CLOSING ARGUMENTS AND RECOMMENDATIONS

MAY 18, 2018  10:00-11:00

MS. REVEL POINTON: Greetings from Australia. It's an honor to be presenting to you the closing submissions to the Permanent Peoples' Tribunal on Human Rights, Fracking and Climate Change today.

My co-lead attorney, Dr. Evan Hamman, unfortunately, has to send his apologies as he is off in China on a business matter and he regrets not being able to participate in the closing days but assures the judges that if any further help is needed then please do contact him.

So we've had significant submissions before the Tribunal this week raising serious concerns and providing more examples of the issues of concern around the world from fracking and climate change and their particular impacts on human rights.

While I am honored to be in this role of providing the closing submissions for the PPT I also recognize the significant responsibility that this role has of appropriately collating and doing justice to the significant and powerful testimonials and evidence put before the tribunal this week.

I know that I could never do it justice to the TREMAINE & CLEMENS, INC.  EUGENE, OREGON  (541)343-8833
extensive experience and knowledge that the Tribunal has before it in these submissions, both written and oral, the testimony and the evidence and particularly in just one hour this morning. And so I ask that the judges do take time to deeply consider all of the submissions and evidence it has received to duly inform its deliberations and recommendations.

I'm going to provide here just a snapshot of the arguments put before the Tribunal to hopefully assist the judges as they coalesce their findings into recommendations.

So just by way of overview I thought I would start by reminding us of what the purpose of the Permanent Peoples' Tribunal is just to set up a bit more context and also the fundamental legal questions that we're looking to answer through the Tribunal.

I'll then be providing an overview of submissions that are particular to the questions that the Tribunal has been asked to consider. And if there's time I'm going to try to answer some of the questions that the judges put to the attorneys later this week but we'll see how we go.

So as we know the Permanent Peoples' Tribunal is an internationally recognized civil society human rights tribunal and it functions independently of state
authorities. And therein lies its benefit in actually providing for a space, where state authorities are failing, to put on a forum for those whose voices can't actually be heard in normal legal or governance frameworks.

The frame of the Permanent Peoples' Tribunal is on human rights and particularly for this one on the issues of fracking activities and associated climate change impacts. But we'll also be hearing and have heard this week about the impacts to the rights of nature.

The Tribunal, as I mentioned, plays a really important role in filling that space that is not used sufficiently by state authorities to properly account for human rights impacts that activities are having or actions are having that we're condoning in our society.

And it's a very important role to empower those voices that aren't able to have their chance to have their concerns or issues heard in our legal and political frameworks as I mentioned.

So, as you know, as judges for this PPT you've been asked to apply the standards of international human rights law and render an advisory opinion on the following four fundamental legal questions associated with the impacts of fracking and climate change.
So firstly the question is, Under what circumstances do fracking and other unconventional oil and gas extraction techniques breach substantive and procedural human rights protected under international law as a matter of treaty or custom?

Secondly, Under what circumstances do fracking and other unconventional oil and gas extraction techniques warrant the issuance of either provisional measures, a judgment enjoining further activity, remediation relief or damages for causing environmental harm?

Thirdly, What is the extent of responsibility and liability of states and non-state actors for violations of human rights and for environmental and climate harm caused by these oil and gas extraction techniques?

And fourthly, What is the extent of responsibility and liability of states and non-state actors, both legal and moral, for violations of the rights of nature related to environmental and climate harm caused by unconventional oil and gas extraction techniques?

The focus of the investigation is on states since they're considered to be the primary duty bearers for protecting the human rights of their citizens.
compared to less easily demonstrated but still apparent
duty that exists for corporate citizens to protect human
rights. However, fossil fuel corporations may have been
implicated in witness testimony put before the Tribunal.

As we go through a summary of some of the
evidence that led into each of these questions this
morning I'll take the opportunity now to remind us that
we're doing so through the lens of six different cases;

Impacts to human health, including human physical
and mental health;

The climate impact case that addresses all the
human rights and earth rights dimensions for both
present and future generations;

For fracking and climate change, including
government's continued subsidization of fossil fuels;

The environmental ecosystem, hydrological and
seismicity cases;

And we'll address the human rights and earth rights
dimensions of adverse environmental ecosystem and
wildlife impacts as well impacts on air, surface water,
ground water and earthquakes. So the general
environmental impacts;

We'll then look at the public participation case,
which includes the human rights dimensions of public
participation or the lack thereof in decision-making
around the industries concerned and policy-making concerning that industry;

And the fuels infrastructure case will address the human rights and earth rights dimensions of exploration, drilling, fracking, extraction and delivery processes as well as the infrastructure needed for transport, storage and exporting product of waste and the social and cultural impacts and costs;

We'll look at the human rights dimensions of these costs and impacts on individuals, families and communities.

These cases have been addressed through various submissions and testimonials in different ways and not always quite directly. So it's good to keep them in mind if that helps the judges in formulating the way the four questions are answered.

I'll also use the opportunity in these closing submissions to attempt to provide an answer to the questions, potentially through the submissions themselves and, as I mentioned, if we have time at the end.

So getting into the questions.

