

INTERNATIONAL COURT OF JUSTICE

**OBLIGATIONS OF STATES IN RESPECT OF
CLIMATE CHANGE**

(REQUEST BY THE UNITED NATIONS GENERAL
ASSEMBLY FOR AN ADVISORY OPINION)

**ANNEXES TO THE
WRITTEN COMMENTS OF THE COOK ISLANDS**

15 AUGUST 2024

LIST OF ANNEXES

EXPERT REPORTS	PAGE *
Annex No. 1: Liam Koka'ua, <i>Traditional Knowledge and Climate Change Adaptation in the Cook Islands - Expert Report by Liam Koka'ua</i> , 5 July 2024.	3
Annex No. 2: Linda Siegele, <i>Expert report around the importance of upholding and protecting human rights in the face of the impacts climate change by Linda Siegele</i> , JD LLM, 15 July 2024.	14

* Please note that these page numbers refer to the page numbers in the bottom center where these two annexes can be found in this particular document. The page numbers referred to the in the Written Comments of the Cook Islands refer to the page numbers on the expert report documents themselves (in the bottom right corner).

Traditional Knowledge and Climate Change Adaptation in the Cook Islands

Expert Report by Liam Koka‘ua

I. INTRODUCTION AND OUTLINE OF THIS EXPERT REPORT

My name is Liam Ramsay Tuā‘ivi Koka‘ua and I am of the Ngāti Ārera of Pokoinu, Rarotonga. I also trace genealogical descent to the islands of Avarau (Palmerston Atoll), Manihiki, Rakahanga, Tongareva, Mangaia and Tahiti. I am currently a Project Curator, Mātauranga Māori at Auckland Museum, Auckland, New Zealand.

I have written this Expert Report in support of the Written Comments to be submitted by the Cook Islands for the advisory proceedings before the International Court of Justice on the obligations of States in respect of climate change as requested by the General Assembly by resolution A/RES/77/276.

This Report will give attention to the importance of traditional knowledge in the Cook Islands, particularly regarding our nation’s efforts to adapt to the impacts of anthropogenic climate change. The Report stresses the importance of changing how traditional knowledge is perceived and valued by the international climate change adaptation funding community and the pertinence that traditional knowledge is integrated into climate change funding mechanisms and adaptation projects in the future.

This Expert Report will proceed as follows: Section II will provide a brief outline of my qualifications and credentials. Section III will discuss my own definition of traditional knowledge in the Cook Islands and establish the current context. In Section IV I will look at the importance of traditional knowledge in combatting the impacts of climate change in the Cook Islands. Section V will look at how traditional knowledge is implemented for climate adaptation in the Cook Islands. Section VI will look at how traditional knowledge is implemented for climate adaptation in the Cook Islands. In Section VII I will discuss my understanding of the role of states in respect of climate change adaptation and traditional knowledge. This will be followed by a concluding statement and declaration.

II. QUALIFICATIONS AND CREDENTIALS OF THE AUTHOR

I hold a Bachelor of Arts, majoring in Pacific Studies and Geography, a Postgraduate Diploma in Geography, and a Master of Indigenous Studies with First Class Honours. All qualifications come from the University of Auckland.

My relevant work experience includes:

- (1) Project Officer, Te Ipukarea Society (2015-2019). This involved conservation fieldwork in various ecosystems of the Cook Islands such as Rarotonga Cloud Forest, Ngā-pū-toru karst environments, and Mangaian secondary forest. During this time I was particularly interested in the native biodiversity of the Cook Islands. I also raised awareness on the sustainability issues regarding various development options for the Cook Islands, particularly in the areas of migratory fish stocks, tourism, and seabed mining, with a focus on youth.
- (2) Project Manager, Waingake Restoration, Gisborne District Council (2020-2021). Worked alongside Indigenous communities to build resilience to natural hazards and climate change through a large-scale native forest reforestation programme, including invasive weed control, pest eradication, planting of native seedlings, and erosion stabilisation through both hard and soft engineering.
- (3) Senior Pasifika Specialist, Auckland Council (2021-2023). I brought my knowledge of East Polynesian cultures to Auckland Council to support the implementation of the Council’s “Ara Moana” Pasifika Strategy. This included indigenising working processes in Council, promoting indigenous languages, supporting Indigenous Pacific staff culturally and professionally, and assisting in research relating to Cook Islands Māori and other Pacific Indigenous knowledge systems. This included a project on the traditional lunar calendars (“arāpō”) of the Pacific.
- (4) Project Curator, Mātauranga Māori, Auckland Museum (2023-present). This is a role which involves the development of a permanent exhibition on “Natural Environment and Human Impacts”. The gallery development process is underpinned by Mātauranga Māori (indigenous knowledge in Aotearoa New Zealand), but also includes Pacific Indigenous knowledge content. It is a role which has facilitated my further research into traditional knowledge systems of the Cook Islands and wider Pacific.
- (5) In the area of governance, I have been a member of the Board of Directors of Nia Tero since July 2022. I was a former Board Trustee of marine conservation non-profit, Blue Cradle (July 2021-Dec 2023). In July 2024 I became an advisor for Moonjelly Foundation, a new non-profit focussed on funding Indigenous scientists who use both traditional knowledge and Western scientific methodologies.

III. TRADITIONAL KNOWLEDGE IN THE COOK ISLANDS

I will firstly offer a definition of traditional knowledge in the context of the Cook Islands. Traditional knowledge is the Indigenous worldview and customary practices, including spirituality, of the Māori and Pukapukan people who are descended from the original inhabitants of the islands currently known as the Cook Islands. Especially the knowledge passed down from generation to generation, much of which dates to the era prior to first

missionary contact in 1821. Traditional knowledge is a subset of Indigenous knowledge which continues to be generated on a daily basis by Māori and Pukapukan people in our islands today, and will continue to be generated in the future to suit the future needs of our people.

