



environmental defender's office new south wales

Submission to the United Nations Human Rights Council – 'human rights and climate change'

The EDO Mission Statement

To empower the community to protect the environment through law, recognising:

- ◆ *the importance of public participation in environmental decision making in achieving environmental protection*
- ◆ *the importance of fostering close links with the community*
- ◆ *that the EDO has an obligation to provide representation in important matters in response to community needs as well as areas the EDO considers to be important for law reform*
- ◆ *the importance of indigenous involvement in protection of the environment.*

Contact Us

Environmental Defender's
Office Ltd
Level 1, 89 York St
SYDNEY NSW 2000

freecall 1800 626 239

tel (02) 9262 6989

fax (02) 9262 6998

website: www.edo.org.au

For inquiries on this matter contact Neva Collings at the EDO

HUMAN RIGHTS COUNCIL RESOLUTION 7/23
Human Rights and Climate Change

Contents

INTRODUCTION

1. ASSESSMENTS AT A NATIONAL LEVEL OF THE IMPACT OF CLIMATE CHANGE (EXPERIENCED OR ANTICIPATED) ON HUMAN LIVES AND ON POPULATIONS MOST AFFECTED AND VULNERABLE

- 1.1. Intergovernmental Panel on Climate Change 4th Assessment Report'
- 1.2. Human Rights and Equal Opportunity Commission
- 1.3. Permanent Forum On Indigenous Issues: International Expert Group Meeting On Indigenous Peoples And Climate Change - Summary Report
- 1.4. Garnaut Climate Change Review Draft Report
- 1.5. CSIRO Marine and Atmospheric Research Paper 012: 'Climate Change and Health: Impacts on Remote Indigenous Communities in Northern Australia,' D.Green
- 1.6. CSIRO Indigenous Engagement Strategy
- 1.7. UNSW Climate Change Research Centre: Climate Adaptation

2. STUDIES CARRIED OUT AT A NATIONAL LEVEL, INCLUDING BY INDEPENDENT RESEARCH INSTITUTIONS, ON THE RELATIONSHIP BETWEEN CLIMATE CHANGE AND HUMAN RIGHTS

- 2.1. Permanent Forum on Indigenous Issues: International Expert Group Meeting on Indigenous Peoples and Climate Change - Summary Report
- 2.2. Submission to Australia 2020 Summit

3. PROJECTS AND MEASURES AT A NATIONAL LEVEL TO MITIGATE OR ADAPT TO CLIMATE CHANGE, INCLUDING INFORMATION ON ANY ASSESSMENTS OF THE IMPACT OF SUCH PROJECTS AND MEASURES ON AFFECTED POPULATIONS AND THEIR HUMAN RIGHTS

- 3.1. Federal Government Carbon Pollution Reduction Scheme - Green Paper

- 3.2. United Nations University Institute of Advanced Studies Report: Emissions Trading, Carbon Financing and Indigenous Peoples
- 3.3. National Climate Change Adaptation Framework
- 3.4. CSIRO: Aboriginal Wetland Burning in Kakadu
- 3.5. Permanent Forum on Indigenous Issues: International Expert Group Meeting on Indigenous Peoples and Climate Change - Summary Report
- 3.6. Native Title Research Unit: Impacts and Opportunities of Climate Change: Indigenous Participation in Environmental Markets - J. Wier

4. VIEWS ON THE RELATIONSHIP BETWEEN OBLIGATIONS ARISING OUT OF INTERNATIONAL CLIMATE CONVENTIONS AND INTERNATIONAL HUMAN RIGHTS TREATIES, INCLUDING ON INTERNATIONAL ASSISTANCE AND COOPERATION

- 4.1. Human Rights and Equal Opportunity Commission: Submission to the Australia 2020 Summit
- 4.2. Permanent Forum on Indigenous Issues: International Expert Group Meeting on Indigenous Peoples and Climate Change - Summary Report

5. FINDINGS AND CONCLUSIONS

EXECUTIVE SUMMARY

This report submitted by the *NSW Environmental Defenders Office* and the *Foundation for Aboriginal and Islander Research Action*, focuses on assessments of climate change and climate change responses in Australia that impact upon and involve Aboriginal and Torres Strait Islander peoples.

The Environmental Defenders Office (NSW) is a not-for-profit community legal centre specialising in public interest environmental law and has an active program of casework, scientific education and advice, education and law reform. EDO is committed to climate justice for Aboriginal and Torres Strait Islander peoples. The EDO Mission Statement includes *empowering the community to protect the environment through law, recognising indigenous involvement in protection of the environment*. In light of the projected impacts of climate change on Indigenous communities, active engagement with Aboriginal and Torres Strait Islander peoples will be particularly crucial in the context of Australia's mitigation and adaptation response to climate change.

The Foundation for Aboriginal and Islander Research Action (FAIRA) is an indigenous rights organisation with consultative status to the economic and social council that is concerned with human rights issues as they affect the Indigenous Peoples of Australia and elsewhere in the world. FAIRA endeavours to promote the practical use of studies and research under the control of Indigenous Peoples to pursue rights and equality, rejecting the tendency to study Indigenous Peoples from academic or pretentious perspectives. The Foundation for Aboriginal and Islander Research Action (FAIRA) is a community organisation owned and managed by Aboriginal and Torres Strait Islander people since 1977.

This submission is a response to the call for submissions by the United Nations Human Rights Council in its decision 7/23 "Human Rights and Climate Change".

At its 7th session the Human Rights Council acknowledged the human rights impacts of climate change and proposed five terms of reference. This report will address four of the five terms of reference (a) to (d) which are:

- (a) Assessments at the national level of the impact of climate change (experienced or anticipated) on human lives and on populations most affected and vulnerable;
- (b) Studies carried out at the national level, including by independent research institutions, on the relationship between climate change and human rights;
- (c) Projects and measures at a national level to mitigate or adapt to climate change, including information on any assessments of the impact of such projects and measures on affected populations and their human rights; and,
- (d) Views on the relationship between obligations arising out of international climate conventions and international human rights treaties, including on international assistance and cooperation.

As mentioned above, this submission will focus on the impact of climate change on Indigenous communities. Assessments of climate change impacts in Australia demonstrate that Aboriginal and Torres Strait Islander peoples are disproportionately impacted. This is noted in the IPCC 4th Assessment Report, the reports of the Australian Human Rights and Equal Opportunity Commission, and a range of academic research. However, of great concern is that in Australia we are yet to see a detailed national assessment of climate change impacts on Aboriginal and Torres Strait Islander peoples that encompasses the economic, ecological, social and cultural impacts on Indigenous peoples, and that includes constructive recommendations for adaptation action and a plan for implementation.

Despite the vulnerability and susceptibility of Aboriginal and Torres Strait Islander peoples to climate change, due to a range of factors that include historical and on-going discrimination, marked socio-economic disadvantage, and dispossession from their traditional lands and territories, Australian climate law and policy reform has for the most part excluded the scope of Indigenous rights and interests on a comprehensive national basis. What we have seen thus far is climate change impact assessment that is focussed primarily on economic and ecological aspects, with a narrow focus on Aboriginal and Torres Strait Islander communities in specific geographical areas, and without full consideration of the devastating impact of potential further loss of territories for Indigenous peoples.

