

Official Complaint of the
Government of Algeria
Alleging Violation of the International
Covenant on Civil and Political Rights by
Australia

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I. Summary of Complaint

1. The State of Algoria complains that Australia is failing to fulfil its existing obligations under the International Covenant on Civil and Political Rights¹ (“ICCPR”) due to its historical and continuing contribution to anthropogenic climate change and its associated impacts upon the human rights and fundamental freedoms recognised in ICCPR as held by the citizens of the State of Algoria.
2. The State of Algoria makes this Complaint in accordance with interstate provisions provided through Article 41 of the ICCPR.
3. The relevant human rights and fundamental freedoms alleged to have been violated are:
 - a. The right to self-determination (Article 1);
 - b. The right to life (Article 6);
 - c. The right to liberty of movement and freedom to choose one’s residence (Article 12);
 - d. Freedom from arbitrary or unlawful interference with privacy and family (Article 17);
 - e. The right to culture (Article 27).

II. Complainant²

4. Article 41(1) requires that the complainant be a party to the ICCPR to bring a matter under the inter-state procedures. Algoria became a party to the ICCPR and declared its acceptance of the competence of the Committee under Article 41 on 1 January 1993.

III. Defendant

5. This Complaint is made against Australia. Article 41(1) requires that the respondent nation be a party to the ICCPR to be subject to an inter-state complaint. Australia became a party to

¹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (‘ICCPR’).

² This entry contains hypothetical facts for the purposes of the complaint.

the ICCPR on 13 November 1980.³ Australia declared its acceptance of the competence of the Committee under Article 41 on 28 January 1993.⁴

IV. Basis of Complaint

6. Article 41(1) of the ICCPR provides that if a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. The State of Algeria provided the defendant State Party with notice that Australia is not giving effect to the provisions of the present Covenant on 1 March 2008.
7. Article 41(1)(a) of the ICCPR provides that the receiving State shall afford the State which sent the communication an explanation. The defendant State Party has not responded to the State of Algeria in response to the notifications provided on 1 March 2008.
8. Article 41(1)(b) provides that if the matter is not adjusted to the satisfaction of both States Parties either State shall have the right to refer the matter to the Committee. This Complaint is made in accordance with Article 41(1)(b) as the defendant State Party has not responded to the initial communication, and the State of Algeria remains unsatisfied with the matter.

V. Jurisdiction

9. Article 3 of the ICCPR provides that the States Parties 'undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.'⁵ The text of Article 3 does not provide any jurisdictional limitation for this obligation.

³ Office of the High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties*, as of 09 June 2004 accessed <<http://www.unhcr.ch/pdf/report.pdf>> at 1 December 2008.

⁴ "The Government of Australia declares that it recognises, for and on behalf of Australia, the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the aforesaid Convention." - OHCHR, *Declarations recognising the competence of the Human Rights Committee under article 41*; 28 January 1993.

⁵ Note that the undertaking in Article 2(1) is limited by territory and jurisdiction. "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

10. The State of Algeria submits that Article 3 creates an obligation for Australia as a State Party to *ensure* the equal right of men and women to the enjoyment of rights contained within the ICCPR, *without* jurisdictional limitation.
11. Article 2(1) of the ICCPR provides that each State Party ‘undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant.’ The obligation contained in Article 2(1) is subject to the jurisdictional limitation contained within it. Further, Article 2(2) of the ICCPR requires States Parties to adopt the ‘legislative and other measures as may be necessary to give effect to the rights recognised in the present Covenant.’ Article 2(3) requires States Parties to ensure the availability and operation of effective remedies for individuals. Article 2 defines the scope of the obligation held by States Parties and has been read in to all of the rights contained in the ICCPR.⁶
12. This article must 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 light of its object and purpose’.⁷ It is necessary to consider ‘any relevant rules of international law applicable in the relations between the parties.’⁸
13. The State of Algeria submits that the obligation held by Australia under Article 2(1) to *respect and to ensure* to all individuals within its territory and subject to its jurisdiction the rights recognised in the ICCPR, encompasses cases where Australia takes measures which will have an effect on individuals in the territory of another state.
14. The Human Rights Committee (“HRC”) and other international tribunals have recognised that in certain circumstances states must protect the rights of individuals outside of their territories from the effects of measures taken by them.⁹ To construe a strict literal meaning

⁶ Human Rights Committee, General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant: 26/05/2004. CCPR/C/21/Rev.1/Add.13.

