OPENING CEREMONY

MAY 14, 2018 9:00-10:00

DR. THOMAS KERNS: Hello. And welcome to the Permanent Peoples' Tribunal Plenary Session on Human Rights, Fracking and Climate Change. I'm Tom Kerns, Emeritus Professor of Philosophy at North Seattle College and Director of Environment and Human Rights Advisory.

In early 2014 three organizations petitioned the Permanent Peoples' Tribunal to hear this case; Environment and Humans Rights Advisory here in the US; the Global Network For The Study Of Humans Rights And The Environment, founded and directed by Anna Grear, professor of law at Cardiff University in Wales and founder and editor-in-chief of the Journal Of Human Rights and the Environment; and third, the Human Rights Consortium at the University of London directed by Damian Short.

This week is called the Plenary Session because four preliminary tribunals in preparation for this session were convened last year and early this year in Athens, Ohio, Youngstown, Ohio, Charolettesville, Virginia and Australia, hearing testimony from well over 200 witnesses who came to tell their stories, recount
their experiences or share their expertise.

Statements from all these witnesses were recorded, transcribed, summarized in final reports, with links to their testimony, and submitted to this Tribunal.

Results and testimony from those tribunals will be presented orally this week and made publicly available for use by attorneys and judges in future court actions.

In addition 17 Amicus Curiae Briefs have been submitted by 14 attorneys and 12 directors of 20 NGOs in seven different countries on five different continents, all of whom are also scheduled to present orally before the PPT judges this week along with our two lead attorneys, Dr. Evan Hamman and Revel Pointon.

Ten judges selected by the Permanent Peoples' Tribunal are hearing this case. Their names and areas of expertise are available at Tribunalonfracking.org.

They are being asked to render an advisory opinion on these four fundamental questions.

No. 1. Under what circumstances do fracking and other unconventional oil and gas extraction techniques breach substantive and procedural human rights that are protected by international law as a matter of treaty or custom?
Second. Under what circumstances do fracking and other unconventional extraction techniques warrant the issuance of either provisional measures, a judgment enjoining further activity, remediation relief or damages for causing environmental harm?

Third. What is the extent of responsibility and liability of states and non-state actors for violations of human rights and for climate and other environmental harm caused by these techniques?

Fourth. What is the extent of responsibility and liability of states and non-state actors, both legal and moral, for violations of rights of nature related to environmental and climate harm caused by these techniques?

These four questions are also available at Tribunalonfracking.org.

It is not possible to name and publicly thank all of you whose work has been so essential to bringing this tribunal session into being. You know who you are. But the long, hard, persistent work of five or six people needs to be acknowledged, if only by speaking their names publicly.

Anna Grear, Simona Perry, Kathleen Dean Moore, Carly Lettero, Shelley Stonebrook and Emily Grubby.

Thank you.
And now to Carly Lettero without whose excessively long hours and extensive commitment this tribunal situation would not be happening.

MS. CARLY LETTERO: Hi, I'm Carly Lettero with the Spring Creek Project for Ideas, Nature And The Written Word at Oregon State University.

It's an honor to co-organize the Tribunal because it closely aligns with Spring Creek Project's commitment to working on the most daunting and urgent environmental issues of our time.

The Tribunal offers people from around the world whose human rights are threatened by fracking and climate change an opportunity to tell their stories. It's courageous story telling and the Spring Creek Project is proud to support it.

I want to thank the graduate students in the Master Of Arts in Environmental Arts and Humanity Program at Oregon State University who have spent the last year helping to imagine and organize this Tribunal.

Thanks also to Zoom Video Communications who donated the software that we are using for every session of the Tribunal.

And special thanks to Tom Kerns for his unwaivering dedication to making this Tribunal happen for the last four years. Thank you.
There will be ten judges presiding over this session of the Tribunal and we want to thank them for sharing their expertise, time and dedication to human rights.


If you would like to learn more about the judges you can read short biographies on the Tribunal web site, Tribunalonfracking.org.

This session of the Tribunal is historic for a number of reasons. The Tribunal has had sessions on environmental issues in the past, including Chernobyl and Bhopal but for the first time in its nearly 40-year history the Tribunal is holding a session on an international environmental issue that can affect everyone regardless of where they live.

This session is also historic because it will expand the scope of the Permanent Peoples' Tribunal to include arguments about the rights of nature in addition to the rights of people.
And, for the first time, this Tribunal will be hosted completely on-line, which is an inclusive format that will allow people from around the world to participate and to follow along as the proceedings happen.

So thanks to all of you who are joining on-line. The video recordings of each tribunal session will be available on the Spring Creek Project's Facebook and youtube pages. And we'll be posting the recordings about a half hour after each session concludes.

And now on to the Opening Ceremony. We'll begin with a short video featuring Human Rights that was created by graduate students in the Environmental Arts And Humanities program at Oregon State University. Then we'll hear opening remarks from Gianni Tognoni, Robin Kimmerer and John Knox.

