to prevent a corporation from wantonly polluting a water source or by forcing a government to install proper piping and delivery systems for residents. In a developed world context, it is fathomable that the right to water might be used to compel governments to adopt more robust water strategies. In an Australian context, given the focus on water management, it could possibly be used to encourage the governments to, at one end, co-operate in a more meaningful fashion, or at the other, force the government to adopt a particular strategy such as stricter water restrictions or the construction of a desalination plant or water recycling plant. Such strategies are listed by Oxfam as being necessary to ensure the future viability of our water.

In summary, while the right to water remains one of the least developed economic and social rights, it relates to a fundamental need which is unquestionably threatened by climate change. As such it might offer some of the more novel options for the whole world to secure present and future access to a precious resource.

3.8 Loss of civil and political rights

3.8.1 What are civil and political rights?

Civil and political rights are rights relating to civil and political freedom held by all human beings by virtue of their humanity. The UDHR 1948 includes various civil and political rights provisions. The fundamental UN instruments relating to civil and political rights are the ICCPR, the Optional Protocol to the ICCPR; and the Second Optional Protocol to the ICCPR. The ICCPR is constituted of fifty-three articles, includes a myriad of civil of political rights and is a legally binding treaty.

In the ICCPR, civil and political rights can be broadly classified into five categories: protection of an individuals integrity; procedural fairness before the law; protection of individuals from gender, religious, racial and other types of discrimination; individual freedom of belief, speech, association, of press, right to hold assembly; and the right to political participation. These categories include for example, rights relating to self determination, the right to life, liberty and freedom of movement, rights to freedom of thought, conscience and religion, freedom of expression and the press, peaceful assembly and association, freedom from discrimination, prohibition on slavery, procedural fairness etc.

3.8.2 The impact of climate change on civil and political rights

Climate change threatens to disrupt civil and political rights through necessitating or legitimising more authoritarian forms of government. Existing emergency response legislation generally provides for the temporary suspension of civil and political rights. For example, the *State Emergency and Rescue Management Act 1989 (NSW)* the New South Wales Minister for Emergency Services has the power to:

- compel evacuation and prohibit access to emergency areas (s37);
- close traffic (s 37A(1)(a));
- close a public or private place (s37A(1)(b));
- pull down or shore up premises (s37A(1)(c));
- shut off water, gas, liquid, solid, grain or other supply (s37A(1) (d));
- take possession of, remove or destroy any material that may be dangerous to life or property or interfere with emergency response (s37A(1) (f)); and

- take possession and make use of any person’s property (s38(1)).

These powers are available upon the declaration of an emergency by the New South Wales Premier. The Premier can make the declaration if he or she is satisfied that there is an emergency,⁷⁶ which constitutes a significant and widespread danger to life or property in New South Wales. On 8 December 2006, New South Wales Opposition leader Peter Debnam demanded the Premier declare a state of emergency on water.⁷⁷

Climate change has the potential to be framed as a “permanent State of Emergency”. Both Al Gore⁷⁸ and UN Secretary General Ban Ki-Moon⁷⁹ have described climate change as an emergency. This is conceptually distinct to more specific emergency events such as bush fires and floods, where the time period of the emergency is clear and definable. Climate change may affect human habitats and ways of life in such an extensive and prolonged manner that more undemocratic forms of government are called for to keep society stable. In this way a “permanent State of Emergency” could lead to a crippling breakdown in political freedoms.

International Alert’s report “A Climate of Conflict: The links between climate change, peace and war”⁸⁰ found that there are 46 countries in which the impacts of climate change interacting with social, economic and political problems will create a high risk of conflict.⁸¹ There is another group of 56 countries where the institutions of government will have great difficulty taking the strain of climate change.⁸²

Political and social instability erode the ability of the state to meet its functions, including safeguarding human rights and democratic systems.⁸³ Undeveloped and unstable states are particularly at risk of these “consequences of consequences”.⁸⁴ However, the International Alert report makes clear that through enhancing social resilience, prioritising adaptation in unstable states, promoting international cooperation and other measures, the impacts of climate change upon governance can be minimised. “The physical consequences of climate change may be largely in the hands of nature, but the consequences of these consequences are not.”⁸⁵

⁷⁶ “Emergency” is defined as an emergency due to an actual or imminent occurrence (such as fire, flood, storm, earthquake, explosion, terrorist act, accident, epidemic or warlike action) which:

- endangers, or threatens to endanger, the safety or health of persons or animals in the State; or
- destroys or damages, or threatens to destroy or damage, property in the State (including the environment of the State);

being an emergency which requires a significant and co-ordinated response.