⁷ *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331, art 31 (entered into force 27 January 1980) (herein after Vienna Convention). While Article 4 provides that the Vienna Convention does not have retroactive application the Human Rights Committee has assumed that its principles on treaty interpretation are reflective of customary international law.

⁸ *Ibid.*

⁹ See e.g., *Mbenge v Zaire*, HRC 24 March 1983, UN Doc. A/38/40, 134. In this case the complainants had left the territory in which the alleged violations occurred. The Inter-American Commission on Human Rights has stated that “the Commission is of the view that a state party to the American Convention may be responsible under certain circumstances for the acts and omissions of its agents which *produce effects* or are undertaken outside that state’s own territory” (emphasis added). Report N° 38/99, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 289 (1998), at para. 17.

to the text 'within its territory and subject to its jurisdiction' and exclude responsibility for any measures or consequences occurring beyond national boundaries would undermine the object and purpose of the ICCPR. The HRC has held that the object and purpose of the ICCPR is to 'create legally binding standards for human rights by defining certain civil and political rights and placing them in a framework of obligations which are legally binding for those states which ratify; and to provide an efficacious supervisory machinery for the obligations undertaken.'¹⁰

15. A strict literal interpretation of 'within its territory and subject to its jurisdiction' would require individuals to be within the territory *and* subject to its jurisdiction. An alternative interpretation is that the obligation in Article 2(1) encompasses individuals who are within the territory *and* individuals who are subject to the State Party's jurisdiction.¹¹ While the first interpretation is the more natural, literal meaning, this interpretation would undermine the substance of some rights contained in the ICCPR which actually presume that individuals may be outside the territory of the State Party when they exercise that right.¹² Such a result would be inconsistent with the object and purpose of the ICCPR. The HRC has adopted the second interpretation and has stated:

...a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.¹³

16. This interpretation has developed with reference to various methods by which a State Party may exercise power or effective control over a person, including through the actions of the forces of a State acting outside of its territory. It is submitted that the exercising of *power or effective control* is appropriately viewed as able to encompass acts or omissions by a State that cause transboundary environmental harm.

However, it is evident that Article 2(1) of the ICCPR has a stronger territorial focus than the American Convention on Human Rights (1978) as it also refers to "within its territory".

¹⁰ Human Rights Committee, General Comment 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant: 04/11/94, CCPR/C/21/Rev.1/Add.6, s 7.

¹¹ Dominic McGoldrick, 'Extraterritorial Application of the International Covenant on Civil and Political Rights' in Fons Coomans and Menno T. Kamminga (eds), *Extraterritorial Application of Human Rights Treaties* (2004), pp.41-72, 48.

¹² For example, the right to enter one's own country: Article 12(4).

¹³ Human Rights Committee, General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant: 26/05/2004. CCPR/C/21/Rev.1/Add.13, s 10.

17. In this case, Australia’s historical and continuing contribution to anthropogenic climate change has had and continues to have an impact upon the human rights and fundamental freedoms recognised in the present Covenant as held by the citizens of the State of Algoria. This process of transboundary environmental harm demonstrates that the greenhouse gas emissions of Australia constitute a means through which Australia is exercising power or a form of effective control over individuals in Algoria.
18. The submitted approach to Article 2(1) is consistent with relevant rules of international law outside of the ICCPR applicable in the relations between the parties. Most importantly, under international environmental law no state has the right to use or permit the use of its territory in a way that causes harm to the property or persons within another state.¹⁴ This was recognised by the International Court of Justice (“ICJ”) in its Advisory Opinion on the Legality of the Threat of Use of Nuclear Weapons. The ICJ stated ‘the existence of the general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.’¹⁵

VI. Exhaustion of all available domestic remedies

19. Article 41(c) of the ICCPR states that the Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognised principles of international law.
20. In this case, domestic remedies are not appropriate as the complainant is the State of Algoria representing the citizens of Algoria.¹⁶
21. Furthermore, it is arguable that Australian law does not provide domestic remedies as:

¹⁴ *Trail Smelter case* (1938/1941) 3 R.I.A.A. 1905. In this case Canada was held responsible for transboundary air pollution in the U.S. In this case, the tribunal stated that under “principles of international law ... no state has the right to use or permit the use of territory in such a manner as to cause injury by fumes in or to the territory of another of the properties or persons therein...”.

¹⁵ *Legality of the Threat of Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, para. 29.

¹⁶ Domestic remedies may encompass legal, administrative, legislative, policy or programme remedies. It is assumed that there are no domestic remedies provided within Algoria to resolve this dispute.