Gianni Tognoni is the Secretary General of the Permanent Peoples' Tribunal in Italy. Robin Kimmerer is a distinguished teaching professor at the SUNY College of Environmental Science And Forestry in Syracuse, New York. She is also the founding director of the Center for Native Peoples and the Environment. And John Knox is the United Nations Special Rapporteur on the Issue of Human Rights and the Environment. He's also the Henry C. Lauerman, professor of International Law at Wake
Forest University School of Law in North Carolina.
And finally we'll conclude the opening ceremony with a short piece by environmental scientist and writer Mary Heather Noble who will read her lyrical poem Seduction, which was published in the anthology Fracture: Essays, Poems and Stories on Fracking in America.

Thank you for joining us.


Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted here by the constitution or by law.

Article 3. Everyone has the right to life, liberty and security of person.

Article 17 (1). Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of their property.

Article 25 (1). Everyone has the right to a standard of living adequate for the health and well-being of herself and of her family, including food, clothing, housing and medical care and necessary social services. And the right to security in the event of
unemployment, sickness, disability, widowhood, old age
or other lack of livelihood and circumstances beyond her
control.

(2). Motherhood and childhood are entitled to
special care and assistance. All children, whether born
in or out of wedlock, shall enjoy the same social
protection.

Article 23(1). Everyone has the right to
work, to free choice of employment, to just and
favorable conditions of work and to protection against
unemployment.

Article 12. No one shall be subjected to
arbitrary interference with his or her privacy, family
home or correspondence nor to attacks upon his or her
honor and reputation. Everyone has the right to the
protection of the law against such interference or
attacks.

Article 10. Everyone is entitled in full
equality to a fair and public hearing by an independent
and impartial tribunal in the determination of his or
her rights and obligations.

According to United Nations Declaration on the
Rights Of Indigenous People:

Article 1. Indigenous peoples have the right
to the full enjoyment, as a collective or as
individuals, of all human rights and fundamental freedoms as recognized in the charter of the United Nations, the Universal Declaration of Human Rights and International Human Rights Law.

Article 26 (2). Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

Article 11. Indigenous peoples have the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archeological and historical sites.

Article 29. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

As stated in the Universal Declaration of the Rights of Mother Earth.

Article 2. Mother Earth and all beings of which she is composed have the following inherent rights:

The right to life and to exist;

The right to be respected;
The right to continue their vital cycles and processes free from human disruptions;
The right to maintain its identify and integrity as a distinct, self-regulating and interrelated being;
The right to water as a source of life;
The right to clean air;
The right to integral health;
The right to be free from contamination, pollution and toxic or radioactive waste.

DR. GIANNI TOGNONI: Good morning to everybody and welcome to this opening session of the Permanent Peoples' Tribunal On Fracking, Climate Changes And Environmental Issues which has being organized over the last several months through an important collaboration with an academic group from the States, not only, and which has been accepted as a very critical issue by the Permanent Peoples' Tribunal because it represents, really, today one of the most hot issues which are to be faced by, on one side, the real life of community who are exposed to exploitation of their resources and exposed to the violation of their right to make decision on their destiny.

And on the other side, which is facing international law itself, because it is one of the
problem which, on one side, is considered to be under
the responsibility of the states and the states are
those who are supposed to be the guarantors of the
rights of people.

On the other side should be part of the joint
responsibility of the international community and,
therefore, of the international law. Because of the
outcome or what happens in the exploitation of the
resources could be somehow considered to be a common
good of the humanity where everybody should be
responsible for respecting it. On the other side should
be considered to be accountable for that.

So this issue, which is so critically
important for the future of mankind, not only for the
present state of the respect of rights has been
considered by the Permanent Peoples' Tribunal as one of
the area which perfectly represent its competencies in
the areas of international law. Because the Tribunal
has been established now more or less 40-years ago in
'79, the documentation of the Tribunal is perfectly
available on the site of the promoters of this Tribunal
so I won't insist on that.

But just to recall that the main purpose of
the tribunal was to, first, make visible something which
is not specifically recognized as a critical issue in
the mainstream communication. And that is certainly the case of the role of fracking which is very much discussed and very well-known in the area of energy and resource exploitation but is rather marginally considered in the area of international environmental law and everything else which has to do with mining. And all this exploitation of resources for marginalized population or population which are becoming marginalized because they are simply considered a land of novelty where everybody in the states or international or multi-national corporations who do work on it.

The second point besides visibility of the Tribunal was to be really the principle role in the presentation of the problems that are related to resource exploitation, mining, people's participation, to give really the reward to the community themselves. And in this sense the preparatory phase of this session has been involvement of many communities who are the true actors in this Tribunal.

The Tribunal becomes yet, again, a tribune where people are speaking by themselves and they are trying to make their point clear with their own words without complying directly or principally to the determinants of international language.

