

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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29 August 2008

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.unhchr.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&Cr1>.

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). .