Aboriginal and Torres Strait Islander peoples have a special relationship with their lands and territories, which has been recognised by the High Court of Australia and the Declaration on the Rights of Indigenous Peoples, tentatively supported by the Australian government, which states at Article 25:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Forced relocation from lands and territories as a result of climate change, and without free, prior and informed consent requires special consideration, as provided by Article 28 of the Declaration:

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent;
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Australia lacks a comprehensive assessment of climate change impacts specific to Aboriginal and Torres Strait Islander peoples and their communities to ensure that proposed climate change responses are appropriate, and that any response respects Indigenous peoples' inherent human rights as distinct peoples. To achieve this outcome, what is required is full and effective engagement with Aboriginal and Torres Strait Islander peoples upon which climate change responses can be negotiated with ongoing monitoring, a timetable for action and adequate financial and technical resources.

Part 1: Assessments at a National Level of the Impact of Climate Change (experienced or anticipated) on human lives and on populations most affected and vulnerable.

We have identified Indigenous climate change assessments conducted by six groups at a national level. These are:

- Intergovernmental Panel on Climate Change (IPCC);
- Human Rights and Equal Opportunities Commission (HREOC);
- International Expert Group Meeting on Indigenous Peoples and Climate Change;
- Garnaut Climate Change Review;
- Commonwealth Scientific and Industry Research Organisation (CSIRO); and
- University of New South Wales

We now discuss these reports in turn and summarise their main findings on the extent to which Indigenous peoples will be significantly affected by climate change.

1.1 Intergovernmental Panel on Climate Change 4th Assessment Report

The IPCC 4th Assessment report summarises the likely impacts of human-induced climate change on Aboriginal and Torres Strait Islander peoples.¹ The report notes that Aboriginal and Torres Strait Islander peoples, who represent 2.5% of the total Australian population, are identified as having a greater vulnerability than non-Indigenous people to the impacts of climate change as a result of their current social and economic disadvantage.² It is important to bear in mind that the vulnerability of Aboriginal and Torres Strait Islander peoples also arises from historic discrimination which has hindered political and social status, and restricted access to land and territories.

Moreover, in the Northern Territory of Australia, where almost one in three people (32%) are estimated to be Indigenous,³ the report relays concerns expressed by Aboriginal people that ‘these impacts may detrimentally affect [their traditional lands with] major implications for amenities, cultural heritage, accessibility, and health of communities.’⁴ Impacts to Indigenous culture as well as impacts to health, ecosystems and infrastructure are of primary concern.

The report discusses the various impacts that climate change is expected to have on Australia’s Aboriginal and Torres Strait Islander peoples. The three main impacts identified by the report are:

- i) impacts to Indigenous communities’ adaptive capacity;
- ii) impacts to Indigenous health; and
- iii) impacts to Indigenous culture.

However, it must be emphasised that a primary impact is the potential loss of whole communities as a result of climate change.

Adaptive Capacity

‘Adaptive capacity’ is a phrase used in the IPCC report to describe the ability of Indigenous communities to absorb the changes brought about by climate change and gradually adjust to these changes. Adaptation is not presumed to be a negative process, merely a transformative process.

It is important to emphasise that although Aboriginal and Torres Strait Islander peoples have adapted to climate change for millennia, they have never had to deal

¹ The situation of Australia and New Zealand are specifically addressed in chapter 11 of the report, found at the following location - <http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-chapter11.pdf>

²

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/productsbyCatalogue/14E7A4A075D53A6CCA2569450007E46C?OpenDocument>

³ *Ibid.*

⁴ *Ibid.*

with the rapid climate change we are currently experiencing, nor a scenario in which they have little control.

The report goes on to say the current situation of Aboriginal and Torres Strait Islander peoples will limit the ability of these communities to adjust to climate change:

Indigenous communities in remote areas of Australia often have inadequate infrastructure, health services and employment (Braaf, 1999; Ring and Brown, 2002; IGWG, 2004; Arthur and Morphy, 2005). Consequently, many of these communities show features of social and economic disadvantage (Altman, 2000; ABS, 2005b). Existing social disadvantage reduces coping ability and may restrict adaptive capacity (Woodward et al., 1998; Braaf, 1999), affecting these communities' resilience to climate hazards (Watson and McMichael, 2001; Ellemor, 2005).⁵

The IPCC report identifies some Indigenous communities as having a low adaptive capacity, with coastal communities and those for whom water security will be threatened being most susceptible.⁶ However the report does not identify the susceptibility of Aboriginal and Torres Strait Islander people who live in urban and regional areas and who may be prevented from accessing their traditional homelands due to forced retreat strategies, or due to loss of lands and territories as a result of submersion or inundation.

The need for further research regarding short and long term protection measures has been emphasised by obvious changes in climatic conditions in more recent years:

King tides in 2005 and 2006 in the Torres Strait have highlighted the need to revisit short-term coastal protection and long-term relocation plans for up to 2,000 Australians living on the central coral cays and north-west islands (Mulrennan, 1992; Green, 2006b).⁷

Significant losses of biodiversity are predicted to occur in certain 'hotspot' areas. These areas also support large proportions of Australia's Indigenous people and are highly culturally significant, and provide subsistence for local Aboriginal communities. Examples include the Queensland Wet Tropics, Kakadu wetlands, and the Murray Darling Basin in eastern Australia.⁸

The IPCC report also notes the impacts of climate change on Aboriginal communities in Northern Australia, where the Jabiluka and Ranger uranium mines are located, and where Aboriginal people rely on the landscape for subsistence and water supply. The report projects that 'increases in extreme events such as floods and cyclones have the potential to increase erosion, slow down re-vegetation, shift capping materials and expose tailings,'⁹ greatly disrupt natural cycles and the

⁵ Chapter 11 *Australia and New Zealand*, IPCC 4th Assessment Report, Working Group 2, 523.

⁶ *Ibid*, 509.

⁷ *Ibid*, 523.

⁸ *Ibid*, 509.

⁹ *Ibid*, 522.

availability of fresh water and other vital sources of food for Indigenous people, impacts which “have not been adequately considered in long-term mine planning.”¹⁰

Health

The IPCC Report identifies Indigenous peoples in Australia and New Zealand as groups particularly susceptible to negative health impacts resulting from climate change.

The current social and economic situation of Indigenous communities is reiterated as a factor that will undoubtedly increase the negative health-related impacts of on these communities. This is particularly the case for remote communities:

Indigenous people living in remote communities are likely to be at increased [health] risk due to their particular living conditions and poor access to services. The annual number of diarrhoeal hospital admissions among Aboriginal children living in central Australia is likely to increase 10 percent by 2050, assuming no change in current health standards (McMichael et al., 2003).¹¹

The report identifies health impacts on Indigenous communities as a result of climate change that include ‘increases in the number of days of extreme heat, which may affect disease vectors, reproduction and survival of infectious pathogens, and heat stress (Green, 2006a; McMichael et al., 2006).’¹²

Culture

The IPCC 4th Assessment Report acknowledges that ‘many Aboriginal and Torres Strait Islander communities strongly connect the health of their ‘country’ to their cultural, mental and physical well-being’ and that ‘direct biophysical impacts, such as increases in temperature, rainfall extremes or sea-level rise, are likely to have significant indirect impacts on the social and cultural cohesion of these communities.’¹³

Plans to relocate Aboriginal and Torres Strait Islander peoples living in island and coastal communities, such as in the Torres Strait to the north of the mainland, will have a dramatic impact on these predominantly Indigenous communities due to the special connection they have with their lands and territories that is recognised in the Declaration on the Rights of Indigenous Peoples. Moreover, the inability to access lands and territories will also have a detrimental impact on Aboriginal and Torres Strait Islander people living outside these communities in urban areas who are no longer able to return home.

