



UNIVERSITÀ DEGLI STUDI
DI MILANO

United Nations Human Rights Commitee (HRC): the Torres Strait Islanders decision

28 October 2022
Università di Cagliari

Pierre Clément Mingozi
PhD student Università di Milano – Aix-Marseille
Université (CERIC)

OUTLINE

- 1) Setting the scene: a brief overview of the HRC
- 2) The Torres Straits Islanders communication
- 3) The facts as submitted by the applicants
- 4) State party's observations
- 5) Considerations of admissibility and merits by the HRC
- 6) Taking Stock and Prospects



1) SETTING THE SCENE: A BRIEF OVERVIEW OF THE HRC

The Charter of the United Nations (1945) proclaims that one of the purposes of the United Nations is to promote and encourage respect for human rights and fundamental freedoms for all → the Universal Declaration of Human Rights by the United Nations General Assembly in 1948: “*a common standard of achievement for all peoples in all nations*”.

1966: two great achievements:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Right (ICESCR)

Moreover,

5 other international conventions.

1) SETTING THE SCENE: A BRIEF OVERVIEW OF THE HRC

What is the Human Rights Committee?

The Human Rights Committee is the body of 18 independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties.

3 main types of matters considered by the HRC:

- 1) State party reports
- 2) General comments
- 3) Individual and inter-state complaints

2) THE TORRES STRAITS ISLANDERS COMMUNICATION

CCPR/C/135/D/3624/2019

Advance unedited version

Distr.: General
22 September 2022

Original: English

Human Rights Committee

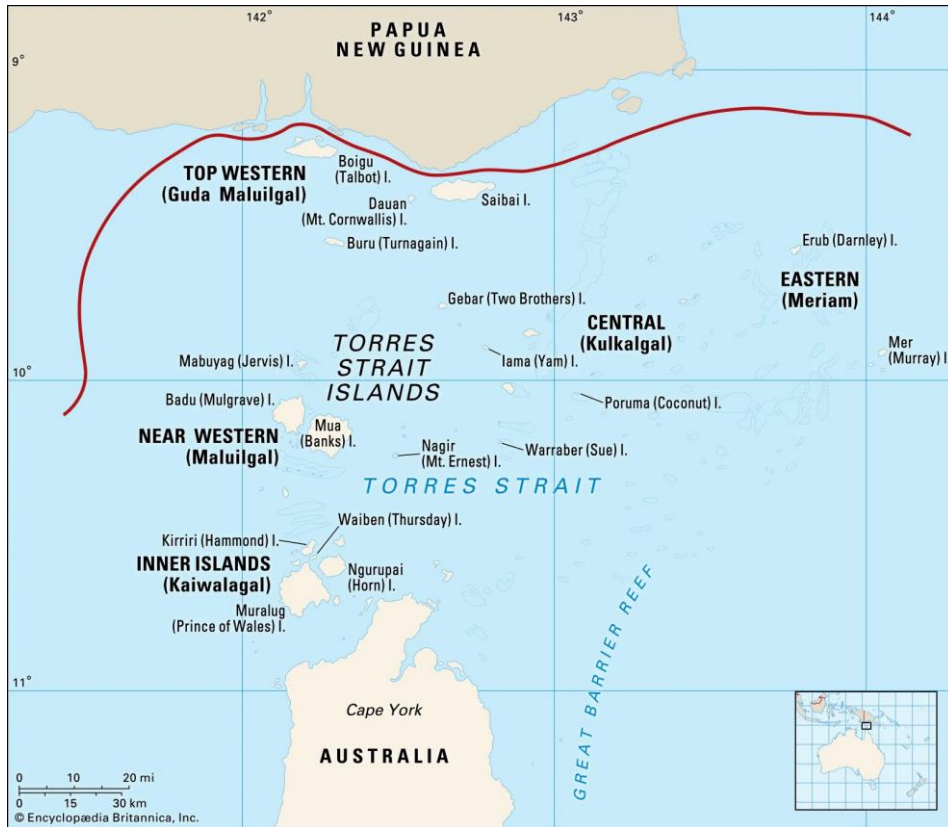
**Views adopted by the Committee under article 5 (4) of the
Optional Protocol, concerning communication No.
3624/2019******

Claim filed on May 13th, 2019
Decision on September 22nd, 2022



2) THE APPLICANTS

The Torres Strait Islands are a group of over 100 islands off the northern tip of Queensland, between Australia and Papua New Guinea. It is home to a diverse indigenous population comprised of over seven thousand people in 19 communities across 16 islands.



Torres Strait Islanders: indigenous Melanesian people of the Torres Strait Islands (Queensland, Australia) → Ethnically distinct from the Aboriginal people of the rest of Australia. Torres Strait Islanders living in Australia (nearly 28,000) than on low-lying islands (about 4,500). Each community is distinct, with their own traditions, laws, and customs. Two main Indigenous language groups, *Kalaw Lagaw Ya* and *Meriam Mir*.



