

Climate Change and Human Rights Law

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Figure 1: Image of the Torres Strait 8, L-R: Yessie Mosby, Kabay Tamu, Keith Pabai, Stanley Marama, Nazareth Warria, Ted Billy, Daniel Billy and Nazareth Faud. Source: Photo by 350 Australia, used with permission.

Over the past two decades there has been a growing awareness of the close intersection between climate change and human rights. However, the relationship between these two issues is not straightforward. In this chapter we explore some of the opportunities, as well as the tensions and trade-offs, that arise from framing climate change as a human rights issue. After this overview, we explore the normative development of human rights in the context of climate change through the United Nations ('UN') human rights system and how the right to a healthy environment is emerging as an important right in relation to climate change. Next, we consider the way that climate litigation has been mobilised to advance human rights claims globally and in Australia. We then consider some of the challenges and limitations in understanding climate

change as a human rights issue and how human rights frameworks might need to change and adapt in response to these challenges.

KEY QUESTIONS

- How does the climate crisis give rise to human rights concerns? What rights, of what subjects, and what obligations, imposed on what actors, does it engage?
- What have been the limitations of the human rights response in the face of the climate crisis?
- What might a human rights response that is adequate to the scale and scope of the climate crisis look like?

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This chapter does not provide a comprehensive coverage of doctrines, frameworks, cases and scholarly commentary relevant to the relationship between climate change and human rights law. Rather, it provides select examples to illustrate key themes. See the references for more information on these topics.

1. Climate Change and Human Rights

At the 1972 UN Conference on the Human Environment, it was acknowledged that humanity ‘has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being’.¹ Since then, there has been a ‘**greening**’ of human rights: a growing acceptance of the fact that a healthy environment is a necessary enabling condition for the full enjoyment of human rights, that environmental degradation interferes with human rights, and that measures to protect the environment must be rights compliant. In a historic **resolution** in July 2022, the United Nations General Assembly (‘UNGA’) recognised ‘the right to a clean, healthy and sustainable environment as a human right’.²

The protection of internationally recognised human rights is threatened in the context of climate change, including rights to life, culture, health, food, and an adequate standard of living for individuals and communities across the world, among other rights. As the UN Special Rapporteur on human rights and the environment has observed: ‘climate change is having a major impact on a wide range of human rights today and could have a cataclysmic impact in the future unless ambitious actions are undertaken immediately’.³ The human rights impacts of climate change are unequally distributed, with those that have contributed least to the greenhouse gas emissions that cause climate change often hit first and worst by its adverse impacts.⁴ In particular, climate change threatens the human rights of those living in poverty or those individuals and communities who experience vulnerability due to ‘marginalization [and] historical and ongoing patterns of inequity such as

1. Declaration of the United Nations Conference on the Human Environment, UN Doc A/CONF.48/14/Rev. 1 (Stockholm, 16 June 1972).
2. United Nations General Assembly, *The Human Rights to a Clean, Healthy and Sustainable Environment*, GA Res 76/300, UN Doc A/76/L.75 (26 July 2022).
3. David Boyd, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/74/161 (15 July 2019) para 26.
4. Intergovernmental Panel on Climate Change, 2023: Sections: In *Climate Change 2023: Synthesis Report*. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds)]. IPCC, Geneva, Switzerland, pp. 35–115, 51.

colonialism’.⁵ There are many warnings from human rights experts that ‘climate change will exacerbate existing poverty and inequality’ and could lead to ‘climate apartheid’ where ‘the wealthy pay to escape overheating, hunger and conflict, while the rest of the world is left to suffer’.⁶

There is a risk that certain measures to respond to climate change may affect the protection of human rights. For example, large-scale renewable energy projects, while important to achieve emissions reductions, might challenge or be inconsistent with the rights of local communities if these rights are not respected and **free prior and informed consent (‘FPIC’)** is not sought.⁷ Similarly, measures to mitigate climate change by protecting forests — whether to reduce greenhouse gas emissions involved with deforestation and forest degradation or to preserve the role of forests in sequestering carbon dioxide — can interfere with the rights of forest communities and Indigenous peoples living in these forest areas.⁸ Another example is measures to adapt to climate change by relocating people from areas vulnerable to rising sea levels, which interfere with rights to self-determination, culture and freedom of movement if not implemented with proper human rights safeguards, procedural protections and consultation processes. A further tension between protecting the climate system and protecting human rights may arise when realising certain rights, especially some socio-economic rights, involves increasing greenhouse gas emissions. For example, constructing new housing to realise the right to housing of the 1.6 billion people globally who are homeless or lack adequate housing will generate significant emissions.⁹ Addressing climate change, therefore, involves a complex balancing of

5. Intergovernmental Panel on Climate Change, 2022: *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (February 2022).

6. Philip Alston, *Climate Change and Poverty: Report of the Special Rapporteur on Extreme Poverty and Human Rights*, A/HRC/41/39 (25 June 2019).

7. Hansika Agarwal et al, *Enabling a Just Transition: Protecting Human Rights in Renewable Energy Projects — A Briefing for Policymakers* (Columbia Center on Sustainable Investment, 2023).

8. Julia Dehm, *Reconsidering REDD : Authority, Power and Law in the Green Economy* (Cambridge University Press, 2021).

9. Balakrishnan Rajagopal, *Towards a Just Transformation: Climate Crisis and the Right to Housing — Report of the Special Rapporteur on the Right to Adequate Housing*, A/HRC/52/28 (23 December 2022).

different rights and consideration of how to allocate financial and technical resources accordingly.

There is an emerging international consensus that actions to address climate change should be compliant with, and should promote the protection of, human rights. Notably, the preamble to the 2015 Paris Agreement affirmed that states

should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.¹⁰

Human rights provide a *powerful moral language* for describing harms that have been experienced, especially by vulnerable and marginalised groups, and for advancing claims. Human rights also provide a framework to articulate the obligations imposed on various actors, including the obligations of states (and private actors) to respect, protect and fulfil human rights. Under this standard, states must **respect** human rights and avoid policies and actions that would breach them; they also must **protect** human rights by ensuring that private actors, such as corporations and financial institutions, are not able to infringe the rights of others; and they must **fulfil** human rights by taking positive steps towards their full realisation. A human rights framework may also provide forums in which to complain about violations of human rights and mechanisms through which to seek redress. Indeed, individuals are increasingly initiating proceedings before courts and other complaints bodies claiming their human rights have been violated as a result of climate change. In the process, existing human rights have begun to be interpreted to take account of the way harms to the environment impact human rights, and the rights to a healthy environment and a safe climate have emerged for international recognition.

The application of these rights to Australia occurs via our participation in international human rights treaties and other UN mechanisms. They are also considered through

10. Paris Agreement to the United Nations Framework Convention on Climate Change, Paris, 12 December 2015, in force 4 November 2016, Doc. FCCC/CP/2015/10/Add.1, preambular para 11.

state and territory human rights legislation and federal, state and territory anti-discrimination laws. These processes and the emerging jurisprudence are discussed in sections 2.2, 2.3.1 and 2.3.2.

KEY QUESTIONS

- The concept of **climate justice** is related to but arguably broader than human rights and has distributive, recognitional, procedural and reparative dimensions. In what ways can human rights provide the language or framework to support climate justice?
- Can you think of some other examples of potential tensions between human rights and climate objectives? How could these tensions be addressed or minimised?