- a. Under Australian law, ratification of a treaty does not incorporate that treaty into Australian law.¹⁷ Treaties are not self-executing under this system and so will only create rights and duties under domestic law upon enactment by Parliament or declaration of inclusion by the courts;
- a. Section 51 (xxix) of the Australian Constitution (the external affairs power) provides the Commonwealth Parliament with the power to legislate so as to incorporate into Australian law the provisions of international conventions;
- b. Australia does not have a bill of rights and the ICCPR is not directly enforceable under Commonwealth legislation;
- c. Limited protection of human rights and fundamental freedoms is provided in Australia through the Commonwealth Constitution, the common law and legislation.
- d. The ICCPR is included in the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). Through this legislation the Australian Human Rights Commission may receive complaints about alleged breaches of the ICCPR in some circumstances. Complaints to the Australian Human Rights Commission are unenforceable; and
- e. Human rights legislation has been introduced in the Australian Capital Territory through the *Human Rights Act 2004* and in Victoria through the *Charter of Human Rights and Responsibilities Act 2006*. Both of these Acts are based upon the ICCPR. No other jurisdiction in Australia provides human rights statutes.

VII. Facts submitted by the Government of Algeria

22. Under Article 1.2 of the United Nations Framework Convention on Climate Change (“UNFCCC”)¹⁸, climate change is defined as ‘a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.’ The Intergovernmental Panel on Climate Change (IPCC) defines climate change as a variation in ‘either the mean state of the climate or in its variability, persisting for an extended period, typically decades or longer.’¹⁹

¹⁷ *Bradley v The Commonwealth* (1973) 128 CLR 557 at 582-583.

¹⁸ *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107, art 2 (entered into force 21 March 1994) (“UNFCCC”).

¹⁹ IPCC TAR WG I, 788.

23. The citizens of Algeria have been and are anticipated to be impacted by climate change in the following manner²⁰:

- a. Sea level rise is contributing to mangrove losses in the fertile coastal plain where most Algerians live and make their basic living from small-scale agriculture and fishing;
- b. Climate change is disrupting glacial systems, water resources and intensifying storms in the coastal regions of Algeria;
- c. There are 'projected changes in the frequency and severity of extreme climate events such as heat stress, droughts and floods, would have significant consequences for food and forestry production, and food security.'²¹; and
- d. Smallholder and subsistence farmers, pastoralists and artisanal fisherfolk will suffer complex, localised impacts, as well as the longer-term, negative impacts of other climate-related processes, such as snow-pack decrease, sea level rise, and spread in the prevalence of human diseases affecting agricultural labour supply.

24. The Australian Government has or should have been aware of the process of anthropogenic climate change as scientific evidence of this process has existed for a long time:²²

- a. In 1824, Joseph Fourier described a 'greenhouse effect' in a paper presented to Paris' Académie Royale des Sciences;
- b. In 1896, Svante Arrhenius proposed the concept of a man-made greenhouse effect. Arrhenius hypothesised that the increase in the burning of coal since the industrial revolution could lead to an increase in atmospheric carbon dioxide ("CO₂") and heat up the planet;
- c. In 1938, Guy Stewart Callendar compiled temperature statistics and found that over the previous century mean temperature and CO₂ levels had risen markedly. He concluded that the mean temperature rise was most likely caused by the increase in CO₂;
- d. In 1958, Charles Keeling began continuous monitoring of CO₂ levels in the atmosphere. The Keeling Curve was developed which continues to chart the year on year rise of CO₂ concentrations;

²⁰ Competition Question.

²¹ Ibid.

²² See IPCC, ar4-wg1-chapter1 (<<http://www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-chapter1.pdf>>).

- e. In 1990, the IPCC provided its First Assessment Report and predicted an increase of 0.3°C each decade in the 21st Century;
- f. In 1995, the IPCC provided its Second Assessment Report and reported that ‘the balance of evidence suggests a discernible human influence on global climate’;
- g. In 2001, the IPCC provided its Third Assessment Report and found with 66-90% confidence that most of the observed warming over the last 50 years is likely to have been due to the increase in greenhouse gas concentrations; and
- h. In 2007, the IPCC released its Fourth Assessment Report and found that ‘warming of the climate system is unequivocal’ and most of the increase in global average temperatures since the mid 20th century is the result of anthropogenic greenhouse gas emissions (greater than 90% certainty). The IPCC further stated that the level of temperature and sea rise in the 21st Century will depend upon the extent or limit of emissions in coming years.