2) THE TORRES STRAITS ISLANDERS COMMUNICATION

Alleged victims: the applicants i.e. Daniel Billy et. al. & 6 of their children.

Respondent: Australia

Legal framework:

- Competence: Optional Protocol to the International Covenant on Civil and Political Rights
- Merit: International Covenant on Civil and Political Rights (ICCPR)



3) THE FACTS AS SUBMITTED BY THE APPLICANTS

- **Climate change** & its huge impacts on the environment → community → traditional knowledge.
Sea level rise, floods, erosion, soil acidification → impacts on infrastructure, housing, land-based food production systems and marine industries causing health problems such as increased disease and heat-related illness.
- Victim status
- The State party has failed to implement an **adaptation programme** to ensure the long-term habitability of the islands. The State has also failed to **mitigate** the impact of climate change.
- + no available or effective **domestic remedies** to enforce their rights under articles 2, 6, 17, 24 and 27 of the Covenant.



4) STATE PARTY'S OBSERVATIONS

Admissibility:

- The communication is inadmissible.
- The applicants have not demonstrated their claim that they are victims of violations within the meaning of article 1 of the Optional Protocol + no evidence of imminent threats.
- No meaningful causation or connection between the alleged violations of their rights and the State party's measures or alleged failure to take measures.
- victim status → the applicants must show that an *act* or *omission* by the State party has already adversely affected their enjoyment of a Covenant right, or that such an effect is imminent. No evidence in the present case. (See *Teitiota v. New Zealand*).

Merit:

- 1) alleged failures to take mitigation measures: it is not possible to demonstrate a causal links between the State party's contribution to climate change, its efforts to address climate change, and the alleged effects of climate change on the enjoyment of the applicants' rights.
- 2) adaptation measures: the alleged adverse effects of climate change have yet to be suffered, if at all, by the applicants.

5) CONSIDERATION OF ADMISSIBILITY AND MERITS BY THE HRC

- **Admissibility**

→ art. 97 of its rules of procedure




→ article 5 (2) (b) of the Optional Protocol (exhaustion of local remedies)

→ victim status: in the present case “individual’s risk of being affected is more than a theoretical possibility” (par. 7.9).

YES, it is admissible !

5) CONSIDERATION OF ADMISSIBILITY AND MERITS BY THE HRC

- Merits

- **Article 6:** “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. 
- **Article 17 (1):** “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”. 
- **Article 27:** “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”. 
- No need to examine the applicants’ remaining claims under article 24 (1) of the Covenant i.e. rights of the child

Thus: pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the applicants with an effective remedy.

Accordingly...

State party is under an obligation to: provide adequate compensation, engage in meaningful consultations, to continue its implementation of measures necessary to secure the communities' safe existence on their respective islands and monitor and review the effectiveness of the measures implemented and resolve any deficiencies as soon as practicable.

- + to take steps to prevent similar violations in the future
- + the Committee wishes to receive from the State about the measures taken to give effect to the Committee's Views (180 days).

6) TACKLING STOCK AND PROSPECTS

“This **decision marks a significant development** as the Committee has created a pathway for individuals to assert claims where national systems have failed to take appropriate measures to protect those most vulnerable to the negative impacts of climate change on the enjoyment of their human rights” Prof. Hélène Tigroudja, Committee member.

- First legal action grounded in human rights brought by climate-vulnerable inhabitants of low-lying islands against a nation state.
- First time that indigenous peoples’ right to culture has been found to be at risk from climate impacts
- Australia’s poor climate record is a violation of the right to family life and right to culture under the ICCPR (no “drop in the ocean” argument anymore?)

But what about...

- 1) no violation of art. 6 of the Covenant → no “real and foreseeable risk” (the standard applied in Teitiota) This gave rise to a number of separate opinions. See. Arif Bulkan, Marcia V. J. Kran, and Vasilka Sancin Joint dissenting opinions !
- 2) No alleged violation of the rights of the six children under Article 24(1) (right of the child to protective measures): what about future generations?

Indeed...

Art. 6 ICCPR: right to life

- No violation of art. 6: right to life

Although the HRC confirmed (recalling its GC 36 (2018)) that «the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life” (par. 8.3).

... in the present case:

- 1) No indication by the applicants that they have faced or presently face adverse impacts to their own health or a real and foreseeable risk: applicants’ claims under article 6 of the Covenant mainly relate to their ability to maintain their culture, which falls under the scope of article 27 of the Covenant and not article 6.
- 2) Adaptation and mitigation measures mentioned by the State party are taken into consideration e.g. Torres Strait Seawalls Program (2019-23).

Art. 24(1) ICCPR: right of the child

- The HRC having found a violation of articles 17 and 27, the Committee ... does not deem it necessary to examine the authors' remaining claims under article 24 (1) of the Covenant !

Thank you for your attention!

For questions:
pierremingozzi@unimi.it