⁷⁷ Sydney Morning Herald, *New water lows, no new restrictions*. Available at <http://www.smh.com.au/news/national/new-water-lows-no-new-restrictions/2006/12/08/1165081130717.html>, 8 December 2006.

⁷⁸ United Nations, *Global Warming is more than just a green issue, says Secretary-General*. Available at <http://www.un.org/apps/news/story.asp?NewsID=20091&Cr=climate&Cr1=change>, 29 September 2006.

⁷⁹ ABC, *UN Chief says global warming is ‘an emergency’*. Available at <http://www.abc.net.au/news/stories/2007/11/11/2087480.htm>, 11 November 2007.

⁸⁰ International Alert, *A Climate of Conflict: The links between climate change, peace and war*, November 2007.

⁸¹ Ibid, p.3.

⁸² Ibid, p.3.

⁸³ Ibid, p.21.

⁸⁴ Ibid, p.3.

⁸⁵ Ibid, p.8.

Darfur

Darfur provides an example of the impacts of climate change intensifying political and civil failings in the state. UN Secretary General Ban Ki-Moon has argued that “the Darfur conflict began as an ecological crisis, arising at least in part from climate change.”⁸⁶ Existing economic and political marginalisations, as well as violence, were exacerbated by the 20 year Sahelian drought.⁸⁷ In 2003, two Darfurian armed groups attacked military installations.⁸⁸ In response the local government backed militias engaged in a campaign of ethnic cleansing, causing over 200,000 deaths and the displacement of over two million people.⁸⁹ While climate change does not itself explain the outbreak or extent of violence in Darfur, it is clear that the civil and political human rights abuses in the area can be linked to climate change.

New Orleans

The intensity and scale of Hurricane Katrina in late August 2005 along the north-central Gulf Coast of the USA has been directly attributed to the effects of climate change.⁹⁰

Following Hurricane Katrina, there were reports of racial injustice and human rights violations in Mississippi and Louisiana including increases in police abuse, racial profiling, voter disenfranchisement and in-custody abuses, housing discrimination, and other civil liberties violations.⁹¹ Existing discrimination against the poor, the undereducated, the disabled, immigrants, undocumented workers, and people confined to institutions⁹² was exacerbated in the aftermath of the storm, as these groups were most affected. Further, a number of activists and NGOs have cited the chaos and deprivation and the way in which those deprivations were disproportionately suffered by poor African Americans following the storm, as an indictment of the US government’s violations of sections of the ICCPR.⁹³

Abusive arrest practices, cruel conditions of imprisonment, denial of due process and illegal incarceration occurred. Almost all prisoners evacuated were denied access to attorneys and courts and denied information about their cases and why they were being held. Prisoners were detained without trial.⁹⁴

On 9 December 2005, Governor Kathleen Blanco signed an executive order indefinitely postponing the New Orleans municipal elections. When rescheduled, officials announced

⁸⁶ Ban Ki-Moon, ‘A Climate Culprit in Darfur’, in *The Washington Post*, 16 June, 2007.

⁸⁷ International Alert, *A Climate of Conflict: The links between climate change, peace and war*, November 2007, p.12.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Boston Globe, *Katrina's Real Name*. Available at http://www.boston.com/news/weather/articles/2005/08/30/katrinass_real_name, 30 August 2005; World Science, *Did Global Warming Power Katrina?*. Available at http://www.world-science.net/othernews/050915_stormfrm.htm, 15 September 2005; ABC News, *Did Global Warming Boost Katrina's Fury?* Available at <http://abcnews.go.com/Technology/DyeHard/Story?id=1121948&page=1>, 14 September 2005.

⁹¹ American Civil Liberties Union, *Broken Promises*, August 2007; Marina Sideris and the Amnesty Working Group, *Amnesty for the Prisoners of Katrina: A Critical Resistance Special Report*, November 2007.

