

# INTERNATIONAL TRIBUNAL FOR THE RIGHTS OF NATURE

**JUDGEMENT IN THE MATTER OF:**

**GREAT BARRIER REEF**

**versus**

**AUSTRALIA FEDERAL AND STATE GOVERNMENTS AND OTHERS**



## **INTRODUCTION**

1. This case was heard by the Tribunal presided over by Alberto Acosta during the second session of Tribunal held from 5 to 6 December in Lima, Peru. The hearing was dedicated to the memory of José Tendetza who was murdered shortly before he was due to give evidence before the Tribunal. This is the unanimous judgment of the Tribunal.

## **PROCEEDINGS**

2. The Australian Earth Laws Alliance (AELA) submitted the application for the case of the Great Barrier Reef to the Tribunal in Quito in January 2014. This was followed by a hearing of a Regional Chamber of the Tribunal on 15 October 2014 in Brisbane, Australia (see Schedule 1 for details) which preceded the hearing of the case by the Tribunal which sat in Lima, Peru from 5 to 6 December 2014 (see Schedule 2 for details).

3. In finalising this judgement the Tribunal also took account of testimony from Gudju Gudju, an elder of the Gimul people, one of the many groups of indigenous peoples who have lived adjacent to the Great Barrier for approximately 70,000 years or 2,250 generations and have a particularly intimate relationship with it.

#### **Initial Hearing (Quito, January 2014)**

4. The Australian Earth Laws Alliance (AELA) submitted the application for the case of the Great Barrier Reef to the Tribunal in Quito in January 2014. Dr Michelle Maloney, the National Convenor of the AELA, presented the case to the Tribunal and requested that it be accepted for hearing by the Tribunal at a future date.
5. The Tribunal (Judge Vandana Shiva presiding) decided that the Tribunal should hear the matter on a future date because the complainant (AELA) had provided credible evidence that, as a direct consequence of the development of coal ports and the proposed shipping of large volumes of coal across the Great Barrier Reef:
  - 5.1. serious violation of the rights, and breaches of the duties, established by the Universal Declaration of the Rights of Mother Earth (“the Declaration”) are occurring and are likely to continue; and
  - 5.2. there is a present and very real threat to the Great Barrier Reef community.
6. In announcing the Tribunal’s decision to hear the case, Judge Cormac Cullinan noted that the submissions made to the Tribunal provided evidence of potentially serious violations of specific rights of the Great Barrier Reef and the members of that community<sup>1</sup>, and of potentially serious failures on the part of human beings and the public and private institutions established by humans to respect and live in harmony with Mother Earth.<sup>2</sup> He also pointed out that the facts of this case raised other important issues worthy of consideration by the Tribunal. For example, if current concentrations of greenhouse gases in the atmosphere are already causing significant climate change, is any significant

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<sup>1</sup> These include the rights recognised in the Declaration: to continue their vital cycles and processes free from human disruptions (Declaration, article 2(1)(c)); to integral health; (article 2(1)(g)); to be free from contamination and pollution (article 2(1)(h)); and to wellbeing (article 2(3)).

<sup>2</sup> These include the duties of all human beings, all States and all public and private institutions, to ensure that the pursuit of human well-being contributes to the well-being of Mother Earth now and in the future (article 3(2)(d)) and to establish precautionary and restrictive measures to prevent human activities from causing species extinction, the destruction of ecosystems or the destruction of ecological cycles (article 3(2)(i)).

increase in the rate of production of hydrocarbons (such as the opening of the vast new coal mines that are to be the source of the coal shipped across the Great Barrier Reef) a violation of the rights of Nature?

### **Hearing of the Australian Regional Chamber of the Tribunal**

7. On 15 October 2014, an Australian Regional Chamber of the Tribunal conducted hearings in Brisbane, Queensland, to hear evidence from local witnesses for the Great Barrier Reef case (see Schedule 1 for details). The evidence presented at that hearing proved that human activities were causing significant damage to the Great Barrier Reef.
8. After deliberation, the Regional Chamber made the following findings based on the evidence presented to it.
  - 8.1. The Great Barrier Reef's rights to exist, thrive and evolve have been, and are being, violated. In particular, the following three articles of the Declaration are being violated: the right to exist,<sup>3</sup> the right to continue its vital cycles and processes free from human disruptions,<sup>4</sup> and the right to maintain its identity and integrity as a distinct, self-regulating and interrelated being.<sup>5</sup>
  - 8.2. Intervention by the Australian Federal Government and Queensland State Government to prevent further industrial development along the coastline adjacent to the Reef would assist the Great Barrier Reef community to restore itself to integral health and it was the responsibilities of those governments to do so.
  - 8.3. The Regional Chamber noted that the significant body of domestic and international law that already exists to protect the Great Barrier Reef had failed to prevent the ongoing damage to the Reef.<sup>6</sup> It concluded that although appropriate enforcement of existing environmental law in Australia would assist in protecting the health of the Reef, this would be insufficient. The overwhelming impacts of the ongoing growth in current modes of production and consumption, require a new ecocentric framing of ethical and legal systems such as that given legal expression in the Declaration.

