

**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**

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ON BEHALF OF ALL INUIT OF THE ARCTIC REGIONS OF THE UNITED STATES AND CANADA,
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I. SUMMARY OF THE PETITION

In this petition, Sheila Watt-Cloutier, an Inuk woman and Chair of the Inuit Circumpolar Conference, requests the assistance of the Inter-American Commission on Human Rights in obtaining relief from human rights violations resulting from the impacts of global warming and climate change caused by acts and omissions of the United States. Ms. Watt-Cloutier submits this petition on behalf of herself, 62 other named individuals, and all Inuit of the arctic regions of the United States of America and Canada who have been affected by the impacts of climate change described in this petition.

Global warming refers to an average increase in the Earth's temperature, causing changes in climate that lead to a wide range of adverse impacts on plants, wildlife, and humans. There is broad scientific consensus that global warming is caused by the increase in concentrations of greenhouse gases in the atmosphere as a result of human activity. The United States is, by any measure, the world's largest emitter of greenhouse gases, and thus bears the greatest responsibility among nations for causing global warming.

The Inuit, meaning "the people" in their native Inuktitut, are a linguistic and cultural group descended from the Thule people whose traditional range spans four countries – Chukotka in the Federation of Russia, northern and western Alaska in the United States, northern Canada, and Greenland. While there are local characteristics and differences within the broad ethnic category of "Inuit," all Inuit share a common culture characterized by dependence on subsistence harvesting in both the terrestrial and marine environments, sharing of food, travel on snow and ice, a common base of traditional knowledge, and adaptation to similar Arctic conditions. Particularly since the Second World War, the Inuit have adapted their culture to include many western innovations, and have adopted a mixed subsistence- and cash-based economy. Although many Inuit are engaged in wage employment, the Inuit continue to depend heavily on the subsistence harvest for food. Traditional "country food" is far more nutritious than imported "store-bought" food. Subsistence harvesting also provides spiritual and cultural affirmation, and is crucial for passing skills, knowledge and values from one generation to the next, thus ensuring cultural continuity and vibrancy.

Like many indigenous peoples, the Inuit are the product of the physical environment in which they live. The Inuit have fine-tuned tools, techniques and knowledge over thousands of years to adapt to the arctic environment. They have developed an intimate relationship with their surroundings, using their understanding of the arctic environment to develop a complex culture that has enabled them to thrive on scarce resources. The culture, economy and identity of the Inuit as an indigenous people depend upon the ice and snow.

Nowhere on Earth has global warming had a more severe impact than the Arctic. Building on the 2001 findings of the Intergovernmental Panel on Climate Change, the 2004

Arctic Climate Impact Assessment – a comprehensive international evaluation of arctic climate change and its impacts undertaken by hundreds of scientists over four years – concluded that:

The Arctic is extremely vulnerable to observed and projected climate change and its impacts. The Arctic is now experiencing some of the most rapid and severe climate change on Earth. Over the next 100 years, climate change is expected to accelerate, contributing to major physical, ecological, social, and economic changes, many of which have already begun.

Because annual average arctic temperatures are increasing more than twice as fast as temperatures in the rest of the world, climate change has already caused severe impacts in the Arctic, including deterioration in ice conditions, a decrease in the quantity and quality of snow, changes in the weather and weather patterns, and a transfigured landscape as permafrost melts at an alarming rate, causing slumping, landslides, and severe erosion in some coastal areas. Inuit observations and scientific studies consistently document these changes. For the last 15 to 20 years, Inuit, particularly hunters and elders who have intimate knowledge of their environment, have reported climate-related changes within a context of generations of accumulated traditional knowledge.

One of the most significant impacts of warming in the Arctic has been on sea ice. Commonly observed changes include thinner ice, less ice, later freezes and earlier, more sudden thaws. Sea ice is a critical resource for the Inuit, who use it to travel to hunting and harvesting locations, and for communication between communities. Because of the loss in the thickness, extent and duration of the sea ice, these traditional practices have become more dangerous, more difficult or, at times, impossible. In many regions, traditional knowledge regarding the safety of the sea ice has become unreliable. As a result, more hunters and other travelers are falling through the sea ice into the frigid water below. The shorter season for safe sea ice travel has also made some hunting and harvest activities impossible, and curtailed others. For the Inuit, the deterioration in sea ice conditions has made travel, harvest, and everyday life more difficult and dangerous.

The quality, quantity and timing of snowfall have also changed. Snow generally falls later in the year, and the average snow cover over the region has decreased ten percent over the last three decades. The spring thaw comes earlier and is more sudden than in the past. As with decreased ice, the shorter snow season has made travel more difficult. In addition, the deep, dense snow required for igloo building has become scarce in some areas, forcing many travelers to rely on tents, which are less safe, much colder and more cumbersome than igloos. The lack of igloo-quality snow can be life threatening for travelers stranded by unforeseen storms or other emergencies. These changes have also contributed to the loss of traditional igloo building knowledge, an important component of Inuit culture.

Permafrost, which holds together unstable underground gravel and inhibits water drainage, is melting at an alarming rate, causing slumping, landslides, severe erosion and loss of ground moisture, wetlands and lakes. The loss of sea ice, which dampens the impact of storms

on coastal areas, has resulted in increasingly violent storms hitting the coastline, exacerbating erosion and flooding. Erosion in turn exposes coastal permafrost to warmer air and water, resulting in faster permafrost melts. These transformations have had a devastating impact on some coastal communities, particularly in Alaska and the Canadian Beaufort Sea region. Erosion, storms, flooding and slumping harm homes, infrastructure, and communities, and have damaged Inuit property, forcing relocation in some cases and requiring many communities to develop relocation contingency plans. In addition, these impacts have contributed to decreased water levels in rivers and lakes, affecting natural sources of drinking water, and habitat for fish, plants, and game on which Inuit depend.

Other factors have also affected water levels. Changes in precipitation and temperature have led to sudden spring thaws that release unusually large amounts of water, flooding rivers and eroding their streambeds. Yet, after spring floods, rivers and lakes are left with unusually low levels of water further diminished by increased evaporation during the longer summer. These changes affect the availability and quality of natural drinking water sources. The fish stocks upon which Inuit rely are profoundly affected by changing water levels. Fish sometimes can not reach their spawning grounds, their eggs are exposed or washed ashore, or northward moving species compete with the native stocks for ecological niches.

The weather has become increasingly unpredictable. In the past, Inuit elders could accurately predict the weather for coming days based on cloud formations and wind patterns, allowing the Inuit to schedule safe travel. The changing climate has made clouds and wind increasingly erratic and less useful for predicting weather. Accurate forecasting is crucial to planning safe travel and hunting. The inability to forecast has resulted in hunters being stranded by sudden storms, trip cancellations, and increased anxiety about formerly commonplace activities.

Observers have also noted changes in the location, characteristics, number, and health of plant and animal species caused by changes in climate conditions. Some species are less healthy. In the words of the Arctic Climate Impact Assessment, “[m]arine species dependent on sea ice, including polar bears, ice-living seals, walrus, and some marine birds, are very likely to decline, with some facing extinction.”

Other species are becoming less accessible to the Inuit because the animals are moving to new locations, exacerbating the travel problems resulting from climate change. Still others cannot complete their annual migrations because the ice they travel on no longer exists, or because they cannot cross rivers swollen by sudden floods. More frequent autumn freeze-thaw cycles have created layers of solid ice under the snow that makes winter foraging more difficult for some game animals, including caribou, decreasing their numbers and health. These impacts on animals have impaired the Inuit’s ability to subsist.

Increased temperatures and sun intensity have heightened the risk of previously rare health problems such as sunburn, skin cancer, cataracts, immune system disorders and heat-related health problems. Warmer weather has increased the mortality and decreased the health of

some harvested species, impacting important sources of protein for the Inuit. Traditional methods of food and hide storage and preservation are less safe because of increased daytime temperatures and melting permafrost.

The current impacts in the Arctic of climate change are severe, but projected impacts are expected to be much worse. Using moderate – not worst case – greenhouse gas emission scenarios, the Arctic Climate Impact Assessment finds that:

- “Increasing global concentrations of carbon dioxide and other greenhouse gases due to human activities, primarily fossil fuel burning, are projected to contribute to additional arctic warming of about 4-7°C, about twice the global average rise, over the next 100 years.”
- “Increasing precipitation, shorter and warmer winters, and substantial decreases in snow and ice cover are among the projected changes that are very likely to persist for centuries.”
- “Unexpected and even larger shifts and fluctuations in climate are also possible.”
- “Reductions in sea ice will drastically shrink marine habitat for polar bears, ice-inhabiting seals, and some seabirds, pushing some species toward extinction.”
- “Caribou/reindeer and other animals on land are likely to be increasingly stressed as climate warming alters their access to food sources, breeding grounds, and historic migration routes.”
- “Species ranges are projected to shift northward on both land and sea, bringing new species into the Arctic while severely limiting some species currently present.”
- “As new species move in, animal diseases that can be transmitted to humans, such as West Nile Virus, are likely to pose increasing health risks.”
- “Severe coastal erosion will be a growing problem as rising sea level and a reduction in sea ice allow higher waves and storm surges to reach shore.”
- “Along some Arctic coastlines, thawing permafrost weakens coastal lands, adding to their vulnerability.”
- “The risk of flooding in coastal wetlands is projected to increase, with impacts on society and natural ecosystems.”
- “In some cases, communities and industrial facilities in coastal zones are already threatened or being forced to relocate, while others face increasing risks and costs.”
- “Many Indigenous Peoples depend on hunting polar bear, walrus, seals, and caribou, herding reindeer, fishing, and gathering, not only for food and to support the local economy, but also as the basis for cultural and social identity.”
- “Changes in species’ ranges and availability, access to these species, a perceived reduction in weather predictability, and travel safety in changing ice and weather conditions present serious challenges to human health and food security, and possibly even the survival of many cultures.”

Noting the particular impact these changes will have on the Inuit, the ACIA states: “For Inuit, warming is likely to disrupt or even destroy their hunting and food sharing culture as

reduced sea ice causes the animals on which they depend on to decline become less accessible, and possibly become extinct.”

Several principles of international law guide the application of the human rights issues in this case. Most directly, the United States is obligated by its membership in the Organization of American States and its acceptance of the American Declaration of the Rights and Duties of Man to protect the rights of the Inuit described above. 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 United States also has international environmental law obligations that are relevant to this petition. For instance, the United States also has an 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. 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.”

The impacts of climate change, caused by acts and omissions by the United States, violate the Inuit’s fundamental human rights protected by the American Declaration of the Rights and Duties of Man and other international instruments. These include their rights to the benefits of culture, to property, to the preservation of health, life, physical integrity, security, and a means of subsistence, and to residence, movement, and inviolability of the home.

Because Inuit culture is inseparable from the condition of their physical surroundings, the widespread environmental upheaval resulting from climate change violates the Inuit’s right to practice and enjoy the benefits of their culture. The subsistence culture central to Inuit cultural identity has been damaged by climate change, and may cease to exist if action is not taken by the United States in concert with the community of nations

The Inuit’s fundamental right to use and enjoy their traditional lands is violated as a result of the impacts of climate change because large tracks of Inuit traditional lands are fundamentally changing, and still other areas are becoming inaccessible. 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 have diminished the value of the Inuit's right of access to these lands.

The Inuit's fundamental right to enjoy their personal property is violated because 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 is also violated, because much of the Inuit's traditional knowledge, a formerly priceless asset, has become frequently unreliable or inaccurate as a result of climate change.

The Inuit's fundamental rights to health and life are violated as climate change exacerbates pressure on the Inuit to change their diet, which for millennia has consisted of wild meat and a few wild plants. Climate change is accelerating a transition by Inuit 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. Natural sources of drinking water are disappearing and diminishing in quality. Increased risks of previously rare heat and sun related illnesses also implicate the right to health and life.

The Inuit's fundamental rights to residence and movement, and inviolability of the home are likewise violated as a result of the impacts of climate change because the physical integrity of Inuit homes is threatened. Most Inuit settlements are located in coastal areas, where storm surges, permafrost melt, and erosion are destroying certain coastal Inuit homes and communities. In inland areas, slumping and landslides threaten Inuit homes and infrastructure.

The Inuit's fundamental right to their own means of subsistence has also been violated as a result of the impacts of climate change. The travel problems, lack of wildlife, and diminished quality of harvested game resulting from climate change have deprived the Inuit of the ability to rely on the harvest for year-round sustenance. Traditional Inuit knowledge, passed from Inuit elders in their role as keepers of the Inuit culture, is also becoming outdated because of the rapidly changing environment.

The United States of America, currently the largest contributor to greenhouse emissions in the world, has nevertheless repeatedly declined to take steps to regulate and reduce its emissions of the gases responsible for climate change. As a result of well-documented increases in atmospheric concentrations of greenhouse gases, it is beyond dispute that most of the observed change in global temperatures over the last 50 years is attributable to human actions. This conclusion is supported by a remarkable consensus in the scientific community, including every major US scientific body with expertise on the subject. Even the Government of the United States has accepted this conclusion.

However, and notwithstanding its ratification of the UN Framework Convention on Climate Change, United States has explicitly rejected international overtures and compromises, including the Kyoto Protocol to the U.N. Framework Convention on Climate Change, aimed at securing agreement to curtail destructive greenhouse gas emissions. With full knowledge that

this course of action is radically transforming the arctic environment upon which the Inuit depend for their cultural survival, the United States has persisted in permitting the unregulated emission of greenhouse gases from within its jurisdiction into the atmosphere.

Protecting human rights is the most fundamental responsibility of civilized nations. Because climate change is threatening the lives, health, culture and livelihoods of the Inuit, it is the responsibility of the United States, as the largest source of greenhouse gases, to take immediate and effective action to protect the rights of the Inuit.

Because this petition raises violations of the American Declaration of the Rights and Duties of Man by the United States of America, the Inter-American Commission on Human Rights has jurisdiction to receive and consider it. The petition is timely because the acts and omissions of the United States that form the basis for the petition are ongoing, and the human rights violations they are causing is increasing. Because there are no domestic remedies suitable to address the violations, the requirement that domestic remedies be exhausted does not apply in this case.

The violations detailed in the petition can be remedied. As such, the Petitioner respectfully requests that the Commission:

1. Make an onsite visit to investigate and confirm the harms suffered by the named individuals whose rights have been violated and other affected Inuit;
2. Hold a hearing to investigate the claims raised in this Petition;
3. Prepare a report setting forth all the facts and applicable law, declaring that the United States of America is internationally responsible for 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 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 Petitioner and the affected Inuit, a plan to protect 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 Petitioner and the affected Inuit communities, a plan to provide assistance necessary for Inuit to adapt to the impacts of climate change that cannot be avoided;
- e. Provide any other relief that the Commission considers appropriate and just.