As a result of the special relationship Aboriginal and Torres Strait Islander peoples have with their lands and territories, the IPCC report recognises that adaptation

¹⁰ *Ibid.*

¹¹ *Ibid*, 524.

¹² *Ibid*, 523.

¹³ *Ibid.*

should be a different process for Indigenous people compared to non-Indigenous Australians:

More research is required as to how local communities can shape adaptation (Kenny, 2005) and of adaptation options for Māori and Indigenous Australian communities, especially for those on traditional lands.¹⁴

Whilst the report points to the ‘need to revisit short-term coastal protection and long-term relocation plans for up to 2,000 Australians living on the central coral cays and north-west islands’¹⁵ as a result of recent king tides, it merely alludes to the detrimental impact to the culture and livelihood of Indigenous peoples for whom the island is home, and does not explore the nature or extent of this impact or opportunities to avoid it.

The IPCC report recognises that there is a gap in understanding as to what may be the most appropriate (sustainably and culturally) adaptation method, or methods, for Indigenous peoples’ communities. It is suggested that Indigenous people themselves may be best situated to develop ways to adapt to their surrounding physical environment and that non-Indigenous Australians may also be able to benefit from a sharing of ‘traditional,’ or Indigenous knowledge:

There is recent recognition of the untapped resource of Indigenous knowledge about past climate change (Rose, 1996; Lewis, 2002; Orlove, 2003) which could be used to inform adaptation options. However, the oral tradition of recording this knowledge has, until recently, largely hindered non-Indigenous scientists from using this expertise to inform their science (Webb, 1997; Hill, 2004).¹⁶

Summary

The IPCC report demonstrates that the primary focus of climate change policy and financial investment has been on mitigation rather than adaptation even though mitigation strategies are not expected to have any visible impact until 2040.¹⁷ By this time, the most vulnerable populations including Indigenous peoples, will be experiencing the full extent of climate change impacts, whether forced retreat due to projected sea level rises, diminished water supply, exposure of burial sites due to coastal erosion, and diminished means of subsistence due to biodiversity loss. The distinct relationship connection between Indigenous people and their land makes forced relocation a ‘worst case’ scenario. Greater efforts need to be directed to engaging with Aboriginal and Torres Strait Islander peoples in the development of adaptation strategies that respect their inherent rights as peoples.

1.2 Human Rights and Equal Opportunity Commission

The Human Rights and Equal Opportunity Commission (‘HREOC’) is a federal body with a statutory mandate to oversee the domestic implementation of human

¹⁴ *Ibid*, 531.

¹⁵ *Ibid*, 523.

¹⁶ *Ibid*.

¹⁷ *Ibid*, 529.

rights. This section of the submission will address three reports produced by HREOC: Background Paper ‘Human Rights and Climate Change’; a submission to *Australia 2020 Summit*; and a presentation by Emily Gerrard titled, ‘Climate Change and Human Rights: Issues and Opportunities for Indigenous People.’¹⁸

1.2.1 *Background Paper “Human Rights and Climate Change: 2008 Human Rights and Equal Opportunity Commission (HREOC)”*¹⁹

The background paper acknowledges that climate change poses a threat to the very survival of Indigenous peoples who are disproportionately affected.²⁰

The paper states:

In September 2007 the Interagency Support Group on Indigenous Issues pointed out that ‘the most advanced scientific research has concluded that changes in climate will gravely harm the health of Indigenous peoples traditional lands and waters and that many of plants and animals upon which they depend for survival will be threatened by the immediate impacts of climate change.’²¹

Furthermore, the paper comments on a report by Friends of the Earth International which predicts that:

As a result of climate change more than 100,000 people in northern Aboriginal communities will face serious health risks from malaria, dengue fever and heat stress, as well as loss of food sources from floods, drought and more intense bushfires. It is also anticipated that in the Torres Strait Islands, at least 8000 people could lose their homes if sea levels rise by one metre.²²

1.2.2 *Submission to Australia 2020 Summit*

Prime Minister Kevin Rudd convened the *Australia 2020 Summit* in April 2008 ‘to help shape a long-term strategy for the nation’s future’. At the *Australia 2020 Summit*, HREOC provided a submission on human rights and climate change.

HREOC’s submission to the summit notes that climate change is being responded to primarily as an environmental or economic issue with inadequate consideration of social and cultural implications. The rights of Aboriginal and Torres Strait Islander peoples will be significantly affected due to their close relationship with the environment. Impacts of climate change will harm traditional lands and waters, and threaten the survival of many plants and animals upon which Indigenous peoples depend. Further, given the socio-economic disadvantage experienced by many Aboriginal and Torres Strait Islander people, social inequity, poverty, and social deprivation will be exacerbated by climate change.²³

¹⁸ Available at http://www.hreoc.gov.au/legal/seminars/speeches/emily_gerrard08.html

¹⁹ Available at http://www.humanrights.gov.au/about/media/papers/hrandclimate_change.html

²⁰ See ‘The Rights of Indigenous Peoples’ at http://www.humanrights.gov.au/about/media/papers/hrandclimate_change.html

²¹ *Ibid.*

²² *Ibid.*

²³ Available at http://www.humanrights.gov.au/legal/submissions/2008/080415_2020summit.html

1.2.3 Climate Change and Human Rights: Issues and Opportunities for Indigenous People

In this HREOC presentation held on 20 August 2008, speaker Emily Gerrard highlights the need for protecting and fostering Indigenous peoples' participation in climate change responses and seeks to ensure the preservation of existing rights and interests of Indigenous peoples in Australia. Her speech also briefly mentions ways in which Indigenous peoples can seek redress for damage and loss due to climate change.²⁴

Ms Gerrard notes that to date there has been little space afforded for dialogue and collaboration with Indigenous people about responses to climate change. Consultation concerning law and policy reform accessible to all stakeholders and interest groups, including Aboriginal and Torres Strait Islander peoples, is recommended.

With regard to mitigation, there is concern that new climate laws and markets may decrease or limit the rights of Indigenous peoples by restricting access to and use of land, and by extinguishing or suspending native title.

Large-scale forest plantations as 'carbon sinks' will result in a loss of traditional country and the ecosystems upon which Aboriginal and Torres Strait Islander peoples depend. The report recognises that forests have many values for Indigenous people beyond their carbon absorbing capacity, including nourishment, providing shade, medicines, tools and other resources. Trees and other vegetation are used as bio-indicators for timing of practices and seasons, and "enmeshed with native title, cultural and intellectual property rights."²⁵

With regard to proposed emissions trading and associated regulation, Ms Gerrard highlighted the following challenges in the interaction of indigenous peoples with such a scheme:

- Indigenous peoples have unique cultural interests, economic development aspirations and legal rights and interests that should be respected, preserved and promoted where they interact with the proposed Carbon Pollution Reduction Scheme;
- Indigenous peoples possess many tangible and intangible assets that may be realised through meaningful and respectful partnerships and investment; and,
- As significant land holders, (20% of Australia owned and controlled by Aboriginal and Torres Strait Islander peoples) the contribution of Indigenous peoples to mitigation efforts need to be recognised as a major component of the national mitigation response.²⁶

1.3 Permanent Forum On Indigenous Issues: International Expert Group Meeting On Indigenous Peoples And Climate Change, Darwin Australia, April 2-4, 2008, Summary Report

²⁴ See http://www.hreoc.gov.au/legal/seminars/speeches/emily_gerrard08.html

²⁵ *Ibid.*

²⁶ *Ibid.*

The Summary Report of this Expert Group Meeting highlights the fact that the goals and needs of Indigenous people in climate change processes differ from the goals and needs of other stakeholders.²⁷ The meeting goes beyond existing studies, stating that it ‘recognises that climate change is a matter of life and death for many Indigenous peoples living in vulnerable regions of the world.’²⁸ This takes the impacts of climate change considered by other studies at a national level to a new level and creates a strong sense of urgency and appropriateness of mitigation and adaptation strategies for Indigenous communities.

