

Human Rights and Climate Change 101

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- The potential use of human rights to support arguments for requiring governments to take action in response to climate change.
- How international instruments protect the rights of indigenous communities and the dimension of obligations that regional and international supervisory bodies have applied to these rights.

- The act of filing climate change-based petitions in international fora advances innovative arguments and pushes international law in a new direction.
- Judgments, decisions and resolutions

Effects of climate change

- Temperature change
- Precipitation change
- Extreme weather
- Sea-level rise

Key Threats of Climate Change

- Food shortages and famine
- Spread of diseases
- Weather disasters
- Water: too much or too little
- Loss of housing and shelter
- Cultural extinction
- Climate driven migration
- Mental health problems

The impact of climate change on HR

Key Threats	Human Rights
• Food Shortages and Famine	• Right to life , physical integrity and safety
• Spread of Diseases	• Right to enjoy the benefits of the culture
• Weather Disasters	• Right to use and enjoyment of the lands that a certain ethnic group has traditionally occupied
• Water: Too much or Too Little	• Right to self-determination
• Loss of Housing and Shelter	• Right to use and enjoyment of property
• Cultural Extinction	• Right to preservation of health
• Climate Driven Migration	• Right of peoples to their own livelihood
	• The right to residence
	• Right to the inviolability of the home
	• Right to public information

Impacts

- Ecosystems
- Settlements
- Agriculture
- Industry
- Water
- Food

IPCC GWII AR5

- Vulnerability
- Arctic
- Poverty
- Human Health

Vulnerability

- The propensity or predisposition to be adversely affected that encompasses a variety of concepts and elements including sensitivity or susceptibility to harm and lack of capacity to adapt.
- People who are marginalized in any way are specially vulnerable to the impacts of climate variability.

Arctic

“Climate change will confront the Arctic peoples with the biggest challenge the have ever faced”.

Klemetti Nakaalajarvi,
President of the Sami
Parliament



Arctic Sea Ice Extent, Sept. 2012 in white, compared with the 1979 to 2000 average (pink line)

Poverty

- Impacts on livelihoods
- Reductions in crop yields
- Destruction of homes
- Increased food prices and food insecurity
- Slow down economic growth
- Make poverty reduction more difficult
- Increase risks of violent conflicts

Impacts on Health

- Cold-related health impacts
- Flood-related health impacts
- Malnutrition
- Food borne and waterborne diseases
- Infectious diseases
- Respiratory diseases
- Injuries

Impacts on Mental Health

Extreme events - the unborn and children

THE GLOBE AND MAIL

May 1, 2014

Youth anxiety on the rise amid changing climate

By GAYLE McDONALD

'For most people who are anxious about climate change, the anxiety is escalated by the fact they do not see an answer. Worry plus powerlessness leads to distress.'

Human Rights

- Inter-American Commission of Human Rights
- Inter-American Court of Human Rights
- European Court of Human Rights
- United Nations human rights system
 - Human Rights Council
 - High Commissioner on Human Rights
 - Human Rights Committee
 - Committee on Economic, Social and Cultural Rights
 - High Commissioner for Refugees

Human Rights Council

- **Resolution 7/23 HRC (2008)**
 - Climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the **full enjoyment of human rights**.

Human Rights Council

- **Resolution 10/4 HRC (2010)**
 - Special Rapporteur on **adequate housing** will prepare and present a **thematic report** on the potential impact of climate change on the right to adequate housing.
 - OHCHR and UNFCCC will facilitate **exchange of information** between human rights and climate change.

Human Rights Council

- **Resolution 18/22 of the HRC (2011)**
 - Reaffirms that all human rights are universal, indivisible, interdependent and interrelated.
 - Climate change-related impacts have a range of implications, to the right to **life**, adequate **food**, the highest attainable standard of **health**, **adequate housing**, **self-determination** and **safe drinking water** and sanitation.

Human Rights Council

- **Resolution 18/22 of the HRC (2011)**
 - **Seminar** on addressing the **adverse impacts of climate change on the full enjoyment of human rights**, with a view to forging stronger interface and cooperation between the human rights and climate change communities.
 - Recalls that in no case may a people be deprived of its **own means of subsistence**.



Office of the United Nations High Commissioner for Human Rights

- **HRC Seminar “The Adverse Impacts of Climate Change on the Full Enjoyment of Human Rights” 23-24 February 2012.**
 - Need of creating Special Procedures on Climate Change
 - Special Rapporteur
 - Working group



Office of the United Nations High Commissioner for Human Rights

- The effects of climate change will be most acutely felt by those segments of the population whose rights protections are already precarious due to factors such as **poverty, gender, age, minority status, migrant status and disability.**
- Certain groups, such as **women, children, indigenous peoples and rural communities,** are more exposed to climate change effects and risks.



