

## Why a Human Rights Tribunal?

By TOM KERNS

**W**hy would a tribunal—specifically, a human rights tribunal—be asked to rule on the health, climate, and social impacts of fracking? Why would human rights be the standards against which oil and gas production should be judged? And why would the Permanent Peoples’ Tribunal in Rome be the tribunal asked to hear those cases, especially given that it has no subpoena authority and no authority to compel behavior of litigants?

These three questions can be condensed to: Why human rights? Why a tribunal? Why the Permanent Peoples’ Tribunal?

### WHY HUMAN RIGHTS?

The important thing about norms—and specifically, about human rights norms—is that they set standards, both legal and moral, for what duty-bearing governments and corporations must and must not do. These standards, which apply universally to governments and corporations, draw a clear line between behaviors that are considered morally acceptable and those condemned as morally reprehensible.

Human rights standards are also universal, not parochial. They are not limited to certain groups, religions, nations, or situations. This way, a state or a corporation cannot say, “Well, that may be what you and your group believe about right and wrong, but we sim-

ply do not share your values.” Rather, human rights are universal in at least these following three senses.

First, they are universal in the sense that they arose out of a broad human consensus across the world. As human rights scholar Johannes Morsink has reminded us, the 1948 adoption of the Universal Declaration of Human Rights (UDHR) was the first time in human history that representatives of virtually every nation on earth came together and formally adopted a statement of moral values.<sup>1</sup>

Second, human rights are promulgated universally. The UDHR is, for example, the most widely translated document in the world. To date, it has been translated into over five hundred languages, including at least two sign languages.<sup>2</sup>

Third, human rights standards formally apply to all persons everywhere because of the simple fact that they are human persons. According to the United Nations High Commission on Human Rights: “Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.”<sup>3</sup>

We can say, therefore, that human rights—at least, those articulated in and implied by the UDHR—are the closest thing the world has ever had to a globally

agreed upon set of moral norms. This is remarkable.

Again in 2005, a World Summit of Heads of State and Government also adopted a statement recognizing the universality of human rights and affirming that states are committed to fulfilling them:

We reaffirm the solemn commitment of our States to fulfill their obligations to promote universal respect for and the observance and protection of all human rights and fundamental freedoms for all in accordance with the [United Nations] Charter, the Universal Declaration of Human Rights and other instruments relating to human rights and international law. The universal nature of these rights and freedoms is beyond question.<sup>4</sup>

Finally, human rights standards are recognized as taking precedence over other, potentially conflicting considerations in policy making such as utility, cost-benefit analysis, economic value and social value. As human rights scholar Jack Donnelly puts it,

“rights are *prima facie* trumps,”<sup>5</sup>

“In many ways, compassion can be seen as the ground from which recognition of human rights has grown.

and as American legal philosopher and constitutional scholar Ronald

Dworkin says, “Individual rights are political trumps held by individuals.” This means that rights claims take precedence over other considerations when issues of rights are at stake.<sup>6</sup> The institution of rights, says Dworkin, “represents the majority’s promise to the minorities that their dignity and equality will be respected,”<sup>7</sup> and therefore, that rights must be given the greatest weight in policy-making decisions.

But what exactly are human rights? Human rights standards, we can say, are justified moral claims universally held by all persons vis-à-vis their governments so that people can lead a minimally decent life. As Dworkin puts it:

To have a right to x is to be entitled to x. It is owed to you, belongs to you in particular. And if x is threatened or denied, right-holders are authorized to make special claims that ordinarily trump utility, social policy, and other moral or political grounds for action.<sup>8</sup>

Further, these basic human rights are not just lofty aspirational ideals. Most, rather, are moral floors, moral minimums, delineating the most basic requirements for a person to live a minimally decent life. Failure to respect these minimal norms offends the con-

science and often provokes moral outrage. Even the Preamble of the UDHR reminds us that disregard and contempt for human rights can trigger justifiable outrage.<sup>9</sup> One of the drafters of the UDHR, Carrare Andrade from Ecuador, spoke for many of his colleagues when he said that the Declaration “was the most important document of the century, and indeed ...a major expression of the human conscience.”<sup>10</sup>

In many ways, compassion can be seen as the ground from which recognition of human rights has grown.<sup>11</sup> This may be one reason why human rights litigation relies so heavily on direct personal narratives of people who have suffered as a result of government and corporate failures to respect human rights. These personal narratives provoke the moral imagination, inspiring hearers to feel and appreciate the pain of others and to demand a response.