The first question, as we mentioned, looks at what circumstances fracking and other unconventional and oil and gas extraction techniques breach substantive and
procedural human rights protected by international law
as a matter of treaty or custom?
This might be paraphrased as how or when has
it been demonstrated that unconventional oil and gas
techniques breach human rights? The Tribunal has
extended its investigation into fracking to any
unconventional oil and gas extraction technique. So I
thought I might give a very brief reintroduction to
these techniques should it assist us as we work through
the testimonials.
So unconventional oil and gas resources don't
appear in traditional formations but they use
specialized extraction or production techniques to
obtain fuel from the deposits. So shale gas, coal bed
methane, coal seam gas and tight oil, which is locked in
extraordinarily impermeable high rock making the under-
ground formation extremely tight, these are all
unconventional gas products or oil products.
This is compared with conventional oil and gas
which can be extracted from geological formations using
standard methods that are much cheaper and are more
straight forward.
So unconventional oil and gas extraction is a
very complex process that involves a higher level of
risk than your normal standard conventional oil and gas
products.

As stated for the purposes of this Tribunal the term fraking has sometimes been used in testimonials more broadly than hydrologic fracturing and refers more to general unconventional gas or oil extraction techniques. But more formally hydraulic fracturing, or fracking as it's known colloquially, is known as the process of injecting a high pressure mix of water, sand and chemicals into subterranean rocks, bore holes, et cetera, so as to force open existing fissures and extract oil and gas.

Fractured fluids are used to extend fractures, add lubrications, change gel strength and whatnot. So I have a bit more information than that but I'm sure that if the judges would like to, at the end, we can go back through the processes for fracturing and discuss what's actually involved if that's necessary but I might move on to the testimonials in case that has been sufficiently covered this week.

I will just start by saying, in answer to one of the questions posed by the Tribunal being, are there differences between the fracking and other unconventional oil and gas extraction techniques which the Tribunal should consider?

Can any of them be carried out in a manner
compatible with respect for human rights and the environment?

While I'll attempt to answer the second question later in the statement I'll try to answer the first now.

So not all unconventional gas and oil extraction requires fracking. All of the activities pose risk, particularly to our ground water basins and increasingly climate change but in slightly different ways.

So coal seam gas reservoirs that are exploited are generally shallower and have a higher concentration of gas than shale reservoirs. Shale reservoirs always require hydraulic fracturing while perhaps only half of coal seam gas reservoirs require fractured stimulation or fracking.

There are numerous proven risks and impacts related to the development of fracking projects such as heavy freshwater consumption, water and soil contamination and public health impacts.

The Concerned Health Professionals of New York and The Physicians For Social Responsibility conclude in their fifth edition of the compendium, which is the before the Tribunal, that that emerging data from a rapidly expanding body of evidence, continue to reveal a
plethora of occurring problems and harms that cannot sufficiently be averted through regulatory frameworks. There is no evidence that fracking can operate without threatening public health directly or without imperiling climate stability upon which public health depends. 

In 2012 the UN Environment Program issued a global alert on fracking concluding that fracking may have environmental impacts even if done properly.

There are still significant reserves among conventional natural gas deposits in many countries that appear to be increasing their reliance on gas as a perceived transition fuel to move around coal.

And I know one of the questions otherwise from the judges was where we might find data on current expansion of fracking and other known conventional forms of oil and gas extraction in the world?

I recommend having a look at the International Energy Agency World's Energy Outlook. While they are not forecasting their scenarios and they are named according to that and provide a really good idea of what the predicted and current use of oil and gas in the world is under different policy scenarios it's probably the most respected and used outlook source for gauging oil and gas extraction along with other resources around.
It could be compared to the BHP. They have a similar economic outlook that it's good to compare the data against each just to have an even more accurate understanding of the predictions of oil and gas extraction. I'm happy to provide a little more information if necessary around that too.

So when do activities breach substantive and procedure human rights?

Substantive human rights being, as we know, are rights considered to exist for its own sake and to constitute part of the normal legal order of society. Whereas procedural human rights existing more to provide a means to enforce substantive rights through legal and governance processes.

So we'll look at substantive rights first.

The testimonials have found numerous substantive human rights that could be picked up through impacts of fracking and climate change during the proceedings this week. They include the right to life, security of person and bodily integrity; right to health, right to a healthy, viable and supportive environment; right to safe water; right to respect for private and family life; the right to property; the right to peacefully enjoy one's possessions.

I might start out with a quick review of the
question of where the basis of these human rights comes from. And happily we'll go through this in more detail at the end if necessary.

So the Universal Declaration of Human Rights in 1948 was, I believe, the first genesis of clearly articulated internationally recognized human rights and it provided member states with the requirements to respect and observe human rights and fundamental freedoms for all.

It's mainly a statement of moral rather than legal obligations, however, the status of these rights was elevated in 1966 when two other documents, the International Covenant On Civil And Political Rights and the International Covenant On Economic, Social and Cultural Rights were adopted by the United Nations to give a legal and enforceable status to most of the rights recognized in the Universal Declaration.

Among the substantive rights recognized in the International Covenant On Civil And Political Rights relevant to fracking, the right to self-determination, including the pursuit of economic, social and cultural goals to manage and dispose of one's own resources, and the right not to be deprived of the means of subsistence or the inherent right to life, including an increase in life expectancy.
Whereas for the International Covenant on Economic, Social and Cultural Rights the following rights might be relevant. The right to work under just and favorable conditions, including safe working conditions. The right to an adequate standard of living, including the continuous improvement of living conditions. And the right to the highest attainable standard of physical and mental health, including access to safe and potable water and an adequate supply of safe food free from adverse substances. And healthy occupational and environmental conditions.

