

Indigenous Australians, Climate Change, and the Importance of Environmental Rights:
How the Torres Strait Eight are Reforming Postcolonial Legislation

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September 23, 2022, was the day of a landmark decision by the United Nations Human Rights Committee (UNHRC) in the case of *Daniel Billy et al. vs. Australia*.¹ In what came to be known as the Torres Strait Islanders Petition,² a group of Indigenous Australians (commonly referred to as the Torres Strait 8) from the Torres Strait Islands asserted that the Australian government had violated their rights by failing to prevent and mitigate effects of climate change in their environmentally vulnerable homelands. The UNHRC sided with the petitioners who invoked Articles 6, 17, and 27 of the International Covenant on Civil and Political Rights (ICCPR), finding that Australia did not uphold the human rights to life, freedom from arbitrary interference with privacy, and culture, respectively.³ This affirmed government responsibility in ensuring that citizens' rights also include environmental rights. The concept of environmental rights, while moderately new terminology, has long existed as an extension of human rights. As defined by the UN, it is "the human right to a clean, healthy and sustainable environment."⁴ It is applied universally but holds particular significance for indigenous populations of the world and huge implications for global governments. Australia, a country with an extensive history of colonialism and harmful Native-settler relations, is one of the first to be called to accountability on such a scale. They have since been asked by the UNHRC to take action in the form of compensation, communication with those affected, needs assessments, implementation of environmentally protective measures, monitoring the land, and prevention of further harm. This case is contextualized by the strong connections between the environmental rights of Indigenous Australians (including groups from both subcategories of Aboriginals and Torres Strait Islanders) and the effects of colonization. By denying Native Australians environmental autonomy, their human rights are violated as well. These violations have diminished their influence and ability to engage in traditional, regulatory maintenance of the natural land (Country). Evidence—both contemporary and historical—has shown that the silencing of Indigenous Australian voices is to the detriment of the environment as well as to their various cultural identities. The Torres Strait

¹United Nations Human Rights Committee, *Daniel Billy et al. vs. Australia*, CCPR/C/135/D/3624/2019 (2022), https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20220923_CCPRC135D36242019_decision.docx.

²The petition is still ongoing as an effort to get the Australian government to fully and officially adopt the Torres Strait Islanders' demands as a part of the Our Islands Our Home campaign and can be signed at: <https://ourislandsourhome.com.au>.

³ United Nations General Assembly [UNGA], *International Covenant on Civil and Political Rights*, (New York: UN General Assembly, 1966) <https://www.ohchr.org/sites/default/files/ccpr.pdf>.

⁴UNGA, *The Human Right to a Clean, Healthy and Sustainable Environment*, A/RES/76/300 (2022), <https://undocs.org/en/A/RES/76/300>.

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Islanders Petition and UNHRC ruling, however, exhibit a positive potential outlook on future environmental legislation as indigenous populations disproportionately experience the effects of climate change.

As of 2022, Indigenous Australian groups are primarily concentrated in the north and east of the mainland, in the islands above, and on coastlines.⁵ These areas are not only significant as ancestral lands, but also for their geologic location lying near or on the equator between the Tropic of Capricorn and Cancer. This region is recently referred to by Christian Parenti as the “Tropic of Chaos,” a place where climate change has an increased presence and intensified onset.⁶ For the Torres Strait Islanders, the effects of climate change—namely sea level rise, extreme storms, and flooding—threaten their everyday lives, putting them at risk of forced displacement, community uprooting, and subsequent culture extinction due to the loss of sacred land.⁷ The same remains true for all Native Australians, as well as a majority of indigenous populations around the world. Patricia K. Townsend argues in her book about environmental anthropology that while climate change threatens everyone, the distribution of associated risk across the world’s population is uneven due to a combination of political, economic, geologic, and sociological reasons. Furthermore, conflict over natural resources between indigenous people and settlers are exacerbated in the modern day by industry and poverty; where “these groups are asked to bear a disproportionate share of the *risk* associated with industry while at the same time receiving a smaller share of its *benefits*.”⁸ Colonial violence of the past never disappeared, nor has it been remedied. Rather, it has evolved into an extensive system of oppression designed to only benefit some while depriving the colonized of their basic human rights. Australia, a capitalist country fully aware of the ramifications of its industry, has largely initiated a policy of empty promises and neglect in regard to environmental protection. As the Australian government and industry leaders actively contribute to climate change, Indigenous Australians shoulder the multifaceted burdens, greatly reducing their quality of life. This is one of the reasons the activism of the Torres Strait 8 and their commitment to protective environmental legislation is so paramount.