Christianisation impacted on traditional spirituality, which encapsulates a worldview where we as Māori people see ourselves as genealogically related to the natural world. Our traditional spirituality and worldview follows that we descend from Papa (earth mother) and Ātea (sky father, sometimes known as Te Tumu), their children were atua, departmental deities, who preside over various resources and ecosystems of the natural world. The spiritual presence of these deities in certain places made these sites “tapu”, or sacred and therefore prohibited. Tapu could also be placed by traditional leaders to preserve natural resources, this practice is known as rā‘ui and continues to be implemented with varying effect throughout the Cook Islands. The replacement of traditional spirituality with Christianity, as well as how the Bible has been interpreted, has had an impact on our connection to the natural environment. Some practices such as tattooing, the consumption of kava (*Piper methysticum*) and the celebration of the appearance of the Matariki (Pleiades) star cluster (to herald the new year) were completely outlawed by the missionaries.

Despite this, much traditional knowledge has managed to survive, and Māori and Pukapukan people of the Cook Islands remain heavily dependent on the land and sea for sustenance. There are promising moves and initiatives being led by some branches of the community to revive other traditional knowledge systems currently dormant.

Some examples of traditional knowledge in the Cook Islands include:

- (1) Application of the arāpō (lunar calendar) for activities such as planting, fishing and even family planning.
- (2) Knowledge of different cultivars of traditional crops (such as breadfruit, bananas, and taro) as well as fish species. Specifically, the knowledge of when and how each of these cultivars or species are best planted, harvested, or caught and how to preserve and process them into nutritious meals.
- (3) Knowledge of how to construct sea vessels such as outrigger canoes and double-hulled canoes, and what tree species are best suited for different aspects of the vessel. This now includes both native and non-native timbers.
- (4) Ocean voyaging knowledge, particularly for double-hulled voyaging canoes. Being able to read the waves, swells, clouds, behaviour of birds, fish and cetacean movements, and especially the stars, in order to travel (sometimes thousands of miles) to other islands in the Pacific Ocean.

IV. THE IMPORTANCE OF TRADITIONAL KNOWLEDGE IN COMBATING THE IMPACTS OF CLIMATE CHANGE IN THE COOK ISLANDS

In my view, there are three key interrelated reasons why traditional knowledge is essential to combatting the impacts of climate change in the Cook Islands, and why Western knowledges and approaches alone are insufficient.

First, traditional knowledge is much more suited to identifying extraordinary changes at the local scale, these may include changes in climate, biodiversity, soil health, and water quality. This is due to the continued ability of Indigenous peoples to observe the traditional signs (i.e. environmental indicators) on a daily basis, during everyday activities (such as fishing and planting) and to compare these daily observations with hundreds if not thousands of years of ancestral knowledge which has been passed down through the generations.

Second, the practitioners of traditional knowledge, Indigenous peoples who are living on their traditional territories, have no hidden agendas when it comes to dealing with the impacts of climate change. Protecting the integrity of our ecosystems is a matter of survival, not only because it is our source of nourishment, but because our cultures, languages, wellbeing, and entire way of life are dependent on these ecosystems. These aspects of who we are evolved out of these very ecosystems. On the other hand, Western knowledge is often intertwined with political agendas, including being supported by government or university funding. Western scientists can be motivated to produce certain results or prove certain theories which are not based. They do not necessarily support the needs identified by Indigenous communities nor do they prioritise integration or valuing of traditional knowledge.

Thirdly, western knowledge is not always suited for the remote environments or social contexts of the places where climate change is having the largest impact. Foreign scientists often come to these areas without cultural grounding or local knowledge which is intrinsic to understanding traditional knowledge and practices, and the local social contexts. As a result, these scientists may not understand what the most pressing needs for climate adaptation are for these communities.

Therefore, the Cook Islands must have the resources and support needed to scale up our integration of traditional knowledge in climate adaptation for the following two reasons:

- (1) Science in conjunction with traditional knowledge would be the most effective method to understand the impacts of climate change, especially in specific localities where Indigenous peoples continue to exercise guardianship in their territories. Promoting the use of traditional knowledge would increase its value amongst Cook Islands people, as well as all people globally, as there is currently a bias towards Western science.
- (2) In the context of climate change adaptation, utilising traditional knowledge will allow for a focus on the localised aspects of the environment and climate which are most relevant for Indigenous peoples, such as food security. For example, monitoring traditionally important fish species and whether they are becoming more or less difficult to catch. This is an improvement on typical Western science

research outputs which often do not consider the most pressing needs of Indigenous peoples and may create results which are of no material value to the communities who live in that ecosystem.

If this recognition, support, and integration of traditional knowledge is not provided, there will continue to be significant harm inflicted on the Cook Islands due to climate change, and we will continue to receive technical advice or infrastructure which is not fit for purpose. These costly gifts of support will not necessarily focus on what matters to the Indigenous communities, for example, food security, cultural vitality, or holistic wellbeing. For example we are likely to receive climate infrastructure which is ill-placed, not taking into account wind and wave patterns, flood-prone areas, or the seasonal movements of animals. Or we may receive recommendations on crops and animals which are ill-suited for our climate or that people are not accustomed to eating or processing. While people fund hard infrastructure, valuable traditional knowledge of dozens of varieties of traditional crops or animal foods (such as taro or flying-fish) may be being lost because it is not being valued by donors or even our own people. What is the use of a sea wall if you have nothing to eat? All the aforementioned risks are those which integration of traditional knowledge can address. Without this, all climate adaptation work will not be as successful as required for our survival on our remote islands.

V. HOW TRADITIONAL KNOWLEDGE IS IMPLEMENTED FOR CLIMATE ADAPTATION IN THE COOK ISLANDS

Traditional knowledge has been implemented for climate adaptation in the Cook Islands, both by the Government of the Cook Islands through the Climate Change division of the Office of the Prime Minister, and by community organisations like Kōrero o te ‘Ōrau and Te Ipukarea Society. Some of the initiatives and a summary of some of my own work implementing traditional knowledge are described in the subsections below to the best of my knowledge:

A. Government of the Cook Islands

I believe a successful project run by the Government of the Cook Islands in the past was the programme "Strengthening the Resilience of our Islands and our Communities to Climate Change (SRIC - CC)", funded by UNDP Climate Change Adaptation. Particularly the "A Lifetime of Change – Marine Fisheries" documentary which it produced, as well as the document titled "Using local knowledge to understand climate variability in the Cook Islands" (January 2015). There was much more involved in this programme, however these two documents stand out to me as a person concerned with the loss of traditional knowledge.

