



The Global Initiative

for Economic, Social and Cultural Rights

**Parallel Report submitted by the
Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)
to the Committee on Economic, Social and Cultural Rights
on the occasion of the consideration of the
Fifth Periodic Report of Australia
during the Committee's 61st Session**

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1. Introduction

1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights organization which seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. The vision of the GI-ESCR is of a world where the human rights framework reflects the real world experiences of all of us, effectively furthering social and economic justice and human dignity, and catalyzing change from the local to the global, back to the local.

2. The mission of the GI-ESCR is to strengthen the international human rights framework through creative standard setting, so that all people, and in particular marginalized individuals and groups, are able to fully enjoy their economic, social and cultural rights, and are able to do so without discrimination and on the basis of equality; provide innovative tools to policy makers, development actors and others on the practical implementation and realization of economic, social and cultural rights; enforce economic, social and cultural rights through international, regional and national mechanisms and seek remedies for violations of these rights, with a focus on creating beneficial jurisprudence aimed at transformative change; engage networks of human rights, women's rights, environmental and development organizations and agencies to advance the sustainable enjoyment of economic, social and cultural rights at both national and international levels; and work with advocates, social movements and grassroots communities at national and local levels to more effectively claim and enforce economic, social and cultural rights, including by engaging international mechanisms for local impact.

3. The GI-ESCR is a member of the Extra-Territorial Obligation Consortium (ETO Consortium) and serves on the Consortium's Steering Committee.

4. Australia engages in decisions and activities which affect and have the potential to affect, either detrimentally or beneficially, obligations under the International Covenant on Economic, Social and Cultural Rights as they relate to climate change. The relevant obligations under the Covenant have both territorial and extra-territorial effect.

2. Decisions, actions and omissions related to climate change impact Covenant rights, including extra-territorial obligations

5. Decisions resulting in climate change may constitute violations of Covenant rights. For instance, the Human Rights Council's Analytical Study on the Relationship between Climate Change and the Human Right to Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health recalls that "according to WHO, projected increases in average seasonal temperatures and the frequency and intensity of heat waves will contribute to increase in heat-related deaths among people aged over 65 years."¹ The study goes on to note that compared to a

¹ Human Rights Council, Analytical study on the relationship between climate change and the human right to everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/HRC/32/23 (6 May 2016) at para. 1.

future without climate change, this is projected to result in nearly 38,000 additional deaths per year as of 2030 and nearly 100,000 additional deaths per year as of 2050² and that the largest impacts will be felt in South-East Asia.³

6. Similarly, climate change affects nutrition through changes in crop yields, loss of livelihood, increase in poverty, and reduced access to food, water and sanitation.⁴ Disrupted supplies of water and high temperatures stress crops and promote algal blooms in reservoirs while rising ocean acidification affects fisheries. Consequently, climate change will detrimentally impact the rights to health, food, water and sanitation. Indeed, according to the World Bank, a 2°C increase in average global temperature would put between 100 million and 400 million more persons at risk of hunger and could result in over 3 million additional deaths from malnutrition each year.⁵ Similarly the WHO estimates approximately 95,000 additional deaths per year on account of under nutrition of children aged five years or less by 2030.⁶

7. Climate change also affects the right to adequate housing. For instance by causing housing to become inadequate on account of flooding, erosion, and related disease vectors.

8. Marginalized or vulnerable groups bear the brunt of these impacts. The Human Rights Council Analytical Study concludes that negative impacts of climate change are disproportionately felt by the poor, women, children, migrants, persons with disabilities, minorities, indigenous peoples and others in vulnerable situations, particularly those living in geographically vulnerable development countries⁷ such as populations living in small island development States.⁸ Indeed, persons living in small island development States currently suffer from climate-sensitive health problems and vulnerability to extreme weather events which can have short and long-term health effects, including drowning, injuries, increased disease transmission and deterioration of water quantity and quality.⁹

9. Australia's decisions, actions and omission are contributing to climate change and its human rights impacts. Australia ratified the Paris Agreement on 9 November 2016 and committed to a target of 26 to 28 per cent reduction (from 2005 levels) of greenhouse gas admissions by 2030. This commitment, however, is considered inadequate as it is the equivalent to a range of approximately 5 per cent above to 5 per cent below 1990 levels.¹⁰ And, while per capita emissions are declining, absolute

² *Id.*

³ *Id.*

⁴ *Id.* at para. 20.