In 1972 the UN Conference On The Human Environment in Stockholm, Sweden resulted in another declaration that was the first recognition of the right to a healthy environment as essential to the enjoyment of the basic human rights and the right to life itself.

The Declaration starts with the principle that man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generations.

The current United Nations Special Rapportuer On Human Rights And The Environment, John Knox, has also
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affirmed that states are obliged, under international human rights law, to take reasonable and justifiable measures to protect environment related human rights, acknowledging that environmental degradation can and does adversely affect the enjoyment of a broad range of human rights.


It establishes governance by disclosure and has the three pillars of, access to information, public participation and access to justice. This Convention has been signed by around 50 countries, however, the United States and Australia have not signed this Convention.

So let's get to the submissions.

So the Tribunal heard the evidence and testimonials gathered from various pre-tribunals around the world, particularly in Ohio and Charlottesville in the United States and also in Australia.

So Rick Sahli presented the findings of the
1 jurors found that the testimonies heard established
2 violations by the fracking industry and by the federal
3 and Ohio state governments of the following human rights
4 recognized in international law.

   Right to life, security of person and bodily
6 integrity. Right to health. Right to a healthy and
7 viable and supportive environment, to safe water, to
8 respect for private and family life, to property, to
9 peacefully enjoying one's possessions.

   Testimonials presented cases of increased
10 medication demands and illness such as splitting
11 headaches, nervous system tremors, respiratory issues,
12 nose, eye and throat irritation, insomnia, mental trauma
13 and so on due to the stress of noise, vibration and
14 odors of living around these unconventional oil and gas
15 production areas.

   There were loud noises, reported smells and
17 air emissions, including dust plumes that were so strong
18 from the nearby facilities and traffic that residents
19 were forced to leave their houses or remain in doors.

   We heard submissions around trucks passing
21 every 13 minutes, 24 hours ever single day.

   Fracking and dumping of toxic fracking wastes
23 in the poorest region of the states, the Appalachian and
24 Ohio, and the inability of the people there to decide
for themselves whether to allow fracking waste dumping or not.

We heard the forced evacuation of lands to avoid health risks.

There was a claimed unfair highly complex process of violating the rights to life and liberty to possessing property and to safety.

And complaints that elderly with no ability to access computers were often being exploited by energy companies.

Impacts to climate stability through both clearing of vegetation and methane emissions were of concern.

And also the locally grown food producers were extremely concerned that the safety of the food grown close to fracking operations was at risk and the reduction of viable uncontaminated farm land caused by fracking was actually under risk as well.

These local chemical-free agricultural food movements are particularly vulnerable to potential contamination by fracking accidents or emissions. And their products have been placed in the food system without testing all of the impacts on this industry on their food sources.

Obviously they risk losing the organic
certification and removal from the market if they are found to no longer meet the standards required of them.

So various findings from the extensive submissions put before the pre-tribunals in Ohio lead to a recommendation that a moratorium should immediately be issued preventing exploratory and extensive fracking wells, fracking waste water, disposal injection wells and associated operations and infrastructure until such time as a full publicly funded industry independent evidence-led human rights impact assessment has been properly undertaken and published in the public interest.

The evidence of extreme health impacts of fracking and its associated operations support the urgency of considering the human rights impact immediately and various recommendations around what the assessment should include.

The pre-tribunals in Australia heard testimonials from a range of stakeholders and experts including many land holders directly affected by unconventional oil and gas exploration; Doctors For The Environment, who are a group of doctors who advocate for the need to protect our environment by adequately protecting our health; clinical psychologists and also previous regulators.
And the testimonials in the Australian case found that the Australian government has failed to protect the human right to attain the highest possible standard of physical and mental health by failing to insure a safe, clean and healthy environment through various key issues.

These were the failure to undertake prior baseline assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights;

A failure to ensure effective enforcement of environmental standards;

A failure to protect the rights of those who are most vulnerable to the risks proposed by these industries;

And a failure to comply with the obligations to indigenous peoples and members of traditional communities including failing to recognize and protect their right to be consulted with and have obtained from them free prior and informed consent.

So there were ongoing concerns raised around safety and being free from threats and harassments and intimidations and violence, which people complained of being subject to.
We did have the unfortunate death of a farmer, George Bender, and as a result partly of, I understand, intimidation and violence -- well, not necessarily violence but intimidation -- and extreme difficulty in ease of trying to negotiate with the gas industry from what I've heard.

So the testimonials claim that there is no legal requirement for the government to consider the health impacts of the industry on the people expected to host, which is a clear issue around the failure to recognize the human rights to have your health impacts considered and then assessed before you're allowing these industries to go ahead and then when they're going ahead that these health impacts are being protected continuously.

The testimony considered that there was a lack of scientific investigations. We have very few baseline studies or health impact assessments being undertaken prior to the industry going through.

Particularly where I live in Queensland the industry came through in a big sweep very fast in the last decade without the regulator necessarily being ready and without any sufficient baseline studies of how the environments were before and how they interact, particularly ground water basins, how they interact with...
each other to understand properly how this industry is actually impacting on our environment and the communities around it.