I recall that when we conducted censuses of rare native species (the kura *Vinii kuhlii*, a parrot, and ‘ara pepe *Pandanus arapepe*, a plant), local Māori knew the best places to visit to get an understanding of their populations. For the kura, they had observed the preferred food sources while tending their banana plots. For the ‘ara pepe they knew where it could be found because

it is preferred for the making of certain flower garlands (the drupes are easier to pierce with a needle than the more common pandanus species). Without integrating this knowledge into our censuses, we would have spent considerable resources traversing difficult karst environments looking for these species, possibly to no avail. Understanding the populations and threats facing our rare native species in the Cook Islands is important as they are indicator species, they help us to understand the impacts of climate change on our ecosystems and adapt accordingly.

B. Te Ipukarea Society (NGO)

Te Ipukarea Society has implemented a pilot project on Rarotonga planting traditional coastal trees to ensure the medium/long-term protection of an eroding coastline, the main tree which has been planted is tamanu (*Calophyllum inophyllum*) – a Polynesian introduction and culturally valued for its timber and medicinal uses. Traditional knowledge tells us this tree traditionally grew around the coast of our islands and was the most effective buffer to cyclone damage (even more so than other natives or Polynesian-introduced plants). To provide an immediate solution to the erosion they utilised geotextile sandbags to hold banks in position (which can be cut open when no longer required) and planted fast-growing native beach creepers to stop further erosion and provide a stable foundation for the tamanu seedlings to properly establish their root systems, which will take decades. This is a great example of the integration of traditional knowledge and Western knowledge for climate adaptation at a single site, but needs to be upscaled significantly.

C. Kōrero o te ‘Ōrau (NGO)

Much can be said for the climate adaptation work of non-government organisation Kōrero o te ‘Ōrau (KO), including strengthening of our Indigenous youths’ connections to their natural world through educational programmes which introduce them to the traditional planting and fishing practices of our ancestors. They also ran a highly successful project to introduce youth to traditional ocean navigation (the Tāua e Moana programme). However I will focus on KO’s taramea (*Acanthaster planci* - crown of thorns) removal programme. The taramea are removed by freedivers who have traditional knowledge of Cook Islands reef ecosystems. The divers know the taramea are extremely difficult to kill, so the retrieved starfish are taken to land to be composted in gardens. Traditional knowledge also tells us the taramea is a sea star which naturally predated on coral which has been stressed by storms, but unfortunately our corals now also have the new stresses of anthropogenic climate change. The taramea started to decimate Rarotonga’s corals in 2019 and its population would have exploded had it not been for KO keeping their numbers down. The number of taramea removed recently reached 10,000 individuals. A recovered reef in the Cook Islands has a high living coral cover – including large numbers of branching and table corals such as those of the *Acropora* genus, to which taramea are particularly partial. Recovered reefs also have diverse and abundant fish communities, valued for subsistence harvesting. Preserving such ecosystems builds our climate resilience in the long-term and provides food security for our people.

D. My Own Research

My work documenting the traditional knowledge of Rarotonga's mountains was an attempt to record the deep cultural connections and ecological knowledge associated with our island's interior, thereby improving our ability to adapt to a changing climate. This research includes promoting the importance of the taro vai – ancient, terraced wetland taro systems in the Takuvaine Valley on Rarotonga. I focus on this modified ecosystem because of its importance in climate resilience for our people going forward. The wetland system prioritises and values responsible management of freshwater by its design and has the highest food output per area of all taro (*Colocasia esculenta*) production methods. The taro vai are more resilient to drought as they are situated beside permanent flowing rivers above the modern water catchment. Additionally, These terraces preserve a high diversity of taro cultivars which will be of importance as we face further threats of disease, drought, pests, flash floods, all of which potentially threaten the island's most staple root crop.

VI. CHALLENGES IN IMPLEMENTING TRADITIONAL KNOWLEDGE FOR CLIMATE ADAPTATION IN THE COOK ISLANDS

The most pressing challenge in the Cook Islands is the lack of funding from the largest carbon-emitting nations to support projects which either are led by or heavily informed by traditional knowledge. This is because funders generally do not understand the value of traditional knowledge or do not understand how it can be utilised effectively in adaptation projects which generally have Western knowledge-defined outputs. Therefore, most climate funding applications do not even mention traditional knowledge as an option for a climate adaptation project. For example, in the Cook Islands most funding is directed towards large green technological projects like renewable energy or hard infrastructure such as water storage and harbour development projects. Perhaps it is because traditional knowledge projects do not return money to developed countries (e.g. there is no need for technicians and engineers to come over from Europe), or require us to purchase their materials or technology. To summarise, traditional knowledge projects tend to be focussed on mitigation and “soft” solutions to climate change rather than trying to control nature through infrastructure, which is what is the expectation of donors in climate-funding arrangements.

A second huge challenge we face is the lasting impacts of colonisation on our Indigenous peoples in the Cook Islands, meaning that there is a lack of value of traditional knowledge by some of the community, whether consciously or subconsciously. This often means, while it may be considered useful, our traditional knowledge is still considered inferior to Western knowledge. This means Indigenous project implementers or managers sometimes may be reluctant to focus heavily on traditional knowledge in their projects because they think it will not be relevant, or there is a belief that overseas funders may be discouraged to support their project when they see the inclusion of traditional knowledge in their funding proposals.

Finally, there is a lack of capacity amongst our people and/or project coordinators to deliver climate adaptation projects where the results can be translated into clear outputs which funders can understand and therefore be willing to continue funding towards. This is partly because traditional knowledge is a rarity restricted mostly to the elderly or our people who have careers which enable them to spend most of their time in natural ecosystems, often they are not the ones working in decision making roles or for climate funding agencies. It is also partly because the inclusion of traditional knowledge in modern reporting mechanisms is a new concept. Our people know how to live off the land and sea and practise all the knowledge I have referred to in this report. However, fitting these traditional practices into modern climate adaptation application forms and/or reporting templates is more difficult.

