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FORGING A PATH FORWARD: SAFEGUARDING INDIGENOUS COMMUNITIES FROM THE IMPACT OF CLIMATE CHANGE

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ABSTRACT:

This article examines the effects of 'climate change' on indigenous communities and the safeguarding of their rights, with a focus on the "Daniel Billy et.al v. Australia" case 'climate change' poses severe threats to 'indigenous peoples'' livelihoods and traditions, yet they also contribute significantly to mitigating its impacts. Utilizing normative legal research methods, including statutory and case law analysis, it evaluates the protection of indigenous rights by the UNHRC. The analysis highlights the significance of the "UNHRC"'s decision in "Daniel Billy et.al v. Australia", which represents a milestone in international law regarding 'climate change' 's repercussions on human rights. While non-binding, the ruling grants access and establishes a crucial precedent for enforcing indigenous claims against states failing to safeguard their rights. It has influenced national legal frameworks and guided interpretations of indigenous rights. Considering subsequent practices in applying human rights treaties and utilizing "UNHRC" rulings as interpretive aids are essential. This analysis aims to deepen comprehension of the challenges and prospects in safeguarding the rights of climate-affected indigenous populations on the global stage.

Keywords; *Climate Change; Indigenous People; Treaty Body; Human Rights.*

ABSTRAK:

Artikel ini mengkaji dampak perubahan iklim terhadap komunitas adat dan perlindungan hak-hak mereka, dengan fokus pada kasus "Daniel Billy et.al v. Australia." Perubahan iklim menimbulkan ancaman serius terhadap mata pencaharian dan tradisi masyarakat adat, namun mereka juga berkontribusi signifikan dalam mengurangi dampaknya. Menggunakan metode penelitian hukum normatif, termasuk analisis undang-undang dan kasus hukum, artikel ini mengevaluasi perlindungan hak-hak adat oleh UNHRC. Artikel ini menyoroti pentingnya keputusan UNHRC dalam kasus "Daniel Billy et.al v. Australia", yang merupakan tonggak dalam hukum internasional terkait dampak perubahan iklim terhadap hak asasi manusia. Meskipun tidak mengikat secara hukum, keputusan tersebut memberikan akses dan menetapkan preseden penting untuk menegakkan klaim adat terhadap negara yang gagal melindungi hak-hak mereka. Keputusan ini telah mempengaruhi kerangka hukum nasional dan membimbing interpretasi hak-hak adat. Mempertimbangkan praktik selanjutnya dalam penerapan perjanjian hak asasi manusia dan menggunakan putusan UNHRC sebagai alat interpretasi adalah hal yang penting. Artikel ini bertujuan untuk memperdalam pemahaman tentang tantangan dan peluang dalam melindungi hak-hak masyarakat adat yang terdampak oleh perubahan iklim di panggung global.

Kata Kunci; *Perubahan Iklim; Masyarakat Adat; Badan Perjanjian; Hak Asasi Manusia.*

A. Introduction

'Climate change' has become a global challenge resulting in serious impacts on various aspects of life, including the rights of 'indigenous peoples' who are directly linked to the natural environment and the sustainability of their lives. 'Climate change' has a major influence on the development of international law due to its comprehensive impact on human life.[1] Although 'climate change' has a comprehensive impact, there are groups that are disproportionately affected, one of which is 'indigenous peoples'.[2] The impacts felt by 'indigenous peoples' are diverse, encompassing both material and non-material losses. 'indigenous peoples' are at risk of losing their distinctive cultural practices, and with their dependence on ecosystems, they are vulnerable to the effects of 'climate change' and extreme weather events, such as floods, droughts, heat waves, forest fires and cyclones. Some of the most affected areas include small islands, high altitudes, humid tropics, coasts, deserts and polar regions.[3] Global warming also increases disease risks, alters animal migration pathways, reduces biodiversity, causes saltwater intrusion into freshwater, damages crops, and generates uncertainty in food security.[4]

However, 'indigenous peoples' are not merely victims of climate change; they also play a key role in addressing its impacts.[5] Representing 5,000 different cultures and speaking around 7,000 languages, indigenous peoples hold invaluable traditional knowledge that complements scientific approaches to climate adaptation.[6]. Despite making up only 5% of the global population, they manage territories that host nearly 80% of the Earth's biodiversity[7], underscoring their critical role in maintaining ecosystems and addressing climate challenges. This dual reality—as both vulnerable communities and active