2. Developments in Human Rights Law in Response to Climate Change

2.1 Climate Change and International Human Rights

While the links between human rights and climate change are increasingly clear, a full articulation of states' (and other actors') obligations in this regard is still in the early stages of development at the international level. This section draws out some of the emerging guidance from human rights bodies that is contributing towards the development of a framework of norms in this area. This guidance is drawn from reports of the UN Office of the High Commissioner for Human Rights and other parts of the UN system, as well as from human rights treaty bodies and [UN Special Procedures mandate holders](#). Notably, the UN appointed a [Special Rapporteur on the promotion and protection of human rights in the context of climate change](#) in 2021.¹ This section highlights some of the key insights of these bodies in relation to the major categories of rights: civil and political rights; social, economic and cultural rights; and procedural rights. It then mentions some of the vulnerable groups specifically impacted by climate change that require tailored human rights responses. Finally, it considers how the human rights framework can contribute to ensuring that non-state actors that are contributing so harmfully to climate change, such as big polluters, are held to account, including extraterritorially.

Before exploring these issues, we should note the problem of jurisdictional reach and human rights. Climate change challenges the idea that human rights only create obligations on states towards those in their own countries, as emissions in one country impact the entire globe. Similarly, many of the major carbon-emitting companies are transnational, requiring a human rights framework that can operate beyond state boundaries and state actors (i.e. 'extraterritorially'). There are valid concerns regarding the capacity of the human rights system to tackle extraterritorial and global issues that require imposing obligations on the international community as a whole.

1. Human Rights Council, *Mandate of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change*, A/HRC/RES/48/14 (13 October 2021).

However, as will be discussed in relation to business and human rights, solutions are emerging. Similarly, in relation to state obligations to those beyond their borders, the UN Committee on the Rights of the Child ('CRC') in the *Sacchi et al v Argentina et al* communication found that states are responsible for harms that affect children in other countries if caused by their actions.²

2.1.1 Civil and Political Rights

The civil and political rights set out in the [International Covenant on Civil and Political Rights](#) ('ICCPR') do not explicitly mention environmental matters but are affected by climate change. Human rights bodies have pointed to state obligations to address those civil and political rights impacted by climate change, such as the right to life, to vote, and to free expression, assembly and association, which are important in relation to environmental and climate protest.³ In 2018, the Human Rights Committee's *General Comment on the Right to Life* identified that '[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life'.⁴ It noted states' obligations to respect and ensure the right to life through measures to protect the environment.⁵ The same Committee articulated the climate dimensions of rights to family and culture in its communication in the case of *Daniel Billy et al v Australia* ('*Daniel Billy*') (discussed in more detail in section 2.3.1).⁶

2. United Nations Committee on the Rights of the Child, *Sacchi et al v Argentina et al* Communication No. 104/2019 (Argentina) CRC/C/88/D/104/2019, Communication No. 105/2019 (Brazil) CRC/C/88/D/105/2019, Communication No. 106/2019 (France) CRC/C/88/D/106/2019, Communication No. 107/2019 (Germany) CRC/C/88/D/107/2019, Communication No. 108/2019 (Turkey) CRC/C/88/D/108/2019. Note however that the European Court of Human Rights took a different approach to extraterritorial jurisdiction in the case of *Duarte Agostinho and others against Portugal and 32 others*, 39371/20, 9 April 2024.
3. International Convention on Civil and Political Rights (opened for signature 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 6, 25, 19, 21 and 22.
4. Human Rights Committee, *General Comment No. 36, Article 6 (Right to Life)*, CCPR/C/GC/35 (3 September 2019) para 62.
5. *Ibid.*
6. Human Rights Committee, 'Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No. 3624/2019 (*Daniel Billy et al v Australia*)' (2022) CCPR/C/135/D/3624/2019.

2.1.2 Social, Economic and Cultural Rights

Social and economic rights, such as the right to social security, an adequate standard of living, health, education and worker rights protected under the [International Covenant on Economic, Social and Cultural Rights](#) (‘ICESCR’), are also affected by climate change. The Intergovernmental Panel on Climate Change (‘IPCC’) 2023 Synthesis Report noted that climate change has already adversely affected the physical and mental health of people globally.⁷ Increased heat and high energy costs mean that disadvantaged people living in inadequate housing are proving unable to protect themselves in heatwaves. Health and housing are thus connected as heatwaves are a major killer,⁸ outpacing other disasters such as floods and bushfires. Rights to health and housing place obligations on states to provide adequate accommodation and to adapt health systems to meet the challenges of a changing climate. Similarly, workers engaged in outdoor work require greater protections in changing climate conditions. The UN Special Rapporteur on extreme poverty and human rights, in a 2019 report on climate change and poverty, noted that climate change will have the most severe impact in poor countries and on people living in poverty.⁹ Rights to food, water and social security are also key to addressing the impacts of climate change.

2.1.3 Procedural

State obligations include procedural rights related to equal access to justice and to effective remedies.¹⁰ Treaty bodies have noted that this includes ‘mandating human rights due diligence and ensuring access to education, awareness-raising and environmental information, and public participation in decision-making’ and protecting the rights of environmental defenders.¹¹ The UN Special Rapporteur on the

7. Intergovernmental Panel on Climate Change, 2023: Sections. In: *Climate Change 2023: Synthesis Report*. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35–115, 50.

8. See, eg, Qi Zhao et al, ‘Global, Regional, and National Burden of Mortality Associated with Non-optimal Ambient Temperatures from 2000 to 2019: A Three-stage Modelling Study’ (2021) 5(7) *Lancet Planetary Health* e415.

9. Human Rights Council, Report of the Special Rapporteur on Extreme Poverty and Human Rights, ‘Climate Change and Poverty’, A/HRC/41/39 (25 June 2019).

10. Elisa Morgera, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change: Access to Information on Climate Change and Human Rights*, A/79/176 (18 July 2024).

11. Joint Statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic,

promotion and protection of human rights in the context of climate change pointed to a ‘participation disconnect’ between those most vulnerable to the impacts of climate change and their lack of ability to participate in international and national forums on climate change.¹² He advanced a range of recommendations for improved participation in the conferences of the parties to the United Nations Framework Convention on Climate Change (‘UNFCCC’) and to the Paris Agreement and at national level through mechanisms such as youth representation in parliament already trialled in Scotland.¹³ In relation to protection of climate rights defenders, the Special Rapporteur recommended that ‘the International Law Commission be mandated to develop, within a two-year time frame, an international legal procedure to give full and effective protection to environmental and indigenous human rights defenders’.¹⁴

ACTIVITY

List five examples where rights in the ICCPR and ICESCR are impacted by climate change. Then list the obligations on states that these might generate.

2.1.4 Especially Vulnerable Groups

The human rights of particularly vulnerable groups — including **Indigenous peoples**, women, children, people with disabilities and displaced people — are specially affected by climate change. People or communities who already experience vulnerabilities and marginalisation due to geography, poverty, age, gender/sexuality, sex, disability, migration status, religion, race or cultural or ethnic background will

Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, *Statement on Human Rights and Climate Change*, UN Doc HRI/2019/1 (14 May 2020).