Further to the above, my experience with NGOs is that government leads nearly all climate change projects where the funding is from regional organizations, like SPREP, SPC, GEF, and GCF. NGOs in the Cook Islands who implement traditional knowledge projects prefer to access program funding where they don't have to apply every year. However, this means that the reality is that there are only small grants available to them, which are contested between the NGOs. All of the above means NGOs wishing to implement traditional knowledge are not only not receiving the funding they need but also the capacity-building to manage and apply for funding from donors.

Sometimes traditional knowledge must be adapted to show a particular outcome, like when our people are more concerned with the traditional knowledge which puts food on the table. Often our people are required to focus on the adaptation goals or needs which are determined at a global or regional level, which does not acknowledge the nuances of our needs in the Pacific islands (or differentiate between the climate change impacts facing atolls compared to mountainous islands, etc.). Donors come with their own criteria, and organisations wishing to implement traditional knowledge adjustments to fit. Gender equity is an example. We often make things up just to tick the box, even though certain genders are typically the ones which hold certain types of knowledge. For example, men are given the role of fishing beyond the reef, while it is the women's role to fish and glean within the reef, however a climate adaptation project administrator would not be aware of this.

Gender equity, including in regard to the participation of women, is extremely important for adaptation efforts in the Cook Islands. However, in my experience, Western perspectives on what gender equity looks like in practice can be different to those of Indigenous communities. For example, women in the Cook Islands are traditionally valued for their abilities to collect and process certain foods, cooking, weaving, producing traditional medicine and so forth. While there is increasing overlap with men in many traditional activities, women are typically in fields where they are traditionally considered to be the knowledge-holders. Therefore, having to tick a donor funder's box by encouraging women to be involved in domains traditionally delivered by men (such as taro growing¹ or fishing beyond the reef) is very difficult and even disrespectful and offensive to Cook Islanders in being culturally inappropriate and harmful. Vice versa is also true when men are compelled by donors' requirements to be involved in an activity which is traditionally for women, such as weaving.

¹ I also acknowledge that there are many nuances across the Cook Islands in this respect, where in some islands, gender roles as described here may be reversed. For example in Pukapuka and Nassau, taro growing is traditionally a women's role.

To emphasize, both men and women have their traditional realms of expertise in regard to adaptation, and they both have significant amounts of traditional knowledge to share when it comes to climate change adaptation, it is not held by one gender solely. Therefore, there is an urgent need for funders and donor States and entities to not impose Western notions of gender equity and representation with regard to adaptation efforts, and to respect the sovereignty and rights of Indigenous peoples to self-determination and culture when it comes to adaptation efforts as well.

In reference to solid climate adaptation infrastructure projects typically funded by developed countries, I will use the harbour improvement on Mitiaro as an example. It was funded by a NZAid/AusAid Outer Islands Development Infrastructure programme, and therefore not specifically climate change funding, however it is typical of heavy-infrastructure projects being implemented by climate change funders. In Mitiaro the foreign engineers did not incorporate traditional knowledge of waves and tides during the planning and construction phase. Before, people could launch out to the ocean, even during rough sea conditions. I have been told by multiple fishermen that it is now difficult to get their boats out to sea. The following is taken from the Project Completion Report: “Overall, while the project has satisfactorily achieved most of its outcomes, issues related to access and safety for small crafts is a key weakness of the design. The steep slipway and high tide wave action make it difficult for fishers with canoes and small crafts to move between the shore to the sea safely”.²

A similar example is SRIC – CC, mentioned earlier in this report. According to people who worked on the project, most of the activities were decided by a foreigner unfamiliar with the island and our indigenous cultures. Hydroponic garden projects were introduced to the northern Cooks when water is a limiting factor there. Plastic tanks instead of concrete ones were delivered to the northern islands. Yet, locals were complaining about the taste of plastic leachates in their water due to high temperature. People in the north have been using concrete water tanks for about 150 years and know what works.

VII. THE CONTRIBUTION OF STATES IN RESPECT OF CLIMATE CHANGE ADAPTATION AND TRADITIONAL KNOWLEDGE IN THE COOK ISLANDS

In terms of what developed high-emitting States are currently doing to support climate change adaptation in the Cook Islands, I understand the Government of the Cook Islands can access funds from donors such as the GCF and GEF. However, in my view and based on my work experiences, these funds are highly bureaucratic and difficult for grassroots communities to access. For example, they are huge documents with highly technical terminology, too many reporting check-ins, and too many technical details required, such as calculating carbon sequestered. Our traditional knowledge practitioners or project managers find these barriers a prohibitive factor in applying for funds and feel that these funding sources are for government. Because our projects tend to be long term, they often do not fit in with government agenda’s

² AKAIRO CONSULTING for the Development Coordination Division, Ministry of Finance & Economic Management, Rarotonga, Cook Islands. *THE REHABILITATION AND UPGRADING OF THE TAUNGANUI AND OMUTU HARBOURS ON THE ISLANDS OF MAUKE AND MITIARO Project Completion Report*, December 2013.

as they are more short-term. I know Kōrero o te ‘Ōrau struggled to get support for their taramea operation because it did not have a revenue component to it.

I am not sure if these funding mechanisms have established efficient ways to trickle these large funding pots down to everyday practitioners of traditional knowledge. If this trick-down was effective, we would be encouraging our people to continue the traditional practices, while also actively contributing to solutions which assist in climate adaptation, and compensating them for their time. Even our national government ministries must navigate the challenges of developing proposals for GCF and GEF which fit into complex funder requirements and goals, which often are irrelevant to the needs of our indigenous communities on the ground.

