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The Time Is Now For The IACHR To Address Climate Action As A Human Right: Indigenous Communities Can Lead (Again)

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Cover Page Footnote

Lara C. Diaconu is a December 2020 graduate, JD cum laude, of the Seattle University School of Law. This article was written in the Spring of 2020, prior to the 2020 U.S. Presidential decision and therefore when it was still unknown whether the United States would rejoin the Paris Climate Agreement.

THE TIME IS NOW FOR THE IACHR TO ADDRESS CLIMATE ACTION AS A HUMAN RIGHT: INDIGENOUS COMMUNITIES CAN LEAD (AGAIN)

By Lara C. Diaconu¹

| | |
|----------------------------------------------------------------------------------|-----|
| I. INTRODUCTION | 215 |
| A. <i>THE INTER-AMERICAN SYSTEM – STRUCTURE AND PROCESS</i> | 216 |
| 1. History of the Inter-American System | 216 |
| 2. Using the System | 216 |
| II. IACHR CASE LAW: TOWARDS A GROUNDBREAKING CLIMATE CHANGE DECISION | 218 |
| A. <i>SUMMARY OF RELEVANT HUMAN RIGHTS LAW</i> | 218 |
| 1. Right to Property..... | 218 |
| 2. Right to Enjoy the Benefits of Culture | 220 |
| 3. Right to Health and [therefore] to a Healthy Environment?..... | 221 |
| 4. Right to Life..... | 222 |
| 5. Article 29: Interpretation..... | 223 |
| B. <i>TAKEAWAYS FOR FUTURE CLAIMS</i> | 223 |
| III. THE 2005 INUIT PETITION | 224 |
| A. <i>CONTEXT AND SUMMARY OF INUIT CLAIM</i> | 224 |
| B. <i>IACHR PETITION DISMISSAL AND POST-DISMISSAL HEARINGS</i> | 225 |
| C. <i>TAKEAWAYS FOR FUTURE CLAIMS</i> | 226 |
| IV. 2013 ATHABASKAN PETITION | 226 |
| V. WHAT HAS CHANGED SINCE 2006..... | 227 |
| A. <i>More Robust and Urgent Evidence of Catastrophic Impacts</i> | 228 |
| 1. Intergovernmental Panel on Climate Change (IPCC)..... | 228 |
| B. <i>United Nations Framework Convention on Climate Change (UNFCCC)</i> | 229 |
| C. <i>Global Social Movement</i> | 230 |
| 1. Beyond Paris | 230 |
| 2. Greta and the Global Youth Movement..... | 231 |
| D. <i>CITIZENS V. THE U.S.</i> | 232 |
| 1. Massachusetts v. EPA (2007) | 232 |
| 2. Standing Hurdles: <i>Native Village of Kivalina v. ExxonMobil</i> (2009)..... | 232 |

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| | |
|---------------------------------------------------|-----|
| 3. <i>Juliana v. United States</i> (2020)..... | 233 |
| VI. AN IACHR PETITION IN 2021? | 235 |
| A. <i>The Futility of Petitioning</i> | 235 |
| B. <i>The Case for Petitioning</i> | 236 |
| C. <i>Elements of a 2021 IACHR Petition</i> | 237 |
| 1. <i>Petitioners</i> | 237 |
| 2. <i>Violations</i> | 239 |
| 3. <i>Exhaustion of Domestic Remedies</i> | 240 |
| 4. <i>Precautionary Measures</i> | 240 |
| VII. CONCLUSION | 240 |

I. INTRODUCTION

Before the novel coronavirus pandemic, climate change was finally gaining the momentum needed among global leaders and citizens alike, urging action if the planet hopes to sustain life as we know it. Ironically, even as the COVID-19 pandemic “stay at home” mandates have taken the world’s focus off of climate change since at least March 2020, the planet has shown some hopeful signs of healing: air quality has reportedly improved in all of the world’s major cities.² However, once humans emerge from lockdown and pre-COVID consumption habits resume, the urgency of climate action to avoid the “tipping point” for “major, irreversible climate changes”³ will not have abated. By many accounts, the prospects for a successful “climate decade” are not looking too hopeful.⁴

This article considers whether and how the InterAmerican Commission for Human Rights (IACHR) might serve as a vehicle to pressure the United States government, in particular, to take needed climate action, and the potential for indigenous peoples to lead that effort. Indigenous groups in the Americas can build upon past successes by accessing the IACHR as a mechanism to hold various member nations accountable for environmental justice issues. Indeed, the IACHR record demonstrates a special sensitivity in calling out policies and projects endorsed by nation-states that infringe upon rights uniquely granted to indigenous peoples. As of today, however, indigenous peoples have not successfully litigated the harmful impacts of climate change as a violation of human rights before the Inter-American Court. In 2005, the IACHR dismissed the Inuit people’s claim that the United States threatened their human rights by failing to limit greenhouse gases on the grounds that the Inuit people failed to present facts that the threat was “immediate” and “certain;” a 2013 petition by the Athabaskan peoples against Canada remains pending. This article analyzes the intervening developments since 2005 with respect to both the scientific fact base and growing public pressure that could influence a positive outcome for the Athabaskans and serve as an impetus for a 2021 petition.

² Andrew Freedman and Lauren Tierney, *The Silver Lining to Coronavirus Lockdowns: Air Quality is Improving*, WASH. POST (Apr. 9, 2020), <https://www.washingtonpost.com/weather/2020/04/09/air-quality-improving-coronavirus/> [<https://perma.cc/M2KA-LN WV>]; see also Cailey Rizzo, *Venice’s Canals are Beautifully Clear as Italy’s Coronavirus Lockdown Cuts Down on Water Traffic*, TRAVEL AND LEISURE (Apr. 25, 2020), <https://www.travelandleisure.com/travel-news/coronavirus-cleared-venice-canals-swans-fish> [<https://perma.cc/DF95-YQ25>].

³ Rebecca M. Bratspies, *The Climate for Human Rights*, 72 U. MIAMI L. REV. 308, 313 (2018) (identifying six critical milestones to reach by 2020, including: zero emissions transport, renewable electricity generation, large-scale land restoration, infrastructure decarbonization, and massive investment in climate action).

⁴ See, e.g., Joeri Rogelj et al., *Paris Agreement Climate Proposals Need a Boost to Keep Warming Below 2°C*, 534 NATURE 631, 631 (2016).

A. *The Inter-American System – Structure and Process*

1. History of the Inter-American System

The Organization of American States (OAS) is a regional agency of the United Nations, formally established in 1951⁵ when its Charter went into effect. Having subscribed to the idea that international law should govern member States' reciprocal relations, the OAS Charter created the Inter-American Commission on Human Rights (IACHR) as an organ of the OAS.⁶ At the same 1948 meeting where the OAS Charter was initially signed (the Ninth International Conference of American States in Bogotá, Colombia), participating States signed on to the American Declaration for the Rights and Duties of Man,⁷ forming the basis for evolving interpretations of international human rights law ever since. The IACHR provides oversight to the American Convention on Human Rights (ACHR),⁸ Article 33b of which created the Inter-American Court of Human Rights (IACtHR). The United States ratified the OAS Charter in 1951, and the American Convention in 1977, however, the United States did not agree to submit to the jurisdiction of the Inter-American Court, which was optional.⁹ While all OAS member states, including the United States, have an obligation to abide by the recommendations of the Inter-American Commission, its recommendations are non-binding. The IACHR may refer cases to the IACtHR which has the authority to emit binding decisions, however the U.S. did not sign on to Court oversight.¹⁰

2. Using the System

There are two ways to access the Inter-American System for action based on alleged human rights violations – (1) Petitions and (2) Requests for Precautionary Measures. These two pathways are not mutually exclusive and may be complementary: 1) Petitions undergo a lengthy process of review, but if ultimately deemed worthy are referred by the IACHR to the IACtHR as a case producing a binding decision; while 2) Precautionary Measures are requested in situations of urgency when the Commission finds a “serious, urgent situation in which there is an imminent risk

⁵ Charter of the Organization of American States, Apr. 30, O.A.S.T.S. No. 1-E, 1948, 119 U.N.T.S. 1609 (entered into force Dec. 13, 1951) [hereinafter O.A.S. Charter]. The Charter has been amended by the "Protocol of Buenos Aires," adopted on February 27, 1967, at the Third Special Inter-American Conference (entered into force on February 27, 1970), by the "Protocol of Cartagena de Indias," adopted on December 5, 1985, at the Fourteenth Special Session of the OAS General Assembly (entered into force on November 16, 1988), by the "Protocol of Washington," adopted on December 14, 1992, at the Sixteenth Special Session of the OAS General Assembly (entered into force on September 25, 1997), and by the "Protocol of Managua," adopted on June 10, 1993, at the Nineteenth Special Session of the OAS General Assembly (entered into force on January 29, 1996).

⁶ *See id.* Chapters VIII and XV.

⁷ American Declaration of the Rights and Duties of Man, OAS Resolution XXX, May 2, 1948 [hereinafter American Declaration].

⁸ American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, (entered into force July 18, 1978) [hereinafter American Convention].

⁹ *Id.* art. 62.