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<sup>3</sup> Article 2(1)(a).

<sup>4</sup> Article 2(1)(c).

<sup>5</sup> Article 2(1)(d).

<sup>6</sup> These are listed in Schedule 3.

9. The Regional Chamber suggested that testimony should be received from the indigenous communities who are custodians of the land and sea country linked to the Great Barrier Reef.
10. In 2015 the Australian Earth Laws Alliance held discussions with indigenous communities in Cairns, and testimony from a small selection of indigenous people was received. One indigenous representative, Gudju Gudju of the Gimul people, noted that his people had lived in Australia for at least 70,000 years or 2,250 generations. He and his people are concerned about the health of land and sea country of the Great Barrier Reef. One of the reasons they are advocating for their own sovereignty, is so that they can continue to apply the traditional laws which they used for millennia to protect the Great Barrier Reef. He noted that he and his people are very concerned that the organisations currently responsible for managing the Reef don't truly understand the interconnectedness of all life on the land and sea, and consequently the importance of protecting all. His people want to ensure this is better understood and taken into account in management and decision making.<sup>7</sup> He also stated that his people do not want more coal mines, coal ports or coal seam gas developments.

#### **ISSUES FOR DETERMINATION BY THE TRIBUNAL**

11. The complainants requested this Tribunal:
  - 11.1. to determine whether or not the current and proposed shipping of coal across the Great Barrier Reef in Australia, the construction of ports and other infrastructure to facilitate that process, and the consequential increases in global combustion of coal, violates the Declaration;
  - 11.2. to determine which parties should be held accountable for failing to fulfil their duties as recognised in the Declaration;
  - 11.3. to determine what restorative measures should be taken;<sup>8</sup> and

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<sup>7</sup> A video of the testimony presented by Gudju Gudju, may be viewed at: <https://youtu.be/z-ocsRYPCzo>

<sup>8</sup> The Declaration provides that if human activities violate any of the rights recognised in the Declaration then the injured party (for example, the Great Barrier Reef community and its members) has a right to full and prompt restoration for the violation of those rights (article 2(1)(j)) and human beings, all States, and all public and private institutions must: respect, protect, conserve and where necessary, restore the integrity, of the vital ecological cycles, processes and balances of Mother Earth (article 3(2)(f)); and guarantee that the damages caused by

- 11.4. to determine what preventive or precautionary measures should be taken to prevent future violations of the Declaration being caused by the extraction and transportation of coal.<sup>9</sup>

## **EVIDENCE BEFORE THE TRIBUNAL**

12. The Tribunal, after hearing the testimony and considering evidence submitted to it and analysing it and supplementing it with its own research, accepted the following as factually correct.

### ***Value of the Great Barrier Reef community***

13. The Great Barrier Reef is the world's largest coral system and one of the greatest wonders of Earth. It is the largest structure made by living organisms and can be seen from space. The reef extends for 2,300 km, includes 9,000 tropical islands covering an area of 344,400 km<sup>2</sup> and has more than 3,000 individual coral systems. It is home to at least 1,625 species of fish, 600 types of coral, 133 species of sharks, 30 species of whales and dolphins, and 3,000 species of molluscs.
14. The Defender of Mother Earth drew the Tribunal's attention to the fact that the Great Barrier Reef is a community consisting of an enormous number and diversity of beings whose existence and wellbeing is dependent on that of the Reef. Consequently references in this judgement to the rights of the "Great Barrier Reef" or of the "Great Barrier Reef community" must be understood as references not only to the collective rights of that community but also to the rights of its members.

### ***Threats to the Reef caused by humans (anthropogenic threats)***

15. In 1981 the United Nations Educational, Scientific and Cultural Organisation (UNESCO) recognised the value of the Great Barrier Reef to humanity by declaring the Reef to be a World Heritage Site. However in June 2011, UNESCO issued a warning to the Australian

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human violations of the inherent rights recognized in the Declaration are rectified and that those responsible are held accountable for restoring the integrity and health of Mother Earth (article 3(2)(g)).