Office of the United Nations High Commissioner for Refugees

- It is projected that climate change will over time trigger larger and more complex movements of population, both within and **across borders,** and has the potential to render some people **stateless.**
- This is expected to be a major challenge in the 21st Century.



UN Committees

- **Human Rights Committee**
 - General Comment No. 23: The Rights of Minorities (Art. 27)
 - Right to culture, right to territory and use of resources
 - Lubicon case (Canada) and Länsmän cases (Finland)



UN Committees

- **Committee on Economic, Social and Cultural Rights**
 - General Comments
 - Adequate Housing (4), Adequate food (12), Health (14), Water (15)



UN Committees

- **Statement of the CEDAW Committee on Gender and Climate Change (2009)**
 - “All stakeholders should ensure that climate change and disaster risk reduction measures are **gender responsive,** sensitive to **indigenous knowledge** systems and **respect human rights.**”

UNFCCC

■ The Cancun Agreements (FCCC/CP/2010/7/Add.1)

- Makes reference to Resolution 10/4 of the UN HRC.
- Emphasizes that Parties should, in all climate change related actions, fully respect human rights.

Human rights recently interpreted as protecting the right to environment or a right to an environment of a particular quality:

- Right to **life**, physical integrity and safety
- Right to enjoy the benefits of the **culture**
- Right to use and enjoyment of the **lands** that a certain ethnic group has **traditionally occupied**
- Right to **self-determination**
- Right to use and enjoyment of **property**
- Right to preservation of **health**
- Right of peoples to their own **livelihood**
- Right to **residence**
- Right to the **inviolability** of the **home**
- Right to **public information**
- Freedom of **movement**

The Inter-American Human Rights System

- Inter-American Commission on Human Rights
- Inter-American Court of Human Rights
- American Declaration of the Rights and Duties of the Man
- American Convention of Human Rights

The Inter-American Human Rights System

- The Inter American Human Rights system formally began with the adoption of the **American Declaration**, in 1948, the same year the **Charter of the OAS** was adopted.
- The **IACmHR** was created in 1959, as an autonomous body of the OAS, in Washington D.C.
- **American Convention** on Human Rights entered into force in 1978, reinforced the mandate of the IACmHR, and established in 1979 the **IACtHR**.
- In 1970, the Protocol of Buenos Aires, changed the status of the Commission from "and autonomous entity of the OAS" into one of the principal organs of the OAS.

The American Declaration of the Rights and Duties of Man

- The General Assembly of the OAS has recognized that the American Declaration is a **source of international obligations** for the member states of the OAS (AG/RES 314 (VII-O/77), AG/RES 314 (VII-O/77), AG/RES 368 (VIII-O/78), AG/RES 371 (VIII-O/78)).
- Advisory Opinion OC-10/89 of the IACtHR determines the **legal status of the American Declaration** within the legal framework of the Inter-American system.
 - The American Declaration might not be strictu sensu a treaty; however, it is a source of **binding international obligations** for the OAS's member states.

The American Declaration of Rights and Duties of the Man

- Grand Chief Michael Mitchell v. Canada (2007)
- Maya Indigenous Communities of the Toledo District v. Belize (2004)
- Mary and Carrie Dann v. US (2002)

Inter-American Commission on Human Rights

- Maya Indigenous Communities of the Toledo District v. Belize (2004)
- Inuit Petition (2005)
- Hul'Qumi'Num Treaty Group v. Canada (2009)
- Athabaskan Petition (2013)

Inter-American Court of Human Rights

- The Mayagna (Sumo) Awas Tingni Community v. Nicaragua (2001)
- Sawhoyamaya Indigenous Community v. Paraguay (2006)
- The Saramaka People v. Suriname (2007)
- Xákmok Kasek Indigenous Community v. Paraguay (2010)
- Kichwa de Sarayaku v. Ecuador (2012)

Inuit Petition (2005)

- Inuit people form the Arctic regions of Canada and US.
- Alleged violations of human rights resulting from the impacts of global warming and climate change caused by greenhouse emissions from the US.
- Precedent on the human rights approach to climate change in the Inter-American System.

<http://inuitcircumpolar.com/index.php?Lang=En&ID=1>

<http://graphics8.nytimes.com/packages/pdf/science/16commissionletter.pdf>

The Athabaskan Petition

- April 23rd, 2013
- The Arctic Athabaskan Council, on behalf of all the Arctic Athabaskan Peoples of the Arctic regions of Canada and United States
- Inter-American Commission on Human Rights

<http://www.arcticathabaskancouncil.com/aac/?q=node/5>

The Athabaskan Petition

- Canada's lack of effective – and in some cases non-existent – regulations for **black carbon emissions** are accelerating Arctic warming and this failure violates the human rights of Arctic Athabaskan peoples.
- Alleged violations: Article XIII (**right to the benefits of their culture**), Article XXIII (**right to property**), and Article XI (**right to health**) of the American Declaration. The petition also refers to the right to the means of subsistence.