Impacts and effects of climate change not considered by other sources include the fact that Indigenous peoples have many other daily life pressures which can result in a low priority being given to biodiversity conservation²⁹ ; and that Indigenous youth will be hardest hit by climate change.³⁰

1.4 Garnaut Climate Change Review (Released 30 September 2008)

The Garnaut Review is ‘an independent study by Professor Ross Garnaut, commissioned by Australia’s Commonwealth, State and Territory Governments.’³¹ The Review seeks to ‘examine the impacts of climate change on the Australian economy and recommend medium to long-term policies and policy frameworks to improve the prospects for sustainable prosperity.’³²

Of the twenty four chapters of the Garnaut review, four chapters refer to Indigenous peoples and there is only one cited in the entire report from an Indigenous organisation and that organisation represents a specific geographical area in Northern Australia.

The extent to which the Australian government responds to the recommendations of the Garnaut report remains to be seen, and will be formally announced in December 2008.

*Chapter 6: Climate Change impacts on Australia*³³

In its assessment of climate change impacts on Australia, the chapter recognises that “growth in emissions is likely to have a severe and costly impact on agriculture,

²⁷ Permanent Forum on Indigenous Issues: International Expert Group Meeting on Indigenous Peoples and Climate Change, Darwin, Australia, 2-4 April 2008, *Summary Report*, 3.

²⁸ *Ibid*, 4.

²⁹ *Ibid*.

³⁰ *Ibid*, 7.

³¹ ‘The Garnaut Climate Change Review: About,’ available at <http://www.garnautreview.org.au/CA25734E0016A131/pages/about>

³² *Ibid*.

³³ Chapter 6 *Climate Change Impacts on Australia*, available at <http://www.garnautreview.org.au/index.htm>

infrastructure, biodiversity and ecosystems”³⁴ yet the report identifies impacts on Aboriginal and Torres Strait Islander peoples as limited to health impacts.

Specifically the report refers to the mental health consequences for Aboriginal and Torres Strait Islander peoples and notes the “emotional cost of social, economic and demographic dislocation (for example, in parts of rural Australia, and through disruptions to traditional ways of living in remote Indigenous communities).”³⁵

However, there are many serious implications of climate change for Aboriginal and Torres Strait Islander peoples the chapter does not convey. Whilst the 4th IPCC report emphasises the impact of water scarcity on Indigenous communities in Australia, the Garnaut report only refers to water supply in relation to urban areas and agriculture, and regional centres which are “already feeling the strain of declining rainfall and runoff into streams.”³⁶

*Chapter 14: An Australian Emissions Trading Scheme*³⁷

The chapter on an emissions trading scheme recommends the inclusion of “forestry, agriculture and land management on the earliest possible timetable.”³⁸ It identifies that there is considerable potential for sequestering carbon through change in land and forest management and agricultural practices, and regards the inclusions of these sectors as having prospects for “large-scale participation of Indigenous land managers in the mitigation effort.”³⁹

Although such initiatives are no doubt important, much of the discourse in Australia has focused on the opportunity side of climate change, and not enough on ameliorating harm, including harm that may ensue from mitigation measures and which requires engaging with Aboriginal and Torres Strait Islander communities nationally.

*Chapter 15: Adaptation and Mitigation Measures*⁴⁰

This chapter states that ‘government regulation or acquisition may be justified where land is of significant conservation value, or where certainty of outcome is required.’⁴¹ This is of great concern to Aboriginal and Torres Strait Islander peoples. Compulsory acquisition and regulation of Aboriginal and Torres Strait Islander lands, which currently constitute 20 percent of the Australian land mass, will have significant human rights implications.

³⁴ *Ibid*, 1.

³⁵ *Ibid*, 19.

³⁶ *Ibid*, 5.

³⁷ Chapter 14 *An Australian Emissions Trading Scheme*, available at <http://www.garnautreview.org.au/index.htm>

³⁸ *Ibid*, 10.

³⁹ *Ibid*.

⁴⁰ Chapter 15 *Adaptation and Mitigation Measures For Australia*, available at <http://www.garnautreview.org.au/index.htm>

⁴¹ *Ibid*, 20.

*Chapter 16: Sharing the Burden in Australia*⁴²

Although Aboriginal and Torres Strait Islander peoples are likely to bear a heavy burden of climate change, and have contributed least to it, the chapter of the Garnaut report entitled ‘Sharing the Burden’ makes only one reference to Indigenous peoples. Chapter 16 recognises that ‘remote Indigenous communities in northern and central Australia are likely to be particularly affected, given their reliance on diesel fuel for power supply as well as transport.’⁴³

There are many other examples of Indigenous peoples sharing the burden that warrant mention and that should be highlighted in this chapter, and illustrates the need for engagement, consultation, documentation and an ensuing strategy.

Many remote Indigenous communities rely on diesel for power supply and transport and for this reason are expected to be affected by an emissions price on diesel. (Chapter 19 of the Draft Report (*Income Distribution Effects of Climate Change Mitigation Policy*)).⁴⁴

This is likely to have flow-on effects of further isolation and social exclusion, as the ‘impact[s] of rising fuel prices combined with low-incomes and limited access to public transport’ are felt by these communities.⁴⁵

Of further concern to Aboriginal and Torres Strait Islander communities is that the scheme will increase community interest in, and pressure for extension and upgrading of, public transport infrastructure and services. However, the draft Garnaut report recognises that improvements in existing transport services ‘are likely to occur over decades rather than years’,⁴⁶ demonstrating the low priority to infrastructure in remote communities.

*Chapter 22: Transforming Rural Land Use*⁴⁷

The most extensive reference to Indigenous peoples in the Garnaut report is contained in Chapter 22 on the subject of ‘savanna burning’ which is identified as the principal source of greenhouse gas emissions in the Northern Territory, and a significant source of Australia’s agricultural emissions.

⁴² Chapter 16 *Sharing the Burden in Australia*, available at <http://www.garnautreview.org.au/index.htm>.

⁴³ *Ibid*, 5.

⁴⁴ Chapter 19 *Income Distribution Effects of Climate Change Mitigation Policy*, Garnaut Draft Report, 475, available at <http://www.garnautreview.org.au/CA25734E0016A131/pages/all-reports-resources-draft-report>

⁴⁵ *Ibid*.

⁴⁶ *Ibid*.

⁴⁷ Chapter 22 *Transforming Rural Land Use*, available at <http://www.garnautreview.org.au/index.htm>

Given that about a quarter of Australia is covered by savanna woodlands and grasslands, and much of this land is owned and managed by Indigenous Australians, the report points to the need to reduce savanna fires which are ‘frequently anthropogenic’.⁴⁸ Furthermore, it argues that managing savanna fires has ‘substantial mitigation potential’,⁴⁹ and would also have ‘positive effects for biodiversity conservation and for Indigenous land managers’.⁵⁰

Reducing savanna fires can significantly increase bio-sequestration and protect carbon stored in vegetation sinks. Actions to reduce the area burnt include seasonally targeted management strategies such as fire breaks, early and seasonal burning, and fuel reduction burns. For example, the West Arnhem Land Fire Abatement project.