¹⁰ *See generally* Statute of the Inter-American Court of Human Rights, art. 1, Oct. 1979, O.A.S. Res. 448 (IX-0/79), (entered into force Jan. 1, 1989).

of irreparable harm to a person or group of persons."¹¹ The Commission may also ask the Court to issue a Provisional Measure in cases of extreme urgency and seriousness, i.e. when precautionary measures are not being heeded and to avoid irreparable damage to persons.¹² Finally, an Advisory Opinion may be requested in cases where there may be a need for a more formal interpretation of rights.¹³

Submitting a petition to the IACHR triggers a years-long process of review, data gathering, stakeholder engagement, and finally, determination. Petitions assert human rights violations by an OAS member State, undergo an initial review by the IACHR, receive feedback from the accused member State, and then receive a determination of admissibility.¹⁴ Admissibility decisions often turn on the criterion that the petitioner demonstrates that they have already exhausted appropriate domestic legal remedies, and submit the petition within six months from the date when the case reached its limit in its home judicial system.¹⁵ Exceptions to the domestic remedy exhaustion requirement can be claimed for situations in which:

1) 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; 2) the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or 3) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.¹⁶

A petition will be found inadmissible if it “does not state facts that tend to establish a violation of the rights” enshrined in the American Convention of Human Rights and other instruments to which the violating country is bound.¹⁷ Once the petition is found to be admissible, IACHR proceeds to open a case that focuses on the merits.¹⁸ Both parties will submit additional information to support their assertions regarding the merits, and have the option of engaging in “friendly settlement” negotiations in lieu of having the Commission decide and report its decision.¹⁹ If the State has accepted the optional jurisdiction of the IACtHR,²⁰ the Commission may refer the case to the Court for a binding decision, particularly if the state in question has not yet complied with Commission reports, or if the case law requires clarification and development.²¹

¹¹ O.A.S. Inter-Am. Comm’n H.R., Rules of Procedure [hereinafter Rules of Procedure], art. 25.

¹² *Id.* art. 76.

¹³ American Convention, *supra* note 8, art. 64(1).

¹⁴ Rules of Procedure, *supra* note 11, arts. 26-30.

¹⁵ *Id.* arts. 31-32.

¹⁶ *Id.* art. 31.

¹⁷ *Id.* arts. 27 and 34(a).

¹⁸ *Id.* art. 37.

¹⁹ *Id.* arts. 40-44. A friendly settlement simply refers to a settlement outside of court.

²⁰ In accordance with Article 62 of the American Convention. The United States has not accepted IACtHR jurisdiction.

²¹ Rules of Procedure, *supra* note 11, art. 45.

The number of petitions received by the IACHR has steadily increased over time, from approximately 1,300 received in 2006 to almost 3,000 received in 2018.²² To give an idea of the backlog of petitions, at the end of 2018 there were almost 7,000 petitions pending initial review and 4,217 pending petitions and cases, while 118 total admissibility reports were published in 2018.²³ Also in 2018, only 4 Merits reports and 6 Friendly Settlement reports were published.²⁴ Meanwhile, less than 10% of precautionary measures requested were granted.²⁵

II. IACHR CASE LAW: TOWARDS A GROUNDBREAKING CLIMATE CHANGE DECISION

A. Summary of Relevant Human Rights Law

Indigenous groups in the Americas have utilized the Inter-American system for two decades to hold states accountable for their environmental justice concerns. Framing their claims within an international human rights framework has enabled indigenous groups to establish strong precedents with respect to how some rights, such as the Right to Property, may be interpreted more expansively when applied to indigenous views of property. The threat of climate change to indigenous ways of life has only begun to be addressed by the IACHR, however. The very first petition, submitted by the Inuit in 2005 was considered ineligible; the second Athabaskan petition is still pending review by the IACHR. Nevertheless, the foundational case law that does exist offers insight into how the IACHR could evolve to be an important forum for climate change petitions in the Americas.

1. Right to Property

Article 21 of the American Convention²⁶ outlines the Right to Property, possibly the most often litigated Right by indigenous peoples in the Inter American System. Article 21 states that “[e]veryone has the right to the use and enjoyment of his property.” The IACtHR has generously interpreted this right to property to extend to communal concepts, as well as traditional and culturally-held notions of “use” and “enjoyment” uniquely ascribed to indigenous peoples in the Americas. For example, in *Awes Tingni v. Nicaragua*, the IACtHR protected the right to property of indigenous peoples and interpreted the right to property to mean property in the communally-held form that indigenous people understand and enjoy the land.²⁷

²² O.A.S. Inter-Am. Comm’n H.R. Statistics

²³ *Id.* (“Pending determination” means awaiting a decision on admissibility or merits.)

²⁴ *Id.*

²⁵ *Id.* (120 granted out of 1,618 requested)

²⁶ American Convention, *supra* note 8, art. 21.

²⁷ *See generally* Mayagna (Sumo) Awes Tingni Community v. Nicaragua, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. Ser. C, No. 79 (Aug. 31, 2001) [hereinafter *Awes Tingni*] (petition to prevent the State from granting logging concessions to private foreign interests within their ancestral lands).

Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the 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. For indigenous communities, *relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.*²⁸

Maya Toledo affirmed that the Right to Property has a collective aspect in that the right must be guaranteed to an indigenous community as a whole, and is not defined exclusively by formal legal regimes, but also includes rights in communal property grounded in indigenous custom and tradition.²⁹ The decision held firmly that “... [s]tate[s] should abstain from any acts that might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property.”³⁰

In *Mary and Carrie Dann v. United States*, the IACHR held that the Right to Property under "general international legal principles" includes:

the right of indigenous peoples to legal recognition of their varied and specific forms and modalities of their control, ownership, use and enjoyment of territories and property; the recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied; ... and to have such title changed only by mutual consent ... [which] also implies the *right to fair compensation in the event that such property and user rights are irrevocably lost.*³¹

Despite the apparent clear “home” for a human rights claim arising out of climate change-induced degradation, Article 21 does include caveats that may render it inadequate to fully deliver on its potential.³² Namely, the Right to Property is expressly made subordinate to “the interest of society” and to “reasons of public utility or social interest” as long as “just compensation” is paid.³³ The case history within the Inter-American System affirms the interconnectedness between the very survival of indigenous communities, their livelihoods, and the land they inhabit, in all the ways that communities occupy and interact with the land. However, this native-originalist interpretation

²⁸ *Id.* at ¶ 149 (emphasis added).

²⁹ See generally *Maya Indigenous Communities of the Toledo District v. Belize*, Admissibility Case 12.053, Inter-Am. Comm’n H.R., Report No. 78/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000) [hereinafter *Maya Toledo*] (Maya communities claimed that the Government of Belize issued numerous oil and logging concessions on land traditionally occupied by them).

³⁰ *Maya Toledo*, Merits Case 12.053, Inter-Am. Comm’n H.R., Report No. 40/04, published October 12, 2004, pg. 1 (Summary).

³¹ *Mary and Carrie Dann v. United States*, Case 11.140, Inter-Am. Comm’n H.R., Report No. 75/02, doc. 5 rev. 1 860 (2002), paragraph 130. (emphasis added).

³² See, e.g., Thomas M. Antkowiak, *Rights, Resources and Rhetoric: Indigenous Peoples and the Inter-American Court*, 35 U. PA. J. INT’L L. 113, at 113 (2013); Aled Dilwyn Fisher & Maria Lundberg, *Human Rights’ Legitimacy in the Face of the Global Ecological Crisis - Indigenous Peoples, Ecological Rights Claims and the Inter-American Human Rights System*, 6 J. HUM. RTS. & ENV’T 177, 180 n.8. (2015).

³³ American Convention, *supra* note 8, art. 21.

of the property right could also backfire against those indigenous communities that choose resource extraction as a development strategy for themselves, or decide to sell ancestral land, and by inference, these communities may then be seen as somehow less “indigenous” as it relates to identity.³⁴

Human-induced climate change clearly threatens this foundational human right to property. In the Arctic zone, warming and melting threaten the physical land itself, while severe floods, melting permafrost, and landslides are destroying waterways, riverbanks, roads, and houses,³⁵ affecting the right to use and enjoyment of property. To be sure, United Nations working group reports anticipate the “*loss of rural livelihoods, particularly for people in the agricultural industry in semi-arid regions, in low-lying coastal zones, and still-developing small-island states.*”³⁶

2. Right to Enjoy the Benefits of Culture

The American Declaration delineates the right to enjoy the benefits of culture, stating that “[e]very person has the right to take part in the cultural life of the community.”³⁷ The IACHR has underscored the linkage between the Right to Property and the Right to Enjoy the Benefits of Culture, at least where indigenous communities are concerned, as it acknowledged that “lands traditionally used and occupied by indigenous communities play a central role in their physical, cultural, and spiritual vitality.”³⁸ In *Yakye Axa*, the IACtHR held that:

the culture of the members of the indigenous communities directly related to a specific way of being, seeing, and acting in the world, developed on the basis of their close relationship with their traditional territories and the resources therein. This is due not only because their traditional territories and resources constitute their main means of subsistence, but also because they are part of their worldview and their religiosity.³⁹

Similarly, in *Xákmok Kásek*, the IACtHR underscored that, for indigenous peoples, identity itself is shaped by the ways they individually and collectively relate to the land and nature.⁴⁰

³⁴ Antkowiak, *supra* note 32, at 161.

³⁵ Arctic Athabaskan Council, Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting Caused by Emissions of Black Carbon by Canada (Apr. 23, 2013), pg. 6, [hereinafter Athabaskan Petition].

³⁶ Veronica de la Rosa Jaimes, *Climate Change and Human Rights Litigation in Europe and the Americas*, 5 SEATTLE J. ENV'T. L. 165, 181 (2015) (emphasis added) [hereinafter Fifth Assessment Report].

³⁷ American Declaration, *supra* note 7, art. XIII.

³⁸ de la Rosa Jaimes, *supra* note 36, at 182.

³⁹ *Id.* at 183 (citing *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125 (June 17, 2005) (Members of the Yakye Axa indigenous group camped out on the roadside across from the land they claimed; during that time 16 members died due to a lack of access to food, health care, and education)).