12. Ian Fry, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change: Promotion and Protection of Human Rights in the Context of Climate Change Mitigation, Loss and Damage and Participation*, A/77/226 (26 July 2022) 17–20.

13. *Ibid.*

14. *Ibid.* 23.

be more vulnerable to the impacts of climate change and are likely to be affected more severely. Thus, human rights frameworks need to be especially attentive to the different ways in which vulnerable and marginalised individuals and communities are and will be impacted by climate change. Specific [human rights instruments and bodies](#) already exist to protect the rights of certain groups of people, including women, children, people with disabilities, Indigenous Peoples, migrants, refugees, workers and others. Some of these bodies provide detailed guidance on the implications of climate change on the human rights of specific groups and the obligations that follow from these. Two of these — women and children — are highlighted below, but guidance in relation to states' obligations as they concern other groups are emerging from human rights bodies. You are encouraged to explore this guidance further.

2.1.5 Women

The Committee on the Elimination of Discrimination Against Women ('CEDAW Committee') produced a General Recommendation ('GR') on the specific issue of disaster risk reduction in the context of climate change in 2018.¹⁵ The GR highlights the vulnerability of women and girls in disasters and the measures that must be taken to address this inequality. This attention to non-discrimination, a central principle of human rights, is important across a range of groups that the human rights treaties cover, including people with disabilities, racialised groups and migrants. The CEDAW Committee demonstrates that these groups overlap and the intersecting disadvantages they experience must be addressed by states. For example, it notes the failure of shelters and disaster relief programs to always accommodate the accessibility needs of women with disabilities, older women and Indigenous women.

QUESTION

In the absence of a specific human rights treaty on the rights of older persons, how can this group draw on human rights to support their claims for state responses?

15. Committee on the Elimination of Discrimination against Women, *General Recommendation No. 37 on Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change*, CEDAW/C/GC/37 (7 February 2018).

Hint: Research the case brought by a group of senior women pensioners against Switzerland to the European Court of Human Rights ([Verein KlimaSeniorinnen Schweiz and Others v Switzerland](#)) referred to below.

2.1.6 Children

The UN CRC produced a General Comment (‘GC’) on children’s rights and the environment with a special focus on climate change in 2023, which provides valuable guidance.¹⁶ In addition to the important substance of the GC, its preparation modelled participatory process with child stakeholders. The GC focuses on mitigation, adaptation, and loss and damage and how states must develop laws and policies in these areas to advance the rights of children. It also sets out states’ obligations in relation to the business sector, including transnational companies, and the importance of child-rights focused climate finance at domestic and international levels that ensures effective global cooperation to assist all children. It also gives attention to adaptation measures that must ensure that children are not left out of climate adaptation planning and disaster risk reduction. A key issue emerging increasingly in relation to climate change is the idea of intergenerational equity and the rights of future generations to a habitable planet.

KEY QUESTIONS

- What is the relationship between a child’s right to education and climate change?
- What do states need to do to address climate loss and damage affecting children?
- How can child rights impact assessments inform environmental impact assessments used, for example, to determine whether to

16. Committee on the Rights of the Child, *General Comment No. 26 (2023) on Children’s Rights and the Environment, with a Special Focus on Climate Change*, CRC/C/GC/26 (22 August 2023).

allow a gas pipeline to be built?

- The CRC GC is somewhat silent on the right to culture. Can you think of ways that cultural rights should be protected and promoted in the context of climate change?

2.1.7 Obligations of Private Actors

While international human rights are generally concerned with states' obligations under treaties to which they are parties, there is an increasing recognition of the need to provide guidance to transnational and national private actors, such as businesses, on their obligations to respect human rights. Corporate actors bear considerable responsibility for the climate crisis. Just 90 producers of fossil fuels and cement — the so-called carbon majors — are responsible for 63 per cent of cumulative worldwide emissions from 1751 to 2010.¹⁷ The 2011 *Guiding Principles on Business and Human Rights* ('UNGP') set out the corporate responsibility to respect human rights in Pillar II.¹⁸ This requires businesses to avoid causing or contributing to adverse human rights impacts through their own activities and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services through business relationships. The principle of 'systemic integration' requires that Pillar II of the UNGP be interpreted in light of relevant rules of international law, including environmental and climate law. The corporate responsibility to respect human rights requires business to avoid causing or contributing to climate-related human rights impacts and to seek to prevent those impacts they are linked to through business relationships.¹⁹ This requires companies to engage in 'climate due diligence', which entails, but is arguably not limited to, doing a risk assessment, setting concrete

17. Richard Heede, 'Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010' (2014) 122 *Climatic Change* 229; see also Carbon Majors <<https://carbonmajors.org/>>.

18. Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, 2011, HR/PUB/11/04.

19. United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, UN Doc HR/PUB/11/04 (2011) principle 13.

climate targets, monitoring results of steps taken and communicating these steps to the public.²⁰

2.1.8 Further Development of the Framework of Human Rights Norms on Climate Change

International treaty bodies, alongside other UN groups, have provided valuable guidance on the implications of climate change for human rights. Important work has begun to spell out the obligations that arise from rights affected by climate change, including by taking mitigation and adaptation measures to address climate change and its impacts. This work both draws on and influences similar work by regional human rights bodies, national bodies and courts, civil society and scholars. Further detailed work is still needed to guide states on their many obligations to avoid and address climate harms, including in relation to the rights of specific groups. This guidance needs to be somewhat flexible as the changes that climate brings to our world alter the challenges our planet faces and require innovative rights-informed responses — *human rights itself will need to be adaptive*.

There are a number of important ongoing developments, including the request for advisory opinions from the [Inter-American Court of Human Rights](#) (‘IACtHR’) and the [International Court of Justice](#) (‘ICJ’). The IACtHR has been asked to clarify the scope of state obligations to respond to the climate emergency, with particular attention to the differentiated impacts of the climate emergency.²¹ The ICJ has been asked to render an opinion on the obligations of states to ensure protection of the climatic system and the legal consequences for acts or omissions that have caused significant harm to particularly vulnerable states and present and future generations affected by the adverse effects of climate change.²² The court is asked to have particular regard to a number of human rights instruments including the ICCPR,

20. Chiara Macchi, ‘The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of “Climate Due Diligence”’ (2021) 6(1) *Business and Human Rights Journal* 93; Julia Dehm, ‘Beyond Climate Due Diligence: Fossil Fuels, “Red Lines” and Reparations’ (2023) 8(2) *Business and Human Rights Journal* 151.

21. Inter-American Court of Human Rights, *Request for an Advisory Opinion on Climate Emergency and Human Rights to the Inter-American Court of Human Rights from the Republic of Colombia and the Republic of Chile* (9 January 2023).

22. International Court of Justice, *Request for an Advisory Opinion of the International Court of Justice on the Obligation of States in Respect of Climate Change*, GA Res 77/276, UN Doc A/77/L.58 (29 March 2023).

ICESCR and the Universal Declaration of Human Rights (‘UDHR’) and thus the opinion is likely to provide important clarification of international human rights obligations in the context of climate change.

2.2 The Right to a Healthy Environment

As already mentioned, the relationship between human rights and the environment at the international level was recognised in a [resolution](#) in July 2022 by the UNGA on ‘the right to a clean, healthy and sustainable environment as a human right’.²³ The UNGA resolution followed a similar [resolution](#) the previous year by the United Nations Human Rights Council (‘UNHRC’) recognising that the right to a healthy environment ‘is important for the enjoyment of human rights’.²⁴

VIDEO

Watch this two-minute video from the UNHRC about the UNGA resolution.