⁹² Susannah Sirkin, *The Debacle of Hurricane Katrina: A Human Rights Response*, 30 Fletcher F. World Aff. 223, Winter 2006 p. 224.

⁹³ Lolita Buckner Inniss, *A Domestic Right of Return? Race, Rights, and Residency in New Orleans in the Aftermath of Hurricane Katrina*, 27 BC Third World LJ 325, 2007 p. 362.

⁹⁴ American Civil Liberties Union, *Broken Promises*, August 2007.

cumbersome and obscure absentee voting procedures which risked disenfranchisement of displaced persons and disproportionately affected African Americans.⁹⁵ Evacuees also lost documents including government identifications, birth certificates, and health insurance cards and found it difficult to secure services elsewhere in the state or country.⁹⁶ Further, one of the most serious deprivation of rights following Hurricane Katrina was the lack of affordable housing and housing discrimination.⁹⁷ At least one town actively refused to provide sanctuary to evacuees.⁹⁸

The effects of Hurricane Katrina indicate that there is a definitive link between the effects of climate change induced or exacerbated disasters, and deterioration of civil and political rights. In more extreme cases, the effects of climate change may contribute to, or cause a deterioration in social, legal, political, regulatory and administrative structures resulting in violations of civil and political human rights.

⁹⁵ Ibid, p. 16.

⁹⁶ Lolita Buckner Inniss, *A Domestic Right of Return? Race, Rights, and Residency in New Orleans in the Aftermath of Hurricane Katrina*, 27 BC Third World LJ 325, 2007 p. 331.

⁹⁷ John S Williams and Kristy Bennett, *Impact of International Human Rights Law on Internally Displaced Gulf Coast Citizens*, 77 Miss L.J. 853 2007-2008, p. 863.

⁹⁸ Lolita Buckner Inniss, *A Domestic Right of Return? Race, Rights, and Residency in New Orleans in the Aftermath of Hurricane Katrina*, 27 BC Third World LJ 325, 2007 p. 332.

4 Other issues

4.1 Emergency response and disaster recovery problems

4.1.1 International covenants

The ICCPR, article 4, provides:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

4.1.2 The impact of climate change on emergency response and disaster recovery

An increase in the frequency and severity of natural disaster events is now accepted as a likely consequence of climate change.⁹⁹ The IPCC estimates, that, for example, it is “*very likely*” that we will see increased frequency of warm spells/heat waves over land areas and heavy precipitation events (flooding), and “*likely*” increased drought and intense tropical cyclone activity.¹⁰⁰ The UNDP also projects that climate change will intensify existing health issues, affecting predominantly poor people in poor countries, including those caused by extreme climate events.¹⁰¹

The vulnerability of developing countries to the impact of natural disasters is also greater than in the developed world. Natural disaster events can lead to long-term development setbacks.¹⁰²

The human rights aspects of increased frequency of natural disaster events caused by climate change include:

- unequal access to assistance;
- discrimination in aid provision;
- enforced relocation;
- sexual and gender-based violence;
- loss of documentation;
- unsafe or involuntary return or resettlement; and
- issues of property restitution.¹⁰³

⁹⁹ UNDP, *Human Development Report 2007/2008* (2008). Available at http://hdr.undp.org/en/media/HDR_20072008_EN_Chapter4.pdf, p. 191.

¹⁰⁰ IPCC, *Climate Change 2007: Synthesis Report* (2007), Available at http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf, p. 53.

¹⁰¹ UNDP, *Human Development Report 2007/2008* (2008). Available at http://hdr.undp.org/en/media/HDR_20072008_EN_Chapter4.pdf, pp. 105-106.

¹⁰² Human Rights and Equal Opportunity Commission (HREOC), *Background Paper: Human Rights and Climate Change* (2008). Available at http://www.hreoc.gov.au/pdf/about/media/papers/hrandclimate_change.pdf, p. 16.