⁵ World Bank, *World Development Report 2010*, pp. 4-5.

⁶ World Health Organization, *Quantitative Risk Assessment*; see also Human Rights Council, Analytical study on the relationship between climate change and the human right to everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/HRC/32/23 (6 May 2016) at para. 20.

⁷ *Id.* at para. 23.

⁸ *Id.*

⁹ *Id.*

¹⁰ Climate Tracker, <http://climateactiontracker.org/countries/australia.html>

emission are increasing. For instance, the first half of 2016 Australia's emission increased .8 per cent from 2015 levels.¹¹

10. According to Greenpeace, Australia is 'the world's largest coal exporter [and] will export a billion tonnes of carbon dioxide in its coal this year [2016], erasing the few benefits of meeting its weak Paris target and worsening its contribution to global climate change.'¹² Furthermore, 'in addition to not reducing Australia's domestic CO2 emissions since 1990, coal export volumes have more than tripled in the same period to 400 million tonnes per annum' and 'With every Australian tonne of coal emitting 2.5 tonnes of CO2 on average wherever it is used, this means Australia's CO2 exports through coal have increased by a massive 253% since 1990.'¹³

11. Rather than meeting its Covenant obligations to mitigate climate change causing fossil fuel use, Australia subsidizes the coal industry. Reports from 2015, for instance, show that the government subsidies at Au\$5.6 billion per year.¹⁴

12. The result is that under present policy, Australia's emissions are set to substantially increase to more than 21 per cent above 2005 levels by 2030, equivalent to an increase of around 52 per cent above 1990 levels, thereby falling short of Australia's Paris Agreement commitments.¹⁵

13. Furthermore, Australia is violating its obligation to protect Covenant rights by failing to ensure that private actors don't exacerbate climate change. One example is that of Australian banks, which reportedly invested \$7 billion more in fossil fuels than in renewable energy sources in 2016 despite pledging during the Paris Climate Agreement negotiations to help Australia transition to a low carbon economy.¹⁶ Market Forces reports that ANZ and the Commonwealth Bank were the worst offenders, investing over \$3bn each in fossil fuels. In the same period, ANZ only lent \$225m to renewable sources of energy, giving it a 14:1 ratio.¹⁷

14. Finally, Australia's policies on renewable energy are discouraging, as it has significantly cut funding to the main Renewable Energy body in September 2016 and has criticized State government for setting their own renewable energy targets.¹⁸

3. The State Party has obligations to prioritize Covenant rights in decisions, actions and omission in order to prevent contributing to climate change and it is clear what steps should be deliberately taken to meet those obligations

¹¹ Quarterly Update of Australia's National Greenhouse Gas Inventory: June 2016; <https://www.environment.gov.au/climate-change/greenhouse-gas-measurement/publications/quarterly-update-australias-national-greenhouse-gas-inventory-jun-2016>.

¹² Greenpeace Australia Pacific, *Exporting Climate Change, Killing the Reef* (2016).

¹³ *Id.*

¹⁴ See, Oil Change International, *Empty promises: G20 subsidies to oil, gas and coal production* (November 2015).

¹⁵ Climate Action Tracker, <http://climateactiontracker.org/countries/australia.html>

¹⁶ Market Forces, *Australia 2016 Lending* (2016).

¹⁷ *Id.*

¹⁸ <https://theconversation.com/australian-renewable-energy-agency-saved-but-with-reduced-funding-experts-react-65334> ; <https://www.cleanenergycouncil.org.au/news/2016/September/arena-funding-cuts.html>

15. The Human Rights Council's Analytical Study has stated that "the human rights framework requires that global efforts to mitigate and adapt to climate change be guided by relevant human rights norms and principles"¹⁹ and that "the International Covenant on Economic, Social and Cultural Rights "make[s] clear that human rights obligations of States require both individual action and international cooperation."²⁰ Consequently, to prevent and mitigate climate change, "States acting individually and collectively are obligated to mobilize and allocate the maximum available resources for the progressive realization of economic, social and cultural rights" .²¹ and that "failure to adopt reasonable measures to mobilize resources to prevent foreseeable human rights harm caused by climate change breaches this obligation."²²

