



International Covenant on Civil and Political Rights

Distr.: General
18 September 2023

Original: English

Human Rights Committee

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

<i>Communication submitted by:</i>	Daniel Billy and others (represented by counsel, ClientEarth)
<i>Alleged victims:</i>	The authors and six of their children
<i>State party:</i>	Australia
<i>Date of communication:</i>	13 May 2019 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 18 June 2019 (not issued in document form)
<i>Date of adoption of Views:</i>	21 July 2022
<i>Subject matter:</i>	Failure to take mitigation and adaptation measures to combat the effects of climate change
<i>Procedural issues:</i>	Admissibility: incompatibility; manifestly ill-founded; <i>ratione materiae</i> ; victim status
<i>Substantive issues:</i>	Arbitrary/unlawful interference; children's rights; effective remedy; family rights; home; Indigenous Peoples; minorities' right to enjoy own culture; privacy; right to life
<i>Articles of the Covenant:</i>	2, read alone and in conjunction with 6, 17, 24 (1) and 27; 24 (1), read alone and in conjunction with 6, 17 and 27; and 6, 17 and 27, each read alone
<i>Articles of the Optional Protocol:</i>	1, 2 and 3

* Adopted by the Committee at its 135th session (27 June–27 July 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

*** Individual opinions by Committee members Carlos Gómez Martínez (dissenting), Duncan Laki Muhumuza (dissenting), Hernán Quezada Cabrera (partially dissenting) and Gentian Zyberi (concurring) and a joint opinion by Committee members Arif Bulkan, Marcia V.J. Kran and Vasilka Sancin (partially dissenting) are annexed to the present Views and are circulated in the languages of submission only.



1.1 The eight authors of the communication are Daniel Billy, Ted Billy, Nazareth Faid, Stanley Marama, Yessie Mosby, Keith Pabai, Kabay Tamu and Nazareth Warriia, born in 1983, 1957, 1965, 1967, 1982, 1964, 1991 and 1973, respectively. They are nationals of Australia and residents of the Torres Strait region. They act in their own names and on behalf of five children of Yessie Mosby¹ and the son of Kabay Tamu.² The authors claim that the State party has violated their rights under article 2 of the Covenant, read alone and in conjunction with articles 6, 17 and 27; and articles 6, 17 and 27, each read alone. They also claim violations of the rights of the six children under article 24 (1), read alone and in conjunction with articles 6, 17 and 27 of the Covenant. The Optional Protocol entered into force for the State party on 25 September 1991. The authors are represented by counsel.

1.2 Out of four requests received from third parties to submit interventions, the Committee granted two requests and denied two requests as out of time.³

The facts as submitted by the authors

2.1 The authors belong to the Indigenous minority group of the Torres Strait islands and live on the four islands of Boigu (Stanley Marama and Keith Pabai), Masig (Yessie, Genia, Ikasa, Awara, Santoi and Baimop Mosby and Nazareth Warriia), Warraber (Daniel and Ted Billy and Kabay and Tyrique Tamu) and Poruma (Nazareth Faid).⁴ The Indigenous People of the Torres Strait islands, especially the authors who reside in low-lying islands, are among the populations most vulnerable to the impact of climate change.

2.2 The Torres Strait Regional Authority, a government body, has stated that “the effects of climate change threaten the islands themselves as well as marine and coastal ecosystems and resources, and therefore the life, livelihoods and unique culture of Torres Strait Islanders”. The Regional Authority also noted that “even small increases in sea level due to climate change will have an immense impact on Torres Strait communities, potentially threatening their viability” and that “large increases would result in several Torres Strait islands being completely inundated and uninhabitable”.⁵

2.3 Sea-level rise has already caused flooding and erosion on the authors’ islands, and higher temperature and ocean acidification has produced coral bleaching, reef death and the decline of seagrass beds and other nutritionally and culturally important marine species. According to the Torres Strait Regional Authority, in the Torres Strait region, sea level has risen at the rate of approximately 0.6 cm per year from 1993 to 2010 (compared with the global average of 3.2 mm per year).

2.4 With respect to the impact of climate change on the islands, the village on Boigu, one of five communities particularly vulnerable to inundation, is flooded each year. Erosion has caused the shoreline to advance and has detached a small area from the island. On Masig in March 2019, a cyclone caused severe flooding and erosion and destroyed buildings. The cyclone resulted in the loss of three metres of shoreline. Approximately one metre of land is lost every year. In addition, in recent years a tidal surge has destroyed family graves, scattering human remains. On Warraber, high tides and strong winds cause seawater to flood the village centre every two to three years. On Poruma, erosion has washed away much of the island’s sand over the past few decades.

2.5 Sea-level rise has caused saltwater to penetrate the soil of the islands, with the result that areas previously used for traditional gardening can no longer be cultivated. On Masig, rising sea level has caused coconut trees to become diseased, so that they do not produce fruits or coconut water, which are part of the authors’ traditional diet. Such changes make the

¹ Genia, Ikasa, Awara, Santoi and Baimop Mosby (born in 2010, 2012, 2014, 2015 and 2017, respectively).

² Tyrique Tamu (born in 2010).

³ Requests from Martin Scheinin and David R. Boyd and John H. Knox were granted; requests from Christina Voigt and Olivier de Frouville and Nadia Seqat were denied.

⁴ The authors state that, while Torres Strait islanders constitute 0.14 per cent of the total population of Australia, they represent almost the totality of the settled population of the Torres Strait region. Each island has its own distinctive culture.

⁵ Torres Strait Regional Authority, “Torres Strait Climate Change Strategy 2014-2018: Building community adaptive capacity and resilience”, July 2014, p. iii.

authors reliant on expensive imported goods, which they often cannot afford. Seasonal and wind patterns play a key role in ensuring the authors' livelihoods and subsistence, but are no longer predictable. Precipitation, temperature and monsoon seasons have been subject to change, making it harder for the authors to pass on their traditional ecological knowledge. Seagrass beds and dependent species have disappeared. While crayfish is a fundamental source of food and income for the authors, they no longer find crayfish in areas where coral bleaching has occurred.

2.6 Referring to the Torres Strait Regional Authority report, the authors predict that the severe impacts on their traditional ways of life, subsistence and culturally important living resources will present significant social, cultural and economic challenges, have effects on infrastructure, housing, land-based food production systems and marine industries, and cause health-related problems such as an increased incidence of disease and heat-related illness.

2.7 The State party has failed to implement an adaptation programme to ensure the long-term habitability of the islands. Despite numerous requests for assistance and funding made to the State and federal authorities by or on behalf of the islanders, the State party has not responded promptly or adequately. Although some works were carried out on Boigu and Poruma between 2017 and 2018, many of the priority actions identified in the Torres Strait regional adaptation and resilience plan 2016–2021 remain unfunded. At present, no further government funding has been confirmed. Local authorities have taken a triage approach to saving homes and infrastructure, while residents of Warraber and Masig have taken matters into their own hands, using green waste and debris to secure fragile coastal ecosystems from erosion.

2.8 The State party has failed to mitigate the impact of climate change. In 2017, the State party's per capita greenhouse gas emissions were the second highest in the world. Those emissions increased by 30.72 per cent between 1990 and 2016. The State party ranked forty-third among 45 developed countries in reducing its greenhouse gas emissions during that period. Since 1990, the State party has actively pursued policies that have increased emissions by promoting the extraction and use of fossil fuels, in particular thermal coal for electricity generation.

2.9 There are no available or effective domestic remedies to enforce the rights of Torres Strait islanders under articles 2, 6, 17, 24 and 27 of the Covenant. The authors' rights under the Covenant are not protected in the Constitution or any other legislation applicable to the federal Government. The High Court of Australia has ruled that State organs do not owe a duty of care for failing to regulate environmental harm.⁶

Complaint

3.1 The authors claim that the State party has violated their rights under articles 2, read alone and in conjunction with articles 6, 17 and 27; and articles 6, 17 and 27, each read alone. They also claim violations of the rights of their children identified above under article 24 (1), read alone and in conjunction with articles 6, 17 and 27 of the Covenant. The State party has failed to adopt adaptation measures (infrastructure to protect the lives of the authors and their way of life, homes and culture against the impacts of climate change, especially sea-level rise). The State party has also failed to adopt mitigation measures to reduce greenhouse gas emissions and stop the promotion of fossil fuel extraction and use. As indicated in the Committee's general comment No. 36 (2018) on the right to life (para. 62), climate change is a matter of fundamental human rights.

3.2 The State party's obligations under international climate change treaties constitute part of the overarching system that is relevant to the examination of its violations under the Covenant.⁷

⁶ High Court of Australia, *Graham Barclay Oysters Pty Ltd v. Ryan*, 2002.

⁷ Vienna Convention on the Law of Treaties, art. 31.

Article 2

3.3 The State party has failed to adopt laws or other measures necessary to give effect to the authors' Covenant rights, including those under articles 6, 17, 24 and 27 of the Covenant.

Article 6

3.4 In violation of article 6 (1) of the Covenant, the State party has failed to prevent a foreseeable loss of life from the impacts of climate change,⁸ and to protect the authors' right to life with dignity. The State party has not taken adaptation and mitigation measures, has not provided resources to adopt measures identified as necessary by the Torres Strait Island Regional Council and the Torres Strait Regional Authority, and has not met its obligations under the Paris Agreement. The State party has failed to respect the authors' right to a healthy environment, which is part of the right to life.⁹ The State party must devote maximum available resources and all appropriate means to reducing emissions in order to comply with its obligations under article 6 of the Covenant.