In the Cook Islands, a lot of the best and cost-effective projects which promote the use and implementation of traditional knowledge in climate change adaptation are funded by non-profit organisations such as Nia Tero³. Moonjelly Foundation⁴ has established a framework for funding co-designed with traditional knowledge practitioners, however it is still too early to know if funding will be provided by wealthy donors through this mechanism⁵ both of these organisations are working with KO. These funders understand the need for climate adaptation projects to be “by indigenous communities for indigenous communities” and based on sustainable rather than short-term relationships.

Some traditional knowledge climate change project implementers would say there is too much focus on green technology and climate change-proofing projects that are quick to implement. Yet, such projects have long term impacts on communities. For example, Harbour improvement facilitates the shift to more westernized lifestyle, where more rubbish and processed goods are imported to the islands. This also contributes to the erosion of cultures, health and the resilience of the environment to climate change.

For traditional knowledge to be effectively implemented and used to address the impacts of climate change in the Cook Islands and even the Pacific Islands more generally, more funding from developed high-emitting States is needed. There is also a need for more acknowledgement by these funders, and non-Indigenous politicians and community leaders around the world, that traditional knowledge is essential to not only climate change adaptation but the survival of our species, especially so on remote landmasses in the middle of large oceans.

Some governments, NGOs, and conservation groups around the world are becoming more aware that traditional knowledge is an absolute necessity for ensuring we have the full set of tools we need to navigate and adapt to the impacts of climate change. However, my concern is that this recognition may not be happening fast enough to reverse our species’ current trajectory

³ Nia Tero, ‘Regions – Pasifik’, *Nia Tero*, available here: <https://www.niatero.org/>

⁴ Moonjelly Foundation, ‘Moonjelly Building Blocks - Cook Islands’ *YouTube*, available here: https://youtu.be/gMPISwawiMs?si=LCoJOW3MxiNcsf_a

⁵ Moonjelly Foundation, ‘How to Directly Fund Indigenous-led Ocean Conservation — The Moonjelly Building Block Approach’ (31 January 2024), *Medium*, available here: <https://medium.com/@wearemoonjelly/how-to-directly-fund-indigenously-led-ocean-conservation-the-moonjelly-building-block-approach-8996f70a0cab>

of emissions and extraction of natural resources. We therefore need to do all we can to ensure traditional knowledge is valued and integrated into climate change projects across the planet, in every ecosystem where it is possible to do so.

VIII. CONCLUSION

In conclusion, I believe the Cook Islands is bearing a hugely unfair burden in regard to the impacts of climate change on our islands, and we need to be supported financially, technically, and politically to address this burden on our people and our ecosystems. I have outlined the reasons why traditional knowledge is an essential element of climate change adaptation in our nation, and the reasons why it is currently not afforded the support or recognition it deserves. As the main perpetrators of anthropogenic climate change, the developed, high-emitting States need to acknowledge the importance of traditional knowledge and provide support for our Cook Islands people to practice, and in some cases revive traditional knowledge, so it can be integrated into climate adaptation projects now and in the future. I do believe the Cook Islands have traditional knowledge which not only enable our own people to continue to thrive in our 15 islands but may in fact support the development of hybrid knowledges or technologies which can benefit all of humankind. It is therefore of utmost pertinence that we protect the traditional knowledge we still have while creating an environment where new indigenous knowledge can be generated, and used alongside Western knowledge, to guide our people forward.

IX. DECLARATION

I confirm that all the matters in respect to which I expressed my opinion are within my competence and professional knowledge. I understand that I have an obligation to assist the International Court of Justice with resolving the matters covered by this Expert Report. I have fulfilled my obligation and will continue to do so in future. I confirm that the conclusions in this Expert Report are unbiased, objective, and impartial; they were not led by the influence of the proceedings, nor of any participant thereto.

Signed in Auckland, New Zealand on 5 July 2024



Liam Ramsay Tuā'ivi Koka'ua
Ngāti Ārera, Rarotonga

Expert report on the importance of upholding and protecting human rights in the face of the impacts climate change

by Linda Siegele, JD LL.M

I. Introduction

On 29 March 2023, the General Assembly of the United Nations (UNGA) adopted resolution [A/RES/77/276](#) in which it requested the International Court of Justice (ICJ) to give an advisory opinion on “the obligations of States in respect of climate change”. The following questions were put to the Court by the General Assembly in its resolution:

“Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”

The request for an advisory opinion was transmitted to the Court by the Secretary-General of the United Nations by a letter dated 12 April 2023, which was received in the Registry on 17 April 2023.

In the context of the UNGA request, the Cook Islands made a written statement to the ICJ on 20 March 2024.

In support of the Cook Islands’ written statement and its written comments, this expert report focuses on the first question (a) above around States’ obligations in respect of

climate change and posits that States' have legal obligations at international law to uphold and protect human rights in the face of the impacts of climate change.

II. The structure of this report

This report is organised as follows. After stating the credentials of the author in Part III, Part IV examines the question (a) put to the ICJ by the UNGA through the lens of human rights, acknowledging the prominent human-rights related component of the question on States' obligations to address climate change under international law.

Part V then sets out where we find the international obligation of States to uphold human rights, in the UN Framework Convention on Climate Change (UNFCCC) and Paris Agreement – including the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations, as well as the right to development.

Part VI bolsters these findings by setting out the recent scientific evidence provided by the Intergovernmental Panel on Climate Change (IPCC), which supports the integral relationship between the risks of meeting human rights obligations and the escalation of the impacts of human-induced climate change. It is worth noting also that the IPCC also emphasises the synergies between meeting human rights obligations and addressing the adverse effects of climate change, stressing the utility of using human rights-based approaches as a matter of good practice.

Part VII then moves to a consideration of the background, content, and where available, the outcomes of the requests for advisory opinions to the International Tribunal on the Law of the Sea (ITLOS) and the Inter-American Court of Human Rights (IACtHR). While the requests made to ITLOS and the IACtHR can be distinguished in the nature of their questions from that of the UNGA request to the ICJ, the preparation of these 'sister advisory opinions' is necessarily informed by the same body of international law. It can be assumed, therefore, that the content of these advisory opinions prepared by international courts in good standing would be persuasive as the ICJ formulates its opinion.

