

Breaching Human Rights: Australia, Climate Change and the Torres Strait Islands

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Australia has a mixed relationship with the United Nations Human Rights Committee. Irritation, dismissal and even the occasional openly hostile comment, have registered. But in 1994, the [Toonen decision](#) filtered through the Australian legal process, leading the federal government to remove archaically noxious provisions in the Tasmanian criminal code criminalising sodomy.

The UNHRC has since found Australia’s compliance with the International Covenant on Civil and Political Rights to be patchy. In November 2017, the body released its observations in a five-year review of the Commonwealth’s record noting glaring problems of protection in such areas as refugees and asylum seekers, Aboriginal and Torres Strait Islander people, gender-based violence, the rights of LGBTI people and racism and religious intolerance.

The then Australian Human Rights Commissioner Edward Santow was left red-faced in [making his responding remarks](#).

“The core message from the UN Human Rights Committee was that we must work harder and smarter to protect the human rights of all people in Australia.”

Since that report, climate change activism, conducted through various legal systems and processes, has become increasingly influential. The plight of specifically vulnerable populations, including First Nations Peoples and children before the impacts of such unaddressed change, has become an increasingly active area of litigation and contention.

The [September 22 decision](#) by the UNHRC regarding the human rights of Australia’s Torres Strait Islanders vis-à-vis climate change is yet another step in the journey of redress. In their decision, the Committee, after examining a joint complaint filed by eight Australian

nationals and six of their children, found that Australia had failed to adequately protect Indigenous Torres Strait Islanders against the adverse impacts of climate change, thereby violating their rights to enjoy their culture and be free from arbitrary interferences with their private life, family and home.

The authors of the complaint hail from the four islands of Boigu, Masig, Warraber and Poruma. As the decision notes, they “reside in low-lying islands [and] are among the most vulnerable populations to the impact of climate change.” Citing observations by the Torres Strait Regional Authority (TSRA), the effects of climate change are outlined, including impacts on the islands, marine and coastal ecosystems and resources, and, by virtue of that, “the life, livelihoods and unique culture of Torres Strait Islanders.”

Other climatic phenomena are also noted, including rises in sea level causing flooding and erosion, and rises in temperature producing instances of coral bleaching, reef death, a decline in seabeds and the reduction of “nutritionally and culturally important marine species.”

Each island has faced a number of specific challenges: the village on Boigu has become an annual recipient of heavy flooding. A small area of the island has been detached by relentless erosion. A cyclone in March 2019 caused severe flooding and erosion while destroying infrastructure on Masig. A metre of land is lost each year, while family graves have been destroyed by tidal surges. Warraber has witnessed high tides and strong winds, inundating the village centre every two or three years. Poruma has lost much of its sand over the past few decades.

The Committee noted that Australia had failed “to adopt timely adequate adaptation measures to protect the authors’ collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources”. While seawall construction had, in some cases, been completed and was in others ongoing, the delays in initiating them constituted a violation of the “positive obligation to protect the authors’ right to enjoy their minority culture” under Article 27 of the ICCPR.

For those same reasons, the Committee also found that Article 17, which imposes positive obligations on the State party to take measures protecting home, private life and family, was breached.

While the Committee majority did not find that the Australian government had violated the right to life (Article 6 of the ICCPR), Committee Member Duncan Laki Muhumuza thought otherwise. Despite Canberra’s mitigating measures, “there is an appalling outcry from the authors that has not been addressed and hence, the authors’ right to life will continue to be violated and their lives endangered.” Australia was, just as the Netherlands was deemed in the [Urgenda Foundation case of 2019](#), liable for preventing foreseeable loss of life from the impact of climate change.

In response to their findings, the Committee concluded that Australia, as a State party, had to provide adequate compensation to the complainants for harm suffered; engage them in meaningful consultations on necessary assessments; continue implementing necessary measures to continue a safe existence; review the effectiveness of such measures and resolve deficiencies as soon as practicable.

Yessie Mosby, one of the claimants from the Torres Strait Islander applicants, [left few in doubt](#) about the findings. “I am over the moon. I thank heavenly father, I thank my ancestors and I thank all the people who fought and helped us in this case.”

Mosby was prompted to make the application to the Committee after finding what he claims to have been his great-grandmother’s remains disturbed by rising seas. “We were picking her up like shells off the beach,” he claimed. “That drove me to stand and fight for our future generations.”

The significance of this decision lies in developing an alternative avenue for complainants in the field of environmental law and human rights. [According](#) to Committee member H el ene Tigroudja, the finding “marks a significant development as the Committee has created a pathway for individuals to assert claims where national systems have failed to take appropriate measures to protect those most vulnerable to the negative impacts of climate change on the enjoyment of their human rights.” While such decisions are non-binding on governments, they do have a degree of persuasive heft.

The previous Coalition Prime Minister, Scott Morrison, made a point of ridiculing efforts to cap emissions and rein in the rapacity of the fossil fuel industry. The man who will forever be associated with [brandishing a lump of coal in parliament](#) had little time for the plight of Pacific Island states or First Nations people facing the worst effects of climate catastrophe. The residents from Boigu, Masig, Warraber and Poruma will be anticipating a rather different response from the Labor government of Anthony Albanese.

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