The third objective for the Tribunal has been
to give the opportunity of transforming, as far as possible, the cases of violations of peoples' right into a laboratory of research of new category of rights, new category of participation, in order to re-establish the principles of law, not simply as the guarantors of those who are in power or those would are interpreting officially the principle law, but the principle law should really be transformed in what is the guarantor of the right of many marginalized or exploited people.

In that sense the Tribunal had, as a principle document and real statute, the Universal Declaration of Peoples' Rights, which is called the Algiers Declaration, where in fact the principle of self-determination of people was established.

And in fact we have here, in a not usually considered case of self-determination of people because usually the political interpretation is given only to colonial people or people who are oppressed, here we are people which is diffused across the world in different areas. But in fact all that population which is exploited is, in fact, considered to be a people where, when in fact the violation of their rights are common outside the different mechanism.

So the self-determination of all those fragmented peoples being in developing or developed
world, those who can't make the decision for their own
fate must be really considered in the needs of a self-
determination. And certainly those claims are not
usually available nor in national nor in international
law.

Over the many years of work we have done
almost 40 sessions of the Tribunal. We just
specifically consider this issue and without mentioning,
obviously, all or even a sample of them I think it is
important to record some principal steps which document
how some problems, which are obviously very important,
are left aside by international law.

At the end of the 80's in Berlin we had a
tribunal on the IMF, International Monetary Fund and
World Bank, because they were in fact imposing their own
rules above the rules of Universal Declaration of Human
Rights.

The rights of economy were becoming principal
with respect to the respect of the rights of real
people. Later on this issue was going back doctrinally
also to explore the sources of international law back in
the conquest of America when in fact it was the same.
They were the conquerors who, in order to justify what
they were achieving by colonizing and in fact destroying
people, was in fact declared international law.
Then we had the sessions on Bhopal, on Chernobyl, on pesticides, different areas where, in fact, the market law, law which is regulating in fact industrial rights are, in fact, separated from international law.

Economic law is, in fact, a separate chapter. The international criminal court does not recognize formally economic crimes and even international law is not recognized crimes which are not simply committed by individuals but they are the products of a system which is producing in full impunity or was, in fact, in violation of the right of the people.

So I am not going on in this opening welcome. And the best wishes for the work of the Tribunal I am representing here on one side of the secretariat of the Tribunal which has well-documented all the effort which has been put into the preparation of documents.

We are also very glad, though some curious, to see how this experiment of having a virtual session which certainly allow a participation of people from far away and which could be really a very important instrument to be used by dispersed community and which could favor, in fact, an interaction also of language besides communication with those community which do not have access to the right source of information.
So I simply thank all those who have been working for the preparation of this tribunal. For us it is clearly a great experience.

The president of the Tribunal is very happy, Professor Phillippe Texier from France, who cannot attend the director's meeting but who is also very, very interested and will follow closely. And in that sense, from the point of the Tribunal, we take our role of being the listener of the cases.

And thanks especially to the communities who have been, in fact, the real protagonist and will be even more now the real protagonists of the tribunal.

MS. ROBIN WALL KIMMERER: Greetings this morning to all who gather to deliberate, contribute to and to witness the Permanent Peoples' Tribunal on Human Rights, Fracking and Climate Change. I honor your commitments to devote precious time and energy to engage with these questions that are of fundamental importance to the well-being of life on our beautiful planet. And I'm honored to join you as we exercise our responsibilities to deliberate on behalf of the seven generations.

My English name is Robin Wall Kimmerer. I'm a professor of Environmental and Forest Biology at SUNY College of Environmental Science and Forestry and I'm Tremain & Clemens, Inc., Eugene, Oregon (541)343-8833.
Director of the Center for Native Peoples in the Environment.

I am a member of the citizens Potawatomi Nation. And as is the custom in my culture and in many others let us begin with gratitude for we are showered daily with the gifts of mother earth, food to eat, sweet air to breathe and the preciousness of water.

Gratitude for each other as people for the privilege of our shared work and especially for the original peoples in whose homelands each of us stands today. Although we come from many different places to convene here can we acknowledge that together we stand upon mother earth?

That no matter what language we speak we are grateful for the bird song that greets the day. That we breathe the same air, cherish a cool drink of water, enjoy the shade of a leafy tree, the companionship of animals and that we are all fed from the soil and nourished by the plants.

Can we agree that our lives are made possible and made sweeter by the other lives which surround us, both the human and the more than human beings with whom we share the earth?

Let me also give a customary greeting in my native language. [Potawatomi greeting].
In my ancestral language I greet you all and introduce myself as a Potawatomi woman, a member of the Anishinaabe peoples of the eagle clan and the bear. And I am happy to be here. Grateful for all that has been given to us and that together we can care for mother earth.

It is right and proper, I think, that indigenous language opens our gathering for our language is bold in their structure and their vocabulary of grammar of animacy, which embodies the concept of the rights the nature, the personhood of all beings.

Many native languages, my own included, speak of the earth and of all species as persons in contrast to English which renders all living beings, except for ourselves, of course, as it, as objects.

