

The Right to be Cold: Global Warming and Human Rights

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The relationship between global warming and human rights is something that is beginning to be talked about now, but six or seven years ago no-one had made the connection. I am going to explore the relationship through the context of some work I have done with the Inuit people of the Arctic regions of the world, and in particular a case that I have brought on their behalf.¹ I want you to remember that this connection between global warming and human rights is not limited by any means to the people of the Arctic; there are potential human rights implications of global warming everywhere around the world.

Let me start by discussing Inuit culture. The Inuit live around the North Pole. They go by different names in different parts of the world but generally they refer to themselves as the Inuit. In the United States we sometimes call them Eskimos.

The Inuit have lived in the Arctic for millennia and over the course of that time they have developed a close relationship with the environment. One of the early drafts for the petition that I filed on behalf of the Inuit said something like “the Inuit culture has developed over millennia to survive in the harsh Arctic environment” and my Inuit clients said, “Wait a minute, this isn’t a harsh environment, this is our home, this is the environment we are comfortable in, it’s just as comfortable to us as your nice warm, cosy house is to you. It’s not what we consider harsh at all”. That is a key point: for the Inuit, the cold is what is normal and what allows them to survive. There are many ways in which their culture depends on the cold and, in particular, on the ice.

The Inuit depend quite substantially even today on subsistence hunting and gathering. One of the governments of a territory in Canada where there is a majority Inuit population has estimated that it would cost C\$35 million² a year to replace the food that is gained by the Inuit in subsistence and hunting gathering activities. Almost all of those activities depend upon being able to travel on the ice. They get to the marine mammals and animals that they hunt by travelling on the ice. Those animals depend on the ice and breed on the ice. The Inuit hunt whales and seals, pulling whales up onto the ice because they do not come close to the land. In fact, they generally get to all of their hunting grounds by travelling on the ice. Sometimes they travel in boats, but only for short distances. Much travel in the Arctic is only possible during the winter when there is ice.

An important element of Inuit culture is sharing the hunt. One of my Inuit friends said that it is common knowledge among the Inuit that the average Inuit family includes a mother, a father, some children and anthropologist because the Inuit have been studied intensively. One of the famous writings about the Inuit is about how sharing the hunt is the key to holding the culture together. First of all you cannot hunt large marine mammals efficiently if you do not share the food. If you catch a

¹ Shelia Watt-Cloutier, *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*, 7 December 2005 (available at http://www.law.arizona.edu/depts/iplp/advocacy/icc/documents/ICC_Human_Rights_Petition.pdf)

² Arctic Climate Impact Assessment #

whale you cannot just feed your family and your sled dogs on that whale, you have to share it among the community so the meat does not go to waste. The way that food is shared maintains and develops social ties that are essential to the Inuit culture surviving.

Shelter also depends on the ice and the snow. One of the iconic images of the Inuit is the igloo, the snow house. An igloo is very important if you are travelling out in the Arctic and you get caught in a storm - if you can build an igloo, you can survive almost indefinitely. Now with the changes in the ice and the snow, the snow is often no longer of a character that allows you to build igloos. To compensate, the Inuit travel with tents but a canvas tent is nothing like the kind of protection that an igloo provides. So there is a lot of new danger as result of the environmental changes and I will address these changes later.

There is a quote that sums up how important culture is to the Inuit. Sheila Watt-Cloutier, the lead petitioner in our case, says, "Generations young and old meet on the land, the wisdom of the land and process of the hunt teaches young Inuit to be patient, courageous, tenacious, bold under pressure, reflected to withstand stress, to focus and carry out a plan to achieve a goal".³

The Inuit have the highest suicide rate of any people in Canada⁴ and some of the elders believe that it is because they are losing their connection to the land. One of the efforts they are making is to draw the Inuit youth back into connections with the land. Every Inuit person that I have ever met, even if they have a nine to five desk job, goes out onto the land to hunt and fish and just be there regularly, it is really an important element of their culture. Then there is the literal culture: the knowledge, the role of the elders, all of the traditions that are all passed down as a result of or in relation to hunting, gathering and living on the ice. Much of the culture is actually related to hunting and the cultural traditions and so those are passed on in hunting activities. The elders' role is to hold knowledge about when it is safe to travel, where it is safe to travel, how to hunt and those are all dependant on the snow and the ice.