One or more interactive elements has been excluded from this version of the text. You can view them online here: <https://oercollective.caul.edu.au/climate-conscious-lawyer/?p=1081#oembed-1>

Having a Clean Environment is Declared as a Human Right by the United Nations

Source: UNHRC, [YouTube](#)

The [United Nations Special Rapporteur on the issue of human rights obligations](#)

23. United Nations General Assembly, *The Human Rights to a Clean, Healthy and Sustainable Environment*, GA Res 76/300, UN Doc A/76/L.75 (26 July 2022).

24. United Nations General Assembly, *The Human Rights to a Clean, Healthy and Sustainable Environment*, HRC Res 48/13, UN Doc A/HRC/RES/48/13 (18 October 2021).

relating to the enjoyment of a safe, clean, healthy and sustainable environment has produced framework principles on human rights and the environment that provide detailed guidance on this connection.²⁵ The right to a healthy environment contains both substantive and procedural obligations. Substantive obligations might, for example, impose a duty on the government to protect, preserve and improve the environment for the benefit of the community (in a similar way to that claimed by the applicants in *Sharma v Minister for the Environment*, as discussed below and in the chapter on Climate Change and Tort Law), while procedural obligations have been summarised as ‘access to information, public participation, and access to justice and effective remedies’.²⁶

Environmental Rights

Any proclamation of a human right to environmental conditions of a specified quality.



Figure 2: Substantive and procedural environmental rights. Source: The Scottish Parliament, ‘What are Environmental Rights’ (2019).

The right to a healthy environment is also recognised in 80 per cent of UN countries (156 out of 193) through regional human rights treaties, national constitutions or

25. David Boyd, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/74/161 (15 July 2019).

26. David Boyd, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Right to a Healthy Environment: Good Practices*, A/HRC/43/53 (30 December 2019) (emphasis added).

domestic legislation.²⁷ Australia was one of the 161 states that voted in favour of the UNGA resolution, but there has been limited legislative or other action taken to implement and realise this right at the domestic level.²⁸ A key exception to this is the Australian Capital Territory, which recognised the right to a healthy environment in August 2024 under the *Human Rights (Healthy Environment) Amendment Act 2024* ('Amendment Act') by inserting a new s 27C into the *Human Rights Act 2004* (ACT).

When s 27C comes into effect (by ministerial notice or 17 March 2025 at the latest)²⁹ public authorities will have to consider the new right to a healthy environment prior to making any decisions, in line with their obligations to act consistently with human rights.³⁰ If a member of the public believes that a public authority has acted in contravention of s 27C, they can also bring a human rights complaint to the Australian Capital Territory Human Rights Commission for conciliation.³¹ However, the Amendment Act also inserts a new ss 40C(5A) into the *Human Rights Act 2004* which precludes the judicial enforcement of the new right to a healthy environment under the Human Rights Act.³²

As effective enforcement of environmental rights is a core element of the internationally recognised right to a healthy environment, the absence of a strong enforcement mechanism appears to undermine the value of introducing this right. This approach also appears to create a hierarchy between the rights that are currently given full protection under the Human Rights Act, on the one hand, and the right to a healthy environment, on the other, contrary to the principle that all rights are equal, interdependent and indivisible.³³ Public controversy around the exclusion of litigation

27. Ibid 13.

28. See 'Realising the Right to a Healthy Environment in Australia', *Right Now* (Web Page, 26 March 2025) and the related three part webinar (featuring Dr Ian Fry, UN Special Rapporteur on Human Rights in the Context of Climate Change; Judge Preston, Chief Justice of the NSW Land and Environment Court; Prof. Anne Poelina, Traditional Owner and Chair of the Fitzroy River Council; and a range of experts) for a more detailed discussion of this issue.

29. *Human Rights (Healthy Environment) Amendment Act 2024* (ACT) s 2.

30. *Human Rights Act 2004* s 40B.

31. *Human Rights Commission Act 2005* (ACT) s 41D.

32. *Human Rights (Healthy Environment) Amendment Act 2024* (ACT) s 7. A new ss 40C (5B) clarifies that actions relying on other rights that overlap with the right to a healthy environment will be permitted.

33. United Nations, *Vienna Declaration and Programme of Action* (June 1993).

for s 27C was sufficient to lead to several amendments to the original Amendment Bill,³⁴ including a requirement that the Minister review the operation of s 40C(5A) by October 2027 and that it automatically expire on 1 October 2028.³⁵

KEY QUESTIONS

- Should Australia recognise a right to a healthy environment more broadly? If so, how should the right to a healthy environment be enshrined in Australian law?
- How would enshrining the right to a healthy environment in Australian law help promote climate mitigation and adaptation?

2.3 Rights-based Climate Litigation

Following the adoption of the 2015 Paris Agreement, there has been a ‘rights turn’ in climate litigation.³⁶ There are a growing number of cases raising rights-based arguments before international, regional and national courts. There are now **over 121** decided or pending cases that utilised human rights arguments to advance climate mitigation or adaptation.³⁷

At the international level, the UN Human Rights Committee has provided a communication on Australia’s obligations under the ICCPR in relation to climate change (see the case summary box: *Billy et al v Australia*), and the International Tribunal for the Law of the Sea (ITLOS) has provided an advisory opinion on state

34. Standing Committee on Justice and Community Safety, *Report No. 22 — Inquiry Into The Human Rights (Right To A Healthy Environment) Amendment Bill 2023 — Government Response* (May 2024) 1–2. The original bill already required such a review after five years, but this requirement was brought forward and strengthened by the addition of a sunset clause.

35. *Human Rights (Healthy Environment) Amendment Act 2024* (ACT) ss 8–9.

36. Jacqueline Peel and Hari Osofsky, ‘A Rights Turn in Climate Change Litigation?’ (2018) 7 *Transnational Environmental Law* 37, 40.

37. For an overview see these articles by César Rodríguez-Garavito, and Annalisa Savaresi and Joana Setzer.

parties' obligations under the UN Convention on the Law of the Sea.³⁸ The unanimous opinion handed down by ITLOS in response to a request from small island states, recognises the human rights impacts of climate change,³⁹ requires states to address marine pollution caused by emissions at a 'stringent' standard of due diligence.⁴⁰ As previously discussed, the ICJ is also due to consider the obligations of states in respect of climate change, which will include consideration of human rights issues.⁴¹

Regional courts are also being approached to decide human rights obligations in relation to climate change, with a pending decision in the IACtHR⁴² and a recent decision from the European Court of Human Rights.⁴³ In this latter case, a group of women pensioners whose health is being harmed by increasing heat brought a case against Switzerland.⁴⁴ The court found that Switzerland's failure to adequately regulate emissions reductions or meet its climate targets violated the rights of people to protection of their lives, health, wellbeing and quality of life.

There have been an increasing number of domestic climate change cases that have been decided in recent years (a great place to find these is the [Sabin Center Climate Litigation Databases](#)). Arguably the best-known case is [Urgenda Foundation v State of the Netherlands](#), which was handed down in 2015 and played a significant role in shaping human rights-based climate litigation elsewhere. In that case, the Supreme Court of the Netherlands confirmed that the Dutch government had an obligation under articles 2 and 8 of the European Convention on Human Rights, which protects the right to life and private life, family life, home and correspondence from the threat of climate change and required the government to reduce greenhouse gas emissions by at least 25 per cent by 2020.