¹⁰³ *Ibid*, p. 18; see also ECOSOC, *Strengthening Emergency Relief, Rehabilitation, Reconstruction, Recovery and Prevention in the Aftermath of the Indian Ocean Disaster: Report of the UN Secretary-*

Unequal access to assistance, discrimination in aid provision and sexual and gender-based violence in the context emergency response programs violate the obligations in art 4 of the ICCPR set out above. The other issues set out above violate other internationally recognised human rights, and thereby the requirement to comply with “*other obligations under international law*” in art 4.

The responses to the Indian Ocean tsunami of 26 December 2004 in various countries provide examples of violations of human rights in the ways referred to above. Groups in affected countries who received little or no support and were excluded from decision-making in the recovery process have been identified, including ‘sea gypsies’ and migrant labourers in Thailand, agricultural people and landless people in all countries, Dalits (formerly ‘untouchable’ castes) in India, and ethnic minorities and people already displaced by war in Sri Lanka.¹⁰⁴ In the Nicobar Islands where Indian naval bases are located, relief efforts were militarily led and there is evidence they bypassed affected indigenous communities and local civilian administration.¹⁰⁵

A further aid equity issue is that tsunami-affected populations appear to have benefited disproportionately from generous assistance programs, in comparison with less directly affected communities, who nevertheless remain poor and marginalised for other reasons.¹⁰⁶

Enforced relocation has manifested in a number of ways. On the one hand, the powerlessness of displaced persons subsisting in camps and barracks in Indonesia has been readily apparent.¹⁰⁷ In addition, measures taken by governments, ostensibly for climate change adaptation purposes, have also been cause for concern, the most notable being the Sri Lankan government’s policy of prohibiting within 100 metres of the mean sea level, displacing hundreds of thousands.¹⁰⁸

As might be expected, social structures post-tsunami in many affected regions are less stable than they were before. This has resulted in an increase in violence, particularly against women. A survey conducted by Action Aid International in 2007 of women in Indian, the Maldives, Puntland (Somalia), Sri Lanka and Thailand reported that women in these countries felt that incidence of physical, sexual and emotional violence had increased following the tsunami.¹⁰⁹

The tsunami also provides an instructional example of the potential effect of climate change on property rights. Again particularly at risk in this regard are women. In many developing societies

General (July 2005). Available at <http://www.un.org/docs/ecosoc/documents/2006/reports/ECOSOC%202006%20-%20Tsunami.pdf>, pp. 39-40.

¹⁰⁴ Action Aid International, *Tsunami Response: A Human Rights Assessment* (February 2006). Available at http://www.actionaid.org/docs/tsunami_human_rights.pdf, p. 10.

¹⁰⁵ Hedman, Eva-Lotta, 'The Politics of the Tsunami Response' (July 2005) *Forced Migration Review*. Available at <http://www.fmreview.org/FMRpdfs/Tsunami/full.pdf>, p. 5.

¹⁰⁶ ECOSOC, *Strengthening Emergency Relief, Rehabilitation, Reconstruction, Recovery and Prevention in the Aftermath of the Indian Ocean Disaster: Report of the UN Secretary-General* (July 2005). Available at <http://www.un.org/docs/ecosoc/documents/2006/reports/ECOSOC%202006%20-%20Tsunami.pdf>, p. 40.

¹⁰⁷ See, eg, Williams, Shaun, 'Getting Back Home: Impact on Property Rights of Indian Ocean Earthquake-Tsunami 2004' Working Paper No. 122 (February 2006) *New Issues in Refugee Research*. Available at <http://www.unhcr.org/research/RESEARCH/43fee0302.pdf>, pp. 24-25.

¹⁰⁸ Leckis, Scott, 'The great land theft' (July 2005) *Forced Migration Review*. Available at <http://www.fmreview.org/FMRpdfs/Tsunami/full.pdf>, p. 15.