Let me now explain about what global warming is doing to the Arctic. Because of the way the global climate system functions, as the planet heats the temperature moves toward the cooler parts of the globe and so in the polar regions the temperature increase has been much greater than it has been elsewhere in the world. In fact, annual Arctic temperature has increased twice as fast as the rest of the world over the past few decades.⁵ In 2007, Arctic sea ice fell to the lowest levels since satellite measurements started in 1979.⁶ The following illustrates what the sea ice is likely to do in 2010 to 2030.⁷ You can see the maximum extent of September ice, and by 2090 it is expected that there will almost be no ice in the North Pole. The latest projections actually predict that may happen much earlier.

³ Shelia Watt-Cloutier, remarks to the The World Bank Environmentally and Socially Sustainable Development Week (Washington, 30 March 2005), (available at <http://www.inuitcircumpolar.com/index.php?ID=290&Lang=En>, accessed 18 December 2007)

⁴ James Brooke, 'Canada's Bleak North Is Fertile Ground for Suicide' (18 December 2000), *New York Times*

⁵ Arctic Climate Impact Assessment, *Impacts of a Warming Arctic* (Cambridge University Press, 2004), 8

⁶ National Snow and Ice Data Center, *Arctic Sea Ice Shatters All Previous Recorded Lows* (University of Colorado, 1 October 2007), 1 (available at http://nsidc.org/news/press/2007_seaiceminimum/20071001_pressrelease.html, accessed 18 December 2007)

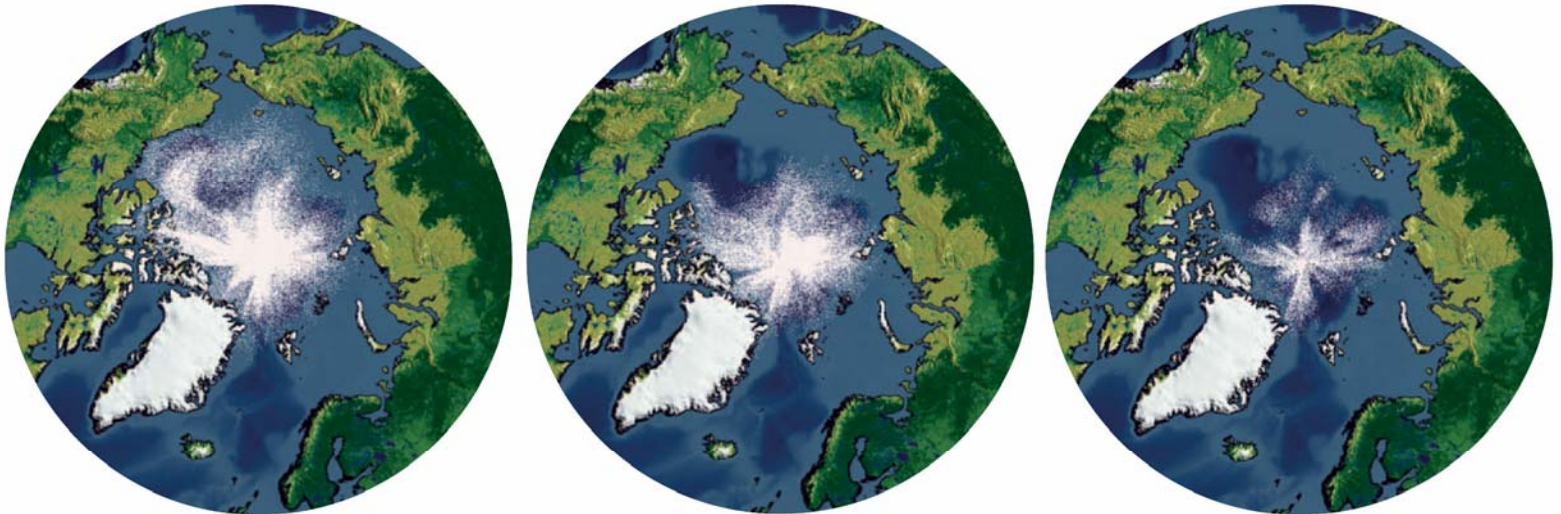
⁷ Arctic Climate Impact Assessment, *Impacts of a Warming Arctic* (Cambridge University Press, 2004), 30

