

Testimony of Earthjustice Managing Attorney Martin Wagner before the Inter-American Commission on Human Rights.

Honorable members of the Commission:

Sheila [Watt-Cloutier] has provided a powerful description of some of the ways global warming is already affecting individuals and communities throughout the hemisphere. I would like to take a few minutes to discuss the relationship between these impacts and human rights, and what that means for the obligations of Members of the Organization of American States.

Because I want to leave time for us to answer questions that you may have, I am not going to discuss in detail here all of the rights implicated by the effects of global warming. A more complete discussion is contained in the background materials we have provided the Commission. Here, I am going to discuss three rights.

The rights of indigenous peoples

Before I discuss the first right, I want to note that -- as Sheila so clearly described -- global warming has particular impacts on indigenous peoples throughout the hemisphere. The relationship between human rights and global warming must therefore be evaluated in the context of indigenous rights. This Commission has recognized that the protection of indigenous populations is a "sacred commitment" of States. Because indigenous peoples' traditional lands and natural resources are essential to their physical and cultural survival, the Commission and the Court have acknowledged that environmental damage - - like that being caused by global warming -- can interfere with the rights of indigenous peoples to life and to cultural integrity. We must keep these principles in mind in considering the relationship of the following rights to the effects of global warming.

The right to use and enjoy property without undue interference

The first right I would like to discuss is the right to use and enjoy property, which is guaranteed in the American Declaration and American Convention, as well as in numerous other international instruments. The Commission has declared this right to be "among the fundamental rights of man." In the case of indigenous peoples, both the Inter-American Court and this Commission recognized that the right to property guarantees the use of those lands to which indigenous peoples have historically had access for their traditional activities and livelihood, regardless of domestic title. In the Belize Maya case, the Commission stated that the right to property is impeded "when the State itself, or third parties acting with the acquiescence or tolerance



Wagner's testimony focused on three key rights of indigenous peoples
Photo: Juan Manuel Herrera - OAS/OEA

of the State, affect the existence, value, use or enjoyment of that property."

The effects of global warming interfere with property in each of these ways. In some cases, property is literally disappearing as a result of warming. This is true in the case of the Inuit's loss of sea ice, which has been recognized as "an extension of their land," or the rapid erosion or submersion of land on which some coastal villages sit. In other cases, increasingly severe storms or the destruction of environmental resources essential to survival undermines the use and enjoyment of property, particularly in the case of poor and indigenous communities with limited ability to turn to other sources for their needs.

The rights to life, physical integrity and security

The second right I would like to discuss is the right to life, physical integrity and security. This most fundamental of rights is guaranteed in all major American and international human rights agreements.

The Inter-American Commission has recognized that the realization of the right to life is necessarily related to and dependent upon one's physical environment. In the Yanomami case, the Commission recognized that allowing the construction of a highway through indigenous territory, leading to an influx of contagious deadly diseases that spread to the Yanomami, the government had failed to protect the integrity of Yanomami lands, thereby violating the Yanomami's rights to life, liberty and personal security.

In its 1997 Report on the Situation of Human Rights in Ecuador, the Commission addressed environmental degradation caused by irresponsible petroleum exploitation, and noted that where environmental harm causes "serious physical illness, impairment and suffering on the part of the local populace, [it is] inconsistent with the right to be respected as a human being."

The effects of global warming interfere with the realization of the right to life, physical integrity, and security throughout the hemisphere. For example, more numerous, intense and extreme weather events will result in more deaths from hurricanes, floods, and heat waves. Migration of species that cause malaria, dengue fever, and avian flu may spread these deadly diseases to areas of the Americas where they were previously unknown. Inuit hunters are falling through the ice to their death more frequently as a result of the thinner ice in the Arctic.