The established link between colonization, industrialization, and the violation of indigenous rights is an ongoing study, especially in the field of environmental rights. Unable to be understated are the harmful effects of land privatization and the associated misguided use of the “tragedy of the commons” theory.⁹ By assuming that native communities are inherently as greed-

⁵Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander People: Census (2022)*, <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/aboriginal-and-torres-strait-islander-people-census/2021>.

⁶Christian Parenti, *Tropic of Chaos: Climate Change and the New Geography of Violence* (New York: Hachette Book Group, 2011), 9.

⁷UNHRC, *Daniel Billy et al. vs. Australia*.

⁸Patricia K. Townsend, *Environmental Anthropology: From Pigs to Policies* (Illinois: Waveland Press, 2000), 62.

⁹Garrett Hardin, “The Tragedy of the Commons,” *Science*, vol. 162, no. 3859 (1968): 1243-48.

driven as white, industrialized society and that the lack of individual ownership of land will lead to chaos, those in power (in settler nations) have ironically taken away all indigenous autonomy in not only communally sharing—but *living with* the land in a way that was self-sustaining for its inhabitants and the ecosystem itself. What this has caused is a cyclical kind of violence that depends upon undermining established cultural and societal systems, as well as disrupting relationships between people and the land/environment.¹⁰ Colonization causes displacement, dehumanization, and/or systemic inequality; society develops industry and urban settlements without allowing indigenous participation or input; industrialization contributes to climate change; and indigenous populations disproportionately affected by climate change due to lack of autonomy, energy rights, adequate healthcare, political voice, etc. experience damaged or uprooted cultural identities because of the degradation of Country. As explained by Amelia Telford of the Seed Mob Indigenous Youth Climate Network: “It’s our communities that are hit first and worst, not only by the impacts of climate change but the impacts of extractive, polluting and wasteful industries that are devastating our country and fueling the climate crisis.”¹¹ For Aboriginals and Torres Strait Islanders, this environmental violence based on years of colonialism and racism absolutely must be remedied for the sake of their health and wellbeing, to honor and protect the strong identities and ideals of past generations, and to show proper reverence to the Earth.¹² In order to achieve these culturally significant obligations, the land they stand upon has to be properly preserved, a right that the UNHRC fully recognizes in their ruling. Especially since the particular effects of climate change the Torres Strait Islanders are experiencing relate to preventable and/or adaptable harm caused by sea level rise and global warming, this foundational step in environmental legislation has the potential to make huge progress if applied to more countries around the world.

There is consensus among worldwide indigenous leadership that land and the environment hold particular importance and that preservation of it is integral for their lifestyles, as specified in many parts of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).¹³ This document, drafted by the Working Group on Indigenous Populations (WGIP), highlights the importance of autonomy over land, redressing past injustices, revitalization of culture, and

¹⁰Kyle Whyte, “Settler Colonialism, Ecology, and Environmental Injustice,” *Environment and Society*, vol. 9 (2018): 125-44.

¹¹Lowitja Institute, *Leadership and Legacy Through Crises: Keeping Our Mob Safe (Close the Gap Campaign Report 2021)* (Melbourne: Close the Gap Campaign Steering Committee, 2021), 29, https://www.lowitja.org.au/content/Document/CTG_Report_2021_FINAL_WEB.pdf.

¹²Australian Human Rights Commission, *Transforming Power: Voices for Generational Change (Close the Gap Campaign Report 2022)* (Sydney: Close the Gap Campaign Steering Committee, 2022), 8, https://humanrights.gov.au/sites/default/files/document/publication/2022_close_the_gap_report.pdf.