Article 27

3.5 The authors' minority culture depends on the continued existence and habitability of their islands and on the ecological health of the surrounding seas.¹⁰ Climate change already compromises the authors' traditional way of life and threatens to displace them from their islands. Such displacement would result in the infliction of egregious and irreparable harm with respect to their ability to enjoy their culture.

Article 17

3.6 Climate change already affects the private, family and home life of the authors, who face the prospect of having to abandon their homes within the lifetime of community members who are currently alive (including the authors). The State party has failed to take any or adequate adaptation and mitigation measures. When climate change threatens disruption to privacy, family and the home, States must prevent serious interference with the privacy, family and home of individuals under their jurisdiction.

Article 24 (1)

3.7 The State party has failed to take adequate steps to protect the rights of future generations of the authors' community, including the six above-mentioned children, who are the most vulnerable and affected by climate change. The future of their survival and culture is uncertain. Future generations, including the children named in the complaint, have a fundamental right to a stable climate system capable of sustaining human life, based on children's right to a healthy environment. Yessie Mosby fears that his children will have to live on another person's land and will not have anything reserved for themselves or their children, as the Masigalgal culture will be extinct.

State party's observations on admissibility and the merits

4.1 In its submission of 29 May 2020, the State party maintains that the communication is inadmissible. The alleged violations of international climate change treaties such as the Paris Agreement and other international treaties such as the International Covenant on Economic, Social and Cultural Rights are inadmissible, *ratione materiae*, because they are outside the scope of the present Covenant. Moreover, there is no basis for the authors' argument that international climate change treaties are relevant to the interpretation of the Covenant, because there are stark and significant differences between the Paris Agreement and the Covenant. The two instruments have different aims and scopes. Sixteen States that have signed the Agreement have not signed the Covenant. Accordingly, interpreting the Covenant through the Paris Agreement would be contrary to the fundamental principles of

⁸ The Hague Court of Appeal, *Urgenda Foundation v. The State of the Netherlands*, Case No. 200.178.245/01, Judgment, 9 October 2018.

⁹ Inter-American Court of Human Rights, Advisory Opinion OC-23/17, 15 February 2017, para. 59.

¹⁰ For example, *Lubicon Lake Band v. Canada* (CCPR/C/38/D/167/1984), paras. 32.2 and 33.

international law.¹¹ The ordinary meaning of one treaty cannot be used to override the clear language of the Covenant.¹²

4.2 The authors have not substantiated their claim that they are victims of violations within the meaning of article 1 of the Optional Protocol.¹³ There is no evidence that the authors face any current or imminent threat of a violation of any of the rights they have invoked.¹⁴ Moreover, the authors have not shown any meaningful causation or connection between the alleged violations of their rights and the State party's measures or alleged failure to take measures. To demonstrate victim status, the authors must show that an act or omission by the State party has already adversely affected their enjoyment of a right under the Covenant or that such an effect is imminent. By their own admission, the authors have not met that test. It is not possible, under the rules of State responsibility under international law, to attribute climate change to Australia. Relying on the Committee's position in *Teitiota v. New Zealand*, the State party asserts that the authors invoke a risk that has not yet materialized.¹⁵

4.3 The authors' claims are also without merit. None of the alleged failures to take mitigation measures fall within the scope of the Covenant. It is not possible under international human rights law to attribute climate change to the State party.¹⁶ It is not possible as a legal matter to trace 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 authors' rights. The Office of the United Nations High Commissioner for Human Rights has stated that "it is virtually impossible to disentangle the complex causal relationships linking historical greenhouse gas emissions of a particular country with a specific climate change-related effect, let alone with the range of direct and indirect implications for human rights" and that "it is often impossible to establish the extent to which a concrete climate change-related event with implications for human rights is attributable to global warming".¹⁷

4.4 The authors' claims with respect to adaptation measures are also without merit, as the authors have yet to suffer the alleged adverse effects of climate change, if at all, and such alleged violations are not imminent.

4.5 The State party describes in detail the adaptation and mitigation measures it is taking with respect to climate change.¹⁸ The Torres Strait Regional Authority coordinates climate change programmes and policies for the benefit of the region and its communities. It consists of both an elected arm of 20 Torres Strait islanders and Aboriginal representatives from the region and an administrative arm comprising a chief executive officer and staff who implement and manage Regional Authority programmes. To respond to coastal management and climate change issues in the Torres Strait, the Regional Authority established a committee from 2006 to 2013, which included representatives from the communities worst affected by coastal erosion and inundation, including Boigu, Warraber, Masig and Poruma, State and federal agencies and various research institutions. The committee enabled a whole-of-government coordinated response to coastal and climate change issues in the Torres Strait region and secured funds to progress identified priority coastal works. The State party describes in detail the Torres Strait Climate Strategy 2014–2018, and the Torres Strait Regional Adaptation and Resilience Plan 2016–2021. The Regional Authority continues to

¹¹ Vienna Convention on the Law of Treaties, art. 31 (3) (c).

¹² *Ibid.*

¹³ The State party argues both that the communication is insufficiently substantiated and that the authors lack victim status.

¹⁴ For example, *E.W. et al. v. Netherlands* (CCPR/C/47/D/429/1990), para. 6.4.

¹⁵ *Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016), para. 9.12.

¹⁶ See the report of the International Law Commission on the work of its fifty-third session (*Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10)*), draft articles on responsibility of States for internationally wrongful acts, article 4 (chap. IV.E.1).

¹⁷ A/HRC/10/61, para. 70.

¹⁸ The State party provides extensive information in its submission regarding its efforts to reduce greenhouse gas emissions.

be directly involved with communities in the Torres Strait to enable them to respond to climate change impacts.

4.6 The Torres Strait Regional Authority also played a lead role in securing the information and funding to progress the construction of a new sea wall for the low-lying island of Saibai. The Regional Authority is working with local councils to progress a more detailed assessment of coastal hazards that would inform coastal adaptation measures and actively seeks opportunities to reduce the region's carbon footprint through the uptake of clean energy technologies.

Article 6

4.7 Article 6 (1) of the Covenant requires States to protect against arbitrary deprivation of life for persons within its jurisdiction, but does not require States to protect those persons from the general effects of climate change.¹⁹ The authors do not claim that they have been arbitrarily deprived of their lives. The *Urgenda* case was based on negligence provisions in the Dutch Civil Code.²⁰ Establishing factual causation under international law is a nearly impossible barrier to such tort claims. As in the *Teitiota* case, the State party is taking adaptation measures in the Torres Strait, thus rendering the harm invoked by the authors too remote to demonstrate a violation of the right to life.

4.8 The authors have failed to demonstrate that article 6 (1) of the Covenant includes a generalized right of protection against the effects of climate change and that relevant domestic legislation is manifestly insufficient or lacking altogether.²¹ The extension of article 6 (1) of the Covenant to a right to life with dignity, although a laudable policy objective shared by the State party, is unsupported by the rules of treaty interpretation, the ordinary meaning of article 6 (1) and any relevant jurisprudence.

4.9 Alternatively, if the Committee maintains the right to a life with dignity, it should only be recognized in limited and particular circumstances. In contrast to the situation in the Committee's recent Views on *Portillo Cáceres et al. v. Paraguay*,²² the actions in the present case were not attributable to the State party, which did not fail to enforce domestic law or infringe any domestic laws. The authors in the present case have not suffered any poor health, let alone poisoning or death.

Article 27

4.10 The State party has enacted laws to protect the survival and continued development of the Torres Strait islanders' cultural identity. The authors merely assert future hypothetical violations of this right. All of the cases in which the Committee has found violations of this right relate to existing, not future violations. Article 27 of the Covenant was never intended to protect against the effects of climate change.

Article 17

4.11 The authors focus entirely on the future disruptions to family life that climate change may cause. The authors have not made any claim that their families (including relatives in extended families) have experienced arbitrary or unlawful interference by the State party. The interference prohibited under article 17 of the Covenant must be real and effective, not potential or future, and must emanate from State authorities or natural or legal persons authorized by the State. The authors' allegation that they could be relocated in the future is speculative.

¹⁹ General comment No. 36 (2018), para. 20.

²⁰ Supreme Court of the Netherlands, *State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Urgenda Foundation*, Case No. 19/00135, Judgment, 20 December 2019.

²¹ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd revised ed. (N.P. Engel, Kehl am Rhein, 2005), p. 123.

²² [CCPR/C/126/D/2751/2016](#).

Article 24

4.12 The authors have not demonstrated that the wide range of legislative and other measures put in place by the State party to protect Australian children fail to comply with the obligation under article 24 (1) of the Covenant. In article 24 (1), which measures of protection are required are not specified; States parties have broad discretion in this regard.

Authors' comments on the State party's observations on admissibility and the merits

5.1 In their comments submitted on 29 September 2020, the authors maintain that the State party did not challenge their arguments regarding several issues, including the science of climate change and its current and future impacts on the islands on which they live; and the interdependency between the authors' unique and vulnerable culture and the surrounding ecosystem of the islands.