Our languages challenges the dominant paradigm that humans alone are possessed of rights and that the rest of the living words exits primarily for human use.

What the English language refers to as natural resources in my language we refer to as our relatives. And through our participation here the Rights Of Nature Movement is actively creating a new system of jurisprudence with roots in this ancient indigenous paradigm which acknowledges the personhood of all beings.
And we are gathered here to consider this most timely question. Do the harms caused by fracking and climate change constitute a breach of rights of nature and human rights?

This question cannot be more urgent as we find ourselves on the cusp of human caused climate chaos and in what biologists have designated as the age of the Sixth Extinction.

But more broadly we are gathered to bring our minds together around the idea that justice should reflect our human values.

As we deliberate let us remember that human made law is constantly evolving. Over the course of human history our understanding of legal rights has been continually expanded to become more and more inclusive to broaden the scope of justice and we acknowledge that there was a time when human rights meant only the rights of white men.

But thankfully, as a species, we have learned and grown and era by era we have come to embrace human rights regardless of gender, ethnicity, race, religion and sexual orientation.

We know that we still have a lot of work to do in realizing rights in all those realms but today we continue that expansion of rights to the rights of
mother earth, the rights of nature, with a perspective that expands beyond a single species, homosapiens, to embrace the intrinsic rights to be of the more than human world in whose embrace of kinship we live.

In this gathering of good minds let us also celebrate the fact that human conscience can become a recognized source of law. That new systems of jurisprudence allow us to clarify our obligations to the living world and together proclaim the rights of nature as fundamental to our deliberations on fracking and climate change.

Now since this is an emerging new legal system that not every one will be familiar with my work this morning is to try and create a common understanding of what is the rights of nature framework and why it's important to the deliberations here this week.

The rights of nature constitute a powerful framework for evaluating these potential harms caused by fossil fuel extraction and climate change.

Simply stated the rights of nature is a declaration that nature, in all its life forms, has the right to exist, persist, maintain and regenerate its vital cycles.

Let's hear that again and let its gravity sink in. Nature, in all its life forms, has the right to
exist, to persist, to maintain and regenerate its vital cycles.

To quote from the Indigenous Environmental Network statement on the Rights Of Nature And Mother Earth. Rights of nature legal systems acknowledge that all rights, including humans, depend on the health and vitality of earth's living systems. All other rights are derivative of these rights. For without a liveable planet our capacity to enjoy any human rights is impossible.

The rights of nature necessarily have primacy and this requires an essential paradigm shift from a legal system designed to protect the power of certain members of one species to a legal system designed to serve all of the living earth community. And herein lies its power.

The rights of nature framework can recognize the legal personhood of non-human beings like rivers and redwoods and sea turtles.

The rights of nature reject the faulty assumptions of human exceptionalism; this world view which places humans apart from and above nature; that perpetuates this fiction that we are somehow more deserving, more entitled to the riches of the earth than any other species and not that those other species are
I would offer these words from the Steelheart Declaration of 2013 which questioned the viability of a global economy whose jurisprudence places property rights above all; that recognizes corporate rights as the most sacred of property rights; subordinated human rights to corporate rights and where nature is not recognized as having any intrinsic rights at all.

Our current legal system gives the rights of personhood to corporations and none at all to forests or coral reefs or spotted salamanders.

What is it we mean by personhood exactly?

We're not being anthropomorphic. This is not a caricature. We mean that all beings have their own roles and their own gifts and responsibilities. Their own intentions.

We recognize that every other living being is not our property but that they are sovereign entities with their own intrinsic rights to their own lives and homelands.

Importantly a legal person is also defined as an entity who has standing to sue for damages in a court of law. Thus the declaration of personhood for all beings is not only a philosophical, ethical, world view stance, it opens the courts.
hear suits for harms done to those persons, which brings us to the questions to be deliberated in today's tribunal.

Granting personhood to all beings is an economic and political construct as well as an ethical stance. Recognition for personhood of all beings opens the door to ecological justice.

Our laws today are all about governing our rights to the land. The shift rights of nature provides is to include the rights of the land. The rights to be whole and healthy. The simple right to exist.

What if the landscape of the Bears Ears National Monument belonged to itself or the Missouri River had the inherent right not to be filled with oil. Or imagine if the Bristol Bay salmon had a right to their own homelands for spawning grounds.

And what if sugar maples were recognized with the rights to exist and not to become climate refugees as their homelands shrink due to climate change.

We also recognize that there are laws more fundamental than any human made laws. The laws of nature revealed by all the sciences, the laws of thermodynamics, the laws of reciprocity, the laws which govern ecosystems in the globe.

Shouldn't we be questioning an economic system
which demands growth, consumption and profit without considering the carrying capacity of natural systems?

We have to understand that we, like every other successful organism, must play by the rules that govern ecosystem function.

Laws of thermodynamics have not been suspended on our behalf. Unlimited growth isn't possible. And in a finite world you cannot relentlessly take without replenishment.