So just as civil laws represent hard *legal* boundaries outside of which certain behaviors are not legally permissible, human rights standards represent hard *ethical* boundaries outside of which certain behaviors are not morally permissible. This means that when a government or corporation is being held accountable for failing to respect their human rights obligations, they are actually being held to only the very lowest standard of moral acceptability.

Another major characteristic of the human rights framework is that it views behaviors and responsibilities less from the perspective of the powerful, the moneyed and the privileged and more from the viewpoint of the poor, the disenfranchised, the unempowered,

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the non-privileged, workers, the injured, minorities, indigenous peoples, women, and children. It also looks at the world through the eyes of future generations who are, in this context, literally voiceless, unable to argue for their own interests. As Protestant theologian Dietrich Bonhoeffer says in his *Letters and Papers from Prison*, “We have for once learnt to see the great events of world history from below, from the perspective of the outcast,...the maltreated, the powerless, the oppressed, the reviled—in short, from the perspective of those who suffer.” One great gift of the human rights framework is that it gives voice to and validates the concerns of those who, due to circumstance and lack of access to resources and power, need a boost for

their voices to be heard. Human rights standards can advocate for the vulnerable and disenfranchised when they are unable to speak for themselves.

Besides these principled advantages of the human rights approach, there are also significant practical advantages to framing environmental issues such as oil and gas production in human rights terms.<sup>12</sup>

One practical advantage is that human rights discourse provides an established, respected, and compelling vocabulary for addressing wrongs perpetrated by governments against people. The combination of clear facts with the genuine rhetorical power of human rights discourse can be a powerful persuader in environmental advocacy.

The human rights framework has advantages in law as well. If an issue does move into the courts, individual plaintiffs would have three advantages in international human rights courts beyond what they would enjoy in domestic courts:

First, every individual person is considered to have legal standing in international human rights courts, which eliminates one of the larger obstacles to having a case heard.<sup>13</sup>

Second, standards of proof in international human rights courts favor the plaintiff over the state. As Romina Picolotti and Jorge Daniel Taillant explain in their book, *Linking Human Rights and the Environment*, “Unlike most national courts, the [Inter-American] Commission and Court have *low* standards of proof.”<sup>14</sup> These courts sometimes admit circumstantial evidence. This can benefit plaintiffs who often have less-than-perfect evidence to support claims of causality and health effects.

Third, the burden of proof would be on the state in such an action, rather than on the plaintiff, even though the state would be the defendant.<sup>15</sup> This means that facts presented by the plaintiff would be presumed true unless proven otherwise by the state.

Another practical advantage of using a human rights frame is that court findings based on human rights law in one country can potentially have positive effects on law and policy in other countries far beyond that one country, since human rights are international and universal. Moreover, using the human rights framework to make a public moral denunciation of certain industry practices can help undermine the social license of the corporations that use those practices, thereby weakening their social standing in communities.

One important and thoughtful critique of the hu-

man rights framework, though, is that it is decidedly anthropocentric as an approach to environmental issues. It is lacking in adequate appreciation for the

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planet’s non-human beings, webs, and systems, and it can give the impression that human beings are the only kind of beings with intrinsic value. It can also give the impression that humans are separate from nature, above nature, and free to exploit nature as much as they like. Indeed, the failure to adequately appreciate the other beings and systems with which we share the planet is exactly what has led to the environmental catastrophes plaguing the earth today, and appealing only to human rights can contribute to this.

There is much that rings true in this critique. Focusing only on *human* rights without also acknowledging the inherent (not just instrumental) value of the planet’s other living beings and systems can indeed be destructive. Because of this risk, this tribunal on fracking will include, as described below, a full day of arguing these oil and gas issues from a rights of nature perspective based on the insights and principles of the Earth Charter.<sup>16</sup> While *human* rights will be the central focus of the plaintiffs’ arguments in this case—partly because the court in which this case will be heard, the PPT, is a human rights court, and partly because human rights are already well established in law—still, rights of nature arguments will play a key role, too, because the lives and well-being of non-human beings and systems are just as much at stake as the lives and well-being of humans.

If governments and corporations are going to be held to standards, there must be appropriate standards to hold them to. Human rights, buttressed by rights of nature, can provide just such standards and, as we will see below, Human Rights Impact Assessments (HRIAs) can help specify exactly how those human rights norms are threatened by fracking.