Part VIII outlines how the Cook Islands, as a small island developing State (SIDS), recognises its human rights obligations in its Constitution and in its climate change policy frameworks, and notes how the ability of the Cook Islands to uphold these obligations depends largely on the ICJ's views on States' human rights obligations in respect of climate change.

Then, on the question of whether States owe extraterritorial human rights obligations in respect of climate change, Part IX recognises that there is a legal anomaly between international human rights law and customary international law principles underlying international environmental law and underscores the importance of the ICJ addressing this anomaly in the present proceedings. Finally, Part X concludes.

Throughout this expert report, the author refers back to the written statement submitted by the Cook Islands, expanding on its arguments where relevant.

III. Credentials of the author

I have a Juris Doctor (JD) degree and am registered to practice law in the United States of America. I was awarded with an LLM (in international environmental law) with merit by University College London in 2004, and since I have written extensively in peer-reviewed academic journals on matters concerning the application of international law, with a focus on the environment. My writing has always considered the issues of justice and the protection of rights in pursuit of fair outcomes for small island developing States (SIDS) in environmental matters.

As a practitioner, I have supported SIDS through the provision of policy and legal advice in the international arena, focusing primarily on biodiversity (Convention on Biological Diversity) and climate change (UN Framework Convention on Climate Change), primarily in the areas of adapting to the adverse effects of climate change, and where there are limits to adaptation, addressing the ensuing loss and damage. This support has involved participation in international negotiating sessions where I have been instrumental in providing real-time advice. This participation has been facilitated through strong and ongoing support by the government of the Cook Islands.

I continue to work with the Cook Islands at both the international and domestic levels, in particular around addressing loss and damage associated with climate change impacts, a current focus being on non-economic loss, including the loss of livelihoods, culture and vital ecosystems services due to disappearing territory from sea level rise and the threat of ultimate dislocation from ancestral lands.

IV. Understanding the first question through the lens of human rights

The first question put by the UNGA to the ICJ focuses on the obligations of States under international law to address climate change, it is nested within a broad list of international treaties and principles. Included in this list are the following international human rights covenants and declarations:

- International Covenant on Civil and Political Rights (1976);
- International Covenant on Economic, Social and Cultural Rights (1976); and
- Universal Declaration of Human Rights (1948).

While none of the above international documents makes provision for climate change, since their agreement the international community, led by the United Nations Human Rights Council (UNHRC), has issued a catalogue of resolutions and other statements on the relationship between human rights and climate change.

The most recent [UNHRC resolution](#)¹ expresses grave concern that climate change has contributed and continues to contribute to the increased frequency and intensity of both sudden-onset natural disasters and slow-onset events, and that these adversely affect the full enjoyment of all human rights and emphasizes the urgent need to address human rights obligations, climate change and its adverse consequences for all, particularly in developing countries.

More specifically, it echoes much of the ongoing work under the United Nations Framework Convention on Climate Change (UNFCCC), including those of the recent outcomes of the Paris Agreement’s first global stocktake, such as calls for deep and rapid cuts in greenhouse gas emissions, the urgent need to adapt to climate change, and the importance of averting, minimizing and addressing loss and damage.

Finally, and perhaps most importantly for SIDS, the resolution requests the United Nations Secretary General (UNSG) to conduct an analytical study on the impact of loss and damage from the adverse effects of climate change on the full enjoyment of human rights, exploring equity-based approaches and solutions to addressing the same, and to submit the study to the UNHRC at its fifty-seventh session (Sep – Oct 2024), to be followed by an interactive dialogue.

This UNHRC resolution, which is the latest in a [series of UNHRC resolutions](#) on climate change, provides clear evidence of the continuing recognition at the highest level of the risk to upholding human rights in the face of the adverse impacts of climate change.

V. Human rights in the UNFCCC and Paris Agreement

The UN Framework Convention on Climate Change (UNFCCC) does not make specific provision for human rights; however, it does acknowledge that climate change and its adverse effects are a common concern of humankind and that States should protect the climate system on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities (CBDR). It could be argued that this underlying principle of CBDR, which is joined with notions of equity, has a basis in human rights.

The Paris Agreement is more explicit in its expression of the relationship between human rights and climate change although this is only through one of its preambular paragraphs, which reads as follows:

Acknowledging that climate change is a common concern of humankind, Parties should when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants,

¹ Resolution adopted by the Human Rights Council on 12 July 2023, 53/6. Human rights and climate change (A/HRC/RES/53/6).

children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,

Importantly, this preambular paragraph links the notion of climate change as a common concern of humankind, found in the UNFCCC, to the obligations of States in both meeting their human rights obligations but also their obligations to take action to address climate change. While this is merely preambular text, the linkage both to the UNFCCC and international human rights obligations is significant.² Indeed, the written statement made by the Cook Islands submits that all States' obligations at international law are interconnected and indivisible, and that States' obligations under the Paris Agreement and the various human rights instruments are no exception.

The Cook Islands' written statement supports this assertion with the compelling argument that the majority of Parties to the Paris Agreement have also ratified the core human rights treaties at international law, which is evidence that in ratifying the Paris Agreement, these States have consented to the reading of their obligations under human rights law and the Paris Agreement together.³

This specific argument is an example of the broader approach taken by the Cook Islands in its written statement, which seeks to synthesise different sources of international law together, reading them as one in articulating the legal obligations of States under international law. However, in doing so, the Court should not preclude consideration of the rich history of the evolution of international law and its principles, which are discussed in more detail below.

VI. Human rights and the science of climate change

Established in 1988 by the [World Meteorological Organization](#) (WMO) and the [United Nations Environment Programme](#) (UNEP), the Intergovernmental Panel on Climate Change (IPCC) provides governments at all levels with scientific information that they can use to develop climate policies. IPCC reports are also a key input into international climate change negotiations.

In IPCC publications, human well-being, planetary health and the disproportionate effect that climate change impacts will have on vulnerable communities have been highlighted. For example, in its 2023 Synthesis Report, the IPCC states that “climate change is a threat to human well-being and planetary health”,⁴ and that “[v]ulnerable communities who

² It is worth noting that this preambular text in the Paris Agreement was copied in full in the [preamble of the Dubai decision](#) on the first Global Stocktake under the Paris agreement (COP 28, Dubai, 2023), evaluating whether the global community is on track to meet the goals of the Paris Agreement and setting out the ‘remedial’ measures required to ‘get back on track’.