[1] Bernadinus Steni & Mumu Muhajir, *Hukum, Perubahan Iklim Dan REDD* (Jakarta: HuMa, 2010).
[2] Inter-govenmental Panel on Climate Change, "Climate Change 2023 Synthesis Report Summary for Policymakers of the IPCC Sixth Assessment Report.," 2023.
[3] United Nations General Assembly, "Resolution Adopted by the General Assembly A/RES/72/155," 2017.
[4] United Nations General Assembly.
[5] United Nations General Assembly.
[6] Maria Antonia, "Climate Change and Indigenous Groups: The Rise of Indigenous Voices in Climate Litigation," E Public Law Journal 9, no. 3 (2022): 213.
[7] Linda Etchart, "The Role of Indigenous Peoples in Combating Climate Change," *Palgrave Communications*, 2017, 2.

contributors—highlights the need for robust international legal frameworks to protect their rights while leveraging their unique capabilities.[8]

Efforts to protect the rights of indigenous peoples in the face of 'climate change' have become increasingly prominent on the global stage, with international bodies such as the "United Nations Human Rights Committee" ("**UNHRC**") playing a pivotal role in this endeavor. Within this context, the case of "*Daniel Billy et.al v. Australia*" stands out as a significant focal point for understanding how the UNHRC addresses the complex intersection of indigenous rights and 'climate change' impacts.

Examining the effectiveness of international law in safeguarding the rights of indigenous peoples is essential to evaluating the efficacy of institutions like the "UNHRC". By analyzing "*Daniel Billy et.al v. Australia*" from an international law perspective, we gain valuable insights into how well the "UNHRC" navigates the intricate legal terrain surrounding indigenous rights in the context of climate change. Moreover, this analysis provides an opportunity to assess the "UNHRC"'s role in shaping and advancing international legal norms that protect indigenous communities facing environmental challenges.

Through a thorough examination of this case, this article aims to uncover the nuances of the challenges faced by indigenous peoples affected by 'climate change' and the extent to which the "UNHRC" effectively addresses these issues. By delving into the legal intricacies and implications of "*Daniel Billy et.al v. Australia*," we seek to shed light on the broader implications for global HR protection mechanisms and identify areas for improvement in safeguarding the rights of indigenous communities in the face of climate-related threats.

Ultimately, this comprehensive exploration of "*Daniel Billy et.al v. Australia*" within the framework of international law aims to contribute to a deeper understanding of the complexities inherent in protecting indigenous rights in the context of climate change. By critically analyzing the UNHRC's responses to these challenges, we endeavor to pave the way for more robust and inclusive legal frameworks that uphold the rights and dignity of indigenous peoples worldwide amidst the growing environmental crisis.

[8] United Nations General Assembly, "Resolution Adopted by the General Assembly A/RES/72/155."

B. Research Method

The research method that will be used in this journal is normative legal research with the aim of finding applicable positive legal principles or doctrines.[9] This research is prescriptive and applied, with the aim of finding positive legal principles or doctrines that apply and providing solutions to the legal issues studied.[10]

The research approach used involves a statutory approach and a case approach. The statutory approach is carried out by examining the rules in applicable international law to assess the role of the UNHRC and its mechanism in protecting human rights in relation to climate change.[11] The case approach is done by examining the case of "*Daniel Billy et.al v. Australia*" and related cases.[12] The legal material collection technique used is a literature study or library research. Literature studies are conducted by reviewing and studying laws and regulations, books, reports, or other research results that are relevant to the problem under this study.[13]

C. Discussion

1. "UNHRC" as Treaty Body

The UN' treaty bodies represent a crucial component of the international HR framework, operating alongside the HR bodies established under the UN Charter. Comprising independent experts, these treaty bodies engage in two primary activities that serve to uphold and advance HR globally. Firstly, states that are party to specific HR treaties are mandated to submit periodic reports detailing the extent to which their domestic laws, policies, and practices align with the provisions outlined in these treaties. This reporting mechanism serves as a means of monitoring state compliance with their treaty obligations, facilitating transparency, accountability, and the exchange of best practices in HR implementation.

Secondly, the treaty bodies administer individual communication procedures, which represent a unique avenue for addressing alleged HR violations at the individual level.[14] Unlike the periodic reporting process, the communications procedure is optional and allows

[9] Bambang Sunggono, *Metodologi Penelitian Hukum*, 13th ed. (Jakarta: Rajawali Press, 2012).
[10] Peter Mahmud Marzuki, Penelitian Hukum.
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid*.
[14] Open Society Justice Initiative, "Implementing International and Regional Human Rights Decisions From Judgment to Justice."

individuals who claim to be victims of HR abuses within the jurisdiction of a ratifying state to submit complaints directly to the relevant treaty body. Through this mechanism, individuals are afforded the opportunity to seek redress for violations of their rights in a quasi-judicial setting, enhancing access to justice and accountability mechanisms within the international HR framework.

Furthermore, treaty bodies regularly publish general comments, also known as "general recommendations," which serve to elucidate the content of treaty provisions, provide procedural guidance to states and stakeholders, and clarify the scope of state obligations under international HR law.[15] These general comments play a vital role in interpreting and applying treaty provisions, fostering a common understanding of HR standards, and informing the development of domestic legislation and policies aimed at promoting and protecting HR.