Projected Ice Extent (5-model average for September)

2010 - 2030

2040 - 2060

2070 - 2090



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September sea-ice extent, already declining markedly, is projected to decline even more rapidly in the future. The three images above show the average of the projections from five climate models for three future time periods. As the century progresses, sea ice moves further and further from the coasts of arctic land masses, retreating to the central Arctic Ocean. Some models project the nearly complete loss of summer sea ice in this century.

So the ice thickness has decreased substantially, the snow has changed character, glaciers are melting and ice sheets are melting. When comparing photographs of the Portage glacier in Alaska taken in 1914 and 2004, it is evident that by 2004 the glacier had basically disappeared.⁸ In addition, the way the glaciers are melting means that there is a lot of fast runoff and flooding. Winter snow melts much faster so there is flooding in the spring and there is a lack of consistent water flow through the streams in the summer so there are floods and droughts as opposed to a consistent source of water.

Sea level rise is also affecting the Arctic just as it is affecting everywhere else in the world. In the Arctic, like in other places, Inuit communities live right on the sea. They are really a marine culture, as even though much of their travel is on the ice, they live mostly on marine animals and plants and settle on the coasts. The ice that used to prevent the creation of large waves is melting on the sea and so storm surges are much bigger than they ever were before, causing coastal erosion.⁹

Erosion is also caused by melting of the permafrost. The permafrost is a layer of frozen soil that underlies 80% of Alaska.¹⁰ When it melts it causes what is called a drunken forest: the trees and buildings all tilt over as the permafrost melts. The erosion exposes more coastal permafrost to the warmer air, resulting in faster permafrost melt. The accelerating loss of ice is expected to aggravate

⁸ Gary Braasch, *Earth Under Fire: How Global Warming is Changing the World* (University of California Press, 2007)

⁹ Arctic Climate Impact Assessment, *Impacts of a Warming Arctic* (Cambridge University Press, 2004), 11

¹⁰ U.S. General Accounting Office, *Alaska Native Villages: Villages Affected by Flooding and Erosion Have Difficulty Qualifying for Federal Assistance*, report number GAO-04-895T (29 June 2004), 5

this problem in the future. All of these changes are leading to more melting and slumping in the land.¹¹

Species are unable to survive the way they could before. Based on 43 studies completed before 2001, the Intergovernmental Panel on Climate Change found that 61% of observed habitat or species had exhibited change.¹² For example, you may have seen pictures of polar bears having trouble getting to the ice that they live on. In recent years, scientists have seen polar bears drown, which had never happened before because polar bears are marine mammals, but now the polar bears may go extinct. Seals breed on the ice and if they do not have the ice to breed then they cannot procreate. The caribou peck through the snow in the winter to get to the frozen grasses, but now the snow falls and then it gets warm, melts and then freezes again and that happens throughout the autumn and so you get these layers ice that the caribou cannot get through and they are getting weak and dying.¹³

Inuit elders report that the weather patterns of the Arctic are also changing and becoming increasingly unpredictable.¹⁴ In the past, elders could accurately predict the weather for the coming days based on cloud formations and cloud movement, but now the clouds do not accurately predict upcoming weather. Sudden changes in wind direction and speed have rendered traditional weather forecasting methods useless.

