

Human rights tools are a key lever to address climate change-accelerated disasters

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'If I was asked to leave this island, I can't. I can't leave my community, because this is my home.'
Stanley Marama, communication to the United Nations Human Rights Committee (Billy et al. 2019, p.6, para. 32)

Stanley Marama is one of the trailblazing 'Torres Strait 8' (Torres Strait 8, n.d.), a group of Torres Strait Islander people who made a complaint against the Australian Government claiming that their islands are being negatively impacted by climate change and that their human rights are being breached due to inadequate climate policy and action (Billy et al. 2019). The Torres Strait 8 submitted to the United Nations Human Rights Committee that their low-lying island communities and homes across the Torres Strait are being damaged by sea level rise and increased flooding from storms. They were deeply concerned at the prospect of having to leave their homes as this would mean cultural and material loss for themselves, their families and their communities. They described these climate change effects as a 'slow-onset catastrophe' (Billy et al. 2019, p.5, para. 30).

The Torres Strait 8, with the support of the Gur A Baradharaw Kod Torres Strait Sea and Land Council and ClientEarth (a UK-based environmental law charity) effectively won their case. The majority of the United Nations Human Rights Committee held the view that the Australian Government was violating its human rights obligations as the Torres Strait 8 and their communities had not been sufficiently assisted to adapt to climate change effects across their region (United Nations Human Rights Committee 2022). This was the first time that the United Nations Human Rights Committee found that a nation state had violated its international human rights law obligations through inadequate climate policy and action (ClientEarth 2023). The Australian Government provided a response to this

finding, noting that Australia is committed to the design and implementation of the Torres Strait Climate Centre of Excellence and the creation of the National First Peoples Platform on Climate Change (Attorney-General's Department 2023, p.3). The Australian Government response further noted that funding was being provided through the Disaster Ready Fund, which could be used for projects such as building sea walls (Attorney-General's Department 2023, p.9).

This complaint was able to proceed because Australia has ratified the First Optional Protocol to the International Covenant on Civil and Political Rights, which allows direct communications with the United Nations Human Rights Committee (Optional Protocol ICCPR 1966). Australia has not yet ratified the equivalent Optional Protocol to the International Covenant on Economic, Cultural and Social Rights (ICESCR 1966). However, the Commonwealth Parliamentary Joint Committee on Human Rights recently released a report calling for a federal Human Rights Act (Parliamentary Joint Committee on Human Rights 2024) supporting the position of the Australian Human Rights Commission (AHRC 2022). A federal Human Rights Act would make the protection and promotion of human rights in Australia directly justiciable (Parliamentary Joint Committee on Human Rights 2024, chp.7).

Considering that the United Nations Human Rights Committee found that the Australian Government has positive obligations due to climate change to prevent arbitrary interference with privacy, family and home

(ICCPR 1966, Art.17), the possible ramifications of this finding are profound and widespread (United Nations Human Rights Committee 2022, p.14, para.8.10). Such findings, and other rights-oriented legal actions, could be extended to Australian mainland areas that are prone to floods and bushfires. The Australian Government is undoubtedly on notice to take action to prevent the destruction of lives, homes and cultures due to climate change and is now under the watch of the international community (Schuijers 2023).

As a newcomer to the disaster sector, I have noticed that, in some quarters, there is disdain for human rights-based law and approaches as they are seen as far removed from the people who experience these events. We know that climate change is occurring and that it is having destructive and disparate effects on communities (Howard et al. 2023; IPCC 2023), including First Nations peoples already experiencing the ongoing effects of colonisation (Billy et al. 2019, p.15, para.85). The international and domestic legal systems, despite their limitations, can hold governments accountable and human-rights based jurisprudence can gradually shape momentum to generate and enforce real policy and practice change. Rather than being seen as a removed instrument, human rights law is a powerful and tangible lever that, for those working in the disaster sector, such as researchers, practitioners and advocates, they should embrace in ways relevant to their work as a tool to make progressive rights-based change.

References

- AHRC (Australian Human Rights Commission) (2022) *Free and Equal. Position paper: A Human Rights Act for Australia*. Australian Human Rights Commission website <https://humanrights.gov.au/human-rights-act-for-australia>.
- Attorney-General's Department (2023) *Billy et al v Australia (3624/2019) Australian Government Response. Human Rights Communications*. Attorney-General's Department website www.ag.gov.au/rights-and-protections/publications/billy-et-al-v-australia-36242019-australian-government-response.
- Billy D, Pabai K, Marama S, Warri N, Mosby Y, Tamu K, Billy T and Faid N (2019) Communication under the Optional Protocol to the International Covenant on Civil and Political Rights. Climate Case Chart website <https://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/>.
- ClientEarth (2023) One year on from historic Torres Strait UN climate victory - no compensation despite legal finding. Press release, 24 September 2023. ClientEarth website www.clientearth.org/latest/press-office/press/one-year-on-from-historic-torres-strait-un-climate-victory-no-compensation-despite-legal-finding.
- Howard A, Rawsthorne M, Joseph P, Terare M, Sampson D and Katrak M (2023) *Social work and human services responsibilities in a time of climate change: country, community and complexity*. Routledge, Taylor & Francis Group.
- IPCC (Intergovernmental Panel on Climate Change) (2023) *Climate Change 2023: Synthesis Report. Summary for Policymakers*. IPCC, Switzerland. www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf
- Parliamentary Joint Committee on Human Rights (2024) Inquiry into Australia's Human Rights Framework. Report. Parliament of Australia website www.apf.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report.
- Schuijers L (2023) 'Australia's inaction on climate change is a violation of Torres Strait Islanders' Human Rights: Billy V Australia, *Melbourne Journal of International Law*, 24(1), A1. AustLit website www5.austlii.edu.au/au/journals/MelbJIL/2023/5.html.
- Torres Strait 8 (n.d.) Our Islands, Our Home website <https://ourislandsourhome.com.au>.
- United Nations (1966) International Covenant on Civil and Political Rights. United Nations website www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.
- United Nations (1966) International Covenant on Economic, Social and Cultural Rights. United Nations website www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights.
- United Nations (1966) Optional Protocol on Civil and Political Rights. United Nations website www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political.
- United Nations Human Rights Committee (2022) Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 3624/2019. <https://digitallibrary.un.org/record/3975431?v=pdf>