25. The Australian Government has or should have been aware of the threat that climate change poses to human life and human rights to Aborigines and others as:

- a. There has been evidence of these risks for some time:
 - i. In 1957, Dr J. Gordon wrote in his book *Our Astonishing Atmosphere*: ‘If the warming up continues at its present rate another fifty years will see so much ice melted from the polar ice caps that the sea will be encroaching on some of our low-lying coasts.’²³
 - ii. In 1988, the World Conference on the Changing Atmosphere issued a report *Implications for Global Security*. The report found that anthropogenic climate change represents a ‘major threat to international security and [is] already having harmful consequences over many parts of the globe.’
- b. In 1992, the UNFCCC was agreed to. Article 2 provides that the ultimate objective of the UNFCCC is ‘stabilisation of greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate change.’
- c. In 1997, the Kyoto Protocol²⁴ to the UNFCCC was agreed to. Under this agreement, developed nations have agreed to binding emission reduction targets.

²³ The Dial Press, 1957, New York, p.118-121.

²⁴ *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, opened for signature 16 March 1998, 37 ILM 22 (1998) (entered into force 16 February 2005) (*‘Kyoto Protocol’*).

26. Australia has contributed to and continues to contribute to anthropogenic climate change as:

- a. The Australian Government has failed to appropriately regulate and reduce the country's greenhouse gas emissions:
 - i. Australia is the highest per capita emitter of greenhouse gases, at almost 27 tonnes per person. This is 25% higher than emissions per person in the United States (21.2 tonnes);²⁵
 - ii. Australia is the world's seventh-largest emitter amongst Annex 1 countries;²⁶
 - iii. In absolute terms, Australia's emissions are higher than that of some European countries with much larger populations, such as France and Italy. Australia's emissions in 2004 were only 20% lower than those of the United Kingdom;²⁷
 - iv. From 1990 to 2004, Australia increased total emissions by 25%;²⁸
- b. The Australian Government has undermined international negotiations under the UNFCCC process:²⁹
 - i. Despite ratifying the UNFCCC, Australia refused to ratify the Kyoto Protocol until December 2007; and
 - ii. In December 2008 the Australian Government announced an emissions reduction target of 5-15% on 2000 levels by 2020.³⁰ Previously the Australian Government had agreed with IPCC findings that Australia must reduce emissions by between 25% and 40% on 1990 levels by 2020 as a part of the Bali Action Plan.

27. Australia has and had the opportunity to reduce the risk of climate change violating the human rights of Algerians. Recent reports have shown that:

²⁵ Turton, *Greenhouse gas emissions in industrialized countries*, in Hamilton, Clive *Scorcher: The Dirty Politics of Climate Change*, Black Inc., Agenda p.39.

²⁶ UNFCCC, 'National greenhouse gas inventory data for the period 1990-2004 and status of reporting', UNFCCC, Bonn, 19 October 2006, <<http://unfccc.int/resource/docs/2006/sbi/eng/26.pdf>> and UNFCCC, 'National greenhouse gas inventory data for the period 1990-2004 and status of reporting', UNFCCC, Poznan, 1-10 December 2008, <<http://unfccc.int/resource/docs/2008/sbi/eng/26.pdf>>

²⁷ In 2004 Australia emitted 534Mt; France 511Mt; Italy 477 Mt and the United Kingdom 663 Mt. Hamilton, above n 10, p.38-39.

²⁸ Excluding land-use change and forestry. Ibid, p.37.

²⁹ See, for example, Hamilton, above n 10, and Oberthur, Sebastian, & Ott, Hermann, *The Kyoto Protocol: international climate policy for the 21st Century*, Springer-Verlag, Berlin, 1999.

³⁰ Depending upon the outcome of international negotiations under the UNFCCC process.

- a. The State of Victoria within Australia has the capacity to achieve 54% cuts by 2020 on 1990 levels. Similar capacity may be expected for the rest of Australia;³¹
- b. Australia has the capacity to reduce emissions by more than 40% by 2020 on 1990 levels;³²
- c. Australia has the capacity to achieve a 30% reduction by 2020 on 1990 levels without major technological breakthroughs or lifestyle changes.³³

VIII. Alleged Violations of the ICCPR by Australia

28. Obligations enforceable through the interstate provisions are those that are contained in the Covenant. Through ratification, Australia has agreed to respect, protect and fulfil the rights and freedoms contained within the ICCPR.

29. A healthy environment is necessary for the enjoyment of civil and political rights that are protected under the ICCPR.