⁴⁰ *Xákmok Kásek Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 175 (Aug. 24, 2010) [hereinafter *Xákmok Kásek*].

Human rights scholars have also aptly emphasized the limitations of relying on the Right to Enjoy Culture.⁴¹ However, its importance to the climate action conversation is resurrected insofar as the culture claim speaks to the ability of indigenous communities to transmit culture and cultural knowledge to future generations. If one outcome of climate change is to fundamentally disrupt communities' knowledge about nature, weather, and ecology, then the cultural tradition of "elders educat[ing] the younger generation in traditional ways of life, kinship and bonding" are also altered.⁴² Arctic warming represents perhaps the clearest example of how indigenous peoples' traditional ways of knowing - about the weather, seasons for hunting and behaviors of wildlife such as bear hibernation patterns -- are made so unpredictable that elders may no longer be able to transmit knowledge to younger generations with confidence.

3. Right to Health and [therefore] to a Healthy Environment?

The OAS recognizes a Right to Health and a Right to a Healthy Environment in Articles 10 and 11, respectively, of the Protocol of San Salvador.⁴³ The Protocol is an addendum to the American Convention which only 16 member States have ratified. Article 10 defines the Right to Health as "the enjoyment of the highest level of physical, mental, and social well-being" and outlines States' correlative duty to provide universal access to health services as a public good.⁴⁴ Article 11, however, defines the Right to a Healthy Environment as linked to a right to access "basic public services," obligating member states to "*promote the protection, preservation, and improvement of the environment.*"⁴⁵ It is clear that environmental contamination and degradation can harm human health, that the Protocol charges member States with taking positive measures to protect human health, and that the Fifth Assessment Report predicts with high confidence risks of injury, *ill-health*, and coastal and inland flooding caused by rising sea levels.⁴⁶

The right to a healthy environment has not been adjudicated to date. It is therefore not clear what types of "public services" are implicated by Article 11 (i.e., sanitation services only?) or how broadly the mandate to "promote the protection of the environment" might be interpreted by the IACtHR. In fact, Article 19 of the Protocol indicates that individual petitions to the Inter-American Commission cannot receive remedies; indeed, signatory States need only report to the Commission as to "progressive measures" taken in this direction.⁴⁷ In addition, the United States did not sign or ratify the Protocol of San Salvador, and therefore cannot be bound by the Right to a Healthy Environment.

⁴¹ See, e.g., Antkowiak, *supra* note 32, at 173; Fisher, *supra* note 32.

⁴² Athabaskan Petition, *supra* note 35, at 3.

⁴³ Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights, A-52 OAS Treaty O.A.S.T.S. No. 69 (1988) [hereinafter Protocol of San Salvador].

⁴⁴ *Id.* art. 10.

⁴⁵ *Id.* art. 11. (emphasis added).

⁴⁶ de la Rosa Jaimes, *supra* note 36, at 176. (emphasis added).

⁴⁷ *Id.* art. 19.

4. Right to Life

Article I of The American Declaration establishes that “every human being has the right to life.”⁴⁸ The Right to Life may be interpreted narrowly to mean protection for the physical integrity of the person, for example, the right to not be arbitrarily deprived of life without due process of law. However, the IACtHR more expansively and three-dimensionally interpreted the Right to Life under what is referred to as the “*vida digna*” doctrine, or right to a *dignified* life.⁴⁹ Since at least 1982, the U.N. Human Rights Committee encouraged member States to take “positive measures” to protect the Right to Life, for example “to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”⁵⁰ For example, in *Yakye Axa*, the court held that “conditions that impede or obstruct access to a decent existence should not be generated.”⁵¹ Furthermore, “states have an obligation to ensure the right to life through generating minimum living conditions that are compatible with the dignity of the human person.”⁵² Finally, if state authorities “*knew or should have known* about the existence of a situation posing an immediate and certain risk to the life” of its citizens, the state acquires a positive obligation to adopt the measures necessary “within the scope of their authority, which could be reasonably expected to prevent or avoid such risk.”⁵³

The concept of the right to a *dignified* life appears to emerge as the overarching Right which permits the full enjoyment of all other rights; the “flexibility” granted to the court to decide how to apply the “dignity” or “dignified” standard, however, brings both advantages and disadvantages.⁵⁴ On one hand, the flexibility of *vida digna* appears to be key to the court's potential to expand its human rights framework to address the threat of climate change and its harmful impacts on the lives and livelihoods of indigenous communities. To the extent that a hypothetical indigenous community petitioner defines *vida digna* to involve the land they live on, or the seas from which they derive a livelihood, then leaning on the *vida digna* doctrine could indeed be useful for a climate change petition. On the other hand, the lack of a clear definition for *vida digna* also makes it possible for the court to interpret the doctrine in a manner that completely evades the issue of climate change and its impacts on human life as we currently know it.

⁴⁸ American Declaration, *supra* note 7, art. I.

⁴⁹ See Antkowiak, *supra* note 32, at 174.

⁵⁰ Human Rights Comm., General Comment No. 6: Article 6 (Right to Life), 16th Sess., ¶ 5, U.N. Doc. A/37/40 (Apr. 30, 1982), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11 [<https://perma.cc/TQ7N-E2KN>].

⁵¹ *Yakye Axa* *supra* note 39, at ¶ 161. (In *Yakye Axa*, an indigenous community was denied entrance to its traditionally-held property for farming, hunting, and fishing. Health conditions and temporary housing were of poor quality. The Court cited the detriment to the right of health and detriment to the right to food and access to clean water as having a major impact on the right to a decent existence and basic conditions to exercise other human rights).

⁵² *Id.* at ¶ 164.

⁵³ *Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No 146, ¶155. (Mar. 29, 2006)* (emphasis added) [hereinafter *Sawhoyamaya*].

⁵⁴ See Antkowiak, *supra* note 32, at 178.

5. Article 29: Interpretation

Article 29 of the American Convention is a provision that also affords the IACHR the flexibility to look beyond the “black letter” rights outlined within the Convention itself. Article 29 declares that:

no provision of this Convention shall be interpreted as: (b) restricting the enjoyment or exercise of any right or freedom recognized ... by virtue of another convention to which one of the said states is a party; [or] (c) precluding any other rights inherent to the human personality or derived from representative democracy as a form of government.⁵⁵

IACHR petitioners could employ this provision to incorporate other Convention rights into its recommendations. For example, petitioners could incorporate claims related to the UN Framework Convention on Climate Change (UNFCCC), to which the United States is a party, or treaty provisions in effect between the United States and indigenous communities, and ask the IACHR under Article 29 to interpret the Convention on Human Rights in a light that favors the enjoyment of these other “democracy-derived” rights.⁵⁶

B. Takeaways for Future Claims

To date, no climate justice petition has successfully been brought through the IACHR or IACtHR. Past successful environmental justice claims have been limited in geographic scope. For instance, the cause of the harm could be traced to the actions or inactions of one OAS member state, and also clearly impact one person or indigenous community in a particularized way. Established case law holds states accountable to take positive measures to establish minimum conditions for a dignified life, when they knew or should have known about the existence of a situation posing an immediate and certain risk to the lives of their citizens, and they did not take the necessary measures available to them that could be reasonably expected to prevent or avoid such risk.⁵⁷ Successful Right to Life petitions affirmed “not only the right of every human being not to be arbitrarily deprived of his life, but also the right that conditions that impede or obstruct access to a decent existence should not be generated.”⁵⁸

⁵⁵ American Convention, *supra* note 8, art. 29.

⁵⁶ Antkowiak, *supra* note 32, at 178 (speaking to the flexibility of “human dignity” as everyone interprets how to achieve, or minimum criteria for, human dignity differently. Antkowiak says that the adaptability of the human dignity concept allows for judicial discretion to “extend existing rights and create new ones”).

⁵⁷ *Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 245, at ¶ 245. (June 27, 2012); see also Xákmok Kásek, supra note 40, at ¶¶ 187-188.*

⁵⁸ *Yakye Axa, supra note 39, at ¶ 157; see also Xákmok Kásek, supra note 40 (court holds Paraguay responsible not just for deaths among the Xakmok Kasek community, but also for not providing the conditions such as access to water, food, education, and health that would guarantee the right to a decent existence, begins ¶ 194).*

The Right to a *vida digna* is especially important in the case of vulnerable and marginalized populations, such as indigenous communities. Within the *vida digna* doctrine, the Right to Property and Right to Enjoy the Benefits of Culture conferred to indigenous communities, in particular, takes into account the ability of future generations to inherit the cultural legacy that the spiritual relationship of indigenous people to the land represents. Indigenous communities therefore seem especially exposed to climate change-related human rights violations, in that climate change fundamentally threatens the ability of indigenous people to hand down knowledge, traditions, and beliefs associated with the lands they have historically inhabited.

While the human rights violation narrative seems cohesive, the harms complained of must also be “within the scope of [a state's] authority, which could be reasonably expected to prevent or avoid such risk”⁵⁹ in order for the IACHR to hold a member State accountable for the violation.

III. THE 2005 INUIT PETITION

A. Context and Summary of Inuit Claim

On December 7, 2005, sixty-three named Inuit from northern Canada and Alaska petitioned the Commission for relief from violations of their human rights caused by global warming and climate change resulting from greenhouse gas (GHG) emissions from the United States.⁶⁰ The Inuit claim described how their traditional hunting grounds were being eviscerated as the permafrost melted, sea ice thinned, glaciers receded, coastal erosion increased, and they experienced shorter winters and longer and warmer summers. The Inuit argued that the harmful impacts mentioned above were a result of the United States’ failure to take meaningful steps to reduce the nation’s GHG emissions and counter climate change while contributing disproportionately to global GHG emissions levels. Notably, the Inuit evidence of the U.S.’ failure to adequately control its greenhouse gas emissions included the decision by then President Bush to withdraw from the Kyoto Protocol that had been signed by Vice-President Gore in 1997 but never ratified by the U.S. Senate.⁶¹ The Inuit claim said these acts and omissions by the United States Government violated their rights to the benefits of culture, right to property, right to the

⁵⁹ *Sawhoyamaya Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No 146 ¶155 (Mar. 29, 2006) (emphasis added).