There are decades of science to support fundamental interdependence and eons of traditional ecological knowledge that we can not have human sustainability without the flourishing of a natural world. On this all life depends.

And so we gather to consider what does it mean to respect natural law and seek to use a new rights of nature legal framework to align human law with the unbreakable laws of nature.

And this movement requires a paradigm shift expanding our thinking from human law to natural law; from an economy of endless expansion to a regenerative economy of sufficiency and abundance; from exploitation to reciprocity; from human well-being alone to the well-being of all.

And it's really important to recognize
precedents for using rights of nature to consider questions of environmental harm. That this has already been done and employed all around the world.

New frameworks of jurisprudence are being developed and implemented in many different arenas. Think of the constitutions of Ecuador and Bolivia that enshrine the rights of mother nature in the constitutions.

The Maori people who negotiated legal personhood for the Whanganu River. Likewise for the Ganges in India. Sovereign indigenous nations in the US, the Ho Chonk and the Ponca have used rights of nature frameworks to protect their homelands from the impacts of fossil fuel extraction.

Through tribunals convened in Paris and elsewhere this movement is growing and the work that we do together here in this Tribunal contributes to the growth and expansion of law on behalf of life.

Why is this so important? The Rights of Nature Movement is an invitation to acknowledge our place as just one member of the democracy of species, not the sole owner of the gifts of the earth.

It's an invitation to leave behind our dishonorable past and our really self-imposed exile from kinship with the living world to live again in
reciprocity and respect and equitable relationship with nature.

I do believe that we are living in a transient period of profoundly painful error and correction on our way to a humbler consideration of ourselves.

In the geologic scope of things the colonialism that fueled the industrial worldview was only an eye blink ago. For eons before that there was a long time on this planet when humans lived well in relative balance with biotic processes embodying this world view of reciprocity that was simultaneously material and spiritual.

There was a time when we considered ourselves the younger brothers of creation, not the masters of the universe. Our current adversarial relationships with the rest of the living world isn't all that we are as a species. We are a species that can learn from the mistakes we've made. We have stories to help us remember a different past and imaginations to help us find a new past.

The earth asks us to change as everything changes and evolves. For if we don't change we will, like all if it does not change, perish. We are a species who can change and our consideration of the rights of nature as fundamental to law is a profound change that
can lead us to cultural shifts that might save us from
the destructive path we are on.

The earth herself is changing by our hands and
the responses from our government leaders to the clear
and present danger of climate disruption have been
wholly inadequate, in scale, in urgency and in
imagination.

While we race around asking how we might
change technology or tax structures the changes that
might save us goes unspoken. What we need to change is
ourselves. We need a change in heart, a change in
ethics and in the laws that embody those ethics.

A shift away from an anthropocentric world
view that considers the earth our property to a
biocentric life-centered world view in which an ethic of
respect and reciprocity can grow. The rights of nature
frameworks embody this biocentric world view.

I'm reminded that the philosopher Joanna Macy
has called this time the great turning. The essential
adventure of our time shifting from the age of
industrial growth to the age of life sustaining
civilization.

Her work and the work of countless others
describes this accelerating momentum of a transition
already in progress and acts large and small as we
humans reclaim this acent way of knowing in which human
life is aligned with ecological processes.

The question is, will that circle turn in time
to save us? And that's up to us.

Why do rights of nature need to be protected?
The rights of nature need to be protected for
reasons both pragmatic and ethical.

First the pragmatic. Human destruction of
ecological systems which sustain our lives are
unsustainable. But what a slippery word sustainable.
It sounds so mild. Let's tell the truth. The unbridled
destruction of eco-systems threatens the continued
existence of every living being on the planet and limits
our options for future regeneration and resilience.

We protect rights of nature out of enlightened
self-interest. The world can survive without us but we
can not survive without an intact living community of
life. As our ancestors remind us when the rivers dry up
and the food is all gone then we'll remember that we
can't eat money.

The second reason comes not from the belly but
from the spirit. The rights of nature framework
provides a legal voice for those who cannot speak for
themselves. As I wrote these words there was a chorus
of bird song outside my window. Robins and finches and
juncoes, doves, flickers all delirious with spring
time
and they're flying back and forth with tuffs of dry
grass for their nests while I give voice to my thoughts
on paper.

What about their voices? What are they saying? Shouldn't their voices be heard in the debate on
the future of the planet? Do they not have the right
to be, to sing, to raise their children, feed their families, pass on their complex and sophisticated
culture, to be secure in their own homelands? The right to live and not join the legions of extinct beauty. The same right that I have who does not even sing. I know they do.

And when we gather as human nations should we not also counsel on behalf of the tree nations, the bird nations, the fish nations, on behalf of soil and seeds and our precious water.

What is the danger if we fail to protect the rights of nature? What is the reward if we do? And the rights of nature framework is obviously based on the language of rights consistent with western legal thinking. And there is great power in that argument to work within a rights-based system of law.