So you have the Inuit culture that depends on the ice, snow and cold and you have the effects of global warming in the Arctic. It all raises the question: Is there a human right to be cold? Or to make it more global, is there a human right, for example, to be dry? Let me explain about why I think there is a connection between human rights and global warming. The first thing to remember is that international law and the international community recognise a special place for indigenous people in the community of nations and the special responsibility of nations. But in particular, international human rights recognises that there is a connection between indigenous people and the territory that they occupy and depend on for their livelihood and for their culture that is special and it needs to be maintained and protected. That is relevant because many of the most vulnerable communities that are being affected first by global warming are indigenous communities.

I am starting with the right to life as the first right to explore as that is, in many people's estimations, the fundamental right. However, in our petition we started with the right to culture because the Inuit thought that was the most important right. They felt that the thing that was being affected most significantly, that they cared about most, was their right to culture. I will discuss culture later.

It is beginning to be recognised in international law that there is a relationship between a healthy environment and human rights. The Inter-American Commission on Human Rights reported: "The realisation of the right to life...is necessarily related to and in some ways dependent upon one's physical environment. Accordingly, where environmental contamination and degradation pose a persistent threat to human life and health, the foregoing rights are implicated".¹⁵ So much of our lives depend on the environment. Just to choose one example, we cannot live without clean water, we

¹¹ U.S. General Accounting Office, *Alaska Native Villages: Villages Affected by Flooding and Erosion Have Difficulty Qualifying for Federal Assistance*, report number GAO-04-895T (29 June 2004), 5; Arctic Climate Impact Assessment, *Impacts of a Warming Arctic* (Cambridge University Press, 2004), 90

¹² Intergovernmental Panel on Climate Change, *Third Assessment Report* (Cambridge University Press, 2001), 5.2.1

¹³ Arctic Climate Impact Assessment, *Impacts of a Warming Arctic* (Cambridge University Press, 2004), 69

¹⁴ Arctic Climate Impact Assessment, *Impacts of a Warming Arctic* (Cambridge University Press, 2004), 92

¹⁵ Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Ecuador* (1997), OEA/Ser.L/V/II.96, doc. 10 rev. 1, 88

cannot have clean water without a healthy environment, so that is a clear example of the connection. Many human rights institutions have recognised the relationship between the environment and the right to life. In the Inuit situation, when you cannot hunt and you cannot get food, that threatens your life. Falling through the ice is something else that had never happened before, because for millennia the Inuit have been travelling on the ice, they knew how to read the ice and they knew where it was safe. Now Inuit hunters are falling through the ice, sometimes drowning, sometimes losing limbs, so that is a threat to their right to life.¹⁶ The Inuit are expressing that they cannot even be confident anymore in travelling safely and in living in their environment. As I mentioned, the snow is not good for making igloos. If you get caught in a storm and you cannot build an igloo you may die or be injured and that is a threat to the right to life.

Another fundamental right which is related to the right to life is the right of all peoples to a means of subsistence. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights list that as the first right.¹⁷ It is the only right that is in both of those covenants. As you can imagine from what I just discussed, the right of the Inuit to subsist is being directly and seriously affected by the changes in the Arctic: they cannot hunt, the food they hunt is not as healthy and so they are being forced to rely on other kinds of food that are not as safe for them.¹⁸ They also cannot get to the calving and hunting grounds the way they used to.

It is not just in the Arctic that the right to a means of subsistence is affected. One of the other common effects is salt water incursion in what were previously fresh water areas. As the sea level rises, the salt water intrudes into the fresh water aquifers and destroys field crops.

The right to property is another fundamental civil right. In the context of indigenous peoples, the international human rights community has recognised that the right to property does not just mean the right to property that you own legal title to, but it is the right to use and continue to use the property that your culture has depended on for a long time and that obviously is being affected not only in the Arctic but elsewhere. For the Inuit the ice is part of their property, it is what they have traditionally depended on and where they traditionally travel and it is literally melting out from under them. Traditional property is also affected by the changes in the Arctic. As I mentioned, the shores are eroding, causing some villages to shift.¹⁹ The entire village has had to move in some places in the Arctic.²⁰ Some buildings that have foundations in the permafrost have collapsed as the permafrost melted.

