



Updated Petition for a Permanent Peoples' Tribunal Session on The Human Rights Impacts of Fracking and Climate Change

January 21, 2018

This document updates our initial petition asking that the Permanent Peoples' Tribunal schedule a Session formally addressing the human rights impacts of fracking and climate change. This petition has seven sections:

- I. The question to be addressed by judges
- II. Issues and community concerns
- III. Initiators, steering group, attorneys
- IV. Resources available to the court regarding matters of fact, human rights norms and earth rights norms
- V. Process, location and dates
- VI. Lecture Series on Human Rights and Climate Change
- VII. Anticipated outcomes

I. The questions to be addressed by judges

The petitioners seek an advisory opinion from the Tribunal on four fundamental legal questions associated with the impacts of fracking¹ and climate change.

1. First, under what circumstances do fracking and other unconventional oil and gas extraction techniques, along with their impacts on the climate system, breach substantive and procedural human rights protected by international law as a matter of treaty or custom?
2. Second, under what circumstances do fracking and other unconventional oil and gas extraction techniques, along with their impacts on the climate system, warrant the issuance of either provisional measures, a judgment enjoining further activity, remediation relief, or damages for causing environmental harm?
3. Third, what is the extent of responsibility and liability of States and non-state actors for violations of human rights and environmental and climate harm caused by these oil and gas extraction techniques?
4. Fourth, 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 these unconventional oil and gas extraction techniques?

We would like to see these questions addressed in light of the following six areas of concern, or subcases:

1. The human health subcase which concerns the health impacts of fracking, both acute and chronic, especially for vulnerable groups – due to exposures to

endocrine disruptors, known and probable carcinogens, radon gas, neuro- and developmental toxicants, ozone, and noise.

2. The climate subcase which concerns the human rights and earth rights implications of fracking's impacts on the climate system, for present and future generations and for other living beings, which may result from a CO₂-intensive extraction process, fugitive and intentional methane releases, fostering a continued reliance on fossil fuels, and so on.
3. The ecosystems subcase which concerns the human rights and earth rights impacts on ecosystems, oceans and wildlife, on contamination and depletion of ground and surface waters, and on the contribution to earthquake swarms.
4. The social costs case which concerns the impacts on communities, social services, roads, housing, property values and relations among neighbors.
5. The public participation case which concerns the lack of opportunities for, and sometimes obstruction of, public participation in decision-making about fracking.
6. The fuels infrastructure case which concerns the human rights and earth rights impacts resulting from fracking infrastructures such as pipelines, compressor stations, export facilities, Liquid Natural Gas facilities, storage facilities and so on.

Prosecutors' arguments, submitted evidence and witness testimony will address human rights concerns in each of the subcases. Yet focusing only on the rights of human beings, without also acknowledging the inherent (not just instrumental) value of other living beings and systems, can be harmful too. So some of these subcases will be argued also from an earth rights (or rights of nature) perspective based on the Universal Declaration of the Rights of Mother Earth, the Earth Charter, the Nagoya Protocol, Title II of the 2008 Constitution of Ecuador and other similar documents. While *human* rights will be the central focus in this Session – partly because the PPT is a human rights court, and partly because human rights are already well established in law – earth rights arguments will play a key role in the climate, ecosystem and fuels infrastructure subcases too, because the lives and well-being of non-human beings and systems are just as much at stake as the lives and well-being of humans.

In sum, we request that the PPT summon the interested parties, hear arguments and evidence from prosecuting and defense attorneys and their witnesses, and render appropriate judgment on the above questions.

II. Issues and community concerns

Communities are concerned about a range of issues related to the health, ecosystem and climate impacts of extreme oil and gas extraction, including, among others:

- adverse acute and long-term human health impacts, particularly for children, the elderly, the disabled, the place-bound and other vulnerable groups;
- adverse impacts on the climate system resulting from accidental and intentional methane releases;
- adverse social and economic impacts, particularly for vulnerable populations;
- the storage, use and disposal of hazardous materials, especially on indigenous

people's lands;

- degradation of ambient air quality resulting from increases in volatile organic compounds, other hazardous air pollutants, diesel emissions, dust and particulate matter;
- contamination and depletion of both surface waters and groundwater sources;
- heavy truck traffic, diesel exhaust, noise pollution and light pollution from round the clock operations;
- damage to soils, lands and ecosystems;
- loss of property value due to the effects of nearby fracking and pipeline operations;
- increased risk of accidents, well blowouts, fires, explosions and vehicle crashes;
- fostering a continued reliance on fossil fuels;
- unsafe disposal of, for each fracking operation, one to two million gallons of waste fluids containing toxic chemicals, brine and radioactive materials;
- increased risk of earthquakes.