And then that obviously creates difficulties when you're trying to regulate them to know what was already in the environment around them versus what was actually a cause of the industry being introduced.

There was a failure to do preliminary testing of children's homes that were actually adjacent to the gas fields and concern that they were exposed to a range of carcinogenic and neurotoxic chemicals associated with the unconventional gas industry.

And doctors gave evidence of a remarkable increase in hospitalization of Darling Downs residents between 2007 and 2014 for acute respiratory conditions which more than doubled hospitalizations for acute circulatory conditions also more than doubled at the same time that CSG emissions increased in the area with particulate matter up 6,000%, oxides of nitrogen increased 500% and formaldehyde increased by 160 tons. So really significant impacts to the air quality in those regions.

Obviously there is also a loss of property value through the impacts of the industry and practices and often in a way that is just not able to be
And impacts to farmers with one doctor estimating a loss of an average of 2.70-million dollars to the mining of coal seam gas for farmers.

Reportedly even firefighters are being put at risk by not being provided with detection equipment or training them should they go into gas fields compared to, I understand, where the US has firefighters equipped with personal gas detectors to escape lethal areas.

And one key thing that's come through a lot of the submissions is a failure of the precautionary principle to be properly applied. It seems to be a key theme for the concerns around this industry that approvals are being awarded without proper knowledge of the ecological impacts on terrestrial ground water and marine environments and insufficient upfront consideration of cumulative impacts.

The Australian Human Rights Commission states that by not insuring that human rights are incorporated into the judicially enforceable legislative frameworks backed up by comprehensive implementation policy it has enabled industry to manipulate decision-making processes and outcomes in a manner that basic human rights are ignored and breaches are not subject to adequate corrective measures, monitoring or reporting.

So these submitters have requested that the
Tribunal, in considering the evidence provided and the 20 to 40 years of impacts ahead of the existing industry in Australia, and also the impacts still to occur from the rapidly expanding industry, they're asking that the Tribunal consider potential future harm as part of their considerations of the industry and not merely harm committed to date.

Then we had the Charlottesville pre-tribunal, which was an excellent example of how money and social class have impacted the location of unconventional gas/oil production where communities are facing the Atlantic Coast Pipeline and Mountain Valley Pipeline, pipeline infrastructure to transport fracked gas.

So both pipelines almost entirely impact rural people and their communities regardless of the mountainous elevations, the poverty end or the African American/Native American/Appalachian majority involved. So rural routings apparently have enormous cost benefits to pipeline developers but they also go through some of the more economically disadvantaged areas.

Expert testimonies included evidence from historians and environmental scientists on fracking gas infrastructure, medical experts on the health impacts of compressor stations and pipelines, economists on the cost benefits of racism and inequality. So the
communities face significant far-right demonstrations and violence in Charlottesville, Virginia and I believe it was last year they were so significant that it prompted UN investigations. So it's a serious issue out there.

Their evidence demonstrated the truth that in their region that infrastructure associated with oil and gas activities is disproportionately sited in non-white and low income communities.

The pre-tribunal conclusions and recommendations from judges provide a snapshot of the findings from the testimonials stating whereas indigenous peoples, people of color, descendants of freedmen communities, Appalachian communities and vulnerable populations have been blatantly targeted and will most certainly be and, in some cases, already are negatively impacted by the Atlantic Coast Pipeline and Mountain Valley Pipeline, as evidenced through the tribunal testimonials. I was going to read them through but I might just give a bit of a summary.

Whereas numerous and diverse examples of cultural attachment and historic preservation atrocities exist, violations of religious and cultures practices and beliefs and so on;

Whereas consistent and pervasive lack of public
participation, lack of opportunities for public input and access to information such as denial of access to the wireless tower has occurred, numerous threats to the built environments including places of faith, roads, highways, driveways and homes, many of which were existing in a blast zone and where water is put at grave risk because of the continuous crisscrossing of the proposed pipelines through rivers, streams, ground water and wetlands, and witnesses testified to the release of greenhouse gas from pipelines and compressor stations which are just adding to the climate change impacts that we're facing as a world;

And whereas the insults negatively impact the health of humans and all living things, especially the most vulnerable, they recommended a request be put to the Tribunal that strongly recommends that the states of West Virginia, Virginia and North Carolina but also all environmental agencies around the world, should suspend all unconventional gas and oil extractions and pipelines, undertake necessary thorough investigations such as environmental, cultural and health impacts assessments with real voice and real vote for the community and immediately cease and desist eminent domain actions.

So they also strongly recommend that the
Tribunal should recommend that the United Nations Human Rights Council should put the United States on trial for crimes against human rights.

Moving on to quickly summarize the submissions of Earthworks, which is an NGO that uses science to educate the public and promote solutions, they found really interesting data through their projects, particularly in terms of the community impact studies they've undertaken which have led them to three central conclusions.

(1) That contaminants that are associated with oil and gas development are present in air and water in areas where residents are experiencing health symptoms consistent with such exposure.

(2) There is a strong likelihood that residents who are experiencing a range of health problems would not be if widespread gas development were not occurring.

And (3) by permitting widespread gas development without fully understanding its impacts to the public health and using that lack of knowledge to justify regulatory inaction, Pennsylvania and other states are risking the public's health.

In their studies they found 75% of the interviewees had health issues reported such as...
neurological problems, forgetfulness, confusion, dizziness. 50% reported respiratory problems. And 89% expressed concern for environmental impacts on their health. So really significant statistics coming out of their studies.

