



Journal Publishing House ?

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The Right to Be Cold, One Woman's Fight to Protect the Arctic and Save the Planet from Climate Change by Sheila Watt-Cloutier

Above all, then, a right is a protection against the power of others, whether or not that power is wielded maliciously. In the past, Inuit populations had seen their rights trampled. Now, with our world melting around us, we were again experiencing this assault against our rights. Our work with two U.S. environmental groups would help us make that case to the world, and would encourage the global community to recognize that environmental protection is intrinsically linked to the protection of human rights.

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Indeed, the majority of the world's population now lived in cities, and people in urban areas were often far removed from the land that supported them. A great disconnect had grown between city dwellers and the environment. Too many didn't realize that the cars they drove and the emissions they created by powering their cities were connected to the Inuk hunter falling through the thinning ice, and to the Pacific islander defending his home along the sinking shore. For cities to reflect true ecological integrity, those who lived within them needed to look inward to realize the effects of their decisions on urban populations, but also outward to understand how their decisions affected the entire world. We believed that once city residents realized this profound interconnectedness, they would be able to relate to vulnerable communities around the world, as a shared humanity.

But how could we Inuit and the ICC get this important message across? During one of our ICC Canada board meetings, Pita Aatami, president of Makivik, wondered what we needed to do to draw the world's attention to the imminent devastation of the Inuit way of life. He asked, "With our food being poisoned with toxins, our ozone layer being depleted and now climate change affecting our hunting culture, what strong stance do we need to take to be heard? Do we need to launch lawsuits to draw attention to this serious matter?" My mind began to spin as I thought about this proposal; not only would the legal process be extremely expensive but also the world might interpret this action as a pursuit of money. I was vehemently opposed to this becoming an issue of money. I've always felt that whatever action we take, whatever path we decide to follow, we must remain on the moral high ground. I thought we could make a stronger impact through the politics of influence than through the politics of conflict or confrontation. I'm a firm believer that synergy is created when you look for answers that will bring about a change in perspective at a time when people, the world, cultures, or communities are ready for that change.

Luckily for us, the Inuit and Arctic communities weren't the only ones grappling with how to get the world's attention focused on climate change. A number of environmental law institutes in the United States had already been thinking about legal strategies that might put pressure on governments of the world to address environmental issues. Their focus had been on the United States, in particular, as it had been almost completely absent from the UNFCCC process and the efforts to lower greenhouse gas emissions. It had become evident that the world's leading economic power and worst greenhouse gas emitter (back then) was reluctant to lift a finger to do anything about climate change.

One of the environmental institutes looking at legal avenues was Earthjustice, based in San Francisco. Attorney Martin Wagner from Earthjustice and Donald Goldberg from the Center for International Environmental Law (CIEL) in Washington, D.C., had been working together to link the issue of the environment to human rights. It was a brilliant approach. Martin and Donald felt that the human rights discussion was due for an update. They had recognized that in an era of striking environmental damage, people's economic, social, and cultural freedoms were affected not only by their civil or political freedoms, but also by the changing climate and environmental degradation. To secure the already-recognized human rights, populations would also have to be protected from devastating environmental change. Another way of looking at it was that since it was proving difficult to protect the environment, perhaps they would have more success protecting the people in it.

Martin and Donald had heard about my work on the POPs treaty from Dan Magraw, who was heading CIEL at the time, and whom I had met during the negotiations. They invited me to meet with them, hoping that they might find support in the Inuit community for an effort to link Arctic climate change to human rights. Terry Fenge and I were in Washington, D.C., in late 2002 to attend a few events, and we met with Donald for the first time in a hotel lobby in the capital. I put a great deal of weight on first impressions, and I wanted to see if Donald's approach would be compatible with Inuit interests and concerns and whether he was the sort of person we could work with. While our meeting was brief, I left feeling comfortable that Don was knowledgeable, but just as importantly, well intentioned—a man with his heart in the right place.

A few weeks later, we had a conference call with Martin from Earthjustice to further explore this avenue. In our talks, Donald and Martin explained that under the structures of international law, a human rights petition is really the only way for a non-governmental group (or an individual) to directly address the world's governments, and that legal petitions are also a powerful way to convey the human story of an issue to a global public. They suggested that a human rights petition—a lengthy document that would include science, research, witness statements, and legal arguments—would allow Inuit to tell the world what was happening to them, to put what had been a largely scientific debate into human terms.