#### WHY A TRIBUNAL?

The important thing about standards, including human rights standards, is that their power to persuade or compel is weakened if they are not widely known, publicly acknowledged, regularly appealed to, and exercised. The function of a tribunal is to do just that.

This is one reason the world needs more human rights courts and why, with so few of them yet in existence and with access to them so difficult, it will be up to civil society organs, as we will see below, to create and maintain such courts independently. The presence of such human rights courts, whether state-based or civil society-based, can strengthen human rights claims and make them more effective.

One challenge, though, is that human rights norms can be rather general, at least as expressed in the formal declarations, conventions, and treaties that constitute human rights law. Without clarifying and specifying those norms to particular situations there may be questions as to whether or how a certain human rights norm would be applicable to a given situation. Does the right to security of person, for example, apply to families in rural areas who are impacted by commercial aerial pesticide sprays? Does the right of women and children to special consideration apply to families living near hydro-fracking operations? These are questions that courts will ultimately decide, but a well-researched Human Rights Impact Assessment, specified to a particular situation, can be a big help in clarifying and specifying the moral issues at stake. An HRIA that foregrounds and documents human rights standards particularized for a given situation can be a powerful tool both in advocacy generally and in a human rights tribunal specifically.

Three HRIAs of fracking have already been conducted and published so far: one commissioned by Earthworks and specified to fracking in New York State; one commissioned by the Bianca Jagger Human Rights Foundation about fracking in the United Kingdom; and one prepared by the Sisters of Mercy and Mercy Global Action framed in broader terms for fracking as a whole.<sup>17</sup> All three have slightly different formats, but most include the following elements somewhere in their structure: (1) a list of basic, agreed-upon facts about fracking in that specific situation and community; (2) a simple listing of the community's concerns; (3) the specific human rights norms at issue, where each norm can be found (covenant title and article number), what that article says and means, and why that right would be applicable in this particular situation; (4) an enumeration of the

risks faced by the government or corporation that is permitting or conducting the fracking; and (5) detailed recommendations for what the government or corporation should do to reduce those risks and to meet its human rights obligations.

HRIAs like these can also be useful tools for litigators and their researchers as trial strategies are being developed and cases being built. An HRIA can help them assess, for example, which issues and rights might best be foregrounded at trial.

The 2011 Human Rights Impact Assessment for Fracking in New York, for example, identifies adverse health impacts resulting from exposure to fracking processes and emissions as threatening the right to security of person. “Everyone has the right to life, liberty and security of person” (UDHR Article 3; International Covenant on Civil and Political Rights [ICCPR] Article 9) and any government’s failure to prevent this is a failure adequately to respect this right.<sup>18</sup>

The right to security of person is threatened as well by all the consequences of climate disruption caused by CO<sub>2</sub>-intensive fracking processes and by the CH<sub>4</sub> (methane) emissions, both fugitive and intentional, that result. Climate disruption also threatens the right to a healthy environment, as expressed in the Preamble of the Aarhus Convention:

Every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.<sup>19</sup>

All this was confirmed recently when federal Judge Ann Aiken wrote in her November 2016 opinion in *Juliana v. USA et al.*, that “the right to a climate system capable of sustaining human life is fundamental to a free and ordered society.”<sup>20</sup>

Reports prepared by the UN High Commission on Human Rights and by the UN Environmental Program about the human rights dimensions of climate change will be helpful here too, as will the newly developed Declaration on Human Rights and Climate Change.<sup>21</sup>

The right of citizens to participate in decision-making about environmental matters such as fracking is guaranteed by, among others, Article One of the Aarhus Convention, which states that governments “shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters.” This means that citizens have the right to full information about environmen-

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tal issues being considered and the right to participate knowledgeably in decision-making about those issues. Failure to allow access to information or participation in decision-making about fracking would threaten this right.<sup>22</sup>

When it comes to fracking's impacts on ecosystems, though, prosecutors will argue the case based on rights of nature rather than on *human* rights. While there is a human right to a healthy environment,<sup>23</sup> the case addressing fracking's impacts on ecosystems will be argued primarily from the Earth Charter perspective that "all beings are interdependent and every form of life has value regardless of its worth to human beings."<sup>24</sup> Article 71 of Ecuador's national constitution may also be useful in this context since it includes this formal rights of nature statement:

Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.<sup>25</sup>

Since the PPT is a *human* rights tribunal the larger focus will necessarily be on human rights. But to help balance this focus, one full day of tribunal hearings will be designated for arguing the subcases, especially the ecosystems subcase, from a rights of nature perspective.