38. International Tribunal on the Law of the Sea, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS No. 31, Advisory Opinion (21 May 2024).

39. *Ibid* para 66.

40. *Ibid* para 399.

41. See n 22 and accompanying text above.

42. See n 21 and accompanying text above.

43. European Court of Human Rights, *KlimaSeniorinnen v Switzerland*, 53600/20.

44. *Ibid*.

The year 2024 was busy, with many new domestic climate change cases being litigated. On 21 March 2024, [applicants in India were successful](#) in their constitutional claims, with the Supreme Court delivering a historic judgment in [MK Ranjitsinh and Others v Union of India and Others](#). The three-judge bench, led by Chief Justice DY Chandrachud, formulated a new constitutional right to be free from the adverse effects of climate change, derived from articles 21 (right to life) and 14 (right to equality) of the Indian Constitution.

These cases have primarily focused on the human rights obligations of governments; however, some cases have also sought to clarify and enforce the human rights obligations of business and other private actors in relation to climate change. There is also growing focus on the human rights obligations of private business in climate litigation. The 2021 ruling of the Hague District Court in the Netherlands in [Milieudefensie v Dutch Royal Shell](#) required oil company Shell to reduce its net greenhouse gas emissions across their operations by 45 per cent by 2030 from 2019 levels. While the decision was based on a duty of care, codified in the *Dutch Civil Code*, the court also referred to the UNGP, which it described as ‘suitable as a guideline in the interpretation of the unwritten standard of care’. In 2024, the Court of Appeal affirmed that Shell had a legal duty of care to take action on climate change but refused to impose a specific emission reduction target (currently under appeal).

In 2022, the Commission on Human Rights of the Philippines found that major fossil fuel companies could be held liable for climate-related human rights impacts. In its report, [National Inquiry on Climate Change](#), the Commission identified — drawing on Pillar II of the UNGP — that businesses enterprises ‘may be compelled to undertake human rights due diligence and held accountable for failure to remediate human rights abuses arising from their business operations’.⁴⁵ It also recommended that ‘carbon majors’ desist from activities that undermine climate science; cease further exploration of new oil fields, keep fossil fuels in the ground and transition to clean energy; contribute to the Green Climate Fund for the implementation of mitigation and adaptation measures; and continually engage with experts, civil society and other stakeholders to assess and continually improve the corporate response.⁴⁶

45. Commission on Human Rights of the Philippines, *National Inquiry on Climate Change Report: A report by the Commission en Banc V of the Commission on Human Rights* (2022).

46. Ibid.

2.3.1 Australia: International Human Rights Litigation Related to Climate Change

Australia has signed and ratified numerous international human rights treaties, and this allows Australian citizens and residents to utilise the complaints processes under these treaties to raise arguments about the human rights impacts of climate change. For example the [Optional Protocol to the ICCPR](#) allows individuals who claim that their rights under the ICCPR have been violated to bring a communication to the Human Rights Committee, if they have first exhausted all possible domestic avenues for redress.⁴⁷

CASE SUMMARY: BILLY ET AL V AUSTRALIA

On 13 May 2019, eight adults and six children — all Indigenous Peoples from the Torres Strait Islands — brought forward a communication to the UN Human Rights Committee on the grounds that the Australian government had violated its human rights by failing to take adequate action to mitigate greenhouse gases and pursue adequate adaptation measures.⁴⁸ The applicants outlined a litany of adverse impacts they had already experienced in the context of climate change, including flooding and inundation of low-lying communities, the erosion of traditional lands, loss of critical vegetation, and the reduced ability to practice their traditional culture and pass it on to future generations. The applicants also emphasised that the future impacts of climate change are projected to increase in severity, giving rise to the risk of some low-lying islands in the Torres Strait becoming uninhabitable.

The petitioners alleged that Australia was violating their human rights by failing to:

- take adequate adaptation measures — namely, ‘take adequate measures to provide infrastructure to protect their lives and way of life,

47. *Optional Protocol to the International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), art 2 (16 December 1966).

48. Human Rights Committee, ‘Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No. 3624/2019 (Daniel Billy et al v Australia)’ (2022) CCPR/C/135/D/3624/2019 (‘Daniel Billy’).

their homes and their culture against the threats posed by climate change, especially sea level rise'; and

- take adequate mitigation measures — namely, 'take adequate measures to reduce Australia's national greenhouse gas emissions which contribute to climate change'.

Specifically, they alleged that a number of their rights protected by the covenant were violated, including:

- Article 2: obligation of the state party to adopt laws or other measures to give effect to the rights in the Covenant;
- Article 6: right to life;
- Article 17: protection from 'arbitrary or unlawful interference with his privacy, family, home or correspondence';
- Article 27: right to culture; and
- Article 24(1): rights of the child.

The decision by the Human Rights Committee, released in September 2022, was significant for its development of the Committee's consideration of the human rights impacts of climate change.⁴⁹ The Committee found that the Australian Government had violated the rights of the applicants protected in Article 17 and Article 27 of the ICCPR by failing to take adequate climate action adaptation measures. It did not, however, consider the Australian Government's human rights commitments in the context of mitigation measures.

In considering Article 17, the committee found that the complainants may need to abandon their homes, and that the home of one was already flooded in 2010. It also found that the complainants and other members of their community depended on the health of the surrounding ecosystems for their own wellbeing, as they relied on local fish, marine resources, land crops and trees for subsistence and livelihoods. In considering Article 27, the Committee concluded this right seeks to protect and ensure the survival and continued development of the distinct cultural identity of minority and Indigenous groups. The Committee noted that the Torres Strait Islanders' distinct cultural practices were place-specific and deeply connected to the local land and sea environment. Thus, it concluded that

49. The committee had earlier considered the implications of climate change for the right to life in *Teitiota v New Zealand* CCPR/C/127/D/2728/2016 (7 January 2020), although the applicant was unsuccessful in his claims.

climate impacts on the island and surrounding seas had already impaired their ability to maintain their culture.

It should also be noted that the committee found there was not yet a violation of the right to life under Article 6. It accepted the statement by the petitioners that ‘that their islands will become uninhabitable in 10 years (Boigu and Masig) or 10–15 years (Poruma and Warraber) in the absence of urgent action’ and that ‘without robust national and international efforts, the effects of climate change may expose individuals to a violation of their rights under article 6 of the Covenant’.⁵⁰ However, it suggested that those 10 to 15 years allow time for ‘intervening acts’ to protect those rights, including the potential relocation of Torres Strait Islander Peoples. A number of Committee members in dissenting individual opinions found there was a violation of the right to life.⁵¹ Some committee members highlighted that ‘the State party has a positive obligation to minimise “reasonably foreseeable threats to life”’ and that ‘despite multiple requests and knowledge of the ongoing impacts on the lives of the authors, the State party did not undertake adaptation measures in a timely manner’. On this basis they found that Australia violated the petitioners right to life.⁵²

The Committee held that the Australian Government was under an obligation to provide the applicants with an ‘effective remedy’. On what constitutes an ‘effective remedy’, the Committee stated that the Australian Government is required to make full reparation to individuals whose rights have been violated, including (1) compensation for the Indigenous Peoples from Boigu, Poruma, Warraber and Masig Islands for the harm they have suffered; (2) engaging in meaningful consultations to assess their needs; (3) taking measures to secure their communities’ safe existence into the future; and (4) monitoring and reviewing the effectiveness of the measures implemented, and resolving any deficiencies as soon as practicable.

