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The Petition of the Arctic Athabaskan Peoples to the Inter American Commission on Human Rights

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Matter commented on:

[*Petition to the Inter American Commission on Human Rights seeking relief from violations of the rights of Arctic Athabaskan Peoples resulting from rapid arctic warming and melting caused by emissions of black carbon by Canada*](#)

The indigenous peoples of the Arctic, including the Arctic Athabaskan peoples, have contributed the least to the accelerated warming and melting of the Arctic through emissions of greenhouse gases yet they are among the first to face direct environmental, social and human impacts of climate change. On April 23rd, 2013 the Arctic Athabaskan Council (AAC), represented by Earthjustice and Ecojustice Canada, on behalf of all the Arctic Athabaskan Peoples of the Arctic regions of Canada and United States, filed a petition with the Inter American Commission on Human Rights (IACHR) seeking relief from violations of their rights resulting from rapid Arctic warming and melting caused by emissions of black carbon for which Canada has international responsibility. The petition is a detailed and comprehensive memorial that includes a thorough analysis of international human rights law and case law, as well as the evidence of some Athabaskan people claiming violations of their human rights.

Through the mechanisms and procedures developed by the United Nations (UN) in recent years, the protection of human rights can be achieved in four ways: by the submission of periodic reports; by *in situ* visits; by filing petitions with supervisory bodies that issue reports assessing whether or not State behavior conforms with the requirements of the relevant treaty, and by the possibility of standing before international courts (e.g. the International Criminal Court). The UN human rights system is complemented by regional protection systems that operate in Europe (1953), the Americas (1959) and Africa (1986). All these systems possess a similar composition and legal framework, and operate through supranational institutions to supervise the human rights commitments of States.

The Inter American Human Rights system formally began with the adoption of the [*American Declaration of the Rights and Duties of Man*](#) (1948) (American Declaration), but it was not until 1959 that its first supervisory body, the Inter American Commission on Human Rights (IACHR), was established. The IACHR is an autonomous body of the Organization of American States (OAS), and obtains its mandate from both the [*Charter of the Organization of American States*](#) (article 106) and the [*American Convention on Human Rights*](#) (American Convention) (article 33). In 1965, the IACHR obtained the authority to consider complaints or petitions from citizens whose human rights have been infringed. Since then the IACHR has admitted more than 15, 000 cases. Canada has not acceded to the American Convention. However, as a party of the OAS, since 1990, it is subject to the American Declaration and the jurisdiction of the IACHR.

The claim of the AAC is based on the central argument that Canada's lack of effective – and in some cases non-existent - regulations for black carbon emissions are accelerating Arctic warming and that this failure violates the human rights of Arctic Athabaskan peoples. Since Athabaskan peoples depend on natural resources for their livelihood, contends the petition, the effects of climate change (e.g. higher temperatures, melting snow, melting permafrost, shrinking glaciers, longer dry seasons, increase in forest fires and severe climate extremes) are felt most acutely by their populations and therefore, human rights agreements and declarations should provide an important protection for them.

The petitioners ask the IACHR to investigate and declare that Canada's failure to implement adequate measures to reduce black carbon emissions violates the Athabaskan peoples' rights established in 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. Although this right is not mentioned specifically in the American Declaration, the petitioners argue that it is implied in the above mentioned articles. The ACC also requests that the IACHR recommend that Canada takes steps to limit black carbon emissions and to protect the Athabaskan culture and resources from the effects of the accelerated Arctic warming.

In order to succeed, the petitioners will need to show how environmental degradation can violate their human right to property. Since the adoption of the [*Indigenous and Tribal Peoples Convention*](#), 27 June 1989, 76 ILC C169 by the International Labour Organization, both international and regional human rights systems have developed new ways to enhance the protection of human rights of aboriginal peoples. The IACHR has followed this trend and in the last decade has admitted petitions alleging violations of the right to property and right to culture of indigenous peoples from many different OAS countries including Argentina, Belize, Ecuador, United States and Canada.

The petition faces two critical challenges. First, as with any lawsuit related to responsibility for climate change, the petitioners face the burden of proving legally sufficient causation between the harm resulting from climate change and the acts or omissions of the Canadian government. Secondly, the petitioners will need to demonstrate that they have exhausted their domestic remedies.