Garnaut explains why credits for managed savanna burning schemes are difficult to include in an emissions trading scheme because under the Kyoto Protocol Australia can only account for emissions removed on land what was cleared at 1st January 1990, and most savanna areas will not satisfy this provision. The report recommends that ‘future carbon accounting provisions should include all greenhouse gases removed by and emitted from managed lands’.⁵¹

On the other hand, strategic property management of arid and semi arid lands is an area in which Aboriginal people may benefit in Australia from emissions trading, which account for 70 percent of Australia’s land mass:

It is estimated that these rangelands could absorb at least half of Australia’s current annual emissions or some 250 Mt for several decades. A carbon price of \$20 per tonne would provide up to a tenfold increase in income for property holders in this region if current practices were replaced by land restoration through a strategic property management program.⁵²

Garnaut highlights that in respect of arid and semi-arid lands, much of which is Aboriginal controlled, the ‘mitigation gains are potentially so large that it is important for Australia to commence work on program design and implementation even before the issues of coverage, national and international, are fully resolved.’⁵³

Summary

Whilst the focus of the report is on the economic implications of climate change, the government funding that will be required by Aboriginal and Torres Strait Islander peoples for health and infrastructure impacts/needs, and the potential for Indigenous communities to engage in carbon off-setting activities through various

⁴⁸ *Ibid*, 27.

⁴⁹ *Ibid*, 26.

⁵⁰ *Ibid*.

⁵¹ *Ibid*.

⁵² *Ibid*, 27.

⁵³ *Ibid*.

land management practices and the use of Indigenous-owned land, are factors that are left as brief mentions in the draft Garnaut review. It is hoped that the final report will seek greater engagement with Aboriginal communities throughout Australian jurisdictions in order to provide effective participation of Indigenous communities and their lands in a national emissions trading scheme.

The priorities for Aboriginal and Torres Strait Islander peoples are, in priority order, first and foremost to survive climate change, second to reduce the impacts of climate change, and third to create an economic advantage from climate change through climate change mitigation responses.

1.5. CSIRO Marine and Atmospheric Research Paper 012: 'Climate Change and Health: Impacts on Remote Indigenous Communities in Northern Australia,' D. Green

This research paper by Donna Green and produced by the Commonwealth Scientific and Industrial Research Organisation (CSIRO) addresses the health impacts on remote Indigenous communities in Australia's north as a result of climate change. The paper most importantly recognises the special case of Indigenous Australians in facing climate change impacts, as reflected in the following excerpt:

Many Indigenous people living in remote areas have a heightened sensitivity to ecosystem change due to close connections that exist for them between the health of their 'country,' their physical and mental well-being and the maintenance of their cultural practices. A biophysical change manifested in a changing ecosystem has, for example, the potential to affect their mental health in a way not usually considered in non-Indigenous societies.⁵⁴

The impacts of climate change on Indigenous health will therefore be qualitatively different to the health impacts suffered by non-Indigenous Australians. The paper highlights the fact that domestic policies have tended to adopt a broad, 'catch-all' approach and have failed to acknowledge this 'specific vulnerability.' The need for more research at the domestic level is recommended in order to guide policy makers, and suggested as necessary in addressing this policy failure.

Significantly, the paper provides research that is able to inform and guide policy makers as to the specific circumstances of Indigenous people and the likely impacts to Indigenous health, as distinct from impacts to non-Indigenous health, which will result from climate change. Regrettably, such valuable research has as yet been ignored by the government in developing the national response to climate change.

1.6 CSIRO: Indigenous Engagement Strategy

The CSIRO, a government research body, has developed and initiated an 'Indigenous Engagement' strategy. The strategy aims to achieve greater Indigenous participation in the research and development agenda activities of the CSIRO. It a)

⁵⁴ Green, D. 'CSIRO Marine and Atmospheric Research Paper 012: Climate change and Health: Impacts on Remote Indigenous Communities in Northern Australia' (2006), 1.

recognises the contribution Indigenous knowledge can provide to national challenges ie. climate change, and b) seeks to ensure CSIRO's activities are effective 'in contributing to the challenges and aspirations of Indigenous communities.'⁵⁵

The strategy comprises four broad objectives:

- Scientific Opportunities – engage in research and projects underpinned by a universally accepted ethical framework, that will impact on the quality of life for Indigenous peoples and thereby all Australians;
- Employment – to close the gap incrementally of reaching 2.5% Indigenous employment nationally within CSIRO;
- Education Outreach – increase participation and education outcomes of Indigenous children and youth of school age level and beyond within science;
- Cultural Learning and Development – broaden the knowledge and understanding of Indigenous issues and cultures within CSIRO.⁵⁶

Within these four objectives, a human rights-based approach to solving scientific dilemmas (for example, climate change) and a human rights-based approach to undertaking research as to possible solutions of these dilemmas is seemingly implied. This is seen in the express aim of impacting quality of life, employment rates and education to Indigenous peoples. The case study of CSIRO's work in Kakadu (see below) is an example of what this human rights-based approach looks like.

1.7 UNSW Climate Change Research Centre: Climate Adaptation

The University of New South Wales Climate Change Research Centre (CCRC) recognises the social and economic disadvantage of Indigenous communities in remote areas of Australia. The research of the CCRC finds that climate change impacts will specifically affect remote Indigenous communities in ways distinct from non-Indigenous communities.⁵⁷

Projects undertaken by the Centre seek to better understand the ways in which climate change will impact Indigenous people, particularly in regard to culture and connections with the land. The Centre acknowledges that any changes to the physical health of the land on which Indigenous people live will have 'significant indirect impacts on the social and cultural cohesion of these communities.'⁵⁸

The work of the Centre also seeks to promote the use of traditional knowledge about past climate change in developing current strategies for adaptation.⁵⁹

⁵⁵ CSIRO Indigenous Engagement Strategy, available at <http://www.csiro.au/resources/IndigenousEngagement.html>

⁵⁶ *Ibid.*

⁵⁷ CCRC Climate Adaptation, produced by the University of New South Wales, available at <http://www.cedl.unsw.edu.au/research/indigenous.html>

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

Part 2: Studies carried out at a national level, including by independent research institutions, on the relationship between climate change and human rights

2.1 Permanent Forum on Indigenous Issues: International Expert Group Meeting on Indigenous Peoples and Climate Change, Darwin Australia, April 2-4, 2008, Summary Report

The Expert Group Meeting Summary Report (noted above in section 1.3) begins by declaring ‘the legitimate right [of Indigenous people] to be included in decision-making fora established to address [the] issues [of climate change].’⁶⁰ It continues to examine the nature of the rights held by Indigenous peoples in addressing climate change and suggests such rights may be at risk under current systems of government.

The Report argues for the full and effective participation and engagement of Indigenous peoples with States, demanding that governments honour ‘the right to self-determination and the principle of free, prior and informed consent as set out in the Declaration on the Rights of Indigenous Peoples.’⁶¹

The potential for Indigenous peoples to become environmental refugees is expressed as a main concern in the Report and it is acknowledged that the potential for Indigenous communities to adapt to climate change is closely linked to land use rights.⁶²

The Expert Group Meeting’s Report draws largely on the human rights established in international law to uphold the participation of Indigenous people in the development of strategies to deal with climate change and also demands that the principles in this international instrument be acknowledged and upheld by governments at a domestic level. It suggests that where governments fail to uphold these international standards Indigenous peoples are likely to be most disadvantaged.