V. VIOLATIONS: THE EFFECTS OF GLOBAL WARMING CONSTITUTE VIOLATIONS OF INUIT HUMAN RIGHTS, FOR WHICH THE UNITED STATES IS RESPONSIBLE

A. THE HUMAN RIGHTS OF INDIGENOUS PEOPLE SHOULD BE INTERPRETED IN THE CONTEXT OF INDIGENOUS CULTURE AND HISTORY, WHICH REQUIRES PROTECTION OF THEIR LAND AND ENVIRONMENT

1. “[E]NSURING THE FULL AND EFFECTIVE ENJOYMENT OF HUMAN RIGHTS BY INDIGENOUS PEOPLES REQUIRES CONSIDERATION OF THEIR PARTICULAR HISTORICAL, CULTURAL, SOCIAL AND ECONOMIC SITUATION AND EXPERIENCE”⁴²¹

In applying the rights contained in the American Declaration to indigenous peoples, both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have repeatedly emphasized the need to take into account the unique context of indigenous culture and history.*

The Court recognized this context in the *Awás Tingni* case, in which the Court interpreted the American Convention’s protection of “property” to mean protection of property rights as understood by the indigenous community involved.⁴²² In its judgment on reparations in the *Aloeboetoe et al.* case, the Court disregarded the State’s domestic family law for purposes of determining which persons were the next-of-kin of the victims, and awarded reparations based on the matrilineal and polygamist customs of the Saramaka people to which the victims belonged.⁴²³ In addition, although rejecting the Saramaka’s contention that, according to their customs, the entire community was injured as the “family” of the deceased, the Court implicitly accepted that the entire community had suffered damages when it ordered reparations that would benefit the community as a whole.⁴²⁴

“[T]he Commission has since its establishment in 1959 recognized and promoted respect for the rights of indigenous peoples of this Hemisphere.”⁴²⁵ Since 1972, it has been the Commission’s position that “because of moral and humanitarian principles ... protection for indigenous populations constitutes a sacred commitment of the states.”⁴²⁶ This recognition, shared by the international community as a whole, is a norm of general or customary international law. “In acknowledging and giving effect to particular protections in the context of human rights of indigenous populations, the Commission has proceeded in tandem with developments in international human rights law more broadly.”⁴²⁷

* “Both the Inter-American Court and the Inter-American Commission on Human Rights have held that, although originally adopted as a declaration and not as a legally binding treaty, the American Declaration is today a source of international obligations for the OAS member States.” Inter-Am. Court H.R., Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, July 14, 1989, Ser. A. No. 10, at ¶¶ 35, 45 (1989).

In the *Mary and Carrie Dann* (“Dann”) case, the Commission considered rights set forth in the Proposed American Declaration on the Rights of Indigenous Peoples (“Proposed Declaration”) in interpreting and applying the provisions of the American Declaration.⁴²⁸ The Commission noted that, although the Proposed Declaration has not been adopted, “the basic principles reflected in many of the provisions of the Declaration ... reflect general international legal principles developing out of and *applicable inside ... the inter-American system ...* in the context of indigenous peoples.”⁴²⁹ The Commission further acknowledged that much of the Proposed Declaration reflects established international norms:⁴³⁰ “[A] review of pertinent treaties, legislation and jurisprudence reveals the development over more than 80 years of particular human rights norms and principles applicable to the circumstances and treatment of indigenous peoples.”⁴³¹ The Commission concluded that “by interpreting the American Declaration so as to safeguard the integrity, livelihood and culture of indigenous peoples through the effective protection of their individual and collective human rights, the Commission is respecting the very purposes underlying the Declaration which, as expressed in its Preamble, include recognition that ‘... it is the duty of man to preserve, practice and foster culture by every means within his power.’”⁴³²

The Commission reaffirmed this view in its recent decision in the *Maya Indigenous Communities of the Toledo District* (“*Belize Maya*”) case, in which it gave “due regard to the particular principles of international human rights law governing the individual and collective interests of indigenous peoples.”⁴³³ Quoting from its 1997 Report on the Human Rights Situation in Ecuador, the Commission noted that distinct “protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population.”^{434*} In finding that the human rights of the Maya people had been violated, the Commission “afford[ed] due consideration to the particular norms and principles of international human rights law governing the individual and collective interests of indigenous peoples, including consideration of any special measures that may be appropriate and necessary in giving proper effect to these rights and interests.”⁴³⁵

In the *Yanomami* case, the Commission determined that “international law in its present state ... recognizes the right of ethnic groups to special protection ... for all those characteristics necessary for the preservation of their cultural identity.”⁴³⁶ In concluding that the rights of the Yanomami people had been violated, the Commission considered that “the Organization of American States has established, as an action of priority for the member states, the preservation and strengthening of the cultural heritage of these ethnic groups and the struggle against the

* In the Ecuador Report, the Commission stated:

Within international law generally, and inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and cultural survival – a right protected in a range of international instruments and conventions.

OEA/Ser.L/V/II.96, Ch. 10.

discrimination that invalidates their members' potential as human beings through the destruction of their cultural identity and individuality as indigenous peoples."⁴³⁷

As the Commission has affirmed, international law recognizes that the human rights of indigenous peoples must be protected in the context of indigenous culture and history. For example, the U.N. Human Rights Committee has stated that the rights under Article 27 of the International Covenant on Civil and Political Rights ("ICCPR") "depend on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to [practice] their religion, in community with other members of the group."⁴³⁸ In addition, the International Labour Organisation's Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention 169) states that "[t]he rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded."⁴³⁹

As described in Section II-A above, the Inuit are an indigenous people who have occupied the arctic and sub-arctic regions of the United States, Russia, Greenland, and Canada for many millennia. As such, "they are entitled to special protection ... for all those characteristics necessary for the preservation of their cultural identity" and for the protection of their human rights.

2. BECAUSE OF THEIR CLOSE TIES TO THE LAND AND THE ENVIRONMENT, PROTECTION OF THE INUIT'S HUMAN RIGHTS NECESSARILY REQUIRES PROTECTION OF THE ARCTIC ENVIRONMENT

The lives and culture of the Inuit demonstrate that indigenous peoples' human rights are inseparable from their environment. As a Special Rapporteur of the UN Commission on Human Rights has noted, violations of indigenous peoples' human rights "almost always arise as a consequence of land rights violations and environmental degradation and indeed are inseparable from these factors."⁴⁴⁰ Therefore, preservation of the arctic environment is one of the distinct protections required for the Inuit to fully enjoy their human rights on an equal basis with all peoples. States thus have an international obligation not to degrade the environment to an extent that threatens indigenous peoples' culture, health, life, property, or ecological security.

Within the Inter-American system, and in the international community generally, indigenous peoples' right to a healthy environment has been repeatedly recognized and enforced. For instance, the Inter-American Court noted in the *Awás Tingni* case that the failure to prevent environmental damage to indigenous lands "causes catastrophic damage" to indigenous peoples because "the possibility of maintaining social unity, of cultural preservation and reproduction, and of surviving physically and culturally, depends on the collective, communitarian existence and maintenance of the land."⁴⁴¹ Similarly, in its *Belize Maya* decision, this Commission found that "the State's failure to respect [the Maya people's human rights had] been exacerbated by environmental damage" to Mayan lands.⁴⁴² The "logging concessions granted by the State ... caused environmental damage,

and ... this damage impacted negatively upon some lands wholly or partly within the limits of the territory in which the Maya people have a communal property right.”⁴⁴³

In its 1997 report on Ecuador, the Commission found that “indigenous peoples maintain special ties with their traditional lands, and a close dependence upon the natural resources provided therein – respect for which is essential to their physical and cultural survival.”⁴⁴⁴ As the report further acknowledges, “damage to these lands ‘invariably leads to serious loss of life and health and damage to the cultural integrity of indigenous peoples.’”⁴⁴⁵ In discussing the connection between

the physical environment and the rights to health and life, the report concluded that environmental degradation can “give rise to an obligation on the part of a state to take reasonable measures to prevent” the risks to health and life associated with environmental degradation.⁴⁴⁶

The Commission further noted that human rights law “is premised on the principle that rights inhere in the individual simply by virtue of being human,” and that environmental degradation, “which may cause

serious physical illness, impairment and suffering on the part of the local populace, [is] inconsistent with the right to be respected as a human being.”⁴⁴⁷



International law protects the special ties that many indigenous people have to their environment. For example, ILO Convention 169 states that “[g]overnments shall take measures ... to protect and preserve the environment of the territories [indigenous people] inhabit.”⁴⁴⁸ The Convention further requires that indigenous peoples’ rights “to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.”⁴⁴⁹ In addition, Article XIII of the Proposed American Declaration of the Rights of Indigenous Peoples explicitly guarantees indigenous peoples the right to environmental protection: “Indigenous peoples shall have the right to conserve, restore and protect their environment, and the productive capacity of their lands, territories and resources.”⁴⁵⁰ Similarly, Article 28 of the U.N. Draft Declaration on the Rights of Indigenous People guarantees “the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources.”⁴⁵¹ The Draft Declaration also includes the “total environment” in the concept of the property to which indigenous peoples have a right.⁴⁵²

The right to a healthy environment is also a right of customary international law outside the context of indigenous peoples. In the words of Judge Weeramantry of the International Court of Justice,

The protection of the environment is likewise a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.⁴⁵³

Echoing numerous international instruments,⁴⁵⁴ the Inter-American Commission has recognized that “[t]he realization of the right to life, and to physical security and integrity is necessarily related to and in some ways dependent upon one’s physical environment.”⁴⁵⁵

Like other indigenous peoples, the Inuit rely on the natural environment for their cultural and physical survival. The Inuit and their culture have developed over thousands of years in relationship with, and in response to, the physical environment of the Arctic.⁴⁵⁶ The Inuit have developed an intimate relationship with their surroundings, using their understanding of the arctic environment to develop tools, techniques and knowledge that have enabled them to subsist on the scarce resources available in the tundra.⁴⁵⁷ All aspects of Inuit life depend on the ice, snow, land and weather conditions in the Arctic.⁴⁵⁸ For example, the subsistence harvest is essential to the continued existence of the Inuit as a people.⁴⁵⁹ As one observer noted, “If you tell the Eskimo he can’t hunt the whale, you might as well tell him he can’t be Eskimo.”⁴⁶⁰ The judicious use of plants and game, for everything from food to clothing to lighting, has allowed the Inuit to thrive in the arctic climate, while developing a complex social structure based upon the harvest.⁴⁶¹ Destruction of the delicate arctic ecosystem is therefore “inconsistent with [the Inuit’s] right to be respected as ... human being[s],”⁴⁶² and violates many rights guaranteed in the American Declaration.

B. THE EFFECTS OF GLOBAL WARMING VIOLATE INUIT HUMAN RIGHTS

1. THE EFFECTS OF GLOBAL WARMING VIOLATE THE INUIT’S RIGHT TO ENJOY THE BENEFITS OF THEIR CULTURE

a. The American Declaration guarantees the Inuit’s right to the benefits of culture.

The American Declaration guarantees the Inuit’s right to the benefits of culture.⁴⁶³ The Charter of the Organization of American States places cultural development and respect for culture in a position of supreme importance.⁴⁶⁴ The American Convention also recognizes the importance of cultural freedom to human dignity in its protection of freedom of association⁴⁶⁵ and progressive development.⁴⁶⁶ Cultural rights are also protected in other major human rights instruments including the Universal Declaration of Human Rights⁴⁶⁷ the ICCPR,⁴⁶⁸ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁶⁹

The Court and the Commission have long recognized that environmental degradation caused by a State's action or inaction can violate the human right to the benefits of culture, especially in the context of indigenous cultures.⁴⁷⁰ In the *Awas Tingni* case, the Inter-American Court, in discussing the right to property, acknowledged the link between cultural integrity and indigenous communities' lands: "[T]he close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival."⁴⁷¹

In the *Belize Maya* case, the Commission acknowledged that interference with indigenous lands necessarily implicates the right to culture.⁴⁷² The Commission acknowledged that international human rights law recognized that "the use and enjoyment of the land and its resources are integral components of the physical and cultural survival of the indigenous communities." In its *Yanomami* decision, the Commission noted that the State had an obligation under the OAS Charter to give priority to "preserving and strengthening ... the cultural heritage" of indigenous peoples, and determined that the granting of concessions to subsoil resources on indigenous land – "with all the negative consequences for their culture" – violated the Yanomami's rights.⁴⁷³ The Commission also recognized that protection of ancestral lands is an essential component of indigenous peoples' right to culture in its Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin.*

In its country reports, the Commission has further recognized the close connection between the environment and the right to culture. As stated in the Commission's 1997 Report on the Situation of Human Rights in Ecuador, "[c]ertain indigenous peoples maintain special ties with their traditional lands, and a close dependence upon the natural resources provided therein – respect for which is essential to their physical and cultural survival."⁴⁷⁴

The U.N. Human Rights Committee's jurisprudence further supports the importance of natural resources to the right to the benefits of culture. The Committee has recognized that degradation of natural resources may violate the ICCPR's right to enjoy culture:

[C]ulture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the

* "[S]pecial legal protection is recognized for the use of their language, the observance of their religion, and in general, all those aspects related to the preservation of their cultural identity. To this should be added the aspects linked to productive organization, which includes, among other things, the issue of the ancestral and communal lands. Non-observance of those rights and cultural values leads to a forced assimilation with results that can be disastrous." Inter-Am. C.H.R., *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin* 76, OEA/Ser.L/V/II.62, doc. 10, rev. 3 (1983) at ¶ II.B.15.

effective participation of members of minority communities in decisions which affect them.... The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole.⁴⁷⁵

In *Bernard Ominayak and the Lubicon Band v. Canada* (“Lubicon”), which the Commission cited with approval in the *Belize Maya* decision,⁴⁷⁶ the petitioners alleged that the government of the province of Alberta had deprived the Band of their means of subsistence and their right to self-determination by selling oil and gas concessions on their lands.⁴⁷⁷ The U.N. Human Rights Committee characterized the claim as being based on the right to enjoy culture under Article 27 of the ICCPR. It found that oil and gas exploitation, in conjunction with historic inequities, threatened the way of life and culture of the Band and that Canada had thus violated Article 27.⁴⁷⁸

The U.N. Draft Declaration on the Rights of Indigenous People specifically assures the cultural rights of indigenous groups and links them to the natural environment. The Declaration asserts that “[i]ndigenous peoples have the collective and individual right to ... prevention of and redress for ... [a]ny action which has the aim or effect of depriving them of their integrity as distinct societies, or of their cultural or ethnic characteristics or identities; ... [and] [a]ny action which has the aim or effect of dispossessing them of their lands, territories or resources.”⁴⁷⁹ As part of the right to the benefits of culture, the draft also includes the right to “revitalize, use, develop and transmit to future generations [indigenous peoples’] histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.”⁴⁸⁰

The Inuit’s human right to enjoy the benefits of their unique culture is thus guaranteed under the American Declaration and affirmed by other sources of international law. In the global and Inter-American human rights systems, indigenous peoples’ right to culture is inseparable from the condition of the lands they have traditionally occupied. The United States thus has a clear duty not to degrade the arctic environment to an extent that infringes upon the Inuit’s human right to enjoy the benefits of their culture.

b. The effects of global warming violate the Inuit’s right to enjoy the benefits of their culture

Through its failure to take effective action to reduce greenhouse gas emissions, the United States is violating the Inuit’s right to the benefits of culture. The subsistence way of life central to Inuit cultural identity has been damaged by, and may cease to exist because of, climate change. Traditional Inuit knowledge, passed from the Inuit elders in their role as keepers of the Inuit culture, is becoming less useful because of the rapidly changing environment. Given the widely acknowledged and extensive connection between the natural environment and Inuit culture, the changes in arctic ice, snow, weather patterns and land caused by climate change is resulting in the destruction of Inuit culture.



The United States government itself has recognized the importance of the subsistence way of life to the continued survival of the Inuit culture. In granting preference to subsistence uses of fish and wildlife in Alaska, the United States Congress noted that “the continuation of the opportunity for subsistence uses ... is *essential* to Native physical, economic, traditional, and *cultural existence*.”⁴⁸¹

As previously explained, climate change hinders the Inuit’s ability to continue to practice the traditional subsistence harvest because it changes the characteristics of the ice, snow, land and weather of the Arctic. Travel over ice and snow, an essential component of the traditional Inuit harvest, has necessarily declined because of the relative scarcity of these infrastructure resources. Winter ice hunting has diminished because the later freeze and earlier, more sudden thaw allow less time each year for ice hunting, increase the risk of breaking ice, and affect the behavior and health of game. Increasingly, changes in the location, characteristics, and health of harvested species require hunters to travel farther for a successful harvest, aggravating the impact of travel difficulties. Current projections of continued accelerated change in the characteristics of the ice, snow, land and weather of the Arctic mean that these difficulties will only worsen in the future.⁴⁸²

The shortage of deep, dense, granular snow required for building igloos has diminished the Inuit’s ability to travel and hunt safely and conveniently. Building igloos for travel shelter, a unique and important practice that is part of Inuit culture, has been replaced by the use of uninsulated, more cumbersome tents and fixed-location cabins. The dearth of useful snow has nearly eradicated some Inuit’s practice of relying on igloos for travel and emergency shelter. Scientists predict a further “substantial decrease in snow ... cover over most of the Arctic by the end of the 21st century,” which will continue to diminish the Inuit’s ability to build and use igloos.⁴⁸³

The change in the orientation of snowdrifts has already severely hampered the traditional method of using the snowdrifts to navigate, contributing to the decline in travel and harvest activities. The repercussions of this change can be likened to the impact on ancient mariners had the stars suddenly changed their positions in the sky. In a land lacking consistent landmarks, the loss of one of the few navigation tools available to the Inuit is a profound deprivation.