<sup>9</sup> The Declaration recognises that human beings, all States, and all public and private institutions have a duty to establish precautionary and restrictive measures to prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles (article 3(2)(i)).

government about threats to the life of the Great Barrier Reef. Among the threats noted by UNESCO are:

- 15.1. the impacts of 1.99 million tourists a year;
  - 15.2. damage caused by thousands of freight ships through the ports on the northern coast of Australia, which create risks of pollution from fuel and coal dust (particularly during transshipping operations) and from cargo losses;
  - 15.3. damage to the Reef caused by sediments agitated in the construction of new ports
16. Dredging and sea dumping of dredge material have caused sedimentation across the Reef to a far greater extent than had been predicted. This reduces water quality which affects corals and other marine life.
17. The phenomenon of climate change is also having a negative effect on the Great Barrier Reef. A 0.4°C rise in average water temperature is already causing severe bleaching on much of the Reef and the increased frequency of severe weather events, ocean acidification and sea level risk caused by climate change also put the Reef at risk. The combustion of coal mined in Australia (approximately 50.8 million tons of coal per year) makes a significant contribution to accelerating climate change and consequently to accelerating harm to the Reef.
18. UNESCO made 14 recommendations to the Australian Government, which have not been addressed to date.
19. The damage arising from these activities (which are well documented) include: marine pollution, the death and displacement of fish, ocean acidification, destruction of the coral, (it is estimated that up to 48% of the coral has already been lost) and significant impacts on the livelihood and health of more than 50 indigenous communities. If destructive human activities continue, the Great Barrier Reef will die along with the marine life it supports and this will have severe impacts on many species and people (particularly indigenous peoples).
20. Instead of the Federal Government and the Queensland government responding by stopping or restricting the human activities that are causing this harm, they are permitting the intensification of these activities. For example, these governments have authorised

the opening of vast new coal mines that will double the annual coal production of Queensland and dramatically increase the volume of coal exported via the waters of the Great Barrier Reef. Three of the largest coal mines are the Carmichael Mine, proposed by Adani, and Kevin's Corner and Alpha Coal Mine, proposed by GVK Hancock.

21. The expansion of the ports along the Queensland coast and the increase in shipping that is occurring to accommodate the escalating coal exports is increasing the risks to the Great Barrier Reef community. Dredging to expand Gladstone harbour is releasing toxins in the sediment and silt which remains in suspension in harbour waters inhibits the ability of fish to extract oxygen from the water. The offshore disposal of dredge spoil has increased the turbidity of the water, which has a negative effect on sea grass meadows and on the marine life which depends on them.

### ***The oceanic context***

22. Oceans constitute a single interconnected system that covers 71 percent of the surface of Earth and contains 97 percent of Earth's water.
23. Humans are changing the fundamental chemical properties of the oceans by increasing the carbon dioxide concentrations in the atmosphere and by undertaking a wide range of activities that pollute marine waters (such as those occurring around the Great Barrier Reef). The ocean is absorbing so much carbon dioxide that the PH level is being reduced. The ocean is 30% more acidic today than it was before humans began burning fossil fuels and is more acidic than it has been at any time in approximately 55 million years. The increase in acidification is having widespread impacts, particularly on oceanic beings that require calcium. Reefs are corroding, shells are becoming thinner and if acidification continues it may become impossible for marine beings to form shells. If that occurs it will result in the destruction of many species of plankton with devastating impacts on the functioning of ecosystems and on the well-being and existence of many populations of species, including whale-kind.
24. Scientists predict that coral reef ecosystems may become extinct within the next 50 years because they will not be able to regenerate their calcium carbonate structures.

## THE RIGHTS OF THE GREAT BARRIER REEF

25. The Declaration recognises in Article 2(1) that the Great Barrier Reef and myriads of beings that form part of that community have the following rights, among others:

- 25.1. the right to life and to exist (article 2(1)(a));
- 25.2. the right to wellbeing (article 2(3));
- 25.3. the right to a place and to play its role in Mother Earth for her harmonious functioning (article 2(2));
- 25.4. the right to continue their vital cycles and processes free from human disruptions(article 2(1)(c));
- 25.5. the right to integral health; (article 2(1)(g));
- 25.6. the right to be free from contamination, pollution and toxic or radioactive waste; (article 2(1)(h)); and
- 25.7. the right to full and prompt restoration for the violation of the rights recognized in this Declaration caused by human activities; (article 2(1)(j)).

26. On the basis of the evidence considered by Tribunal it is clear that a range of activities being carried out by humans in Australia (particularly within the State of Queensland) are polluting the waters of the Great Barrier Reef with sediments and toxic chemicals, and causing direct physical damage to the Reef to such an extent that the integrity and health of the various communities of which the Reef is comprised have been deteriorating for several decades (if not longer) and that degradation is accelerating. These activities include:

- 26.1. the mining, export and combustion of coal, which contribute to climate change and the warming and acidification of the oceans;
- 26.2. the discharge of pollutants from land-based sources, such as agricultural runoff into the waters of the Great Barrier Reef;
- 26.3. shipping, with the risk of shipping incidents such as oil spills and coal dust pollution;

