

Climate Litigation and Arctic Indigenous Peoples

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As a result of the slow response of national law and governance to the pressing issues of climate change, activists and lawyers have increased efforts to use national and international judiciary systems to fill in the accountability gap left by the absence of enforcement instruments in climate regulations. With the terms “climate litigation” or “climate change litigation” scholars and practitioners define an emerging body of legal practice aimed to set case law precedents to further climate change mitigation and adaptation efforts from public and private institutions, such as governments and companies.

Climate change litigation encompasses cases before judicial and quasi-judicial bodies that entail material issues of climate change science, policy, or law. As of 31 May 2022, 2,002 cases from around the world had been identified and included in the Sabin Center’s Climate Change Litigation databases.

Global climate litigation can be divided into two main categories: litigation aligned with climate objectives and litigation not aligned with climate objectives.

In the first category we can find those cases that aim to compel States or private entities towards respecting climate law and policy objectives. In this category we can find the famous case *Urgenda Foundation vs the Netherlands*, where a Dutch environmental group, the Urgenda Foundation, and 900 Dutch citizens acted against the government arguing for the need of more stringent actions to prevent global climate change. The court required the Dutch State to reduce greenhouse emissions to 25% below 1990 levels by 2020, as the government’s pledge already in place to reduce emissions by 17% were insufficient to meet the Paris agreement’s goal.

The second category consists of judicial and quasi-judicial cases where the aim is not to go against the implementation of measures to contrast climate change, but *how* such measures are being implemented. For example, the Fosen peninsula case in Norway (table 2) concerns the construction of a wind farm on the territory of Sami Indigenous peoples which negatively impacts their

right to culture protected by art. 27 of the International Covenant on Civil and Political Rights.

Table 1.

Human rights-based climate litigation	
Aligned with climate objectives	Not aligned with climate objectives
Compel States and private entities to comply with climate change obligations (adaptation, mitigation, procedural)	Contrast the implementation of climate change measures negatively impacting human rights

In climate litigation, human rights play a key role. In fact, climate change, through negative impacts such as flooding, heatwaves, droughts, desertification, extreme weather events and rising sea levels are jeopardizing many human rights such as the right to life, to food, housing, property and many others. Thus, the *human rights-based climate litigation* has emerged at the national and international level with the aim of making governments and private actors responsible for their lack of commitment into effectively combating climate change and its impacts. This surge is both a cause and an effect of the expanding international recognition of the close connection between human rights and climate change. In October 2021, the UN Human Rights Council passed a crucial, although non-binding resolution recognising the right to a healthy environment. In July 2022, the UN General Assembly adopted a resolution recognizing the right to a clean, healthy, and sustainable environment as a human right under the principles of international law. Finally, in September 2022 the UN Human Rights Committee delivered a ground-breaking decision on climate change impacts on human rights, finding that Australia's failure to adequately protect Indigenous Torres Strait Islanders against adverse impacts of climate change was a breach of the International Covenant on Civil and Political Rights.

Arctic Indigenous peoples are among the most vulnerable populations when it comes to climate change, and they have filed cases of climate change litigation before national and international jurisdictions. Climate change impacts in the Arctic imply an unprecedented challenge in adaptation and cultural survival for Arctic Indigenous peoples, and, in many cases, disappearance of their traditional ecological knowledge which is deeply intertwined to the environment.

Therefore, it is not surprising that Arctic Indigenous peoples are using human rights as a tool to obtain climate justice through States' accountability for the emissions of climate-altering substances. The table below summarized such climate litigation cases, proving an overview of Arctic Indigenous peoples' legal claims at the national and supranational level, and of the type of litigation.

Table 2.

Climate litigation cases involving Arctic Indigenous peoples			
	Case name	Type	Description
National jurisdiction	Sovereign Inupiat for a Living Arctic v. Bureau of Land Management (2020)	Aligned	Challenges to approval of a development plan for major oil and gas development in the National Petroleum Reserve-Alaska.
	Resisting Environmental Destruction on Indigenous Lands v. EPA (2012)	Aligned	Challenge to two permits issued by EPA to Shell for offshore Arctic drilling operations.
	Supreme Court of Norway - HR-2021-1975-S, (case no. 20-143891SIV-HRET), (case no. 20-143892SIV-HRET) and (case no. 20-143893SIV-HRET) (2021)	Not aligned	Whether the construction of Storheia and Roan windfarms on Fosen peninsula amounts to a violation of the reindeer herders' right to enjoy their own culture under Article 27 of the International Covenant on Civil and Political Rights.
International jurisdiction	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 (2013)	Aligned	A petition filed by Earthjustice on behalf of the Arctic Athabaskan Council. It alleges that Canada's insufficient regulations of black carbon emissions threaten the Athabaskan people's human rights.
	Petition to the Inter-American Commission on Human Rights Seeking Relief From Violations Resulting from Global Warming Caused By Acts and Omissions of the United States (2005)	Aligned	Sheila Watt-Cloutier, Chair of the Inuit Circumpolar Conference, filed a petition to the Inter-American Commission on Human Rights seeking relief from human rights violations resulting from the impacts of climate change caused by acts and omissions of the United States.

For more on this, read...

Savaresi A and J Setzer, 'Mapping the Whole of the Moon: An Analysis of the Role of Human Rights in Climate Litigation' [2021] SSRN Electronic Journal

<https://ssrn.com/abstract=3787963>