The loss of this form traditional knowledge further undermines Inuit culture. Predicting the weather, a crucial part of planning safe and convenient travel and harvest, as well as an

important role for the Inuit elders, has become much more difficult because of changes in weather patterns. As a result, the elders can no longer fulfill one of their important roles, nor can they pass the science of weather forecasting to the next generation.

As a result of these changes, the Inuit's ability to continue to practice the subsistence way of life central to their culture is diminishing rapidly. The shorter, fewer, less fruitful and more dangerous hunting trips not only mean less food harvested, but less time spent engaging in important cultural practices and teaching younger generations the intricacies of those practices. The ongoing and accelerating impacts of climate change will continue to erode Inuit cultural practices in the future.

Other aspects of Inuit culture are also jeopardized by the changing climate. Land slumping, erosion and landslides threaten cultural and historic sites, as well as traditional hunting grounds. Traditional methods of food storage and hide preparation are changing because of the melting permafrost and changing weather patterns. The early spring thaw has forced a change in the traditional timing of festivities.



The elders' roles as educators have been compromised because the changing conditions have rendered inaccurate much of their traditional knowledge about weather, ice, snow, navigation and land conditions. The Inuit educational system, passing on and building upon knowledge from one generation to the next, is critical to Inuit cultural survival. The Inuit have spent millennia developing knowledge about their physical surroundings.⁴⁸⁴ The unprecedented rapid climate change has made much

of this traditional knowledge inaccurate, and therefore less valuable to the Inuit. As climate change continues, these impacts will only get worse. The loss of this traditional knowledge may permanently erase aspects of the Inuit history and culture. 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.*"⁴⁸⁵

The cumulative effects of these injuries are permanently undermining the Inuit's ability to engage in their unique culture. Arctic climate change, caused by the United States' regulatory action and inaction, is depriving the Inuit of their cultural identity and their continued existence as a distinct people, violating their human right to enjoy the benefits of their culture.

2. THE EFFECTS OF GLOBAL WARMING VIOLATE THE INUIT'S RIGHT TO USE AND ENJOY THE LANDS THEY HAVE TRADITIONALLY USED AND OCCUPIED

a. The American Declaration guarantees the Inuit's right to use and enjoy the lands they have traditionally occupied

The American Declaration includes the human right to “own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.”⁴⁸⁶ The Commission acknowledged the fundamental nature of this right when it stated, “[v]arious international human rights instruments, both universal and regional in nature, have recognized the right to property as featuring among the fundamental rights of man.”⁴⁸⁷ Similarly, the American Convention declares that “[e]veryone has the right to the use and enjoyment of his property.... No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.”⁴⁸⁸ The Universal Declaration of Human rights includes the right to property as well.⁴⁸⁹ Other international instruments, including the European Convention on Human Rights⁴⁹⁰ and the African Charter on Human and Peoples' Rights⁴⁹¹ also secure the right to property.

The Inter-American Court and this Commission have long recognized that indigenous peoples have a fundamental international human right to use and enjoy the lands they have traditionally occupied, independent of domestic title. Moreover, as this Commission has noted, “the right to use and enjoy property may be impeded when the State itself, or third parties acting with the acquiescence or tolerance of the State, affect the existence, value, use or enjoyment of that property.”⁴⁹²

The Inter-American Court affirmed the independent existence of indigenous peoples' collective rights to their land, resources, and environment in the *Awas Tingni* case.⁴⁹³ The Court held that the government of Nicaragua had violated the Awas Tingni's rights to property and judicial protection when it granted concessions to a foreign company to log on their traditional lands without consulting them or getting their consent. In the context of indigenous land rights, “the close relationship that the communities have with the land must be recognized and understood as a foundation for their cultures, spiritual life, cultural integrity, and economic survival.”⁴⁹⁴ The court further noted that, “[b]y the fact of their very existence, indigenous communities have the right to live freely on their own territories.”⁴⁹⁵

In its recent *Belize Maya* decision, the Commission found that Belize violated the Maya people's right to use and enjoy their property by granting concessions to third parties to exploit resources that degraded the environment within lands traditionally used and occupied by the Maya people.⁴⁹⁶ Indigenous people's international human right to property, the Commission noted, is based in international law, and does not depend on domestic recognition of property interests.⁴⁹⁷ The Commission noted that indigenous property rights are broad, and are not limited “exclusively by entitlements within a state's formal legal regime, but also include that indigenous communal property that arises from and is grounded in indigenous custom and

tradition.”⁴⁹⁸ In fact, the failure of the State to recognize indigenous property rights was itself one basis for the Commission’s finding of a violation of the Maya people’s right to property.⁴⁹⁹

The Commission recognized in the *Dann* case that general international law supports indigenous peoples’ property rights in their ancestral lands.⁵⁰⁰ In that case, the indigenous petitioners challenged the purported extinguishment of their aboriginal title to lands they had traditionally used and enjoyed within the state of Nevada.* In ruling that the extinguishment of aboriginal rights to ancestral land violated their right to property, the Commission noted that the Proposed American Declaration on the Rights of Indigenous Peoples reflected general principles of international human rights law.† The Commission noted that this was particularly true of the Proposed Declaration’s Article XVIII, which states that “[i]ndigenous peoples have the right to the recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied, as well as to the use of those to which they have historically had access for their traditional activities and livelihood.”⁵⁰¹

Other human rights institutions also recognize the independent international human right of indigenous people to use and occupy their ancestral lands. For example, the International Labour Organisation’s Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries declares, “[t]he rights of ownership and possession of [indigenous peoples] over the lands which they traditionally occupy shall be recognised.”⁵⁰² The United Nations’ Draft Declaration on the Rights of Indigenous Peoples specifically includes “the right to own, develop, control and use the lands and territories, *including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources* which they have traditionally owned or otherwise occupied or used.”⁵⁰³

Deprivation of the use and enjoyment of land through environmental degradation caused by a State’s actions or inactions therefore constitutes a violation of the human right to property. In the *Belize Maya* case, the Commission noted that “the right to use and enjoy property may be

* The Inuit whose rights have been violated in this petition face much the same situation as the Dannels, as the United States has purported to extinguish their aboriginal title against their will through enactment of the Alaska Native Claims Settlement Act. See 43 U.S.C. 1601 *et seq.*

† “The development of these principles in the inter-American system has culminated in the drafting of Article XVIII of the Draft American Declaration on the Rights of Indigenous Peoples, which provides for the protection of traditional forms of ownership and cultural survival and rights to land, territories and resources. While this provision, like the remainder of the Draft Declaration, has not yet been approved by the OAS General Assembly and therefore does not in itself have the effect of a final Declaration, the Commission considers that the basic principles reflected in many of the provisions of the Declaration, including aspects of Article XVIII, reflect general international legal principles developing out of and applicable inside and outside of the inter-American system and to this extent are properly considered in interpreting and applying the provisions of the American Declaration in the context of indigenous peoples.” *Case of Mary and Carrie Dann* (“*Dann*”), Report N° 75/02, Case 11.140 (United States), Inter-Am. C.H.R., 2002 ¶ 129 (2002), available at <http://www.cidh.oas.org/annualrep/2002eng/USA.11140.htm>.

impeded when the State itself, or third parties acting with the acquiescence or tolerance of the State, affect the existence, value, use or enjoyment of that property.”⁵⁰⁴ The environmental degradation caused by development can “affect the existence, value, use or enjoyment of”⁵⁰⁵ land, especially that of land belonging to indigenous people using it for subsistence. The Commission also noted that while states may encourage development as a means of securing economic and social rights, they nevertheless have an obligation to take positive measures to ensure that third parties do not infringe upon property rights, especially those of indigenous people.⁵⁰⁶ Environmental degradation caused by a State’s action or inaction thus compromises the human right to property that is protected by the American Declaration.

The Inuit’s human right to protection of their land is thus guaranteed by the American Declaration and general international law. The United States government has an obligation not to interfere with the Inuit’s use and enjoyment of their land through its acts and omissions regarding climate change.

b. The effects of global warming violate the Inuit’s right to use and enjoy the lands they have traditionally occupied

For millennia, the Inuit have occupied and used land in the arctic and sub-arctic areas of the United States, Canada, Russia, and Greenland. Included in the “land” that the Inuit have traditionally occupied and used are the landfast winter sea ice,^{*} pack ice,[†] and multi-year ice.[‡] The Inuit have traditionally spent much of the winter traveling, camping and hunting on the landfast ice.⁵⁰⁷ They have used the summer pack ice and multi-year ice to hunt seals, one of their primary sources of protein. Because the international human right to property is interpreted in the context of indigenous culture and history, the Inuit have a human right to use and enjoyment of land and ice that they have traditionally used and occupied in the arctic and sub-arctic regions of the United States, Canada, Russia, and Greenland. Inuit have also secured domestic property rights through the conclusion of four agreements with the Government of Canada⁵⁰⁸ and in Alaska by the legislated 1971 Alaska Native Claims Settlement Act.^{509§}

* “Fast ice is sea ice that grows from the coast into the sea, remaining attached to the coast or grounded to a shallow sea floor.” ACIA Overview, *supra* note 16, at 24.

† “Pack ice refers to a large area of floating sea ice fragments that are packed together.” *Id.*

‡ “[P]ack ice lasting more than a year becomes multi-year ice [which is] progressively fresher, harder and thicker.” GIBSON & SHULLINGER, *supra* note 7, at 8.

§ The Alaska Native Claims Settlement Act (“ANCSA”) is unlike the Canadian agreements in that ANCSA is a unilateral settlement imposed upon the Alaskan Inuit by the United States without the Inuit’s consent. *See* 43 U.S.C. 1601 *et seq.* While the Act purports to extinguish aboriginal collective title in favor of individual alienable shares in a corporation, the Commission’s *Dann* case makes clear that extinguishment of aboriginal title without informed consent of the peoples involved is ineffective from the perspective of international human rights. *Dann* at ¶ 130.

For instance the Nunavut Land Claims Agreement (NLCA) provides the Inuit of Nunavut title to some 352,240 square kilometers of land chosen for, among others, wildlife harvesting, conservation purposes, high potential for propagation, cultivation or husbandry, and for cultural importance.⁵¹⁰ These collective property rights are being devalued by the impacts of climate change and will continue to be severely devalued as the impacts of climate change continue.

Global warming violates the Inuit's human right to use and enjoy their land because "third parties acting with the acquiescence or tolerance of the State [are] affecting the existence, value, use [and] enjoyment of that property."⁵¹¹ Climate change has made the Inuit's traditional lands less accessible, more dangerous, unfamiliar, and less valuable to the Inuit. The disappearance of sea ice, pack ice, and multi-year ice is affecting the very existence of Inuit land. In the last thirty years, about eight percent of the total yearly sea ice has ceased to exist, with more dramatic losses more recently, and further acceleration of the trend expected in the future.⁵¹² Summer sea ice has decreased fifteen to twenty percent, and is projected to disappear completely by the end of this century.⁵¹³ The ice that remains is less valuable to the Inuit because the later freezes, earlier, more sudden thaws, and striking loss of thickness have made use of the ice more dangerous and less productive. Sea ice, a large and critical part of coastal Inuit's property, is literally melting away.

The loss of sea ice has another effect on the Inuit's use and enjoyment of their property. This loss of ice has contributed to alarming coastal erosion because sea storms and wave movement are so much greater without the breakwater effect of the ice.⁵¹⁴ The erosion threatens the Inuit's homes and villages, forcing them to move their homes, which is expensive, arduous, and inconvenient, or lose them. Coastal campsites, a traditional use of land while traveling and harvesting, have been washed away. The erosion in turn exposes coastal permafrost to the warmer air and water, causing it to melt as well.⁵¹⁵ As the ice continues to disappear, the impact on Inuit coastal homes and communities will increase.



The melting permafrost has altered the characteristics of Inuit land, diminishing its value to the Inuit, and affecting their ability to use and enjoy their property. Slumping has damaged homes, villages and infrastructure. Water resources and wetlands are drying because the permafrost no longer inhibits drainage, which changes the look of the land, alters landmarks, and transforms critical habitat. The use of permafrost for food storage is no longer practical in some areas, eliminating a traditional use of the land, and diminishing its value to the Inuit. The extent

of permafrost is expected to retreat northward by hundreds of miles this century, further diminishing the value of Inuit land.⁵¹⁶

The sea ice that the Inuit have used for millennia as hunting grounds is ceasing to exist, and what remains is less useful.⁵¹⁷ The land they have traditionally used and occupied is fundamentally changing as a result of climate change, making it less valuable and useful to the Inuit. The United States' acts and omissions regarding climate change have violated their right to use and enjoy their ancestral lands and their rights of property in those lands.

3. THE EFFECTS OF GLOBAL WARMING VIOLATE THE INUIT'S RIGHT TO USE AND ENJOY THEIR PERSONAL, INTANGIBLE AND INTELLECTUAL PROPERTY

a. The American Declaration guarantees the Inuit's right to use and enjoy their personal, intangible and intellectual property

The Inuit's human right to property extends to their right to use and enjoy their personal and intellectual property without undue interference. In the *Awes Tingni* case, the Court expansively defined property to include those material goods capable of being acquired, as well as all rights that can be deemed to make up the assets of a person. Protected property includes "those material things which can be possessed, as well as any right which may be part of a person's patrimony; that concept includes all movables and immovables, corporeal and incorporeal elements and any other intangible object capable of having value."⁵¹⁸ Personal property, intellectual property, and intangible rights of access fall within this definition.

The Proposed American Declaration on the Rights of Indigenous Peoples guarantees "the right to the recognition and the full ownership, control and protection of their cultural, artistic, spiritual, technological and scientific heritage, and legal protection for their intellectual property ... as well as to special measures to ensure them legal status and institutional capacity to develop, use, share, market and bequeath that heritage to future generations."⁵¹⁹ The Proposed Declaration also protects indigenous peoples' property interests in "the use of [lands] to which they have historically had access for their traditional activities and livelihood."⁵²⁰ In addition, ILO Convention 169 protects the right of indigenous peoples to access the lands they have traditionally used for subsistence.⁵²¹ The broad scope of the Inuit's human right to use and enjoy of their property thus extends to their tangible and intangible personal property.

Deprivation of the use and enjoyment of personal property through environmental degradation caused by a State's actions or inactions can constitute a violation of the human right to property. In the *Belize Maya* case, the Commission noted that "the right to use and enjoy property may be impeded when the State itself, or third parties acting with the acquiescence or tolerance of the State, affect the existence, value, use or enjoyment of that property."⁵²² Environmental degradation caused by development can "affect the existence, value, use or enjoyment of" personal property.

The Inuit's human right to protection of their personal and intellectual property is guaranteed by international law. The United States government therefore has an obligation not to interfere with the Inuit's use and enjoyment of their property through its failure to take effective action to reduce greenhouse gas emissions.

b. The effects of global warming violate the Inuit's right to use and enjoy their personal, intangible and intellectual property

The Inuit, both individually and collectively possess property rights in "movables" as well as "intangible object[s] capable of having a value."⁵²³ Their personal possessions, such as equipment, clothing, and hides, clearly fall within the protected property. The Inuit's intellectual property, in the form of their traditional knowledge, is an "intangible object capable of having a value." In addition, the Inuit possess intangible property rights of access to the harvest of resources.

