

Fossil Fuels & Climate Justice/ Energy

Keywords – title

- > Climate change
- > Inuit tribe
- > Arctic melting
- > Climate displacements

1. Factual background

Climate change is already occurring in the Arctic and could be devastating for the Inuit. In fact, its effects are already noticeable.¹ A number of life-altering changes have taken place in Inuit societies lasting recent years, changes that can only be explained by changes in weather patterns. The Inuits, who number almost 155,000, inhabit the Arctic region of Canada, Alaska, Greenland and Chukotka in the far east of Russia. In terms of nature's time scales, they have suddenly been forced to reconsider their traditional life styles and make significant adaptations in response to current changes in climatic conditions. Their adaptability is facilitated by traditional Inuit knowledge, strong social networks, flexibility in the use of resources, and institutional support. Changing Inuit livelihoods, however, have undermined certain aspects of their adaptive capacity and this has resulted in emerging vulnerabilities.

The ways of life that have allowed the Inuit to survive for hundreds of years in what is for most people a harsh environment are now threatened by changes induced by humans far to the south of the areas where the Inuit live. For countless generations, the Inuit have observed the environment and accurately predicted the weather, thus enabling them to travel safely on the sea ice and hunt seals, whales, walrus, and polar bears.

The Inuit people have been seriously harmed by the retreat of sea ice and the thawing of permafrost caused by global warming. Summer sea ice, a critical extension of traditional Inuit land, is literally ceasing to exist. Winter sea ice is thinner and unsafe in some areas. Slumping, erosion, landslides, drainage, and more violent sea storms have destroyed coastal land, wetlands, and lakes, and have detrimentally changed the characteristics of the landscape upon which the Inuit depend. The inability to travel to lands traditionally used for subsistence and the reduced harvest has diminished the value of the Inuit's right of access to these lands.



Map of Nunavut

<http://www.polarnet.ca/polarnet/nunavut.htm>

Most Inuit settlements are located in coastal areas, where storm surges, permafrost melt, and erosion are destroying certain Inuit homes and communities. In inland areas, slumping and landslides threaten Inuit homes and infrastructure.

Climate change has reduced the value of the Inuit's personal effects, decreasing the quality of food and hides, and damaging snowmobiles, dog sleds and other tools. Their right to cultural intellectual property has also been violated, because much of the Inuit's traditional knowledge, a formerly priceless asset, is now frequently unreliable or inaccurate as a result of climate change.

Climate change is accelerating the transition to a more Western store-bought diet with all of its inherent health problems. Life-threatening accidents are increasing because of rapid changes to ice, snow and land. Traditional food preservation methods are becoming difficult to practice safely. Their diet, which for millennia has consisted of wild meat and a few wild plants, now has to be changed. Also, natural sources of drinking water are disappearing and diminishing in quality. The increased risks of previously rare heat- and sun-related illnesses also involve the right to health and life.

Because the Inuit culture is inseparable from its physical surroundings, the widespread environmental upheaval resulting from climate change threatens the subsistence of the Inuit cultural identity, which may cease to exist if

¹ Inuit means "the people" and is the generic name given to indigenous people of the Arctic. Though the word "eskimo", meaning "eaters of raw meat", is still used to describe Inuit, it is sometimes considered derogatory. There are two main groups that are referred to as Eskimo: Yupik and Inuit.



<http://indigenoussuestoday.blogspot.com.es> – Inuit fishing,



Source: Flickr –moving with sled dogs is becoming increasingly dangerous for the Inuit people.

action is not taken by the United States in concert with the community of nations.

2. International legal framework

The Inuit claim is based on the violation of some of the fundamental, internationally-recognised human rights. The international human rights, as recognised in the American Declaration of the Rights and Duties of Man, that are clearly being undermined include: the right to life (Art. I), the right to residence and movement (Art.VIII), the right to the inviolability of the home (IX), the right to the preservation of health and to well-being (Art. XI), the right to the benefits of culture (Art. XIII), and the right to work and to fair remuneration (Art. XIV).

Other international human rights instruments give meaning to the United States' obligations under the Declaration. For example, as a party to the International Convention on Civil and Political Rights ("ICCPR"), the United States is bound by the principles therein. As a signatory to the International Convention on Economic, Social and Cultural Rights ("ICESCR"), the United States must act consistently with the principles of that agreement.