5.2 The State party erred in asserting that the authors have yet to suffer the adverse effects of climate change, if at all. This contradicts the evidence that the authors already provided and the reports of the Torres Strait Regional Authority, a State agency. Moreover, the State party has already violated its duty to avert devastating and future irreversible impacts on rights protected by the Covenant, including impacts caused by existing greenhouse gas emissions. Protective measures must be initiated today.²³ Climate change is a slow-onset process. Thus, a State party may violate its obligations before the worst effects occur. The authors' claims are based on both current violations and an imminent threat of violations. They already experience severe impacts arising from climate change, including damage to their homes and disruption of their family life. In their combined statements, the authors describe experiencing the following problems: flooding and inundation of villages; flooding and inundation of ancestral burial lands; loss by erosion of their traditional lands, including plantations and gardens; destruction or withering of traditional gardens through salinification caused by flooding or seawater ingress; decline of nutritionally and culturally important marine species caused by climate change, and associated coral bleaching (reef death) and ocean acidification; and a reduced ability to practise their traditional culture and pass it on to the next generation. They also experience anxiety and distress owing to erosion which is approaching some homes in the community. For six of the authors, upkeep of ancestral graveyards and visiting and feeling communion with deceased relatives is at the heart of their cultures and the most important ceremonies (such as coming-of-age and initiation ceremonies) are culturally meaningful only if performed on the native lands of the community observing the ceremony.

5.3 The authors living on Boigu and Masig face a real prospect of displacement and loss of culture within the next 10 years unless urgent and significant action is taken to enable the islands to withstand expected sea-level rise. The authors living on Warraber and Poruma face such a prospect within their lifetimes unless urgent action is taken within 10 to 15 years. Such displacement can be prevented with reasonable adaptation and mitigation measures. If the State party's interpretation of imminence were followed, the authors would be forced to wait until their culture and their land were lost in order to submit a claim under the Covenant.

5.4 The authors have identified specific acts and omissions by the State party (relating to adaptation and mitigation) instead of relying on abstract arguments. Those acts and omissions have already impaired and will continue to impair the authors' rights in ways that will worsen over time, because of the latent and/or irreversible nature of climate change.

5.5 The State party is responsible for its own emissions contribution, lack of due diligence and failure to take adaptation measures to protect the authors' rights and fulfil its obligation to reduce emissions. The protection of the right to life requires States to review their energy policies and prevent the dangerous emission of greenhouse gases.

²³ According to land and sea profiles published in 2015 and 2016, the Torres Strait Regional Authority assigned to the four islands where the authors live ratings of either high vulnerability to sea-level rise (Masig, Poruma and Warraber) or very high vulnerability (Boigu) and considered them to have low (Masig and Warraber), very low (Boigu) or medium (Poruma) sea-level rise response options.

5.6 International environmental legal obligations of States are indeed relevant to interpreting the scope of their duties under the Covenant. Treaties should be interpreted in the context of their normative environment.

5.7 The State party has not so far taken any adequate concrete measures to prevent the authors' islands from becoming uninhabitable or to address the real and foreseeable threat of the complete loss of the authors' cultures. The Committee's jurisprudence supports the notion that environmental harm can lead to violations of fundamental human rights, given the dependence of Indigenous minority cultures on a healthy environment and the strong cultural and spiritual link between Indigenous Peoples and their traditional lands.

5.8 With respect to article 24 of the Covenant, the principle of intergenerational equity places a duty on current generations to act as responsible stewards of the planet and ensure the rights of future generations to meet their developmental and environmental needs. The remedies requested by the authors are reasonable and proportionate.

State party's additional observations

6.1 In its additional observations, submitted on 5 August 2021, the State party maintains that the authors' allegations (changes to seasonal patterns; erosion of ancestral land; saltwater intrusion; and damage to cultural practices, species and homes) represent possible impacts of climate change but not existing or imminent violations of Covenant rights caused by the State party, either through act or omission. Those impacts only suggest that current adverse effects may, subject to contingencies, worsen in the future. The possible impacts of a slow-onset process do not confer victim status on the authors.

6.2 The authors acknowledge that there is still a window of time in which adaptation measures can be planned and implemented. The authors themselves contemplate the consequences that might arise if and when their islands become unviable for habitation.

6.3 Climate change is a global phenomenon attributable to the actions of many States. Unlike other environmental issues previously considered by the Committee, it requires global action. The general effects of climate change and the effectiveness of any mitigation or adaptation measures to address those effects are not within the complete control of any State.²⁴

6.4 The State party's position is not, as the authors allege, that they must simply wait and suffer increasingly severe climate impacts. The international community has sought to address climate change primarily, and rightly, as a matter requiring international cooperation under international environmental agreements. Notwithstanding the authors' dissatisfaction with the pace and nature of the State party's efforts, this does not mean that the State party's response to the threat of climate change, and consequently the response of many other States, amounts to a violation of the Covenant.

6.5 In applying the principle of systemic integration described by the International Law Commission, relevant rules for the purpose set out in article 31 (3) (c) of the Vienna Convention on the Law of Treaties must concern the subject matter of the treaty term at issue.²⁵ Climate change treaties do not provide evidence of the object and purpose of the Covenant or the meaning of its terms.

6.6 Regarding the exhaustion of domestic remedies, States parties to the Covenant are not required to make available a domestic remedy for the purposes under article 2 (3) of the Covenant where: (a) the alleged violations are outside the scope of the Covenant (as is the case here, since the allegations relate to the compliance of Australia with international climate change treaties); or (b) there is no breach of rights recognized by the Covenant as properly understood, as is the case for the allegations in the present communication.

6.7 The obligation to respect under article 2 (1) of the Covenant is a positive obligation of non-interference with Covenant rights that extends only to real risks against which a State

²⁴ See *Poma Poma v. Perú* (CCPR/C/95/D/1457/2006).

²⁵ Report of the International Law Commission on the work of its fifty-eighth session (A/61/10), pp. 180 and 413.

party can offer protection.²⁶ The alleged threat to the authors' rights is a global phenomenon arising from myriad acts committed by innumerable private and State entities over decades which, unquestionably, are beyond the jurisdiction and control of the State party. It would be perverse if, to ensure that climate change does not impair the authors' rights, the Covenant were to impose a duty or obligation on the State party that the State party could not hope to fulfil. Moreover, the authors acknowledge the multiplicity of global causes of climate change, and that there is still the opportunity for mitigating factors at the national and global levels to intervene in order to allay the threat posed by its future impacts.

6.8 Any positive obligation that arises under the Covenant is limited principally to the threat posed by the acts of private persons or entities within a State party's jurisdiction and control. This could also extend to positive obligations in respect of environmental issues that pose a direct, specific and objective threat to the enjoyment of Covenant rights, such as the use of pesticides (as in *Portillo Cáceres et al. v. Paraguay*), where it is within the scope of a State's power to avert that risk. It does not, however, create an obligation to protect generally against the future effects of climate change, which, as a matter of international law, extend well beyond the scope of a single State party's jurisdiction and control.

6.9 Academic scholars have noted that "causal pathways involving anthropogenic climate change, and especially its impacts, are intricate and diffuse" and that human rights law "cannot actually address the depth and breadth of the causes and impacts of climate change".²⁷ A threat that is not attributable to a State cannot be ensured or protected against by that State in cases where such protection cannot be achieved by the State alone.

6.10 Positive obligations under the Covenant do not require the maximum deployment of possible resources or the realization of the highest possible ambition. To adopt such an unprecedented test would not only place an impossible burden on States but also displace reasonable policy choices made in good faith by States as they assess a range of threats and challenges that have an impact on the enjoyment of human rights under the Covenant and decide how to distribute limited resources to address them.

6.11 It would be both inappropriate and unfounded for the Committee to interpret the Covenant in such a way as to allow it to remake the informed, good faith and difficult policy decisions of a democratically elected Government which inherently involve compromises, trade-offs and the allocation of limited resources across the range of challenges to the full enjoyment of human rights. In urging the Committee to adopt an unduly broad interpretation of a positive obligation, the authors invite the Committee to disregard States' discretion in making relevant decisions, even if exercised in good faith. Fulfilment of positive obligations under the Covenant must recognize competing challenges to limited State resources.

6.12 The authors' claims under article 27 of the Covenant are both factually and legally incorrect. The State party is taking measures to prevent the islands from becoming unviable for habitation through the adaptation and mitigation measures described at length in its observations. The State party provides detailed information on legislation, policies and practices designed to protect the cultural rights of Torres Strait islanders. Such measures include the Torres Strait Islander Cultural Heritage Act 2003 (Qld), the Torres Strait Islander Traditional Child Rearing Practice Act 2020 (Qld), the Traditional Ecological Knowledge Project of the Torres Strait Regional Authority, the declaration of three Indigenous protected areas in the Torres Strait region, the use of Torres Strait infrastructure and housing, Indigenous land-use agreements, and the Local Thriving Communities programme. As a matter of international law, article 27 of the Covenant does not involve any positive obligation to prevent slow-onset risks that might arise in the future. A breach of article 27 of the Covenant arises only at the time of any denial; it does not convert a risk of future denial into a present breach. Even if the Committee were to admit an intergenerational element of

²⁶ The State party provided detailed information in its submission on the measures it has taken to address the harmful effects of climate change.

²⁷ For example, Fanny Thornton, "The absurdity of relying on human rights law to go after emitters", in *Debating Climate Law*, Benoit Mayer and Alexander Zahar, eds. (Cambridge, United Kingdom, Cambridge University Press, 2021), p. 159.

cultural transmission, there is nothing to suggest that the State party has directly interfered in or failed to protect the authors' ability to transmit their culture across generations.