Climate change diminishes the value of the Inuit's personal property. For example, disappearing ice roads and snow damage sled and skidoo runners, as well as sled dogs' paws. Hides have become less valuable for use as clothing and for sale because of changes in the animals' fur characteristics resulting from climate change, changes in optimal timing for harvest, and difficulties in processing the hides. In the small community of Pangnirtung in Nunavut, Inuit conduct a commercial fishery through the sea ice that employs up to fifty people. In recent years, however, the ice often has not formed properly or has broken up early with ensuing losses of vital equipment.⁵²⁴ Climate change is thus diminishing the use and value of the Inuit's personal property.

In addition, the Inuit possess intangible property in the form of traditional knowledge. The Inuit's traditional knowledge is a valuable intangible possession protected under the definition of protected property described in the *Awasi Tingni* decision.⁵²⁵ The Inuit educational system of passing on and building upon knowledge from one generation to the next has tremendous value to the Inuit's survival and culture. The Inuit have spent millennia developing knowledge about their physical surroundings. In addition, western scientists have recently recognized the value of traditional Inuit knowledge to their studies on species, climate change, and other critical scientific issues.⁵²⁶ The unprecedented rapid climate change has made much of this traditional knowledge inaccurate, affecting the Inuit's ability to "use, share, market and bequeath that [knowledge] to future generations."⁵²⁷ Climate change has therefore made the Inuit's traditional knowledge less valuable.

The right to access lands for subsistence purposes is also an intangible property right, the value of which is diminished by the effects of global warming. The Nunavut Land Claims Agreement provides that Inuit have free and unrestricted access to all lands and waters within Nunavut, Canada, subject to conservation requirements, to their full level of economic, social and cultural need.⁵²⁸ In Alaska, the Alaska National Interest Lands Conservation Act ensures rural residents reasonable access to all public lands, including the Alaska National Wildlife Refuge, for subsistence uses.⁵²⁹ The Inuit's property interest in access to lands to which "they

have historically had access for their traditional activities and livelihood”⁵³⁰ is now less valuable because climate change has substantially diminished the fruit of the harvest from those lands. For example, the disappearance of travel routes and healthy game due to climate change has made access for the Inuit more difficult and less valuable. “Having spent considerable time and political energy negotiating comprehensive land claim agreements which guarantee their right to harvest wildlife, Inuit leaders are warranted in questioning the value of the agreements if, as a result of climate change, key species can no longer withstand hunting or are no longer to be found.”⁵³¹

In these ways, global warming is reducing the “existence, value, use, [and] enjoyment”⁵³² of the Inuit’s property. As the warming continues to accelerate, this damage will continue to reduce the value of Inuit property. U.S. acts and omissions regarding climate change are thus violating the Inuit’s fundamental human right to use and enjoy their property.

4. THE EFFECTS OF GLOBAL WARMING VIOLATE THE INUIT’S RIGHT TO THE PRESERVATION OF HEALTH

a. The American Declaration guarantees the Inuit the right to the preservation of health

The American Declaration provides that “[e]very person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”⁵³³ This guarantee is interpreted in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”) as ensuring “the enjoyment of the highest level of physical, mental and social well-being.”⁵³⁴ Other major international human rights instruments also safeguard the right to health, including the Universal Declaration of Human Rights,⁵³⁵ the International Convention on Economic, Social, and Cultural Rights (ICESCR),⁵³⁶ and the African Charter on Human and Peoples’ Rights.⁵³⁷ The universal and fundamental nature of this right is further supported by the fact that at least seventy national constitutions recognize the state’s obligation to promote health, many of them directly proclaiming a right to health.⁵³⁸

This Commission has acknowledged the close relationship between environmental degradation and the right to health, especially in the context of indigenous peoples. In the *Yanomami* case, the Commission recognized that harm to people resulting from environmental degradation violated the right to health in Article XI of the American Declaration.⁵³⁹ In that case, the Brazilian government’s failure to prevent environmental degradation stemming from road construction and subsequent development of Yanomami indigenous lands caused an influx of pollutants and resulted in widespread disease and death. The Inter-American Commission found that “by reason of the failure of the Government of Brazil to take timely and effective measures [on] behalf of the Yanomami Indians, a situation has been produced that has resulted in the violation, injury to them, of the ... right to the preservation of health and to well-being.”⁵⁴⁰ Additionally, in the *Belize Maya* case, the Commission noted that the right to health and well-

being in the context of indigenous people's rights was so dependent on the integrity and condition of indigenous land that "broad violations" of indigenous property rights necessarily impacted the health and well-being of the Maya.⁵⁴¹

International health and environmental law also lend support and meaning to the American Declaration's right to health. The preamble of the Constitution of the World Health Organization (WHO) recognizes that "[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being."⁵⁴² The Stockholm Convention on Persistent Organic Pollutants, signed by the United States, seeks "to protect human health and the environment from persistent organic pollutants."⁵⁴³ The WHO Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes aims "to promote at all appropriate levels, nationally as well as in transboundary and international contexts, the protection of human health and well-being, both individual and collective."⁵⁴⁴ Finally, principle 14 of the Rio Declaration recognizes the importance of controlling "any activities and substances that ... are found to be harmful to human health."⁵⁴⁵

The close relationship between environmental protection and health has been also been recognized by various international human rights bodies and experts. Special Rapporteur Rodolfo Stavenhagen of the UN Commission on Human Rights recently concluded that "the effects of global warming and environmental pollution are particularly pertinent to the life chances of Aboriginal people in Canada's North, a human rights issue that requires urgent attention at the national and international levels, as indicated in the recent Arctic Climate Impact Assessment."⁵⁴⁶ Special Rapporteur Fatma Zohra Ksentini of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on Promotion and Protection of Human Rights) identified the right to health as a fundamental right and analyzed the effects of the environment on that right.⁵⁴⁷ Drawing from various international human rights documents and national constitutions, she found that, under customary international law, "everyone has a right to the highest attainable standard of health."⁵⁴⁸ She further found that, "[i]n the environmental context, the right to health essentially implies feasible protection from natural hazards and freedom from pollution."⁵⁴⁹ The United Nations' Special Rapporteur on the right to health, Paul Hunt, also noted that the right to health gives rise to an obligation on the part of a State to ensure that environmental degradation does not endanger human health.⁵⁵⁰ The recognition of the connection between health and the environment is further underscored by the definition of pollution in international environmental law as "the introduction by man of substances or energy into the environment resulting in such deleterious effects as hazards to human health or which harm/endanger human health."⁵⁵¹

The U.N. Committee on Economic and Social Rights explained that the right to "the highest attainable standard of physical and mental health" in Article 12.1 of the International Covenant on Economic, Social and Cultural Rights

is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health

embraces a wide range of socio-economic factors ... and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”⁵⁵²

The Committee further states that victims of a violation of the right to health should have access to remedies at the both national and international levels and should be entitled to adequate reparation.⁵⁵³

The World Health Organization (“WHO”) has also recognized on numerous occasions the right to health in connection with environmental harms. In 1976, the WHO Executive Board recommended that the World Health Assembly adopt a resolution urging governments “to make environmental health programmes an integral part of their national health and development efforts, particular attention being given to the most needy sectors of the population.”⁵⁵⁴ The resolution, adopted by the World Health Assembly on January 27, 1976, considered that “progress in improving the conditions of the human environment as they affect health is too slow” and emphasized that “the improvement of environmental conditions should be seen as part of the total health and development effort.”⁵⁵⁵ In 1989, the WHO Executive Board became concerned that environmental degradation resulting from indiscriminate use of technology posed a threat to human health. It recommended that the World Health Assembly adopt a resolution urging WHO Member States “to establish and evaluate policies and strategies for preventing adverse effects of development to the environment and on health” and calling on the international community “to increase their support for activities to promote a healthy environment and to control adverse effects of development on the environment and health.”⁵⁵⁶

The right to preservation of health recognized in the American Declaration necessarily includes a prohibition on degradation of the environment to the point that human health and well-being are threatened. The United States has an international obligation not to infringe upon the Inuit’s human right to health and well-being through degradation of their physical environment.

b. The effects of global warming violate the Inuit’s right to the preservation of health

Climate change caused by the U.S. government’s regulatory actions and inactions is harmful to the Inuit’s health and well-being. Continued accelerating climate change will continue to add to these and other health risks in the future. Disappearing sea-ice and changing environmental conditions have diminished populations, accessibility, and quality of fish and game upon which the Inuit rely for nutrition. The Inuit’s health is also adversely affected by changes in insect and pest populations and the movement of new diseases northward. The quality and quantity of natural sources of drinking water has decreased, exacerbating the already damaging effects on Inuit health. In addition to physical health issues, the Inuit’s mental health has been damaged by the transformation of the once familiar landscape, and the resultant cultural

destruction. These increases in health risks, caused by the United States' acts and omissions, violate the Inuit's right to the preservation of health.

Like the Mayan people in the *Belize Maya* case, the Inuit rely so heavily on the condition of the land for their health and well-being that the damage to their environment caused by climate change violates their human right to health and well-being. Climate change has subjected the Inuit to a higher risk of diet-related diseases. The Inuit's diet is rapidly changing because of the scarcity, inaccessibility, and decrease in quality of traditional food sources due to climate change. Loss of game habitat and food sources, and the inaccessibility of game due to travel difficulties hinder the Inuit's ability to rely on the subsistence harvest for sustenance. The less healthy and more expensive store-bought food the Inuit must use to supplement the subsistence harvest increases dietary health risks such as "cancer, obesity, diabetes, and cardiovascular diseases."⁵⁵⁷ In addition, the deteriorating health of harvested game negatively affects the nutritional value of subsistence game to the Inuit.



The rapidly disappearing sea ice, which is habitat and hunting grounds for polar bears, has forced the bears to into a smaller, less productive living space. Consequently, the bears must search for food on land, where more frequent and dangerous encounters between Inuit and bears results. In addition, the bears have begun raiding garbage dumps in Inuit settlements, further endangering the health of Inuit. Grizzly and black bears have also become a problem for the Inuit. Grizzly bears have extended their range further north because of climate change, and have been spotted hunting seal and raiding caribou caches. Black bears have also been seen more frequently further north. The extra competition for food and loss of harvested food from previously unknown species threaten the health of the Inuit.

Shifts in species distribution due to climate change also subject the Inuit to a greater risk of topical infections, allergies, and animal-borne diseases. For example, the increase in flies and mosquitoes brings an increased risk of infection from insect bites, as well as of fly- and mosquito-borne illnesses.⁵⁵⁸ These risks are echoed in the Arctic Climate Impact Assessment's projection that "animal diseases that can be transmitted to humans, such as West Nile virus, are likely to pose increasing health risks."⁵⁵⁹ Increased populations of pests such as fox and mice have also raised the risk of rabies. Residents of Sachs Harbor have begun to suffer from allergies to white pine pollen, which has moved northward, as well as from skin rashes and other skin problems due to increased sun and wind arising from climate change.⁵⁶⁰

Climate change is also profoundly affecting the Inuit's mental health. Transformation of the once familiar landscape causes psychological stress, anxiety, and uncertainty.⁵⁶¹ The loss of important cultural activities such as subsistence harvesting, passing on traditional knowledge to

younger generations, weather forecasting, and igloo building can induce psychological problems.⁵⁶² Because of the increased danger and insecurity of travel, the practice of traditional cultural activities induces more stress than in the past, adding emotional barriers to the physical barriers to the practice of those cultural activities.⁵⁶³ In addition, the damage to homes, infrastructure and communities from increased coastal erosion, land slumping, and flooding result in displacement, dislocation, and associated psychological impacts.⁵⁶⁴



The United States' acts and omissions with respect to climate change have degraded the arctic environment to the point that those acts and omissions violate the Inuit's fundamental human right to the preservation of their health.

5. THE EFFECTS OF GLOBAL WARMING VIOLATE THE INUIT'S RIGHT TO LIFE, PHYSICAL INTEGRITY AND SECURITY

a. The American Declaration protects the Inuit's right to life, physical protection and security

Under the American Declaration, "[e]very human being has the right to life, liberty and the security of his person."⁵⁶⁵ The right to life is the most fundamental of rights, and is contained in all major international human rights conventions.⁵⁶⁶ The United States has repeatedly bound itself to protect this fundamental right by ratifying the OAS Charter and the ICCPR,⁵⁶⁷ adopting the American Declaration, and signing the American Convention on Human Rights.⁵⁶⁸ The right to life is also a general principle of law that is contained in the constitutions of many nations, including that of the United States.⁵⁶⁹

This Commission has made clear that environmental degradation can violate the right to life. In the *Yanomami* case, the Commission established a link between environmental quality and the right to life.⁵⁷⁰ In that case, the Brazilian government had constructed a highway through Yanomami territory and authorized the exploitation of the territory's resources. These actions led to the influx of non-indigenous people who brought contagious diseases that spread to the Yanomami, resulting in disease and death. The Commission found that, among other things, the government's failure to protect the integrity of Yanomami lands had violated the Yanomami's

rights to life, liberty and personal security guaranteed by Article 1 of the American Declaration.⁵⁷¹

In its Report on the Situation of Human Rights in Ecuador, the Commission stated that “[t]he right to have one’s life respected is not ... limited to protection against arbitrary killing.”⁵⁷²

The realization of the right to life, and to physical security and integrity 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.⁵⁷³

In discussing the connection between the physical environment and the right to life, the report concluded that environmental degradation can “give rise to an obligation on the part of a state to take reasonable measures to prevent” the risk to life associated with environmental degradation.⁵⁷⁴ The Commission noted that human rights law “is premised on the principle that rights inhere in the individual simply by virtue of being human,” and that environmental degradation, “which may cause serious physical illness, impairment and suffering on the part of the local populace, [is] inconsistent with the right to be respected as a human being.”⁵⁷⁵

This application of the American Declaration is also consistent with the interpretation of the right to life under the International Covenant on Civil and Political Rights. In *E.H.P. v. Canada*, a group of Canadian citizens alleged that the storage of radioactive waste near their homes threatened the right to life of present and future generations. The U.N. Human Rights Committee found that the case raised “serious issues with regard to the obligation of States parties to protect human life,” but declared the case inadmissible due to failure to exhaust domestic remedies.⁵⁷⁶ The Committee has also stated that the right to life “has been too often narrowly interpreted.... [It] cannot properly be understood in a restrictive manner, and the protection of this right requires that states adopt positive measures.”⁵⁷⁷

The United States has an obligation to protect the Inuit’s human rights to life and personal security. This obligation includes the duty not to degrade the arctic environment to such an extent that the degradation threatens the life and personal security of Inuit people.

b. The effects of global warming violate the Inuit’s right to life, physical protection and security

The United States’ acts and omissions regarding global climate change violate the Inuit’s right to life, physical security and integrity. Changes in ice and snow jeopardize individual Inuit lives, critical food sources are threatened, and unpredictable weather makes travel more dangerous at all times of the year. The impacts the Inuit are already suffering will continue to worsen as climate change accelerates.

Individual Inuit lives are at risk due to the effects of climate change. As explained above, the sea ice, an important resource for travel and hunting, freezes later in the year, thaws earlier and more suddenly, and is thinner because of climate change.⁵⁷⁸ In the spring, the thaw happens much more rapidly, causing the ice to change from safe to perilous in a matter of hours rather than weeks. The thinner ice and new, unpredictable areas of open water cause hunters and other travelers to fall through the ice and be injured or drowned.

Not only are harvested species becoming scarcer as the climate changes, the Inuit's access to these foods is diminishing due to difficulties in travel and changes in game location.⁵⁷⁹ The U.S. Congress has acknowledged that, for many Inuit, "no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses."⁵⁸⁰ Damage to the Inuit's subsistence harvest violates their right to life.

Sudden, unpredictable storms due to climate change also threaten the Inuit's lives and physical security. The inability of elders to predict the weather accurately increases the risk that hunters and travelers will be caught unprepared, with life-threatening consequences in the harsh arctic climate. Stranded travelers can no longer rely on the abundance of snow from which to construct emergency shelters.