- 26.4. the construction, expansion and dredging of ports adjacent to the Great Barrier Reef;
- 26.5. impacts of tourism on the Reef, including high level of boats travelling through the waters, large numbers of tourists entering the waters and the consequent pollution and impacts on coral through tourist interactions with the Reef.
27. The Declaration specifically recognises that the Great Barrier Reef and the beings of that community have the right to integral health (article 2(1)(g)). In referring to “integral health” the Declaration reminds us of the essential interrelatedness of every aspect of the Earth community and that the health of the whole system affects the health of any aspect or being within it, and *vice versa*. As the preamble to the Declaration notes: “we are all part of Mother Earth, an indivisible, living community of interrelated and interdependent beings with a common destiny”. This understanding is also reflected in Article 1 which records that “Each being is defined by its relationships as an integral part of Mother Earth” (Article 1(3)). In this case it is clear that the health of the great oceanic systems of Earth and that of Great Barrier Reef are interrelated and inseparable.
28. There is no doubt that the rapid acidification and warming of the oceans that is currently occurring pose grave dangers to most fundamental rights of the Great Barrier Reef: its right to exist and to continue its vital cycles that contribute to the health of Earth. These threats arise from global warming caused primarily by the excessive combustion of hydrocarbons, including coal, by human beings. In this case many of the direct assaults on the Great Barrier Reef arise from the construction, expansion and operation of coal ports that are intended to dramatically increase the volumes of coal exported from Australia. This coal will be combusted, which will in turn increase global warming and ocean warming and acidification to the detriment of the Great Barrier Reef. This is a clear example of how these deliberate human activities are violating the integral health of the Great Barrier Reef community.
29. Human activities are undoubtedly violating the rights of the Great Barrier Community recognised in the Declaration. These human activities include both activities that have a direct impact on the Great Barrier Reef such as those referred to in paragraph 26 above, and activities that contribute to climate change and ocean warming and acidification which have indirect but potentially even more severe impacts.

30. Extremely serious and on-going violations of the rights of the Great Barrier Reef are being caused both by human activities that have direct destructive impacts on the Great Barrier Reef (such as dredging and the discharge of pollutants into coastal waters) and by those that have indirect, but no less serious, impacts (such as activities that increase global warming, and particularly the increase of carbon dioxide in the atmosphere). Such severe harm to the Great Barrier Reef community has already been caused by these activities, which continue to intensify, that it is now necessary to recognise the reality that this is now a global emergency which requires urgent and decisive responses.
31. We find that these deliberate human activities are violating the right of the Great Barrier Reef community to integral health (article 2(1)(g)) and its related rights to wellbeing (article 2(3)); to continue its vital cycles and processes free from human disruptions (article 2(1)(c)); to be free from contamination, pollution and toxic or radioactive waste; (article 2(1)(h)); to play its role in Mother Earth for her harmonious functioning (article 2(2)); and ultimately to exist (article 2(1)(a)).

## **ACCOUNTABILITY**

32. In order to establish whether or not the defendants must be held accountable, we must identify whether or not they (or others) have breached any of the duties recognised by the Declaration, and if so, to what extent.
33. The parties that are most responsible for serious violations of the Declaration, often do not suffer the harmful consequences of their actions. In this case those that will suffer most include other species, ocean-dependent communities, future generations, and the Earth community as whole. This is unjust and perpetuates anti-social decision-making. Consequently the Declaration imposes a duty on all human beings, all States, and all public and private institutions to recognize and promote the full implementation and enforcement of the rights and obligations recognized in the Declaration (article 3(2)(b)) and to guarantee that those responsible for violations of the inherent rights recognized in this Declaration are held accountable for restoring the integrity and health of Mother Earth (article 3(2)(g)).

***Accountability of mining companies, banks and other private sector organisations***

34. The Declaration recognises that, among other obligations, human beings, all States, and all public and private institutions must:
- 34.1. act in accordance with the rights and obligations recognized in the Declaration;
  - 34.2. ensure that the pursuit of human wellbeing contributes to the wellbeing of Mother Earth, now and in the future;
  - 34.3. establish precautionary and restrictive measures to prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles;
  - 34.4. recognize and promote the full implementation and enforcement of the rights and obligations recognized in the Declaration.
35. These duties must rest particularly heavily upon those organisations which intentionally promote increased extraction and combustion of fossil fuels, including by funding these activities. The fact that these activities undermine rather than contribute to, the wellbeing of Mother Earth, renders them illegitimate and unlawful. In fact from the perspective of the Earth community as a whole, the continuation of such activities is profoundly anti-social and must be discontinued as soon as possible.

***Accountability of individuals***

36. The Declaration records that *“Every human being is responsible for respecting and living in harmony with Mother Earth”* (article 3(1)). Consequently no-one is exempt from ensuring that they do not contribute to climate change and thereby to the warming and acidification of the oceans.
37. The responsibilities of the people who invest in, fund, promote, manage or undertake these harmful activities is not lessened by the legal fiction that these anti-social activities are carried out by a juristic person such as a company. Each human being is responsible for the consequences of their actions – particularly when they are foreseeable.
38. Although there is some merit in the argument that responsibility must also be borne by everyone who uses the energy generated by the burning of the coal exported via the ports adjacent to the Great Barrier Reef, their responsibility is minor in comparison with that of

those directly involved in the harmful activities or with the power to regulate and prevent the harm.