In the context of the right to life and physical integrity, I would like to mention the right of all peoples to a means of subsistence. Although the Protocol of San Salvador guarantees the right to food, a general right to means of subsistence is not explicitly recognized in any of the American human rights documents. Nevertheless, this right -- which is recognized in both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights -- is inherent in and a necessary component of the right to life, as well as other rights. In its discussion of the Proposed American Declaration on the Rights of Indigenous Peoples, the Commission has commented that the right to a means of subsistence is a general international legal

principle that applies in the Inter-American system. As global warming interferes with the ability of people to hunt, gather, or engage in subsistence farming on their traditional lands, it undermines their right to a means of subsistence and their right to life.

The right of peoples to enjoy the benefits of culture

The last right I want to discuss is the right to enjoy the benefits of culture, which is given a place of importance in the Charter of the OAS and guaranteed in the American Declaration. In the Belize Maya case, the Commission noted that "the use and enjoyment of the land and its resources are integral components of the physical and cultural survival of the indigenous communities."

Global warming is destroying lands and ecosystems to which indigenous cultures throughout the hemisphere are tied; it is interfering with the ability of indigenous peoples to sustain themselves as they traditionally have, and to engage in and pass on practices that define them and their culture. In order to survive, indigenous peoples are thus forced to assimilate with other cultures in ways, and on a schedule, that they have not chosen. This Commission -- in its Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin -- noted that it is precisely this kind of forced assimilation that the right to culture is intended to prevent.

The relevance of international environmental law

Because global warming implicates human rights, as Sheila and I have explained, we must ask what that means for States. Before I move to a discussion of the implications for States of the relationship between global warming and human rights, I would like to say a word about the relevance of international environmental law in the context of today's topic. The Inter-American Court has noted that "a treaty can concern the protection of human rights, regardless of what the principal purpose of the treaty might be." This Commission has applied that principle, noting that the rights of the American Declaration should 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."

One of the most fundamental norms of customary international law is, in the words of the International Court of Justice, "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States." Because the emission of greenhouse gases in one State causes harm in other States, this norm provides context for assessing States' human rights obligations with respect to global warming.

Implications for States of the Relationship Between Global Warming and Human Rights

It is a fundamental principle of international law that States have a duty to prevent and remedy violations of their international obligations. In the case of global warming, this obligation does not end with the responsibility to address greenhouse gas emissions

caused by the government itself, but extends to a responsibility to regulate private actors within State jurisdiction who are contributing to the problem.

The Inter-American Commission has recognized the responsibility of States to prevent non-governmental entities from causing environmental degradation that violates human rights. In its 1997 report on the human rights situation in Ecuador, the Commission called upon Ecuador to "ensure that measures are in place to prevent and protect against" human rights violations related to environmental contamination caused by private actors. In the Belize Maya case, the Commission recommended that the government not acquiesce in or tolerate acts of third parties that would violate the Maya peoples' rights.

Other human rights institutions have acknowledged the obligation of States to protect against human rights violations by the actions of third parties. For example, the UN Human Rights Committee has stated that the obligation of States to ensure civil and political rights "will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities." The UN Committee on Economic, Social and Cultural Rights has stated that States violate their duty to protect the right to health if they fail to "enact or enforce laws to prevent [air pollution]."

In light of these principles, and recognizing the serious human rights implications of the effects of global warming, States have an international obligation to address their role global warming, whether through their own activities or by the activities of private actors within their jurisdiction.

While it is up to States how to go about implementing these obligations, there is a strong presumption that they should at a minimum participate in international efforts to address the problem of global warming. In the UN Framework Convention on Climate Change, 190 nations have recognized the need for coordinated effort and established a regime for doing so. But simply participating in that regime is not necessarily sufficient to discharge States' duty to prevent human rights violations related to global warming. Because States' human rights obligations are independent of their obligations under the UN Framework system, States must work to ensure that the international system is strong enough to fully protect human rights. If they are unable to do so through global collaboration, they must take the individual steps necessary to avoid contributing to human rights violations through their own actions or the actions of private entities under their jurisdiction.

I appreciate the time the Commission has taken to consider this important topic today, and I offer my assistance as the Commission plays its important role in addressing the problem of global warming in the coming months and years.

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