And they've made a range of recommendations themselves around more regulatory improvements that need to be made to rectify these substantive human rights impacts that are being made.

I might go on, given the time, to question 2. I didn't realize this would take so long. I apologize.

I wanted to cover quickly on procedural rights. I might just mention that the Ohio pre-tribunals' various submissions provided for procedural rights breaches that were occurring around fracking and climate change mainly around access to information and public participation in environmental decision-making just not being effective. And the right to justice and access to justice.

So having the ability to actually rely on a legal framework and a regulator that is well-resourced and able and willing to uphold their human right or even the rights they have under their subnational and national laws.

So the experience of the Nuiqsut in Alaska is
a good example of a failure of the human right to access justice in the public service where traditional owners are not able to rely on their department of conservation to address the complaints they're putting in around harmful air emissions from local unconventional gas because the department hasn't been given sufficient funding to undertake monitoring that would be necessary to actually enforce their laws.

So there's a substantial issue with their ability to access justice in that instance as well as access information. There are countless examples.

I know in Australia the submissions that we put forward and Associate Professor Amanda Kennedy, I believe, presented to you dealt with the issues around the lack of meaningful public participation and access to justice here. Especially trying to get data on impacts to ground water or impacts to air emissions. It's extremely difficult for the public to do so depending on how the conditions are framed. There's no absolute right to this information.

So there are various recommendations that have been made to protect procedural rights and they basically are around those issues of insuring that the public actually has the right to access information that is necessary for them to understand the impacts that
they're experiencing to their health and also the environment that they've concerned about.

That there is a guaranteed access to justice with the appropriate bodies, be that a regulator or a community legal center system ably funded to support people to access justice as needed. And for countries such as Australia and the US to, at the very least, ratify the Aarhus Convention to ensure that those pillars of the Convention are actually insured to be upheld in their jurisdictions and that the people can rely on those to hold their governments to account.

I'll try to move a little more quickly.

So question (2) Was under what circumstances do fracking and other unconventional and oil and gas extraction techniques warrant the issuance of provisional measures, judgments enjoining further activities, remediation relief or damages?

So it could be paraphrased as when has it been demonstrated that relief might be required or penalties might be required due to the impacts of unconventional oil and gas?

So I have discussed various human rights that have been affected by the industry in question already in No. 1. I would like to argue then to all of the instances are breaches of human rights so it would be
circumstance giving rise to some kind of relief or penalty to account for the breach.

The extent of the breach would, of course, determine the extent of the relief or penalty required in any given situation. But various submissions have particular comments and suggestive mechanisms for addressing the impacts of the unconventional oil and gas industry.

For instance, Megan Hunter from Freshwater Accountability Project, provided submissions which argue that both state and non-state actors should be responsible and liable for the various violations claimed by this industry under internationally accepted human rights norms.

This was on the basis of their evidence from clients that they work with on significant impacts to their life, security and even bodily integrity after things like accidents of the industry in Ohio where residents feared for their life after explosions or significant fires or even exceedingly loud noises for long periods of times.

But it can also extend to death threats from the industry where people were speaking out or human health impacts generally or loss of clean drinking water amongst many other things.
So Megan was arguing that the widespread and egregious nature of these violations warrant sufficiently the issuance of an advisory opinion by the Peoples' Tribunal declaring that, first, recognition of the violations taking place and recognition that both state and non-state actors are responsible. And, once again, asking for a moratorium on further unconventional gas or oil developments immediately implemented and the remediation and damages should be awarded to the affected public in order to redress the human and environmental rights that have been done to prevent further harm and to ensure further actions to uphold human rights.

Andy Gheorghiu of Food And Water Watch considers that, "Nothing short of an outright ban on fracking and rapid cessation of fossil fuel extraction and consumption will remedy the many associated harms of our oil and gas industry. "Other provisional measures, a judgment enjoining further activity, remediation relief or damages for causing environmental harm are simply inadequate half measures," he says. "The industry will always try to avoid taking responsibility for any damages and/or environmental harm they've done."
I might also personally add that the
government is often supporting the industry, too, in
escaping liability or damages in instances we've seen.

So in Australia the regional governments are
moving generally towards a business model. So this is a
subtle example but it's one that we've raised concern
about where the businesses they regulate are called
their customers or clients.

And this is a seemingly inappropriate reframe
of the regulators' role which risks confusing the roles
and removing of the arm length distance by which they
should be operating when they're regulating the industry.

Muara Stephens from the Coalition To Protect
New York, who I believe you just heard from, had
provided submissions demonstrating the process and
impacts in New York and other US communities have gone
through from the fracking industry. And Muara
recommends that, by any reasonable measure, the attacks
that she's presented to the Tribunal upon health,
environment and future should be considered criminal
offenses against all of humanity and against the earth.

She says nature deserves our legal protection
as well as do our children, the people of the global
south and all who are opposed in silence. Without an
honorable international judiciary to stop them these
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entities will have a free rein to control policy
decision-making and further subvert legislatures,
judiciaries and executive branches of government from
the village level on up.

So they believe fracking and related
industrial activities should be made crimes in
international law as they are in reality.

So moving on to question 3. What is the
extent of responsibility and liability of states and
non-state actors for violations of human rights and for
environmental and climate harm caused by these oil and
gas extraction techniques?