¹⁰⁹ Action Aid International, *Violence Against Women in the post-tsunami context* (April 2007). Available at <http://www.actionaid.org/assets/pdf/VAW%20People's%20Report.pdf>.

the property rights of women are limited. For example, in Aceh, marriage requires women to move into the village of their husband. Women who became widowed vulnerable to missing out on being able to get their property rights back, as village power structures favour retention of property within the bloodline.¹¹⁰

4.2 *Refugee displacement issues*

The effects of climate change also threaten to drive millions of people around the globe to migrate, both within their own State and across international borders. Despite use of the term 'refugee' to describe vulnerable populations, the status of persons displaced by climate change is currently unclear under international law. It is arguable that human right instruments provide a basis for seeking and being granted asylum where displaced persons would be exposed to "cruel, inhuman or degrading treatment" if returned to their home, based on the notion of complementary protection. In addition, persons who are forced to migrate as a result of climate-change related natural disasters but remain within their home State ("internally displaced persons") may be entitled to receive certain levels of protection and assistance during displacement, as well as during the process of return or resettlement as outlined in the UN's Guiding Principles on Internal Displacement.

The Stern Review on the Economics of Climate Change predicts that "greater resource scarcity, desertification, risks of drought and floods, and rising sea levels could drive many millions to migrate."¹¹¹ By 2050, up to 200 million people could be forced to migrate due to the impact of climate change according to estimates of the IPCC¹¹². The factors contributing to climate-induced migration are complex and varied, and include displacement following natural disasters, progressive environmental degradation, and socio-political instability resulting from ecological stress.¹¹³ In particular, shoreline erosion, coastal flooding, increasing salinity and exposure to severe weather events threaten food and water security, and the very habitability of some human settlements.¹¹⁴

The various effects of climate change on human settlement will be felt differently around the globe. For example, Inuit communities in North America and Greenland fear displacement due to melting ice and loss of traditional hunting grounds.¹¹⁵ In February of this year, lawyers for the tiny Alaskan village of Kivalina filed a suit against two dozen oil, coal and power producers for public nuisance. Members of the village are being forced to relocate at a cost of \$US400 million because of flooding caused by the warming Arctic climate.¹¹⁶ Within the Asia-Pacific region,

¹¹⁰ Williams, Shaun, 'Getting Back Home: Impact on Property Rights of Indian Ocean Earthquake-Tsunami 2004' Working Paper No. 122 (February 2006) *New Issues in Refugee Research*. Available at <http://www.unhcr.org/research/RESEARCH/43fee0302.pdf>, p. 40.

¹¹¹ Nicholas Stern, *The Economics of Climate Change: The Stern Review* (2007), 128.

¹¹² The figure of 200 million accepted by the IPCC was first proposed by Oxford academic Norman Myers, see Myers, N, "Environmental Refugees: An emergent security issue", *13th Economic Forum*, Prague, May 2005.

¹¹³ See Etienne Piguet, 'Climate Change and Forced Migration' (2008) 153 *UNHCR New Issues in Refugee Research* 1-13; and Steve Lonergran, 'The Role of Environmental Degradation in Population Displacement' (1998) 4 (Spring 1998) *Environmental Change and Security Project Report* 5 for a discussion of environmental 'push' factors in migration.

¹¹⁴ Parry M.L et al, 'Summary for Policymakers' in Intergovernmental Panel on Climate Change (IPCC) (ed), *Climate Change 2007: Impacts, Adaptation and Vulnerability: Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (2007) 7-22.

¹¹⁵ S Watt-Cloutier, *Global Warming and Human Rights* (2007) 7.

¹¹⁶ F Barringer, 'Flooded Village Files Suit, Citing Corporate Link to Climate Change', *The New York Times*, 27 February 2008.

small-island developing States such as Kiribati and Tuvalu face whole-of-nation displacement as a consequence of rising sea levels, salt-water incursion and storm surges.¹¹⁷ Already, all one thousand inhabitants of the Carteret Islands near Papua New Guinea are being progressively relocated to mainland Bougainville. The Islands, which are only one-and-a-half metres above sea level, are expected to be completely submerged by 2015.¹¹⁸ Yet many Cartaret Islanders have expressed their strong reluctance to move given their familial and cultural ties to the islands, safety concerns of living in Bougainville and the financial costs associated with purchasing new land. The unhappy predicament of the Cartaret Islanders led one London newspaper to label them, the “First Climate Refugees.”¹¹⁹

Considering Australia’s proximity to several small-island developing states facing whole-of-nation displacement, New South Wales Young Lawyers are concerned about the rights of persons who have been displaced, or are faced with the prospect of forced migration due to an uninhabitable environment.