⁶⁰ Sheila Watt-Cloutier, *Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by the Acts and Omissions of the United States*, Dec. 7, 2005, http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2005/20051208_na_petition.pdf [<https://perma.cc/98TL-62K4>] [hereinafter Inuit Petition]; see also Arctic Climate Impact Assessment, *Impacts of a Warming Climate: Final Overview Report (“ACIA Overview”)* 668 (2004), available at <https://www.amap.no/documents/download/1058/inline> [<https://perma.cc/BR5R-6QJ2>].

⁶¹ Press Release, Office of the Press Sec’y, President Bush Discusses Global Climate Change (June 11, 2001), <https://georgewbush-whitehouse.archives.gov/news/releases/2001/06/20010611-2.html> [<https://perma.cc/6T88-SJUS>]; Julian Borger, *Bush Kills Global Warming Treaty*, THE GUARDIAN (Mar. 29, 2001, 3:28 EST), <https://www.theguardian.com/environment/2001/mar/29/globalwarming.usnews> [<https://perma.cc/8JVL-4QZC>].

preservation of health, right to life, right to physical integrity and security, right to a means of subsistence, and their rights to residence, movement, and the inviolability of the home.⁶²

B. IACHR Petition Dismissal and Post-Dismissal Hearings

In a letter dated November 16, 2006, IACHR dismissed the petition because “the information it provided was insufficient for making a determination.”⁶³ The main challenge for the petitioners was the perceived insufficiency of facts establishing the causal link between the harm documented by the Inuit community and the acts and omissions of the U.S. Government.⁶⁴ The Commission then called for hearings on the issue held on March 1, 2007.⁶⁵

The dismissal of the Inuit petition demonstrates how the structure of the 20th century human rights framework -- state-based, submissive to state-prioritized economic growth, and for the most part protective of individual harms incurred at a fixed place within one accountable nation-state—incompatibly meets the 21st century challenge of climate change. Fisher and Lundberg comment that “the IACHR effectively passed up an opportunity to address a right to environmental protection, ... expos[ing] the limits of the system's current indigenous rights framework from an ecological integrity perspective - climate change's more diffuse geography ... and direct challenge to structural economic drivers of ecological degradation.”⁶⁶

In addition, the Inuit petition faced another specific challenge that the defendant state was the United States, which did not opt into Article 62 jurisdiction of the IACtHR under the American Convention.⁶⁷ Sheila Watt-Cloutier, when speaking about the petition to the 2005 COP, said:

[a] declaration might not [be] enforceable, but it has great moral value. We intend the petition to educate and encourage the United States to join the community of nations in a global effort to combat climate change. This petition is our means of inviting the United States to talk with us and to put this global issue into a broader human and human rights context. Our intent is to encourage and inform....⁶⁸

⁶² Inuit Petition, *supra* note 60, at 74-95; *see also* Itzchak Kornfeld, *The Impact of Climate Change on American and Canadian Indigenous Peoples and Their Water Resources*, 47 ENV'T. L. REP. NEWS & ANALYSIS 10245 (2017); and de la Rosa Jaimes, *supra* note 36, at 192.

⁶³ *See* Andrew C. Revkin, *Americas' Inuit Climate Change Petition Rejected*, N.Y. TIMES, (Dec. 16, 2006) <https://www.nytimes.com/2006/12/16/world/americas/16briefs-inuitcomplaint.html> [<https://perma.cc/3V8T-NXGJ>].

⁶⁴ *See e.g.*, Hari M. Osofsky, *Inuit Petition as a Bridge - Beyond Dialectics of Climate Change and Indigenous Peoples' Rights*, 31 AM. INDIAN L. REV. 675 (2007) at 689; Megan Chapman, *Climate Change and the Regional Human Rights Systems*, 10 SUSTAINABLE DEC. L. & POL'Y 37, 38 (2010).

⁶⁵ Letter from Ariel E. Dulitzky, Assistant Executive Secretary, Inter-American Commission on Human Rights, to Sheila Watt-Cloutier, Petitioner (Feb 1, 2007); Testimony of Donald M. Goldberg, Global Warming and Human Rights, March 1, 2007 (Center for International Environmental Law); Testimony of Martin Wagner (Earthjustice), Global Warming and Human Rights, March 1, 2007.

⁶⁶ Fisher, *supra* note 32, at 196. (such as American emissions driven by consumption and business practices)

⁶⁷ *Id.*

⁶⁸ Osofsky, *supra* note 64, at 687.

It appears that Watt-Cloutier knew that the chances of a “win” against the United States using the Inter-American System as the forum were unlikely; certainly, she knew that no declaration could be binding even if emitted. However, the Inuit define success differently. Human rights legal scholars have also noted the importance of the Inuit Petition, if only to force the Commission to consider how climate change might be justiciable given existing legal instruments.⁶⁹

C. Takeaways for Future Claims

The dismissal of the Inuit Petition underscores three main points to be carried forward into any future IACHR climate change-related petitions: 1) future petitions will need to present concrete facts tying the defendant state’s actions or inaction to the anthropogenic climate change impacts cited as violations of human rights readily recognized by the American Convention;⁷⁰ 2) the Inter-American system is imperfect in that it was created by nation-states and any “teeth” it may have to enforce decisions relies on these nation-states voluntarily surrendering to its jurisdiction. Nevertheless, the system can be seen as “a vehicle for articulating and protecting traditional values on an international stage,” thereby motivating other actors to continue pressing forward;⁷¹ and 3) even if the U.S. is not keen to take cues from international human rights bodies such as the IACHR, petitions can contribute to the evolution of international human rights frameworks so that climate change, and its intersection with indigenous peoples’ rights may be more universally understood and acted upon globally.

IV. 2013 ATHABASKAN PETITION

On April 23, 2013, the Arctic Athabaskan Council submitted a petition to the IACHR seeking relief from Canada for violations of their human rights caused by emissions of black carbon leading to rapid arctic warming and melting.⁷² The claim asserts that Canada’s lack of effective federal and provincial regulations for black carbon emissions is responsible.⁷³ The harmful effects of climate change documented in the petition include: increased fire incidents, increased difficulty of river travel due to low water levels, increased infestation of trees, reduced populations of moose and porcupines, changed caribou migration patterns, and reduced permafrost due to melt.⁷⁴ These negative impacts are violations of Athabaskan human rights, especially considering that “[t]he Athabaskan peoples’ subsistence hunting system is ‘a tightly integrated social-ecological system in which people depend on nature for a wide range of ecosystem services, including subsistence resources, protection from fire risk, and cultural ties to their traditional

⁶⁹ See, e.g., Hari M. Osofsky, *Inuit Petition as a Bridge? Beyond Dialectics of Climate Change and Indigenous Peoples’ Rights*, in *Adjudicating Climate Change: State, National and International Approaches* 272, 273, 282 (William C.G. Burns & Hari M. Osofsky, eds., 2009).

⁷⁰ See, e.g., de la Rosa Jaimes, *supra* note 36, at 195.

⁷¹ Osofsky, *supra* note 64, at 695.

⁷² Athabaskan Petition, *supra* note 35, at 1.

⁷³ de la Rosa Jaimes, *supra* note 36, at 193.

⁷⁴ Athabaskan petition, *supra* note 35, at 29-30.

lands.”⁷⁵ Athabaskan have lived in the same way for millennia in terms of how they interact with the Arctic lands to ensure their own sustenance, shelter, and cultural identity.⁷⁶ The Athabaskan petition asks the IACHR to 1) declare that Canada’s failure to adopt measures to reduce black carbon emissions violates the Athabaskan peoples’ right to the benefits of their culture, right to property, and right to health enshrined in the American Declaration and 2) recommend that Canada take actions to implement black carbon emissions reductions measures and to protect the Athabaskan culture and resources from the effects of the accelerated Arctic warming.⁷⁷

Almost *seven years later*, this petition is still pending an admissibility determination. Here the attenuated proximate cause chain may prove to be an obstacle as it was in the case of the Inuit petition. First, the petition must demonstrate that Canadian Government acts or omissions caused the specific environmental degradation that is causing a violation of the Athabaskan people’s human rights. Nevertheless, there are four reasons to believe that this petition might meet with success where the prior Inuit petition failed. First, the proximate cause of the environmental impact is more specific and geographically more closely tied to Canadian sources than in the Inuit petition. The Arctic warming of which the Athabaskans complain is the acceleration due to black carbon falling on white ice and snow, absorbing sunlight instead of reflecting it. Black carbon is the sooty pollution emitted from diesel engines, residential heating stoves, agricultural and forest fires, and some industrial facilities, which only stays in the atmosphere for about one week and therefore Canadian sources are irrefutably the cause of the black carbon complained of by the Athabaskan.

Second, any changes in the relationship between the Athabaskan people and the ecology of the frozen Arctic due to accelerating warming represent a catastrophic disruption to the Athabaskan way of life, which dates back “millennia.” Third, the Athabaskan petition justifies an exception to the “exhaustion of domestic remedies” requirement, alleging that Canadian law offers Arctic Athabaskans “no reasonable chance of success” due to the undue burden such challenges would impose, and due to the lack of remedies under Canadian constitutional, statutory and common law for the human rights violations in question.⁷⁸ Finally, a lot has changed with respect to heightened scientific clarity and global awareness of the impending crisis linked to anthropogenic climate change in the intervening decade plus between the dismissal of the Inuit petition and the current deliberations regarding the Athabaskan petition.