III. Initiators, steering group, attorneys

The initiating organizations that submitted the original petition are:

- [The Global Network for the Study of Human Rights and the Environment²](#)
- [Environment and Human Rights Advisory³](#)
- [The Human Rights Consortium⁴](#)

In addition to these initiators, current Steering Group members include:

- The [Spring Creek Project](#) at Oregon State University;
- The Oregon State University [Master of Arts in Environmental Arts and Humanities program](#);
- A dozen or so environmental and human rights activists, NGO leaders, attorneys and professors.

Attorneys:

- [Benedict Coyne](#), President, Australian Lawyers for Human Rights
- [Richard Sahli](#), Attorney at Law, Columbus, OH
- [Lisa Mead](#), Executive Director, Earth Law Alliance will argue Rights of Nature cases.
- [Michelle Maloney, PhD](#), Co-Founder and Convener, Australian Earth Laws Alliance, will assist with arguing Rights of Nature cases

IV. Resources available to the court regarding matters of fact and human rights norms

A significant literature about the factual and human rights dimensions of fracking and climate change has been emerging and is now available to the court:

For information about matters of fact related to fracking and climate change, see:

- The well-researched and highly authoritative [Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking \(Unconventional Gas and Oil Extraction\)](#)⁵, co-authored by Concerned Health Professionals of New York and by Physicians for Social Responsibility, 4th edition, November 2016.
- The [Fifth Assessment Report](#)⁶ is the most recent climate assessment report of the Intergovernmental Panel on Climate Change (IPCC).

For reviews of human rights norms related to fracking and climate change, see:

- [“Does Fracking Violate Human Rights?”](#)⁷ several invited papers in the *Questions for a Resilient Future* series at [The Center for Humans and Nature](#)⁸, Spring 2017
- [Fighting for Our Shared Future: Protecting Both Human Rights and Nature’s Rights – 2016 Update](#), [Earth Law Center](#)⁹, December 2016
- [United Nations Toolkit on the Right to Health](#)¹⁰
- [Philippine Petition on Climate Change and Human Rights](#)¹¹, May 2016
- [Declaration on Human Rights and Climate Change](#), [Global Network for the Study of Human Rights and the Environment](#), May 2016; [poster-size version](#)¹², [letter-size version](#)¹³, [tri-fold version](#)¹⁴, [blurb about DHRCC](#)¹⁵
- [“The Declaration on Human Rights and Climate Change’: A New Legal Tool for Global Policy Change,”](#) Kirsten Davies, et al, [Journal of Human Rights and the Environment](#) (8.2) September 2017¹⁶
- [Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities](#), by the Inter-American Commission on Human Rights, 2015¹⁷
- [Report on Human Rights and Climate Change](#), UNEP, 12-10-15¹⁸
- [Understanding Human Rights and Climate Change](#), UNHCHR 2015¹⁹
- [Human Rights and the Business of Fracking: Applying the UN Guiding Principles on Business and Human Rights to Hydraulic Fracturing](#)²⁰
- [A Guide to Rights-based Advocacy: International Human Rights Law and Fracking](#), Sister Áine O’Connor, RSM, Mercy Global Action Coordinator at the UN, et al, 2015²¹
- [Extreme energy, ‘fracking’ and human rights: a new field for human rights impact assessments?](#) Damien Short, et al, 2015²²
- [A Human Rights Assessment of Hydraulic Fracturing and Other Unconventional Gas Development in the United Kingdom](#), 2014²³
- [Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#)²⁴
- [A Human Rights Assessment of Hydraulic Fracturing for Natural Gas in New York State](#), 2011²⁵

For testimony and findings available from preliminary pre-PPT tribunals, see:

- the Athens, Ohio pre-PPT tribunal held May 13, 2017
- the Youngstown, Ohio pre-PPT tribunal held July 29, 2017
- the Brisbane, Australia pre-PPT tribunal to be held in February 2018
- other pre-PPT tribunals still in the planning stages

For overviews of this tribunal session, see:

- [“An International Tribunal on the Human Rights Impacts of Fracking: Structure, Grounding and Purposes,”](#)²⁶ Tom Kerns, in [New Frontiers in Environmental Constitutionalism](#)²⁷, pp 48-61 [United Nations Environment Program](#), May 2017
- [“Why a Human Rights Tribunal?”](#)²⁸ Tom Kerns, in [Minding Nature](#)²⁹, June 2017
- [“Fracking Goes on Trial for Human Rights Violations,”](#)³⁰ Kathleen Dean Moore, in [Truthout](#), Nov 2015
- Other overviews can be seen on [the media page](#)³¹ of the Tribunal website.