4.2.1 Climate Change ‘Refugees’

While the term climate ‘refugees’ has been used to describe persons displaced by climate change, we acknowledge this does not reflect the accepted legal definition of ‘refugee’. Under the 1951 *Convention Relating to the Status of Refugees* and 1967 Protocol,¹²⁰ States have an obligation to provide asylum to refugees in their territory, and not to return them to a country where they are likely to face persecution. Persons deemed refugees are subsequently afforded core entitlements in the receiving State such as legal status, access to courts, rights to employment and access to welfare. Applying the refugee framework to climate-induced displacement is problematic due to the need for persecution “*by reason of an individual’s race, religion, nationality, political opinion or membership of a particular social group*”.¹²¹ By its very nature, climate change involves incremental and diffuse environmental harm, as opposed to systematic and discriminatory conduct. Also, the definition of ‘refugee’ does not cover persons who have not yet crossed an international border, but are preparing to migrate due to deteriorating living conditions.

Nonetheless, persons forcibly displaced by climate change could arguably be entitled to ‘complementary protection’ based on broader protection obligations imposed on States by human rights instruments.¹²² In particular, Article 7 of the ICCPR which prohibits “torture and cruel, inhuman or degrading treatment or punishment” has been recognised by the UN Human Rights Committee as a basis for preventing a person’s removal from a country of asylum.¹²³ Existing jurisprudence on Article 7 adopts a very limited interpretation of “inhuman or degrading treatment”, which excludes generalised poverty or lack of resources as grounds for being granted

¹¹⁷ Mimura, Nubuo et al, ‘Small Islands’ in Intergovernmental Panel on Climate Change (ed), *Climate Change 2007: Impacts, Adaptation and Vulnerability: Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (2007) 687-716.

¹¹⁸ J Stewart, ‘Rising Seas Force Carteret Islanders out of Home’, *Lateline*, ABC Television, 5 February 2007. Available at <http://www.abc.net.au/lateline/content/2006/s1840956.htm>.

¹¹⁹ J Vidal, ‘Pacific Atlantis: First climate change refugees’, *The Guardian* (London), 25 November 2005.

¹²⁰ *Convention Relating to the Status of Refugees*, adopted 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) (Refugee Convention); *Protocol Relating to the Status of Refugees*, adopted 31 January 1967, 606 UNTS. 267, (entered into force 4 October 1967).

¹²¹ Refugee Convention, art 1A(2).

¹²² See Jane McAdam, *Complementary Protection in International Refugee Law* (2007).

¹²³ UN Human Rights Committee, *General comment No. 20- Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment* (1992) at para 9.

asylum.¹²⁴ Yet clearly, it is most “inhuman or degrading” for persons to be returned to an environment which is incapable of sustaining human settlement, and where they are deprived of the most basic standards of subsistence. Especially in the case of small-island developing States faced with imminent submersion, some communities may not have a physical State to be returned to.

It is conceivable that the grounds of complementary protection based on human rights obligations may be extended in the future. In *Ullah v Secretary of State for the Home Department* [2004] UKHL 26, the House of Lords recognised the potential for human rights in addition to those outlined in Article 7, to prevent a person’s removal from a country of asylum. Anyone whose basic ‘right to life’ is jeopardized should theoretically be entitled to seek asylum, and precisely *why* an individual is harmed becomes irrelevant.¹²⁵ So where the rights essential to human dignity are seriously threatened by the effects of climate change, vulnerable persons could be entitled to receive international protection.

4.2.2 Internally Displaced Persons

One of the predicted impacts of climate change will be an increase in the incidence of severe weather events, or natural disasters. But for many people, this will result in relocation within the borders of their home country as opposed to overseas migration. Those who are prompted to move by natural disaster are entitled to certain levels of assistance from their national authorities and sometimes from the international community. So-called “internally displaced persons” (IDPs), have been recognised by the UN as a group in need of international protection and are the subject of soft law principles.

The Guiding Principles on Internal Displacement establish standards for treatment of IDPs which give “due regard to the protection needs and human rights”, and create a positive obligation to “take appropriate measures in this regard”¹²⁶ such as the provision of shelter. Although not legally binding, we observe that the Guiding Principles have received considerable international support. The World Summit 2005 recognized them as “an important international framework for the protection of internally displaced persons,”¹²⁷ and a growing number of governments are incorporating them into national policies.