The impacts of climate change, caused by the acts and omissions of the United States, violate the Inuit's fundamental human rights, which are protected by the American Declaration of the Rights and Duties of Man and other international instruments. In this regard, the Inuits have complained that climate change jeopardizes their right to life, physical integrity and security, their right to use and enjoy the lands they have traditionally used and occupied, their right to use and enjoy their personal property, and their right to the inviolability of their home—rights that are recognized by both the Universal Declaration of Human Rights² and the American Convention on Human Rights.³

Also, the United States has a basic obligation to ensure that activities within its territory do not cause transboundary harm or violate other treaties to which it

is a party. As a party to the UN Framework Convention on Climate Change, the United States has committed to developing and implementing policies aimed at returning its greenhouse gas emissions to 1990 levels. The United States has rejected the Kyoto Protocol, which would have obligated it to reduce its emissions to 7% below 1990 levels.

All of these international obligations are relevant to the application of the rights in the American Declaration because, in the words of the Inter-American Commission, the Declaration "should be interpreted and applied in context of developments in the field of international human rights law ... and with due regard to other relevant rules of international law applicable to [OAS] member States."

All these international law documents are supported by the UN Human Rights Council Resolutions. On 28 March 2008, the Human Rights Council adopted its first resolution on "human rights and climate change" (Res. 7/23).⁴ The Resolution recognised the threat that climate change poses to human rights and requested that the Office of the United Nations High Commissioner for Human Rights (OHCHR) conduct a detailed study on human rights and climate change. The study was prepared and submitted to the tenth session of the Council held in March 2009.⁵

Also, on 25 March 2009, the Council adopted Resolution 10/4 "Human rights and climate change"⁶ in which it, inter alia, notes that "climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights ..."; recognizes that the effects of climate change "will be felt most acutely by those segments of the population who are already in a vulnerable situation ...", recognizes that "effective international cooperation to enable the full, effective and sustained implementation of the United Nations Framework Convention on Climate Change ... is important in order to support national efforts for the realization of human rights implicated by climate change-related impacts", and

² Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc A/810 (Dec. 12, 1948).

³ American Convention on Human Rights, O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 8, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

⁴ Text available online in: http://www2.ohchr.org/english/issues/climatechange/docs/Resolution_7_23.pdf.

⁵ Report of the Office of the High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights, U.N. Doc. A/HRC/10/61 (15 January 2009).

⁶ UNHRC, UN Doc. A/HRC/10/29 (Mar. 20/2009).

⁷ In December 2005, Ms. Sheila Watt-Cloutier, the elected Chair of the Inuit Circumpolar Conference (ICC), announced that a petition had been filed with the Washington, DC-based Inter-American Commission on Human Rights (IACHR), one of two bodies within the Organization of American States authorized to oversee the operation of the OAS Inter-American Human Rights System. See "Petition to the Inter American Commission on Human Rights violations resulting from global warming caused by the United States", December 7, 2005.



Gordon Wiltsie, National Geographic – Inuit hunter Jayko Apak waits for seals on an ice floe.

and commitments have the potential to inform and strengthen international and national policy-making in the area of climate change”.

3. Action taken in the context of international institutions

In December 2005, the international Inuit communities asked the Inuit Circumpolar Conference (ICC) to file an unprecedented complaint with the Inter-American Commission of Human Rights (IACHR) against the United States for causing dangerous climate change and violating the Inuit people’s rights according to the U.N. Human Rights System and the Inter-American System within the Organization of American States (OAS).⁸ The 163-page petition⁸ as supported by testimony from 63 named Inuit from Alaska and northern Canada. Drawing upon the traditional knowledge of hunters and elders and wide-ranging peer-reviewed science, the petition documents the existing, ongoing, and projected destruction of the Arctic environment and culture and the hunting-based economy of Inuit caused by global warming. The petition sought relief from violations of the human rights of Inuit resulting from global warming caused by greenhouse gas emissions from the United States.

The Petitioner requested the Commission to take the following actions:

1. Make an onsite visit to investigate and confirm the harm suffered by the named individuals whose rights have been violated and other affected Inuit;
2. Hold a hearing to investigate the claims raised in the Petition;
3. Prepare a report setting forth all the facts and applicable law, declaring that the United States of America is internationally responsible for the violations of rights affirmed in the American Declaration of the Rights and Duties of Man and in other instruments of international law,

and recommending that the United States:

- a. adopt mandatory measures to limit its emissions of greenhouse gases and cooperate in the efforts of the community of nations – as expressed, for example, in activities relating to the United Nations Framework Convention on Climate Change – to limit such emissions at the global level;
- b. take into account the impacts of U.S. greenhouse gas emissions on the Arctic and affected Inuit in evaluating and before approving all major government actions;
- c. establish and implement, in coordination with the Petitioner and the affected Inuit, a plan to protect the Inuit culture and resources, including, *inter alia*, the land, water, snow, ice, and plant and animal species used or occupied by the named individuals whose rights have been violated and other affected Inuit; and mitigate any harm to these resources caused by US greenhouse gas emissions;
- d. establish and implement, in coordination with the Petitioner and the affected Inuit communities, a plan to provide the assistance the Inuit need to adapt to the impacts of climate change that cannot be avoided; and
- e. provide any other relief that the Commission considers appropriate and just.