30. The HRC and other major human rights bodies have established a link between human rights and the environment.³⁴ Jurisprudence of human rights bodies indicates that environmental concerns can adversely affect various rights held under the ICCPR.³⁵

31. The state of science on anthropogenic climate change makes clear that climate change poses a dangerous threat to human rights and fundamental freedoms.

32. Given this threat and the state of science, it is evident that the ICCPR requires all States Parties to the Covenant to:

- a. Ensure, both individually and in co-operation with other States Parties, that greenhouse gas emissions are reduced;

³¹ Nous Group 2008 *Turning it Around: Climate Solutions for Victoria* commissioned by Environment Victoria

³² Greenpeace 2008 *Energy [R]evolution: A Sustainable Australia Energy Outlook*

³³ McKinsey & Company 2008, *An Australian Cost Curve for Greenhouse Gas Reduction*, Sydney

³⁴ See Marguerite E Middaugh, 'Linking Global Warming to Inuit Human Rights' (2006) 8 *San Diego International Law Journal* 179, 181.

³⁵ Ibid 199-206. See also, eg, Dinah Shelton, 'Human Rights and the Environment: Jurisprudence of Human Rights Bodies, Background Paper No 2' (Paper presented at the Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, Geneva, 14-16 January 2002).

- b. Ensure that they do not advocate or support measures that will exacerbate climate change impacts on human rights and fundamental freedoms protected under the ICCPR; and
 - c. Reduce the risk that increased concentrations of greenhouse gases poses to human rights by avoiding emissions nationally to the utmost of the State Party's capacity as quickly as possible.
33. Australia has an obligation to prevent some of the direct consequences that climate change may have upon the rights of Algerians by reducing and limiting its contribution to climate change³⁶ and promoting an international outcome that will protect the rights of Algerians.
34. Australia knows or ought to have known of the real and immediate risk to fundamental human rights and freedoms caused by Australia's contribution to climate change.
35. Australia has failed to regulate or reduce greenhouse gas emissions; and has undermined international negotiations under the UNFCCC process.
36. Australia has violated the following rights of the citizens of Algeria through its historical and continuing contribution to climate change.

A. The Right of Self-Determination

*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*³⁷

37. Climate change threatens the right of self-determination³⁸ protected under Article 1(1) of the ICCPR of Algerians by dangerously undermining economic, social and cultural development of the people both individually and collectively.³⁹

³⁶ The UN Deputy High Commissioner for Human Rights, Kyung-wha Kang, has stated that:

"Global warming and extreme weather conditions may have calamitous consequences for the human rights of millions of people...ultimately climate change may affect the very right to life of various individuals...[countries] have an obligation to prevent and address some of the direct consequences that climate change may reap on human rights." Laura MacInnis 'Climate change threatens human rights of millions: UN' *Reuters* 19 February 2008.

³⁷ Article 1(1).

³⁸ The right of self-determination is: (a) provided in the Preamble and Article 1 of the UN Charter; (b) held by people rather than by governments alone (Western Sahara Case, 1975 International Court of Justice 12, 31.) (c) a norm of jus

38. Climate change threatens to dangerously undermine the ability of the people of Algeria to freely determine their political status by affecting human habitats and ways of life in such an extensive and prolonged manner that political instability will result. In particular, climate change will exacerbate existing social, economic and political problems to create a high risk of conflict⁴⁰ or create great difficulty for the institutions of government to take the strain of climate change.⁴¹
39. Political and social instability caused by climate change will erode the ability of the state of Algeria to meet its functions, including safeguarding human rights and democratic systems.⁴² Undeveloped states such as Algeria are particularly at risk of these ‘consequences of consequences’.⁴³

B. The Right to Life

*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*⁴⁴

40. The ability of people to enjoy the right to life as provided in Article 6(1) of the ICCPR is directly impacted by the quality of the environment. Protection of the environment is an essential basis for the protection of the right to life of present and future generations of Algerians.⁴⁵

cogens,(See separate opinion of Ammoun, J. in Legal Consequences for States of the Continued Presence of South Africa in Namibia (S.W.Africa) 1971 International Court of Justice 16, 89-90) meaning that it must be strictly obeyed at all times; and (d) protected as erga omnes which means “flowing to all” and that the international community must protect it in all circumstances (Inter-American Commission on Human Rights, Organization of American States, Press Communiqué no. 13/93 (May25, 1993).).

³⁹ See also Karen Parker & Lyn Neylon, Jus Cogens: Compelling the Law of Human Rights, 12 Hastings Int. & Comp. L. Rev. 411, 440 (1989), drawing on discussion of the right to self-determination in A. Critescu, The Right to Self-determination, U.N. Doc. E/CN.4/Sub.2/404/Rev. 1, U.N. Sales No. E.80.XIV.3 (1980) and H. Gros Espiell, The Right to Self-Determination, U.N. Doc. E/CN.4/Sub.2/405/Rev.1, U.N. Sales No. E.79.XIV.5 (1980).