V. Process, location and dates

Three one-day preliminary tribunals have already been conducted in the US and more are anticipated in the US, in Australia and possibly in the UK. Testimony, findings and recommendations from those preliminary tribunals will be available to attorneys and judges prior to the plenary PPT session next spring.

The week-long plenary session of this tribunal will be conducted virtually throughout the week of May 14-18, 2018. [Zoom](#) is donating its conferencing software for the Tribunal and the Media Services department at Oregon State University (OSU) will be setting up online conferencing facilities and assisting with technical support. Once judges have been selected, Zoom and OSU will send us all (organizers, judges, attorneys, etc.) information about how to prepare for the process. We will all have two or three test sessions well before May 14th, with all of us online simultaneously so we can learn the software, become familiar with it and access whatever technical support we need.

The reason for conducting the tribunal virtually is so it judges, attorneys, witnesses and observers will not need to travel to a specific location, but will instead be able to participate fully and easily from their homes or offices. Each participant will need a good internet connection and access to a basic computer with a built in (or attached) camera and microphone. Most computers now have both. Some people find it works better to use a headset or ear buds like those that come with most smart phones. But if not everyone has a good internet connection or owns that kind of computer, they may be able to make arrangements with a friend or organization who does. The sessions will be conducted using Zoom conferencing software which is free for all users (organizers will offer help downloading it).

Because judges, attorneys and witnesses will not be required to travel to participate in the tribunal, there will be significant savings in travel costs and time, and the tribunal’s carbon footprint will be reduced significantly. The entire tribunal process will also be video-recorded and streamed live so anyone in the world can watch it in real time or at a

later time. We also plan to have a court reporter in attendance throughout each hearing so a transcribed record of all proceedings will be available.

In addition, private conferencing time can be arranged for judges who wish to deliberate and discuss together privately online, before, during or after the week of hearings.

Some judges, attorneys or witnesses may wish to travel to be with others near them, if that is desirable. Depending on grant funding we may also be able to bring one or more judges here to the OSU campus, and perhaps one of the prosecuting attorneys, to participate in person. That will all be dependent on funding.

We are all breaking new ground here, so one of our goals will be to provide a good model of how this process can work so others in the future can conduct similar events virtually, saving money and reducing carbon footprints.

As for the opening day and final day of the tribunal session, they will be like the other days except that there will be an opening ceremony to initiate the tribunal and a formal closing ceremony on the final day. The court's findings and recommendations are not expected until some later date post-tribunal, and when they do become available, public press events will be arranged to announce them.

Upon completion and publication of the Tribunal's findings and recommendations, they will be formally presented to the United Nations Special Rapporteur on Human Rights and the Environment and to the United Nations Office of the High Commissioner for Human Rights.

VI. Lecture Series on Human Rights and Climate Change

In the months leading up to the Tribunal, the Spring Creek Project will present a Lecture Series on Human Rights and Climate Change.

This online series will feature leading scientists, attorneys, writers, community leaders, activists, and artists. Some lectures will explain the current state of human rights and climate change — how did we get here and what is happening around the world, while others will invite listeners to imagine a future in which climate justice is available to all living beings. Other lectures may focus on a place — Standing Rock, deep sea drilling sites, fracking fields next to schools and in neighborhoods, etc. Together, the lectures will invite audiences to imagine a world in which environmental crises are easily recognized as human rights crises.

One lecture, each of which spans about 20 minutes, will be released globally each Wednesday noon beginning January 31. The lectures will be free and publicly available on the Spring Creek Project website, social media channels, and at a weekly live-screening. Judges, attorneys, witnesses and others will be able to view each lecture as it is released. Lectures and dates of presentations can be reviewed [here](#).

Some lectures, depending on content, may also be submitted as testimony to the Tribunal.

VII. Anticipated outcomes

We anticipate that this PPT Human Rights Session on Human Rights, Fracking and Climate Change will result in:

- 1) findings and recommendations that provide comprehensive advisory opinions on the four questions in section one above.
- 2) findings and recommendations with respect to the six subcases.

The intention is that this court's advisory opinion and recommendations will

- 1) bring human rights and earth rights norms and law into the foreground of public discourse about oil and gas extraction and about climate change;
- 2) provide a quasi-legal precedent that could be referenced as interpretive “soft law” in the event of future actions in domestic and/or international courts; and
- 3) demonstrate, for those who might wish to bring future cases, what legal actions of this sort look like.