¹³United Nations Department of Economic and Social Affairs, *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 (New York: UNGA, 2007), https://social.desa.un.org/sites/default/files/migrated/19/2018/11/UNDRIP_E_web.pdf.

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accessibility to basic human rights. Another instance of indigenous-led discussion regarding the topic is the Kari-Oca 2 Declaration, issued during the United Nations Conference on Sustainable Development Rio+20. Speaking as a united front, leaders of various indigenous groups condemned the impact of imperialist globalization in exploiting and damaging the Earth, reaffirmed rights to self-determination, and emphasized that the land and first peoples are inextricably linked in survival due to their distinct relationship and culturally ingrained knowledge systems regarding management, conservation, and sustainability.¹⁴ In 2022, before the UNHRC ruling, the Torres Strait 8's own Yessie Mosby stated that: "We must look after our island, the way it has looked after us. The bosom of this land is our mother, and the water surrounding it is our father. We have to protect them, our islands our home."¹⁵ Mosby's hopes are clear: protection, commitment, gratitude, and respect towards the land and its First Peoples. Although these vocal pleas of indigenous groups have largely been ignored in the past and today, the Torres Strait Islanders Petition's role as a precedent for restorative and protective legislation in addressing environmental injustices is exigent. In the fight for indigenous equality, this case operates as concrete evidence of environmental rights, an active culmination of activist efforts, and as a possible reference point for many future rulings.

With cultural and social ties in mind, scientific and observational evidence has concluded that the environment also benefits from Indigenous Australian management. A major example of this comes in the form of controlled burning. Studies of clan estates have shown that ecological integrity is highly maintained, especially in areas of biological diversity, supporting endangered or range-restricted species, preventing threatening processes like late-dry season wildfires, and keeping out invasive species.¹⁶ In his study on global environmental history, I. G. Simmons testifies to this particular relationship Native Australians share with the environment: "Not only was it a particular human-managed ecology but an economy in the sense that rights of usage flowed from its deployment, and emotional ties to the land resulted."¹⁷ Links can be drawn between culture and environment through the exemplary partnership of Indigenous Australians and land management. Both parties benefit, with one receiving resources and cultural gratification and the other being managed in a self-sustaining way. Conversely, there is evidence of harm and environmental degradation associated with the lack of indigenous input and the improper

¹⁴"Kari-Oca 2 Declaration," delivered at Rio de Janeiro, Brazil, 2012, <https://www.ienearth.org/kari-oca-2-declaration/>.

¹⁵Yessie Mosby, "River Voices - Zenadh Kes," filmed March 21, 2022, 6:22, <https://youtu.be/GIMRle9A6gQ?si=sbHIuMywMINI26x8>.

¹⁶D. Yibarbuk, P. J. Whitehead, J. Russell-Smith, D. Jackson, C. Godjuwa, A. Fisher, P. Cooke, D. Choquenot, and D. M. J. S. Bowman, "Fire Ecology and Aboriginal Land Management in Central Arnhem Land, Northern Australia: A Tradition of Ecosystem Management," *Journal of Biogeography* vol. 28, no. 3 (2001): 325–43 at 340.

¹⁷I. G. Simmons, *Global Environmental History: 10,000 BC to AD 2000* (Illinois: University of Chicago Press, 2008), 32.

application of it. According to research retrieved from the 2021 Close the Gap Campaign Report, increasingly devastating droughts, uncontrolled bushfires, flash flooding, and extreme storms have destroyed land and infrastructure: causing mass displacement of people and wildlife alongside record amounts of air pollution in Australia.¹⁸ With such disasters reaching levels beyond catastrophic, traditional land management by Native Australians previously effective in maintaining a balance between people and earth is no longer able to scale up, nor appropriately apply in every instance.¹⁹ In other words, the issues of the modern climate crisis are unprecedented in Indigenous Australians' responses because their sustainable way of living was never the cause of it, nor did they ever historically have to address such human-caused extremes. The significance of this is that it represents the causal relationship between colonization, industrialization, and indigenous population decrease with that of environmental degradation. This also explains why the UNHRC ruling places such heavy blame and responsibility on the Australian government for its non-management of environmental concerns and ignorance towards associated issues experienced by Native groups.