2.2 Submission to Australia 2020 Summit

The HREOC submission to the *Australia 2020 Summit* (noted above in 1.2.2) made the following recommendations with regards to a human rights-based approach to tackling climate change:

A human rights-based approach should be adopted in the development of climate change responses, to provide a standard against which policy and resource allocation is evaluated. Under a human rights-based approach:

⁶⁰ Permanent Forum on Indigenous Issues: International Expert Group Meeting on Indigenous Peoples and Climate Change, Darwin, Australia, 2-4 April 2008, *Summary Report*, 2.

⁶¹ *Ibid.*

⁶² *Ibid.*, 4.

- Individuals are seen as rights-holders, and the government should provide for their meaningful participation in policy development.
- There should be an emphasis on local knowledge of the environment, including traditional cultural practices of Indigenous communities.
- The principles of non-discrimination and substantive equality are integral. Decision-makers should consider likely impacts on disadvantaged or vulnerable groups when forming policy.
- Core minimum human rights standards should guide decision-makers when weighing competing demands on limited resources.

In addition, any long-term plan to adapt to the impacts of climate change should:

- Recognise the spiritual, economic, social and cultural significance that land plays in the lives of indigenous people.
- Recognise the contribution that traditional owners can make to custody and management of land and seas.
- Provide for the equal participation of Indigenous Australians in developing future strategies.⁶³

Not only does HREOC call upon the Government to adopt an approach to climate change mitigation that fully considers and accounts for the effects of climate change on human rights, the submission goes further, outlining exactly what that approach should encompass and the particular human rights considerations that have relevance to Indigenous people. The specific cultural sensitivity of Indigenous people and the capacity for them to be involved in the mitigation and adaptation process are also acknowledged.

⁶³ Submission of the Human Rights and Equal Opportunity Commission to the *Australia 2020 Summit* (April 2008) accessed at http://www.hreoc.gov.au/legal/submissions/2008/080415_2020summit.html

Part 3: Projects and measures at a national or regional level to mitigate or adapt to climate change, including information on or assessments of their impact on affected populations and their human rights.

3.1 Federal Government Carbon Pollution Reduction Scheme – Green Paper

The Carbon Pollution Reduction Scheme Green Paper ‘canvasses options and preferred approaches on issues [related to the scheme], such as which industry sectors will be covered and how emission caps will be set. It also includes ways to address the impacts on Australian households, emissions-intensive trade-exposed industries and other strongly affected sectors.’⁶⁴

The paper makes it clear that ‘only forestry activities that are recognised in Australia’s Kyoto Protocol accounts will be eligible for inclusion in the [scheme].’⁶⁵ This is likely to significantly restrict the capacity of Indigenous people to be involved in the scheme. In addition to this restriction, the Government has stated that ‘emissions from the uncontrolled burning of savannah in the tropical north of Australia, which can be reduced through controlled burning management practices’⁶⁶ are unlikely to ever be included in the scheme.

Further into the report, seemingly in contradiction to the previous point, the Government states its commitment ‘to facilitating of the participation of Indigenous land managers in carbon markets and [a promise to] consult with Indigenous Australians on the potential for offsets from reductions in emissions from savanna burning and forestry opportunities under the scheme.’⁶⁷

This presents a confusing message: the Government has already denied the inclusion of controlled savanna burning as an offset mechanism. The Government then expresses that it will consult with Indigenous people regarding this exact issue and the potential for it to offset emissions. It appears they have made a decision prior to the process of consultation and engagement with indigenous peoples. If this is the case, the effectiveness of such participation will be extremely limited, if not entirely void.

3.2 United Nations University Institute of Advanced Studies Report: Emissions Trading, Carbon Financing and Indigenous Peoples

In contrast to the Australian Government’s *Green Paper*, the *United Nations University Institute of Advanced Studies Report on Emissions Trading, Carbon Financing and Indigenous Peoples* supports and recognises the value of Indigenous participation in developing mitigation and adaptation strategies to climate change. The report addresses and explains various strategies adopted at an international and

⁶⁴ *Carbon Pollution Reduction Scheme Green Paper* – <http://www.climatechange.gov.au/greenpaper/index.html>.

⁶⁵ *Ibid*, Summary 17.

⁶⁶ *Ibid*, Summary 19.

⁶⁷ *Ibid*, Summary 38.

domestic level, and considers a framework for future Indigenous engagement in mitigation strategies.

One of the mitigation measures discussed by the report is land use and forestry projects, such as plantations and controlled burning. Controlled burning is proposed as a project that could assist in maintaining ‘traditional Indigenous land management practices.’⁶⁸ Such projects, whilst helping to reduce carbon emissions, will also ‘provide employment and training opportunities’⁶⁹ for Indigenous communities.

The report highlights the potential for Indigenous communities to play a part in voluntary carbon market schemes through these land management and forestry-related activities.⁷⁰

Some of the positive impacts of mitigation activities for Indigenous peoples are listed:

Activities may encourage a return to country, provide local employment or even encourage the maintenance of traditional practices, such as customary land management activities.⁷¹

Various case studies of emissions trading or offsetting projects that involve Indigenous people and/or communities are also described by the report. These are described in more detail further below:

- West Arnhem Land Fire Abatement Project
- Aboriginal Wetland Burning in Kakadu
- Bushlight Australia
- Ikuntji Cool Community

The report not only provides information on existing projects where Indigenous people play an active role in carbon pollution reduction but, additionally, proposes a framework for carbon offset projects where the project developer *fully* consults all stakeholders and considers all environmental and other impacts associated with the plan proposed. This consultation process seemingly has not occurred with the main policies for mitigation suggested at a national level. The Federal Government’s *Green Paper* and the *Garnaut Draft Report* have involved very limited Indigenous participation in their research and modelling of various mitigation options. As the report comments, ‘research suggests that problems can arise when Indigenous people are not properly consulted, nor their interests taken into account, in the development of carbon mitigation activities.’⁷²

3.2.1 *West Arnhem Land Fire Abatement Project*

⁶⁸ Barnsley, I. United Nations University Institute of Advanced Studies Report: Emissions Trading, Carbon Financing and Indigenous Peoples, April 2008, 7.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, 9.

⁷¹ *Ibid.*, 10.

⁷² *Ibid.*, 9.

West Arnhem Land Fire Abatement Project is ‘a partnership between Darwin Liquefied Natural Gas, the Northern Territory government, the Northern Land Council and relevant Aboriginal Traditional Owners.’⁷³ The project takes place across 28,000km of Western Arnhem Land and seeks to offset a proportion of the greenhouse gas emissions from the Liquefied Natural Gas plant in Darwin Harbour. Emission abatement of around 100,000 tonnes a year of CO₂ is estimated as the potential for offsets as a result of the project.⁷⁴

Darwin Liquefied Natural Gas was attracted by the cost-effective nature of the project as compared with blue gum or pine plantations as carbon offsets. The project is not generating any income from carbon trading, but is described by the company as ‘a fee for service arrangement,’⁷⁵ where Indigenous fire managers are paid to undertake burning regimes to produce greenhouse offsets. Despite this, the ‘process and accounting practices used to abate greenhouse emissions in this project would qualify for carbon trading if the market arose in the future.’⁷⁶ The project has been considered as a model for use across all of northern Australia.⁷⁷

The project is presented in a positive light for both Indigenous communities and the company involved. Where carbon reduction regulations are imposed by legislation upon private industry, there is clearly a potential for both parties to benefit through the establishment of such innovative carbon reduction projects.