“Facts alone, though, cannot determine what should or should not be done. For that you need a second premise—a value premise. Interestingly, these HRIAs of fracking all have the formal content and structure of a practical syllogism of the sort first brought to our attention by Aristotle. Probably because of my philosophical background and all those years teaching introductory logic courses, it feels oddly validating to me that these HRIAs are so clearly syllogistic.

A practical syllogism, to explain, is any argument form in which the conclusion is: therefore X should be done or Y should not be done. A practical syllogism has two premises, each quite different than the other. The first is the facts premise which basically claims "this is the state of affairs," or "given these facts." Facts alone, though, cannot determine what should or should not be done. For that you need a second premise—a value premise. So the argument goes like this: given this state of affairs (premise 1) and given this set of values (premise 2), X should therefore be done or not done.

The second premise, the value premise, could include any kind of value, such as "given the importance of maximizing health," or "given that we should max-

imize jobs." Or it could be the values of your religious tradition: "given the principles of Buddhism," or "given the teachings of Jesus," for example.

The second value premise that industry most prefers, though, is cost/benefit analysis (CBA), in which anticipated future costs and benefits are carefully selected and inventively quantified, usually in economic terms, and then industry opts for the course they believe has the fewest costs and the most benefits of those they have chosen to highlight.

Setting aside all the weaknesses and extreme flexibility of CBA, which usually can be manipulated to let you draw pretty much any conclusion you like, it is really no surprise that industry would prefer a method that allows the pretense of forecasting the future, quantifying portions of it in economic terms, then making choices based on their view of those parts of the future.

When an HRIA or a tribunal applies human rights norms as the second premise, quite different conclusions will follow.

#### WHY THE PERMANENT PEOPLES' TRIBUNAL?

The most important thing about tribunals is that they must be both *independent* and *competent*.

A tribunal should be *independent* of economic and political pressures, independent of national interest pressures, independent in its authority to choose which cases it will hear, independent in selecting its own judges, independent from those bringing and arguing the cases, and independent in its deliberations and rulings.

The Permanent Peoples' Tribunal is independent in all these ways. It was founded independently in Bologna, Italy, by a range of legal experts, writers, and leaders in civil society, including five Nobel Prize laureates, under the auspices of the Lelio Basso International Foundation for the Rights and Liberation of Peoples. Now headquartered in Rome, it is internationally recognized as a human rights tribunal functioning independently of state authorities, national politics, and vested economic interests.

The PPT independently chooses which cases it will hear, and it selects and impanels its own judges. Plaintiffs whose cases have been selected for hearings have no say at all about whom the judges hearing their case will be, just as plaintiffs in domestic courts have no voice in determining which judge will hear their case. Normal practice for the PPT is to select a panel of five or seven judges, about half of whom are jurists trained

in human rights law and experienced in adjudicating human rights cases, and about half of whom are respected members of civil society. While judges' travel and lodging expenses may be covered in some cases, they receive no compensation at all for their skill and training, nor for the time and effort they put into the hearings, into their individual and collective deliberations, or into their preparation of the formal rulings, each of which can be substantial.

One reason it is important for a court to be independent is to insure that judges are not influenced by external forces and are able to deliberate freely and to render judgments based solely on the facts and arguments presented to the court.

A human rights tribunal is *competent* to the extent that its panel of judges includes jurists trained in human rights law and experienced in human rights adjudication. The additional respected members of civil society should also be familiar with and committed to human rights values.

This independence and competence differentiates the PPT from other more *ad hoc*, self-constituted tribunals sometimes organized and conducted by activists groups. These groups sometimes select their own judges, so in those situations, the judges may not be entirely independent and may, in some cases, not be expert in either environmental or human rights law. Most environmental groups, though, would greatly appreciate the opportunity to have their cases heard by an independent and competent tribunal like the PPT, which is one reason civil society needs more access to such courts.

In PPT cases, as in most domestic legal systems, plaintiffs are responsible for selecting their own legal representatives. In cases on fracking, too, plain-

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tiffs bringing the case to the tribunal are responsible for selecting their own litigators, legal advisors, and legal researchers. They are

responsible also for gathering evidence, organizing it, and making it available to the prosecuting team.