6.13 Article 24 (1) of the Covenant does not itself set out the rights of children but refers to necessary measures of protection for children. Instead of identifying any measures specifically sought by the authors to obtain such protection for children, their comments only describe climate change impacts that affect the Torres Strait population generally, adults and children alike. The special measures warranted by article 24 of the Covenant seek to protect children because of their status as minors. The effects of climate change do not depend upon a person's status as a minor.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee recalls the requirement under article 5 (2) (b) of the Optional Protocol that the author of a communication must exhaust all judicial or administrative domestic remedies, insofar as such remedies offer a reasonable prospect of redress and are de facto available to the author.²⁸ The Committee recalls that for the purpose of article 5 (2) (b) of the Optional Protocol, authors must make use only of all those avenues that offer them a reasonable prospect of redress, that relate to the alleged violation and that offer redress that would be proportionate to the harm done.²⁹ In this regard, the Committee notes the authors' uncontested statement that the highest court in Australia has ruled that State organs do not owe a duty of care for failing to regulate environmental harm. The Committee takes note of the State party's position that States parties to the Covenant are not required to make available domestic remedies in cases where, as in the present case, there is no breach of rights recognized by the Covenant as properly understood. With due regard for its remaining findings on admissibility in the paragraphs below, the Committee considers that the issue of whether the authors' Covenant rights were breached cannot be dissociated from the merits of the case. In the above circumstances, and in the absence of information from the State party indicating that effective and available domestic remedies existed at the relevant time for the authors to raise the alleged Covenant violations before competent State bodies, the Committee considers that article 5 (2) (b) of the Covenant does not preclude it from examining the communication.

7.4 The Committee notes the authors' claims under article 2, read alone and in conjunction with articles 6, 17, 24 (1) and 27 of the Covenant. The Committee recalls that according to its jurisprudence, the provisions of article 2 of the Covenant lay down a general obligation for States parties and do not give rise, when invoked separately, to a claim in a communication under the Optional Protocol. Furthermore, article 2 of the Covenant may not be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.³⁰ In the present case, the Committee observes that the authors' claims under article 2, read in conjunction with articles 6, 17, 24 (1) and 27 of the Covenant lie in the alleged failure of the State party's policies to give effect to their rights in relation to life, private life, family, home and culture. The Committee notes, however, that the authors have already alleged violations of their rights under articles 6, 17, 24 (1) and 27, resulting from alleged defects in the legislative and policy framework and

²⁸ For example, *D.G. et al. v. Philippines* (CCPR/C/128/D/2568/2015), para. 6.3.

²⁹ *Portillo Cáceres et al. v. Paraguay*, para. 6.5.

³⁰ For example, *Devi Maya Nepal v. Nepal* (CCPR/C/132/D/2615/2015), para. 6.6.

practices of the State party regarding causes, effects and responses relating to climate change. The Committee considers that an examination of whether the State party violated its general obligations under article 2 of the Covenant, read in conjunction with articles 6, 17, 24 (1) or 27 of the Covenant would not be distinct from the examination of the violation of the authors' rights under articles 6, 17, 24 (1) or 27 of the Covenant. The Committee therefore considers that the authors' claims under article 2, read alone and in conjunction with articles 6, 17, 24 (1) and 27 of the Covenant are inadmissible under article 3 of the Optional Protocol.

7.5 The Committee takes note of the State party's argument that the authors' claims under other international treaties are inadmissible, *ratione materiae*, because they lie outside the scope of the Covenant. The Committee observes that it is not competent to determine compliance with other international treaties or agreements. However, to the extent that the authors are not seeking relief for violations of the other treaties before the Committee but rather refer to them in interpreting the State party's obligations under the Covenant, the Committee considers that the appropriateness of such interpretations relates to the merits of the authors' claims under the Covenant. Accordingly, the Committee considers that in this respect, article 3 of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.

7.6 The Committee notes the State party's position that the communication is inadmissible under articles 1 and 2 of the Optional Protocol because the State party cannot be held responsible, as a legal or practical matter, for the climate change impacts that the authors allege in their communication. The arguments raised by the parties require the Committee to contemplate whether, under article 1 of the Optional Protocol, a State party may be considered to have committed a violation of the rights of an individual under the Covenant, where the harm to the individual allegedly resulted from the failure of the State party to implement adaptation and/or mitigation measures to combat adverse climate change impacts within its territory.

7.7 With respect to adaptation measures, the Committee recalls that the authors in the present communication have invoked articles 6, 17, 24 (1) and 27, each of which entails positive obligations of States parties to ensure the protection of individuals under their jurisdiction against violations of those provisions.³¹

7.8 With respect to mitigation measures, although the parties differ as to the amount of greenhouse gases emitted within the State party's territory and as to whether those emissions are significantly decreasing or increasing, the information provided by both parties indicates that the State party is and has been in recent decades among the countries in which large amounts of greenhouse gas emissions have been produced. The Committee notes that the State party ranks high on world economic and human development indicators. In view of the above, the Committee considers that the alleged actions and omissions fall under the State party's jurisdiction under articles 1 or 2 of the Optional Protocol and therefore that it is not precluded from examining the present communication.

7.9 The Committee notes the State party's position that the communication is inadmissible under articles 1 and 2 of the Optional Protocol because the authors invoke potential future harms and have not sufficiently substantiated their claim that they are victims of a past or existing violation or imminent threat of a violation of their rights by the State party. The Committee recalls its jurisprudence in which it stated that a person can claim to be a victim in the sense of article 1 of the Optional Protocol only if he or she is actually affected. How concretely that requirement should be met is a matter of degree. Individuals claiming to be a victim of a violation of a right protected under the Covenant must demonstrate, however, either that a State party has, by act or omission, already impaired the exercise of their right or that such impairment is imminent, basing their arguments for example on legislation in force or on a judicial or administrative decision or practice. If the law or practice has not already been concretely applied to the detriment of such an individual,

³¹ General comments No. 36 (2018), para. 21; No. 16 (1988), para. 1; No. 17 (1989), para. 1; and No. 23 (1994), para. 6.1; and *Abdoellaevna and Y v. Netherlands* (CCPR/C/125/D/2498/2014), para. 7.3.

it must in any event be applicable in such a way as to indicate that the individual's risk of being affected is more than a theoretical possibility.³²

7.10 The Committee notes that the authors presented in their communication information indicating the existence of real predicaments that they have experienced personally and actually owing to disruptive climate events and slow-onset processes such as flooding and erosion. The authors argue in part that those predicaments have already compromised their ability to maintain their livelihoods, subsistence and culture. While noting the State party's argument that the authors have not substantiated that present and future climate change impacts and the State party's role in mitigating those impacts have violated the authors' rights under the Covenant, the Committee observes that the authors, as members of peoples who are the long-standing inhabitants of traditional lands consisting of small, low-lying islands which presumably offer scant opportunities for safe internal relocation, are highly exposed to adverse climate change impacts. It is uncontested that the authors' lives and cultures are highly dependent on the availability of the limited natural resources to which they have access and on the predictability of the natural phenomena that surround them. The Committee observes that in the light of their limited resources and location, the authors would be unlikely to be able to finance adequate adaptation measures themselves, on an individual or community level, to adjust to actual or expected climate change and its effects in order to moderate harm. The Committee therefore considers that the authors are among those who are extremely vulnerable to experiencing severely disruptive climate change impacts intensely. The Committee considers, based on the information provided by the authors, that the risk of impairment of those rights, owing to alleged serious adverse impacts that have already occurred and are ongoing, is more than a theoretical possibility. The Committee accordingly considers that articles 1 and 2 of the Optional Protocol do not constitute an obstacle to the admissibility of the claims under articles 6, 17, 24 (1) and 27 of the Covenant.

7.11 The Committee therefore declares the authors' claims under articles 6, 17, 24 (1) and 27 of the Covenant admissible and proceeds to examine them on the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

8.2 The Committee notes the authors' claim that, by failing to implement adequate mitigation and adaptation measures to prevent negative climate change impacts on the authors and the islands where they live, the State party has violated their rights under the Covenant.

Article 6

8.3 The Committee notes the authors' claim that the events in this case constitute a violation by act and omission of their right to a life with dignity under article 6 of the Covenant, owing to the State party's failure to perform its duty to provide adaptation and mitigation measures to address climate change impacts that adversely affect their lives, including their way of life. With respect to the State party's position that article 6 (1) of the Covenant does not obligate it to prevent foreseeable loss of life from climate change, the Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner and that the protection of that right requires States parties to adopt positive measures to protect the right to life.³³ The Committee also recalls its general comment No. 36 (2018) on the right to life, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death (para. 3).³⁴ The Committee further recalls 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.³⁵ States parties

³² For example, *Teitiota v. New Zealand*, para. 8.4.

³³ For example, *Teitiota v. New Zealand*, para. 9.4; and *Toussaint v. Canada* (CCPR/C/123/D/2348/2014), para. 11.3.

³⁴ See also *Portillo Cáceres et al. v. Paraguay*, para. 7.3.