50. Daniel Billy (n 47) para 8.7.

51. Joint opinion by committee members Arif Bulkan, Marcia VJ Kran and Vasilka Sancin (partially dissenting), para 6.

52. Ibid.

KEY QUESTIONS

- In your assessment, do the facts presented by the applicants demonstrate that there was a violation of the right to life? How should human rights bodies take into account uncertainties about future risks as well as uncertainties about future action by state parties?
- Why do you think the Committee focused on Australia's failure to take appropriate adaptation measures, rather than Australia's failure to take appropriate mitigation measures?
- Do you think the Human Rights Committee communication process was a powerful tool to protect the applicants' human rights? Why/why not?

2.3.2 Australia: Domestic Human Rights Litigation Related to Climate Change

There has been limited scope for right-based climate litigation in Australia, as Australia lacks a national bill of rights.⁵³ Only three Australian jurisdictions — Victoria, Queensland and the Australian Capital Territory — have human rights legislation. The legislation in Victoria and Queensland does not give rise to an independent cause of action. It allows plaintiffs to raise issues of human rights when bringing a separate cause of action — that is, to ‘piggy-back’ a human rights argument onto an existing claim.⁵⁴ In contrast, it is possible to take a direct action under the *Human Rights Act 2004* (ACT). However, there are a number of procedural issues that might deter such climate change litigation, including costs.⁵⁵

Some Australian climate litigation, while not explicitly raising human rights

53. Harry Hobbs and Rachel Pepper, ‘The Environment Is All Rights: Human Rights, Constitutional Rights and Environment Rights’ (2020) 44 *Melbourne University Law Review* 634.

54. Justine Bell-James and Briana Collins, ‘Queensland’s Human Rights Act: A New Frontier For Australian Climate Change Litigation?’ (2020) 43 *UNSWLJ* 3.

55. For further discussion, please see the chapter in this textbook on ‘Civil Procedure and Climate Litigation’.

arguments, nonetheless has important human rights implications.⁵⁶ For example, *Sharma v the Minister for the Environment* was a novel attempt by eight children (and their litigation representative) to use private law to protect their human rights from the worsening effects of climate change by seeking an injunction to restrain the Minister for the Environment from granting approval to the Vickery coalmine extension.⁵⁷ The applicants had claimed the Minister owed them and other Australian children a duty of care to exercise her power under the *Environmental Protection and Biodiversity Conservation Act 1999* with reasonable care so as not to cause them harm resulting from climate change, and that any approval (of the mine extension) would amount to a breach of this duty (see the chapter on Climate Change and Tort Law). In the next case summary box we provide a brief overview of a recent significant rights-based climate case in Australia — *Waratah Coal v Youth Verdict*.⁵⁸

CASE SUMMARY: WARATAH COAL V YOUTH VERDICT

In the 2022 decision of the Queensland Land and Environment Court case of *Waratah Coal v Youth Verdict* ('Waratah Coal'),⁵⁹ Kingham P found that the grant of a mining lease (in the Galilee Basin) would be incompatible with the *Human Rights Act 2019* (QLD).⁶⁰ The applicants' claims were based on a range of rights recognised under the Act, including the rights to life, the cultural rights of Aboriginal and Torres Strait Islander peoples, the rights of children, the right to property, the rights to privacy and the home, and the right to non-discrimination.⁶¹

56. Cristy Clark and Beth Goldblatt, 'The Right to a Healthy Environment and Social and Economic Rights — Responding to Climate Change in Australia' (2023) 29 (1) *Australian Journal of Human Rights* 65.

57. *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560 ('Sharma').

58. *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 ('Waratah Coal (No 6)').

59. Ibid.

60. Human Rights Act 2019 (QLD).

61. *Waratah Coal (No 6)* (n 57) 248. [*Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 5)* [2022] QLC 4, 248.]

As the consideration of any potential limitation on human rights is subject to a proportionality test under s 13 of the *Human Rights Act 2019* (QLD), the judge's detailed consideration of climate science, as well as her decision to include 'Scope 3 emissions',⁶² rejection of the developer's 'perfect substitution' argument (under which they claimed that the contribution to climate change from the mined coal was irrelevant, because if that mine did not supply coal, then another would),⁶³ and sceptical approach to the claimed likelihood of both offsets and economic and social benefits⁶⁴ made a significant contribution to her Honour's finding that the human rights impacts were disproportionate.⁶⁵ Taken together with the broader impacts of the mine on ecological values, climate change and intergenerational equity, her Honour recommended that the application be refused, creating a notable precedent not only within human rights law but also within environmental law.

When considering the impact on the right to culture, her Honour quoted a number of illustrative passages from the evidence provided by the First Nations witnesses, both through affidavits and on-Country evidence. This included evidence from Florence Gutchen that 'our land is our mother because ... we come from the land, from the ground'.⁶⁶ This sense of connection was also articulated by Harold Ludwig, 'a Guugu Yimiddhir man from the community of Hopevale north of Cooktown' who explained, '[t]he environment gave us everything: the spiritual strength, nourishment, the cause and the life'.⁶⁷ Kingham P noted his description of this relationship 'as reciprocal — not just a right, but a responsibility'.⁶⁸ Finally, Juritju Fourmile articulated the deep sense of entanglement that they, 'as Indigenous people, First Nations people', understand themselves as having with future generations and the rest of the biosphere.⁶⁹

62. Ibid 147. Scope 3 emissions are those created overseas by burning coal that was mined in Australia.

63. Ibid 160–200.

64. Ibid 244–5.

65. Ibid 317–18.

66. Ibid 1552.

67. Ibid 1553.

68. Ibid 1558.

69. Ibid 1563.

Where is my daughter going to go fishing later on when all the creeks dry up? Where is she going to go when she can't go into the bush because it's too hot and the rainforest dies off? ... Those trees are connected to this land. We as people are connected to those trees. They die, we die. Think of it holistically, the bigger picture, you know?

Julia Dehm argues that Waratah Coal was the first case in Australia to explicitly link climate change and human rights and is arguably one of the few cases globally where the links between expanding fossil fuel production, its impacts on climate change, and the resulting effects on human rights have been recognized.⁷⁰

This is significant domestically and internationally.

KEY QUESTIONS

- Despite the growth in right-based climate litigation there arguably still remains a 'supply-side accountability gap'. Some human rights treaty bodies and special procedure mandate holders have offered views on the role of fossil fuel production. Arguably, this is starting to coalesce into a clear normative position that preventing new fossil fuel developments is necessary to protect, respect and fulfil the realisation of all human rights.⁷¹ To what extent do you think *Waratah Coal* is a useful precedent in preventing fossil fuel expansions or new fossil fuel projects elsewhere?
- What other human rights avenues might exist to challenge fossil fuel expansions or new fossil fuel projects?