V. WHAT HAS CHANGED SINCE 2006

By many accounts, the world has “woken up” to the reality of climate change.⁷⁹ Over the course of the past decade, the impacts have been more tangibly seen and felt. Science is capable

⁷⁵ Veronica de la Rosa Jaimes, *The Arctic Athabaskan Petition: Where Accelerated Arctic Warming Meets Human Rights*, 45 CAL. W. INT’L L. J. 213, 237 (2015).

⁷⁶ *Id.*

⁷⁷ de la Rosa Jaimes, *supra* note 36, at 193.

⁷⁸ *Id.* at 194.

⁷⁹ See, e.g. Alejandra Borunda, *Past decade was the hottest on record*, NATIONAL GEOGRAPHIC (Jan. 15, 2020), <https://www.nationalgeographic.com/science/article/the-decade-we-finally-woke-up-to-climate-change> [<https://perma.cc/K9YT-JKLN>].

of attributing more directly to climate change the increasing number and intensity of weather events observed,⁸⁰ and there may be a decreasing gap between expert and public risk perception on the issue of climate change.⁸¹ Very significantly, a robust global youth movement has gained momentum to advocate for climate action, which should be increasingly difficult to ignore whether you are a politician seeking re-election or a human rights body hearing the cries of future generations alleging our negligence in denying them a secure future.⁸² Finally, the U.S. judicial system has seen increased litigation initiated by citizens and environmental groups seeking legal pathways to influence the United States to take bolder and urgent steps.⁸³

A. More Robust and Urgent Evidence of Catastrophic Impacts

1. Intergovernmental Panel on Climate Change (IPCC)

Evidence produced by the Intergovernmental Panel on Climate Change (IPCC) increasingly documents the anthropogenic origins of climate change, characterizing the scientific evidence as “unequivocal.”⁸⁴ In October 2014, the IPCC report “predict[ed] with high confidence risks of injury, ill-health, and coastal and inland flooding caused by rising sea levels.”⁸⁵ Rising temperatures in the Arctic leading to melting permafrost increases the likelihood of disease and injury due to dangerous conditions and worsens water quality.⁸⁶ By the UN Climate Action Summit in 2019, an IPCC Special Report was prepared which reiterated the need to keep post-industrial era global warming below 1.5°C, and concluded that world nations had much less time than previously thought to take action:

[e]xpert judgment based on the available evidence ... suggests that if all anthropogenic emissions were reduced to zero *immediately*, any further warming beyond the 1°C already experienced would *likely* be less than 0.5°C over the next two to three decades, assessed *likely* range for the date at which warming reaches

⁸⁰ *Id.*

⁸¹ See e.g., Borunda, *supra* note 79; Abigail Sullivan & Dave D. White, *An Assessment of Public Perceptions of Climate Change Risk in Three Western U.S. Cities*, 11 WEATHER, CLIMATE, & SOC’Y 449 (2019) (A pro-environmental worldview and perceived personal responsibility are the most influential predictors of climate change risk perceptions as opposed to scientific evidence, at least in the United States).

⁸² See, e.g., Borunda, *supra* note 79; Janna Ramadan, *Rise of U.S. Youth Climate Activism*, HARVARD POLITICAL REVIEW (Oct. 4, 2019), <https://harvardpolitics.com/united-states/youth-climate-activism/> [<https://perma.cc/N7Z2-Q4TT>].

⁸³ Katy Scott, *Can 'Climate Kids' Take On The U.S. Government and Win?*, CNN (Jul. 24, 2018), <https://www.cnn.com/2018/07/24/health/youth-climate-march> [<https://perma.cc/CV9K-PZCN>].

⁸⁴ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, 2014: SYNTHESIS REPORT 5 at 2 (Rajendra K. Pachauri et al. eds., 2015); see also Bratspies, *supra* note 3, at 312.

⁸⁵ de la Rosa Jaimes, *supra* note 36, at 176.

⁸⁶ See, e.g. Athabaskan petition, *supra* note 35, at 34, 45-46.

1.5°C of 2030 to 2052. The lower bound on this range, 2030, is supported by multiple lines of evidence.⁸⁷

In addition, every year's delay before initiating emission reductions decreases by approximately two years the remaining time available to reach zero emissions on a pathway still remaining below 1.5°C.⁸⁸ In order to hold at 1.5C, the world's annual carbon dioxide emissions "would have to be on an extremely steep downward path by 2030."⁸⁹

B. United Nations Framework Convention on Climate Change (UNFCCC)

The United Nations Framework Convention on Climate Change (UNFCCC)⁹⁰ was signed in 1992 and entered into force in 1994, a full decade prior to the Inuit petition's dismissal. One hundred and fifty-four nations, including the United States, signed the UNFCCC, which committed signatories to "reduce atmospheric concentrations of greenhouse gases" with the goal of "preventing dangerous anthropogenic interference with Earth's climate system."⁹¹ The Framework Convention signatories agreed to stabilize their greenhouse gas emissions at 1990 levels by the year 2000. After the signing of the UNFCCC treaty, the Parties have gathered at "Conferences of the Parties" (COPs) to review progress against the treaty's commitments. At the COP-1 in 1995, the Parties already realized that holding or reducing emissions at 1990 levels would be inadequate; that conclusion led to the Kyoto Protocol⁹² in 1997, which set more serious and binding emissions targets for developed countries. The United States signed, but never ratified, the Kyoto Protocol.

Then, by ratifying the 2015 Paris Agreement,⁹³ the largest carbon emitters, including the United States, China, India, and the European Union, all collectively endorsed the goal of keeping warming as close to 1.5°C as possible, a goal increasingly viewed as the turning point beyond which climate change impacts will not be reversible.⁹⁴ Even though President Trump formally announced the United States' intention to withdraw from the Paris Agreement on November 4,

⁸⁷ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE: 2018 SPECIAL REPORT, Chp. 1 at 66 (M.R. Allen, et al., 2018) *available at* <https://www.ipcc.ch/sr15/> [<https://perma.cc/8WZ7-QACG>].

⁸⁸ *Id.* at 61.

⁸⁹ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE: 2018 SPECIAL REPORT, SUMMARY FOR POLICYMAKERS AT 18 (Masson-Delmotte, V., et al., eds., 2018), *available at* [<https://perma.cc/7ZK4-98TR>]. (Annual carbon dioxide emissions are currently more than 40 billion tons per year.)

⁹⁰ United Nations Framework Convention on Climate Change, May 9, 1992, 27 U.N.T.C. 7.

⁹¹ *Id.*

⁹² Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, FCCC/CP/1997/L.7/Add.1.

⁹³ Paris Agreement, Dec. 12, 2015, FCCC/CP/2015/10/Add.1 [hereinafter Paris Agreement]; *see also* Bratspies, *supra* note 3, at 312.

⁹⁴ Bratspies, *supra* note 3, at 320.

2019⁹⁵ the remaining G-19 countries remain fervently committed.⁹⁶ The U.S. withdrawal did not become effective until one year following notification, or November 4, 2020.

Notably, the Paris Agreement was the first time that human rights language was employed within an international climate treaty:

Parties should, when taking action to address climate change, respect promote and consider their respective obligations on human rights, the right to health, the rights of indigenous people, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity...⁹⁷

C. Global Social Movement

1. Beyond Paris

Over the past decade, the UN system, and in particular bodies such as the Human Rights Council and the IACHR itself, has increasingly issued statements connecting climate change with human rights. In 2008, following the release of the Fourth IPCC Assessment Report, the UN Human Rights Council formally requested the UN Office of the High Commissioner for Human Rights (OHCHR) to conduct a study on the relationship between climate change and human rights.⁹⁸ Also, in 2008, the Organization of American States approved a resolution stating that “economic and social development and environmental protection are interdependent pillars of sustainable development; [c]limate change is a shared concern of all humankind, and its effects have an impact on sustainable development and could have consequences for the full enjoyment of human rights.”⁹⁹ The OAS resolved specifically:

to express an interest ... in the global efforts to face climate change, in particular with regard to the ... possible links between climate change and human rights,” and “[t]o instruct the Inter-American Commission on Human Rights (IACHR), ... to contribute, within its capacities, to the efforts to determine the possible existence of a link between adverse effects of climate change and the full enjoyment of human rights.¹⁰⁰

⁹⁵ Keith Johnson, *Is the United States Really Leaving the Paris Climate Agreement?*, FOREIGN POLICY (Nov. 5, 2019, 2:19 PM), <https://foreignpolicy.com/2019/11/05/paris-climate-agreement-united-states-withdraw/> [<https://perma.cc/2JFU-MFK6>].

⁹⁶ Bratspies, *supra* note 3, at 314.

⁹⁷ *Id.* at 328.

⁹⁸ Human Rights Council Res. 7/23 (Mar. 28, 2008), https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf [<https://perma.cc/N7TX-BGZT>].

⁹⁹ OAS General Assembly Resolution No. 2429 (XXXVIII-O/08), Human Rights and Climate Change in the Americas (June 3, 2008), pg. 265.