In essence, the work of the UN' treaty bodies is integral to the promotion and protection of HR worldwide. Through their dual functions of monitoring state compliance and facilitating individual complaints, as well as their role in providing interpretative guidance through general comments, treaty bodies contribute significantly to the realization of the universal HR principles enshrined in international law.

Each of these bodies is composed of 10 to 25 experts, working in an independent capacity: they are impartial, objective, and provide judicial oversight of HR treaties (Principi, 2020).[16] Currently, there are five treaty bodies, or HRCs, competent to receive individual communications or HRCs, competent to receive individual communications: *"the Human Rights Committee"; "the HRC Against Torture" ;"the HRC on the Elimination of Racial Discrimination" ; "the Committee on the Elimination of Discrimination Against Women", and "the Committee on the Right of Persons with Disabilities".*

In the case of HRC only countries that have ratified "the Optional Protocols of the International Covenant on Civil and Political Rights" can file individual communications. Among the various treaty bodies established by the United Nations, HRC, inaugurated in 1977, stands out as a pioneer in several respects within the realm of HR protection and accountability. Notably, the HRC has played a vital role in adjudicating individual communications, rendering decisions on a significant portion of such cases to date. This

[15] Open Society Justice Initiative.

[16] Kate Fox Principi, "Implementation of UN Treaty Body Decisions: A Brief Insight for Practitioners," *Journal of Human Rights Practice* 12, no. 1 (2020): 185–92, https://doi.org/10.1093/JHUMAN/HUAA013.

function underscores the HRC's commitment to addressing alleged HR violations at the individual level and providing recourse to victims seeking justice and redress.

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One of the distinctive features of the HRC's approach is its proactive stance towards Overseeing the execution of its decisions, commonly referred to as "Views" by state parties. This process involves the appointment of a “Special Rapporteur for the Follow-Up of Views”, tasked with overseeing the execution of the HRC's rulings and ensuring atate parties undertake suitable actions to address HR violations identified by the HRC.[17] This innovative mechanism has set a precedent for other UN treaty bodies, inspiring similar follow-up initiatives aimed at enhancing the effectiveness and impact of their decisions.

Central to the functioning of the HRC's individual communications procedure is the principle of exhaustion of domestic remedies, enshrined in Art. 2 of the “ICCPR”. According to this principle, individuals lodging complaints with the HRC must first pursue all available avenues for seeking accountability or redress within their national legal systems before turning to international mechanisms. This requirement reflects the complementary nature of international and national HR mechanisms, emphasizing the importance of domestic institutions in addressing HR violations and reserving international intervention for cases where national remedies have been exhausted or proven ineffective.

Thus, before submitting a case to the HRC, individuals are obliged to navigate through the complexities of their domestic legal systems, exhausting all possible remedies and appeals processes. Only when domestic avenues have been fully explored and deemed inadequate or inaccessible can individuals seek recourse through the HRC's individual communications procedure. By adhering to this procedural requirement, the HRC ensures that its intervention remains subsidiary to national legal frameworks and fosters a collaborative approach to HR protection between international and domestic institutions.

[17] Open Society Justice Initiative, “Implementing International and Regional Human Rights Decisions From Judgment to Justice.”

2. Case Study "*Daniel Billy et.al v. Australia*"

a. *The Background and Basis of Torret Island 'indigenous peoples'' Demand*

In 2019, Torres Strait Islander indigenous groups living on the islands of 'Boigu, Masig, Warraber and Poruma', filed a lawsuit against Australia at the "UNHRC" forum. They face significant vulnerability to the impacts of 'climate change'. [18] The Torres Strait Regional Authority ("TSRA") recognizes that 'climate change' poses a threat to the islands, threatening both the physical environment and the unique culture of the Torres Strait Islander people. Sea level rise, increased temperatures and ocean acidification have caused flooding, erosion, coral bleaching and loss of marine species, affecting the traditional lifestyles of the claimants.[19]

The impacts of 'climate change' in the Torres Strait region are profound and multifaceted, posing significant challenges to the communities inhabiting these vulnerable islands. The recent reports by 'TSRA' highlight the escalating consequences of rising sea levels, which have manifested in annual flooding in Boigu and severe erosion in Masig. These environmental shifts have not only damaged infrastructure but also displaced populations, exacerbating the already precarious situation.

The effects of 'climate change are not limited to immediate physical damages; they extend to altering the very fabric of daily life for the residents of the Torres Strait. Erosion in Warraber and Poruma has irrevocably changed the landscape, rendering traditional garden TSRApatterns disrupt established livelihoods, challenging the predictability of seasons and winds upon which many rely.