There was an interesting report submitted by
Andy Gheorghiu from Food And Water Watch that relies on
an example of Exxon Mobil's own in-house scientists in
1980 warming about the impacts of global warning and the
company considering this in their plans and operations,
however, then going about starting a denial-campaign
that covered up the certainty that climate change and
fossil fuel extraction are actually closely linked.

So apparently 30-million dollars was given to
climate denial think tanks and to politicians to support
this dissemination. And for years the industry earned
billions by contributing significantly to global warming
while not taking any of the responsibility around this
So I thought this case study was an excellent demonstration of the significant responsibility of non-state actors in not taking responsibility when they are aware of the impacts, and the significant impacts, that their industry is creating by not taking account of those. But I think it also brings in the states in allowing non-state actors to operate in such a way where they probably were privy to the same information.

So we know that unconventional gas and oil extraction activities create greenhouse gas emissions, particularly methane, of an extremely dangerous greenhouse gas that is a powerful greenhouse gas 86 times more powerful than carbon dioxide when its atmospheric warming impacts are considered over a 20 year time period and 34 more times more powerful over a 100 year time period.

So what we don't know is how significant the amount of methane emissions released as fugitive or migratory emissions from the gas and oil industries are due to consistent failure to require these figures to be measured. It's, therefore, difficult to determine the extent of responsibility and liability of states and non-state actors for violating human rights for climate harm given we don't have that data.
However, the fact that the regulation of these serious greenhouse gas emissions is so lax in ensuring that emissions are actually measured and avoided or reduced we consider itself a human right failure of the government and the industry.

The industry even has a profit benefit from saving gas from getting accidently released through its production chain and, nevertheless, we still see countless examples where monitoring and reporting is just not undertaken and so all of these leaks and emissions aren't getting addressed.

The impacts of climate change risks generally is particularly significant for those living in Alaska where they're not only at risk for climate change threatening to force their migration from their homelands but also the actual undertaking of fracking and unconventional gas and oil exploration which is impacting their livelihoods daily through poor regulation and significant reporting impacts to their health and livelihoods. So the Tribunal has before it exceptional submissions from various Alaskan based entities.

So Robin Bronen a human rights attorney and the director of the Alaskan Immigration Justice Project, presented on Human Rights And Climate Forced Migration.
and argued that the continued increase in greenhouse gas emissions is forcing those who have least contributed to the climate crisis to make the extremely difficult decision to leave their homes where they've lived for millennia. So there was evidence put forward which demonstrates serious governance and human rights challenges around these climate forced community relocations.

And there is an excellent Law Review article before the Tribunal which I recommend that it read given the implications that it has on this highly vulnerable community as an example of how climate change impacts can really play out and who should be made responsible and liable for these actions where the industry itself is having both direct and indirect impacts on their lives through on-site and then global emissions.

So Robin recommended that the Tribunal ultimately proposes that the creation of an expert working group is created to specifically provide guideline principles on which maybe she termed, I'm not sure if it's a known term otherwise, "climigration", outlining key human rights principles that can guide an adaptive governance framework. So really interesting recommendations around that.

I know Eunice Brower and Ceal Smith provided...
submissions from the Alaska Climate Network as well on their experience of fracking in the native village of Nuiqsut which I've mentioned before and they have extensive testimonials provided in their letter around the impacts that their village is facing, both to their health and to the degradation of their environment also and their ability to undertake subsistence living.

So question 4 is looking at what's the extent of responsibility and liability of states and non-state actors, both legal and moral, for violations of the rights of nature related to environmental and climate harm caused by these unconventional oil and gas extraction techniques?

So firstly I just wanted to quickly reflect on what the rights of nature are. Lisa Mead and Michelle Maloney have provided fantastic submissions to the Tribunal on the rights of nature in which they give a great explanation of the background and of when and where it's playing out in the law at the moment, explaining that the Universal Declaration of the Rights of Mother Earth, known as the Declaration in their submission, was kind of the commencement, I guess, of a formal recognition of the rights of nature and was created in Bolivia in 2010 by a Peoples' Congress. So it's actually not a formally recognized document but it...
is getting extensive recognition more increasingly throughout the world.

So there's also a growing body of legal recognition through many countries with Ecuador and Bolivia, New Zealand and Columbia and India all, to some extent, providing either a particular ecosystem or environmental features such as rivers. For India it was most recently the rivers Ganga and Yamuna and all of the tributaries, streams and natural water flows around it, being given legal personhood or a living entity that has corresponding rights, duties and liabilities as a living person to ensure that they're able to better protect these entities.

Or it might also be Bolivia passing the Rights of Mother Earth Act in 2010 which creates institutional structure to protect the rights of mother earth and enable citizens to represent and defend their interests.

So these legal events demonstrate rights of nature are no longer merely just a philosophical trend and they really have a substantial legal notion that is being given increasingly legal effect globally.

Lisa and Michelle argue that the rights of nature are being violated from unconventional gas and oil extraction through various means. And the key ones are violation of the rights of the rivers, aquifers and
waterways through the significant water use by the industrial processes and they mention tarsands extraction as an example.

Also in Australia and in other countries, US and Romania, the pollution of aquifers by toxic fracking chemicals has been a concern, including methane.