But let me say that in indigenous thinking we tend to frame this a bit differently. In terms of
responsibility we don't define land as property for which we have rights but as a community for which we have responsibility. And that land, in turn, has a responsibility for us.

The rights of nature framework at its heart embraces this sense of responsibility that people have to use their gifts on behalf of the more than the human world. It is up to us.

In my culture it is said that each being was given a gift. The birds were given the gift of music that lightens our spirit and sings up the sun but we are also taught that every gift is coupled to a responsibility to use that gift. That in fact the gifts and responsibilities are two sides of the same coin.

Along with their musical gift the birds were given the responsibility to lighten our hearts and sing up the sun.

The stars were given the gift of twinkle and the responsibility to guide us at night.

What are our gifts? We human people carry gifts of our own. We are scientists and artists and farmers and story tellers. In return for the gifts of the earth we are called to give our own in return.

The capacity to engage the questions of our Tribunal is a gift. It is a gift to be a lawmaker and
if we make the laws we can change the laws. And we have
the responsibility to do so when they no longer
reflected our values.

We began with gratitude and there I will end
my opening words with gratitude for each of us giving
our own gifts.

In the course of these deliberations we
reciprocate the gifts of the earth with our attention,
our compassion, using our good minds and good judgment
on behalf of the living world. Together we move
forward to mutual thriving.

In the words of my honored teacher, the late
Onondaga clan mother Audrey Shenandoah, we seek justice.
Justice not only for ourselves but justice for all
creation.

Thank you.

DR. JOHN KNOX: My name is John Knox. I'm
the United Nations Special Rapportuer on Human Rights
and the Environment and it's my pleasure to be with you
here today.

So when we talk about human rights we often
starts with the Universal Declaration of Human Rights
which was adopted in 1948. Eleanor Roosevelt was the
chair of the Human Rights Commission of the United
Nations body that drafted it. And the General Assembly
adopted it in 1948 went on to draft human rights treaties based on the Universal Declaration. So in that way it's the seminal document in all of international human rights law.

The Universal Declaration includes civil and political rights, such as rights to life, liberty, security of person, freedom of expression, freedom of religion and so forth. It also includes economic, social and cultural rights such as the right to an adequate standard of living and the right to the highest attainable standard of health. What it doesn't refer to is the environment.

If you look at the Universal Declaration nowhere will you find any reference to the environment or environmental concerns. That is not because the drafters of the declaration considered the environment and decided not to include it. It's because the modern environmental movement really didn't arise until the late 1960, 20-years after the Universal Declaration was adopted.

After the modern environmental movement did arise there was a movement in many countries around the world, which continues to this day, to recognize the importance of environmental protection by incorporating a constitutional right to a healthy environment in their
In fact more than 100 countries around the world now recognize that right in their national constitution. But at the international level, at the United Nations level, there wasn't this kind of recognition of a human right to a healthy environment. Instead what happened beginning in the 1990s was that advocates such as Kumi Naidoo, then the Executive Director of Greenpeace International, and many other human rights and environmental bodies brought human rights issues and environmental issues together. They applied human rights law to environmental protection and they brought environmental claims to human rights tribunals.

For example the Inter-American Court of Human Rights in San Jose, Costa Rica, which has jurisdiction to hear and decide on human rights claims throughout Latin America and the Caribbean began to decide environmental cases. So did the European Court of Human Rights and many other regional tribunals as well as the United Nations independent expert bodies such as special rapporteurs reporting to the Human Rights Commission and Council and treaty bodies appointed to oversee compliance with human rights treaties, they all began to hear more and more environmental cases.
What these cases had in common is that they were based on existing human rights, not on the stand alone human right to a healthy environment. But instead rights like the rights to life and health and an adequate standard of living, food, water, housing and so forth.

And so, over time, these human rights bodies began to green human rights and create a body of environmental human rights law.

In 2012 the Human Rights Council which had taken the place of the Human Rights Commission and become the main United Nations human rights body, the Human Rights Council decided to appoint a new independent expert to examine this relationship of human rights and the environment.

I had the honor of being appointed to be the first independent expert in 2012, six years ago. The resolution creating the mandate specifically asked me to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

And to that end I undertook consultations all over the world. I did that with a great deal of help from lawyers and academics. I did research to pull together what human rights bodies had said about
environmental protection and I came to some basic conclusions. Despite the range of the different rights that we're interpreting they reached very similar conclusions.

First, they all agreed that environmental harm interferes with a vast range of human rights.

Second, they agreed that human rights laws set out certain basic procedural requirements that have to be followed in environmental decision making and more generally in decision making that has environmental effects.

Third they said that human rights law sets out minimum substantive standards. Now while states have more discretion with respect to substantive standards than they do with procedural obligations. That discretion is not unlimited.

Fourth, states have to take additional steps to protect those who are most vulnerable.

So how does that apply to climate change? Mary Robinson, the former president of Ireland and the former High Commissioner For Human Rights at the United Nations has said that climate change is the greatest threat to human rights in the 21st Century. What does she mean by that?