This lack of shelter has contributed to deaths and injuries among hunters stranded by sudden storms.⁵⁸¹ In addition, the decrease in summer ice has caused rougher seas and more dangerous storms, increasing hazards to boaters.⁵⁸² Formerly familiar and common activities are now laden with unavoidable and unpredictable threats to human life because of the unpredictable weather.



Climate change has damaged the arctic environment to such an extent that the damage threatens human life. The United States has breached its duty under the American Declaration to protect the Inuit's right to life and personal security.

6. THE EFFECTS OF GLOBAL WARMING VIOLATE THE INUIT'S RIGHT TO THEIR OWN MEANS OF SUBSISTENCE

a. The American Declaration protects the Inuit's right to their own means of subsistence

A people's right to their own means of subsistence is inherent in and a necessary component of the American Declaration's rights to property, health, life, and culture in the context of indigenous peoples. The ICESCR and ICCPR both provide that all peoples "may freely dispose of their natural wealth and resources," but that "[i]n no case may a people be deprived of its own means of subsistence."⁵⁸³ The U.N. Draft Declaration on the Rights of Indigenous People provides the same assurance to indigenous peoples.⁵⁸⁴ In the context of indigenous peoples, the rights to self-determination and one's own means of subsistence have become recognized principles of international human rights law.

Included within a people's right to their own means of subsistence is the right to control over natural resources and the physical environment.⁵⁸⁵ As described in more detail above, this Commission has noted that the basic principles reflected in many of the provisions of the Proposed American Declaration on the Rights of Indigenous Peoples, "including aspects of Article XVIII, reflect general international legal principles developing out of and applicable inside and outside of the inter-American system and to this extent are properly considered in interpreting and applying the provisions of the American Declaration in the context of indigenous peoples."⁵⁸⁶ Article XVIII of the Proposed Declaration states that indigenous peoples have the "right to an effective legal framework for the protection of their rights ... with respect to traditional uses of their lands, interests in lands, and resources, *such as subsistence*."⁵⁸⁷ The Proposed Declaration also states that "[i]ndigenous peoples have the right to ... autonomy or self-government with regard to ... land and resource management, [and] the environment."⁵⁸⁸ Deprivation of control over natural resources and the environment necessarily deprives indigenous peoples of their own means of subsistence.

Other human rights bodies have acknowledged the right of a people to control over their own means of subsistence. In its 2002 Concluding Observations to Sweden, the U.N. Human Rights Committee recommended that Sweden take steps to involve the indigenous Sami people in decision-making processes that affect their traditional lands and economic activities, particularly "by giving them greater influence in decision-making affecting their natural environment and their means of subsistence."⁵⁸⁹ Similarly, in response to Canada's failure to implement recommendations for aboriginal land and resource allocation, the Human Rights Committee emphasized Canada's obligations under Article 1 of the ICCPR and the ICESCR, stating, "peoples ... may not be deprived of their own means of subsistence."⁵⁹⁰

The Human Rights Committee has also recognized that the right to culture requires protecting a people's means of subsistence. In the *Lubicon Lake* case, the Lubicon Lake Band of indigenous peoples asserted that the State's failure to protect their culture from the impacts of

development activities violated their right to self-determination.⁵⁹¹ Although the Human Rights Committee determined that it did not have jurisdiction to consider a violation of a collective right in a procedure designed to protect individual rights,⁵⁹² the Committee stated that the State's actions violated the right to culture in the ICCPR because they "threaten[ed] the [subsistence] way of life of the Lubicon Lake Band."⁵⁹³

Other international instruments also protect the right to subsistence. For example, Article 21 of the Draft U.N. Declaration on the Rights of Indigenous Peoples includes the right to subsistence, stating that indigenous peoples have the right "to be secure in the enjoyment of their own means of subsistence and development."⁵⁹⁴ ILO Convention 169 also protects the right of a people to their own means of subsistence, stating that a right of access to lands they do not own, but "to which they have traditionally had access for their subsistence and traditional activities" must be protected.⁵⁹⁵ Convention 169 further states that the "subsistence economy and traditional activities ... such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development."⁵⁹⁶

The Inuit's right to their own means of subsistence is protected under international law and is an intrinsic part of the rights established in the American Declaration. The United States has an international obligation not to deprive the Inuit of their own means of subsistence.

b. The effects of global warming violate the Inuit's right to their own means of subsistence

Arctic climate change is making the Inuit's subsistence harvest more dangerous, more difficult and less reliable. In fact, climate change is gradually and steadily destroying the Inuit's means of subsistence.⁵⁹⁷ Changes in ice, snow, weather, seasons and land have combined to deprive the Inuit of their ability to rely exclusively on the subsistence harvest, violating their right to their own means of subsistence. Continuing changes in the arctic climate will further interfere with the Inuit's right to their own means of subsistence.



Because travel is an essential component of the Inuit subsistence harvest, the deprivation of safe and reliable means of travel deprives the Inuit of their means of subsistence. Travel over ice has become more dangerous and more difficult because of more sudden thaws, thinner ice, and new areas of open water that persist throughout the winter. The later freezes and earlier thaws have dramatically shortened the winter ice travel season. The loss of summer sea ice has also made boat travel more

dangerous because of the loss of the multi-year ice's wave-suppressing effect. Travel over snow, an important surface for travel using sleds or snowmobiles, has been diminished by the later snowfall, lack of snow cover, earlier, more sudden thaw, and loss of multi-year snow cover. The change in the orientation of snowdrifts has made navigation using the snowdrifts unreliable, depriving the Inuit of one of the few navigation tools consistently available and contributing to the decline in their ability to subsist on harvested foods. The Inuit can no longer plan safe travel because the unpredictable weather has deprived them of the ability to forecast the weather. The resulting trip cancellations, stranded travelers and the need for more cumbersome equipment further deprive the Inuit of their ability to subsist. The catastrophic effects that climate change has had on travel have deprived the Inuit of their own means of subsistence.

In addition to depriving the Inuit of their ability to travel in safety, climate change has crippled the subsistence harvest through its effect on harvested foods. Land animals' winter food sources are now trapped below a hard, impenetrable layer of ice caused by the new autumn freeze-thaw-freeze pattern, resulting in fewer, less healthy, and less accessible land animals for harvest. The harvest of ice-dependent animals has also become less fruitful because the animals' habitat, food sources, and living space are disappearing. The animals are suffering a loss in numbers and decline in overall health that is expected to accelerate in the coming years.⁵⁹⁸ The remaining animals are changing location and habits, making them less accessible, harder to find and, because of impacts on the ability to travel, sometimes impossible to hunt.



As a result of the problems with travel and food sources due to climate change, the Inuit are no longer able to rely exclusively on the subsistence harvest for their survival. Climate change has therefore deprived the Inuit of their means of subsistence. The United States' acts and omissions with regard to climate change, done without consultation or consent of the Inuit, violate the Inuit's human rights to self-determination and to their own means of subsistence.

7. THE EFFECTS OF GLOBAL WARMING VIOLATE THE INUIT'S RIGHTS TO RESIDENCE AND MOVEMENT AND INVIOABILITY OF THE HOME

a. The American Declaration guarantees the Inuit's right to residence and movement and inviolability of the home

The American Declaration guarantees every person "the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will."⁵⁹⁹ The American Declaration also guarantees every person "the right to the inviolability of his home."⁶⁰⁰ Like the right to life, the rights to residence and movement and inviolability of the home are established in all major human rights instruments, including the Universal Declaration of Human Rights,⁶⁰¹ the ICCPR,⁶⁰² the

American Convention on Human Rights,⁶⁰³ the European Convention on Human Rights⁶⁰⁴ and the African Charter on Human and Peoples' Rights.⁶⁰⁵ Many constitutions also guarantee the right to movement and residence.⁶⁰⁶

In the *Yanomami* case, this Commission found a violation of the right to residence and movement where some Yanomami people had to leave their traditional lands because of a series of adverse changes caused by government development projects.⁶⁰⁷ The Commission noted that the construction of a highway through the territory of the Yanomami Indians, "compelled them to abandon their habitat and seek refuge in other places."⁶⁰⁸ The right to residence and movement was violated where parts of the Yanomami lands became uninhabitable because of changes to the land and the environment caused by government-sponsored development projects.⁶⁰⁹

Other human rights tribunals have recognized the significant link between environmental quality and the right to the inviolability of the home. In *Lopez Ostra v. Spain*, the European Court of Human Rights held that Spain's failure to prevent a waste treatment plant from polluting nearby homes violated this right.⁶¹⁰ Similarly, in *Guerra and Others v. Italy*, the Court held that severe environmental pollution may affect individuals' well-being and adversely affect private and family life, and as a result held Italy liable for its failure to secure these rights.⁶¹¹ The European Court recently reaffirmed this concept in *Fadeyeva v. Russia*, in which the failure of the State to relocate the applicant away from a highly toxic area constituted violation of the right to respect for the home and private life.⁶¹² The European Court noted that forcing a few people to bear the environmental costs of economic benefits to the entire community did not strike a fair balance between these competing interests. The connection between the home, private life and the environment is thus well established in international law.

The United States thus has an obligation not to infringe upon the Inuit's rights to residence and movement and inviolability of the home through destruction of the land upon which the Inuit have built their homes.

b. The effects of global warming violate the Inuit's right to residence and movement, and inviolability of the home

The United States' acts and omissions that contribute to global warming violate the Inuit's right to residence and movement because climate change threatens the Inuit's ability to maintain residence in their communities. Furthermore, the Inuit's right to inviolability of the home is violated because the effects of climate change adversely affect private and family life. In particular, climate change harms the physical integrity and habitability of individual homes and entire villages. Coastal erosion caused by increasingly severe storms threatens entire coastal communities. Melting permafrost causes building foundations to shift, damaging Inuit homes and community structures. The destruction is forcing the coastal Inuit to relocate their communities and homes farther inland, at great expense and distress.

This forced relocation goes to the heart of the rights to residence and movement and inviolability of the home. As in the *Yanomami* case, the destruction of Inuit homes due to climate change “compel[s the Inuit] to abandon their habitat and seek refuge in other places,”⁶¹³ affecting their family and private lives as well as denying them the ability “to fix [their] residence ... and not to leave it except by [their] own will. U.S. acts and omissions with regard to climate change therefore violate the Inuit’s fundamental human rights to residence and movement and inviolability of the home.

C. THE AMERICAN DECLARATION SHOULD BE APPLIED IN THE CONTEXT OF RELEVANT INTERNATIONAL NORMS AND PRINCIPLES

In their interpretation of the American Declaration of the Rights and Duties of Man, both the Court and Commission have consistently recognized the relevance of broader developments in the field of international law to their analysis of rights, duties, and violations.

1. THE AMERICAN CONVENTION ON HUMAN RIGHTS BEARS ON INTERPRETATION OF THE AMERICAN DECLARATION

The Commission has acknowledged that the American Convention on Human Rights “may be considered to represent an authoritative expression” of the rights contained in the American Declaration, and is therefore properly considered in interpreting the Declaration’s provisions.⁶¹⁴ The jurisprudence of the Commission and the Court in interpreting the Convention’s provisions is thus also relevant in interpreting the Declaration. At the same time, the Convention should not restrict the Court’s reading of the American Declaration or other sources of human rights. Specifically, Article 29 of the Convention states that the Convention must not be interpreted as “restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention...; precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.”⁶¹⁵

2. DEVELOPMENTS IN OTHER INTERNATIONAL HUMAN RIGHTS SYSTEMS SHOULD BE TAKEN INTO ACCOUNT WHEN INTERPRETING AND APPLYING THE AMERICAN DECLARATION

The Commission similarly has recognized that “the provisions of ... the American Declaration, should be interpreted and applied in context of developments in the field of international human rights law.”⁶¹⁶ It has noted in particular the appropriateness of considering other international and regional human rights documents in the interpretation and application of the rights contained in the American Declaration.⁶¹⁷ The Commission has used this approach often in interpreting the scope and meaning of the rights contained in the American Declaration and Charter of the Organization of American States (“OAS Charter”).⁶¹⁸ Other human rights instruments that are relevant to the understanding of the rights at issue in this case include, as

demonstrated above, the American Convention, the ICCPR, the ICESCR, other regional human rights conventions, the ILO Convention 169, and the official interpretations of these instruments by human rights bodies.

3. INTERNATIONAL ENVIRONMENTAL NORMS AND PRINCIPLES ARE RELEVANT TO THE INTERPRETATION AND APPLICATION OF THE AMERICAN DECLARATION

In the *Awás Tingni* case, the Court reaffirmed that “human rights treaties are live instruments whose interpretation must adapt to the evolution of the times.”⁶¹⁹ In its advisory opinion regarding *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, the Court considered the questions before it “in the context of the evolution of the fundamental rights of the human person in contemporary international law.”⁶²⁰

The American Declaration should thus be applied “with due regard to other relevant rules of international law applicable to member states against which complaints of human rights violations are properly lodged.”⁶²¹ As the Court has noted, “a treaty can *concern* the protection of human rights, regardless of what the principal purpose of the treaty might be.”⁶²² The Commission has similarly stated that “it would be inconsistent with general principles of law for the Commission to construe and exercise its Charter-based mandate without taking into account other international obligations of member states which may be relevant.”⁶²³ Finally, in interpreting the term “other treaties” in Article 64 of the American Convention, the Court affirmed its competence to interpret the provisions of the American Declaration using international developments as well as the provisions of the American Convention.⁶²⁴

In considering the United States’ acts and omissions relating to climate change, therefore, the Commission should take into account not only the specific rights provisions in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights, but also other relevant obligations the United States has assumed under international treaties and customary international law. The United States’ breach of these obligations reinforces the conclusion that the United States is violating rights protected by the American Declaration.

a. The United States is violating its obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol

The United States ratified the U.N. Framework Convention on Climate Change (FCCC) on October 15, 1992, and the Convention entered into force on March 21, 1994.⁶²⁵ The objective of the Framework Convention is to “achieve ... stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”⁶²⁶ To further this objective, Article 4.1(b) of the Convention requires Parties to formulate and implement national programs for mitigating anthropogenic greenhouse gas emissions.⁶²⁷

Article 4.2(b) is more specific: each Annex I (developed country) Party must communicate information on its policies and measures to limit emissions and enhance removals of greenhouse gases, and on the resulting projected emissions and removals through 2000, “with the aim of returning individually or jointly to [its] 1990 levels these anthropogenic emissions of [GHGs].”⁶²⁸

Although the year 2000 has passed, this obligation is not moot.* The terms of Article 4.2(b), given their “ordinary meaning ... in their context and in light of the object and purpose,”⁶²⁹ remain operative as long as the Framework Convention remains in force. In light of the Framework Convention’s objective of avoiding dangerous atmospheric concentrations of greenhouse gases, mooted the obligation would make no sense. Indeed, were Article 4.2(b) to be read as applying only during the period before 2000, the objective would have been unachievable from the start. It is clear that U.S. climate policy must aim at returning U.S. emissions to 1990 levels as quickly as possible.

Judging by its most recent report to the Framework Convention secretariat, which forecasts U.S. GHG emissions increasing markedly for the foreseeable future,⁶³⁰ as well as statements by President Bush and numerous other government officials,[†] the United States has abandoned the aim of returning its emissions to 1990 levels, in violation of its obligation to implement the Framework Convention in good faith and in light of the Convention’s objective. Although the U.S. government has acknowledged its obligation to reduce emissions, it has not taken steps to remedy the defects identified by the secretariat in its first review of U.S. climate policy, in 1999.⁶³¹

Explaining his position on global warming, President Bush stated, “Our country, the United States is the world’s largest emitter of manmade greenhouse gases. We account for almost 20 percent of the world’s man-made greenhouse emissions. We also account for about one-quarter of the world’s economic output. We recognize the responsibility to reduce our emissions.”⁶³² In spite of this recognition, the U.S. Government predicts that U.S. emissions will

* The obligation to aim to return greenhouse gas emissions to 1990 levels is found in Article 4.2(b), whereas the reference to returning “by the end of the present decade to earlier levels” is in Article 4.2(a). While the reporting requirements of Article 4.2(b) are limited to the “the period referred to in subparagraph (a),” the aim to return emissions to 1990 levels is not. Parties have disregarded the limitation on reporting requirements.