The PPT, with its independence and its deep human rights competency, is, therefore, ideal for foregrounding and bringing into sharp focus the recognition that human rights are essential standards against which fracking and its impacts should be measured. The PPT is also the ideal court for testing whether

fracking and its impacts meet these most minimal standards for ethical conduct and, if not, to publicize that fact and open the door for bringing these matters before domestic and international courts.

Plaintiffs, of course, would like to see a judgment in their favor, but regardless of the ruling, they would like to see the court make clear that human rights norms are fully applicable to oil and gas extraction and production. Their hope is that judges will call governments and corporations to account and urge them to recognize that human rights norms are directly applicable to oil and gas extraction and production processes and to the people impacted by them.

One final reflection on societal sea change: Large scale shifts in social awareness, standards, and policy—as, for example, with women's suffrage, the abolition of slavery, the growing recognition of civil rights, the Vietnam war, etc.—often come about as much for moral reasons as for anything else. In other words, change of such magnitude often does not fully emerge and take hold in a society until something fundamental changes in that society's deep understanding of what it believes is morally acceptable and what it condemns as morally reprehensible.

This tribunal—and perhaps others like it around the world—will help societies to determine whether the human health, climate, and human rights costs of oil and gas production being experienced now and soon to be experienced by the next generation will be enough to inspire a sea change in the kinds of energy production technologies they deem morally acceptable.<sup>26</sup>

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## NOTES

1. Never before in human history had a document about moral values been conceived, written, and endorsed by representatives of virtually every nation on earth. René Cassin, one of the drafters of the UDHR (who, for his work, was awarded the Nobel Peace Prize in 1968), is quoted as saying that, with the UDHR, “something new . . . entered the world.” It was, he said, “the first document about moral value adopted by an assembly of the human community.” J. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press, 1999), 33.

2. For information on the UDHR see United Nations Office of the United Nations High Commissioner for Human Rights, “About the Universal Declaration of Human Rights Translation Project,” at <http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx>; accessed May 7, 2017.

3. United Nations Office of the United Nations High Commissioner for Human Rights,

"What Are Human Rights?" at <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>; accessed May 7, 2017.