Well, as William Gibson, the science fiction
author said, the future is already here. It's just unevenly distributed.

That is, the effects that, in many countries, we're still waiting to see from climate change or we're just beginning to see as a result of climate change, in other countries they're already here. They're already affecting life in those countries.

This maps shows the vulnerability index, as of a couple of years ago although it hasn't changed significantly since then, and what you see there is that the countries that are the most vulnerable to climate change effects are those in sub-Saharan Africa, in South Asia and Southeast Asia and other hot spots around the world.

What you also see is that those countries are also countries that have done the least to contribute to climate change. They're the most vulnerable despite the fact that they're the least to blame.

They're the most vulnerable for many reasons, including that they may be more subject to droughts and extreme weather events. But one of the major reasons is that the climate change is going to cause rising sea levels. There is really no doubt about this. It's just a matter of physics. As the climate warms so does the ocean and as the ocean warms it expands.
course, as frozen water in Greenland and Antarctica melts it joins the ocean waters further causing it to expand.

So while predictions still vary quite a bit it seems clear that we're looking at least a rise of a meter by 2100.

Well, rise of a meter will have really severe effects for many countries around the world. And, again, it's already starting to have those effects.

This is a map showing how much one meter rise in sea level, what effect that would have in the country of Bangladesh, which has extremely low lying coastal area.

This is a picture of Male', the island that is the capital of the Maldives one of the lowest countries in the world. As you can see there there is simply nowhere for the people of that country to go. There is no higher ground. A rise in sea level of one meter would make many of the islands of the Maldives effectively uninhabitable.

So one effect of thinking about climate change through a human rights lens is to realize and put a human face on the effects of climate change so that we're no longer thinking about just future generations or polar bears on ice flows but we are thinking about...
the effects on people today, such as the Maldivian children who may well have to evacuate their home country during their own lifetime. And not that far away in their own lifetime.

So how do these major human rights obligations apply in the context of climate change?

In my most recent report to the United Nations Human Rights Council I presented 16 framework principles on human rights to the environment to try to summarize the main human rights obligations that are relevant to environmental protection.

Perhaps the key insight I've come to in my work as the United Nations special rapporteur is that human rights and the environment are really interdependent. States have to ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfill human rights, and vice versa.

It's necessary to be able to exercise human rights in order to be able to protect the environment. More specifically it's necessary to be able to exercise procedural rights, for example, such as rights to have states assess environmental impacts. Rights to have states make environmental information public, to facilitate participation in environmental decision making. Absolutely the rights of freedom of expression...
and association are of fundamental importance in ensuring that environmental policies reflect the views of those who are most directly affected.

And states have obligations under human rights law to provide effective remedies for violations of all of these rights.

As I said, states also have substantive obligations. While states have somewhat more discretion here no one expects Ghana, say, to have exactly the same level of environmental protection as Denmark, for example.

Nevertheless, human rights bodies have made clear that states do have obligations to protect against or at least take steps to do their best to protect against foreseeable environmental harm.

While they have some discretion to strike a balance between environmental protection and economic development that balance can't be unreasonable or result in unjustified foreseeable infringements of human rights.

In particular, states should take into account international standards such as those promulgated by the World Health Organization.

They should never take retrogressive measures. They should never go backwards in their level
of protection. They must never discriminate between
groups. It's no excuse to say, well, we are in a state
of economic development here. That's not an excuse for
saying that it's OK to discriminate against a minority
within that country.

And once the balance is struck states have to enforce it. They have to make sure it's actually implemented.

In addition states have obligations to protect against threats to the most vulnerable. Those who are most vulnerable from environmental harm and climate include, for example, women, children, the disabled, older persons, persons living in poverty, indigenous peoples and other communities that are particularly closely reliant on the natural ecosystems which support all human life.

So how do these general norms apply to climate change? Let me just highlight three levels; the international level, the national level and the project level.

At the international level states have to cooperate with one another to reduce total greenhouse gas emissions.

At the national level every state has obligations to take effective adaptation measures. That
is to take measures to ensure that their people within
their jurisdiction that are their responsibility have
the best chance they can to adapt successfully to the
unavoidable and unavoidable effects of climate change.

And at the project level even projects that
are designed to mitigate or adapt to climate change they
themselves have to be sure to comply with human rights
obligations.

So let's say a word or two more about each of
those levels of obligation.

At the international level states have to
cooparative to adopt mitigation necessary to reduce
global emissions so as to hold the increase in global
average temperatures below levels that would cause
widespread harm to the enjoyment of human rights.

In practice what we know from scientists that
study this is that that means that it's necessary to
keep the increase in global average temperature to well
below 2 degrees Celsius.

That means that states have a duty to
cooperate to face this global shared threat. This duty
to cooperate is recognized by the United Nations
Framework Commission On Climate Change itself, which
recognizes that the global nature of climate change
calls for the widest possible cooperation by all
countries and their participation in an effective and appropriate international response.

