

Valuing Indigenous Environmental Stewardship in Responding to Climate Change

By Neva Collins

The vulnerability of Aboriginal and Torres Strait Islander peoples to human induced climate change calls for special measures that include restitution for lands and waters lost or diminished as a result. This vulnerability has been extensively reported by the United Nations Inter-governmental Panel on Climate Change and observed by Indigenous peoples first hand living on their traditional lands and territories and attributed to a range of factors including historical and ongoing discrimination, marked socio-economic disadvantage, and dispossession from traditional lands and territories. Climate change is exacerbating this disadvantage by further degrading the lands and waters upon which Aboriginal and Torres Strait Islander people depend and are entitled to as of right, the responses to which include compulsory acquisition for mitigation and conservation purposes.

The *Declaration on the Rights of Indigenous Peoples* (the Declaration) recognizes the spiritual, cultural,

social and economic relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters. The Declaration, supported by the Australian government, states at Article 25:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

The emerging climate change responses must recognize the rights of Aboriginal and Torres Strait Islander peoples to their lands, waters and resources, and place a value on their unique role as environmental stewards. Aboriginal and Torres Strait Islander peoples have sustainably managed and interacted with their lands and waters for millennia, cultivating rich ecosystems from which Australian (post colonial) society has reaped considerable reward. The primary focus of Australian

climate law and policy reform is on the economic and ecological aspects, with a narrow focus on Aboriginal and Torres Strait Islander communities in specific geographical areas, and without full consideration of the devastating impact of potential further loss of territories for Indigenous peoples. A critical issue is the protection and preservation of their lands, waters, and natural resources, and inter-generational transfer of knowledge that is the tenet of article 8(j) of the *Convention on Biological Diversity* to which Australia is a party.

Restitution for lands and waters acquired for mitigation purposes, and for lands and waters degraded as a result of climate change must be considered. There must also be inclusion of measures that recognize and remunerate the value of environmental stewardship provided by Aboriginal and Torres Strait Islander peoples. On both aspects a major challenge is calculating value. For restitution, the value of lands and waters acquired must also restore loss



of livelihoods and interruptions in the intergenerational transfer of knowledge associated with lands and waters.

For ecosystem services, the value of Indigenous environment stewardship presents similar challenges and has been approached by the Millennium Ecosystem Assessment which concluded that the term and concept of ecosystem services implies that the services is of value to people (in terms of economic, health, cultural or other benefits) and that degradation or loss of the service represents a harmful impact on human well-being.

Compulsory acquisition for climate change purposes has been flagged by the foremost report on climate change, the final Garnaut Report, which noted the potential for Aboriginal land to be part of the climate change mitigation response, and suggested that acquisition may be justified where land is of significant conservation value, or where certainty of outcome is required. Given that approximately 10% of the Indigenous estate, or 2% of Australia's landmass, is within the boundaries of the National Reserve System this could have far reaching implications for Aboriginal and Torres Strait Islander peoples if implemented.

The *Declaration on the Rights of Indigenous Peoples* (the Declaration) provides guidance in that it requires

States to provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of dispossessing Indigenous peoples of their lands, territories or resources.¹ Any relocation of Indigenous peoples shall only occur on the basis of prior informed consent and after agreement on just and fair compensation and, where possible, with the option of return.²

The quantum of just terms compensation for lands and waters compulsorily acquired must reflect the terms of redress articulated in the Declaration as outlined above. Restitution for lands and waters degraded or reclaimed as a result of climate change raises is difficult to quantify to reflect the full value for Indigenous peoples cultural identity. There is much to be gained by recognizing and remunerating Aboriginal and Torres Strait Islander peoples as environmental stewards to manage, maintain and improve their traditional lands and waters, and should be valued as an ecosystem service rather at the discretion and whim of government grants, or cast as a welfare problem.