¹⁰⁰ *Id.*

In 2009, the UN Human Rights Council passed a resolution observing that “*climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights.*”¹⁰¹ And in December 2015, just before the COP21 meeting held in Paris, the IACHR issued a statement expressing concern regarding the *grave harm climate change poses to the universal enjoyment of human rights* and urging OAS member states to “ensure that any climate agreement reached incorporates human rights in a holistic manner.”¹⁰²

2. Greta and the Global Youth Movement

In August 2018, Greta Thunberg, a then-unknown fifteen year old schoolgirl in Sweden, stopped attending school each Friday in order to protest outside of the Swedish Parliament, vowing to continue until Sweden met its carbon emissions target committed to in the 2015 Paris Agreement.¹⁰³ She urged other school children to join her, the word of her protests going viral around the world with the hashtag “#FridaysForFuture.”¹⁰⁴ By December 2018, 20,000 students around the world had joined her.¹⁰⁵ In September 2019, Greta traveled by boat to New York to address the UN Climate Action Summit.¹⁰⁶ She has been one visible and powerful force mobilizing the next generation to organize around climate action, but there has been a broad appeal for environmental justice activism across racial, ethnic, religious, and nationality lines that pre-dated Greta’s campaign.¹⁰⁷

From protests against pollution and pipelines, in defense of Flint, Michigan resident rights to clean drinking water or to protect the Amazon rainforest, young people of color are leading multiple and inter-connected movements to advocate for their communities’ rights to health, livelihoods, and a future free of environmental devastation -- where the link between localized impacts and global climate change is very clear.¹⁰⁸

¹⁰¹ Human Rights Council Res. 10/4 (Mar. 25, 2009).

¹⁰² IACHR Press Release, *IACHR Expresses Concern regarding Effects of Climate Change on Human Rights*, Dec. 2, 2015, available at http://www.oas.org/en/iachr/media_center/PReleases/2015/140.asp [<https://perma.cc/UHA9-GFE5>] (emphasis added).

¹⁰³ *Greta Thunberg: What Does the Teenage Climate Activist Want?*, BBC NEWS (Feb. 28, 2020), <https://www.bbc.com/news/world-europe-49918719> [<https://perma.cc/ETH9-GJHU>].

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ PBS NewsHour, *Greta Thunberg's Full Speech To World Leaders at UN Climate Action Summit*, YOUTUBE (Sept. 23, 2019), <https://www.youtube.com/watch?v=KAJsdgTPjU>.

¹⁰⁷ Nylah Burton, *Meet The Young Activists of Color Leading the Charge Against Climate Disaster*, VOX (October 11, 2019, 8:00 AM), <https://www.vox.com/identities/2019/10/11/20904791/young-climate-activists-of-color>.

¹⁰⁸ *Id.*, See also, Leah Asmelash, *Greta Thunberg Isn't Alone. Meet Some Other Young Activists Leading the Environmentalist Fight*, CNN (September 29, 2019, 9:53 AM), <https://www.cnn.com/2019/09/28/world/youth-environment-activists-greta-thunberg-trnd/index.html> [<https://perma.cc/76M5-FXVX>].

D. *Citizens v. the U.S.*

Since 2006, groups, including youth activists, have increasingly turned to the world's courts to hold governments, corporations, and individuals responsible for climate change; this is especially true in the United States.¹⁰⁹

1. Massachusetts v. EPA (2007)

On November 29, 2006, the U.S. Supreme Court heard the first case to ever successfully challenge federal regulatory inaction on climate change.¹¹⁰ The State of Massachusetts asked the Environmental Protection Agency (EPA) to regulate new motor vehicle carbon emissions contributing to climate change under its Clean Air Act mandate to regulate “any air pollutant” that can “reasonably be expected to endanger public health or welfare.”¹¹¹ The EPA argued that, as an agency, the Clean Air Act does not authorize the EPA to regulate greenhouse gas emissions and denied the petition. On April 2, 2007, the Supreme Court issued a landmark 5-4 decision against the Bush Administration,¹¹² holding that the EPA can only avoid regulating greenhouse gas emissions from new cars if it determines that such emissions do not contribute to climate change.¹¹³ Notably, the majority acknowledged Massachusetts's standing to bring suit because “EPA's steadfast refusal to regulate greenhouse gas emissions presents a risk of harm to Massachusetts that is both ‘actual’ and ‘imminent,’ and there is a ‘substantial likelihood that the judicial relief requested’ will prompt EPA to take steps to reduce that risk.”¹¹⁴ Perhaps this case influenced President Bush to include in his January 2007 State of the Union speech a statement that “technological breakthroughs ... will help us be better stewards of the environment, and they will help us to confront the serious challenge of global climate change.”¹¹⁵

2. Standing Hurdles: *Native Village of Kivalina v. ExxonMobil* (2009)

Two years later, however, a federal district court dismissed a common law public nuisance action brought by the Eskimo village of Kivalina against oil, energy, and utility companies for

¹⁰⁹ See Scott, *supra* note 83. (As of July 2018, there have been over 1,000 climate change cases filed against governments, corporations and individuals in 24 countries — 888 of those cases were located in the United States, according to Columbia University's Sabin Center for Climate Change Law).

¹¹⁰ See *Massachusetts v. EPA*, 549 U.S. 497, 127 S. Ct. 1438, 167 L.Ed.2d 248 (2007) (The court affirmed that the U.S. EPA did have a mandate to regulate greenhouse gases under the Clean Air Act, and acknowledged the State of Massachusetts had standing to sue for environmental protection because its territory was at imminent risk due to climate change).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 498-99.

¹¹⁵ Press Release, Office of the Press Sec'y, President Bush Delivers State of the Union Address (Jan. 23, 2007), <https://georgewbush-whitehouse.archives.gov/stateoftheunion/2007/> [<https://perma.cc/9UVP-DUXY>]; see also The State of the Union Message: Bush Loses the Upper Hand, *ECONOMIST* (Jan. 25, 2007), <https://www.economist.com/united-states/2007/01/25/bush-loses-the-upper-hand> [<https://perma.cc/NU8H-8W8R>].

greenhouse gas emissions that contribute to global warming and erosion of Arctic sea ice.¹¹⁶ The court dismissed the case because the village lacked Article III standing and because of the “political question” doctrine, specifically that the claim lacked “judicially discoverable and manageable standards.”¹¹⁷ Claims alleging statutory violations related to a procedural right, i.e., to raise an unconsidered threat of environmental harm posed by a federally licensed project,¹¹⁸ or an express right to bring a citizen suit, generally have not faced standing challenges.¹¹⁹ However, other cases¹²⁰ similar to *Kivalina* that do not arise from a statutory violation have also faced dismissal for lack of Article III standing. Article III standing requires plaintiffs to show 1) an actual injury that is specific and imminent; 2) that the harm is “fairly traceable” to the defendant’s conduct; 3) likelihood that the injury will be redressed by a favorable decision.¹²¹

3. *Juliana v. United States* (2020)

*Juliana v. United States*¹²² is the most recent climate change claim brought in U.S. federal court that closely resembles the kind of petition that could be brought in the international human rights system and which is not grounded in a specific statutory violation. This case remarkably survived motions to dismiss and to strike at the federal district court level, recognizing a justiciable Fifth Amendment due process right “to a climate system capable of sustaining human life.” However, on January 17, 2020, the Ninth Circuit reversed that decision holding that plaintiffs lacked Article III standing.¹²³ In March 2020, plaintiffs asked for an en banc review by the Ninth Circuit, and in the meantime, many amici briefs were submitted in support of the *Juliana* plaintiffs, including a brief signed by twenty-four U.S. Senators and Representatives asserting that the Court has the duty to maintain the balance of power among the three co-equal branches and to protect the Nation’s youth when the other branches’ actions infringe on their constitutional rights.¹²⁴

In 2015, the *Juliana* plaintiffs sued President Barack Obama, and numerous executive agencies for *knowing* that carbon emissions from fossil fuels are destabilizing the climate system in a way that would significantly endanger plaintiffs, and *despite that knowledge* “permitt[ing], encourag[ing], and otherwise enabl[ing] continued exploitation, production, and combustion of

¹¹⁶ See generally *Native Village of Kivalina v. ExxonMobil Corp.*, 663 F.Supp. 2d. 864 (N.D. Ca. 2009) (explanatory parenthetical).

¹¹⁷ *Id.*

¹¹⁸ See generally *Nulankeyutomonon Nkihtaqmikon v. Impson*, 503 F.3d 18 (1st Cir. 2007) (explanatory parenthetical).

¹¹⁹ See generally *Covington v. Jefferson County*, 358 F.3d 626 (9th Cir. 2004) (explanatory parenthetical).

¹²⁰ See, e.g., *Clean Air Council v. United States*, 362 F.Supp. 3d 237 (E.D. Pa. 2019) (References *Juliana v. United States*, (Section V.C.3.) as “the only court” to have recognized a Fifth Amendment Due Process right to “a climate system capable of sustaining human life.”); *Louisiana Env’t Action Network v. McDaniel*, No. CIV A 06-4161, 2007 WL 2668880 (E.D. La. Sept. 5, 2007).

Louisiana Env’t Action Network v. McDaniel, unpublished (E.D. La. 2009).

¹²¹ *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).

¹²² *Juliana v. United States*, 217 F.Supp. 3d 1224, 1233 (D.Or. 2016).

¹²³ *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020).

¹²⁴ Brief for Kelsey Cascadia Rose Juliana, *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020) (no. 18-36082).

fossil fuels, ... deliberately allowing atmospheric CO₂ concentrations to escalate to levels unprecedented in human history.”¹²⁵ The youth plaintiffs argue that *defendants’ acts and omissions*, across a broad range of policies, licenses granted, and other decisions made, whether they be tax breaks granted to the fossil fuel industry, the (lack of) regulation of CO₂ emissions from power plants and vehicles, or construction of fossil fuel infrastructure such as pipelines and marine coal terminals, etc., “*violate their substantive due process rights to life liberty, and property, and that defendants have violated their obligation to hold certain natural resources in trust for the people and for future generations.*”¹²⁶ In terms of remedy, the plaintiffs seek “(1) a declaration [that] their constitutional and public trust rights have been violated and (2) an order enjoining defendants from violating those rights and directing defendants to develop a plan to reduce CO₂ emissions.”¹²⁷ One could easily imagine replacing “substantive due process rights” with “human rights” violations alleged in the context of any IACHR petition.