The IACHR rejected the petition on November 16, 2006.⁹ The IACHR informed the petitioners that the Commission would not consider the petition “because the information it contains does not satisfy the requirements set forth in those Rules”¹⁰. [...] the information provided does not enable us to determine whether the alleged facts would tend to characterize a violation of rights protected by the American Declaration”.

In January 2007, the ICC requested a hearing with the IACHR during the latter

⁸ Inuit Circumpolar Conference, Petition to the Inter American Commission on Human Rights seeking relief from Violations resulting from Global Warming caused by Acts and Omissions of The United States. (Dec. 7, 2005), available at http://www.earthjustice.org/library/legal_docs/petition-to-the-inter-american-commission-on-human-rights-on-behalf-of-the-inuit-circumpolar-conference.pdf. The Petition number is N°P-1413-05. See also Earth Justice, *Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States*, December 7, 2005. www.earthjustice.org/library/reports/ICC_Human_Rights_Petition.pdf. Also see WATT-CLOUTIER, S., “Global Warming and Human Rights”, www.ciel.org/Climate/IACHR_Inuit_5Mar07.html and also see ZIMMERMAN, E.M., “Valuing Traditional Ecological Knowledge: Incorporating the Experience of Indigenous People into Global Climate Change Policies”, *New York University Environmental Law Journal*, 13, 2005, p. 812.

⁹ See the document: <http://graphics8.nytimes.com/packages/pdf/science/16commissionletter.pdf> and GORDON, J., “Inter-American Commission On Human Rights To Hold Hearing After Rejecting Inuit Climate Change Petition”, *Sustainable Development Law & Policy*, Núm. VII-2, January 2007.

¹⁰ It refers to the requirements of Article 28 of the “Rules of Procedure of the Inter-American Commission on Human Rights”: “Article 28. Requirements for the Consideration of Petitions. Petitions addressed to the Commission shall contain the following information:

- a. the name, nationality and signature of the person or persons making the denunciation; or in cases where the petitioner is a nongovernmental entity, the name and signature of its legal representative(s);
- b. whether the petitioner wishes that his or her identity be withheld from the State;
- c. the address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and email address;
- d. an account of the act or situation that is denounced, specifying the place and date of the alleged violations;
- e. if possible, the name of the victim and of any public authority who has taken cognizance of the fact or situation alleged;



Picture taken from the movie "Arctic Tale", National Geographic Films.

f. the State the petitioner considers responsible, by act or omission, for the violation of any of the human rights recognized in the American Convention on Human Rights and other applicable instruments, even if no specific reference is made to the article(s) alleged to have been violated;

g. compliance with the time period provided for in Article 32 of these Rules of Procedure;

h. any steps taken to exhaust domestic remedies, or the impossibility of doing so as provided in Article 31 of these Rules of Procedure; and

i. an indication of whether the complaint has been submitted to another international settlement proceeding as provided in Article 33 of these Rules of Procedure."

¹¹ Letter from Ariel E. Dulitzky, Assistant Executive Secretary, Inter-American Commission on Human Rights, to Sheila Watt-Cloutier, Petitioner (Feb. 1, 2007), available at http://www.earthjustice.org/library/legal_docs/inter-american-commission-on-human-rights-inuit-invite.pdf (last visited January 13, 2012).

¹² The results of this testimony by Ms. Watt-Cloutier, CIEL Senior Attorney Donald Goldberg, and EarthJustice Managing Attorney Martin Wagner are available at the announcement Global Warming and Human Rights Gets a Hearing on the World Stage. See http://www.ciel.org/Climate_Change/IAC_HR_Inuit_5Mar07.html.