The right to preservation of health is also a fundamental human right and this right is being affected all around the world as disease vectors are expanding with warming. For example, mosquitoes are carrying diseases into area they have never been known before and heat is affecting people in ways that it has not before. In a hearing before the Inter-American Commission on Human Rights last March, Sheila Watt-Cloutier the lead petitioner said - and it caused quite an uproar among the media -

¹⁶ Beth Duff-Brown, 'Voices from the ice tell of warming signals', *MSNBC* (16 April 2007), (available at <http://www.msnbc.msn.com/id/18057721/>, accessed 20 December 2007)

¹⁷ *International Covenant on Civil and Political Rights*, art 1(2); *Covenant on Economic Social and Cultural Rights*, art 1(2)

¹⁸ Arctic Climate Impact Assessment, *Impacts of a Warming Climate: Final Overview Report* (Cambridge University Press 2004), 16

¹⁹ Arctic Climate Impact Assessment, *Impacts of a Warming Climate* (Cambridge University Press 2004), 19

²⁰ Patrick Huguenin, 'Global warming may spell doom for New York of the future', *NY Daily News* (8 November 2007) (available at http://www.nydailynews.com/lifestyle/2007/11/08/2007-11-08_global_warming_may_spell_doom_for_new_yo.html, accessed 20 December 2007)

that there are Inuit communities now where people are putting air conditioners into their homes.²¹ It is not really hot in the summer but their homes are built to withstand the Arctic winter, so they do not breathe very well. As a consequence, when it does warm up it gets very hot inside. Elderly people are also getting sick and dying as a result of the heat.

In the Andes, the Himalayas and other parts of the world, communities depend on glacial melt for their water and those glaciers are projected to disappear very soon.²² There is a serious question about where these small, generally poor communities are going to get their water and that clearly affects their right to health. Around the world, it is the poor and powerless that tend to be affected most substantially. For example, in Los Angeles, black Americans are affected by the heat increases much more than white Americans.²³ As I mentioned before the shift to non-subsistence food is affecting the Inuit and is likely to affect other indigenous people around the world.

The rights of culture and the Inuit cultural practices are being affected by the changes in the Arctic. Many Inuit are aware of this and they are afraid that their culture is disappearing. The elders are losing their role in the community because they used to be the holders of wisdom about when to hunt, when it was safe to travel and how to travel and where to travel. Because their knowledge is not holding true anymore, their role is fading. Hunting is a time when people pass along cultural knowledge and they are losing the opportunity to hunt. One Inuit resident of Pangnirtung expressed the fear that, "in the future... [the Inuit way of life] will seem as if it were nothing but a fairytale."²⁴

So if there is a connection between human rights and global warming, what does that mean for the world? We thought it was useful to raise the connection for a number of reasons that I will mention shortly. So we filed a petition on behalf of the Inuit of Canada and Alaska against the United States in the Inter-American Commission on Human Rights, which is part of the organisation of American States, analogous to the United Nations for all of the Americas. This petition argued that the United States was violating the Inuit's human rights by failing to take effective action to address the US's responsibility for global warming.²⁵ The United States is responsible historically for 30% of the greenhouse gases in the atmosphere and presently for 25% and it is currently the top or the second emitter of greenhouse gases, depending on how you measure China, and yet is doing nothing.²⁶ So that was our claim at the Inter-American Commission.