Despite the urgency of the situation, the response from governmental authorities has been woefully inadequate. Requests for assistance and funding to implement adaptation measures have gone largely unanswered, leaving communities to fend for themselves in the face of mounting environmental pressures. Even initiatives outlined in the "Torres Strait Regional Adaptation and Resilience Plan 2016-21" remain unfunded, further highlighting the disconnect between policy and action.

Compounding these issues is the failure of the state to address the root causes of climate change. Australia's low ranking in greenhouse gas emissions reductions and active promotion of fossil fuel extraction demonstrate a fundamental disregard for the long-term

[18] Human Rights Committee, Views adopted by the Committee under article 5 (4) of theOptional Protocol, concerning communication No. 3624/2019.

[19] *Ibid*.

well-being of its citizens and the global community. This failure to mitigate the impacts of 'climate change' not only undermines the rights of those directly affected but also sets a dangerous precedent for future environmental policy.

In seeking redress for these grievances, the Plaintiffs assert that domestic remedies are insufficient to safeguard their rights as outlined in various Art. of the "ICCPR". Despite the recognition of these rights within international frameworks, they are not adequately enshrined within Australian law, leaving affected communities without recourse. The precedent set by the 'High Court of Australia' further compounds this issue, absolving state entities of responsibility for environmental protection through regulatory measures.

Given the inadequacy of domestic avenues for justice, the Plaintiffs argue for the necessity of international intervention to address HR infringements resulting from inadequate responses to climate change. By highlighting the interconnectedness of 'climate change' and HR, they call for a coordinated global effort to hold states accountable for their actions—or inactions—in the face of this existential threat.

In essence, the plight of the Torres Strait communities serves as a stark reminder of the urgent need for proactive measures to address the impacts of 'climate change' and uphold the rights of vulnerable populations. Without decisive action at both the national and international levels, the cycle of environmental degradation and human suffering will only continue to worsen.

b. ***Australian Government Argument***

Australia's contention that it is not feasible to attribute responsibility for 'climate change' to the state within the framework of HR legislation underscores a complex legal debate. From a legal perspective, establishing causal links between the state's actions contributing to climate change, the purported impacts of 'climate change', and the rights of the Plaintiffs presents significant challenges. This contention forms a crucial component of the ongoing legal discourse surrounding 'climate change' litigation and the intersection of HR law.

In "*Daniel Billy et.al v. Australia*," the Australian side presented detailed arguments regarding the adaptation and mitigation measures undertaken in response to 'climate change' in the Torres Strait region. Central to their defense was the role of the 'TSRA' in coordinating 'climate change' programs and policies aimed at benefiting local communities. The establishment of special committees and the implementation of strategic plans

underscore Australia's commitment to addressing climate-related challenges in the region. Furthermore, legislative measures aimed at protecting the survival and cultural identity of Torres Strait Islanders, as articulated under Art. 6(1) and 27 of the International Covenant on Civil and Political Rights (ICCPR), highlight the multifaceted approach adopted by the Australian government.

Australia's rejection of the Plaintiffs' claims regarding speculation of future relocation underscores the nuanced interpretation of HR principles. The assertion that prohibited interference must be real and effective under Art. 27 of the ICCPR reflects the intricate legal standards applied in evaluating claims of rights violations. Similarly, Australia's defense against alleged violations of Art. 24(1) of the ICCPR emphasizes the need for concrete evidence demonstrating non-compliance with treaty obligations. This legal scrutiny highlights the complexities involved in establishing state accountability for 'climate change' impacts within the framework of international HR law.

Moreover, Australia's arguments concerning the protection of indigenous rights under Art. 27 of the ICCPR and the broader implications of 'climate change' on familial and community structures offer insights into the evolving landscape of HR jurisprudence. The delineation of rights and obligations under international treaties necessitates a nuanced understanding of the intersecting factors at play, including environmental degradation and cultural preservation.

In conclusion, the legal arguments presented by Australia in "*Daniel Billy et.al v. Australia*" underscore the intricate balance between state responsibilities, indigenous rights, and 'climate change' mitigation efforts. The case serves as a poignant reminder of the complexities inherent in addressing climate-related challenges within the framework of international HR law, and underscores the need for continued dialogue and cooperation to ensure the protection of vulnerable communities in the face of environmental adversity.

c. *UNHRC's View*

The HRC considered each Art. of the Plaintiff's claim.

1. Art. 6 "ICCPR"

Art. 6 of the "ICCPR" provides as follows:

1. "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.

2. ..."

This Art. deals with the ‘right to life’ and the protection of that right under the law of nations. The Plaintiffs argue that the Australian Government failed to prevent the predictable loss of life due to ‘climate change’. That the State did not take steps to adapt, mitigate, and fulfill the Plaintiffs' ‘right to a healthy environment’.