4. A. Clapham, *Human Rights: A Very Short Introduction* (Oxford, UK: Oxford University Press, 2015, Kindle ed.), ix.
5. Donnelly continues: "All things considered, rights may themselves be trumped by weighty other considerations. Claiming a right, however, in effect stops the conversation and both increases and shifts the burden of proof to those who would argue that this right in this particular case is itself appropriately trumped." J. Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, 2013, Kindle ed.), locations 227-30.
6. R. Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977), xi.
7. *Ibid.*, 205.
8. *Ibid.*, xi, 90.
9. "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind . . ." UN General Assembly, "Universal Declaration of Human Rights," preamble (Paris, 1948), <http://www.un.org/en/universal-declaration-human-rights/>; accessed May 7, 2017.
10. Quoted in Morsink, *The Universal Declaration of Human Rights*, 300.
11. T. Kerns, "Schopenhauer's Mitleid, Environmental Outrage and Human Rights," in A. Grear, A. Grant, and E. Grant, eds., *Thought, Law, Rights and Action in the Age of Environmental Crisis* (Cheltenham, UK: Edward Elgar, 2015), 220-48.
12. T. Kerns, "Ten Practical Advantages of a Human Rights Approach to Environmental Advocacy," *Journal of Environmental Studies and Sciences* 3, no. 4 (2013): 416-20.
13. "One of the most important successes of international human rights law is that it has given victims direct access to international human rights fora. Thus in international human rights law, *individuals* are subjects of law and can legally claim against human rights abuses perpetrated by states." R. Picolotti and J.D. Taillant, *Linking Human Rights and the Environment* (Tucson: University of Arizona Press, 2003), 120.
14. *Ibid.*, 133.
15. "That is . . . the facts reported in the petition shall be presumed to be true if, during the maximum period set by the Commission, the government of the State in question has not provided pertinent information to the contrary...If the State denies the evidence, it must specifically prove that the evidence is not valid." *Ibid.*, 133-34.
16. For information on the Earth Charter, see the Earth Charter Initiative at <http://earthcharter.org>.
17. For information about the New York State HRIA, see T. Kerns, Environment and Human Rights Advisory, "A Human Rights Assessment of Hydraulic Fracturing for Natural Gas," December 12, 2011, at <http://d3n8a8spro7vhmx.cloudfront.net/themes/578eca176ad575b709000001/attachments/original/1469661000/EHRA-frac-rpt-111212-1-final1.pdf?1469661000>. For information about the United Kingdom HRIA, see A. Grear, E. Grant, T. Kerns, et al., for the Global Network for the Study of Human Rights and the Environment, Environment of Human Rights Advisory, and the Human Rights Consortium, "A Human Rights Assessment of Hydraulic Fracturing and Other Unconventional Gas Development in the United Kingdom," October 30, 2014, at <http://d3n8a8spro7vhmx.cloudfront.net/themes/578eca176ad575b709000001/attachments/original/1469661068/UK-HRIA-wo-appdx-hi-res.pdf?1469661068>. And for information about the Sisters of Mercy and Mercy Global Action HRIA, see C. Lozano Acosta, D. Horwitt, A. Kelly, et al., for the Sisters of Mercy (NGO), Mercy International Association: Global Action, "A Guide to Rights-Based Advocacy: International Human Rights Law and Fracking," June 2015, at <http://d3n8a8spro7vhmx.cloudfront.net/themes/578eca176ad575b709000001/attachments/original/1469661028/Fracking-Hum-Rts-Guide-2015.pdf?1469661028>.
18. Kerns, Environment and Human Rights Advisory, "A Human Rights Assessment of Hydraulic Fracturing for Natural Gas," 12.
19. "Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters," June 25, 1998, Aarhus, Denmark, at <http://www.environmentandhumanrights.org/resources/Aarhus%20convention.pdf>.
20. *Juliana v. United States*, No. 6:15-CV-01517-TC, 2016 WL 6661146 (D. Or. Nov. 10, 2016), 32, at <https://static1.squarespace.com/static/571d109b04426270152febe0/t/5824e85e6a49638292ddd1c9/1478813795912/Order+MTD.Aiken.pdf>.
21. The first draft of the Declaration on Human Rights and Climate Change, prepared by a team of thirteen scholars from seven different countries on five different continents, was completed in November 2015, ahead of the COP 21 meetings in Paris that year. The draft was later submitted for review globally in nine European, African, and Asian languages to environmental and human rights scholars, lawyers, jurists, indigenous community representatives, NGOs, and others. Well over one hundred thoughtful responses and suggestions were received in response to this review process and incorporated into the final draft. The final version of the Declaration, completed in May 2016, was authorized by the drafting group for distribution and endorsements. See "Draft Declaration on Human Rights and Climate Change," at <http://gnhre.org/gnhre-draft-declaration/draft-declara->

[tion-on-human-rights-and-climate-change-2/](http://gnhre.org/gnhre-draft-declaration/draft-declara-tion-on-human-rights-and-climate-change-2/); accessed May 7, 2017.

22. For a fuller detailing of how this right to public participation can be derailed by governments and corporations, see Simona Perry's contribution to the "Does Fracking Violate Human Rights?" project. Her essay, titled "Self-Determination and the Right to Information on the Shale Gas Frontier," examines public participation in light of rights articulated in the UDHR and in the United States Constitution's Bill of Rights. See <http://www.humansandnature.org/self-determination-and-the-right-to-information-on-the-shale-gas-frontier>; accessed March 12, 2017.
23. The Aarhus Convention Preamble: "every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations."
24. The Earth Charter, at [http://earthcharter.org/invent/images/uploads/echarter\\_english.pdf](http://earthcharter.org/invent/images/uploads/echarter_english.pdf), accessed March 13, 2017.
25. See Article 71 of the Rights of Nature Articles in Ecuador's Constitution, at <http://therightsofnature.org/wp-content/uploads/pdfs/Rights-for-Nature-Articles-in-Ecuador-Constitution.pdf>; accessed March 13, 2017. The *human* rights declaration that comes closest to recognizing the intrinsic value of all natural beings and systems is the United Nations Declaration on the Rights of Indigenous Peoples, since it recognizes the unique traditional and spiritual connections between indigenous peoples and their traditional lands. But that is still expressed as a right for humans, rather than as rights that the lands and living beings have in themselves.
26. For further information about the Permanent Peoples' Tribunal Session on the Human Rights Impacts of Fracking and Climate Change, see <http://www.tribunalonfracking.org>.