We're seeing severe pollution of rivers by gas and chemicals to the extent that in Australia the Condamine River and other connected water systems have actually caught fire due to gas bubbling up in the river. And they go on.

And in terms of these rights to the rivers, aquifers and waterways being violated they claim that the right to continue their vital cycles and processes free from human disruptions, right to integral health and the right to be free from contamination, pollution and toxic or radioactive wastes, are being breached in these instances due to the unconventional oil and gas activities. These are all articles in the Declaration that they're referring to when they're drawing in these rights.

They further argue that the industry violates the rights of the climate system. And this is based on the rights of nature articulation in the Declaration that gases released by the unconventional oil and gas
industry violate the following atmospheric rights of nature to these rights. So the integral health and the right to be free from contamination, pollution or toxic radioactive waste.

The violation of the rights to land and subsurface to overall well-being and integral health are also considered through tree clearing, the risk of increased seismic activity as result of waste water reinjection underground at high pressure.

And, in this instance, they draw on the Declaration to show that these earthquakes and seismic activities directly interfere with the right to well-being, the right to a place and to play its role in mother earth for her harmonious functioning.

The right to continue their vital cycles and processes free from human disruptions. The right to integral health and the right to be free from contamination, pollution and toxic or radioactive waste once again.

So finally they argue that there's been a violation of the rights of animals and plants to exist and thrive due to the impacts, for instance, of numerous migratory birds that were killed due to tailing ponds toxicity in Canada or through significant impact on habitat through clearing. And I know they mention TREMAINE & CLEMENS, INC. EUGENE, OREGON (541)343-8833
through the southern Brigalow Belt in Queensland there's
been significant clearing of suitable habitat for
various species of lizards and snakes that are actually
only found in that area.

So as to the question of the extent of the
responsibility of the state and non-state actors for
these legal and moral violations Michelle and Lisa have
argued that governments and public institutions and the
people who work in them they have a particular
responsibility to act and must meet a higher standard by
virtue of the regulatory powers and responsibilities
vested in them.

The Declaration places an onus on states,
being the Declaration from Bolivia, places an onus on
states and public institutions to protect the rights of
mother nature, including to establish and apply
effective norms and laws for the defense, protection and
conservation of the rights of mother earth;

To guarantee that the damages caused by human
violations of the inherent rights recognized in the
Declaration are rectified and that those responsible are
held accountable for restoring the integrity and health
of mother earth;

That empowering human beings and institutions to
defend the rights of mother earth and all human beings
as necessary and to establish the precautionary and
restrictive measures to prevent human activities from
causing species extinction, the destruction of
ecosystems or the disruption of ecological cycles.

So these are all key areas that they're
arguing that the states need to be held responsible for
in terms of the impacts that are being allowed to the
rights of nature.

The governments indicted through the evidence
before the Tribunal, so including US, England, Canada
and Australia are not, on the evidence, fulfilling their
responsibilities to protect the rights of nature in
their decision-making or governance processes nor are
the companies or non-state actors, however, fulfilling
their role of upholding human rights or the rights of
nature adequately above their own profits. And we're
seeing that throughout all of the submissions.

The Declaration records that every human being
is responsible for respecting and living in harmony with
mother earth. Consequently everyone, including all
companies and government officials, has a responsibility
to ensure that they do not contribute to climate change
and thereby the warming and acidification of the oceans
and also not to contribute to undue impacts to the
rights of nature.
Lisa and Michelle request that the Permanent Peoples' Tribunal examine the factual evidence put before them on how unconventional oil and gas activities are violating the rights of nature:

That they determine the accountability of relevant parties for the violations of the rights of nature and jurisdictions impacted by this industry;

That a determination of what restorative measures should be undertaken should be provided;

And that determination of what preventative and precautionary measures should be taken to prevent future violations of the rights of nature;

And finally they ask that the Tribunal acknowledges the inherent wisdom in recognizing, in law, the intrinsic rights of nature and of ecosystems to exist, to thrive, to regenerate and to evolve, thus adding to the growing conviction that such a fundamental systemic change may be the only thing that can save us in our darkest hour.

So I'm just seeing the time. I hope that I've laid out various key evidence relevant to each question. I realize it could have been more engaging being able to have a bit more time and maybe provide a bit more of an elucidation of the findings that have come out of the submissions put before you rather than just a summary.
But I will take the opportunity to remind the judges to refer back to the four key questions in considering your responses to the testimonials put before you. It's a formidable task that you have in front of you and so are the issues that we're seeking to solve or, at the very least, to address.

So I really congratulate all of the people who have had the courage and determination to speak out about the impacts that are occurring and that these people that have been threatened from the unconventional oil and gas industry as part of this tribunal hearing. It's been very impressive to read and participate in the viewing the submissions put before you.

I'll leave you with a quote from a submission that was put before the Tribunal by Raymond Cusson.

"So as we progress in time we realize that the threat persists for our way of life, the human rights, the rights of nature, the changing climate and democracy. We, the citizens and communities, have a moral obligation to speak out, to demand a change and to live the change we want to see.

"The governments and industry have a moral, if not legal, obligation to listen and a responsibility to ensure public safety."

So thank you so much to the judges for your
consideration and deliberations in being part of making

government and industry take note and hopefully take
more responsibility for the impacts that are occurring
to our earth and humanity. And I hope these closing
submissions have assisted somewhat in your deliberations
for this Permanent Peoples' Tribunal on Human Rights,
Fracking and Climate Change.