70. Julia Dehm, 'Undermining the Energy Transition', Verfassungsblog (Blog post, 19 November 2023) <<https://verfassungsblog.de/undermining-the-energy-transition/>>.

71. Dehm, 'Beyond Climate Due Diligence' (n 46).

3. Critiques of Human Rights Law in Response to Climate Change

Human rights are not without their critiques, several of which are particularly relevant to the intersection of climate change and rights. Here it is important to note that many critical theorists have acknowledged that human rights still have significant instrumental value, and that their critique is offered to support a strategic deployment of rights alongside greater awareness of their risks and limitations.¹

3.1 Preventing Structural Change

The first critique is that human rights detract energy and momentum from movements seeking to secure transformative or structural change, and may also work to legitimise existing power arrangements.² Essentially, it is argued here that the institutional recognition of rights has a history of deradicalising social movements by incorporating their claims into the liberal, capitalist status quo.³ There is growing recognition that climate change is a direct result of our current neoliberal political economic order, and that genuine climate action will require fundamentally changing this status quo.⁴ In this context, the claimed deradicalising tendencies of human rights merit critical attention.

A related critique here is that human rights have historically been individualist and centred the state (as the key source of oppression and protection). This individualist and state-centric focus has a poor record of addressing the role of third parties, such as

1. See, eg, Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018); Peter Burdon and Claire Williams, 'Rights of Nature: A Constructive Analysis', in Douglas Fisher (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (Edward Elgar, 2016) 210.
2. See, eg, Samuel Moyn, 'A Powerless Companion: Human Rights in the Age of Neoliberalism' in Ben Golder and Daniel McLoughlin (eds), *The Politics of Legality in a Neoliberal Age* (Routledge, 2017) 147 ('A Powerless Companion'); David Kennedy, 'The International Human Rights Movement: Part of the Problem?' (2002) 15 *Harvard Human Rights Journal* 101.
3. *Request for an Advisory Opinion on the Climate Emergency and Human Rights Submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile* (9 January 2023) 41.
4. See, eg, Naomi Klein, *This Changes Everything* (Penguin, 2014).

corporations, in breaching human rights, which may be problematic given the central role of corporations in driving climate change. The state's dual role as protector and oppressor also creates an inherent tension for enforcement.

3.2 Eurocentrism

Another critique of human rights is that it presents Western, or 'Eurocentric', cultural practices as being universal. Indeed, the foundational texts of international human rights law, and particularly the UDHR, were drafted almost exclusively by white (mostly male) elites. It is further argued that when the UDHR was adopted by 48 of the 58 existing members of the UN, '[a]lmost two-thirds of world countries were still colonies and as a result without a voice'.⁵ By asserting Eurocentric cultural practices as universal, human rights have been used to erase other ways of knowing and to assert dominance and justify imperialism.

The Eurocentric history of human rights is particularly relevant to climate change due to the increasing recognition that colonisation and imperialism are core to its root causes.⁶ Heather Davis and Zoe Todd, for example, argue that by 'making the relations between the Anthropocene and colonialism explicit, we are then in a position to understand our current ecological crisis and to take the steps needed to move away from this ecocidal path'.⁷ In response to these critiques, scholars are increasingly calling for human rights to shed its Eurocentric foundations through a process of **decolonisation** to enable it to positively contribute to this project of moving towards a more sustainable future.⁸

5. Hakimeh Saghaie-Biria, 'Decolonizing the "Universal" Human Rights Regime: Questioning American Exceptionalism and Orientalism' (2018) 4(1) *ReOrient* 59, 61. DOI: 10.13169/reorient.4.1.0059.

6. See, eg, Heather Davis and Zoe Todd, 'On the Importance of a Date, or, Decolonizing the Anthropocene' (2017) 16(4) *ACME: An International Journal for Critical Geographies* 761, 763.

7. *Ibid.*

8. See, eg, Davinia Gómez Sánchez, 'Transforming Human Rights through Decolonial Lens' (2020) (15) *The Age of Human Rights Journal* 276.

3.3 Anthropocentrism

The final critique that we will consider is the argument that human rights are ‘anthropocentric’ — that is, they elevate the rights of humans above those of the rest of the environment. This limits the usefulness of human rights for addressing the significant effects of climate change on more than humans — and also risks entrenching the dualist mode of thinking (the separation of humans from the rest of the environment) that has contributed to driving climate change itself. One response to this charge of anthropocentrism has been the growth of a global movement for the recognition of rights for the rest of nature. The *rights of nature* movement has recently been associated with a raft of legal changes in jurisdictions around the world, which have recognised rights for individual natural entities (often rivers) or all of nature, sometimes through or alongside the mechanism of legal personhood.⁹

However, rights of nature have also been criticised for many of the same reasons considered above (deradicalisation and Eurocentrism). As with earlier critiques of rights, many of these critiques acknowledge that there is nothing inherent within rights that leads to these downsides. Instead, they emphasise the need to be aware of the potential risks and of unconsciously adopting (and entrenching) Western ideological traditions (or ontologies).¹⁰ One strategy that can assist with this mindful approach is to acknowledge the leadership of Indigenous peoples in many rights of nature developments and to recognise that humanity is both part of and deeply interdependent on the rest of the biosphere. Alongside the recognition of rights for nature, many of these legal developments have embedded transformative mechanisms for empowering Indigenous authority within environmental governance, and these mechanisms also offer a radical potential for moving beyond Eurocentrism.¹¹

9. See, eg, ‘Rights of Nature Timeline’, *Global Alliance for the Rights of Nature* (Web Page, 26 March 2025) <<https://www.garn.org/rights-of-nature-timeline/>>.

10. Peter Burdon and Claire Williams, ‘Rights of Nature: A Constructive Analysis’, in Douglas Fisher (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (Edward Elgar, 2016) 205, 210; *Request for an Advisory Opinion on the Climate Emergency and Human Rights* (n 3).

11. *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change*, GA Res 77/276, UN Doc A/77/L.58 (1 March 2023); written and oral submissions by states can be accessed at <<https://www.icj-cij.org/case/187>>; *Request for an Advisory Opinion on the Climate Emergency and Human Rights* (n 3) 120; Cristy Clark, Karen Fisher and Elizabeth Macpherson, ‘Indigenous Rights and Ontological Plurality in the

4. Future Trajectories of Human Rights Law: Relational Rights and Reparations

Human rights are not static; they continue to evolve, and this evolution has been informed by the above critiques of human rights, alongside increasing recognition of the impacts of climate change and other environmental harms on human rights. One recent development has been the growing movement for the provision of redress for loss and damage ('L&D') caused by climate change. This concept seeks to recognise the contribution of colonialism and extractive imperialism in driving climate change and the disproportionate impact this continues to have on the Global South. L&D litigation and the recent L&D Fund (see Section 4.1) are two mechanisms for providing redress and demanding some accountability from those in the Global North who continue to profit from extractive practices.

Another development, which has gone hand in hand with the shift away from Eurocentrism discussed above, has been a greater appreciation of the centrality of relationships to people's wellbeing and rights — leading to a stronger focus on communal rights and on rights that better respond to humanity's deep entanglement with the rest of the biosphere. These 'relational rights' seek to protect communities and reciprocal obligations, rather than individuals and extractive rights.