²¹ Sheila Watt-Cloutier, testimony before the Inter-American Commission on Human Rights (Washington, 1 March 2007), (available at <http://www.earthjustice.org/news/press/007/nobel-prize-nominee-testifies-about-global-warming.html>, accessed 18 December 2007)

²² University of California, San Diego, 'Scripps-led Study Shows Climate Warming to Shrink Key Water Supplies around the World' (San Diego, 15 November 2005) (available online at <http://ucsdnews.ucsd.edu/newsrel/science/barnett-snow.asp>, accessed 20 December 2007)

²³ Redefining Progress, *Climate Change in California: Health, Economic and Equity Impacts – Executive Summary* (California, September 2004), 5

²⁴ Nikittuittuq Ltd. & Inuit Qaujimagangit, *Inuit Knowledge Of Climate Change, South Baffin: A Sample Of Inuit Experiences Of Recent Climate And Environmental Changes In Pangnirtung And Iqaluit Nunavut* (April 2003), Appendix C at 21

²⁵ Sheila Watt-Cloutier, *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*, 7 December 2005 (available at http://www.law.arizona.edu/depts/iplp/advocacy/icc/documents/ICC_Human_Rights_Petition.pdf)

²⁶ Kevin Baumert & Jonathan Pershing, *Climate Data: Insights and Observations* (Pew Center for Global Climate Change 2004), 27, 13 (available at <http://www.pewclimate.org/docUploads/Climate%20Data%20new.pdf>)

Let me take a moment to discuss human rights. Why is it useful to draw this connection? One reason it is useful, and this is true across the board for human rights claims, is that human rights give voice to otherwise voiceless people and for the Inuit that was very important. I think sometimes for people like me who are very privileged, just having a voice does not often seem like enough. I want change, but for Inuit want the world to know what is happening to them. They want it recognised that it is not their fault, their rights are being affected and that something is being lost.

Another factor is that the old rhetoric about science. When I started working on this issue seven or eight years ago, the discussion of global warming was about how many degrees per decade the planet is going to heat up and how many centimetres per century sea level is going to rise. Partly as a result of this petition, the rhetoric has changed as people have began to talk about what the human impacts are. The change in rhetoric makes a dramatic difference around the world. Not only with what the common person thinks about global warming but with what happens in international negotiations, with how diplomats think about what they are doing. So human rights affect diplomatic negotiations and debates as well. Governments will do things in the name of human rights that they sometimes will not do otherwise. Sometimes they will justify things they would like to do but might be uncomfortable doing for other reasons if they can justify them on the basis of human rights. I know that human rights carry a certain amount of pressure now. As we know, governments are frequently willing to violate human rights, but being called to account in the international community for human rights violations carries weight of at least some kind with all governments and for some governments it carries a lot of weight. Being able to talk about global warming as a human rights issues changes the rhetoric and changes the tenure of the discussion at international levels.

One result of the change is the Malé declaration was adopted by a number of small island nations in November 2007. The declaration officially recognises the relationship between global warming and human impact and the signatories call on the international community to set a goal of keeping global temperature rise to well below two degrees.²⁷ Two degrees is what scientists may believe is just below the “tipping point”, the point at which the global climate system goes irreversibly into a downward spiral. I think that that “well below” is a significant phrase in the Malé declaration, because if you look at human rights you might say two degrees is not acceptable; two degrees will still mean the loss of many cultures and the loss of many human lives. Maybe we need to move faster. The Malé countries also resolved to consider the human dimensions of global warming in their negotiations in Bali and human rights studies.

So let me briefly explore some of the implications of our human rights approach to global warming. As I said we may need to have faster reduction goals than are presently being discussed. We may need to think about reduction goals more on a per capita emissions basis rather than a global emissions basis. If you talk about an issue as a human rights issue, you are talking about the rights of individuals as opposed to the rights of nations and so far much of the discussion about global warming has been about the fact that United States emits roughly the same amount as China, so they should have equivalent responsibilities. If you look at it on a per capital basis, the United States emits far more per capita than China does and maybe we need to think about that if we are looking at this from a human rights perspective. Looking at it from a human rights perspective reinforces the validity of what is called the common but differentiated responsibility principle which is essentially the principle adopted in the Kyoto Protocol made under the United Nations Framework Convention on Climate