Given how quickly and unequivocally Inuit culture, health, and economic well-being were being affected by climate change, we were ideally equipped to link climate change to basic human rights—to argue that the protection from climate change was essential in order to secure the social, cultural, and economic rights that were already internationally recognized.

Donald and Martin were planning to focus their petition on the United States. Not only was it the world's largest producer of greenhouse gases but, just as important, it also had not been supporting the international treaties on environmental protection. While other countries, like China, were also producing CO₂s in serious amounts, Donald and Martin felt that the developed countries should be first in line to bring their emissions down. And there was also a powerful and progressive human rights tribunal that had jurisdiction over the United States: the Inter-American Commission on Human Rights. They explained that the European Court of Human Rights was also good, but it did not have jurisdiction over the United States. The IACHR had also, apparently, already started to make links between the environment and human rights in some of their decisions, so it looked as if they might be the most open to hearing a petition like ours.

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Then, in early December, almost a year after we had submitted the petition, one of the lawyers from CIEL in Washington was told by a staff member from the U.S. State Department that the IACHR would not hear our petition. What a way to find out!

Shortly after this, an official letter came from the IACHR stating that it could not process the petition at present. The only explanation given was that the petition didn't enable the commission to determine whether the alleged facts would characterize a violation of rights protected by the American Declaration. The commission's letter did not question the essential facts: that global warming is threatening the lives, culture, and property of Inuit in truly devastating ways. In fact, in the year since the petition was filed, accounts from our people and new scientific studies had confirmed that the Arctic was warming at an unprecedented rate, and that this warming was attributable to anthropogenic emissions of greenhouse gases.

Upon hearing the decision from the IACHR, I immediately wrote to them, saying that we would provide whatever other information they needed in order to make clear the connection between climate change and human rights violations in the Arctic. I also sought a detailed explanation of their concerns. Without such an explanation, we wouldn't have any assurance that the commission had fully considered our petition, nor could we understand how the commission reached its conclusions, or even how we might remedy any shortcomings that the commission had identified. Only a few days after we'd received the letter from the IACHR, the petition team received some sad news.

Brian Tittlemore, a lawyer working for the IACHR, had passed away from cancer on December 12, 2006. Brian had been very supportive of what we were doing, championing our cause from within, informing and educating the nine-man commission on what our petition was all about. Brian recognized what we were trying to do for the cause of humanity. His death was a great loss to our cause, but his passing was a great loss to the world as well.

At the same time that all this bad news was landing on my doorstep, I was also very sick with the flu. It was a low point for me—a time of confusion, anger, and loss of direction. During a phone call with Martin, Donald, Paul, James Anaya, and the rest of the team, I acknowledged that hearing about the decision the way we did made the news even harder for me. I wasn't entirely surprised, given that there seemed to be a less-than-transparent connection between the State Department and the commission. But I felt the commission's response had been evasive and dismissive. "How could we possibly let the commission get away with informing the U.S. administration before informing us?" I asked in one of my emails. "And what kind of hold does the U.S. administration have on the commission?" Frankly, we felt the IACHR had let us down, as so many southern institutions had.

I went on: In our attempt to be polite, respectful, not put the commission in the wrong light in order to keep the door open with them, I feel like I now have compromised something within me and all that I stand for. This process is very much about the journey being the destination, the power being in the attempt and the strength being in the struggle. It isn't only about the final ruling, per se, but how we Inuit portray ourselves and stand tall throughout the process, and how we as Inuit in turn are treated and respected throughout the process by institutions that are put there to protect our rights. I also have looked up the commission website and saw for the first time they are all men from very warm countries. I do wonder if any one of those men [has] ever seen snow and sea ice, much less [has] any inkling as to what the ice, snow and cold represent for an entire people living at the top of the world.

James Anaya responded with compassion and empathy. He noted how hard IACHR lawyer Brian Tittlemore had worked for our cause, and said he didn't know if his illness and passing had anything to do with the response we received. James's mention of Brian hit me hard. I had been focusing so much on how the commission had treated us that Brian's illness had been secondary to me. In fact, my denial had been so strong that when James mentioned that Brian had actually passed away, I was shocked. Brian was a truly good person, and I had always felt his support and encouragement. I remembered his openness and his willingness to help. All barriers gave way and I broke down and wept.

I AM A RATHER PERSISTENT PERSON. Despite the lack of response to my initial letter, I continued to write to the commission. I asked for a face-to-face meeting with them. I felt that it was crucial for them to hear us in person. In my letters, I insisted that they hold, at the very least, a hearing in Washington, D.C., on the legal impacts of climate change. Eventually, they agreed.