The good news is that the Ninth Circuit holding acknowledges the undisputed factual basis of the plaintiffs’ claim—threats of anthropogenic climate change are real,¹²⁸ and the United States has known about the risks since at least 1965.¹²⁹ The Court also pointed out that the United States is not only guilty of inaction when it comes to the country’s harmful reliance on fossil fuels and carbon emissions, but the United States Government also “affirmatively promotes fossil fuel use” through tax policy, permits granted for imports/exports, subsidies for both domestic and overseas projects, and leases granted for fossil fuel extraction on public lands.¹³⁰ The Court also agrees that 1) the plaintiffs’ properly allege specific and particular injuries;¹³¹ 2) that those injuries are caused by carbon emissions from fossil fuel extraction, production, and transportation;¹³² and 3) that federal leases have increased those emissions,¹³³ resulting in sufficient basis for a factual dispute to survive summary judgment. The Ninth Circuit also agreed that plaintiffs are not limited to APA fora as they are not challenging a specific outcome or procedure under a specific statute but are alleging broad constitutional claims.¹³⁴

¹²⁵ *Juliana*, 217 F.Supp. at 1233.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Juliana*. 947 F.3d at 1166. (Climate change is occurring at an increasingly rapid pace; since the Industrial Age began, the levels of carbon in the atmosphere have skyrocketed to levels not seen in 3 million years; this rise stems from fossil fuel combustion and if unchecked will wreak havoc on the Earth’s climate; temperatures have already risen 0.9 degrees Celsius above pre-industrial levels and may rise more than 6 degrees Celsius by the end of the century; this extreme heat is melting polar ice caps, and may cause sea levels to rise 15 to 30 feet by 2100; absent some action, the destabilizing climate will bury cities, spawn life-threatening natural disasters, and jeopardize critical food and water supplies).

¹²⁹ *Id.*

¹³⁰ *Id.* at 1167.

¹³¹ *Id.* at 1168.

¹³² *Id.* at 1169. (The United States accounts for over 25% of global carbon emissions from 1850-2012, and currently accounts for 15%).

¹³³ *Id.* (About 25% of fossil fuels extracted in the United States come from federal waters and lands, an activity that requires authorization from the federal government).

¹³⁴ *Id.* at 1167.

The Court of Appeals takes issues with its ability to make a determination on this kind of claim as an “Article III” Court. The Ninth Circuit dismissal rests on the determination that 1) it falls to the political branches, not the Courts to deliver the solution; and 2) even if the Courts did deliver the remedy requested by the plaintiffs, it would not resolve catastrophic climate change, which is the issue complained of. The Ninth Circuit decision articulates the “political doctrine” issue to be that the remedy requested “seek[s] not only to enjoin the Executive from exercising discretionary authority expressly granted by Congress but also to enjoin Congress from exercising power expressly granted by the Constitution over public lands.”¹³⁵ In terms of remedy, the Court cites expert testimony suggesting that altering the course towards catastrophic climate change will require “much more than the cessation of the government's promotion of fossil fuels,” but instead “calls for no less than a fundamental transformation of this country's energy system, if not that of the industrialized world.”¹³⁶ In addition, “the record shows that many of the emissions causing climate change happened decades ago or come from foreign and non-governmental sources.”¹³⁷ Even though the Ninth Circuit has declined to make a decision, the decision indicates its hope that Congress and Executive agencies will take note of the claims and take appropriate action.

VI. AN IACHR PETITION IN 2021?

A. *The Futility of Petitioning*

There are valid reasons to doubt that international human rights legal instruments will serve as an effective tool to combat climate change.¹³⁸ First, at the current rate of processing, by the time the Commission evaluates any new petition for admissibility, the “decade of climate action” will be coming to a close. The Athabaskan Petition has already been waiting for seven years for its initial admissibility determination; even if admitted, the Commission’s process may require years more to reach a decision on the merits and no chance of binding decision. U.S. has not generally been responsive to Commission recommendations. Second, an eligible petition must first clearly demonstrate that it has exhausted all domestic remedies. In the case of indigenous peoples’ rights threatened by the disappearance of their lands or the natural resources they depend on for subsistence and to preserve their culture, the Commission could claim that there are remedies still to be pursued via the political as well as judicial branches. Third, the facts presented must clearly link the acts or omissions of the United States government to the harm caused by climate change. The IACHR may still not be ready to “cinch” up the chain of proximate cause -- holding one member State responsible for what amounts to a global problem with global causes and its impacts, even if disproportionate, on a specific individual or group of individuals. Finally, there is an opportunity cost in terms of time and resources that would be investing in drafting the petition. Given the urgency of a response, the chances of a favorable outcome, and if yes, then the chance

¹³⁵ *Id.* at 1170.

¹³⁶ *Id.* at 1170-71.

¹³⁷ *Id.* at 1170.

¹³⁸ *See, e.g.,* Kornfeld, *supra* note 62, at 10250.

of a meaningful remedy, any rational petitioner may logically conclude that energies are better invested elsewhere.

B. The Case for Petitioning

Notwithstanding the case against, legal scholars have signaled the importance of the international human rights system as a moral authority, exerting pressure on member states to protect, in particular politically underrepresented groups, including indigenous communities. Others assert that the ability to reframe climate change impacts in human rights terms, as opposed to framing based on existing regulatory policies, allows stakeholders to consider more fully the overarching consequences of social choices.¹³⁹ A human rights framework infuses greater urgency and universal appeal that should enable policymakers to rise above the “legal and technical lock-ins created by past decisions” and focus instead on the problem of climate change threats.¹⁴⁰ In addition, there is value in pressuring the international human rights framework itself to evolve and to retain relevance and legitimacy in the face of ecological concerns that were not clearly articulated in the post-WWII era when the regional human rights system was established.¹⁴¹ Even without binding authority, the IACHR and IACtHR carry a role of “norm diffusion in support of actors and movements domestically.”¹⁴² The recognition of law and rights related to climate change is an evolving process that “must be politicized before they can be legalized,” using a human rights framework can help mobilize this process by “mov[ing] marginalized groups and issues to the center.”¹⁴³

Today in the United States, the prospect for the kind of national action needed to reverse the climate impact of our carbon-driven economy appears bleak. The Administration of Barack Obama demonstrated seriousness and commitment to participate in international efforts to reach the 1.5°C limits on climate change, putting in place policies such as the Climate Action Plan.¹⁴⁴ In 2017, however, President Trump appointed Scott Pruitt, an *anti*-environmental protection lawyer, to lead the Environmental Protection Agency. Under Pruitt, the EPA has reversed many significant regulations, most notably related to climate change initiatives delaying implementation of a rule that would have required fossil fuel companies to reduce methane leaks from oil and gas wells.¹⁴⁵ Pruitt served as key support for the President in identifying a legal path for withdrawal from the Paris Agreement, one of Trump's campaign promises.¹⁴⁶ After Pruitt resigned in 2018, Andrew

¹³⁹ See, e.g., Bratspies, *supra* note 3, at 330.

¹⁴⁰ *Id.* at 331.

¹⁴¹ Fisher, *supra* note 29, at 178.

¹⁴² *Id.*

¹⁴³ Bratspies, *supra* note 3, at 344.

¹⁴⁴ The President's Climate Action Plan, (June 2013), available at <https://obamawhitehouse.archives.gov/sites/default/files/image/president27sclimateactionplan.pdf> [<https://perma.cc/DB84-MAMG>].

¹⁴⁵ Coral Davenport, *Counseled by Industry, Not by Staff, E.P.A. Chief is Off to a Blazing Start*, N.Y. TIMES (Jul. 1, 2017), <https://www.nytimes.com/2017/07/01/us/politics/trump-epa-chief-pruitt-regulations-climate-change.html> [<https://perma.cc/NG7C-T8MJ>].

¹⁴⁶ *Id.*

Wheeler, a former coal lobbyist, took over as EPA Administrator.¹⁴⁷ The U.S. Administration did not participate in the UN Climate Summit in September 2019, including the newly-appointed UN Ambassador Kelly Kraft (married to Joe Kraft, owner of one of the U.S.' largest coal companies).¹⁴⁸ On November 4, 2019, the United States formally notified the United Nations that it would withdraw from the Paris Agreement, effective in November 2020.¹⁴⁹ On Inauguration Day, President Biden re-committed the United States to the Paris Agreement, issuing various executive orders signaling his intention to reinstate many of the environmental regulations discarded during the prior Administration.¹⁵⁰ At the same time, the domestic policies needed to carry through these executive branch intentions will depend on an approving majority in Congress, which may prove challenging given the prevailing national political polarization across an entire agenda of issues, including climate change.

C. Elements of a 2021 IACHR Petition

1. Petitioners

The IACHR has a relatively liberal standing requirement, in that petitions may be filed either by individuals, groups, or organizations who have either been victims of violations under the American Convention or who represent them. NGOs could raise issues of general interest, such as the protection of the environment. For a petition to be deemed admissible, however, there must be “specific, individual, and identifiable victims.” Indigenous communities within the United States with strong property interests and livelihoods linked to land highly affected by climate change could be viable petitioners. In 2007, the Fourth Assessment Report identified American indigenous communities to be among the most sensitive to climate change in North America.¹⁵¹ For example, Alaska Natives will likely be one of the groups most impacted by climate change due to the situation created by melting permafrost.¹⁵² Eighty-six percent of Alaska Native villages have experienced some degree of flooding and erosion, with those living along the coast impacted

¹⁴⁷ Coral Davenport, Lisa Friedman, and Maggie Haberman, *E.P.A. Chief Scott Pruitt Resigns Under a Cloud of Ethics Scandals*, N.Y. TIMES (Jul. 5, 2018), <https://www.nytimes.com/2018/07/05/climate/scott-pruitt-epa-trump.html> [<https://perma.cc/3JAJ-AQ3K>].

