**An international civil society human-rights tribunal’s Advisory Opinion on human rights and climate change**

The Permanent Peoples’ Tribunal Session on Human Rights, Fracking and Climate

Change conducted hearings during the week of May 14-18, 2018. Ten judges from nine countries heard oral testimony that week, reviewed written and video-recorded testimony from four preliminary tribunals held in the months prior, and reviewed fourteen *amicus curiae* briefs submitted by attorneys and organizations in five different countries and seven different US states. The Tribunal’s Advisory Opinion was released on April 12, 2019. This report summarizes those portions of the Opinion relevant to human rights and climate change.

A substantial collection of testimony, submitted by Alaskan human rights attorney Robin Bronen, concerned the dramatic impacts of sea level rise and the loss of near-shore sea ice on several small, highly vulnerable native villages along Alaska’s northwest coastlines. Most of these villages, highly dependent on the sea, are located directly on the shoreline, so as near-shore sea ice has melted earlier in the spring, it no longer protects them from storms coming in from the west. Their shoreline is eroding into the sea and buildings that had been protected from storms in the past are now suffering serious damage. Several of these communities have been forced to decide whether it will even be possible to stay on ancestral lands. This has raised a range of serious human rights concerns including, among others, the right to life, the right to an adequate standard of living, the right of Indigenous peoples to their traditional lands and resources, and the right of Indigenous peoples to self-determination.

**I** **The right to life**, referenced in several human rights instruments including in the Universal Declaration of Human Rights (Article 3) and in the International Covenant on Civil and Political Rights (Article 6), imposes an affirmative obligation on States to protect citizens from conditions that pose an imminent threat to their lives. When governments fail to take measures to moderate, inhibit or reverse climate change, or to help populations adapt to it, they are failing to meet their human rights obligations.

The Tribunal’s Advisory Opinion acknowledges that its analysis is taking place “in a historical context in which climate change is the main global threat to the survival of the human species and consequently to the exercise of all human rights.” (p76) It quotes from the UN High Commission on Human Rights report, titled “Understanding Human Rights and Climate Change,” noting that “the human rights which are most affected by climate change include the right to life . . . , the right to food, the right to water” and the right to other necessities essential for life. (p31)

The Opinion highlights the Declaration on Human Rights and Climate Change and cites several of its provisions directly related to the right to life, including Article 4, “All human beings have the right to a planetary climate suitable to meet equitably the ecologically responsible needs of present generations without impairing the rights of future generations to meet equitably their ecologically responsible needs.” The Opinion further recommends “That State and sub-state jurisdictions should consider adopting the Declaration on Human Rights and Climate Change and making its standards and provisions part of public policy at all levels.” (p60)

**II** **The right to an adequate standard of living**, articulated in the Universal Declaration of Human Rights (Article 25, 1) and in the Convention on the Rights of the Child (Article 24, 2, c) among other instruments, means that all persons and families must be guaranteed access to the basic preconditions for a healthy life including secure access to nourishing food, clean water, shelter from the elements, and adequate clothing, as well as medical care and necessary social services. Recognizing this, the Opinion cites the 2015 UN High Commission on Human Rights report’s affirmation that the right to an adequate standard of living, among “the human rights which are most affected by climate change,” (p31) includes the right to life, the right to self- determination, the right to development, the right to food, the right to water and sanitation, the right to health, the right to housing, the right to education, the right to meaningful and informed participation, the rights of those most affected by climate change and the rights of future generations. (p31)

The Opinion further acknowledges the growing legal recognition “that the enjoyment of human rights cannot be separated from a healthy and safe environment. Even more, environmental degradation caused by the massive extraction of natural resources is a driver of serious violations of human rights, from right to health, food, water, housing, jobs.” (p46)

This right to an adequate standard of living requires governments to take affirmative measures to prevent conditions – such as climate change, environmental pollution, the spread of disease and malnutrition, etc – that would hinder citizens’ access to these most fundamental necessities. The Tribunal judges cite John Knox, United Nations Special Rapporteur on Human Rights and the Environment, who says that it is the duty of states to take active steps to protect people’s right to a healthy environment. Governments, he says, must “ensure a safe, clean, healthy and sustainable environment in order to respect, protect, and fulfill human rights.” (p74)

In addition to affirming the right to an adequate standard of living for all those alive today, the judges further recognize that “this issue also involves more directly than any other cases in the history of the PPT, the rights of future generations.” (p76)

The Opinion recommends “That all States and governments at all levels should include in their constitutions a recognition of the right of all their citizens to a healthy environment.” (p59)

**III** **The right of Indigenous peoples to their traditional lands and resources** is articulated in the United Nations Declaration on the Rights of Indigenous Peoples (Article 26): “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired,” and governments are required to “give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous peoples concerned.”

The Tribunal recognized that those customs and traditions are central. Tribunal judges heard  dramatic testimony violations of these rights in  Indigenous communities along Alaska’s west coast, detailing the physical loss of Native lands and resources as a result of climate change, sea level rise, and loss of sea ice in the Arctic. The Opinion recognizes that: “In the indigenous cosmovision, the territory represents the universe, that is, what is above the ground, on the ground and under the ground. It includes renewable natural resources (water sources, wood, flora and fauna) and non-renewable resources (mines, gas and oil). The territory is linked to the sacred, to the space of social reproduction, physical survival, work, solidarity, and in general to the exercise of . . . autonomy.” (p57)

The Opinion quotes an Indigenous representative speaking in an earlier PPT Session. “The land, which was given to us from the beginning, is what sustains our coexistence, our raison d'être as native Indigenous peoples. In that territory there are the norms that we must fulfill as representatives of a specific culture. Each and every one of the places of our history are components of what we call ancestral territory, a sacred space that nourishes, strengthens and gives us existence on this planet. Therefore, this space belongs to each and every one of those peoples to whom the Spiritual Mother entrusted them with specific missions, which we must protect. The territory is where Laws and History are written; without them we would not be peoples with different cultures.” (p57)

The Opinion also cites the 1976 Universal Declaration of the Rights of Peoples (Article 16). “Every people has the right to the conservation, protection and improvement of its environment,” and from Article 8, “Every people has an exclusive right over its natural wealth and resources. It has the right to recover them if they have been despoiled.” (p78)

**The right of Indigenous peoples to self-determination**, articulated in the United Nations Declaration on the Rights of Indigenous Peoples (Articles 3 and 4), was featured extensively in testimony presented to the court, both orally and in brief, by Alaska human rights attorney Robin Bronen.

As a final note, the United Nations Environment Programme 2015 report, “Climate Change and Human Rights,” distinguishes three kinds of duties required of States to meet their human rights obligations: “1) the duty to **respect** human rights, a negative obligation which requires states to refrain from taking actions that would interfere with or curtail the enjoyment of human rights; 2) the duty to **protect** human rights against violations by third parties; and 3) the duty to **fulfill** human rights, a positive obligation, which requires states to undertake measures to ensure the realization of rights for all members of society.” All three kinds of duties bear on States’ obligation to protect against climate change, particularly with respect to State actions that license, permit, monitor and subsidize fossil fuel industry extraction, infrastructure and distribution practices.

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