The HRC acknowledges that both itself and regional HR courts have established that environmental degradation can undermine the effective enjoyment of the ‘right to life’, and that severe environmental degradation can pose risks to individuals' well-being and result in violations of the ‘right to life’. In this particular instance, the HRC observes that the ‘TSRA’, a government agency, recognized in its report titled "Torres Strait climate change Strategy 2014-18" the vulnerability of the Torres Strait Islands to significant and adverse impacts of ‘climate change’ affecting the ecosystems and livelihoods of the Islanders.

Additionally, the HRC takes note of the Claimants' assertions regarding their islands (paragraphs 2.3-2.5 and 5.2), citing issues such as inundation, breaches of sea walls, coral bleaching, rising temperatures, erosion, decline in the number of coconut palms and marine life used for sustenance and cultural practices, as well as the scarcity of rainfall and its repercussions on agriculture.

The HRC recognizes that in certain regions, the absence of alternative means of livelihood may render individuals more susceptible to the negative effects of ‘climate change’. While acknowledging the Plaintiffs' argument that the well-being of their islands is intimately tied to their own lives, the HRC observes that although the Plaintiffs express concerns about the insecurity stemming from unpredictable changes in seasonal weather patterns, shifts in tide timings, and the depletion of significant traditional and cultural food sources, they have not substantiated experiencing or currently facing adverse effects on their health, or a tangible and foreseeable risk of exposure to situations of physical harm or extreme uncertainty jeopardizing their ‘right to life’, including the ‘right to life’ with dignity. Additionally, the HRC remarks that the Plaintiffs' assertions under Art. 6 of the Pact primarily pertain to their capacity to preserve their culture, a matter falling under the purview of Art. 27 of the Pact.

The HRC recognizes the Claimants' assertion that their islands are projected to become uninhabitable within 10-15 years due to the effects of ‘climate change’, which could potentially infringe upon individuals' rights under Art. 6 of the “ICCPR”. Nonetheless, the HRC is unable to determine that the State's actions are inadequate, considering the information furnished by the State indicating its implementation of adaptation measures

aimed at mitigating existing vulnerabilities and enhancing resilience to 'climate change' - induced damages. These measures include infrastructure development initiatives targeting coastal erosion.

2. Art. 17 "ICCPR"

Art. 17 of the "ICCPR" provides as follows:

> *"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.*
> *2. Everyone has the right to the protection of the law against such interference or attacks."*

The Plaintiffs argue that 'climate change' has affected their personal, family, and household lives causing them to face the possibility of leaving their homes within their lifetimes. With regard to the Plaintiffs' claim of violation of Art. 17 of the "ICCPR", the HRC recognizes the Plaintiffs' argument that 'climate change' is affecting their personal, family and home lives, forcing them to face the potential of leaving their homes. The erosion of their island, accompanied by incidents of flooding, created significant distress among the Plaintiffs, which was further emphasized by the destruction of Stanley Marama's (one of the Plaintiffs) home in 2010 due to flooding.

In addition, the HRC emphasizes the obligation of States Parties to prevent interference with the privacy, family or home of individuals, which should not be understood as a restriction on arbitrary restraint, but also requires States Parties to take the necessary positive steps to ensure the effective exercise of the rights under Art. 17 of the "ICCPR". This principle becomes particularly relevant in cases where environmental damage threatens those fundamental aspects of life. The Plaintiffs' traditional indigenous lifestyles, which are inextricably linked to their territory, fall within the scope of protection of Art. 17 of the "ICCPR".

On the other hand, the HRC recognizes the extensive measures presented bythe state party to address 'climate change' impacts, including the "Torres Strait Regional Adaptation and Resilience Plan", community engagement, heat mapping, installation of monitoring sites, financial commitments, emission reduction initiatives, and various other adaptation projects. However, the HRC notes the absence of a specific response to the Claimants' claims regarding the demand for adaptation measures, particularly the enhancement of sea walls.

While recognizing the ongoing construction of sea walls, the HRC expressed concern over the State party's failure to explain the delay in implementing these measures on the

islands inhabited by the Plaintiffs. The HRC emphasizes the importance of recognizing and addressing the concrete impacts on the Plaintiffs' lives, including the reduction of marine resources, crop losses, and the adverse effects of flooding on their homes and cultural practices.

Thus, the HRC concludes that the State party, by not adequately fulfilling its positive obligation to implement adaptation measures that effectively safeguard the home, private life, and family of the Plaintiffs, has violated their rights under Art. 17 of the Pact. The HRC highlights the severity and visibility of these violations and emphasizes the adverse consequences on the well-being of individuals when environmental degradation directly affects their fundamental rights.