¹⁴⁸ Colum Lynch and Robbie Gramer, *U.N. Summit Opens With Dire Warnings on Climate Change*, FOREIGN POLICY (Sep. 23, 2019), available at <https://foreignpolicy.com/2019/09/23/u-n-summit-opens-with-dire-warnings-on-climate-change/> [<https://perma.cc/2WH3-3SS3>].

¹⁴⁹ Keith Johnson, *Is the United States Really Leaving the Paris Climate Agreement?*, FOREIGN POL’Y (Nov. 5, 2019, 2:19 PM), <https://foreignpolicy.com/2019/11/05/paris-climate-agreement-united-states-withdraw/> [<https://perma.cc/2JFU-MFK6>].

¹⁵⁰ Coral Davenport & Lisa Friedman, *Biden Cancels Keystone XL Pipeline and Rejoins Paris Climate Agreement*, N.Y. TIMES (Feb. 19, 2021), <https://www.nytimes.com/2021/01/20/climate/biden-paris-climate-agreement.html> [<https://perma.cc/BL65-97WA>].

¹⁵¹ See also Kornfeld, *supra* note 62, at 10248. (Kornfeld notes specifically that 86% of Alaskan Native villages have already experienced some degree of flooding and erosion due to their northern location, especially along the coast of Alaska).

¹⁵² Randall S. Abate & Elizabeth Ann Kronk, *Commonality Among Unique Indigenous Communities: An Introduction to Climate Change and Its Impacts on Indigenous Peoples*, 26 TUL. ENV’T. L.J. 179, 183 (2013).

the most.¹⁵³ As was described above in the Inuit Petition, indigenous communities living in northern Canada and Alaska are already feeling the impact of “less reliable sea and lake ice, [] loss of forest resources, stress on caribou herds, and more exposed coastal infrastructure from diminishing sea ice,” due to climate change-induced polar warming.¹⁵⁴

Seventeen tribes living along Washington State’s 3,000-mile Pacific coastline and facing an imminent threat to their livelihoods, property, and homes as a result of rising waters could also initiate an IACHR petition. These coastal Washington tribes have been advocating for federal assistance to proactively relocate entire villages.¹⁵⁵ Since 2014, the Quinault Nation has been formally discussing the relocation of two villages – Queet and Taholah – both of which are technically below sea level as the oceans have risen over time, with a projected cost of \$65 to \$100 million.¹⁵⁶ However, instead of using a litigation strategy, leaning on treaty rights to assert property claims, the Quinault chose political advocacy. The Tribal Coastal Resiliency Act was passed by the House on December 12, 2019.¹⁵⁷ Bill sponsor Representative Derek Kilmer (D-WA) justified the need for the bill pointing out that “[c]oastal tribes are increasingly confronting persistent flooding, mold damage, tsunami threats, and erosion.”¹⁵⁸ This bill expands the Coastal Zone Management Act to establish a \$5 million per year set-aside for tribes to help them to relocate or to implement other climate change mitigation measures needed to protect both their people and their sacred sites from rising sea levels.¹⁵⁹ However, even if this Congressional measure passes the U.S. Senate, the bill represents a meager response at best compared with the scale of the need. Therefore even if the bill is passed, Washington tribes might not be able to claim that there has been no response to their plight, and the United States can claim that they are taking “progressive measures.”

The *Juliana* plaintiffs could also take their petition to the IACHR. It is not clear whether all plaintiffs are also members of indigenous tribes, but perhaps there is a subset sufficient in number to submit a petition to the IACHR with an indigenous identity overlay. U.S. courts have practically conceded the facts of the case, and harm done, and sufficient evidence to support a claim. The *Juliana* plaintiffs have been denied access to the courts merely on the grounds of Article III standing, and because they are youths who are not able to vote and do not have recourse to a “political solution,” these potential petitioners might hold an even greater claim on the conscience of the IACHR because they are effectively denied a forum by which to seek a remedy in their home country, the United States.

¹⁵³ Kornfeld, *supra* note 62, at 10249.

¹⁵⁴ Kornfeld, *supra* note 62, at 10248-49.

¹⁵⁵ Manola Secaira, *Washington’s Coastal Tribes Are Working To Escape Rising Sea Levels. A Bill In DC Could Help*, CROSSCUT (Oct. 2, 2019), <https://crosscut.com/environment/2019/10/coastal-tribes-wa-are-working-escape-rising-sea-levels-bill-dc-could-help> [<https://perma.cc/FSD5-PABB>].

¹⁵⁶ *Id.*

¹⁵⁷ Coastal and Great Lakes Communities Enhancement Act, H.R. 729, 116th Cong. (2019).

¹⁵⁸ *U.S. House Passes Bill to Aid Coastal Tribes*, PENINSULA DAILY NEWS (Dec. 16, 2019, 1:30 AM), <https://www.peninsuladailynews.com/news/u-s-house-passes-bill-to-aid-coastal-tribes/> [<https://perma.cc/7296-ZKZB>].

¹⁵⁹ H.R. 729.

2. Violations

The United States is responsible for its active promotion of carbon-emitting activities through its various programs and policies promoting fossil fuel extraction on public lands and for its omissions when it actively withdraws from its UNFCCC commitments. US courts have acknowledged that these acts and omissions substantially contribute to climate change and, in turn, that climate change has directly and especially impacted indigenous group plaintiffs in all groups mentioned above.

The case for human rights violations is clear. Based on the *vida digna* doctrine, the United States has a duty to take positive measures within its means to ensure that conditions for a dignified life are provided for indigenous groups residing within its borders. The requirement that the United States knew or should have known about the risks of climate change and continues nevertheless to do nothing to change the status quo is met. The standard of *vida digna* is further qualified by the other human rights guaranteed to indigenous communities in the American Convention, namely the right to property and the right to enjoy the benefits of culture. When indigenous communities are physically forced to relocate or can no longer pursue traditional subsistence livelihoods on their traditional or reservation lands, the ability to pass on traditional knowledge, ways of life, and relationship with nature to the next generation is no longer possible.

In addition to American Convention violations, these injuries may also represent violations of treaties subscribed by the United States with indigenous groups. Article 29 of the American Convention states that:

no provision in the Convention shall be interpreted as...(b) restricting the enjoyment or exercise of any right or freedom recognized ... by virtue of another convention to which one of the said states is a party; [or] (c) precluding any other rights inherent to the human personality or derived from representative democracy as a form of government....¹⁶⁰

The IACHR must therefore take into account the commitments that the United States has also made to the petitioners as a result of any treaty it has previously signed, as well as international commitments it has made within the context of the UNFCCC. The American Convention provisions must be interpreted in a way that embraces those other internationally recognized commitments, not to mention “any other rights inherent to the human personality.”¹⁶¹

¹⁶⁰ American Convention, *supra* note 8, art. 29.

¹⁶¹ *Id.*

3. Exhaustion of Domestic Remedies

Two of the more recent attempts to prompt United States action in favor of climate change actions are the Quinault Nation political action path and the *Juliana* litigation. Whether the Tribal Coastal Resiliency Act is passed or rejected by the U.S. Senate, this legislation could prompt a petition due to its absolute inadequacy as it relates to a response to the crisis. Funding at the level of five million dollars per year does not approach the level of funding required to relocate just the two communities identified by the Quinault Nation; the unquantified value of injury incurred by these, and all other communities, who will have to abandon their traditional homelands due to rising seas is practically the same as a rejection of the legislation. At the same time, an IACHR petition would offer the opportunity to not only request an adequate monetary allocation for needed relocation and other adaptation and mitigation measures due to climate change, but tribes could also ask for broader injunctions of United States government subsidies and programs that incentivize fossil fuel extraction and dependence, compliance with global climate change agreements, etc.

Likewise, the Ninth Circuit's dismissal of *Juliana v. United States* offers another concrete moment at which exhaustion of domestic remedies is reached for the *Juliana* plaintiffs. Plaintiffs are currently seeking a rehearing *en banc*, and so perhaps once that motion is either dismissed or granted and the case again dismissed by the Ninth Circuit, these plaintiffs may then turn to the IACHR.

4. Precautionary Measures

Due to the immense backlog in IACHR petitions and the relative urgency of action needed, petitioners, should consider requesting precautionary measures simultaneously with the submission of their petition for review. Certainly, if a 2020 petition waits in line for processing along with all of the other backlogged petitions, by the time it is processed, it will be too late.

VII. CONCLUSION

The time is now to ramp up the pressure on the United States government to urgently take action to mitigate the impact of climate change by petitioning the IACHR. The information we have now, as opposed to what was available in 2005 or even 2013, sufficiently indicates the immediacy and certainty of the risks of climate change as a threat to the right to life, especially threats to the lives and livelihoods of indigenous peoples. The United States falls under the jurisdiction of the IACHR as a signatory to the American Convention and a member of the OAS. The United States is also a signatory of the UN Framework Convention on Climate Change, even as it currently attempts to withdraw from the latest round of Paris Climate Agreement commitments. At a minimum, such action would help evolve international human rights frameworks to appropriately incorporate climate change impacts as a threat to human rights

globally and bring even greater pressure on the United States and other actors to urgently join the rest of the international community to do its part.