³ Cook Islands Written Statement, p 108-110.

⁴ IPCC, Synthesis Report of the Sixth Assessment Report (2023), p 89, available at <https://www.ipcc.ch/ar6-syr/>.

have historically contributed the least to current climate change are disproportionately affected (high confidence)”.⁵

In addition, the WGII 2022 Report indicates that “[c]limate hazards are a growing driver of involuntary migration and displacement” and that “[c]limate-related illnesses ... and threats to mental health and well-being are increasing”.⁶

More specifically, the WGII Report provides that:

*...climate-change impacts exacerbate existing inequalities already experienced by some communities, including Indigenous Peoples, Pacific Island countries and territories and marginalised peoples, such as migrants and women in fisheries and mariculture. **These inequities increase the risk to their fundamental human rights** by disrupting livelihoods and food security, while leading to loss of social, economic and cultural rights...*⁷

The WGII Report highlights the utility of human-rights based approaches in addressing the adverse effects of climate change, which require the “[f]ull participation of those affected...preserving cultural, emotional and spiritual bonds to place, and dedicated governance structures and associated funding”.⁸

VII. Human rights and climate change in “Sister Advisory Opinions”

The request to the ICJ for an advisory opinion is one of three on climate change recently made to international courts and tribunals. The other two requests were made to the International Tribunal on the Law of the Sea (ITLOS) and the Inter-American Court of Human Rights (IACtHR). In fact, the ITLOS opinion is the first of the three advisory opinions to be issued and could likely inform the other two opinions. The human rights aspects of these ‘sister advisory opinions’ are summarised briefly below.

a. ITLOS advisory opinion and human rights

The request to ITLOS for an advisory opinion on States’ obligations in respect of preventing marine pollution resulting from climate change was lodged by the Commission of Small Island States on Climate Change and International Law (COSIS), which was established by Antigua and Barbuda and Tuvalu in 2021. The mandate of COSIS includes promoting the implementation and progressive development of rules and principles of international law concerning climate change.

⁵ Ibid., p 5.

⁶ IPCC WGII, AR6 Climate Change 2022: Impacts, Adaptation and Vulnerability (2022), p 1044, available at <https://www.ipcc.ch/working-group/wg2/>.

⁷ Ibid., p 469.

⁸ Ibid., p 2771.

The [ITLOS advisory opinion](#) was handed down in May 2024. Written statements supporting the request were made by over 30 State Parties to the UN Convention on the Law of the Sea, including from Belize, the Federated States of Micronesia, Mauritius, Nauru and Singapore. In addition, the United Nations Special Rapporteurs on Human Rights and Climate Change, Toxics and Human Rights and Human Rights and the Environment submitted a [written statement](#).

The advisory opinion recognises that “climate change represents an existential threat and raises human rights concerns”; however, this is the sole reference to human rights in the Tribunal’s opinion.⁹ The Tribunal, however, does apply the principle of CBDR to the central question around a States’ obligation to take all necessary measures to address marine pollution, recognising that “States with greater means and capabilities” “must do more” to reduce greenhouse gas emissions,¹⁰ while explaining that the “available means and capabilities should not be used as an excuse to unduly postpone, or even exempt” a State Party from, taking all necessary measures to reduce marine pollution associated with climate change.¹¹

Furthermore, the advisory opinion indicates that States which are “better placed...to meet their environmental responsibilities” should, among other things, provide scientific, technical, educational and other necessary assistance to developing country States “with lesser capabilities”.¹² While in line with the principle of CBDR and obligations under the UNFCCC and Paris Agreement for developed countries to provide support to developing countries, the ITLOS advisory opinion falls short of recognising the inherent vulnerabilities to climate change of SIDS and the associated implications.

b. Request to the IACtHR for an advisory opinion on the “Climate Emergency and Human Rights”

In January 2023, Colombia and Chile submitted a [request](#) to the IACtHR for an advisory opinion to clarify the scope of State obligations, both individually and collectively, in responding to climate change within the framework of international human rights law, paying special attention to the differentiated impacts of climate change on individuals from diverse regions and population groups, as well as on nature and ultimately on human survival.

Clearly, of the three requests for advisory opinions on climate change, this is most central to the issue of human rights and climate change. It has the very specific aim of clarifying the scope of human rights obligations of individual States in relation to addressing climate change, especially as regards responsibilities to non-State actors. The request also recognises that both international human rights and environmental treaties have an important collective dimension with the potential of establishing reference points for

⁹ ITLOS, Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion (21 May 2024), p 35.

¹⁰ *ibid.*, p 82.

¹¹ *ibid.*, p 81.

¹² *ibid.*, p 115.

interpreting the scope of the shared but differentiated responsibilities of States in responding to climate change.

In addition to requesting clarification on the relationship between human rights obligations and climate change, Colombia and Chile are seeking clarification in terms of States' obligations including on:

- Preserving the right to life and survival;
- The rights of children and future generations;
- The requirement to consult and provide judicial due process;
- The duty to protect environmental defenders, as well as women, indigenous peoples, and Afro-descendant communities.

While the IACtHR has yet to issue its advisory opinion, the request has generated regional, and indeed international, interest and support. In April and May 2024, the IACtHR held public hearings on the Colombia / Chile advisory opinion request. The Court has heard interventions from a broad range of State and non-State actors from both regional and international participants. The hope is that these oral interventions will inform the Court's consideration of the request for an advisory opinion. It is not clear whether the IACtHR's advisory opinion will be issued before that of the ICJ but considering the direct focus of the Colombia / Chile request on human rights and climate change, release of the IACtHR's opinion in advance of the ICJ's could not help but be informative.