Environmental rights, along with *cooperation*, are needed in order to protect vulnerable indigenous populations of Australia and the world, as well as to develop successful bicultural remedial plans. A merging of technologies, ideas, practices, and observations is more likely to be successful in addressing the scale of today's environmental crisis—which first requires that the government dedicate efforts to listening to, preserving, and protecting indigenous voices. It is not that indigenous people are born with an innate sense of ecological wisdom; it is *knowledge* learned and experienced firsthand in traditional cultural practices passed down through generations. It is a spiritual attachment gained from living with and among the natural world. The Earth is respected because it is and has been an integral part of their lifestyles. Interactions with nature are rooted in collective identities—indigenous or not.²⁰ In that sense, environmental rights like those specified by the UNHRC are just as important in efforts to protect cultural diversity, implement new standards of law, and preserve the natural world.

Unfortunately, Australia's rejection of the UNDRIP as well as a general lack of action or leadership regarding the climate emergency represents an absence of accountability,²¹ a reluctance to restore environmental autonomy, and a disconnect in respecting the basic human rights of the

¹⁸Lowitja Institute, *Close the Gap Campaign Report 2021*, 26.

¹⁹Marc Wohling, "The Problem of Scale in Indigenous Knowledge: A Perspective from Northern Australia," *Ecology and Society* vol. 14, no. 1 (2009), 6-7.

²⁰Kay Milton, "Cultural Theory and Environmentalism," in *The Environment in Anthropology: A Reader in Ecology, Culture, and Sustainable Living*, ed. Nora Hadn and Richard R. Wilk (New York: New York University Press, 2006), 351-54 at 354.

²¹United Nations Digital Library voting record of initial decision: <https://digitallibrary.un.org/record/609197?ln=en>. Australia later endorsed the Declaration, but never formally adopted or implemented it, from AHRC: https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-_australias_third_upr_2021.pdf.

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native populations whose roots to the land may date back to more than fifty-thousand years ago.²² This is why the Torres Strait Islanders had to resort to appealing to the UNHRC; all domestic remedies had been exhausted. Whereas individual, native-led movements towards environmental autonomy have been allowed to grow and the incorporation of indigenous ecological knowledge (IEK) has become more valuable,²³ the Parliament of Australia has yet to provide an official government voice for Indigenous Australians. The Uluru Statement From the Heart has become the basis of Aboriginal and Torres Strait Islander civil rights efforts, as it proposes for a First Nations Voice and representative body to be added to the Australian Constitution. It notes that:

. . . sovereignty is a *spiritual notion: the ancestral tie between the land, or ‘mother nature,’ and the Aboriginal and Torres Strait Islander peoples who were born therefore, remain attached thereto, and must one day return thither to be united with our ancestors.* This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.²⁴

It was rejected by the government upon its release and in the 2023 referendum.²⁵ While it emphasizes land sovereignty and by extension the cultural importance of connection to the environment, it also highlights the dilemma of how Indigenous Australians can have their environmental rights respected if even their most basic political and civil rights are not yet met. In this instance, a hierarchical view of human rights must be consolidated in order to truly grasp that environmental rights *are* basic human rights for Indigenous Australians. The government must do more than just safeguarding basic human rights while only recognizing environmental welfare.²⁶ The two should be intertwined at the forefront in order properly to represent indigenous groups, their lifestyles, and their cultural heritages. The UNHRC ruling and the articles the petition was invoked under encapsulate this necessity by explaining how transgressions against environmental rights have negatively impacted the life functions of the Torres Strait Islanders.

The argument against the Uluru Statement is also the most prevalent voice of opposition against indigenous rights, restorative environmental justice, and native land titles: Australian

²²Richard Broome, *Aboriginal Australians: Black Responses to White Dominance 1788-2001* (Crows Nest: Allen & Unwin, 2002), 13.

²³Some examples include but are not limited to: Close the Gap Campaign, Native Title groups and Registered Native Title Body Corporates (RNTBCs), Our Islands Our Home Campaign, Australian Institute of Aboriginal and Torres Strait Islander Research (AIATSIS), Reconciliation Australia, Lowitja Institute, etc.