3.2.2 CSIRO: Aboriginal Wetland Burning in Kakadu

The CSIRO Aboriginal Wetland Burning project involves the re-application of traditional fire management practices to wetland areas choked with Mudja, a native grass which significantly decreases the biodiversity of these areas. CSIRO scientists in partnership with traditional owners and their children undertake burning practices during September to December.⁷⁸

Benefits of the project are listed as:

- The dramatic enhancement of the biodiversity of wetlands, including plants and animals;
- An improvement in cultural values of wetlands for Aboriginal people through increased availability of food resources;
- The demonstrated value of applying traditional ecological knowledge in partnership with western science; and

⁷³ ‘West Arnhem Land Fire Abatement Project’, available at http://savanna.cdu.edu.au/information/arnhem_fire_project.html

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ ‘Aboriginal wetland burning in Kakadu’, available at <http://www.csiro.au/science/KakaduWetlandBurning.html>.

- The importance of recording traditional knowledge and handing it on to younger generations.

3.2.3 *Bushlight*

The *Bushlight* program is funded by the Federal Government's Australian Greenhouse Office and administered by the Centre for Appropriate Technology, based in Alice Springs. The program involves *Bushlight* staff working with Indigenous communities 'to help them plan and manage their energy services [by providing them with] technical and other information they need to be able to choose affordable, consistent and reliable renewable energy services.'⁷⁹ Following this period of planning and consultation, training and resources are provided enabling the community to construct their own renewable energy systems and maintain these systems.⁸⁰

3.2.4 *Ikuntji Cool Community*

The *Cool Communities* program is also funded by the Federal Government's Australian Greenhouse Office, and involves a collaboration of non-governmental environmental organisations. Industry, government and communities work together 'to find ways to cut greenhouse gas emissions, save money and improve lifestyles.'⁸¹ In Ikuntji, in the West MacDonnell ranges, the program provided a rubbish collection service using wheelie bins to replace the practice of burning off rubbish, simultaneously improving hygiene and reducing carbon emissions.⁸²

Both the *Bushlight* program and the *Cool Communities* are again presented in a positive light and involve the collaboration of both private and public bodies with Indigenous communities to create a beneficial outcome for all parties.

3.3 *National Climate Change Adaptation Framework*

The National Climate Change Adaptation Framework was commissioned by the Council of Australian Governments (COAG), and 'includes possible actions to assist the most vulnerable sectors and regions.'⁸³ 'Agriculture, biodiversity, fisheries, forestry, settlements and infrastructure, coastal, water resources, tourism and health'⁸⁴ are listed as the vulnerable sectors or areas.

The Framework report states that one of the potential areas for action is to 'identify vulnerable coastal areas and apply appropriate planning policies, including

⁷⁹ Barnsley, I. United Nations University Institute of Advanced Studies Report: Emissions Trading, Carbon Financing and Indigenous Peoples, April 2008, 13.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ National Climate Change Adaptation Framework,' produced by the Australian Government

Department of Climate Change, available at <http://www.climatechange.gov.au/impacts/about.html>

⁸⁴ *Ibid.*

ensuring the availability of land, where possible, for migration of coastal ecosystems.⁸⁵ In proposing relocation of coastal populations as a method of adaptation, the connection between Indigenous peoples and their land and the impacts such an adaptation strategy would have on Indigenous peoples is not acknowledged.

Whilst remote Indigenous communities are identified as a special case scenario regarding their vulnerability, there has been no consideration of the impact of possible relocation on these communities.

3.4 CSIRO Marine and Atmospheric Research Paper 012: 'Climate Change and Health: Impacts on Remote Indigenous Communities in Northern Australia,' D. Green

This Research Paper, as noted above in section 1.5, argues that current government strategies directed at mitigating and/or reducing impacts to human health as a result of climate change fail to take account of the specific vulnerability of Indigenous people. This is demonstrated in the way these strategies have treated 'health' as an independent factor or element, whilst for Indigenous people, physical health is bound up with many other aspects of life. This is likely to reduce the effectiveness of these strategies to mitigate impacts to 'health' in the context of Indigenous communities.⁸⁶

This concern is captured in the following excerpt:

Strategies that seek to manage physical risks to health without taking account of the larger context of an Indigenous world view that may not necessarily separate the health of culture, country and physical and mental well-being may be of limited effectiveness.⁸⁷

The paper suggests that current strategies to mitigate climate change impacts to human health will have to go much further in considering the specific needs of Indigenous communities if they are at all to be successfully applied in this context.

3.5 Permanent Forum on Indigenous Issues: International Expert Group Meeting on Indigenous Peoples and Climate Change, Darwin Australia, April 2-4, 2008, Summary Report

In addition to considering the effects of climate change on Indigenous people, the Summary Report (noted above in section 1.3) also examines strategies for climate change mitigation and adaptation and the implications of these strategies for Indigenous people.

The report also points to a significant 'gap between international policy development on climate change and implementation at a national level.'⁸⁸ This can

⁸⁵ *Ibid*, 12.

⁸⁶ Green, D. 'CSIRO Marine and Atmospheric Research Paper 012: Climate change and Health: Impacts on Remote Indigenous Communities in Northern Australia' (2006), 9.

⁸⁷ *Ibid*.

clearly be seen in the failure of Australia's main mitigation and adaptation programs to consult and engage with Indigenous communities. This has resulted in recommendations and strategies that do not account for, or do so only to a limited degree, the particular vulnerability of Indigenous people in facing climate change. Similarly, these strategies have not acknowledged the value of traditional knowledge in adapting to climate change and are based on an assumption that the government is best situated to decide what approach should be taken in adapting to climate change. The Expert Group Meeting proposes that effective and efficient adaptation measures will need to be based on the recognition of Indigenous collective rights to land, and collective rights to traditional knowledge, as a vital starting point.⁸⁹

3.6 Native Title Research Unit: *Impacts and Opportunities of Climate Change: Indigenous Participation in Environmental Markets* – E. Gerrard

This paper canvasses the ways in which Indigenous people can opt to participate in environmental-based commercial activities, and ways to seek redress for damage and loss as a result of climate change. Two case studies relevant to carbon abatement projects are provided.

The paper forewarns that the 'design, development and implementation of domestic emissions trading scheme may significantly impact upon and carry opportunities for Indigenous peoples.'⁹⁰

Mallee Eucalypt Carbon Sink Project – New South Wales Greenhouse Gas Abatement Scheme (GGAS)

The GGAS has been implemented in two jurisdictions in Australia, New South Wales and Victoria, and provides a mechanism through which carbon stored in forests may be traded. The scheme enables a company to negotiate access to land to plant and manage trees under forestry legislation, with the carbon stored in trees measured and sold to emitters.

Under GGAS, Aboriginal businesses may seek accreditation and invest in forest and revegetation projects to acquire credits for trade on domestic or international markets. The project demonstrates the potential for Indigenous people to participate in carbon related markets through involvement in land use and development projects.

In conclusion, the author of the paper asserts that the benefits of economic opportunities in response to climate change are that they enable Indigenous people to remain 'on country' while creating jobs and business opportunities.