³⁵ *Toussaint v. Canada*, para. 11.3; and *Portillo Cáceres et al. v. Paraguay*, para. 7.5.

may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life.³⁶ The Committee considers that such threats may include adverse climate change impacts and recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.³⁷ The Committee recalls that States parties should take all appropriate measures to address the general conditions in society that may give rise to direct threats to the right to life or prevent individuals from enjoying their right to life with dignity.³⁸

8.4 The Committee takes note of the State party's position that the extension of article 6 (1) of the Covenant to a right to life with dignity through general comment No. 36 (2108) is unsupported by the rules of treaty interpretation, with reference to article 31 of the Vienna Convention on the Law of Treaties (1969). However, the Committee is of the view that the language at issue is compatible with the latter provision, which requires that a treaty be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. In this regard, the Committee notes that under article 31 of the Convention, the context for interpretation of a treaty includes in the first place the text of the treaty, including its preamble and annexes. In the preamble of the Covenant, it is recognized initially that the inherent dignity and the equal and inalienable rights of all members of the human family are the foundation of freedom, justice and peace in the world and it is also recognized that those rights derive from the inherent dignity of the human person. While the State party notes that socioeconomic entitlements are protected under a separate Covenant, the Committee observes that the preamble of the present Covenant recognizes that the ideal of free human beings enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy their civil and political rights, as well as their economic, social and cultural rights.

8.5 The Committee observes that both it and regional human rights tribunals have established that environmental degradation can compromise effective enjoyment of the right to life and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life.³⁹ In the present case, the Committee notes that the Torres Strait Regional Administration, a government agency, recognized in its report entitled "Torres Strait Climate Change Strategy 2014–2018" the vulnerability of the Torres Strait islands to significant and adverse climate change impacts that affect ecosystems and the livelihoods of the islands' inhabitants.⁴⁰ The Committee also notes the authors' claims regarding their islands' exposure to flood-related damage, sea wall breaches, coral bleaching, increasing temperatures, erosion, reduction of the number of coconut trees and marine life used for food and cultural purposes, and a lack of rain and its effect on crop cultivation (paras. 2.3–2.5 and 5.2).

8.6 The Committee recalls that in certain places, the lack of alternatives to subsistence livelihoods may place individuals at a heightened risk of vulnerability to the adverse effects of climate change.⁴¹ The Committee takes into account the authors' argument that the health of their islands is closely tied to their own lives. The Committee notes, however, that while the authors attest to feelings of insecurity engendered by a loss of predictability of seasonal weather patterns, seasonal timing, tides and availability of traditional and culturally important food sources, they have not indicated that they have faced or currently face adverse impacts on their own health or a real and reasonably foreseeable risk of being exposed to a situation of physical endangerment or extreme precarity that could threaten their right to life, including their right to a life with dignity. The Committee also notes that the authors' claims under article 6 of the Covenant relate mainly to their ability to maintain their culture, which falls under the scope of article 27 of the Covenant.

³⁶ General comment No. 36 (2018), para. 7.

³⁷ *Ibid.*, para. 62.

³⁸ *Ibid.*, para. 26.

³⁹ *Portillo Cáceres et al. v. Paraguay*, para. 7.4 and footnotes 45 and 46.

⁴⁰ Land and Sea Management Unit, Torres Strait Regional Authority, *Torres Strait Climate Change Strategy 2014–2018*, July 2014.

⁴¹ *Teitiota v. New Zealand*, para. 9.9.

8.7 Regarding the authors' assertion that their islands will become uninhabitable in 10 years (Boigu and Masig) or in 10 to 15 years (Poruma and Warraber) in the absence of urgent action, the Committee recalls that without robust national and international efforts, the effects of climate change may expose individuals to a violation of their rights under article 6 of the Covenant.⁴² Furthermore, given that the risk of an entire country's becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.⁴³ The Committee notes that, under the Torres Strait sea walls programme (2019–2023), multiple infrastructures will be constructed and upgraded to address ongoing coastal erosion and storm surge impacts on Poruma, Warraber, Masig, Boigu and Iama. The Committee notes that by 2022, several coastal mitigation works had been completed on Boigu with funding of \$A 15 million: the construction of a 1,022 metre-long wave return wall, the raising and extension of an existing bund wall to 450 metres and the upgrading of stormwater drainage infrastructure. The Committee observes that under the programme, coastal mitigation works on Poruma, Warraber and Masig were scheduled to begin in 2021 or 2022 and to be completed by 2023. The Committee takes note of the other adaptation and mitigation measures mentioned by the State party. The Committee considers that the time frame of 10 to 15 years, as suggested by the authors, could allow for intervening acts by the State party involving taking affirmative measures to protect and, where necessary, relocate the alleged victims. The Committee also considers that the information provided by the State party indicates that it is taking adaptive measures to reduce existing vulnerabilities and build resilience to climate change-related harms on the islands. Based on the information made available to it, the Committee is not in a position to conclude that the adaptation measures taken by the State party would be insufficient and therefore represent a direct threat to the authors' right to life with dignity.

8.8 In view of the foregoing, the Committee considers that the information before it does not disclose a violation by the State party of the authors' rights under article 6 of the Covenant.

Article 17

8.9 The Committee notes the authors' claims that climate change already affects their private, family and home life, as they face the prospect of having to abandon their homes. The Committee also notes that the erosion of their islands causes the authors significant distress and that flooding occurs on the islands. The Committee further notes the allegation of Stanley Marama that his home was destroyed owing to flooding in 2010. The Committee recalls that States parties must prevent interference with a person's privacy, family or home that arises from conduct not attributable to the State, at least where such interference is foreseeable and serious.⁴⁴ Thus, when environmental damage threatens disruption to privacy, family and the home, States parties must prevent serious interference with the privacy, family and home of individuals under their jurisdiction.

8.10 The Committee recalls that the authors depend on fish, other marine resources, land crops and trees for their subsistence and livelihoods and depend on the health of their surrounding ecosystems for their own well-being. The State party has not contested the authors' assertions in that regard. The Committee considers that the aforementioned elements constitute components of the traditional Indigenous way of life of the authors, who enjoy a special relationship with their territory, and that these elements can be considered to fall within the scope of protection under article 17 of the Covenant.⁴⁵ In addition, the Committee considers that the application of article 17 should be understood not as being limited to the act of refraining from arbitrary interference; but rather as also obligating States parties to adopt positive measures that are needed to ensure the effective exercise of the rights under

⁴² *Ibid.*, para. 9.11.

⁴³ *Ibid.*

⁴⁴ General comment No. 16 (1988), paras. 1 and 9.

⁴⁵ *Benito Oliveira et al. v. Paraguay* (CCPR/C/132/D/2552/2015), para. 8.3; and *Portillo Cáceres et al. v. Paraguay*, para. 7.8.

article 17 in the presence of interference by the State authorities and physical or legal persons.⁴⁶

8.11 The Committee takes note of the State party's extensive and detailed information that it has taken numerous actions to address adverse impacts caused by climate change and carbon emissions generated within its territory. Those actions include, with relevance to the authors' claims, release of the Torres Strait Regional Adaptation and Resilience Plan 2016–2021, which focused both on climate impacts and reducing vulnerability through resilience; direct involvement of the Regional Authority with communities in the region to enable them to respond to climate change impacts; community heat mapping to monitor and reduce heat risk; installation of monitoring sites relating to tides, sea level, temperature and rainfall; commitment of over \$A 15 billion for country-wide natural resource management, water infrastructure, drought and disaster resilience and recovery funding; investment of \$A 100 million for management of ocean habitats and coastal environments; provision of regional and global climate finance of \$A 1.4 billion (2015–2020) and \$A 1.5 billion (2020–2025), with a strong focus on achieving adaptation outcomes; reduction of its carbon emissions by 20.1 per cent (from 2005 to 2020) and by 46.7 per cent per person (from 1990 to 2020); investment of an estimated \$A 20 billion in low emissions technologies (2020–2030) and \$A 3.5 billion in the Emissions Reduction Fund; initiation or completion of 58 actions identified in the Torres Strait Regional Adaptation and Resilience Plan 2016–2021; development of local adaptation and resilience plans for the 14 outer island communities; development by the Torres Strait Regional Authority of a draft regional resilience framework to help build greater local and regional resilience to climate change impacts, informed by discussions with community representatives; ongoing assessment of climate change impacts for Torres Strait communities; coastal mapping on the Torres Strait islands to inform coastal adaptation planning; continuation of coastal protection initiatives by the Regional Authority to address erosion and storm surge impacts on local communities; and investment of \$A 40 million in stage 2 of the Torres Strait sea walls programme (2019–2023). The Committee recalls the information contained in paragraph 8.7 concerning the State party's completed and ongoing efforts to build new or updated sea walls on the islands where the authors live and notes that the sea walls are all expected to be completed by 2023.