† For example, President Bush announced, “My administration is committed to cutting our nation’s greenhouse gas intensity – how much we emit per unit of economic activity – by 18 percent over the next 10 years.” “President Announces Clear Skies & Global Climate Change Initiatives,” National Oceanic and Atmospheric Administration, Silver Spring, Maryland, Feb. 14, 2002 at <http://www.whitehouse.gov/news/releases/2002/02/20020214-5.html>. According to analysis by the Pew Center on Global Climate Change, the Administration’s 18% intensity target will allow *actual* emissions to increase 12% over the same period. Emissions will continue to grow at nearly the same rate as at present. Pew Center on Global, at http://www.pewclimate.org/policy_center/analyses/response_bushpolicy.cfm.

increase 42.7% by 2020, from 1562 MMTC in 2000 to 2088 MMTC in 2020.⁶³³ As if to confirm its complete rejection of Article 4.2, the United States' latest report to the secretariat makes no mention of ever returning to 1990 emissions levels, instead identifying the U.S. goal as the 18% carbon intensity reduction proposed by President Bush in 2001.⁶³⁴ The U.S. plan to reduce greenhouse gas intensity by 18% in ten years exceeds by only 4% the 14% reduction in greenhouse gas intensity expected in the absence of the President's additional proposed policies and measures.^{635*} This goal, which is to be met in 2012, will allow *actual* emissions to *increase* by 12% over the same period, a rate of growth that is nearly the same as at present.⁶³⁶

b. The United States is violating its obligation to avoid transboundary harm and to respect the principle of sustainable development

Customary international law requires the United States to prevent its territory from being used in a manner that causes harm outside of its jurisdiction. This obligation to avoid transboundary environmental harm is one of the most fundamental and widely recognized customary international law norms. It originates from the common law principle of *sic utere tuo ut alienum non laedus* (do not use your property in a manner that will harm others).⁶³⁷

For over half a century, this principle has been recognized by international tribunals as limiting the way in which States may use their territory. In the 1938 *Trail Smelter Arbitration* between the United States and Canada, the U.S.–Canada International Joint Commission held that “under principles of international law, as well as the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”⁶³⁸ In the *Corfu Channel Case*, the International Court of Justice recognized the principle even more broadly as “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.”⁶³⁹ More recently, in its 1996 advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice noted that “[t]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.”⁶⁴⁰

The prohibition on transboundary harm has also been included in numerous widely accepted treaties and declarations over the past several decades. For example, in adopting the 1972 Declaration of the United Nations Convention on the Human Environment (Stockholm Declaration) and the 1992 Rio Declaration on Environment and Development, the United States and 179 other nations agreed that sovereignty over natural resources is conditioned on the responsibility of States “to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national

* The report notes that the 18% improvement in intensity in actuality amounts to only a 4% improvement from expected emissions during the same period. U.S. Climate Action Report – 2002, *supra* note 91 at 5.

jurisdiction.”⁶⁴¹ The United States agreed to that formulation in several international treaties, including the 1993 North American Agreement on Environmental Cooperation⁶⁴² and the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.⁶⁴³ In a statement that the United States has recognized as expressing customary international law,⁶⁴⁴ the UN Convention on the Law of the Sea echoes these texts, stating that “States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as to not cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.”⁶⁴⁵ The Framework Convention itself acknowledges state responsibility for the prevention of transboundary harm, adopting the same language as the Stockholm and Rio Declarations.⁶⁴⁶

International law recognizes that the obligation to avoid transboundary harm limits States’ right to economic development. For example, both the Stockholm Declaration and the Rio Declaration condition the right of States “to exploit their own resources pursuant to their own environmental and development policies” on the responsibility to avoid transboundary environmental harm.* The International Court of Justice has explained that “[t]his need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.”⁶⁴⁷ Eminent scholars, including at least one judge of the International Court of Justice, consider sustainable development to be “a principle with normative value.”⁶⁴⁸ The Inter-American Commission took the same position when it stated that, although “the right to development implies that each state has the freedom to exploit its natural resources, ... the Commission considers that the absence of regulation, inappropriate regulation, or a lack of supervision in the application of extant norms may create serious problems with respect to the environment which translate into violations of human rights.”⁶⁴⁹

Climate change has already produced numerous transboundary environmental impacts as it alters the arctic environment. These impacts include melting ice and decreasing snow, erratic weather and alterations in land and water conditions. Through action and inaction with respect to climate change that have made a major and disproportionate contribution to these transboundary environmental impacts, the United States has violated its international responsibility for preventing activities within its jurisdiction from damaging the environment outside its borders. The United States’ failure to take effective action to minimize these impacts also violates the principle of sustainable development. These violations in turn have contributed to the human rights violations at issue in this petition.

* Principle 2 of the Rio Declaration, *supra* note 454, and principle 21 of the Stockholm Declaration, *supra* note 641, each provide that

States have ... the sovereign right to exploit their own resources pursuant to their own environmental [Rio adds: “and developmental”] policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

c. The United States is violating its obligation to act with precaution

The obligation of States to act cautiously in the face of scientific uncertainty is a well-established principle of international law. The Rio Declaration provides the most widely accepted articulation of this norm: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. When there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”⁶⁵⁰ The United States has stated its support for this part of the Rio Declaration.⁶⁵¹ The Malmö Ministerial Declaration, which came out of the United Nations Environment Programme’s First Global Ministerial Environment Forum in 2000, reaffirmed the dedication of the United States and numerous other nations to “the observation of the precautionary approach as contained in the Rio Principles.”⁶⁵²

The precautionary principle has been included in many of the major international environmental treaties, including agreements to address climate change, ozone, biodiversity, biosafety, and persistent organic pollutants.⁶⁵³ The United States has accepted treaties endorsing a precautionary approach, such as the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Heavy Metals and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.⁶⁵⁴ Moreover, recent environmental agreements demonstrate an emerging international trend of strengthening the precautionary principle to embrace an active obligation to make decisions in a precautionary manner.⁶⁵⁵

Most relevant here, the Framework Convention, to which the United States is a party, states that “[t]he Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.”⁶⁵⁶ The Convention specifically addresses scientific uncertainty by noting that “lack of full scientific certainty should not be used as a reason for postponing [cost-effective] measures” in the face of “threats of serious or irreversible damage.”⁶⁵⁷

U.S. action and inaction in response to its acknowledged contributions to global climate change demonstrate a failure to take precautionary measures. The U.S. government has repeatedly alleged uncertainty in climate science, and continues to do so, to justify its refusal to take effective steps toward reducing carbon emissions.⁶⁵⁸ The precautionary principle articulated in the Framework Convention and other international instruments would require the United States to take precautionary measures to reduce emissions even if the uncertainty alleged by the United States actually existed. At this point, however, there is no longer scientific uncertainty over the threat that climate change poses or the contribution of greenhouse gases to it. As detailed in Part II, the Intergovernmental Panel on Climate Change and the international and U.S. scientific communities agree that human-induced emissions of greenhouse gases are the principal cause of global warming. Moreover, the United States has acknowledged that it contributes almost 20% of the world’s greenhouse gas emissions,⁶⁵⁹ and that it plans to increase its net contributions of greenhouse gases each year.⁶⁶⁰

The impacts of climate change on the Arctic and Inuit are both serious and irreversible. The alterations in the ice and land are progressing rapidly, and causing long-term changes to the environment. Similarly, the loss of the Inuit's communities and traditional way of life cannot be easily corrected at a later date.

Although there remains some scientific uncertainty with respect to the nature and timing of sub-regional impacts, there is virtually no scientific uncertainty with respect to the issues relevant to this petition – the rapid and persistent warming of the Arctic as a result of the buildup of anthropogenic greenhouse gases in the atmosphere, and the highly adverse effect of this warming on the lives and culture of the Inuit. Were there some uncertainty concerning these issues, however, the U.S. approach to climate change would violate the precautionary principle.

4. THE UNITED STATES HAS A DUTY TO REMEDY BREACHES OF ITS INTERNATIONAL OBLIGATIONS

States' responsibility to prevent breaches of international law and remedy them when they occur is a foundational principle of international law. The Permanent Court of International Justice and its successor, the International Court of Justice, have repeatedly recognized States' duty to make reparations when they breach international law obligations. In its 1928 decision *Concerning the Factory at Chorzów*, the Permanent Court of International Justice held that “[i]t is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation.”⁶⁶¹ The International Court of Justice found state responsibility for international law violations and required reparations in both the *Corfu Channel Case* and the *Gabcikovo-Nagymaros Project*.⁶⁶² The opinion in *Gabcikovo-Nagymaros Project* explained that “[r]eparation must, ‘as far as possible,’ wipe out all the consequences of the illegal act.”⁶⁶³

The *Restatement (Third) of the Foreign Relations Law of the United States* similarly acknowledges that States must act to prevent violations of environmental obligations and are responsible for such breaches and their consequences.⁶⁶⁴ The principle of State responsibility is also imbedded in other principles of international law, such as the prohibition on transboundary harm discussed in Section III.C.3.b. The Stockholm and Rio Declarations, for example, specifically indicate that States are responsible for preventing transboundary harm resulting from activities on their territory or under their control.⁶⁶⁵

The Inter-American Court of Human Rights has recognized that these principles equally in the case of human rights obligations. In the *Velásquez Rodríguez* case, the Court ordered compensation for human rights violations, stating that “the obligation to indemnify is not derived from internal law [of the violating nation], but from violation of the American Convention. It is the result of an international obligation.”⁶⁶⁶

Similarly, the principle that the polluter should pay the costs of pollution, as articulated in the Rio Declaration, presumes responsibility on the part of those who pollute.⁶⁶⁷ The Malmö

Ministerial Declaration recently reiterated the necessity of applying the polluter pays principle,⁶⁶⁸ as did the Plan of Implementation resulting from the 2002 World Summit on Sustainable Development.⁶⁶⁹ By failing to act to reduce greenhouse gas emissions, the United States has allowed domestic emitters to impose the environmental costs of their pollution on those outside U.S. borders, with the Inuit suffering especially from this lapse.

The United States has failed thus far to take responsibility for the breaches of international law and their consequences that stem from its acts and omissions with respect to climate change. The United States has acknowledged its duty to reduce its greenhouse gas emissions,⁶⁷⁰ but its current policies result in continued emissions increases.⁶⁷¹ The ever-growing U.S. contribution to global climate change serves to accelerate the pace of the environmental impacts in the Arctic and the resultant violations of the Inuit's human rights.

The United States is obligated under international law to take responsibility for its contributions to global climate change both by limiting emissions and by paying reparations to those that it has harmed and continues to harm. The United States therefore has a duty to provide appropriate remedy and redress to the Inuit.

D. BY ITS ACTS AND OMISSIONS, THE UNITED STATES VIOLATES THE HUMAN RIGHTS OF THE INUIT

1. THE UNITED STATES IS THE WORLD'S LARGEST CONTRIBUTOR TO GLOBAL WARMING AND ITS DAMAGING EFFECTS ON THE INUIT

As established above, the United States is, by any measure, the world's largest contributor to global warming and its damaging effect on the Inuit. As the world's largest consumer of energy, both historically and at present, it emits the most fossil fuels and is responsible for the largest amount of cumulative emissions of any nation on Earth. It follows that the United States has contributed more than any other nation to the rise in global temperature. U.S. emissions of energy-related CO₂ are also vastly out of proportion to its population size. On a per-person basis, U.S. emissions in 2000 were more than five times the global average,⁶⁷² nearly two-and-a-half times the per capita emissions in Europe,⁶⁷³ and nine times those in Asia and South America.⁶⁷⁴ Among the countries with significant emissions, the United States had the highest level of per capita emissions.⁶⁷⁵

2. U.S. CLIMATE POLICY DOES NOT REDUCE GREENHOUSE GAS EMISSIONS

a. U.S. climate policy

In February 2002, the administration of U.S. president George W. Bush formulated a Global Climate Change Initiative, for which the stated goal is to reduce U.S. greenhouse gas emissions "intensity" by 18% between 2002 and 2012. Emissions intensity describes the ratio of greenhouse gases emitted per unit of economic output.⁶⁷⁶ The major elements of this initiative are a pair of programs, Climate Leaders and the "Climate VISION" Partnership, which are aimed

to persuade and provide limited assistance industry to voluntarily reduce its greenhouse gas emissions.⁶⁷⁷

Climate Leaders is administered by the U.S. Environmental Protection Agency (EPA), which describes it as an “industry-government partnership that works with companies to develop long-term comprehensive climate change strategies.”⁶⁷⁸ Member businesses adopt voluntary reduction targets, based either on emissions intensity or absolute emissions, and agree to inventory their greenhouse gas production to track progress toward these goals. Climate Leaders also requires companies to report their emissions and summarize their goals and achievements to EPA.

The “Climate VISION” Partnership is a similar public-private partnership scheme launched by the Department of Energy (DOE) in February 2003.* Similar to the Climate Leaders initiative, its mission is to induce business and trade associations to set and achieve voluntary emissions reduction goals within their sector.⁶⁷⁹ Targeted sectors include oil and gas, railroads, auto manufacturers, and chemical manufacturing.⁶⁸⁰ Additionally, the Federal government provides funding through the USDA Environmental Quality Incentives Program (EQIP) for farmers to engage in carbon sequestration projects.⁶⁸¹ It also revamped its Voluntary Reporting of Greenhouse Gases Program in order to allow companies to report any decreases in their emissions and, if emissions decreases are mandated in the future, secure credit for reported decreases.⁶⁸²

The President’s 2006 budget request to Congress includes \$524 million in tax incentives to reduce greenhouse gases.⁶⁸³ These incentives include tax credits for the purchase of hybrid and fuel-cell vehicles, residential solar heating systems, energy produced from landfill gas, electricity produced from alternative energy sources, and combined heat and power systems.⁶⁸⁴

In 2001, the United States established the multi-agency Climate Change Science Program (CCSP) to oversee and coordinate government research on areas of uncertainty in climate science. The President’s 2006 budget request for CCSP is nearly \$2 billion.⁶⁸⁵ The Climate Change Technology Program (CCTP), also established in 2001, is a multi-agency program to accelerate research and development of technologies that can achieve greenhouse gas emission reductions.⁶⁸⁶ With a projected budget of nearly \$3 billion in 2006, CCTP focuses on advanced technologies, such as hydrogen energy, zero-emissions coal-fired power plants, and nuclear fusion.⁶⁸⁷ The program also funds research and development of renewable energy, nuclear power, and energy efficiency.⁶⁸⁸

The Federal initiative also includes \$200 million for international assistance and cooperation. International programs include the International Partnership for a Hydrogen Economy,⁶⁸⁹ the Methane-to-Markets Partnership,⁶⁹⁰ the Carbon Sequestration Leadership

* Other agencies participating in Climate VISION include the EPA, Department of Transportation (DOT), Department of Agriculture (USDA) and Department of the Interior (DOI).