Paul Crowley, Martin Wagner, Donald Goldberg, and I took hold of this opportunity with full force, preparing for several days for the hearing. The commission would not hear the petition itself, but they would allow us to expand upon the legal basis for connecting climate change to human rights. They also asked if I would relate the impacts on other vulnerable regions of the world. Because I had always seen this issue in an inclusive way, I agreed to do that. That was what I'd always wanted.

When we got to the hearing in Washington, Paul, Martin, Don, and Dan Magraw from CIEL spoke to the commission about the various legal issues raised in our petition. In my speech, I addressed how climate change was affecting communities around the globe. I was careful not to try to represent the feelings and interests of other peoples, but explained the connections of the melting Arctic to other places in the world, and how rising sea levels were negatively affecting vulnerable regions, along with their Indigenous peoples. The month before I gave my speech, record-breaking winds in Iqaluit and Pannituuq had torn the roofs off buildings and homes. The weather, which we had learned and predicted for centuries, had become *uggianaqtuq*—a Nunavut term for behaving unexpectedly, or in an unfamiliar way.

Our sea ice, which had allowed for safe travel for our hunters and provided a strong habitat for our marine mammals, was, and still is, deteriorating. I described what we had already so carefully documented in the petition: the human fatalities that had been caused by thinning ice, the animals that may face extinction, the crumbling coastlines, the communities that were having to relocate—in other words, the many ways that our rights to life, health, property, and a means of subsistence were being violated by a dramatically changing climate. I also reminded them that global warming, which causes additional runoff from watersheds that empty into the Arctic, speeds the process by which POPs find their way into our marine mammals. And I reiterated that hunting for Inuit was so much more than a way of providing our communities with food. “Hunting,” I said, “is, in reality, a powerful process where we prepare our young for the challenges and opportunities not only for survival on the land and ice but also for life itself. The character skills learned on the hunt, of patience, boldness, tenacity, focus, courage, sound judgment and wisdom, are very transferable to the modern world that has come so quickly to the Arctic world. We are seeing this powerful training ground on the land and ice being destroyed before our very eyes. Not only are our livelihoods being threatened but also we are losing lives as a result of these dramatic changes as the sea ice depletes and creates precarious situations for our hunters and their families.”

I concluded by saying, “The individual rights of many are at stake. The collective rights of many peoples to their culture are also at stake. I encourage the commission to continue its work in protecting human rights. In so doing, you will protect the sentinels of climate change—the Indigenous peoples. By protecting the rights of those living sustainably in the Amazon basin or the rights of the Inuk hunter on the snow and ice, this commission will also be preserving the world’s environmental early-warning system.” In response to my testimony, the president of the IACHR told me, through an interpreter, that they wanted to move forward with the petition. In fact, he told me that they had asked my legal team for some of the documentation, which was required for them to assess this further. He said that they would get back to us in two weeks. Martin, Don, Paul, Dan, and I headed home.

Those two weeks came and went without any of us hearing from the commission. In fact, as far as I knew, they never got back to us. It was a time of great frustration for me. After my return to Iqaluit, I tried to find out if Earthjustice, CIEL, or any other environmental organization was working on some of the questions they had asked us to report back to them to assess the petition further. It was very difficult to get accurate answers. I wondered if the disconnect was because none of the legal team was attached to me in any official capacity now that I was no longer ICC chair. Yet I felt a great sense of responsibility to see the human rights work through, not only for myself but for my fellow petitioners. After the hearing, I sent a letter to each member of that group, updating them on the situation. But preparing sixty-two letters and having them translated into two languages proved to be a financial burden now that I didn’t have any institutional support.

While our petition didn’t get the reception we were hoping for, I believe it did play an important role in moving the climate change discussion forward. It wasn’t evident immediately, but the petition was an important step in paving the way for other efforts to recognize climate change as a human rights issue. In fact, also in 2007, the Small Island Developing States met in Malé in the Maldives and, in partnership with CIEL, issued the Malé Declaration on the Human Dimension of Global Climate Change, which called on the United Nations High Commissioner for Human Rights to conduct a study about how climate change affected the abilities of populations, like those in the sinking island states, to fully exercise their human rights. It also asked the United Nations Human Rights Council to convene a debate on climate change and human rights. Indeed, the following year, the council did adopt a resolution (7/23), referring to the United Nations’ own charter and covenants on human rights, that acknowledged that climate change had “implications for the full enjoyment of human rights” for many peoples and communities around the globe.