8.12 However, the Committee notes that the State party has not specifically commented on the authors' allegations that they attempted to request the construction of adaptation measures, in particular upgraded sea walls, at various points over the last decades. While welcoming the new construction of sea walls on the four islands at issue, the Committee observes that the State party has not explained the delay in sea wall construction with respect to the islands where the authors live. It has not contested the factual allegations set forth by the authors concerning the concrete climate change impacts on their home, private life and family. The Committee notes that the State party has not provided alternative explanations concerning the reduction of marine resources used for food and the loss of crops and fruit trees on the land on which the authors live and grow crops, elements that constitute components of the authors' private life, family and home. The Committee also notes the authors' specific descriptions of the ways in which their lives have been adversely affected by flooding and inundation of their villages and ancestral burial lands; destruction or withering of their traditional gardens through salinification caused by flooding or seawater ingress; and decline of nutritionally and culturally important marine species and associated coral bleaching and ocean acidification. The Committee further notes the authors' allegations that they experience anxiety and distress owing to erosion that is encroaching on some homes in their communities and that the upkeep and visiting of ancestral graveyards is associated with the very heart of their culture, which requires experiencing feelings of communion with deceased relatives. The Committee notes the authors' statement that their most important cultural ceremonies are meaningful only if performed on native community lands. The Committee considers that when climate change impacts, including environmental degradation on traditional (Indigenous) lands in communities where subsistence is highly dependent on available natural resources and where alternative means of subsistence and humanitarian aid are unavailable, have direct repercussions on the right to one's home, and the adverse consequences of those impacts are serious because of their intensity or duration and the

⁴⁶ General comment No. 16 (1988), para. 1.

physical or mental harm that they cause, the degradation of the environment may then adversely affect the well-being of individuals and constitute foreseeable and serious violations of private and family life and the home.⁴⁷ The Committee concludes that the information made available to it indicates that, by failing to discharge its positive obligation to implement adequate adaptation measures to protect the authors' home, private life and family, the State party violated the authors' rights under article 17 of the Covenant.

Article 27

8.13 The Committee recalls that article 27 establishes and recognizes a right which is conferred on individuals belonging to minority Indigenous groups and which is distinct from, and additional to, the other rights that all persons are entitled to enjoy under the Covenant.⁴⁸ The Committee also recalls that, in the case of Indigenous Peoples, the enjoyment of culture may relate to a way of life which is closely associated with territory and the use of its resources, including such traditional activities as fishing or hunting.⁴⁹ Thus, the protection of this right is directed towards ensuring the survival and continued development of cultural identity.⁵⁰ The Committee further recalls that article 27 of the Covenant, interpreted in the light of the United Nations Declaration on the Rights of Indigenous Peoples, enshrines the inalienable right of Indigenous Peoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity. Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion.⁵¹

8.14 The Committee notes the authors' assertion that their ability to maintain their culture has already been impaired by the reduced viability of their islands and the surrounding seas, owing to climate change impacts. The Committee also notes the authors' claim that those impacts have eroded their traditional lands and natural resources that they use for traditional fishing and farming and for cultural ceremonies that can be performed only on the islands. The Committee further notes their claim that the health of their land and the surrounding seas is closely linked to their cultural integrity. The Committee notes that the State party has not refuted the authors' arguments that they could not practise their culture on mainland Australia, where they would not have land that would allow them to maintain their traditional way of life. The Committee considers that the climate impacts mentioned by the authors represent a threat that could have reasonably been foreseen by the State party, as the authors' community members began raising the issue in the 1990s. While noting the completed and ongoing sea wall construction on the islands where the authors live, the Committee considers that the delay in initiating these projects indicates an inadequate response by the State party to the threat faced by the authors. With reference to its findings in paragraph 8.14, the Committee considers that the information made available to it indicates that the State party's failure to adopt timely adequate adaptation measures to protect the authors' collective ability to maintain their traditional way of life and to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State party's positive obligation to protect the authors' right to enjoy their minority culture. Accordingly, the Committee considers that the facts before it amount to a violation of the authors' rights under article 27 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 17 and 27 of the Covenant.

10. 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.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is

⁴⁷ See, mutatis mutandis, *Benito Oliveira et al. v. Paraguay* (CCPR/C/132/D/2552/2015); and general comment No. 23 (1994).

⁴⁸ General comment No. 23 (1994), paras. 1 and 6.1.

⁴⁹ *Benito Oliveira et al. v. Paraguay*, para. 8.6.

⁵⁰ *Ibid.*, para. 8.3.

⁵¹ *Käkkäläjärvi et al. v. Finland* (CCPR/C/124/D/2950/2017), para. 9.9.

obligated, *inter alia*, to provide adequate compensation to the authors for the harm that they have suffered; engage in meaningful consultations with the authors' communities in order to conduct needs assessments; continue its implementation of measures necessary to secure the communities' continued safe existence on their respective islands; and monitor and review the effectiveness of the measures implemented and resolve any deficiencies as soon as practicable. The State party is also under an obligation to take steps to prevent similar violations from occurring in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official language of the State party.

Annex I

[Spanish only]

Voto individual (disidente) de Carlos Gómez Martínez, miembro del Comité

1. El calentamiento global coloca en situación de grave riesgo la vida familiar de los autores (artículo 17 del Pacto) y también la supervivencia de las comunidades indígenas a las que pertenecen (artículo 27 del Pacto), dada la circunstancia de que habitan islas de muy escasa altitud en el estrecho de Torres, fácilmente inundables por la subida del nivel del mar. Este hecho evidencia su extrema vulnerabilidad y les sitúa como víctimas potenciales de violación de los derechos humanos apenas mencionados y de los que son titulares.

2. Sin embargo, la evitación total del riesgo y de los daños derivados del cambio climático está fuera del alcance de la actuación aislada del Estado parte, dado que el calentamiento de la tierra es un fenómeno global al que solo se puede dar respuesta mundial en una lucha en la que han de implicarse todos o, al menos, una parte significativa de los Estados del planeta. Por ello no puede concluirse que el Estado parte haya violado los derechos de los autores por no haber evitado los riesgos o no haber eliminado totalmente los daños que puedan sufrir, derivados del cambio climático.

3. Por esta razón, el Comité se centra en las medidas de adaptación al cambio climático. El Comité admite, en los párrafos 8.7 y 8.11 de su dictamen, que el Estado parte ha llevado a cabo acciones concretas para la adaptación de la vida de los autores al nuevo entorno que traerá consigo el cambio climático, siendo de especial relevancia la construcción de muros de contención de las aguas del mar, obras ya iniciadas y cuya finalización se espera en 2023.

4. Cuestión distinta es si las medidas de adaptación son o no las exigibles hasta el punto de que, por no ser suficientes, puedan suponer la violación de los derechos humanos de los autores. La adaptación al cambio climático es un concepto indeterminado que puede ir desde una leve acomodación hasta la drástica configuración de un nuevo entorno plenamente resiliente que permita la vida en plenitud de los autores en las nuevas circunstancias climáticas. En cualquier caso, corresponde al Estado parte decidir el curso de acción que debe emprender para adaptar su país al cambio climático atendiendo a los intereses de toda la ciudadanía y a la posible opción por políticas tanto ambientales, como la reforestación con especies resistentes o la facilitación de la transición energética, como de otra índole, como la reducción de la pobreza, que también tiene importante repercusión en el disfrute de los derechos humanos.

5. En el propio dictamen se señala, en el párrafo 8.7, que el Comité no está en condiciones de concluir que las medidas de adaptación adoptadas por el Estado parte sean insuficientes para representar una amenaza directa al derecho de los autores a una vida digna, por lo que se excluye la violación del artículo 6 del Pacto. Si ello es así, no se entiende cómo el Comité sí se considera en condiciones de concluir que las medidas de adaptación emprendidas por el Estado parte sean insuficientes a los efectos de apreciar una violación de los artículos 17 y 27 del Pacto. No se explica por qué el juicio de suficiencia no es válido a unos efectos (no violación del artículo 6) y sí lo es a otros (violación de los artículos 17 y 27).

6. En definitiva, en el dictamen no se explica la razón por la cual el Comité considera que las medidas de adaptación llevadas a cabo por el Estado parte —la construcción de diques de contención del agua del mar—, o el retraso en ejecutarlas —iniciadas en 2017 y 2018 en los malecones de Boigu y Poruma (véase el párr. 2.7)—, han sido insuficientes hasta el punto de constituir una violación de los artículos 17 y 27 del Pacto. Asimismo, tampoco se explica qué otra actuación suplementaria hubiera sido exigible al Estado parte para poder concluir que no se produjo dicha violación.

Annex II

[English only]

Individual opinion of Committee member Duncan Laki Muhumuza (dissenting)

1. The Committee found that there was no violation of article 6 of the Covenant based on the information provided by the State party.
2. I have comprehensively perused the information provided by both the authors and the State party and I am convinced that there is a violation of article 6 of the Covenant, which states that: “Every human being has the inherent right to life ... protected by law. No one shall be arbitrarily deprived of his life.”
3. The Committee found that there was no violation of article 6 by the State party based on the information provided by the State party. The Committee considered the information provided by the State party insofar as adaptative measures were put in place to reduce the existing vulnerabilities and build resilience to climate change-related harms to the islands and it was on those grounds that the Committee found that there was no violation of article 6.
4. I am cognizant of the adaptive measures that the State party has taken under the Torres Strait sea walls programme (2019–2023), and, in this regard, that:
 - (a) Multiple infrastructures will be constructed and upgraded to address ongoing coastal erosion and storm surge impacts on Poruma, Warraber, Masig, Boigu and Iama;
 - (b) By 2022, several coastal mitigation works had been completed on Boigu with funding of \$A 15 million, as well as the construction of a 1,022 metre-long wave return wall, the raising and extension of an existing bund wall to 450 metres and the upgrading of stormwater drainage infrastructure;
 - (c) Coastal mitigation works on Poruma, Warraber and Masig were scheduled to begin in 2021 or 2022 and to be completed by 2023.
5. While these efforts and measures taken and/or yet to be taken are commendable and appreciated, there has been an outcry from the authors that has not been addressed and hence the authors’ right to life will continue, appallingly, to be violated and their lives endangered.
6. I am of the considered view that the State party has failed to prevent a foreseeable loss of life from the impact of climate change. As highlighted by the *Urgenda Foundation v. the State of Netherlands* case,¹ the State party is tasked with an obligation to prevent a foreseeable loss of life from the impacts of climate change, and to protect the authors’ right to life with dignity.
7. In the instant case, the State party has not taken any measures to reduce greenhouse gas emissions and cease the promotion of fossil fuel extraction and use, which continue to affect the authors and other islanders and endanger their livelihood, resulting in the violation of their rights under article 6 of the Covenant.
8. The citizens of the Torres Strait islands have also lost their livelihoods on the islands owing to ongoing climate changes and the State party has not taken any measures to mitigate this factor. As a result of the rise in the sea level, saltwater has penetrated the soils of the islands and as a result lands previously used for traditional gardening can no longer be cultivated. The coral bleaching that occurred has led to the disappearance of crayfish which are a fundamental source of food and income for the authors.
9. These factors combined point to the imminent danger or threat posed to people’s lives, which is already affecting their lives; yet, while the State party is aware, it has not taken effective protective measures to enable the people to adapt to climate change.