3. Art. 27 "ICCPR"

Art. 27 of the "ICCPR" provides as follows:

> *"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 practice their own religion, or to use their own language."*

The Plaintiffs contend that the viability of their minority culture hinges on the preservation and continued existence of their island, as well as the health of the surrounding marine ecosystem. They argue that 'climate change' poses a current threat to their traditional way of life and presents the looming risk of displacing them from their islands. Such displacement, they argue, would inflict severe and irreversible damage on their capacity to engage in and derive enjoyment from their cultural practices.

The HRC affirms the significance of Art. 27, which recognizes and establishes different rights for individuals belonging to indigenous groups, in addition to the rights granted to all individuals under the "ICCPR". In the context of 'indigenous peoples', cultural enjoyment is closely linked to territories and traditional activities, such as fishing or hunting, with the aim of ensuring the survival and development of cultural identity.

Furthermore, the committee (herenafter, "HRC") underscores that Art. 27, interpreted in accordance with the "United Nations Declaration on the Rights of 'indigenous peoples'", confirms the inherent right of 'indigenous peoples' to access territories and natural resources vital for the preservation of life and cultural identity. Although the protected rights are individualistic, they are contingent upon the capacity of minority groups to uphold their cultural heritage, language, or religious practices.

The Plaintiffs claim that their ability to sustain their culture has been compromised by the impacts of 'climate change' on the islands and surrounding seas, which are damaging traditional lands, natural resources, and cultural practices. The HRC notes the integral link between the health of their lands and seas and cultural integrity. The failure of the authorities to rebut arguments about the impracticability of practicing culture on mainland Australia is of significant note.

The HRC concluded that the climate impacts described by the Plaintiffs reflected a foreseeable threat, which was recognized by the authorities, and the delay in the construction of the sea walls demonstrated an inadequate response. The authorities' failure to adopt timely adaptation measures, to protect the Plaintiffs' collective ability to maintain a traditional lifestyle and transmit their culture to future generations, amounted to a breach of the positive obligation to protect minority cultures.

4. Recovery Mechanism

Based on the above considerations, the HRC finds a violation of the Plaintiffs' rights under Art. 17 and 27 of the Pact. Along with these violations, the HRC does not consider it necessary to examine the remaining claims under Art. 24(1). Under Art. 2(3)(a), the authorities are obliged to provide an effective remedy, including full reparation for the harm suffered by the Plaintiffs. This includes adequate compensation, meaningful consultation, ongoing implementation of measures necessary for public safety, monitoring and reviewing the effectiveness of measures, and preventing similar violations in the future.

d. Analysis the Impact of "UNHRC' Decision on the Protection of 'indigenous people' Affected by 'climate change'

The decision in "*Daniel Billy et.al v. Australia*" marks an important step in international law regarding the impacts of 'climate change' on HR. The "*Daniel Billy et.al v. Australia*" case is the first "UNHRC" case to find a violation of the "ICCPR" based on ''climate change inaction'. [20] This landmark decision provides a way for individuals, especially 'indigenous peoples', to enforce claims when national systems fail to take

[20] UN Environment Programme, *Global Climate Litigation Report: 2023 Status Review* (United Nations Environment Programme, 2023), https://doi.org/10.59117/20.500.11822/43008.

appropriate steps to protect the vulnerable.[21] Not only does it provide access, but it sets a valuable precedent in assessing state responsibility in relation to the environment.

Rights-based challenges are not new, especially the 'right to a healthy environment'. As recognized by the HRC and taken into consideration in the case of "*Daniel Billy et.al v. Australia*", the HRC ultimately found a violation of Art. 17 based on the State's failure to fulfill its positive obligations to protect shelter, private life, and family and emphasized the adverse consequences of environmental degradation, which is closely related to the 'right to a healthy environment'.

The decision of the "UNHRC" as a treaty body is not only a remedy and correction for aggrieved individuals and the State's need to ensure that similar violations will not occur in the future, but also an influence on the national legal order to give proper meaning to the broadly formulated rights and obligations of a HR rights treaty.[22] In several domestic court cases, UNHRC decisions have been utilized as guidance or interpretative tools.[23] These decisions may serve as a basis for judicial dialogue, influence legislative processes, or be considered in judgments, as exemplified in Gómez Vázquez v. Spain. Their impact extends across legal and policy frameworks, reflecting their significance in shaping judicial and legislative outcomes.

It should be noted that the nature of "UNHRC" decisions is not legally binding. However, States remain obligated to remove barriers in their national legal systems that impede the implementation of "UNHRC" Decisions.[24] This is exactly the case as the impacts of 'climate change' on the Torres Strait Islands are currently being heard in the Australian courts in a Federal Court class action brought by '[Pabai Pabai and Guy Paul Kabai'[on behalf of all people of Torres Strait Island descent.[25] The case is ongoing and the Federal Court Judgment will show the extent to which the "UNHRC" Decision in "*Daniel Billy et.al v. Australia*" protects 'indigenous peoples' affected by 'climate change'.