⁸⁸ Permanent Forum on Indigenous Issues: International Expert Group Meeting on Indigenous Peoples and Climate Change, Darwin, Australia, 2-4 April 2008, *Summary Report*, 5.

⁸⁹ *Ibid.*

⁹⁰ Gerrard, E. (2008) 'Impacts and Opportunities of Climate Change: Indigenous Participation in Environmental Markets', *Native Title Research Unit Issues Paper* Vol 3(13), 5.

Land, sea and water management practices that increase the uptake of carbon dioxide present an innovative opportunity for Indigenous peoples to utilise and adapt traditional knowledge and practices for use in a contemporary low carbon economy.⁹¹

The author of the paper emphasises that Aboriginal and Torres Strait Islander people must be actively engaged in formulating responses to climate change including emissions trading schemes and adaptation strategies. Without engaging there is a risk of litigation for loss of lifestyle, identity, sacred places, and cultural relationships.

⁹¹ *Ibid*, 14.

Part 4: Views of the relationship between obligations arising out of international climate conventions and international human rights treaties including on international assistance and cooperation

4.1 Human Rights and Equal Opportunity Commission: Submission to the Australia 2020 Summit

In its submission to the *Australia 2020 Summit* (as noted above in section 1.2.2), HREOC adopted the view that ‘as a party to the major international human rights treaties, Australia has an obligation to protect individuals against threats posed to human rights by climate change.’⁹² HREOC recommended the Australian Government address the following issues:

- Adaptation measures – the government should provide financial and logistical support to affected communities, within Australia and overseas, to adjust to changing conditions;
- Disaster relief – the government should plan for the evacuation and protection of large numbers of people, with climate-change induced disasters expected on a Hurricane Katrina scale;
- Relocation – the government should facilitate the relocation of communities, including from Australia’s territorial islands, if the impacts of climate change make this necessary; and
- Climate change refugees – the government should advocate for a new international agreement and, in the interim, formulate domestic laws to address climate-induced migration.⁹³

The final recommendation recognises the relationship between Australia’s obligations under international human rights treaties and its obligations arising out of international climate conventions. The recommendation states:

Australia’s response to climate change must also consider the need to protect cultural diversity and heritage, in line with the principles contained in the *Universal Declaration on Cultural Diversity*.⁹⁴

Under the Kyoto Protocol, the Australian Government has made certain commitments to reduce the country’s greenhouse gas emissions. As of 11 March 2008, when Australia’s ratification of the Kyoto Protocol came into effect, Australia is committed to meeting its Kyoto Protocol target⁹⁵, to reduce greenhouse

⁹² Submission of the Human Rights and Equal Opportunity Commission to the *Australia 2020 Summit* (April 2008) accessed at http://www.hreoc.gov.au/legal/submissions/2008/080415_2020summit.html.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ ‘Kyoto Protocol’, produced by the Australian Government Department of Climate Change, accessed at <http://www.climatechange.gov.au/international/kyoto/index.html>.

gas emissions to 108 percent of its 1990 emissions each year for the five year period 2008 to 2012.⁹⁶

Having made this commitment, the Government has already taken steps towards implementing a national Carbon Pollution Reduction Scheme, considered in the Government's *Green Paper* (noted above in 3.1). HREOC, in its submission, draws attention to the fact that whilst Australia has committed to specific targets under the Kyoto Protocol, this commitment should not override or dispose of previous commitments made under international human rights conventions, such as the *Universal Declaration on Cultural Diversity* (the example used here), or the *Universal Declaration of Human Rights*.

The concern expressed in this submission is that the obligations arising out of the Kyoto Protocol have taken precedence over the commitments and obligations Australia holds under various international human rights conventions. The present urgency of climate change action should in no way allow for the response process to be undertaken poorly or in a way that fails to acknowledge the rights of those people who will be most affected.

In making the above recommendations, HREOC clearly acknowledges the importance of Australia's adherence to its international human rights treaty obligations. HREOC actively calls upon the Australian government to honour these obligations where climate change impacts impinge upon the basic human rights of Australian citizens. The same submission recognises that indigenous peoples will be disproportionately affected by the impacts of climate change. This implies that indigenous peoples will be amongst the most vulnerable population sectors within Australia to infringements of basic human rights caused by climate change.

Australia's status as a 'developed', rather than 'developing' nation-state, nullifies its eligibility for international assistance. This is a key factor in the way the human rights of indigenous Australians will fare as the impacts of climate change become more exacerbated. Because of Australia's ineligibility for international assistance in protecting human rights, the responsibility lies with the Australian Government to ensure the rights enshrined in various international treaties are secured for Australian citizens, indigenous and non-indigenous. The HREOC submission calls upon the Australian Government to fulfil this responsibility.

4.2 *Permanent Forum on Indigenous Issues: International Expert Group Meeting on Indigenous Peoples and Climate Change, Darwin, Australia, April 2-4 2008, Summary Report*

The Report, as noted above in section 1.3, discusses many of the mitigation measures adopted at an international level and how the adoption of these measures may threaten the enjoyment of rights by indigenous peoples. The Report states that the Meeting 'expresses concern that many of the mitigation measures such as

⁹⁶ 'Implementing the Kyoto Protocol in Australia – Fact Sheet', produced by the Australian Government Department of Climate Change, accessed at <http://www.climatechange.gov.au/international/publications/fs-kyoto.html>.

renewable energy, Clean Development Mechanism (CDM) and REDD (Reducing Emissions from Deforestation) may negatively affect indigenous peoples.⁹⁷

There is no certainty that Australia will adopt any or all of these strategies, however other measures referred to in the Report, such as migration and forced relocation, are likely to be the only long-term option for Indigenous island communities in the face of rising sea levels. The impact of these measures on Indigenous peoples, as discussed above in *Section 1.1*, would be significant, severing communities' deep spiritual connections with their land and disrupting practices and traditions of Indigenous culture on this land.

5. FINDINGS AND CONCLUSIONS

Human induced climate change disproportionately impacts Aboriginal and Torres Strait Islander peoples which has been clearly identified in reports of the IPCC and the Australian Human Rights and Equal Opportunity Commission. However, national assessments of climate change in Australia that have occurred do not canvass the range of impacts Australia's Indigenous peoples currently experience, and are likely to experience to a great extent in the future. The human rights implications are far reaching, particularly taking into consideration the *Declaration on the Rights of Indigenous Peoples*. Despite this, an assessment of such impacts as a national coordinated priority has not been carried out.

Given the close and special connection Aboriginal and Torres Strait Islander peoples have with their lands and territories, climate change and the various proposed responses to climate change have the potential to interrupt this connection, which will lead to social, cultural and economic effects.

It is not the purpose of this report to elaborate climate change impacts experienced by Aboriginal and Torres Strait Islander peoples, and the effects of such impacts. The purpose of this report is to identify the urgent need for rigorous assessment of climate change impacts in partnership with Aboriginal and Torres Strait Islander peoples taking into consideration their inherent rights as distinct peoples.

⁹⁷ Permanent Forum on Indigenous Issues: International Expert Group Meeting on Indigenous Peoples and Climate Change, Darwin, Australia, 2-4 April 2008, *Summary Report*, 4.

Overarching recommendation

The NSW EDO and FAIRA recommend that a detailed national assessment of the impacts of climate change on Aboriginal and Torres Strait Islander peoples which encompasses the economic, ecological, social and cultural impacts in a single study and that is developed in partnership with Indigenous communities, is needed. This study must be initiated as a matter of urgency and should include constructive recommendations coupled with a plan for implementation.