Value placed on the environmental stewardship of Aboriginal and Torres Strait Islander peoples has potential to provide a viable revenue stream.³ Payments for ecosystems services for

restoring degraded lands and waters could be a viable means by which the socio-economic disadvantage of Aboriginal and Torres Strait Islander peoples be addressed.⁴ There are some examples of this in Australia, though thin on the ground, and include the West Arnhem Fire Management Agreement and Bio-Banking in NSW.

Comprehensive national programs are needed to support community level mitigation and adaptation measures that recognize the value Indigenous knowledge that has enabled Aboriginal and Torres Strait Islander peoples to manage and maintain their lands and waters for millenia.⁵

While the West Arnhem Fire Management Agreement (WAFMA) is touted as a great success yet it has been a one-off project and one that is not part of the proposed Carbon Pollution Reduction Scheme. Signed in August 2006 the WAFMA creates a partnership between Darwin Liquefied Natural Gas (DLNG), the Northern Territory Government, the Northern Land Council (NLC) and traditional owners from coastal Maningrida to the headwaters of the Katherine and Mann rivers. The WAFMA provides the NLC and traditional owners \$17 million over 17 years to implement a fire management strategy that has the result in reducing carbon emissions through controlled burning.

The Declaration recognises the right of Indigenous peoples to environment and conservation programmes, and requires restitution or compensation for lands and waters and resources 'used' or 'damaged' with the prior informed consent of Indigenous peoples.⁶ This compensation can take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29 of the Declaration articulates a right to the conservation and protection of the environment, and deals with the lost productive capacity of the lands territories and resources of Indigenous peoples. States are to establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. To some extent the Caring for Country programme provides such assistance, the success of which depends on funding availability. There is significant potential for Aboriginal and Torres Strait Islander land holders to derive income from ecosystem services and land management practices but which tends to require exclusive possession.

Furthermore the Australian government has assessed that only forestry activities that are recognised in Australia's Kyoto Protocol accounts will be eligible for inclusion in any emerging Carbon Pollution Reduction Scheme (CPRS) and which is likely to significantly restrict the capacity of Indigenous people to be involved in the CPRS scheme. The government has stated that 'emissions from the uncontrolled burning of savannah in the tropical north of Australia, which can be reduced through controlled burning management practices',⁷ are unlikely ever to be included in the scheme.

It is therefore unclear what opportunities will arise for Indigenous Australians from CPRS at this time, although this is likely to become clearer when legislation is introduced. Internationally, if Reduced Emissions from Degradation and Deforestation (REDD) form part of the formal international mechanisms under the United National Framework Convention on Climate Change, it may become part of any CPRS over time. This could provide considerable opportunities for Indigenous land rights, including native title land. ■

References

- [1] UN General Assembly, Declaration on the Rights of Indigenous Peoples (2007), Article 8.
- [2] Ibid, Article 10.
- [3] J.C. Altman, and S. Jackson, S., 2008. 'Indigenous land and sea management', In Lindenmayer, D., Dovers, S., Hariss Olson, M. and Morton, S. (eds), Ten Commitments:reshaping the Luck Country's environment, CSIRO, Victoria.
- [4] Ibid.
- [5] Pacific Regional CSO Forum, Communique of the Pacific Regional Civil Society Organization Forum' (2007) <<http://www.oxfam.org.nz/imgs/whatwedo/mtf/cso%2007%20forum%20communique.pdf>> at 31 July 2010.
- [6] UN General Assembly, above n 1, Article 28.
- [7] Department of Climate Change Carbon Pollution Reduction Scheme Green Paper (2008), Summary 19. available at <www.climatechange.gov.au/greenpaper/index.html>.

Neva began her professional career working with the Aboriginal and Torres Strait Islander Social Justice Commissioner at the Human Rights and Equal Opportunity Commission in 1995 whilst completing a Bachelor of Economics/Laws at Sydney University. In June 2000 Neva was posted to Geneva as the International Projects Officer for the Foundation for Aboriginal and Islander Research Action. Neva is currently a solicitor at the NSW Environmental Defenders Office where she coordinates the Caring for Country Project, including the publication of a Guide to Environmental Law for Aboriginal Communities in NSW.