

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
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1 their experiences or share their expertise.

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

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

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

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

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

21 No. 1. Under what circumstances do fracking
22 and other unconventional oil and gas extraction
23 techniques breach substantive and procedural human
24 rights that are protected by international law as a
25 matter of treaty or custom?

1 Second. Under what circumstances do fracking
2 and other unconventional extraction techniques warrant
3 the issuance of either provisional measures, a judgment
4 enjoining further activity, remediation relief or
5 damages for causing environmental harm?

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

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

15 These four questions are also available at
16 Tribunalonfracking.org.

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

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

25 Thank you.

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

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

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

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

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

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

23 And special thanks to Tom Kerns for his
24 unwaivering dedication to making this Tribunal happen
25 for the last four years. Thank you.

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1 There will be ten judges presiding over this
2 session of the Tribunal and we want to thank them for
3 sharing their expertise, time and dedication to human
4 rights.

5 The panel includes Alberto Acosta Espinosa, in
6 Ecuador. Lilia America Albert Palacios in Mexico.
7 Andres Barreda in Mexico. Upendra Baxi in India. Gil H.
8 Beohringer in Australia. Maria Fernanda Campa in Mexico.
9 Louis Kotze' in South Africa. Larry Lohmann in the
10 United Kingdom. Francesco Martone in Italy. And
11 Antoni Pigrau Sole' in Spain.

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

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

22 This session is also historic because it will
23 expand the scope of the Permanent Peoples' Tribunal to
24 include arguments about the rights of nature in addition
25 to the rights of people.

1 And, for the first time, this Tribunal will be
2 hosted completely on-line, which is an inclusive format
3 that will allow people from around the world to
4 participate and to follow along as the proceedings
5 happen.

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

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

17 Gianni Tognoni is the Secretary General of the
18 Permanent Peoples' Tribunal in Italy. Robin Kimmerer is
19 a distinguished teaching professor at the SUNY College
20 of Environmental Science And Forestry in Syracuse, New
21 York. She is also the founding director of the Center
22 for Native Peoples and the Environment. And John Knox
23 is the United Nations Special Rapporteur on the Issue of
24 Human Rights and the Environment. He's also the Henry
25 C. Lauerman, professor of International Law at Wake
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1 Forest University School of Law in North Carolina.

2 And finally we'll conclude the opening
3 ceremony with a short piece by environmental scientist
4 and writer Mary Heather Noble who will read her lyrical
5 poem Seduction, which was published in the anthology
6 Fracture: Essays, Poems and Stories on Fracking in
7 America.

8 Thank you for joining us.

9 VOICES: From the United Nations Universal
10 Declaration of Human Rights.

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

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

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

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

21 Article 25 (1). Everyone has the right to a
22 standard of living adequate for the health and
23 well-being of herself and of her family, including food,
24 clothing, housing and medical care and necessary social
25 services. And the right to security in the event of

1 unemployment, sickness, disability, widowhood, old age
2 or other lack of livelihood and circumstances beyond her
3 control.

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

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

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

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

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

24 Article 1. Indigenous peoples have the right
25 to the full enjoyment, as a collective or as

1 individuals, of all human rights and fundamental
2 freedoms as recognized in the charter of the United
3 Nations, the Universal Declaration of Human Rights and
4 International Human Rights Law.

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

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

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

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

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

24 The right to life and to exist;

25 The right to be respected;

1 The right to continue their vital cycles and
2 processes free from human disruptions;

3 The right to maintain its identify and
4 integrity as a distinct, self-regulating and
5 interrelated being;

6 The right to water as a source of life;

7 The right to clean air;

8 The right to integral health;

9 The right to be free from contamination,
10 pollution and toxic or radioactive waste.

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

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

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

13 So this issue, which is so critically
14 important for the future of mankind, not only for the
15 present state of the respect of rights has been
16 considered by the Permanent Peoples' Tribunal as one of
17 the area which perfectly represent its competencies in
18 the areas of international law. Because the Tribunal
19 has been established now more or less 40-years ago in
20 '79, the documentation of the Tribunal is perfectly
21 available on the site of the promoters of this Tribunal
22 so I won't insist on that.

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

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

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

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

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

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

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

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

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

18 The rights of economy were becoming principal
19 with respect to the respect of the rights of real
20 people. Later on this issue was going back doctrinally
21 also to explore the sources of international law back in
22 the conquest of America when in fact it was the same.
23 They were the conquerors who, in order to justify what
24 they were achieving by colonizing and in fact destroying
25 people, was in fact declared international law.

1 Then we had the sessions on Bhopal, on
2 Chernobyl, on pesticides, different areas where, in
3 fact, the market law, law which is regulating in fact
4 industrial rights are, in fact, separated from
5 international law.

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

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

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

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

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

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

23 My English name is Robin Wall Kimmerer. I'm
24 a professor of Environmental and Forest Biology at SUNY
25 College of Environmental Science and Forestry and I'm
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1 Director of the Center for Native Peoples in the
2 Environment.

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

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

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

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

24 Let me also give a customary greeting in my
25 native language. [Potawatomi greeting].

1 In my ancestral language I greet you all and
2 introduce myself as a Potawatomi woman, a member of the
3 Anishinaabe peoples of the eagle clan and the bear.

4 And I am happy to be here. Grateful for all
5 that has been given to us and that together we can care
6 for mother earth.

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

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

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

19 What the English language refers to as natural
20 resources in my language we refer to as our relatives.

21 And through our participation here the Rights Of Nature
22 Movement is actively creating a new system of
23 jurisprudence with roots in this ancient indigenous
24 paradigm which acknowledges the personhood of all
25 beings.