Forum,⁶⁹¹ the Generation IV International Forum (for nuclear energy research),⁶⁹² and several bilateral partnerships.⁶⁹³

b. U.S. climate policy is not effective

The President's goal of reducing emissions intensity by 18% and the initiatives adopted to implement that goal have had no discernible effect on U.S. emissions, which have increased by more than 13% between 1990 and 2003.⁶⁹⁴ Except for a dip between 2000 and 2001, emissions have risen every year since 1992, with increases averaging about 1% per year.⁶⁹⁵ There is no indication that this trend will abate as long as current climate policy remains in place. The measures that the government rely on to mitigate greenhouse gas emissions consist mainly of misleading and ineffective targets, voluntary initiatives, and speculative research.

i. Misleading and ineffective targets

The U.S. goal of reducing greenhouse gas *intensity* by 18% is unlikely to lead to any significant decrease in actual emissions. Greenhouse gas intensity tends to fall naturally, as energy efficiency improves and the U.S. economy shifts away from heavy industry. The Government Accountability Office accordingly predicts that without any government action, U.S. greenhouse gas intensity will decline 14% by 2012.⁶⁹⁶ Thus, by the government's own figures, achieving the 18% target will produce only a 4% decrease in emissions.⁶⁹⁷ In absolute terms, however, U.S. carbon dioxide emissions will actually *rise* 18% between 2002 and 2012, according to projections by the U.S. Energy Information Administration (EIA) (15% if the United States suffers low economic growth).⁶⁹⁸

The two programs intended to assist industry to achieve this small improvement in emissions intensity are not on track to succeed. Climate VISION has garnered only a few reluctant pledges to make minor cuts in emissions intensity, in most cases without any quantified reduction targets.⁶⁹⁹ In fact, the target set by the electricity industry for 2000 to 2010 exceeds EIA projections of "business-as-usual" emissions during that period.⁷⁰⁰ Furthermore, because Climate VISION does not require individual companies to set goals for emissions reductions, many of the worst polluters have avoided making even voluntary commitments.⁷⁰¹ While no data are yet available to gauge the progress of Climate VISION, initial results are not encouraging.*

The Climate Leaders program suffers from a similar problem. Of the seventy or so listed partners, only about half have set targets for emissions reductions.⁷⁰² As with Climate VISION, many of those targets would decrease emissions intensity, but would allow absolute emissions to increase.⁷⁰³ Despite being promoted as a major element of the government's climate initiative, Climate Leaders had an annual budget in 2004 of only \$1 million and a full-time staff of three.⁷⁰⁴

* For each sector, the Climate VISION website states that it is too early for emissions data to be available. See, e.g., Climate VISION, Automobile Manufacturers: Results, *available at* <http://www.climatevision.gov/sectors/automobile/results.html> (last visited Jul. 8, 2005).

ii. No mandatory controls

U.S. climate policy does not include any mandatory controls on greenhouse gas emissions. The United States signaled a willingness to adopt mandatory domestic emissions reductions in 1995, when it announced its intention to negotiate legally binding international emissions targets.⁷⁰⁵ It subsequently reversed course, however, and rejected both international and domestic mandatory targets.

President Bush opposes the Kyoto Protocol because, in his view, its binding targets would wreck the U.S. economy and be unfair and ineffective, as the Protocol does not similarly obligate major developing countries such as China and India.⁷⁰⁶ He also opposes mandatory domestic controls. In a letter to several U.S. Senators, he declared his opposition to caps on CO₂ emissions from power plants, a reversal of his own earlier views.⁷⁰⁷ In 2003, the general counsel for the EPA repudiated the position of his two predecessors⁷⁰⁸ and the EPA adopted the position that it did not have the authority to regulate carbon dioxide under the Clean Air Act.⁷⁰⁹ This view was subsequently upheld by a U.S. Federal court.⁷¹⁰

iii. U.S. research cannot ensure adequate reductions

U.S. climate policy relies heavily on future scientific and technological developments to achieve reductions. Technological development by its very nature is speculative, however, and the United States cannot be certain that it will have a dependable method for achieving adequate emissions reductions anytime in the near future. This over-reliance by the U.S. on technological innovation was criticized in the 2004 *Report on the in-depth review of the third national communication of the United States of America*, issued by the secretariat of the Framework Convention. The report criticized “the lack of concrete estimates for emission reductions to be delivered by new technologies.”⁷¹¹

Moreover, current investment decisions by U.S. companies could impede or preclude wide-scale adoption of new technologies identified or promoted by U.S. programs. This seems to be the case with integrated gasification combined-cycle (IGCC). This technology, which is being actively promoted by the U.S. government, would allow CO₂ to be separated out of coal-fired power plant emissions for sequestration. Of the 114 new plants currently in the planning stages nationwide, only 15 are designed to incorporate IGCC.⁷¹² The U.S. government has done little to encourage investment in IGCC. Government funding for FutureGen, the program under which IGCC was developed, has been sporadic.⁷¹³ With no prospect of mandatory greenhouse gas emissions cuts anywhere on the horizon, power companies see little to be gained from investing their money in technology to reduce emissions.⁷¹⁴

Nevertheless, the United States persists in relying heavily on future development of ground-breaking technologies.⁷¹⁵ The United States has reduced expenditures on energy efficiency—a tried-and-true approach—in favor of less tested methods such as carbon sequestration and production of hydrogen. While such approaches hold promise, they may

become commercially viable only decades in the future.* Spending on renewable energy has also fallen somewhat in recent years compared to investments in less immediately workable technologies.⁷¹⁶ The government's proposed 2006 budget would cut funding for research and development of new energy efficiency and renewable energy technologies even further.^{717†}

c. Indirect regulation

The United States has also failed to address major sources of emissions by other means. Power plants and vehicles are two of the main sources of U.S. greenhouse gas emissions, and both are subject to extensive government regulation. Yet the United States has repeatedly declined to extend such regulation to include greenhouse gases.

i. Power plants

Power plants produce 36% of man-made CO₂ in the United States.⁷¹⁸ The government has made clear, however, that it will not mandate any cuts in those emissions.⁷¹⁹ The United States affirmed this statement by leaving greenhouse gases uncovered by the Clear Skies Act, the most recent major legislation to deal with power plant emissions. EPA even withheld a report that an alternative air pollution bill regulating CO₂ as well as other pollutants would result in cleaner air than the Clear Skies proposal at an only marginally greater cost.⁷²⁰ Therefore, the government has not controlled the greatest source of greenhouse gases in the United States and does not plan to do so in the near future.

ii. Vehicles

Automobiles (including cars, sport utility vehicles, and light duty trucks) produce 20% of U.S. greenhouse gas emissions.⁷²¹ Emissions from transportation activities have risen substantially, from 395 MMTC in 1990 to 483 MMTC in 2003.⁷²² Although the United States could reduce emissions from the transportation sector by increasing fuel economy standards, relevant standards have remained almost constant since 1985.⁷²³ In fact, fuel efficiency has actually declined during this period, due to a loophole in the law that subjects vans, SUVs, and light duty trucks to less stringent standards.⁷²⁴ Furthermore, because there are more cars on the road in the United States today and drivers annually travel more miles, even had the government

* Indeed, wide-spread use of fuel cells, which are fueled by hydrogen, will not be practical until sufficient hydrogen production and distribution facilities have been built, in addition to the fuel cell technology itself being developed. National Academy of Engineering, "The Hydrogen Economy: Opportunities, Costs, Barriers, and R&D Needs," at 2, 2004, *available at* <http://www.nap.edu/books/0309091632/html>.

† The proposed DOE budget for 2006 would alter enacted 2005 expenditures by reducing funding for energy conservation by \$21 million and renewable energy by \$27 million, while adding \$22 million for nuclear, \$17 million for efficiency and sequestration, and \$28 million for fusion, sequestration, and hydrogen. Climate Change Expenditures, *supra* note 683, at 10.

maintained the fuel efficiency performance of past years, U.S. emissions would have increased and will continue to substantially increase.*

d. State and local measures are not enough

A number of U.S. state and local governments have attempted to partially fill the regulatory void created by the federal government. As demonstrated by ever-increasing national emissions and uninterrupted global warming trends, however, regulation in these fora cannot effectively mitigate greenhouse gas emissions. There is a strong structural disincentive against state governments enacting mandatory greenhouse gas cuts because many emitters could easily move to locales that do not regulate their production of greenhouse gases.⁷²⁵ Six states have already passed laws *banning* mandatory emissions reductions, setting themselves up as safe havens for companies fleeing from more proactive states.⁷²⁶

Those state and local measures which have been implemented tend to be voluntary and therefore difficult to enforce. This is the case with the U.S. Mayors Climate Protection agreement⁷²⁷ and the tax credits for energy efficiency and renewable energy, which states commonly use.⁷²⁸ Renewable energy mandates, which require electric utilities to generate a certain amount of power from renewable sources, are one of the few compulsory schemes being employed by states. They are in place in only 19 states, however, and often provide utilities an escape hatch by allowing electricity providers to purchase renewable energy credits rather than actually using renewable power and reducing their own greenhouse gas emissions.⁷²⁹ The Regional Greenhouse Gas Initiative, a Northeastern greenhouse gas cap-and-trade agreement that is one of the major pieces of non-federal greenhouse gas regulation, has already missed an important deadline of designing a program by April 2005.⁷³⁰

Even in the aggregate, such state and local efforts can be duplicative and lack coherent direction, which makes them inherently less effective than a centralized federal effort. Without federal mandates, standards, or even guidance, there is no yardstick by which states and municipalities can measure success and determine the usefulness of various initiatives. Furthermore, programs need funding to achieve anything substantial, and there already are reports of states failing to provide adequate financing.⁷³¹ No matter how enthusiastic state and local governments may be, they are not making, and probably cannot make, emissions reductions substantial enough to make a noticeable difference to curb the negative effects of climate change.⁷³²

* The Department of Transportation's National Household Travel Survey noted a rise in non-commercial person-miles of travel from approximately 1.8 trillion in 1977 to approximately 3.9 trillion in 2001. The number of vehicles in the United States nearly doubled in the same time period. DOT, National Household Travel Survey 9, 10, 2001, *available at* <http://nhts.ornl.gov/2001/pub/STT.pdf>. Similarly, truck mileage increased from 34.6 billion miles in 1975 to 72.4 billion in 2001. Bureau of Transportation Statistics, National Transportation Statistics 2005, Table 1-32: U.S. Vehicle Miles, *available at* http://www.bts.gov/publications/national_transportation_statistics/2005/html/table_01_32.html.

3. THE U.S. GOVERNMENT HAS OBSCURED CLIMATE SCIENCE, MISLEADING BOTH THE PUBLIC AND INDUSTRY AS TO THE SCALE AND URGENCY OF THE PROBLEM OF GLOBAL WARMING

The United States has consistently denied, distorted, and suppressed scientific evidence of the causes, rate, and magnitude of global warming. Despite substantial evidence of human-induced climate change, including several assessments by the Intergovernmental Panel on Climate Change (IPCC) and recent reports by its own agencies confirming and expanding on the findings of the IPCC,⁷³³ the U.S. government continues to insist that the science does not yet justify a reduction in greenhouse gas emissions.⁷³⁴ It stresses and frequently exaggerates the uncertainties in climate science as an excuse for inaction.⁷³⁵ A second opinion requested by the White House on the findings of the IPCC,⁷³⁶ and the U.S. government's own subsequent Climate Action Report (its third annual report to the UNFCCC),⁷³⁷ affirmed the mainstream scientific consensus that human greenhouse gas emissions are causing global warming. All of these assessments amply justify immediate action to address climate change. Rather than act, however, the U.S. government has attacked the evidence and obscured the ineffectiveness of its own climate policy. The President dismissed the first version of the Climate Action Report as a "report put out by the bureaucracy."⁷³⁸ The government subsequently revised the document to add a section stressing the remaining uncertainties in the science.⁷³⁹

The U.S. has also attempted to hide information about the certainty and urgency of global warming. For example, it cut the discussion of climate change out of EPA's 2002 annual report for the first time in six years.⁷⁴⁰ A similar incident occurred in 2003 when the White House insisted on such extensive alteration to the discussion of climate change in an EPA report, even attempting to insert findings from a study partly financed by the American Petroleum Institute,⁷⁴¹ that its authors left out that section almost entirely rather than misrepresent the science involved.⁷⁴² Senator Inhofe of Oklahoma, Chairman of the Senate Committee on Environment and Public Works, has openly denounced global warming as a "hoax" on the Senate floor, contending there has been no significant warming in the last century.⁷⁴³ Such behavior led the Union of Concerned Scientists to issue a statement, initially signed by a group of 60 leading scientists that included 19 Nobel laureates,* admonishing the administration for "misrepresent[ing] scientific knowledge and misle[ading] the public about the implications of its policies" on climate change and other issues,⁷⁴⁴ and reproaching the U.S. government for relying on "disreputable and fringe science."⁷⁴⁵

This trend has not abated. In December 2004, the United States issued new guidelines giving federal officials (for the most part, political appointees of the White House) the final sign-off on a series of climate change reports.⁷⁴⁶ A number of the scientific experts involved objected to this undermining of their autonomy, and one lead author even resigned.⁷⁴⁷ Reports also surfaced in June 2005 that the then-chief of staff of the White House Council on Environmental

* The Kyoto Protocol achieved the required level of participation when it was ratified by Russia in November 2005.

Quality, who had previously held a position lobbying against limits on greenhouse gas emissions for the petroleum industry and had no scientific training, repeatedly edited government reports on climate change science to downplay the link between global warming and greenhouse gases.⁷⁴⁸ He has since been hired by the fuel company ExxonMobil.⁷⁴⁹ This distortion and denial of climate science continues in the face of such recent developments as a 2005 joint statement by the U.S. National Academies of Science and ten more of the world's foremost national scientific academies, including those of Germany, China, India, and Russia, that urges nations to take prompt action to reduce emissions in the face of strong evidence that global warming is occurring and is caused by anthropogenic greenhouse gas emissions.^{750*} Even as the case for human-caused climate change and the need to do something about it has convinced the majority of scientists, as shown in even the United States' own scientific reports,⁷⁵¹ the U.S. government has persisted in trying to discredit the established evidence.

4. THE UNITED STATES HAS FAILED TO COOPERATE WITH INTERNATIONAL EFFORTS TO REDUCE GREENHOUSE GAS EMISSIONS

As the world's largest emitter of greenhouse gases, the United States is in a unique position to lead the global effort to avert global warming. Instead of cooperating with international efforts, however, the U.S. government has employed the same tactics of renouncing climate science and delaying action that characterize its domestic approach. Beginning with its rejection of the Kyoto Protocol in 2001,⁷⁵² the United States has hindered attempts by other nations even to agree on the need for coordinated action to deal with global warming. Without the United States, entry into force of the Protocol depended on ratification by Russia, the only remaining country with sufficient emissions to meet the threshold requirement. Russia vacillated for more than a year, due in no small part to a significant drop in the potential value of its emissions allowances when the world's largest buyer, the United States, left the market.

The United States also has obstructed the formulation of additional international measures. At the 10th Conference of the Parties to the UNFCCC, in Buenos Aires, the United States delegation blocked discussion of any steps beyond the expiration in 2012 of Kyoto's first commitment period, preventing anything beyond a weak promise of limited, informal, future talks.⁷⁵³ Other than modest funding of research through the UNFCCC and IPCC, the only international commitments of the United States are limited regional and bilateral partnerships that do not address reduction in greenhouse emissions. Those agreements are confined to research initiatives that will have speculative, long-term effects at best, with no immediate results.⁷⁵⁴ They receive relatively small amounts of funding averaging around \$200 to \$300 million for the last few years.⁷⁵⁵ In addition, they are not intended to expand scientific and technological knowledge, but merely to share and centralize independently-reached findings.⁷⁵⁶

Like other bilateral and regional agreements, the latest U.S. agreement, the Asia-Pacific Partnership on Clean Development, concentrates on long-term and uncertain technological

* The signatories are the national scientific academies of Brazil, Canada, France, Italy, Japan, and the United Kingdom.

advances.⁷⁵⁷ Furthermore, the pact's emphasis on clean development means that its aim is to affect the emissions of U.S. partner countries, like China and India, rather than U.S. emissions.⁷⁵⁸ It is unlikely that this partnership will result in actual emissions reductions; like President Bush's domestic initiative, the vision statement for the partnership states a goal of reducing carbon intensities, rather than achieving cuts in absolute emissions.⁷⁵⁹

In addition to impeding policy negotiations, the U.S. government has continued to quarrel about the relevance of basic climate science. As the Arctic Climate Impact Assessment neared completion in 2004, the United States worked to prevent the Arctic Council from issuing a previously agreed-upon policy report endorsing broad measures to deal with warming, contending that the detailed study did not provide enough evidence on which to base such proposals.⁷⁶⁰

The United States followed a similar course of action during the 2005 Group of Eight (G8) summit in Scotland. It blocked the inclusion of any targets or timetables for emissions reductions in the G8 joint communiqué and plan of action on climate change,⁷⁶¹ and pressured negotiators to delete sections that outlined problems associated with climate change.⁷⁶² It insisted upon removal of the simple statement "our world is warming." It rejected sections describing adverse warming effects already occurring in the Arctic and urging "ambitious" emissions reductions.⁷⁶³

By the time the official versions of the summit documents were issued, the scientific and policy details had been cut down to a third of their original length.⁷⁶⁴ The mere acknowledgment by the United States that action must be taken to address global warming was considered a step forward by world leaders.⁷⁶⁵

Although the United States concedes the fact that climate change is occurring and is caused in large part by anthropogenic greenhouse gases, it refuses to take meaningful action to tackle global warming. The result is that temperatures in the Arctic continue to rise unabated, with dire consequences for the Inuit.