As to the first, the petitioners lay out the scientific evidence for the connection between black carbon and climate change in the Arctic and the vulnerability of the Arctic to projected climate change and its impacts. The ACC states that when black carbon, a “short-lived” climate pollutant (it stays in the atmosphere for only about one week), deposits on ice and snow it not only reduces albedo (the ability to reflect sunlight) but also absorbs sunlight and heats the atmosphere, thereby accelerating Arctic warming. Therefore, due to proximity, allege the petitioners, Canada's emissions of black carbon affect Athabaskan lands the most.

As to the second aspect, Article 31 of the [*IACHR Rules of Procedure*](#) requires a petitioner to exhaust domestic remedies before submitting a case to its jurisdiction. Nevertheless, Article 31 provides three exceptions to this requirement: if access to the remedies under domestic law has been denied; if there has been unwarranted delay in rendering a final judgment or, when “the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated”. The petitioners contend that Canada provides no domestic remedies that are adequate, suitable or effective to redress the rights for

which the Arctic Athabaskan peoples have alleged violations. In this regard, the IACHR has pointed out that its jurisprudence establishes that “a petitioner may be exempt from the requirement of having to exhaust domestic remedies with regard to a complaint, when it is evident from the case file that any action filed regarding that complaint had no reasonable chance of success based on the prevailing jurisprudence of the highest courts of the State” ([Hul’Qumi’Num Treaty Group v Canada \(Admissibility\)](#), (2009) IACHR, Report No 105/09 at para 41). Additionally, the petitioners argue that access to Canadian courts is so costly as to make any potentially available legal remedies impossible for Athabaskan peoples to obtain, the same argument presented by the Hul’Qumi’Num Treaty Group in a petition admitted in 2009.

In November 2006, the IACHR dismissed a petition seeking relief from alleged violations of human rights to the Inuit resulting from global warming caused by greenhouse gas emissions from the United States of America. The IACHR contended, in a [letter](#) response to the Inuit Circumpolar Conference (ICC) that the petition failed to establish “whether the alleged facts would tend to characterize a violation of rights protected by the American Declaration.”

The IACHR has issued recommendations on cases related to the right to property, where it recognizes that “the right to property under the American Declaration must be interpreted and applied in the context of indigenous communities with due consideration of principles relating to the protection of traditional forms of ownership and cultural survival and rights to land, territories and resources” ([Maya Indigenous Communities of the Toledo District v Belize](#), (2004) IACHR, Report No 40/04, Case 12.053, at para 115).

Other cases have been taken by the IACHR, on behalf of the alleged victims of human rights violations, to the Inter American Court of Human Rights (Inter American Court) ([Xákmok Kasek Indigenous Community v Paraguay](#) (2010), Inter-Am Ct HR (Ser C) No 214; [The Mayagna \(Sumo\) Awas Tingni Community v Nicaragua](#) (2001), Inter-Am Ct HR (Ser C) No 79; [The Saramaka People v Suriname](#) (2007), Inter-Am Ct HR (Ser C) No 172; [Sawhoyamaxa Indigenous Community v Paraguay](#) (2006), Inter-Am Ct HR (Ser C) No 146), giving rise to decisions that protect human rights of First Nations and indigenous peoples, in specific the right to property, as “for indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations” ([The Mayagna \(Sumo\) Awas Tingni Community v Nicaragua](#), (2001) at para 149).

The Canadian government has three months to respond to the Commission after which the Commission will determine the admissibility of the petition. If deemed admissible the Commission will proceed to review the petition on its merits. This claim again confronts the Inter American Commission with challenging questions. Providing a recommendation will require bold and innovative thinking. But earlier decisions of the IACHR ([Maya Indigenous Communities of the Toledo District v Belize](#) at paras 86-88; [Mary and Carrie Dann v United States](#) (2002), IACHR, Report No 75/02, Case 11.140 at paras 96-97; and the recent jurisprudence of the Inter American Court ([The Kichwa indigenous people of Sarayaku v. Ecuador](#) (2012), Inter-Am Ct HR (Ser C) No 245 at para 161) suggest that the Commission is well equipped to interpret the American Declaration in light of broader developments in international human rights law. Even more significantly, it will give the Inter American Human

Rights System the opportunity to open the door to a genuinely brave and ambitious call to the environmental protection of the Arctic, as “rapid reductions of emissions of the black carbon have been identified by scientists as the best strategy to reduce near-term warming and melting in the Arctic, providing rapid climate benefits” (Athabaskan petition).

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