While it can be difficult for domestic courts to hold their governments to account for planetary human rights violations beyond national boundaries, the PPT's independence and broader focus can provide a unique forum and highly strategic fulcrum for addressing those larger pressing planetary human rights and earth rights concerns.

Organizing Team
Permanent Peoples' Tribunal Session on Fracking and Climate Change

¹ For purposes of this Tribunal the term “fracking” will refer to the extraction of shale gas, coal-bed methane/coal seam gas (CBM/CSG) and “tight oil,” whether onshore or offshore within coastal waters or waters within the Exclusive Economic Zone. A scaled-up form of hydraulic fracturing (high volume), involving injecting fluids under high pressure to crack the rock, is often used to release hydrocarbons during unconventional oil and gas extraction (UCG). UCG is a complex process, involving pad construction, well drilling, casing, stimulation (often including but not limited to hydraulic fracturing), extraction, waste disposal, well plugging (or failure to do so) and abandonment, as well as associated infrastructures such as pipelines, storage facilities, compressor stations and export terminals. The Tribunal will examine evidence on the full range of impacts of all forms of unconventional gas and oil production including, but not limited to, “fracking.”

² <http://gnhre.org/>

³ <http://environmentandhumanrights.org/>

⁴ <https://hrc.sas.ac.uk/>

⁵ <http://www.psr.org/assets/pdfs/fracking-compendium-4.pdf>

⁶ <https://www.ipcc.ch/report/ar5/>

⁷ <http://www.humansandnature.org/does-fracking-violate-human-rights>

⁸ <http://www.humansandnature.org/>

⁹ <http://www.earthlawcenter.org/>

¹⁰ <http://www.ohchr.org/EN/Issues/ESCR/Pages/Health.aspx>

¹¹

http://d3n8a8pro7vhmx.cloudfront.net/themes/578eca176ad575b709000001/attachments/original/1470446561/Philippine_Climate_Chg__Hum_Rts_petition.pdf?1470446561

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¹³ <https://www.tribunalonfracking.org/wp-content/uploads/2015/06/DHRCC-letter-size.pdf>

¹⁴ <https://www.tribunalonfracking.org/wp-content/uploads/2015/06/DHRCC-final-trifold.pdf>

¹⁵ <https://www.tribunalonfracking.org/wp-content/uploads/2015/06/DHRCC-info.pdf>

¹⁶ <https://www.tribunalonfracking.org/wp-content/uploads/2015/06/Davies-et-al-JHRE-8-2.pdf>

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http://d3n8a8pro7vhm.cloudfront.net/themes/578eca176ad575b709000001/attachments/original/1469696563/Extractive_Industries_IACHR_2015.pdf?1469696563

¹⁸ <https://www.tribunalonfracking.org/wp-content/uploads/2015/06/UNEP-Climate-Chg-Hum-Rts-Report-12-10-15.pdf>

¹⁹ <https://www.tribunalonfracking.org/wp-content/uploads/2015/06/UNHCHR-Understanding-HR-CC-COP21.pdf>

²⁰ <https://www.tribunalonfracking.org/wp-content/uploads/2015/08/Fracking-and-UNGPs-Consulation-Draft-August-20-2015.pdf>

²¹ <https://www.tribunalonfracking.org/wp-content/uploads/2015/06/Fracking-Hum-Rts-Guide-2015.pdf>

²² <https://www.tribunalonfracking.org/wp-content/uploads/2015/06/Short-et-al-HRIAs-for-fracking.pdf>

²³ <https://www.tribunalonfracking.org/wp-content/uploads/2014/12/UK-HRIA-wo-appdx-hi-res.pdf>

²⁴ <https://www.tribunalonfracking.org/wp-content/uploads/2014/12/Knox-Report1.pdf>

²⁵ <https://www.tribunalonfracking.org/wp-content/uploads/2014/12/EHRA-frac-rpt-111212-1-final1.pdf>

²⁶ <https://www.tribunalonfracking.org/wp-content/uploads/2015/06/Kerns-UNEP-PPT-chp-7-04-17.pdf>

²⁷ <http://www.unep.org/environmentalgovernance/erl/resources/publications/new-frontiers-environmental-constitutionalism>

²⁸ <https://www.tribunalonfracking.org/wp-content/uploads/2015/06/Kerns-Why-a-HR-Tribunal.pdf>

²⁹ <http://www.humansandnature.org/why-a-human-rights-tribunal>

³⁰ <http://www.truth-out.org/opinion/item/33588-fracking-goes-on-trial-for-human-rights-violations>

³¹ <https://www.tribunalonfracking.org/in-the-news/>