They reaffirmed this position in subsequent resolutions in 2009 and 2011. And in 2009 the UN High Commissioner for Human Rights did indeed release a study that looked at populations around the world whose economies, safety, and lives, as well as other human rights, were put at risk by climate disruptions. The United Nations continued to maintain its focus on the human rights angle at their COP 16 in Cancún. Along with calling for the establishment of a Green Climate Fund and a Climate Technology Centre and Network, the report produced by the conference echoed the earlier UN resolutions, demanding that climate change actions always take into account human rights.

NGOs outside of the environmental agencies have also brought the issue of climate change to their discussions of social, economic, and political struggles. In 2008 Oxfam International submitted to the UN High Commissioner for Human Rights a report entitled *Climate Wrongs and Human Rights*. In it Oxfam stated, “Climate change was first seen as a scientific problem, then an economic one. Now we must also see it as a matter of international justice. Human rights principles give an alternative to the view that everything from carbon to malnutrition can be priced, compared and traded.”

And some communities have continued our legal pursuit of human rights, in a slightly different way. Kivalina, a small Inupiat community of Alaska, launched a lawsuit for damages caused by climate change against Exxon Mobil Corporation, eight other oil companies, fourteen power companies, and one coal company. Although the suit was thrown out in court, it helped to draw attention to the devastation caused by melting ice.

And another legal action connecting climate change to human rights has been brought to the Inter-American Commission on Human Rights. Four years after our legal impacts hearings, in March 2011, the IACHR heard testimony from Alivio Aruquipa, a farmer from the Bolivian Andes; Kevin E. Trenberth, head of the Climate Analysis Section of the National Center for Atmospheric Research; and Martin Wagner from Earthjustice, claiming that climate change was a human rights issue for Indigenous peoples in the Americas, specifically concerning water resources. The speakers stated that global warming had caused changing precipitation in the Americas and rapid melting of glaciers, changes that were threatening the peoples’ ability to access the freshwater resources they needed for consumption, sanitation, and irrigation. As a result, livelihoods and the cultural survival of various ethnic groups in the regions were at risk.

The issue of access to water was presented to the Spanish-speaking IACHR by Spanish-speaking witnesses, and it’s likely that the members of the commission were already familiar with the challenges that many people in warm climates have in accessing water. The hearing resulted in a press release from the IACHR that connected climate change to human rights.

In part, it stated, “The Commission ... received alarming information on the already serious impact of anthropogenic climate change on the enjoyment of human rights, especially in mountain regions where the widespread loss of glaciers and snowpack and rising temperatures are diminishing access to water, harming food production, and introducing new diseases. The Commission urges States to keep human rights at the forefront of climate change negotiations, including in designing and implementing measures of mitigation and adaptation.”

I realize now, with the luxury of hindsight, that there may have been a reason other than outstanding legal questions as to why our petition wasn't revisited, while the later hearing received such an endorsement from the IACHR. The concept of ice as the life force for an entire people at the top of the world was, I believe, too foreign to a commission made up of representatives from warm countries. It was difficult for them to grasp the fact that ice is something that people depend on not just for survival but to thrive. Indeed, the idea of “the right to be cold” is less relatable than “the right to water” for many people. This isn't meant to denigrate the people on the human rights commission and in the warmer countries, but rather to point out that the global connections we need to make in order to consider the world and its people as a whole are sometimes lacking. Because as hard as it is for many people to understand, for us Inuit, ice matters. Ice is life.

(There are two wonderful books that help to make clear the importance of ice to our people. *The Meaning of Ice: People and Sea Ice in Three Arctic Communities* is edited by Shari Fox Gearheard, Lene Kielsen Holm, Henry Huntington, Joe Mello Leavitt, Andrew R. Mahoney, Margaret Opie, Toku Oshima, and Joelle Sanguya and published by the International Polar Institute. *SIKU: Knowing Our Ice*, edited by S. Gearhead, I. Krupnik, G. Laidler, and L. Kielsen Holm [London: Springer], also explores this essential truth in moving detail.)

In the end, however, it's a positive sign that the “right to water” hearing succeeded the way it did. It provides further proof that people will continue to link climate change to human rights. Our Right to Be Cold petition may have been a little ahead of its time, but it seems to have been an important step in raising the world's awareness. Climate change is about people as much as it is about the earth, and the science, economics, and politics of our changing environment must always have a human face.