Relevantly, the Guiding Principles provide that IDPs have the right to request and to receive protection and assistance from their national authorities. States have the primary responsibility to provide IDPs with protection and humanitarian aid, but if unable or unwilling to do so, they are expected to accept international aid assistance¹²⁸. Post-disaster assistance must be provided

¹²⁴ See for example *Holub v Secretary of State for the Home Department* [2001] 1 WLR 1359, where the UK Court of Appeal held that the right to an education under art. 2 *European Charter on Human Rights* 1950 (similar to the ICCPR) is a limited social right which does not comprise a right to asylum; and *N v Secretary of State for the Home Department* [2005] 31 UKHL. There must be ‘exceptional grounds’ constituting a particular risk for an applicant: *D v United Kingdom* [1997] 24 EHRR 423.

¹²⁵ *Ullah v Secretary of State for the Home Department* [2004] UKHL 26., paras 24-5 (Lord Bingham), 49-50 (Lord Steyn), 67 (Lord Carswell) Rohl comments in relation to ECHR case law that generally, conditions producing refugees such as natural or man-made disasters do not automatically trigger non refoulement. Nonetheless, none of these situations can be *excluded* from providing a background against which an appeal against expulsion can be assessed: Katharina Rohl, *Fleeing Poverty and Violence: Non-refoulement Obligations under the European Convention on Human Rights* (2005).

¹²⁶ *Guiding Principles*, principle 27.

¹²⁷ *World Summit Outcome*, A/RES/60/1, UNGA, 60 sess, para. 132, (2005).

¹²⁸ *Guiding Principles*, principles 3, 25.

without discrimination of any kind such as race, gender, religion or ethnic origin,¹²⁹ and IDPs have the right to enjoy the same freedoms under the law as other persons within their country.¹³⁰ All IDPs have the right to an adequate standard of living, which means at a minimum they should be provided with food and water, basic shelter, clothing, essential medical services and sanitation,¹³¹ and protection of property.¹³² Special attention is also to be given to women, children, persons with disabilities, and the elderly during periods of displacement.¹³³

Furthermore, IDPs have the right to seek safety in another part of the country, to leave their country, or seek asylum in another country. Significantly, there is a right to be protected against forcible resettlement in a place where their life, liberty or health would be at risk.¹³⁴ Hence IDPs arguably have a right not to be returned to a region which, due to the frequent occurrence of climate-related natural disasters, is incapable of sustaining the most basic human rights. IDPs should also be allowed to return voluntarily and safely to their home if they so wish and enjoy equal access to public services.¹³⁵

However, one limitation of the Guiding Principles is their limited application to sudden climate change-induced natural disasters. The Principles do not cover situations of progressive environmental degradation over time as, for example, experienced by the Cartaret Islanders. Since the 1970s, agricultural plots have gradually been lost due to storm related erosion and salt water incursion thereby making traditional sources of food unsustainable. They also offer no protection to some Inuit communities which are facing probable displacement from melting ice and storm damage.

Evidently, a number of protection gaps exist in relation to persons forcibly displaced by climate change- whether internally or externally. However, the very spirit of refugee and human rights law demands that individuals cannot be left in limbo without commitment by States to guarantee protection in the long term. The development of a co-ordinated international response to climate-induced displacement will no doubt take time. Until the status of persons displaced by climate change is clarified, it is likely that such persons will be dealt with through discretionary immigration programs. While this move is welcome, ultimately a new international compact is needed to equitably share the burden of migration flows and uphold the rights of affected individuals. Ironically, the failure to adequately protect human rights threatened by climate change now through mitigation, warning and adaptation, could exacerbate the levels of forced migration in the future.

4.3 Freedom of speech issues

As submitted above, civil and political rights will face increasing danger of erosion if the effects of climate change severely impact on the functioning of a modern society such that governments resort to undemocratic methods of regulation.

New South Wales Young Lawyers propose that a more immediate and discrete civil and political right has already faced some concerning incursions. That is, the freedom of thought and freedom of expression, enshrined in Articles 18 and 19 of the UNDHR and of the ICCPR, when debating

¹²⁹ *Guiding Principles*, principle 4.