VIII. The Cook Islands: Human Rights and Climate Change

As a SIDS, the Cook Islands is particularly vulnerable to climate change. Most recently, the world affirmed this vulnerability at the [Fourth International Conference on SIDS](#) by the Antigua and Barbuda Agenda for SIDS (ABAS) declaration.¹³ It also reaffirmed the special case of SIDS both for environment and development and the commitment to assist SIDS in meeting their sustainable development objectives – first declared in 1992, at the United Nations Conference on Environment and Development. The ABAS declaration also reaffirms the importance of respect for all human rights.

Furthermore, as noted above, the preamble of the Paris Agreement links the taking of action to address climate change to obligations to the respect, promotion and consideration of human rights.

Notably, the Cook Islands has both ratified the Paris Agreement and has recognised and declared under its [Constitution](#) the perpetuation of the following human rights:¹⁴

¹³ UNGA, Draft outcome document of the fourth International Conference on Small Island Developing States (A/CONF.223/2024/4).

¹⁴ Constitution of the Cook Islands, art 64(1).

- the right of the individual to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with law;
- the right of the individual to equality before the law and to the protection of the law;
- the right of the individual to own property and the right not to be deprived thereof except in accordance with law;

In the context of rights to Native land, the Constitution also recognises the following human rights:¹⁵

- freedom of thought, conscience, and religion;
- freedom of speech and expression;
- freedom of peaceful assembly and association.

These rights are all embedded in international human rights law,¹⁶ and as set out above, there is overriding evidence that climate change impacts risk the violation of human rights – as such, the Cook Islands must respect and protect the above listed rights when it takes action to address climate change.

In recognising the importance of protecting and upholding its human rights obligations in addressing climate change, the Cook Islands has included the following two human rights considerations in its policy responses to climate change:

- Cook Islands Climate Change Policy 2018-2028: This Policy contains “Policy Measure B: Strengthen resilience and reduce vulnerability to climate change” which states:¹⁷

“The [Cook Islands government] recognises that strengthening resilience includes building socially cohesive, physically and mentally healthy communities enabled to meet the challenge of climate change. Activities to reduce vulnerability to climate change must respect human rights and allow for those most at risk such as children, the elderly, and persons with disabilities.”

- Cook Islands Third National Communication: On the need for the Cook Islands to mainstream gender frameworks in policy frameworks regarding climate change, this document notes that:¹⁸

¹⁵ Ibid, art 64(1).

¹⁶ See, [Universal Declaration of Human Rights](#), [International Covenant on Civil and Political Rights](#); and [International Covenant on Economic, Social and Cultural Rights](#).

¹⁷ Government of the Cook Islands, *Cook Islands Climate Change Policy 2018-2028*, p 16, available at <https://climatechange.gov.ck/wp-content/uploads/2019/10/Cook-Islands-Climate-Change-Policy-2018-2028.pdf>.

¹⁸ Government of the Cook Islands, *Cook Islands Third National Communication*, p 71, available at <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>.

“Improving the capacity of women to contribute to climate change adaptation strategies is necessary as directed in the National Gender policy. This requires ensur[ing] gender perspective and women human rights are properly integrated in climate change strategies and that funding mechanisms favor gender responsive initiatives.”

As the constitutional human rights provisions and policy measures provide national-level obligations on the Cook Islands to its own people, the ability of the Cook Islands to fulfil these obligations will depend upon how the ICJ’s opinion considers a State’s responsibility to meet its human rights obligations to its own citizens in the face of climate change impacts.

IX. The legal anomaly between international human rights law and the principles of international environmental law

It is also important to acknowledge that the protection of the human rights of Cook Islanders and all peoples and individuals in the world in the face of the impacts of climate change also depends on the ICJ’s opinion on the extraterritorial human rights obligations of States.

In my view, there is an anomaly between the perspective taken under international human rights law, which focuses on the entity responsible for the victim when human rights law is violated, versus the principles of international environmental law, where a State is responsible for extraterritorial harm when the activity that caused the harm impacts on the environment of another State’s jurisdiction.

On this question, a recent human rights and climate change case brought before the European Court of Human Rights (ECtHR)¹⁹ was declared inadmissible because the proponent (from Portugal) had included other countries that had no responsibility for protecting his human rights. The Court determined that it would be impossible for States without the responsibility for defending the proponent’s human rights to be included and emphasized that in disputes over human rights the State must have ‘control over the victim’ even in the case of extraterritorial harm.

From the point of view of a regional human rights court, it will be important for the advisory opinion by the IACtHR in the Colombia / Chile request to delve into the issue of extraterritoriality in the responsibility of States under international human rights law. On extraterritoriality, the ITLOS advisory opinion acknowledges that States with greater resources should assist those with the implementation of their obligations under UNCLOS, but steps back from making determinations about a State’s human rights obligations and from applying responsibility to large emitters for ocean pollution caused in other States.

¹⁹ See ECtHR, Case of Duarte Agostinho and Others against Portugal and 32 Others (9 April 2024), available at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-233261%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-233261%22]}).

Accordingly, it is important for the ICJ in the present advisory proceedings to address the seeming jurisdictional conundrum between international human rights law (i.e., ‘State control over the victim’) and the principles of international environmental law, which acknowledge potential responsibility for States’ acts that cause transboundary harm. Importantly, as a SIDS, the Cook Islands, which has no historical nor current responsibility for the greenhouse gas emissions that are resulting in the climate change impacts threatening human rights, asks the Court to address the responsibility of all States to protect and uphold the human rights of peoples and individuals in the face of climate change impacts.

X. Conclusion

In support of the written statement and written comments submitted by the Cook Islands, this report concludes by emphasising that States have obligations at international law to uphold and protect the human rights of peoples and individuals in small island developing States in the face of climate change impacts.

XI. Declaration

I confirm that all the matters in respect to which I expressed my opinion are within my competence and professional knowledge. I understand that I have an obligation to assist the International Court of Justice with resolving the matters covered by this expert report. I have fulfilled my obligation and will continue to do so in future. I confirm that the conclusions in this expert report are unbiased, objective and impartial; they were not led by the influence of the proceedings, nor of any participant thereto.

Signed in London, United Kingdom on 15 July 2024



Linda Siegele