***Accountability of federal and state governments and public institutions***

39. Governments and public institutions, and the people who work in them bear a particular responsibility to act and must meet a higher standard by virtue of the regulatory powers and responsibilities vested in them. For example the Declaration requires that states and public institutions must:

39.1. establish and apply effective norms and laws for the defence, protection and conservation of the rights of Mother Earth (article 3(2)(e));

39.2. guarantee that the damages caused by human violations of the inherent rights recognized in this Declaration are rectified and that those responsible are held accountable for restoring the integrity and health of Mother Earth (article 3(2)(g));

39.3. empower human beings and institutions to defend the rights of Mother Earth and of all beings(article 3(2)(h)); and

39.4. establish precautionary and restrictive measures to prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles(article 3(2)(i)).

40. The evidence placed before the Tribunal indicates that there has been a catastrophic failure on the part of the Australian Federal Government and the Government of Queensland to take the necessary action to comply with these duties in relation to the Great Barrier Reef. Instead of strengthening the protection of the Great Barrier Reef in response to incontrovertible evidence that it is being damaged and taking decisive action to limit Australia's growing contribution to climate change, they have done the reverse. This is a clear contravention of the Declaration and is consequently unlawful.

41. A government that establishes a power supply system to deliver electricity generated from the combustion of fossil fuels to people, and subsidises the price of that power (for example by not requiring polluting power companies to pay for the elimination or reduction of emissions or to remedy the negative consequences) is promoting global warming. This culpability is exacerbated if the government is not actively promoting a

rapid transition to renewable sources of energy. In comparison, the culpability of a person who uses electricity generated from fossil fuels to meet basic human needs is negligible in comparison to those who perpetuate a system for providing that energy to the exclusion of less harmful sources.

***Accountability of public officials and voters***

42. The primary responsibility for this contravention lies not only with the governments (that is with intangible juristic persons created by legal fictions) but also (to varying degrees) with the decision-makers in political parties who formulated and promoted the policies that legitimised these actions, the elected public representatives and public officials who authorised these actions, and the people who voted for those political parties and elected officials knowing that they intended to take these actions. Each one of them is personally responsible for the part which they have played in creating the immense harm to the Mother Earth and the members of the Earth community (including humans) caused by their deliberate actions and inaction.
43. The Federal Government of Australia and the Government of Queensland and the people who work in them bear a particular responsibility to act and must meet a higher standard by virtue of the regulatory powers and responsibilities vested in them.

**ARE THESE LIMITATIONS TO THE RIGHTS OF THE REEF NECESSARY TO MAINTAIN INTEGRITY, BALANCE AND HEALTH?**

44. Since the rights recognised by the Declaration are not absolute and the rights of any being must of necessity be limited in the interests of maintain the health and integrity of the whole Earth community, it is also necessary to consider the extent to which these violations of the rights of the Great Barrier Reef may be considered to be limitations on those rights which are justifiable in the light of the interests of the Earth community as a whole.
45. The Declaration recognises that there may be situations in which the rights of specific being conflict with (or appear to conflict with) the rights of other beings. Article 1(7) states that:

*The rights of each being are limited by the rights of other beings and any conflict between their rights must be resolved in a way that maintains the integrity, balance and health of Mother Earth.*

46. In this case the human activities that give rise to the violations of the rights of the Great Barrier Reef (for example the mining, export and combustion of coal) are primarily commercial activities that are undertaken to enrich juristic entities (companies) and the people that own shares in them.
47. The revenues from these activities and the resources that they make available to human beings (for example, electricity from coal-fired power stations) contribute to increasing the standard of life and in some cases, the well-being of some human beings. However these apparent benefits to some humans are being achieved at a considerable cost to the Earth community as a whole (Mother Earth). The costs to all beings of humans continuing to burn fossil fuels is increasingly dramatically as we approach and exceed the limits to Earth's capacity to reabsorb and metabolise the greenhouse gasses which these processes emit.
48. The right of human beings to pursue their own wellbeing is not unqualified and is limited by the duty in article 3(2)(d) of the Declaration to ensure that the pursuit of human wellbeing contributes to the wellbeing of Mother Earth, now and in the future. In other words the Declaration does not recognise that human beings have a right to seek to enhance their wellbeing at the expense of the wellbeing of the Earth community. Whatever the short-term gains which humans may make in this way must inevitably be overshadowed by the long-term losses which humanity will suffer as a consequence of the deterioration of their habitat.
49. A complete cessation of coal exports from Australia via the waters of the Great Barrier Reef would obviously have a significant impact on the Australian economy and may result in the certain corporations ceasing to exist. However it is unlikely to result in the death of any humans. Certainly it is improbable to suggest that the effects would be sufficient to constitute a serious violation of those rights of human beings that are recognised in the Declaration (for example, the right to life and to exist) or indeed under international human rights law. On the contrary, a significant reduction in the mining, export and

combustion of coal is likely to enhance the rights of human beings to clean air, to integral health, and to be free from contamination and pollution (article 2(1) paragraphs (f), (g) and (h)). The evidence before the Tribunal also suggest that such a cessation would enhance the wellbeing of indigenous and local human communities who depend on the Reef for sustenance. Consequently we find that the violations of the fundamental rights of the Reef cannot be justified on the basis that these constitute acceptable limitations on the rights of the Reef that are necessary to protect fundamental human rights.