²⁷ *Malé Declaration on the Human Dimension of Global Climate Change* (Malé, 14 November 2007) (available at http://www.biodiversity.mv/documents_for_sids/Declaration%20on%20the%20Human%20Dimension%20of%20Climate%20Change_Final.pdf)

Change. This principle holds that while global warming is a common responsibility of nations, the way that responsibility is implemented is differentiated depending on your responsibility for the problem, your historical responsibility and your capacity to respond. The polluter pays principle says the polluter should bear the burden. Human rights reinforces the common but differentiated principle. Human rights also requires an increased focus on adaptation, but the international community has focused mostly on mitigation, on stopping the increase of greenhouse gas emissions and lowering the increase to try to prevent us from reaching the tipping point. It has not focused as much on adaptation, on allowing communities, individuals and ecosystems to adapt to the inevitable and likely changes of global warming. A human rights perspective would say we need to put a little bit more focus on adaptation so that humans are not harmed as much they are likely to be.

The kinds of flexibility mechanisms that are being discussed are potentially problematic from a human rights perspective. In the Kyoto Protocol there are opportunities for nations to trade carbon credits to nations to support projects in developing countries that would be carbon sinks. However, there are some problems with this approach. One is that local communities are often harmed in those efforts. One classic example is that you can get carbon credits for protecting a forest in a developing county, but there are communities they have been kicked off their traditional land because the government or some company wants to keep them from cutting firewood in that forest so that they can maintain that carbon credit.

We have to avoid ancillary environmental harms because of the connection between the environment and humans. We need to ensure that our offset projects or our carbon trading does not cause other environmental harms. We also need to ensure that the trading does not mean a concentration of greenhouse gas emitters in certain locations because most greenhouse gas emissions are associated with emissions of other toxic pollutants, particularly matter that cause asthma and other substances like mercury and if you concentrate them in poor counties or poor communities then those communities suffer.

Here are some challenging issues that I think have answers. One is, is there a territorial limit? Does the United States have human rights responsibilities for harms that are happening outside its territory? There is a provision in several human rights instruments that talks about a responsibility within your jurisdiction or within your territory, including article 21 of the International Convent on Civil and Political Rights.²⁸ However, there are some human rights institutions that have said that there is not an unmoveable barrier that limits responsibility to territory. The Human Rights Committee has stated that article 21, “does not imply that the State party concerned cannot be held accountable for violations of rights... which its agents commit upon the territory of another State”.²⁹

A second challenging issue is what nations have an obligation to do and what does that mean? We have not had before a human rights situation where arguably every nation in the world is contributing in some way to the human rights violation. Does that mean that somehow this is not a human rights situation or it cannot be a human rights violation? No. We need to differentiate between the legal responsibility for the human rights violation and how you apportion that responsibility and what has to happen as a result of that responsibility. When we look at the field of economic social and cultural rights, we talk about the progressive realisation of rights and that is a useful way to address this problem of what the obligations for a nation mean. We can look at other international obligations like the environmental obligations of parties to the Kyoto Protocol to help us shape what their obligations of nations are with respect to these human rights violations.

²⁸ *International Convent on Civil and Political Rights*, art 21

²⁹ Human Rights Committee, *Lopez Burgos v. Uruguay* (Communication No. 52/1979), para. 12.3

I will close with a quote from Sheila Watt-Cloutier, the petitioner in our case, who said that her petition was a way to call the attention of the world to what is happening to the Inuit. She feels that the Inuit are the canary in the coalmine, the warning for the rest of the planet about what is going to happen to people all around the world. That is the reason I wanted to bring this claim.

“This petition is about encouraging the United States of America to join the world community to agree to deep cuts in greenhouse gas emissions needed to protect the Arctic environment and Inuit culture and, ultimately, the world... We must never forget that, ultimately, climate change is a matter of human rights”.³⁰

³⁰ Shelia Watt-Cloutier, remarks at press conference (Montreal, 7 December 2005) (available at <http://www.inuitcircumpolar.com/index.php?ID=316&Lang=En>, accessed 18 December 2007)