¹³⁰ *Guiding Principles*, principle 1.

¹³¹ *Guiding Principles*, principle 18.

¹³² *Guiding Principles*, principle 21.

¹³³ *Guiding Principles*, principle 4(2).

¹³⁴ *Guiding Principles*, principle 15.

¹³⁵ *Guiding Principles*, principle 28.

climate change. Already in signatory countries, there are frequent and well reported incidents of public denunciation and vilification of scientists, of policy and lobby groups, of industry bodies and of members of the public, who choose to challenge the certainty, scope or nature of climate change or who question the mainstream solutions proposed.

In a modern enlightened society, there must be free and open discussion of this scientific phenomenon. Dissent is not always convenient or efficient but global climate change debates must respect this liberty of thought belonging to all citizens. There are insights and improvements that can be gained when ideas are thoroughly tested and logically defended. This can be a difficult human right to respect, particularly as the phenomenon of climate change tests our resilience and rationality in the face of mortality and the unknown. Nevertheless it is important that data analysis and sound scientific method is not sacrificed in the face of personal attacks and violations of free expression of opinion.

It is not only a civility but a human right that is particularly to be respected when the future of humanity and the globe hangs on the success of finding well judged global solutions, while refraining from divisive arguments. The term “climate change” should not become an argument stopper that precludes thorough understanding of and education about its meaning, its consequences and its potential.

The observations of Nigel Lawson in this regard are particularly thought-provoking:

It could not be a worse time to abandon our traditions of reason and tolerance, and to embrace the irrationality and intolerance of eco-fundamentalism, where reasoned questioning of its mantras is regarded as a form of blasphemy. There is no greater threat to the people of this planet than the retreat from reason we see all around us today.

5 Conclusion

This submission has explored the impacts of climate change on a number of fundamental human rights, as currently provided for in international conventions.

International legal instruments do not currently recognise any “right to a healthy environment”. As HREOC recently pointed out, “current legal instruments and trends in relation to environmental law are insufficient to support the existence of a clear and specific right to an environment of a particular quality in international law”.¹³⁶

However, a number of instruments, such as the UDHR, ICCPR and ICESCR are relevant to people whose lives are impacted by climate change.

Clearly, climate change has had, and will continue to have, adverse impacts on fundamental human rights. In summary:

- *The right to life:* The quality of the environment affects the ability of people to enjoy the universally held right to life. Direct impacts include the increased incidents of natural disasters, while indirect impacts include poorer standards of health, nutrition, access to clean drinking water and susceptibility to disease.
- *The right to development:* The attainment of the right to development by developing countries will be severely impaired by impacts on food and water security, decreases in the earth’s landmass, drastic weather patterns and the destruction of ecosystems.
- *The right to property:* Climate change may result in the deprivation of property without compensation, particularly in coastal areas, and may also have an effect on land uses as a result of changing weather patterns.
- *The rights of indigenous peoples:* Indigenous peoples are particularly vulnerable to the impacts of climate change because of their close relationship with the environment and their reliance on the land to sustain their livelihood.
- *The right to health:* Climate change is likely to increase worldwide deaths from malnutrition, heat stress and infectious diseases. It will also alter traditional sources of, and access to, clean water.
- *The right to food:* Climate change will have an impact on food security by reducing the availability of food, changing access to food, worsening the stability of food supply and effecting the utilisation of food.
- *The right to water:* Climate change will result in changes to components of the hydrological cycle and hydrological systems such as changing rainfall patterns, intensity and extremes.
- *Civil and political rights:* Climate change threatens to disrupt civil and political rights through necessitating or legitimising more authoritarian forms of government.

Climate change will also have impacts on emergency response and disaster recovery, particularly for vulnerable developing countries. It also threatens to drive millions of people around the globe to migrate within and across State borders. Finally, international and national decision-makers need to be tolerant and welcoming of thought-provoking debate on climate change issues in order to make more informed decisions on how to tackle this global phenomenon.

¹³⁶ HREOC, *Background Paper: Human Rights and Climate Change* (2008). Available at http://www.hreoc.gov.au/pdf/about/media/papers/hrandclimate_change.pdf, p. 4.