⁴⁰ International Alert, *A Climate of Conflict: The links between climate change, peace and war*, November 2007, p.3.

⁴¹ Ibid.

⁴² Ibid, p.21.

⁴³ Ibid, p.3.

⁴⁴ Article 6(1).

⁴⁵ See EHP v Canada Communication No 67/1980, [1.3], UN Doc CCPR/C/OP/1 (1984). See *Gabcikovo-Nagymaros Project (Hungary v Slovakia)* 1997 Per C G Weeramantry J (separate opinion), *Gabcikovo-Nagymaros Project (Hungary v Slovakia)* 1997 ICJ 97 at 110; 37 ILM 162 at 206 (1998). IACHR, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/VII.96 Doc. 10 rev. 1 (1997).

41. Climate change is already violating the right to life of citizens of Algeria through:
- a. Sea level rise which is contributing to mangrove losses. This is undermining the ability of Algerians to make their basic living from small-scale agriculture and fishing; and
 - b. Disruption of glacial systems, water resources and intensification of storms in the coastal regions which is undermining food security and water supplies as well as increasing deaths and injuries from storms.
42. Climate change is anticipated to cause more severe and widespread violations of the right to life of citizens of Algeria through:
- a. Projected changes in the frequency and severity of extreme climate events such as heat stress, droughts and floods and their associated impact upon food and forestry production, and food security; and
 - b. Projected complex, localised impacts, as well as longer-term, negative impacts such as snow-pack decrease, sea level rise, and spread in the prevalence of human diseases.

C. The Right to Liberty of Movement and Freedom to Choose One's Residence

*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*⁴⁶

43. Climate change is violating and threatens to further violate the right to liberty of movement and freedom to choose one's residence of Algerians as protected under Article 12(1) of the ICCPR.⁴⁷

⁴⁶ Article 12(1).

⁴⁷ See the case of *Yanomami v Brazil* (1985) where the IACHR heard a case where the Brazilian Government was authorising the construction of a new highway and mining activities in territory of the Yanomami. This would force the tribe to abandon their territory. The IACHR found that there were breaches of the right to life and the right to freedom of resident and movement. Resolution No 12/85 - Case No 7615 (Brazil) (1985).

44. This right covers the situation of internally displaced persons who are forced to abandon land or are restricted in movement through environmental impacts.⁴⁸
45. Through mangrove losses, disruption of food supplies and security, as well as water supplies and the intensification of storms in the coastal regions, the citizens of Algeria are being forced to abandon their homes and traditional lands.
46. Projected changes for Algeria make clear that this process will become ever more serious and widespread.

D. Freedom from Arbitrary or Unlawful Interference with Privacy and Family

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*⁴⁹

47. Existing and anticipated climate change impacts upon the citizens of Algeria constitute arbitrary or unlawful interference with privacy and family as protected under Article 17(1) of the ICCPR.
48. Climate change impacts upon the homes and land of Algerians have made and will make living conditions unbearable. This represents a severe and unlawful impact upon individual and family well-being.⁵⁰

E. The Right to Culture

In those States in which ethnic, religious or linguistic minorities exist, persons belonging in such minorities shall not be denied the right, in community with the other members of their

⁴⁸ F Deng, *Internally displaced persons: Report of the Representative of the Secretary-General*, Mr Francis M Deng, submitted pursuant to Commission on Human Rights resolution 1995/57, UN Doc E/CN.4/1996/52/Add.2 (1995).

⁴⁹ Article 17(1).

⁵⁰ See case of *Lopez-Ostra v Spain* (1994) Eur Ct HR, [47], Application No 16798/90 (1994) and *Guerra v Italy*, Eur Ct HR, Case 14967/89 (1998).