¹ The Hague Court of Appeal, *Urgenda Foundation v. The State of the Netherlands*, Case No. 200.178.245/01, Judgment, 9 October 2018.

10. In the *Urgenda* case, The Hague Court of Appeal characterized climate change as “a real and imminent threat” requiring the State to “take precautionary measures to prevent infringement of rights as far as possible” (para. 43).

11. The Court further held that “it is appropriate to speak of a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with loss of life and/or a disruption of family life” (para. 45).

12. The authors have ably informed the Committee that the current state of affairs and existence in the Torres Strait islands is under imminent threat owing to ongoing climate change and therefore the State party should take immediate adaptive precautionary measures to thwart climate changes and preserve the lives of the islanders, including their health and livelihood. Any further delays or non-action by the State party will continue to put the lives of the citizens at risk, which is a blatant violation of article 6 (1) of the Covenant.

13. Accordingly, I find that there is a violation of article 6 and as a Committee, we should implore the State party to take immediate measures to protect and preserve the lives of the people of the Torres Strait islands. In order to uphold the right to life, States must take effective measures (which cannot be taken individually) to mitigate and adapt to climate change and prevent foreseeable loss of life.

Annex III

[Spanish only]

Voto individual (parcialmente disidente) de Hernán Quezada Cabrera, miembro del Comité

1. Respecto de la comunicación núm. 3624/2019, comparto la decisión del Comité en el sentido de que los hechos examinados ponen de manifiesto una violación de los derechos de los autores en virtud de los artículos 17 y 27 del Pacto, al no cumplir el Estado parte con su obligación de aplicar medidas adecuadas para proteger el hogar, la vida privada y la familia de los autores, y para proteger el derecho de los autores a disfrutar de su cultura minoritaria.
2. Sin embargo, en lo relativo al derecho a la vida, lamento no poder unirme a la mayoría del Comité, la cual concluyó que la información disponible no revela una violación por el Estado parte de los derechos de los autores en virtud del artículo 6 del Pacto.
3. El propio Comité entiende (véase el párr. 8.3) que el derecho a la vida no debe interpretarse de forma restrictiva y que su protección requiere de la adopción de medidas positivas¹. En este sentido el Comité ha establecido en su observación general núm. 36 (2018) que las amenazas al derecho a la vida pueden incluir los efectos adversos del cambio climático, lo que obliga a los Estados partes a “adoptar medidas apropiadas para abordar las condiciones generales en la sociedad que puedan suponer amenazas directas a la vida o impedir a las personas disfrutar con dignidad de su derecho a la vida”². Al respecto, debe tenerse presente que el Estado parte es y ha sido, durante las últimas décadas, uno de los países que han producido grandes cantidades de emisiones de gases de efecto invernadero (véase el párr. 7.8).
4. Según los hechos denunciados, y no rebatidos por el Estado parte, los autores han experimentado y experimentan una serie de problemas derivados de los efectos del cambio climático que afectan sus vidas y la existencia misma de las islas que habitan: la inundación de aldeas y de tierras funerarias ancestrales; la pérdida por erosión de sus tierras tradicionales, incluidas las plantaciones y los jardines; la destrucción o marchitamiento de los jardines tradicionales por la salinización causada por las inundaciones o la entrada de agua de mar; la disminución de especies marinas de importancia nutricional y cultural; la decoloración de los corales, y la acidificación de los océanos, entre otros. A todo ello se suma el riesgo de inhabitabilidad de sus islas debido al persistente aumento del nivel del mar.
5. Si bien el Estado parte ha adoptado en los últimos años diversas medidas para hacer frente a los efectos adversos del cambio climático y las emisiones de carbono generadas en su territorio, dichas medidas son aún insuficientes para garantizar a los autores el disfrute de una vida digna en las islas que habitan en el estrecho de Torres. En efecto, el Comité ha constatado (véase el párr. 8.12) que el Estado parte no ha respondido a varias alegaciones de los autores en este sentido, en particular a la no construcción de medidas de adaptación para mejorar los malecones y el retraso en la construcción de diques, así como tampoco ha dado explicaciones alternativas sobre la reducción de los recursos marinos necesarios para la alimentación y la pérdida de cultivos y árboles frutales. Aun cuando dichas constataciones del Comité están relacionadas con la violación del artículo 17 del Pacto, la falta o la insuficiencia de medidas de adaptación para enfrentar las consecuencias adversas del cambio climático ha repercutido negativamente en las condiciones de vida de los autores. Por lo demás, las amenazas que se ciernen sobre sus medios de subsistencia y sobre la existencia misma de las islas han creado una situación de incertidumbre y, en consecuencia, afectan su salud mental y su bienestar, impidiendo el derecho a disfrutar de una vida digna³. En este

¹ *Portillo Cáceres y otros c. Paraguay* (CCPR/C/126/D/2751/2016), párr. 7.3.

² Observación general núm. 36 (2018), párrs. 26 y 62.

³ Según el Comité en su observación general núm. 36 (2018), el derecho a la vida es “el derecho a no ser objeto de acciones u omisiones que causen o puedan causar una muerte no natural o prematura y a disfrutar de una vida digna” (párr. 3).

contexto, los autores y sus familias ya han sufrido y aún sufren una violación del derecho a la vida, en el sentido de “vida digna”, lo que es una realidad concreta que requiere reparación, independientemente de las futuras mejoras que puedan lograrse con las medidas de mitigación y adaptación que el Estado parte ha comenzado a implementar en los últimos años o que estarían por iniciarse, según la información obtenida por el Comité (véase el párr. 8.7).

6. Con respecto al calendario de adopción de medidas, cabe tener presente que la comunicación de los autores (presentación inicial) es de fecha 13 de mayo de 2019, cuando los efectos adversos del cambio climático en las islas del Estrecho de Torres ya habían producido, durante largo tiempo, serios impactos negativos en sus vidas. Sin embargo, la mayor parte de las obras de mitigación costera emprendidas por el Estado parte, según lo constatado por el Comité, estaban programadas para comenzar recién en 2021 o 2022 y estar terminadas en 2023 (islas Masig, Poruma y Warraber). Solamente en la costa de una de las islas (Boigu) se habían completado en 2022 varias obras de mitigación.

Annex IV

[English only]

Individual opinion of Committee member Gentian Zyberi (concurring)

1. I am generally in agreement with the Committee's findings.¹ In this individual opinion, I explain my position on adaptation and mitigation measures, the law on international responsibility for countering climate change effects and adequate measures, and the violation of article 27.

2. After having acknowledged climate change as a common concern of humankind in the preamble to the 2015 Paris Agreement, the Conference of the Parties to the United Nations Framework Convention on Climate Change address mitigation and adaptation under, respectively, articles 4 and 7 of the Agreement. Mitigation efforts are aimed at addressing the causes of climate change by preventing or reducing the emission of greenhouse gases into the atmosphere. Adaptation efforts are aimed towards adjusting to the current and future effects of climate change. Both types of measures are intrinsically connected and require action by States (and non-State actors), individually and jointly through international cooperation.

3. The State party in this case has taken both mitigation and adaptation measures. When it comes to mitigation measures, assessing the nationally determined contributions taken by States parties to the International Protocol on Civil and Political Rights under the 2015 Paris Agreement, when the State is party to both treaties, is an important starting point. States are under a positive obligation to take all appropriate measures to ensure the protection of human rights. In this context, the due diligence standard requires States to set their national climate mitigation targets at the level of their highest possible ambition and to pursue effective domestic mitigation measures with the aim of achieving those targets.² When a State is found to not have fulfilled these commitments, such a finding should constitute grounds for satisfaction for the complainants, while the State concerned should be required to step up its efforts and prevent similar violations in the future. The requirement of due diligence applies also to adaptation measures.

4. It has been 30 years since, at the 1992 United Nations Conference on Environment and Development (Earth Summit) States recognized climate change as a cause for common concern and action, but despite important developments in the context of the 1992 United Nations Framework Convention on Climate Change, the 1997 Kyoto Protocol to the United Nations Framework Convention on Climate Change and the 2015 Paris Agreement, individual and joint State efforts at addressing the climate crisis remain insufficient.³ Over the years, the law on international responsibility on climate change has developed progressively.⁴

5. A clear limitation of the law on international responsibility in cases of climate change and related litigation is the difficulty involved in addressing what constitutes shared responsibility.⁵ Since it is the atmospheric accumulation of carbon dioxide and other

¹ On article 6, the Committee follows largely its reasoning in *Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016), para. 9.12.