If the judges need any further assistance in
the coming days or weeks or if now, if there's time, in
answering further questions I'm sure I and other
attorneys would gladly do our best to assist you.

DR. THOMAS KERNS: Thank you Revel.

Beautiful summary.

Let's see if there are any questions from the
judges.

DR. ANDRES BARREDA: It is obvious that
the accusation is aimed at the whole of the enterprises
of the corporations and all the packet of techniques and
it's also directed to public institutions that are
accomplices.

My question is if there is a detailed list of
the involved corporations directly involved and, also,
if such a list exists of the public institutions that
are also involved?

I understand that it's a very complex job
because there are so many levels and the disasters are so widespread but still I would like to ask if there is such a list or such lists?

MS. REVEL POINTON: So I understand your question is probably in terms of all impacts from unconventional oil and gas around the world or is it just limited to what the Tribunal has heard and had submissions put towards them?

DR. ANDRES BARREDA: Well, the corporations, the specific corporations by the names, so to speak, and public institutions involved in this. So the active subjects.

MS. REVEL POINTON: Sure. I'm not aware of a single place where -- well for either or all activities.

All of the companies -- what I understand is maybe you're after just a list of all unconventional oil and gas companies generally rather than ones that are implicated necessarily and for impacts on human rights or rights of nature, which I'm not sure if there's any answer. That's another question. But I'm sure a list could be found.

Well, I shouldn't say that. I wonder if maybe even the IEA, the International Energy Agency might even have, as part of their data base, a list of such a
nature. We can look into that and get back to you.

I don't think the institutions or the government bodies, and I imagine you're meaning that regulate these industries and aren't performing well, they're maybe allowing impacts on human rights and rights of nature, I don't think a list exists at all of those entities.

Because, as you said, they just they're so extensive I don't imagine that they would have been captured. However, I imagine there are reports and I know even before the Tribunal the fantastic human rights impacts assessments have gone into, for England and for part of the states, some of the entities that were involved in those and various other reports have tried to detail them. But having one place with all of them I can't think of where that might be, sorry, unless somebody else here could.

DR. THOMAS KERNS: That would be a very long list. And it would vary from -- in the US it would vary from state to state, you know. So there's 50 different organizations or agencies and then the whole federal government would have -- who knows how many agencies are involved in regulating various aspects of, you know, climate and extraction.

DR. GIANNI TOGNONI: If I may add. At TREMAINE & CLEMENS, INC. EUGENE, OREGON (541)343-8833
least I think that would be useful according to what
Andres was asking and saying that a Secretariat do have
a list, because that has been left out many times, at
least that the names of those corporations that have
been involved in the cases which have been presented and
the institutions because that would provide some more
specific reference for the extension of that.

Based on that then we could see whether, in
fact, there is some cluster of corporations, either from
US or from Australia or from India because that would be
important for our general framework and not simply a sum
of detailed cases. And that would be a request that
could be forwarded also to the organizations which have
been following them more systematically those cases
across the world.

And certainly the Friends Of The Earth they
are some of these things and that would be very important
also to clarify the extent of the involvement and whether
there are some systematic implications for some areas.

So I think that would be one of the questions,
and that you could not have the time, and over the next
c few days or so because we have heard during the session
that we are simply asking for some supplemental
information, if possible.
can see the value in it. I worry that some advocates might be concerned about potential claims of defamation and so they might be more hesitant to raise issues when they are actually naming companies that are involved or entities. However, I'll certainly put it to the other advocates as far as possible if they can send in the names of the various companies that they are talking about when they're referencing the impacts that they are experiencing.

DR. GIANNI TOGNONI: So let's say that, as I think you said before, I think that would be interesting and useful for the Secretariat to be in touch with you so that we could explore a bit more some of the questions some of points about the new directions.

MS. REVEL POINTON: Great.

DR. THOMAS KERNS: And with agencies which would be, you know, the state actors, advocates might not be so worried about defamation concerns.

Is that accurate?

MS. REVEL POINTON: I think depending -- no, depending on the defamation laws in the country and depending on what they're claiming around it, I guess. But, yeah, I guess that's a question for each of them.

So we do have the questions for the attorneys TREMAINE & CLEMENS, INC. EUGENE, OREGON (541)343-8833
that were sent through and I'm sorry that I didn't get
to answer more of them.

Were there any other ones that people might
want to try to answer on the spot now?

I can't guarantee I'll be able to but
otherwise we'll continue with Plan A of getting back
responses to you by next Friday.

DR. THOMAS KERNS: I think that's the
best point. Now we need to move on to the next piece.

Any more questions that the judges might
want to submit and any responses that advocates might
want to submit.

MS. REVEL POINTON: Great.

DR. ANDRES BARREDA: Thanks a lot for the
effort.

MS. REVEL POINTON: It's a pleasure.

Thank you so much. It was a honor to present to you
all. So I wish you well in your deliberations and look
forward to hearing your recommendations.

Do get in touch, as I said, if we can be of
further assistance.

DR. ANDRES BARREDA: This effort is going
to be useful for every one who fights against the oil
industry in the world.

MS. REVEL POINTON: I hope so too.
[youtube.com/watch?v=Hfvzwsn0oIE&t=1s]