Black carbon emissions

- Canada emits roughly 98,000 tons of black carbon annually.
- Black carbon emitted in or near the Arctic has higher climate warming impact, as they deposit on ice and snow.
- Diesel emissions, residential heating stoves, agricultural and forest fires and industrial facilities are major sources.

Right to the benefits of their culture

- The use of enjoyment of the land and its resources are integral components of the physical and cultural survival of the indigenous communities. (Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Jurisprudence of the IAHR)
- The lands represent a cultural bond of collective memory. (Maya Toledo)
- Includes distinctive forms and modalities of using territories such as traditional fishing, hunting and gathering. (Human Rights Committee)

Right to the benefits of their culture

- General Comment 23, Article 27, Human Rights Committee, ICCPR.
- *Länsman v. Finland*, Human Rights Committee (1994).
- General Comment 21, Right of everyone to take part in cultural life, Committee on Economic and Social Rights.

Right to the benefits of their culture

- Impacts of climate change:
 - Changes the characteristics of the snow and land.
 - Interferes with hunting, trapping, fishing, gathering.
 - Traditional activities have become more dangerous.
 - Water fluctuations and forest fires harm fauna that is significant to the Athabaskan culture.

Right to the benefits of their culture

- Impacts of climate change:
 - Loss of traditional knowledge.
 - Land slumping, erosion, landslides and melting threatens the structural integrity of historic sites.
 - Melting permafrost and changing weather patterns interfere with the use of traditional underground methods of storing goods.

Right to property

- The close links that indigenous peoples have to their traditional lands should be safeguarded by this right. (*Yake Axa v. Paraguay*, *Mary Dann v. US*)
- This right may be impeded when the State or third parties acting with tolerance of the State, affect the existence, value, use or enjoyment of the property without the informed consultation with those having rights in the property. (Maya Toledo v. Belize)

Right to property

- *Dogan v. Turkey*, ECHR, 2004.
- ILO Convention 169, Art. 7.4, 13-19.
- UN Declaration on the Rights of Indigenous Peoples, Art. 26(2).



Right to property

- Impacts of climate change:
 - It is compromising the land itself.
 - Melting permafrost has changed the characteristics of the land.
 - Increases in freezing rain damage towns, homes, riverbank camps, rivers and roads.
 - Permafrost thaw and ground slumping threaten damage to roads, airport runways and bridges.



Right to health

- HR are implicated where environmental degradation pose a persistent threat to human health. (Report on the HR Situation in Ecuador)
- Close relationship between environmental degradation and the right to preservation of health. (Mayan Toledo)
- States should take reasonable measures to prevent the risks that environmental pollution may pose to health. (Report on the HR Situation in Ecuador)



Right to health

- Committee on Economic, Social and Cultural Rights.
- UN Special Rapporteur on the Right to Health.
- UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People.



Right to health

- Impacts of climate change:
 - Changes in insects and pest populations.
 - Exacerbates the water and food-borne contamination
 - Intestinal disorders, chemical and biological contaminants, animal-borne diseases.
 - Greater risks of injury.
 - Social and physiological stress.



Critical challenges

- To prove legally sufficient causation between the harm resulting from climate change and the acts or omissions of a government.
- To demonstrate the exhaustion of domestic remedies.



Exhaustion of domestic remedies

- Canada provides no adequate domestic remedies.
- Access to Canadian Courts is costly as to make any potentially available legal remedies impossible to obtain.
- Jurisprudence: Exemption that a complaint had no reasonable chance of success based on prevailing jurisprudence on the highest courts. (HuI'Qumi'Num)




Causation

- The petitioners lay out the scientific evidence for the connection between climate change and black carbon.
- Black carbon is “short-lived” pollutant.
- Reduces albedo, absorbs sunlight and heats the atmosphere.
- Due to proximity Canada’s emissions affect Athabaskan lands the most.



What to expect?

- If deemed admissible the Commission will proceed to review the petition on its merits.
- Both the Athabaskan and the Inuit Petitions are examples of creative lawyering.
- Providing a recommendation will require bold and innovative thinking.

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- Actions to reduce emissions from sources near the Arctic will make a significant contribution to slowing the warming and melting.
 - The outcome of the petition will most likely set the course for future decisions by the IACmHR regarding climate change and global warming negative effects.



Muchas Gracias