²⁴The Uluru Dialogue, *The Uluru Statement From the Heart* (Northern Territory: First Nations National Constitutional Convention, 2017), <https://ulurustatemdev.wpengine.com/wp-content/uploads/2022/01/UluruStatementfromtheHeartPLAINTEXT.pdf>.

²⁵Australian Electoral Commission Tally Room, *National Results: Referendum* (2023), <https://tallyroom.aec.gov.au/ReferendumNationalResults-29581.htm>.

²⁶Kristin Shrader-Frechette, “Individualism, Holism, and Environmental Ethics,” in *The Environment in Anthropology*, ed. Haenn and Wilk, 336-47 at 343.

national sovereignty and constitutional integrity. Daniel Wild and Morgan Begg of the Institute of Public Affairs assert that the addition of an indigenous Voice to Parliament is a violation of racial equality and “risks establishing a parallel system of representative government based on race.”²⁷ While concerns about racial divides and further polarization among government bodies and voter bases are valid, it seems both unfair and unreasonable to expect Native Australians to continue tolerating the injustices they have experienced since the colonization of the land. If the idea of granting special concessions to groups that have experienced and continue to experience the worst of humanity—racism, greed, apathy, destruction—is “radical,” then there is hardly a need for the concept of justice at all. Claims that such specifications for Aboriginals and Torres Strait Islanders are unneeded since they are inherently included as Australian civilians under the Constitution completely undermine their historical struggles and paint the multi-generational effects of settler violence as something natural or ordinary, able to just be forgiven and forgotten. The laws of a country and its active practices are often different: reports from Close the Gap, the Australian Human Rights Commission, and many other indigenous human rights organizations have highlighted the glaring, multilayered inequalities between indigenous and non-indigenous populations in Australia. Equality under the law may be guaranteed, but it has yet to take effect for a majority of indigenous populations. At the root of the opposing argument is also a belief that “basic needs of humans . . . are not culturally contingent,”²⁸ which is not only untrue, but uninformed as well, especially in reference to peoples like Native Australians whose cultural identities, ties to their lands, and environmental rights are absolutely paramount to their well-being and survival. The Torres Strait Islanders Petition and UNHRC decision affirm this, concluding that reformation of the law is more than necessary to address the cultural impacts of not just climate change, but the government’s role in upholding human rights legislation in a postcolonial era.

Australia and the world have much larger strides to take in establishing environmental rights and indigenous autonomy. Colonization and environmental degradation cannot be reversed, but by making efforts to communicate with, honor, amplify, incorporate, and acknowledge indigenous populations, achieving a truly multifaceted perspective and plan of action to uplift our earth and *all* of its people are within reach. The validity of the Torres Strait 8’s argument for environmental rights is thus more than proven. While climate change rampages on unchecked, fueled by industrial systems over which indigenous populations and the working class have limited control, the burden of responsibility almost entirely belongs to the government. As more and more marginalized communities on the social, economic, and geological fringes of society suffer from the all-encompassing adverse effects of the climate crisis, those in power have more than an obligation to set standards and implement procedures that will mitigate and remedy those effects. Environmental rights—whether relating to how governments guarantee health and safety for

²⁷Morgan Begg and Daniel Wild, “Indigenous Voice Counterpoint: a Violation of Racial Equality,” *The Sydney Morning Herald* (2019), <https://www.smh.com.au/national/indigenous-voice-counterpoint-a-violation-of-racial-equality-20190603-p51u3u.html>.

²⁸Begg and Wild, “Indigenous Voice Counterpoint.”

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civilians or how individuals responsibly manage their own land—are absolutely necessary. The Torres Strait 8 and other Indigenous Australians signify the fight for climate justice, land rights, and a developing, cooperative, indigenous-led trend for postcolonial legislation that is worthy of replication worldwide. Although Australia cannot solely be held responsible for the climate crisis, they must also do their part as an individual country—as all countries should—in remedial management according to UN standards of environmental law newly applied in the Daniel Billy et al. vs. Australia case.

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