² Paris Agreement, arts. 4 (3) and 4 (2).

³ For more information on the United Nations Framework Convention on Climate Change and related documents and activities, see <https://unfccc.int>.

⁴ See, e.g., Christina Voigt, "State responsibility for damages associated with climate change", in *Research Handbook on Climate Change Law and Loss & Damage*, Meinhard Douelle and Sara L. Seck, eds. (Cheltenham, Edward Elgar Publishing, 2021).

⁵ See, e.g., article 47 of the draft articles on responsibility of States for internationally wrongful acts and related commentary, adopted by the International Law Commission at its fifty-third session (2001); and André Nollkaemper and others, "Guiding principles on shared responsibility in

greenhouse gases that gives rise over time to global warming and climate change,⁶ States should act with due diligence based on the best science when taking mitigation and adaptation action. This is an individual responsibility of the State, relative to the risk at stake and its capacity to address it. A higher standard of due diligence applies in respect of those States with significant total emissions or very high per capita emissions (whether these are past or current emissions), given the greater burden that their emissions place on the global climate system, as well as in respect of States with higher capacities for taking highly ambitious mitigation action.⁷ This higher standard applies to the State party in this case.

6. The Committee has significant practice on article 27 of the Covenant, with much of its case law concerning the rights of Indigenous Peoples.⁸ In this case, it has found a violation because of the State party's failure to adopt timely adequate adaptation measures to protect the authors' right to enjoy their minority culture under article 27. In my view, the Committee should have linked the State obligation to "protect the authors' collective ability to maintain their traditional way of life and to transmit to their children and future generations their culture and traditions and use of land and sea resources" (para. 8.14 of the Views) more clearly to mitigation measures, based on national commitments and international cooperation, as it is mitigation actions which are aimed at addressing the root cause of the problem and not just remedying the effects. If no effective mitigation actions are taken in a timely manner, adaptation will eventually become impossible. Such land and sea resources will not be available for Indigenous Peoples or even for humanity more generally, without diligent national efforts, as well as joint and concerted mitigation actions of the organized international community.

7. Climate change concerns have been addressed over the years by the Committee and other United Nations human rights treaty bodies,⁹ the special procedures of the Human Rights Council¹⁰ and more generally by the United Nations.¹¹ This case shows the possibilities and limitations of human rights-based litigation. That said, alongside other general or specific institutional arrangements addressing climate change issues, the Committee provides a suitable venue for addressing some concerns, especially under articles 6, 7, 17 and 27, both under the Optional Protocol and under article 41 of the Covenant.

international law", *European Journal of International Law*, vol. 31, No. 1 (February 2020), (see principles 2, 4, 10, 11 and 14).

⁶ Jacqueline Peel, "Climate change", in *The Practice of Shared Responsibility in International Law*, André Nollkaemper and Ilias Plakokefalos, eds. (Cheltenham, Cambridge University Press, 2017), p. 1031.

⁷ *Ibid.*, p. 1035.

⁸ For example, William A. Schabas, *Nowak's CCPR Commentary*, 3rd revised ed. (Kehl am Rhein, N.P. Engel, 2019), pp. 809–812.

⁹ *Teitiota v. New Zealand*, [E/C.12/2018/1](#) and [HRI/2019/1](#). See also *M.K.A.H. v. Switzerland* ([CRC/C/88/D/95/2019](#)), *Sacchi et al. v. Argentina* ([CRC/C/88/D/104/2019](#)), *Sacchi et al. v. Brazil* ([CRC/C/88/D/105/2019](#)), *Sacchi et al. v. France* ([CRC/C/88/D/106/2019](#)), *Sacchi et al. v. Germany* ([CRC/C/88/D/107/2019](#)) and *Sacchi et al. v. Turkey* ([CRC/C/88/D/108/2019](#)).

¹⁰ See [A/70/287](#), [A/74/161](#), [A/HRC/40/55](#), [A/HRC/41/39](#), [A/HRC/43/53](#) and Human Rights Council resolution 48/14.

¹¹ See www.un.org/en/climatechange. See also [A/HRC/50/57](#).

Annex V

[English only]

Joint opinion of Committee members Arif Bulkan, Marcia V.J. Kran and Vasilka Sancin (partially dissenting)

1. In addition to a violation of articles 17 and 27 found by the majority of the Committee, we would also find a violation of the right to life under article 6 of the Covenant.

2. The majority opinion correctly states that article 6 should not be interpreted in a restrictive manner (see para 8.3 of the Views).¹ Yet, the “real and foreseeable risk” standard employed by the majority interprets article 6 restrictively and was borrowed from the dissimilar context of refugee cases.² In *Teitiota v. New Zealand*, the Committee concluded that, owing to insufficient information from the author, climate change was not a real or foreseeable enough risk to require the State party to grant him refugee status. In contrast, here the primary question is whether the alleged violations of article 6 themselves ensue from inadequate mitigation and/or adaptation measures on climate change by the State party. Using a more accurate standard, from a factually similar case relating to environmental damage by pesticides, the question becomes whether there is “a reasonably foreseeable threat” to the authors’ right to life.³ The authors detail flood-related damage, water temperature increases and loss of food sources and, most importantly, they explain that the islands they live on will become uninhabitable in a mere 10 to 15 years, according to the Torres Strait Regional Authority, a governmental body. Together, this provides evidence of a reasonably foreseeable threat, constituting a violation of article 6.

3. Using the “real and foreseeable risk” standard, the majority opinion requires adverse health impacts to demonstrate an article 6 violation. Not finding such impacts, the majority fails to find a violation of article 6. Nonetheless, the authors detail real and foreseeable risks to their lives resulting from the flooding of the Torres Strait islands. First, the authors provide evidence of significant loss of food sources on which they rely to sustain themselves and their families. The crops lost include sweet potato, coconut and banana, which are required food sources and livelihood for the authors. The authors demonstrate that flooding has caused land erosion, making food production impossible. They also explain that warmer waters resulting from climate change reduced the availability of crayfish, another primary food source. Second, the authors detail repeated damage to their homes, including significant water damage to the foundation of one author’s home. Thus, the authors have demonstrated real and foreseeable risks to their lives through significant loss of food sources, livelihood and shelter.

4. In the majority opinion, article 6 is interpreted restrictively and it is observed that the authors conflate violations of the guarantee under article 27 of the rights of persons belonging to minorities to enjoy their own culture with violations of the guarantee under article 6 of every human being’s inherent right to life (see para. 8.6). Accordingly, the majority finds a violation of article 27, but not of article 6. While the authors do discuss these violations as related, citing similar facts, the Committee’s jurisprudence does not require that facts relating to different violations arise from different sets of facts. The risks to the authors’ right to life are independent and qualitatively different from the risks to their right to enjoy their culture. Consequently, we are unable to agree that a violation of article 27 sufficiently addresses the authors’ claims.

5. We endorse the view that integral to article 6 is the right to live with dignity (see paras. 8.3 and 8.4). It is critical, however, to do more than simply reference the Committee’s jurisprudence: it must also be used progressively, based on current realities. This

¹ William A. Schabas, *Nowak’s CCPR Commentary*, 3rd revised ed. (Kehl am Rhein, N.P. Engel, 2019), p 122.

² *Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016), para. 8.4.

³ *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.5.

jurisprudence unequivocally notes that no derogation is permitted from article 6.⁴ Moreover, it clarifies the direct connection between environmental harms, the right to life and the right to live with dignity;⁵ and that State parties must duly consider the precautionary approach on climate change.⁶ Given the urgency and permanence of climate change, the need to adhere to the precautionary approach is imperative. In addition, the singular focus on the future obscures consideration of the harms being experienced by the authors, which negatively impact their right to a life with dignity in the present. The unfortunate outcome is that the Committee’s jurisprudence promises far more than the majority delivers.

6. While we agree that the State party is not solely responsible for climate change, the main question before the Committee is significantly narrower: has the State party violated the Covenant by failing to implement adaptation and/or mitigation measures to combat the adverse impacts of climate change within its territory, resulting in harms to the authors? The majority opinion relies on projects initiated by the State party since 2019, which might be completed by 2023 (see para. 8.7). While these measures help build climate change resilience, the majority does not sufficiently consider the violations of article 6 that had already occurred at the time of the filing of this communication. Indeed, promises of future projects are insufficient remedies, as they have not yet occurred, whereas damage to the foundation of the authors’ homes has already occurred. Soil where the authors grow food for subsistence has already been eroded, and crops have been lost. These violations are a direct result of flooding which could have been prevented by adaptation measures, including the timely construction of a sea wall to protect the islands where the authors live. Indeed, in its 2014 report, the Torres Strait Regional Authority concluded that Australia had yet to take any steps on 33 out of the 34 adaptation measures suggested.

7. The State party has a positive obligation to minimize “reasonably foreseeable threats to life”⁷ and should remedy these violations by implementing adaptation measures including those identified by the Torres Strait Regional Authority in 2019. Despite multiple requests and knowledge of the ongoing impacts on the lives of the authors, the State party did not take adaptation measures in a timely manner. Consequently, we would find that the State party violated the authors’ right to life under article 6 of the Covenant in addition to being responsible for the violations found by the majority.

⁴ General comment No. 36 (2108), para. 2.

⁵ *Ibid.*, para. 62.

⁶ *Ibid.*, paras. 62 and 64.

⁷ *Ibid.*, para. 21.