*group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*⁵¹

49. The right to culture protected under Article 27 of the ICCPR of the ethnic, religious and linguistic minorities of Algeria is being violated by anthropogenic climate change.
50. Climate change is destroying the health of Algeria's environment, which has and will have devastating impacts upon minority groups' traditional ways of life, and their spiritual and cultural connections to the land.
51. The natural resources of Algeria that are being destroyed through the impacts of sea level rise and other climate change processes are essential for these minorities' cultural integrity. Their loss threatens displacement of minority groups and loss of life and health.⁵²

IX. Causation

52. For the purposes of proving causation, this Complaint demonstrates the following:
 - a. That anthropogenic greenhouse gas emissions are causing and will cause climate change;
 - b. That the specific impacts suffered in Algeria are attributable to climate change;
 - c. That the specific impacts suffered in Algeria are attributable to the acts or omissions of Australia; and
 - d. That the specific impacts suffered in Algeria are not too remote from the acts or omissions of Australia.
53. Current scientific evidence clearly establishes that anthropogenic greenhouse gas emissions are causing and will cause climate change. The Fourth Assessment Report of the IPCC has found that 'warming of the climate system is unequivocal' and most of the increase in global average temperatures since the mid 20th century is the result of anthropogenic greenhouse gas emissions (greater than 90% certainty). The IPCC has concluded that the level of temperature and sea rise in the 21st Century will depend upon the extent or limit of

⁵¹ Article 27.

⁵² See *Ominayak, Chief of the Lubicon Lake Band v Canada* (1990) Communication No 167/1984, UN Doc Supp No 40 (A/45/40) (1990) and IACHR, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/VII.96 Doc. 10 rev. 1 (1997).

emissions in coming years. Given this level of scientific understanding of climate change and its anticipated impacts, it is appropriate for future impacts to be causally linked to historic and present greenhouse gas emissions on the basis of statistical probability. It is evident that a given level of greenhouse gas emissions will make a substantial degree of harm inevitable.⁵³

54. Current scientific evidence clearly establishes that climate change is already having an impact in Algeria. Sea level rise is contributing to mangrove losses in the fertile coastal plain where most Algerians live and make their basic living. Climate change is disrupting glacial systems, water resources and intensifying storms in the coastal regions of Algeria.
55. Current scientific evidence clearly establishes that climate change will have an increasingly severe impact in Algeria. There are projected changes in the frequency and severity of extreme climate events, as well as projected snow-pack decrease, sea level rise, and spread in the prevalence of human diseases. These impacts can be predicted with a reasonably high level of certainty.
56. As provided in this Complaint, these environmental impacts have and will continue to violate the human rights and fundamental freedoms of Algerians protected under the ICCPR.
57. The specific impacts suffered in Algeria are attributable to Australia's acts and omissions as Australia's greenhouse gas emissions have contributed to the extent of the experienced harms and to the risk of future harms in Algeria.
58. In establishing a causal link between one nation's greenhouse gas emissions and specific human rights impacts, the appropriate test is whether the contribution has caused additional exposure to climate change impacts.
59. A similar approach was adopted by Australia and New Zealand in the Nuclear Tests Cases. In its pleadings, Australia argued that any additional exposure to radioactive contamination, irrespective of how small, substantially contributed to the risk of radiation-related injuries.⁵⁴ Counsel for Australia argued that additional exposure to radiation was proof that Australia

⁵³ In the Nuclear Tests Case, Australia argued "that prospective harm to the Australian population could be calculated with a reasonable degree of accuracy based on the degree of exposure to radiation". Phoebe N. Okowa, *State responsibility for transboundary air pollution in international law* (2000), p. 190.

⁵⁴ (1978) Vol. 1, ICJ Pleadings, at 500 in Okowa, *ibid*, p. 189

has suffered or would suffer damage at some future point.⁵⁵ While the ICJ did not decide on this point, the argument is clearly relevant in determining the appropriate theory of causation in relation to climate change.

60. Under this theory of causation, it is not necessary for the acts or omissions of the State Party to be the sole or primary cause of the specific impacts suffered. The *sine qua non* or 'but for test' is clearly not appropriate in determining causation for climate change because the process is a cumulative phenomenon. There is no way for one State to be entirely responsible for damage caused by climate change, or even for a particular impact caused by climate change. However, the existence of concurrent causes of climate change damage should not limit a claim to recover redress from one particular State.⁵⁶ Instead the existence of these concurrent causes should mean that a particular State is held liable for its contribution to the problem.
61. In this case, Australia is the highest per capita emitter of greenhouse gases and is the seventh largest national emitter amongst Annex 1 countries as listed under the UNFCCC. From 1990 to 2004, Australia increased total emissions by 25%. Although Australia's historical share of global emissions is only 1.2% (1900-1999), Australia has been and is a net emitter with the capacity to reduce the exposure to climate change impacts of Algerians through the reduction of its greenhouse gas emissions. This additional exposure of Algerians has meant and will mean that the human rights impacts in Algeria are more severe than they would be without the Australian contribution. Although Australia is not the primary cause of the specific impacts suffered, Australia has clearly contributed to the process of climate change and the exposure of Algerians to human rights impacts from this process. It is on this basis that the specific impacts suffered in Algeria are attributable to the acts or omissions of Australia.
62. Where the threat to human rights is serious and irreparable but also involves some uncertainty, the HRC and other international tribunals have generally adopted a precautionary approach.⁵⁷ This is appropriate in this Complaint. It is important to note that although the process of climate change is non-linear and the science cannot establish cause-effect relationships with 100% certainty, there is a reasonably high level of certainty in the

⁵⁵ Ibid.