50. Even if we were wrong in this regard and there is a conflict between the rights of human beings (i.e. what is best for humans) and the rights of the Great Barrier Reef (i.e. what is best for the Reef) the role of the Tribunal is to identify how such a conflict can be resolved in a way that maintains the integrity, balance and health of Mother Earth (article 1(7)). The evidence shows that the integrity, balance and health of Mother Earth is being seriously compromised by global warming, ocean warming and acidification and direct assaults on the Reef. Consequently it is not an option to resolve any conflicts between the rights of humans and the rights of the Reef in a way that legitimises the continuation of the human activities that create these consequences.

## **RESTORATION MEASURES**

51. According to scientific evidence presented at the Regional Tribunal, the Reef has a tremendous capacity to heal itself and if the many human activities that are causing on-going harm were stopped, a significant amount of natural regeneration could be expected. However, it may no longer be possible to rectify all the harm that human activities have caused to the Great Barrier Reef and to achieve a full and prompt restoration of these violation of the rights recognized in the Declaration as required by article 1(j) as read with articles 3(2)(g)). However even if this were proved, it cannot justify a failure to take measures to mitigate such harm. The duty to act does not depend on the likelihood of success.

52. In this regard the primary duty of the Tribunal is to identify what is necessary:

52.1. to give effect to the right of the Great Barrier Reef to full and prompt restoration for the violation of the rights recognized in the Declaration caused by human activities (article 2(1)(j)); and

- 52.2. to guarantee that the damages caused by human violations of the inherent rights recognized in the Declaration are rectified and that those responsible are held accountable for restoring the integrity and health of Mother Earth; (article 3(2)(g)).
53. An enormous range of actions could be taken to protect the rights of the Great Barrier Reef and to ensure that it is restored to health. Consequently this judgement only focusses on a few measures which the Tribunal considers to be essential in this regard.
54. First, it will be necessary to do everything humanly possible to stop and reverse the acidification of the oceans and the direct destructive impacts on the Reef. This will require the following, among other measures:
- 54.1. a complete cessation of coal exports from Queensland; and
- 54.2. a dramatic global reduction in the emission of greenhouse gasses;
55. Given the fact that concentrations of greenhouses gasses in the atmosphere are already dangerously high and continued acidification of the oceans can only be prevented by rapidly reducing concentrations of CO<sub>2</sub> in the atmosphere, these measures are urgent and must be commenced immediately. A failure to act with urgency, particularly with knowledge of the consequences of delay and the real likelihood that delay itself may render any response ineffective, is itself a culpable violation of the Declaration and of the rights of all beings. Whether or not nation states have agreed to an international treaty that imposes binding obligations to reduce emissions of greenhouse gasses does not affect the existence of the duty to take effective preventive and restorative measures urgently, nor diminish the culpability of those who fail to act.

## **CONCLUSIONS**

56. This Tribunal makes the following findings.
57. Deliberate human activities are directly and indirectly violating the right of the Great Barrier Reef community to integral health (article 2(1)(g)) and its related rights to wellbeing (article 2(3)); to continue its vital cycles and processes free from human disruptions (article 2(1)(c)); to be free from contamination, pollution and toxic or radioactive waste; (article 2(1)(h)); to play its role in Mother Earth for her harmonious functioning (article 2(2)); and ultimately to exist (article 2(1)(a)).

58. These violations are not necessary to maintain the integrity, balance and health of Mother Earth, and are consequently unjustifiable, illegitimate and unlawful.
59. The Australian Federal Government and the Government of Queensland have failed to comply with their obligations under the Declaration, and in particular, have failed to establish and effectively implement laws and other measures that:
- 59.1. conserve the Great Barrier Reef community and protect its inherent rights (in contravention of article 3(2)(e));
  - 59.2. prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles(article 3(2)(i)); and
  - 59.3. ensure those responsible for violating the inherent rights of the Great Barrier Reef community restore its integrity and health (article 3(2)(g)).
60. In order to begin the process of restoring the integrity and health of the Great Barrier Reef community the Australian Federal Government and the Government of Queensland must immediately:
- 60.1. comply with the UNESCO recommendations;
  - 60.2. prohibit the expansion of the coal ports adjacent to the Great Barrier Reef;
  - 60.3. prohibit any activities that pollute the waters of the Great Barrier Reef or harm it directly or indirectly;
  - 60.4. enforce a rapid reduction in the mining and combustion of coal within, and the export of coal from, the areas under their jurisdiction;
  - 60.5. ensure that human beings that have benefitted from the activities that have harmed the Great Barrier Reef contribute (financially and otherwise) to measures to restore it to integral health, and that the degree to which a person is culpable and has benefitted from those activities be taken into account in apportioning responsibility for contributing to those measures.
61. Any person who directly or indirectly funds, invests in, participates in, authorises or facilitates the process of mining and exporting coal via the Great Barrier Reef ceases doing so and immediately begins taking or contributing to the taking of effective measures to restore the integrity and health of the Great Barrier Reef.