A similar lawsuit, basing one of its arguments on the 'right to a healthy environment' was also brought in the 'Dutch Supreme Court', in the case "*Urgenda Foundation v State of*

[21] Human Rights Committee, Views adopted by the Committee under article 5 (4) of theOptional Protocol, concerning communication No.3624/2019.

[22] Rosanne van Alebeek & André Nollkaemper, "The Legal Status of Deision by Human Rights Treaty Bodies in National Law," *ACIL Research Paper No 2011-02*, 2011, 79.

[23] International Law Association, "International Human Rights Law and Practice", (Berlin Conference: 2004)

[24] *Ibid.*

[25] Brett Spiegel, Phi Finney, and Mcdonald Tel, Pabai Pabai and Guy Paul Kabai v. Commonwealth of Australia (2021).

the Netherlands" "HAZA C/09/00456689".[26], where the Judges found that the Netherlands had violated two Art. of "The European Convention on the Protection of Human Rights and Fundamental Freedoms" based on 'climate inaction': 'the right to private life', family life, residence, and correspondence, and the 'right to life'.

A claim based on the ''right to a healthy environment'' is a legal argument that provides an opportunity for 'indigenous peoples' to protect their rights from the impacts of 'climate change'. The 'right to a healthy environment' is a HR that refers to the right of individuals and communities to live in an environment that supports their health and well-being. This right is recognized in Principle 1 of the "Rio Declaration" which states that "people are central to sustainable development. They have the right to a healthy and productive life in harmony with nature." In addition, UNHRC Resolutions 48/13 also recognize the 'right to a healthy environment' as a HR.[27]

In addition, the HRC in "*Daniel Billy et.al v. Australia*" emphasized the continuity of the interpretation of Art. 27 of the "ICCPR" in line with one of the legal instruments protecting the rights of 'indigenous peoples', namely the "United Nations Declaration on the Rights of 'indigenous peoples'. The HRC affirmed the inalienable right of 'indigenous peoples' to enjoy territories and natural resources essential to the sustainability of life and cultural identity. In this regard, it should be underlined that the nature of the outcome of the "UNHRC""s decisions are not legally binding.[28] However, "UNHRC" decisions can be used as a source of international law if based on the following points:

1. "Subsequent practice in the application of the treaty"

"UNHRC" decisions can be a source of interpretation of international treaties. This principle refers to Art. 31(3)(b) of the "Vienna Convention on the Law of Treaties" ("VCLT") which states that:

> *"subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation".*

While treaty bodies are the primary interpreters of HR treaties, they are also the primary generators of "subsequent practice" in the interpretation of Art. 31(3)(b) of the

[26] Urgenda-Foundation-v-State-of-Netherlands (n.d.).

[27] Rosanne van Alebeek & André Nollkaemper, "The Legal Status of Deision by Human Rights Treaty Bodies in National Law."

[28] Office Of The United Nations High Commissioner For Human Rights, "Human Rights Council," n.d.

"VCLT".[29] A significant amount of agreement in state practice is taken as an indication of state agreement on a particular interpretation of a right. "Subsequent practice" is understood as the realization of the right by states and their participation in monitoring mechanisms, where they have the opportunity to express their views on the interpretation of a treaty by HRC.

In practice, states rarely present their own interpretations of specific rights. Generally, they refer in their reports to the interpretations offered by the treaty bodies in the General Commentary, reporting guidelines, and questions put to them. In doing so, they indirectly endorse the treaty body's view. In such cases, the treaty body's interpretation and the fact that it is accepted and shared by states shapes subsequent practice.[30] Treaty bodies serve as pivotal mechanisms for conducting a comprehensive review of national compliance with the treaties they oversee, functioning through a meticulous country-by-country assessment process. This scrutiny is predicated upon reports periodically submitted by state parties, as mandated by treaty provisions. Initially, states are obliged to furnish a report approximately within a year of acceding to a treaty, followed by subsequent periodic reports typically every 4-5 years.[31]

In addition to government reports, treaty bodies draw upon a diverse array of sources for information, including inputs from non-governmental organizations, UN agencies, other intergovernmental bodies, academic institutions, and media outlets. During regular sessions, Human Rights Committees (HRCs) engage in what is termed as "constructive dialogue" with government representatives while scrutinizing country reports. This characterization underscores the essence of the process: it is envisaged as a dialogue aimed at eliciting cooperation rather than a formal adjudicative proceeding resembling a court hearing.