It's also a principle of international human rights law recognized in the charter of the United Nations and in the International Covenant On Economic Social And Cultural Rights.

So how are states doing in fulfilling this duty to cooperate?

Well it's a mixed bag. On the one hand they have agreed to the Paris Agreement in December of 2015, Article 2 of which says that the agreement aims to strengthen the global response to the threat of climate change including by holding the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperatures increase to 1.5 degrees Celsius.

Well, that's good. However, the United Nations Environmental Program has pointed out in its Emmissions Gap Report that even if fully implemented the unconditional intended nationally determined contributions, that is, the contributions that states so far have made to fulfill their commitments under the Paris Agreement, those contributions are only consistent with staying below an increase in temperature of about 3 degrees Celsius by 2100.
So even if those commitments are implemented we're only about half way to the level that human rights standards and states themselves have recognized are necessary to avoid massive harm to human well-being.

In my reports to the Human Rights Council in March 2016, two years ago, I focused on human rights and climate change. And I evaluated the Paris Agreement and I said that even if they meet their current commitments states won't satisfy their human rights obligations.

From a human rights perspective I said it's necessary not only to implement the current intended contributions but also to strengthen those contributions in order to meet the target as set out in Article 2 of the Paris Agreement.

Now what about the adaptation requirements? Even a 1.5 or 2 degree increase will result and is already resulting in harm to the human rights of communities that are most vulnerable to climate change.

States also have obligations to adopt effective adaptation measures to protect against this harm and to provide for remedies to it.

I want to make clear that these adaptation measures apply to all states. Obviously states that contribute more to the problem have greater responsibility to do something about it.
doubt about that. But adaptation places an obligation on all states to do what they can.

So to go back to the Maldives here, Maldives contributes virtually nothing to climate change. This is not a problem that the Maldives or other small island states or other particularly vulnerable states did anything to create. However, even the Maldives recognizes that it has to do what it can to protect its own people from climate changes effects.

So, in this picture, you can see the Maldives has already started to build or has already built a sea wall around Male', its main capital, and is taking additional steps to try and protect its people from the effects of climate change. That's completely appropriate and in line with their obligations under human rights law.

Other states, though, in a position to help need to do so. The states in particular that have contributed most to the problem also need to live up to their commitments to help countries that are most at risk and most threatened by climate change.

What about actions taken in response to climate change? As I said even actions taken to respond to climate change need to make sure that they take into account human rights obligations.
So the preamble of the Paris Agreement actually recognizes this. It says that parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, including these specific human rights.

That is particularly important, for example, in projects that are designed to promulgate renewable energy. There have been some very strong criticism of projects that were presented as addressing climate change by, for example, increasing hydro-electric power but some of these projects have also been accused of massive human rights violations by running roughshod over the rights of people who already live in those areas and are being displaced without consultation or consent, in many cases.

It's no excuse to say that, well, this is an important project we're working on, therefore, we can ignore the human rights of those who are most affected. That's not how human rights law works, obviously.

Climate finance mechanisms need to include safeguards to make sure that the hundreds of millions of dollars that are expected to flow through these mechanisms in coming years actually do protect human rights of those who are most affected.

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The Adaptation Fund, to mention one of these mechanisms, actually does include fairly good safeguards to protect human rights and environmental concerns. The Clean Development Mechanism created by the Kyoto Protocol does not. It includes almost no safeguards like this.

As we move forward with the Green Climate Fund and the Sustainable Development Mechanism it’s very important to ensure that those mechanisms do include solid protective safeguards.

I actually wrote a letter to a climate commission, the SBSTA, two years ago setting out what the Sustainable Development Mechanism, the replacement for the Clean Development Mechanism should include. It should include environmental and social assessment for every proposed project and program.

It should provide for effective public participation in all decision making.

It should provide a grievance mechanism so those that claim that their rights have been violated can take those grievances to a body that has the authority to receive them. And, of course, it should protect the most vulnerable, including indigenous peoples.

Finally I just want to mention that
increasingly there are climate cases that are being brought on the basis of human rights. I won't go through all of them but some of the most important ones in recent years include the Ashgar Leghari case in Pakistan. The Urgenda Foundation case in the Netherlands. The Earth Justice Petition to the Philippines National Human Rights Institution. And in the United States the Our Children's Trust Litigation.

The Philippines Human Rights Commission case involves a human rights complaint brought against several dozen so called carbon majors, large businesses that have, over the years, contributed an immense amount of carbon pollution. It's actually, on the day I am recording this, March 28th, it's on the second day of hearings, in the process of hearing this complaint, and hopefully issuing a decision on it later this year.

The Our Children's Trust lawsuit brought in the United States is also expected to go to trial later this year. And just two weeks ago a new lawsuit brought on behalf of children against another government, the government of Columbia, was filed. It also accuses its government of not doing enough to safeguard human rights by not doing enough to protect against the effects of climate change.

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name but if you Google OHCHR for the Office of the High
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report on climate change and human rights and I hope
that you find that useful.

Thank you very much.

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