VI. EXCEPTION TO EXHAUSTION OF DOMESTIC REMEDIES

Article 31.1 of the Commission's rules of procedure specifies: "In order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law."⁷⁶⁶ These general principles of international law are further elaborated in article 31.2(a), which establishes that the exhaustion requirement "shall not apply 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."⁷⁶⁷

Because there are no remedies “suitable to address [the] infringement” of the rights Petitioner alleges to have been violated in this case,^{*} the requirement that domestic remedies be exhausted does not apply in this case. Thus, the petition is admissible under the rules of procedure of the Commission.

A. U.S. LAW DOES NOT PROVIDE ADEQUATE OR EFFECTIVE PROTECTION AGAINST THE HUMAN RIGHTS VIOLATIONS SUFFERED BY THE INUIT

The Commission has held that “[i]f a remedy is not adequate in a specific case, it obviously need not be exhausted.”⁷⁶⁸ No U.S. law provides a remedy adequate to protect the rights alleged to have been violated in this petition.

1. THE RIGHT TO LIFE

The Fourteenth Amendment to the U.S. Constitution safeguards citizens’ right to life by prohibiting the States from depriving any person of life without due process of law. The Fifth Amendment places similar limitations on the federal government. However, neither the Fourteenth nor the Fifth Amendment is effective at remedying violations of the right to life that result from environmental harms, such as the violations described in this petition. The U.S. Supreme Court interprets the due process clauses of the Fourteenth and Fifth Amendments as limitations on governmental power to act but not a guarantee of any minimum level of safety and security:

[O]ur cases have recognized that the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual.⁷⁶⁹

In the present case, a substantial portion of the human rights violations arise out of omissions of the U.S. government, in particular the government’s ongoing failure to take meaningful and effective action to limit its contribution to climate change. The due process

^{*} The Inter-American Court of Human Rights has explained that adequate remedies are those “suitable to address an infringement of a legal right.” *Velásquez Rodriquez Case*, Inter-Am. Ct. H.R., Judgment of July 29, 1988, Series C. No. 4, ¶ 64. *See also* *Juan Carlos Bayarri v. Argentina*, Case No. 11.280, Commission Report No. 2/01, January 19, 2001, OEA/ser. L/V/II.111 doc.20 rev., ¶ 27 fn.12 (“If a remedy is not adequate in a specific case, it obviously need not be exhausted”) (*citing Velásquez Rodriquez Case* at ¶ 63 (“[The exhaustion requirement] speaks of ‘generally recognized principles of international law.’ Those principles refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions.”)); *Gilson Nogueira Carvalho v. Brazil*, Case No. 12,058, Ann. Rpt. Inter-Am. C.H.R. 145, OEA/ser. L/V/II.111 doc. 20 rev. Report No. 61/00, ¶ 60 (“[T]he merely theoretical existence of legal remedies is not sufficient for this objection to be invoked: they have to be effective.”).

clauses of the Fourteenth and Fifth Amendment thus offer no adequate or effective remedy to vindicate the Inuit's right to life.

2. THE RIGHT TO RESIDENCE AND MOVEMENT

Neither the U.S. Constitution nor U.S. law provides a right to residence or movement similar to that guaranteed by Article VIII of the American Declaration of the Rights and Duties of Man.⁷⁷⁰ The closest constitutional analogue to the right to residence is the right to property, discussed in the next section. The closest constitutional analogue to the right to movement is the right to interstate travel.

While not explicitly mentioned in the U.S. Constitution, the right to interstate travel has been derived from various constitutional provisions.⁷⁷¹ These provisions include the Privileges and Immunities Clause of Article IV;⁷⁷² the Privileges and Immunities Clause of the 14th Amendment;⁷⁷³ the Commerce Clause;⁷⁷⁴ and the Due Process Clauses of the 5th and 14th Amendment.⁷⁷⁵ The right to interstate travel derived from these provisions guarantees that U.S. citizens may pass through or to reside in any state.

The right to interstate travel under the U.S. Constitution is much narrower than the American Declaration's right of movement, which is one of the rights that is violated as a result of climate change. The right of movement recognized under international human rights laws includes the right not to leave one's residence except by one's own will, and the right to "move about freely."⁷⁷⁶ The U.S. Constitution's right to interstate travel, by contrast, does not protect the right to stay in one's home, but rather seeks to prevent governmental impediments to the right to move from one state to another.⁷⁷⁷

The residence-related claim in this petition is not that U.S. inaction on climate change impedes the Inuit's right to leave their place of residence to move elsewhere, which might implicate the Constitutional right to interstate travel. Rather, the claim is that such inaction impedes the Inuit's right *not* to leave and their right to move about freely within their traditional homelands, which are rights arising under the American Declaration with no analogue in U.S. law. The U.S. Constitution's right to travel therefore furnishes no avenues for an adequate or effective remedy to the Inuit.

3. THE RIGHT TO PROPERTY

The Fifth Amendment of the U.S. Constitution protects private property. It states, in relevant part, "No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." As interpreted by U.S. courts, the amendment entitles property owners to compensation when title to their property transfers to the government as a result of either (i) physical invasion of the property by government order, either permanently or temporarily;⁷⁷⁸ or (ii) regulation for other than health or safety reasons which takes all or nearly all of the value of the property.⁷⁷⁹ Similarly, in certain instances, the amendment restricts the government's ability to attach conditions on a proposed use that are not roughly proportionate to such use.⁷⁸⁰

This constitutional provision, however, provides no effective remedy to the Inuit for damages to their property resulting from climate change. Under U.S. law, the government's failure to take an action to prevent harm to property cannot form the basis of a claim under the Fifth Amendment.⁷⁸¹ Only affirmative government action to transfer private property to a public use in the limited situations described in the preceding paragraph can trigger the Takings Clause.⁷⁸² As such, U.S. law does not provide an adequate or effective remedy for the Inuit's loss of property resulting from U.S. government action and inaction on climate change.

4. THE RIGHT TO INVIOABILITY OF THE HOME

The closest analogy in U.S. law to the right to inviolability of the home is the right to privacy, which the U.S. Supreme Court has found to exist in the "penumbras" of the amendments to the Constitution.⁷⁸³ However, the right to privacy in the United States is generally limited to such personal rights as family planning, child-rearing, and abortion.⁷⁸⁴ The environmental degradation that violates the Inuit's rights to inviolability of the home is thus beyond the scope of the U.S. Constitution's right to privacy. For these reason, the constitutional right to privacy does not provide an adequate or effective remedy for violations to Inuit's right to the inviolability of their homes.

5. THE RIGHTS TO ENJOY THE BENEFITS OF CULTURE, TO HEALTH AND TO MEANS OF SUBSISTENCE

Neither the U.S. Constitution nor U.S. statutes provide due process of law to protect the rights to the enjoyment of the benefits of culture, to health or to means of subsistence. For that reason, there are no domestic remedies to exhaust with respect to those rights.

B. U.S. LAW DOES NOT PROVIDE ADEQUATE OR EFFECTIVE REMEDIES FOR THE HARMS THAT HAVE CAUSED THE VIOLATIONS SUFFERED BY THE INUIT

1. U.S. TORT LAWS

Many of the injuries suffered by the Inuit as a result of climate change may be characterized as torts. However, U.S. tort law does not provide a remedy for these violations.

Absent a waiver, sovereign immunity shields the U.S. government and its agencies from suit.⁷⁸⁵ Pursuant to the Federal Tort Claims Act ("FTCA"), the U.S. government has waived its sovereign immunity only for certain tort claims: those committed "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."⁷⁸⁶ The waiver does not apply, however, to acts and omissions "based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused."⁷⁸⁷

With respect to the situation of the Inuit, there are no tort remedies available against the U.S. government because the U.S. government's acts and omissions that have led to climate

change result primarily from acts considered discretionary under U.S. law. For example, as described below, the U.S. Court of Appeals for the D.C. Circuit has recently held that the statute most likely to require action to address climate change – the U.S. Clean Air Act – gives the U.S. government the discretion not to regulate greenhouse gas emissions.⁷⁸⁸ On the basis of the court’s decision, therefore, U.S. courts have no power to hear Inuit claims based on the government’s failure to take action to address climate change.

Finally, for those acts or omissions of governmental agencies that may be non-discretionary (or “ministerial”) – such as the issuance of a permit to a large carbon emissions producing factory – the non-discretionary act or omission is still immune to suit under the FTCA because it is not an action in which a private citizen can engage.⁷⁸⁹ Because private citizens cannot issue government permits or engage in other typically ministerial government activities, no adequate or effective tort remedy against the U.S. government exists for the Inuit.

2. U.S. ENVIRONMENTAL LAWS

This petition demonstrates that the Inuit have suffered human rights violations as a result of the United States’ failure to take action to prevent harm caused by its greenhouse gas emissions. Although this is predominantly an environmental issue, the U.S. government itself has interpreted the leading U.S. air quality statute as providing no remedy for the violations alleged in this petition, and has suggested no other statute that could provide a remedy.

U.S. federal courts have affirmatively ruled that no right to environmental protection exists under the U.S. Constitution.⁷⁹⁰ Further, although several U.S. statutes address the protection of natural resources, environmental quality, public health, and cultural heritage, none of these laws protects the rights at issue in this petition or prevents the harms that are the basis for the violations of the Inuit’s human rights.

The most obvious potential source of a domestic remedy for harm resulting from U.S. greenhouse gas emissions is the U.S. Clean Air Act (CAA). The U.S. Environmental Protection Agency is responsible for implementing this law. However, the U.S. government has stated that “the CAA does not authorize EPA to regulate for global climate change purposes, and accordingly that CO₂ and other [greenhouse gases] cannot be considered ‘air pollutants’ subject to the CAA’s regulatory provisions for any contribution they may make to global climate change.”⁷⁹¹ The government has also determined that, even if it had the authority to regulate greenhouse gases, such authority would be discretionary and the government would not exercise such discretion.⁷⁹² Finally, the government has formally taken the position that individuals like Petitioner or the individuals whose rights have been violated in this case cannot use U.S. courts to challenge its failure to regulate greenhouse gases.⁷⁹³

In light of the U.S. government’s statements on the availability of environmental regulation and the absence of judicial remedies for the government’s failure to regulate greenhouse gas emissions, the international legal principle of *non concedit venire contra factum proprium* – no one may set himself in opposition to his own previous conduct – prohibits the United States from arguing before this Commission that the petition is inadmissible because the Clean Air Act provides a remedy for the violations at issue. As the Inter-American Court has held, “when a party in a case adopts a position that is either beneficial to it or detrimental to the

other party, the principle of estoppel prevents it from subsequently assuming the contrary position.”⁷⁹⁴

Even if the United States were not bound by its prior statements, however, Petitioner and the individuals whose rights have been violated in this case would have no domestic remedy, because, only a few months ago, the U.S. Court of Appeals for the D.C. Circuit – the only court that may hear a challenge to the government’s decision not to regulate greenhouse gases – upheld the government’s decision not to regulate greenhouse gas emissions under the Clean Air Act.⁷⁹⁵

Nor do other environmental laws provide a remedy. The National Environmental Policy Act of 1969 (“NEPA”) is the basic national charter for environmental protection. It requires the federal government to assess the environmental impact of many of its actions and establishes processes for such assessments, but it does not require the government to achieve any minimum level of environmental protection or provide any other substantive rights or protections for culture or health.⁷⁹⁶

In sum, as demonstrated above, the U.S. legal system does not provide an effective remedy for the human rights violations suffered by the Inuit as a result of U.S. actions and omissions relating to climate change. The lack of an effective remedy constitutes an exception to the exhaustion of remedies rule, according to general principles of international law and article 31.2(a) of the Commission’s rules of procedure. The petition is therefore admissible.

VII. TIMELINESS

Under article 32 of the Commission’s Rules of Procedure, a petition to the Commission should be lodged within six months of notification of the final ruling that comprises the exhaustion of domestic remedies. However, article 32.2 provides that in cases such as the present in which the requirement of exhaustion does not apply, “the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred, and the circumstances of each case.”

Under the circumstances of this case, this petition is being presented within a reasonable period of time. The acts and omissions and resulting harm that form the basis of the petition are ongoing. Emissions from the United States of greenhouse gases that cause global warming are increasing. The United States has failed to take serious and effective measures to minimize its emissions and has given no indication that it will do so in the foreseeable future. The harm to the Inuit caused by U.S. acts and omissions has not diminished but has worsened and will continue to worsen in the coming decades unless the United States changes its behavior. In the absence of adequate or effective domestic remedies, the Inuit Circumpolar Conferences (ICC) has attempted to use other international mechanisms to obtain US protection of the rights of Inuit harmed by climate change.

The Inuit Circumpolar Conference is an observer organization to the UN Framework Convention on Climate Change and has attended three Conferences of the Parties to the FCCC, at which it has held side-events to publicize the impacts of climate change on Inuit and to request that Parties to the Convention take serious actions to reduce greenhouse gas emissions. The ICC is also a Permanent Participant at the Arctic Council where it has pressed for action from all eight Arctic nations, particularly the United States. The ICC has also provided testimony to the U.S. Senate Committee on Commerce, Science and Transportation. Because it is becoming increasingly clear that these efforts have not been and will not be effective, Petitioner is now bringing the matter to the Commission.

VIII. ABSENCE OF PARALLEL INTERNATIONAL PROCEEDINGS

The subject of this petition is not pending in any other international proceeding for settlement, nor does it duplicate any petition pending before or already examined by the Commission or any other international governmental organization.

IX. REQUEST FOR RELIEF

For the reasons stated above, Petitioner respectfully requests that the Commission:

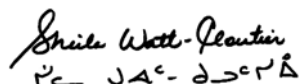
1. Make an onsite visit to investigate and confirm the harms suffered by the named individuals whose rights have been violated and other affected Inuit;
2. Hold a hearing to investigate the claims raised in this Petition;
3. Prepare a report setting forth all the facts and applicable law, declaring that the United States of America is internationally responsible for 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 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 Petitioner and the affected Inuit, a plan to protect 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 Petitioner and the affected Inuit communities, a plan to provide assistance necessary for Inuit to adapt to the impacts of climate change that cannot be avoided;
 - e. Provide any other relief that the Commission considers appropriate and just.

X. VERIFICATION, SIGNATURE AND DESIGNATION OF ATTORNEYS

Sheila Watt-Cloutier, with the support of the Inuit Circumpolar Conference, presents this petition on behalf of the named individuals whose rights have been violated and other affected Inuit. (See Section IV.B.) By her signature below, Ms. Watt-Cloutier attests to the truthfulness of the facts set forth in this petition.

Ms. Watt-Cloutier wants her name used by the Commission in its communications with the government of the United States of America and with the public.

Paul Crowley is authorized to represent Ms. Watt-Cloutier in this case. All notices and communications to the petitioner in relation to this case should be sent to Mr. Crowley, counsel of record, at the address below.



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