1 And we are gathered here to consider this most
2 timely question. Do the harms caused by fracking and
3 climate change constitute a breach of rights of nature
4 and human rights?

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

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

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

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

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

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

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

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

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

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

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

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

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

20 The rights of nature reject the faulty
21 assumptions of human exceptionalism; this world view
22 which places humans apart from and above nature; that
23 perpetuates this fiction that we are somehow more
24 deserving, more entitled to the riches of the earth than
25 any other species and not that those other species are
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1 our property.

2 I would offer these words from the Steelheart
3 Declaration of 2013 which questioned the viability of a
4 global economy whose jurisprudence places property
5 rights above all; that recognizes corporate rights as
6 the most sacred of property rights; subordinated human
7 rights to corporate rights and where nature is not
8 recognized as having any intrinsic rights at all.

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

12 What is it we mean by personhood exactly?
13 We're not being anthropomorphic. This is not a
14 caricature. We mean that all beings have their own
15 roles and their own gifts and responsibilities. Their
16 own intentions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 The Maori people who negotiated legal person-
10 hood for the Whanganu River. Likewise for the Ganges in
11 India. Sovereign indigenous nations in the US, the Ho
12 Chonk and the Ponca have used rights of nature frame-
13 works to protect their homelands from the impacts of
14 fossil fuel extraction.

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

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

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

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

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

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

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

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

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

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

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

23 Her work and the work of countless others
24 describes this accelerating momentum of a transition
25 already in progress and acts large and small as we

1 humans reclaim this ancient way of knowing in which human
2 life is aligned with ecological processes.

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

5 Why do rights of nature need to be protected?

6 The rights of nature need to be protected for
7 reasons both pragmatic and ethical.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Thank you.

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

21 So when we talk about human rights we often
22 starts with the Universal Declaration of Human Rights
23 which was adopted in 1948. Eleanor Roosevelt was the
24 chair of the Human Rights Commission of the United

25 Nations body that drafted it. And the General Assembly
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1 adopted it in 1948 went on to draft human rights
2 treaties based on the Universal Declaration. So in that
3 way it's the seminal document in all of international
4 human rights law.

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

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

21 After the modern environmental movement did
22 arise there was a movement in many countries around the
23 world, which continues to this day, to recognize the
24 importance of environmental protection by incorporating
25 a constitutional right to a healthy environment in their
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1 national constitutions.

2 In fact more than 100 countries around the
3 world now recognize that right in their national
4 constitution. But at the international level, at the
5 United Nations level, there wasn't this kind of
6 recognition of a human right to a healthy environment.

7 Instead what happened beginning in the 1990s
8 was that advocates such as Kumi Naidoo, then the
9 Executive Director of Greenpeace International, and many
10 other human rights and environmental bodies brought
11 human rights issues and environmental issues together.
12 They applied human rights law to environmental
13 protection and they brought environmental claims to
14 human rights tribunals.

15 For example the Inter-American Court of Human
16 Rights in San Jose, Costa Rica, which has jurisdiction
17 to hear and decide on human rights claims throughout
18 Latin America and the Caribbean began to decide
19 environmental cases. So did the European Court of Human
20 Rights and many other regional tribunals as well as the
21 United Nations independent expert bodies such as special
22 rapporteurs reporting to the Human Rights Commission and
23 Council and treaty bodies appointed to oversee
24 compliance with human rights treaties, they all began to
25 hear more and more environmental cases.

1 What these cases had in common is that they
2 were based on existing human rights, not on the stand
3 alone human right to a healthy environment. But instead
4 rights like the rights to life and health and an
5 adequate standard of living, food, water, housing and so
6 forth.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Well, that's good. However, the United
18 Nations Environmental Program has pointed out in its
19 Emmissions Gap Report that even if fully implemented the
20 unconditional intended nationally determined
21 contributions, that is, the contributions that states so
22 far have made to fulfill their commitments under the
23 Paris Agreement, those contributions are only consistent
24 with staying below an increase in temperature of about 3
25 degrees Celsius by 2100.

1 So even if those commitments are implemented
2 we're only about half way to the level that human rights
3 standards and states themselves have recognized are
4 necessary to avoid massive harm to human well-being.

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

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

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

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

22 I want to make clear that these adaptation
23 measures apply to all states. Obviously states that
24 contribute more to the problem have greater

25 responsibility to do something about it. There is no

1 doubt about that. But adaptation places an obligation
2 on all states to do what they can.

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

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

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

22 What about actions taken in response to
23 climate change? As I said even actions taken to respond
24 to climate change need to make sure that they take into
25 account human rights obligations.

1 So the preamble of the Paris Agreement
2 actually recognizes this. It says that parties should,
3 when taking action to address climate change, respect,
4 promote and consider their respective obligations on
5 human rights, including these specific human rights.

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

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

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

1 The Adaptation Fund, to mention one of these
2 mechanisms, actually does include fairly good safeguards
3 to protect human rights and environmental concerns.

4 The Clean Development Mechanism created by the
5 Kyoto Protocol does not. It includes almost no
6 safeguards like this.

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

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

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

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

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

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

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

25 For more information about this I encourage
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1 you to go to my web site. It has an impossibly long
2 name but if you Google OHCHR for the Office of the High
3 Commission For Human Rights, Knox, then it will take you
4 to a web site that has many more reports, including my
5 report on climate change and human rights and I hope
6 that you find that useful.

7 Thank you very much.

8
9 [youtube.com/watch?v=tsolzqk_CDU]

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