⁵⁶ See e.g. *Corfu Channel*, Assessment of Amount of Compensation, 1949 ICJ Rep, 244 at 250.

⁵⁷ Menno T Kamminga, 'The Precautionary Approach in International Human Rights Law: How It Can Benefit the Environment' in David Freestone and Ellen Hey (ed), *The Precautionary Principle and International Law* (1996) 184.

current state of scientific knowledge of climate change. As both States Parties in this Complaint are also States Parties to the UNFCCC, the principles contained in it provide relevant rules of international law applicable in the relations between the parties.⁵⁸ The precautionary principle, which is a principle of customary international law and is contained in the UNFCCC, has been applied by international tribunals to reverse the burden of proof or effectively lower the standard of proof.⁵⁹ It is appropriate for the precautionary principle to be applied in this case to reverse the burden of proof or lower the standard of proof.

63. Finally, the human rights impacts suffered in Algeria are not too remote from the acts and omissions of Australia. There has been scientific evidence of climate change and the risks that climate change poses to human life and human rights for a long period of time. This scientific evidence has been readily available to Australia. The increased severity and additional exposure of human rights of Algerians to climate change impacts was and continues to be a reasonably foreseeable consequence of Australia's contribution to the problem.

X. Remedies sought

64. Article 41(d) states that the Committee shall hold closed meetings when examining communications under this article. Article 41(e) states that subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognised in the present Covenant. Article 41(f) states that in any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information.

65. Article 41(1)(h) the Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

- a. If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement on the facts and of the solution reached;

⁵⁸ Vienna Convention, Section 31(3)(c).

⁵⁹ For e.g. *The Southern Bluefin Tuna Case* (New Zealand v Japan, Australia v Japan) Request for provisional measures, Order of 29th August 1999 (<<http://www.itlos.org>>).

- b. If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

66. The State of Algoria submits that the following solution would be on the basis of respect for human rights and fundamental freedoms as recognised in the ICCPR:

- a. That Australia adopt mandatory measures to limit its greenhouse gases to the utmost of its resources;
- b. The Australia cooperate in international efforts to reduce global emissions;
- c. That Australia consider the impact of Australian emissions on the citizens of Algoria before approving major government actions, for example through a Human Rights Impact Assessment;
- d. That Australia implement plans to protect and mitigate harm to Algorian culture and resources and assist Algorians adapt to climate change's unavoidable impacts in accordance with its contribution to the problem; and
- e. That Australia provide monetary compensation to the State of Algoria to compensate for existing damages and residual damage in accordance with its contribution to the problem, at the sum of \$X.⁶⁰

⁶⁰ A figure is not given as there are insufficient facts provided in the question to calculate such compensation.

Explanatory Note

Due to length restrictions, this Complaint has been restricted to Australia as defendant. A joint complaint could be made against multiple nations.

If the matter is not resolved by this Complaint, the Committee may appoint an ad hoc Conciliation Commission under Article 42. This Commission may only be appointed with the prior consent of the States Parties concerned and will further serve to find an amicable solution to the dispute. If an amicable solution on the basis of respect for human rights as recognised in the Covenant is not reached, the Commission shall provide a report that will embody its findings on all questions of fact relevant, and its views on the possibilities of an amicable solution of the matter (Article 42 (7)(c)).

It is likely that the main area of contention would be the notion that Australia's obligations under the ICCPR include situations where the rights of citizens of other nations have been violated through transnational phenomenon such as climate change. However, as set out in this Complaint it is arguable that the obligation contained in Article 2 should be interpreted to encompass acts or omissions by a State that cause transboundary environmental harm. Climate change is one clear example of such a phenomenon.

The other major area of contention is likely to be causation. As argued in this Complaint, it is possible for a causal link to be demonstrated between one nation's greenhouse gas emissions and specific human rights impacts through determining if that nation's contribution has caused additional exposure to climate change impacts. The extent of that nation's contribution may then be used to calculate the extent of a particular nation's liability.