62. The following activities constitute unlawful violations of the rights of Mother Earth and must cease immediately:

62.1. the granting of any authorisations for the export of coal via the waters of the Great Barrier Reef;

62.2. providing funding for, or facilitating, the export of coal via the Great Barrier Reef;

62.3. investing in the companies that are developing and operating coal mines that are or will be exporting coal via the Great Barrier Reef, including Adani Enterprises Limited (developers of the Carmichael Coal Mine with an estimated annual output of 60 million tonnes); GVK Coal Developers, the parent company of Hancock Galilee (Pty) Ltd (developers of the Kevin's Corner mine) and Hancock Coal Pty Ltd, (developers of the Alpha coal project) which each have an estimated annual output of 30 million tonnes; Waratah Coal Pty Ltd (developers of the Galilee Coal Project with an estimated annual output of 40 million tonnes), and Macmines Austasia Pty Ltd (developers of the China Stone Coal Project with an estimated annual output of 38 million tonnes);

62.4. the use of agricultural fertilisers in a manner that pollutes the sea surrounding the Reef.

63. The Tribunal calls upon all people of good conscience who recognise the value of their membership of the magnificent community of life that we call Earth or Mother Earth to take appropriate action to ensure the implementation of this judgment and to defend the rights of the Great Barrier Reef.

## SCHEDULE 1 HEARING OF THE AUSTRALIAN REGIONAL CHAMBER

### MEMBERS OF THE TRIBUNAL

**Brendan Mackey** Professor

**(Tribunal President)**

**Ian Lowe AM** Emeritus Professor

**Noel Preston:** Ethicist and Adjunct Professor

**Sam Watson** Indigenous community leader from South East Queensland

**Janelle Fabio** Youth representative

### MOTHER EARTH DEFENDER

**Benedict Coyne:** Lawyer

### DEFENCE COUNSEL

**Abraham O'Neill:** Volunteer defence counsel representing the Australian and Queensland Government

### WITNESSES

**Joanne Bragg:** Chief Executive Officer of the Environmental Defenders Office Queensland

**Dr Glen Holmes:** Marine biologist and reef expert from the University of Queensland

**Sean Ryan:** Principal Solicitor of the Environmental Defenders Office Queensland

**Brynn Matthews:** Chairperson of the Environmental Defenders Office Far North Queensland and Cairns resident.

**Michelle Maloney** Coordinator of the Australian Earth Law Alliance

## SCHEDULE 2: TRIBUNAL HEARING, LIMA, 5-6 DECEMBER 2014

### MEMBERS OF THE TRIBUNAL

<b>Alberto Acosta:</b> (Tribunal President):	economist and former President of the Constituent Assembly from Quito, Ecuador
<b>Raúl Prada Alcoreza:</b>	philosopher, sociologist, author, former member of the Bolivian Constituent Assembly of 2006-2007, Bolivia
<b>Hugo Blanco:</b>	political leader, leader of the Confederación Campesina del Perú, Peru
<b>Tantoo Cardinal:</b>	actress , Métis peoples, Canada
<b>Blanca Chancoso:</b>	Kichwa leader and educator from Cotacachi, Imbabura, Ecuador
<b>Tom Goldtooth:</b>	director of Indigenous Environmental Network, Turtle Island/ USA
<b>Francios Houtart:</b>	professor, philosopher, theologian, Belgium
<b>Osprey Orielle Lake:</b>	Co-Founder and Executive Director, Women’s Earth and Climate Network (WECAN), USA
<b>Edgardo Lander:</b>	sociologist, professor, Venezuela
<b>Veronika Mendoza:</b>	congresswoman, representing the region of Cusco, Perú
<b>Rocío Silva Santiesteban:</b>	National Human Rights Coordinator, author, professor, Perú
<b>Atossa Soltani:</b>	founder and Executive Director of Amazon Watch, USA
<b>Terisa Turner:</b>	professor Sociology and Anthropology, former UN Energy Specialist, Canada

## **MOTHER EARTH DEFENDER**

**Ramiro Avila:** Law lecturer at Universidad Andina Simón Bolívar,  
Quito, Ecuador

## **DEFENDANTS**

1. Australian Federal Government
2. Government of the State of Queensland
3. Elected representatives and officials of those Governments who performed any of the political, legislative, executive or administrative acts that legitimated or facilitated activities destructive to the Great Barrier Reef or who omitted to take the acts necessary to prevent that destruction.
4. Companies and people involved in the construction of ports, roads and other infrastructure to facilitate the transportation of coal across the Great Barrier Reef, the mining, transportation or purchase of coal to be transported across or in the vicinity of the Great Barrier reef or other associated activities harmful to the Great Barrier Reef.
5. Organisations and people engaged in other activities harmful to the Great Barrier Reef such as industrial developments near the reef, dredging, and agricultural activities that increase the levels of sediment in coastal waters.

