

INDIGENOUS PEOPLES AND CLIMATE LITIGATION

Their role in rights-based climate litigation

as an instrument to advance climate law and promote climate action

INTRODUCTION

- ◆ Human rights-based climate litigation has promoted climate action, raised social awareness and encouraged governments and industry to limit environmental effects via a bottom-up approach
- ◆ Whether *indigenous* rights-based litigation offers unique advantages over other human rights litigation is uncertain

LEGAL FRAMEWORK

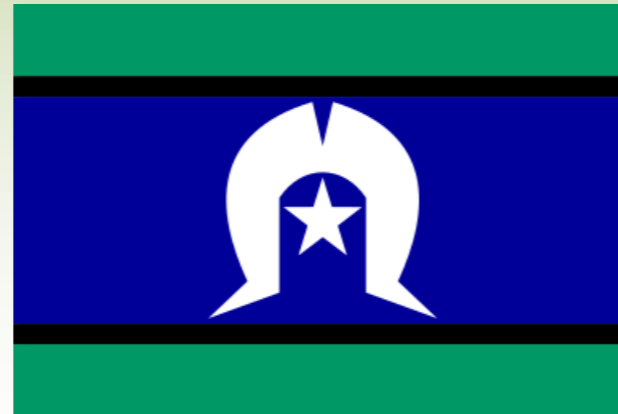
Indigenous peoples have contributed least to climate change but suffer greatest effects due to reliance on ecosystems prone to climate change and a deep connection to the land

- ◆ Indigenous rights are established in international human rights, environmental and labour law
- ◆ Rights affected by climate change include right to culture, self-determination, land, right to health, food and water and adequate standard of living (UN Special Rapporteur, 2017)
- ◆ Indigenous rights are both collective and individual in nature and they have brought litigation in both international and domestic jurisdictions

IACtHR ADVISORY OPINION

2017

- ◆ Inter-American Court of Human Rights (IACtHR) 2017 Advisory Opinion opened door to climate-related litigation by recognising nexus between protection of human rights and climate change effects
- ◆ IACtHR opinion informed by prior indigenous environmental case law, including *Inuit Petition*



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BILLY v AUSTRALIA

2022

- ◆ Landmark climate case brought by Indigenous Torres Strait Islanders to UN Human Rights Committee
- ◆ Alleged Australia breached rights in *International Covenant on Civil and Political Rights* by not adopting adaptation/ mitigation measures and continuing fossil fuel extraction
- ◆ Committee found daily lives of indigenous claimants impacted by climate change and Australia had violated international human rights
- ◆ Set precedent as the first time any country held responsible by a UN body for effects of climate change ; noting that States cannot abrogate their responsibility as global citizen
- ◆ Committee also called for Australia to adopt climate adaptation measures and reduce emissions

INUIT PETITION

2005

- ◆ Climate change uniquely impacts the Inuits (Arctic Circle), especially US greenhouse gas emissions
- ◆ Petition requested Inter American Commission of Human Rights to find US violated their rights, and mandate US limit emissions and develop measures to limit future violations
- ◆ Established precedent as first international recognition of relationship between human rights and climate change
- ◆ Commission held they were unable to determine if US acts/omissions violated *American Declaration* rights
- ◆ Petition internationally successful as it drew public attention and raised awareness climate change



"Traditional clothing; left: seal, right: caribou (Iglulik)" by Ansgar Walk is licensed under CC BY 2.5

ANALYSIS

- ◆ Indigenous rights represent unique opportunities to litigate climate change across all jurisdictions
- ◆ Arguments that climate change impacts human rights, such as self-determination, are more compelling and persuasive when applied to indigenous peoples
- ◆ Indigenous peoples have unique standing to bring collective rights-based claims that protect their culture and way of life
- ◆ Prior indigenous rights-based cases and opinions have established precedent that will inform future climate law cases
- ◆ Limitations include lack of awareness, knowledge and resource intensive

CONCLUSIONS

- ◆ *Indigenous rights have been pivotal* in advancing rights-based climate law
- ◆ As a *model for future climate cases*, indigenous rights-based litigation offers unique standpoints that also supports indigenous peoples right to protect their land and their future
- ◆ However, *activists and litigators must consider important caveats* including taking advantage of vulnerable populations

REFERENCES

Daniel Billy et al v Australia, CCPR/C/135/D/3624/2019, UNHRC, 22 September 2022; *Petition to the IACHR Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States*, 7 December 2005; *The Environment and Human Rights*, Advisory Opinion OC-23/17, IACtHR