16. As climate change negatively impacts Covenant rights, "these impacts trigger obligations and responsibility among all duty bearers."²³ According to the Human Rights Council's Analytical Study, "States " must limit anthropogenic emissions of greenhouse gases " , including through regulatory measures, in order to prevent to the greatest extent possible current and future negative human rights impacts of climate change."²⁴ Indeed, as the Study continued, "critically, it is not enough to simply focus on ensuring that action against climate change respect human rights. A right-based approach requires States to take affirmative action to respect, protect, promote and fulfil all human rights for all persons. Failure to prevent foreseeable human rights harm caused by climate change, or at the very least to mobilize maximum available resources in an effort to do so, constitutes a breach of this obligation."²⁵

17. In order to meet its obligations under the Covenant, Australia should urgently strive to meet the overarching Paris Climate Agreement commitment of limiting warming to no more than 2C. To accomplish this, more than ninety per cent of Australia's coal reserves must be left in the ground.²⁶ Indeed, energy policies that continue to support substantial fossil fuel use are inconsistent with tackling climate change.²⁷ Notwithstanding, Australia has proposed the expansion of coal use from the Galilee Basin, and proposal that if implemented would violate Covenant rights related to climate change, particularly since Galilee Basin coal is of low quality.

4. Australia is violating its above-mentioned Covenant obligations both within its own territory and extra-territorially

18. Obviously, Australia's climate change impact affects both those under Australia's national and territorial jurisdiction, but also has extra-territorial effects that violate its extra-territorial obligations under the Covenant. With respect to extra-territorial obligations, the Maastricht Principles on Extra-Territorial Obligations (ETOs), a restatement of existing international law related to ETOs, makes clear that under the Covenant, at a minimum, States Parties have an "obligation to avoid

¹⁹ *Id.* at para. 33.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at para. 32.

²⁴ *Id.*

²⁵ *Id.* at para. 48.

²⁶ Climate Council, [Unburnable Carbon: why we need to leave fossil fuels in the ground](#) (2015).

²⁷ See *id.*

causing harm²⁸ and thus States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The Maastricht Principles also reiterate the obligations of States to take deliberate, concrete and targeted steps, separately and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfillment of ESCRs, including in matters relating to environmental protection.²⁹

19. Furthermore, States must elaborate, interpret and apply relevant international agreements and standards in a manner consistent with their human rights obligations, including those pertaining to environmental protection (ETOP 17) [and] States have a duty to regulate to ensure that non-State actors do not nullify or impair the enjoyment of economic, social and cultural rights, *inter alia*, by administrative, legislative, investigative and adjudicative measures (ETOPs 23 -27).³⁰

20. Indeed, in its Universal Periodic Review in 2011, Australia received a recommendation from the Maldives to adopt a rights-based approach to climate change policy at home and abroad, including by reducing greenhouse gas emission to safe levels that are consistent with the full enjoyment of human rights.³¹ Australia accepted in part this recommendation and stated Australia is committed to taking action to address climate change in accordance with its international commitments. This will positively impact on the continued ability to enjoy human rights. Human rights impacts will be considered as part of policy approaches to address all impacts of climate change.³²

21. However, Australia has fallen far short of meeting this commitment. The Committee now has an opportunity to clarify just what those international commitments are under the Covenant, and make strong and urgent recommendations to the State Party in this regard.

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²⁸ Maastricht Principles on Extra-Territorial Obligations, Principle 13.

²⁹ ETO Consortium, *Extra-Territorial Obligations in the Context of Eco-Destruction and Climate Change* (citing Maastricht Principles 28 and 29 in relation to Principles 30 ó 35).

³⁰ *Id.*

³¹ Universal Periodic Review: Australia 2011, UN Doc. A/HRC/17/10, at para. 86.

³² Universal Periodic Review: Australia 2011, UN Doc. A/HRC/17/10/Add.1, at para. 4.