¹³ Press Release, Earthjustice, Global Warming & Human Rights Gets Hearing on the World Stage Earthjustice Managing Attorney Martin Wagner gives testimony before the Inter-American Commission on Human Rights (Mar. 1, 2007), available at <http://www.earthjustice.org/news/press/007/global-warming-human-rights-gets-hearing-on-the-world-stage.html>.

organization's February 26 - March 9 session, in order to assist the Commission in exploring and better understanding the relationship between global warming and human rights.¹¹ On February 1, 2007, the IACHR invited representatives of CIEL, EarthJustice, and the ICC to provide testimony on the links between climate change and human rights.¹² The hearing was held at the OAS in Washington, D.C., on March 1,¹³ just two months after the

organization rejected the petition filed by Nobel-Peace-Prize nominee Sheila Watt-Cloutier and 65 other Inuit in 2005.¹⁴

Although IACHR hearings are largely limited to the publication of their findings, this was the first such hearing held in an international forum and may, at the very least, move climate change (as a human right) towards an international consensus.

Although the IACHR does not have the authority to compel the United States to restrict its greenhouse gas emissions or

¹⁴ See ANDREW C. REVKIN, "Americas: Inuit Climate Change Petition Rejected", N.Y. TIMES, Dec. 16, 2006.

compensate the Inuit, the petitioners hoped that such a ruling would increase public awareness of the detrimental effects of climate change and alert governments and corporations to their potential liability for global warming.

The petitioners also anticipated that a favourable ruling would establish a future legal basis for holding countries, companies, and industries responsible for their greenhouse gas emissions, even inducing a stream of litigation, somewhat akin to lawsuits against tobacco companies.

4. Development of the 'Inuit Case' before national judiciaries

Although the Inuit case has not yet been brought before national jurisdictions, there is a similar case on the impacts of climate change on an Arctic people, which has been brought before US national jurisdiction: the Kivalina Case. This case deals with a small village on a barrier reef on Alaska's northwest coast that is disappearing, allegedly due to melting glaciers and rising water levels. Kivalina is only one example of a

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¹⁴ See ANDREW C. REVKIN, "Americas: Inuit Climate Change Petition Rejected", N.Y. TIMES, Dec. 16, 2006.

¹⁵ US District Court of the Northern District of California, Oakland Div. Case: 08-cv-01138- SBA Doc. 194, filed 09/30/09.

¹⁶ US Court of Appeals for the Ninth Circuit, No. 09-17490.

¹⁷ SZ/NYT Supplement 8. 2. 10, p. 4.

growing danger to low coastal regions and islands caused by sea-level rise.

The Native Village of Kivalina and the City of Kivalina (collectively "Kivalina") are the governing bodies of an Inupiat village of approximately 400 people. Kivalina is located on the tip of a six-mile barrier reef located between the Chukchi Sea and the Kivalina and Wulik Rivers on the Northwest coast of Alaska, some seventy miles north of the Arctic Circle.

Global warming is destroying Kivalina, so the village must be relocated soon or be abandoned and cease to exist. Relocating will cost hundreds of millions of dollars and is an urgent matter. The U.S. Army Corps of Engineers and the U.S. Government Accountability Office have both concluded that Kivalina must be relocated due to global warming and have estimated the cost to be between \$95 million and \$400 million.

Therefore, the village of Kivalina is seeking damages from 24 of the biggest US oil and power companies for their alleged contribution to global warming, which the village describes as "a nuisance that is causing severe harm to Kivalina". Defendants in this action include many of the largest emitters of greenhouse gases in the United States. All defendants directly emit large quantities of greenhouse gases and have done so for many years. Therefore, according to the Kivalina complaint, the defendants are responsible for a substantial portion of the greenhouse gases in the atmosphere that have caused global warming and Kivalina's special injuries. Additionally, some of the defendants, as described below, conspired to create a false scientific debate about global warming in order to deceive the public. Further, each defendant has failed promptly and adequately to mitigate the impact of these emissions, placing immediate profit above the need to protect against the harms from global warming. Kivalina seeks monetary damages for defendants' past and ongoing contributions to global warming, a public nuisance, and damages caused by certain defendants' acts in furthering a conspiracy to suppress the awareness of the link between these emissions and global warming.

Kivalina brought this action against defendants in federal court in San Francisco on February 26, 2008, under federal common law and, in the alternative, state law, to seek damages for defendants' contributions to global warming, a nuisance that is causing severe harms to Kivalina. Kivalina further asserts claims for civil conspiracy and concert of action for certain defendants' participation in conspiratorial and other actions intended to further the defendants' abilities to contribute to global warming.

In a ruling dated Sept. 30, 2009 the Federal District Court of Northern California dismissed the case on political question and standing grounds.¹⁵ Kivalina has appealed.¹⁶ The case is expected to finally be resolved by going to the US Supreme Court.¹⁷

References

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