## **DESCRIPTION OF PROCEEDINGS**

**Initial hearing** January 2014, Quito, Ecuador

**Regional Tribunal** 15 October 2014, Brisbane, Australia

**Hearings**

<b>Hearing:</b>	The matter was heard by the Tribunal during the second session of Tribunal held from 5 to 6 December in Lima, Peru and dedicated to the memory of José Tendetza who was murdered shortly before he was due to give evidence before the Tribunal.
<b>Judgement:</b>	Judge Tantoo Cardinal gave the unanimous judgement of the Tribunal.
<b>Language of authentic text:</b>	English (If there are any inconsistencies between different language versions of a judgement the meaning in the authentic text will prevail.)
<b>Complainant:</b>	Australian Earth Law Alliance
<b>Presenters:</b>	Dr Michelle Maloney, Australia (via video) Erin Fitz-Henry, (Australia)
<b>Expert witnesses:</b>	Glen Holmes, Australia Professor Brenden Mackey, Australia (via video)
<b>Representatives of Affected Parties:</b>	Sam Watson (Australia) Senator Larissa Waters, Australia (via video).
<b>Representative of the defendants</b>	None of the defendants were represented at the hearings

## SCHEDULE 3 – EXISTING LEGAL INSTRUMENTS PROTECTING THE GREAT BARRIER REEF

### Australian Federal legislation

- [Great Barrier Reef Marine Park Act 1975](#) is the primary Act in respect of the Great Barrier Reef Marine Park.
- Two acts relates to the Environmental Management Charge:
  - [Great Barrier Reef Marine Park \(Environmental Management Charge-Excise\) Act 1993](#)
  - [Great Barrier Reef Marine Park \(Environmental Management Charge-General\) Act 1999](#)
- [Great Barrier Reef Marine Park Regulations 1983](#)
- [Great Barrier Reef Marine Park \(Aquaculture\) Regulations 2000](#)
- [Great Barrier Reef Marine Park Zoning Plan 2003](#)
- [Environment Protection and Biodiversity Conservation Act 1999](#) came into force on 16 July 2000 and regulates actions that have, will have or are likely to have, a significant impact on matters of national environmental significance.
- [Environment Protection \(Sea Dumping\) Act 1981](#) prohibits dumping of waste or other matter from any vessel, aircraft or platform in Australian waters unless a permit has been issued.
- [Historic Shipwrecks Act 1976](#) prohibits certain activities in relation to historic shipwrecks and relics and requires discoveries to be notified.
- [Native Title Act 1993](#) provides for a number of important aspects of native title, including the recognition and protection of native title and a mechanism for determining claims to native title.
- [Protection of the Sea \(Prevention of Pollution from Ships\) Act 1983](#) is the responsibility of the Department of Infrastructure, Transport, Regional Development and Local Government together with the Australian Maritime Safety Authority.
- [Sea Installations Act 1987](#) provides for a number of aspects relating to sea installations including requirements that they be operated in a manner that is consistent with protection of the environment.

## Queensland Legislation

- [Coastal Protection and Management Act 1995](#) (Qld)
- [Environmental Protection Act 1994](#) (Qld)
- [Fisheries Act 1994](#) (Qld)
- [Marine Parks Act 2004](#) (Qld)
- [Native Title \(Queensland\) Act 1993](#) (Qld)
- [Nature Conservation Act 1992](#) (Qld)
- [Sustainable Planning Act 2009](#) (Qld)
- [Transport Operations \(Marine Pollution\) Act 1995](#) (Qld)
- [Transport Operations \(Marine Safety\) Act 1994](#) (Qld)
- [Workplace Health and Safety Act 1995](#) (Qld)
- And the new **Sustainable Ports Development Act 2015** (Qld) (regulates capital dredging and dumping and development of port facilities).

## International Conventions

- [Convention for the Protection of the World Cultural and Natural Heritage, 1972](#) (the World Heritage Convention)
- [Convention on Biological Diversity, 1992](#) (the Biodiversity Convention)
- [Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973](#) (CITES)
- [Convention on the Conservation of Migratory Species of Wild Animals, 1979](#) (the Bonn Convention)
- [Convention on Wetlands of International Importance Especially as Waterfowl Habitats, 1971](#) (the Ramsar Convention)
- [International Convention for the Prevention of Pollution from Ships, 1973](#) (the MARPOL Convention)
- [United Nations Convention on the Law of the Sea, 1982](#) (the Law of the Sea Convention or UNCLOS)
- [United Nations Framework Convention on Climate Change, 1992](#) (the FCCC)