4.1 Redress for Loss and Damage

The concept of L&D was officially recognised in 2013 at the 19th Conference of the Parties ('COP19') in Warsaw, but it was not until 2022, at COP27 in Sharm El Sheikh, Egypt, that [countries agreed](#) to establish an L&D Fund (and not until 2023, at COP28 in Dubai, that this fund was officially operationalised).¹ [Abhijeet Shrivastava and Renatus Otto Franz Derler](#) argue that the delay in recognising the concept of L&D and in implementing the fund led many stakeholders to seek another avenue

1. United Nations Framework Convention on Climate Change, *Report of the Conference of the Parties on its twenty-eighth session, Held in the United Arab Emirates from 30 November to 13 December 2023: Operationalization of the New Funding Arrangements, including a Fund, for Responding to Loss and Damage referred to in paragraphs 2–3 of decisions 2/CP.27 and 2/CMA.4, FCCC Dec 1/CP.28, UN Doc FCCC/CP/2023/11/Add.1* (13 December 2023).

for redress and compensation via L&D litigation.² Notable cases include *Asmania et al v Holcim*, in which Indonesian fishermen sued a multinational company for sea-level rise impacts in Swiss courts; *Lliuya v RWE*, in which a Peruvian farmer sued RWE, a German electrical company, over glacial flooding threats; and *Sacchi et al v Argentina et al* (2021), in which the UN CRC accepted the possibility of determining states' proportional responsibility for climate harm (while dismissing the case because the applicants had failed to exhaust domestic remedies). *Daniel Billy* has also been described as a L&D case (see the case summary in Section 2.3.1).³ Shrivastava and Derler argue that although L&D litigation risks reinforcing Western hegemony, it can provide access to remedies and operate to strengthen the position of delegates from the Global South in UNFCCC negotiations, potentially leading to stronger L&D financing commitments.

4.2 Relational Rights

In contrast to Eurocentric and anthropocentric conceptions of rights (which tend to be individualist, atomised and sometimes competitive) Indigenous ontologies⁴ tend to focus on the relationship between peoples and the natural world. According to Mary Graham, the custodial ethic of Aboriginal people is created through 'combining and melding together' two principles: first, 'the ethical principle of maintaining a respectful, nurturing relationship with Land, Place and community', and second, 'the organising governance principle based on autonomy and identity of Place'.⁵ In Aotearoa New Zealand, the Whanganui iwi explain a similar concept with the simple expression: 'I am the River. The River is me.'⁶ Elizabeth Macpherson notes

2. Abhijeet Shrivastava and Renatus Otto Franz Derler, 'A Global South Perspective on Loss and Damage Litigation', *Verfassungsblog* (Blog post, 27 June 2024) <<https://verfassungsblog.de/a-global-south-perspective-on-loss-and-damage-litigation/>>.

3. See, eg, Margaretha Wewerinke-Singh, 'The Rising Tide of Rights: Addressing Climate Loss and Damage through Rights-Based Litigation' (2023) 12(3) *Transnational Environmental Law* 537, 556, 558–9.

4. See the chapter in this textbook on 'Legal Theory and Climate Consciousness', which provides a definition for 'ontology' as 'A field of philosophy/theory that addresses what exists; the theory of being and of what is fundamental to existence. For instance, the question of whether human culture is fundamentally different from nature is an ontological question.'

5. Mary Graham, 'The Law of Obligation, Aboriginal Ethics: Australia Becoming, Australia Dreaming' (2023) 37 *Parrhesia* 1, 12.

6. *Te Awa Tupua (Whanagnui Settlement) Act 2017* (NZ) §13(c).

the emergence of a scholarship around environmental **relationality**, reflecting ‘ideas of (often kinship-based) relatedness, relationships and “belonging” between people and place’.⁷ She argues that this relational ‘approach can be contrasted with typical Western laws, where humans are perceived as separate to nature, and law’s engagement with nature is fragmented across seemingly arbitrary jurisdictional scales.’⁸

Recent developments in human rights law are increasingly reflecting a deeper understanding of Indigenous peoples’ relationships with the natural world, and the threat posed by climate change to these relationships. For example, in *Daniel Billy* (the Torres Strait Eight communication), discussed above, the Human Rights Committee noted that climate change-related weather patterns were ‘making it harder for the authors to pass on their traditional ecological knowledge’.⁹ In addition to noting the particular vulnerability of Indigenous peoples to the impacts of climate change, there is a growing recognition of the essential role of Indigenous knowledge in responding to climate change. *Daniel Billy* represents a turning point in human rights law by recognising and reflecting the significance of Indigenous expertise and relationships with **Country** in the articulation of the right to culture and the right to privacy, family and home. Nonetheless, this recognition is only the beginning of reimagining the scope, normative content and, indeed, foundational principles, of human rights more generally.

KEY QUESTIONS

- Can the anthropocentrism of ‘human’ rights be overcome?
- Do you think it is worth using human rights to address climate

7. Elizabeth Macpherson, ‘Can Western Water Law Become More “Relational”? A Survey of Comparative Laws Affecting Water across Australasia and the Americas’ (2022) *Journal of the Royal Society of New Zealand* 1, 2 (citations omitted).

8. Ibid.

9. Human Rights Committee, ‘Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No. 3624/2019 (*Daniel Billy et al v Australia*)’ (2022) CCPR/C/135/D/3624/2019, para 2.5.

change?

5. Conclusion

Climate change has significant implications for human rights, and this is increasingly being recognised at international and domestic levels. As this chapter has explored, human rights frameworks are increasingly being applied to climate change issues, providing new avenues for advocacy, litigation and accountability. However, critiques of human rights approaches highlight important limitations and risks that need to be navigated. Human rights law will continue to evolve in response to the climate crisis, with emerging concepts such as relational rights and redress for loss and damage potentially reshaping how we conceptualise rights in the Anthropocene. As future legal practitioners, it will be crucial for students to think critically about how human rights can be most effectively applied (and developed) to address the significant threats that climate change poses to human wellbeing and to humanity's relationships with the rest of the biosphere. Continued engagement with diverse perspectives, law and expertise, particularly from Indigenous peoples and communities on the front lines of the climate crisis, will be essential to developing a transformative approach to pursuing **climate justice**.

6. Recommended Further Reading

Books, Articles and Chapters

Clark, Cristy and Beth Goldblatt, ‘The Right to a Healthy Environment and Social and Economic Rights — Responding to Climate Change in Australia’ (2023) 29(1) *Australian Journal of Human Rights* 65–83

Davies, Kirsten, Sam Adelman, Anna Gear, Catherine Iorns Magallanes, Tom Kerns and S Ravi Rajan, ‘The Declaration on Human Rights and Climate Change: A New Legal Tool for Global Policy Change’ (2017) 8(2) *Journal of Human Rights and the Environment* 217–53

Dehm, Julia, ‘Coal Mines, Carbon Budgets and Human Rights in Australian Climate Litigation: Reflections on Gloucester Resources Limited v Minister for Planning and Environment’ (2021) 26(2) *Australian Journal of Human Rights* 244–73

Goldblatt, Beth, ‘Climate Change, Inequality and Discrimination Law: The Example of Swimming Pool Access in Moree’ (2023) 41(6) *UNSW Law Journal* 56
<<https://doi.org/10.53637/HEYP3471>>

Humphrys, Stephen (ed), *Human Rights and Climate Change* (Cambridge University Press, 2010)

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