Crucially, the mandate of treaty bodies transcends mere adjudication, emphasizing persuasion and advocacy as central tenets of their role. Subsequently, HRCs articulate their concerns and recommendations through "observations," wherein they evaluate the extent to which the state in question has fulfilled its treaty obligations, contextualizing these assessments within the unique circumstances prevailing in that country. These "Concluding Observations" epitomize a consensus on the interpretation and application of a treaty's

[29] Kerstin Mechlem, "Treaty Bodies and the Interpretation of Human Rights Interpretation of Human Rights," *Vanderbilt Journal of Transnational Law*, vol. 42, 2009, https://scholarship.law.vanderbilt.edu/vjtl/vol42/iss3/4.

[30] *Ibid*.

[31] United Nations Human Rights Office of High Commissioner, "The United Nations Human Rights Treaty System Facts Sheet No. 30" (New York and Geneva, 2012).

provisions vis-à-vis a particular national context. Typically, they encompass introductory remarks followed by delineated sections addressing positive aspects, concerns, and recommendations tailored to the specific country under review. Nevertheless, owing to the inherent constraints of time allocated to each country, the concluding observations often remain somewhat generalized, and their immediate legal impact is somewhat limited and circumscribed.

In conclusion, while treaty bodies play an indispensable role in fostering dialogue and promoting compliance with international HR norms, the practical utility of their pronouncements lies in their capacity to catalyze incremental change over time rather than effecting immediate and transformative legal outcomes. Thus, the process of country review underscores a nuanced interplay between persuasion, dialogue, and incremental normative change aimed at advancing the overarching objectives of HR protection on a global scale.

2. *"Subsidiary or supplementary means of interpretation"*

"UNHRC" decisions represent a crucial source of international law, as delineated in Art. 38(1)(d) of the International Court of Justice (ICJ) Statute, which ruled:

> *"judicial decisions and the teachings of the most highly qualified publicists of the various nations" as "subsidiary means for the determination of the rules of law."*

In the specific context of treaty interpretation, jurisprudence and academic literature assume the role of 'supplementary means of interpretation,' particularly within the framework of Art. 32 of the Vienna Convention on the Law of Treaties (VCLT). This provision grants leeway to consider expert opinion when deciphering the provisions of a treaty.[32] Notably, the legal mechanisms outlined in Art. 38(1)(d) of the ICJ Statute and Art. 32 of the VCLT diverge from the stipulations of Art. 31(3)(b) of the VCLT.

While Art. 31(3)(b) of the VCLT mandates the consideration of subsequent practice in treaty interpretation, Art. 38(1)(d) of the ICJ Statute and Art. 32 of the VCLT merely provide avenues for supplementary means of interpretation. Consequently, "UNHRC" case law assumes significance as a source of interpretation, enriching the discourse surrounding treaty interpretation and application.[33]

The utilization of "UNHRC" decisions as a source of international law underscores the dynamic nature of legal interpretation, wherein judicial decisions and scholarly insights

[32] Rosanne van Alebeek & André Nollkaemper, "The Legal Status of Deision by Human Rights Treaty Bodies in National Law."

[33] *Ibid*.

serve as invaluable tools for elucidating the contours of legal norms and principles. By incorporating diverse perspectives and expert analyses, the interpretative process is enriched, fostering a nuanced understanding of the complex legal issues at hand. Thus, "UNHRC" decisions not only contribute to the development of international law but also exemplify the collaborative endeavor to uphold the principles of justice, equality, and HR on a global scale.

D. Conclusion

The decision in "*Daniel Billy et.al v. Australia*" marks an important step in international law regarding the impacts of 'climate change' on HR, particularly the rights of 'indigenous peoples'. The decision sets a valuable precedent in assessing state responsibility in relation to the environment and provides access for individuals, particularly 'indigenous peoples', to enforce claims when national systems fail to protect the vulnerable. Although this decision is not legally binding, states still have an obligation to remove barriers in their national legal systems that impede the implementation of the "UNHRC" Decision.

In the context of HR treaty interpretation, "UNHRC" decisions can also be an important source of interpretation, both through the interpretation of international treaties and as "subsequent practice" reflecting state agreement on a particular interpretation of a right. In addition, it can also serve as a "supplementary means of interpretation" in accordance with Art. 32 of the "VCLT", allowing for reference to jurisprudence and academic literature in interpreting treaties.

Thus, the "UNHRC" decision in the case of "*Daniel Billy et.al v. Australia*" proves that the "UNHRC" can be an applicable international legal mechanism in protecting the rights of 'indigenous peoples' affected by 'climate change', and this case is an important foundation for the protection of the rights of 'indigenous peoples' in the future.

E. Suggestion

States should proactively align their national legal frameworks with the principles set forth in UNHRC decisions, ensuring that indigenous peoples and other vulnerable groups can effectively seek redress for climate change impacts. Moreover, continued dialogue and cooperation at the international level are essential to reinforce the protection of human rights in the context of environmental challenges.

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