
**In the Permanent Peoples' Tribunal Session
on Human Rights,
Fracking and Climate Change**

**ON PETITION FOR AN ADVISORY OPINION ON THE QUESTION OF
THE IMPACTS OF FRACKING AND CLIMATE CHANGE**

**BRIEF OF AMICUS CURIAE
CENTER FOR EARTH JURISPRUDENCE
IN SUPPORT OF PETITIONERS**

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MARGARET R. STEWART, ESQ., MPA, LL.M.
CENTER FOR EARTH JURISPRUDENCE
6441 East Colonial Drive
Orlando, Florida 32807
United States
(321) 206-5691
mstewart@barry.edu
Advisor for Amicus Curiae

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I. IDENTITY AND INTEREST OF AMICI CURIAE

The Center for Earth Jurisprudence is a United States based legal advocacy center working to advance law, policy, and governance systems aimed to protect legally the sustainability of life and health on Earth. Furthermore, it works to advance laws and governance systems that reflect humans' interdependent relationship with the natural world, remembering that we are dependent on a healthy Earth. Its mission is premised on the concept that humanity has a foundational responsibility to care for and protect the long-term health and well-being of all beings and ecosystems that constitute the natural world. CEJ seeks to develop a philosophy and practice of law that respects the natural world in its own right and recognizes humans as an integral member of the Earth community.

When tribunals have centered on topics relevant to the inherent rights of Nature, environmental organizations have filed amicus curiae briefs to make their views clear. This is such a tribunal. This Session of the Permanent Peoples' Tribunal on Human Rights, Fracking and Climate Change will ask its judges to apply the standards of international human rights law and render an advisory opinion on four fundamental legal questions associated with the impacts of fracking and climate change. The Center for Earth Jurisprudence argues that human rights and Nature's rights are inextricably connected and asks this Tribunal to consider not just the effects fracking and climate have on human rights, but on the rights of the entire Earth community. As the preamble of the Earth Charter explains, "The choice is ours: form a global partnership to care for Earth and one another or risk the destruction of ourselves and the diversity of life." We urge this Tribunal to answer the questions presented by applying the principles of Earth jurisprudence so that the resulting advisory opinion not only addresses the impacts of fracking and climate change on human rights, but on the interdependent rights of the entire Earth community.

II. SUMMARY OF ARGUMENT

Earth jurisprudence is a legal philosophy that seeks a shift from the current anthropocentric, or human-centric, legal ranking to a more Earth-centered approach. It centers on the idea that we must implement laws that govern our moral principles, so that these principles become a basis for all human conduct. Earth Jurisprudence requires a shift in how we legally protect the natural systems that sustain life on Earth with a more scientifically comprehensive approach, specifically one that considers the good of the entire Earth community, including future generations, by framing our governing systems around the health of the ecosystem we all share. Aside from promoting healthy ecosystems and exploring the role of humans in a community, it seeks the creation of legal norms and dispute resolution that foster relationships on Earth.¹ The big picture behind Earth Jurisprudence is the idea that if we care for the habitat that we are reliant on, we then care for ourselves. This Earth centered approach allows us to displace our human centered perspective with one that centers on the needs of nature.²

There are certain elements to this notion. First, is the respect for the intrinsic value of Earth and all its components. Second, is the duty and the responsibility that we all have to care for the planet. Third, is that we want laws to be rooted by science, diversity and natural systems. Finally, in order to be truly Earth-centered, the measure would have to show respect for the three key earth rights: (a) The right to be, (b) the right to habitat, and (3) the right of nature to fulfill its role in the ever-renewing process of the Earth community.³

¹ Cormac Cullinan, Wild Law: A Manifesto for Earth Justice 17 (2003).

² *Id.*

³ Thomas Berry, *Ten Principles of Jurisprudence*, available at <https://therightsofnature.org/thomas-berrys-ten-principles-of-jurisprudence/>

As climate change and current mass extinction continues to buffer the planet, it is imperative that we as a community recognize that our industrialized and increasingly globalized culture is vastly destructive of nature. It is extremely likely that human influence has been the dominant cause of the observed environmental degradation since the mid-20th century. Human emissions of carbon dioxide, methane, and other greenhouse gases now overwhelm the influence of natural drivers on the external forcing of Earth's climate.⁴

As fracking operations in the United States have increased in frequency, size and intensity, and as the transport of extracted materials has expanded, a significant body of evidence has emerged to demonstrate that these activities are dangerous to people and their communities in ways that are difficult and may prove impossible-to mitigate.⁵ Risks include adverse impacts on water, air, agriculture, public health and safety, property values, climate stability, and economic vitality, as well as earthquakes.⁶

The underlying argument concerns the context of the states and the federal government's duty to regulate public and environmental health. Non-governmental organizations carry out many useful activities. However, only government agencies derive their authority from the entire community, locality, and nation and are therefore accountable to the entire public.⁷ To enhance and maintain the public's health, there is a need for preventive programs and laws. As a result, all

⁴ Concerned Health Professionals of New York & Physicians for Social Responsibility, (2018 March). *Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking*, (5th ed.) http://concernedhealthny.org/wp-content/uploads/2018/03/Fracking_Science_Compndium_5FINAL.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ Justin Miller, *Why it's so Hard to Regulate Fracking*, (June 2015), <http://prospect.org/article/why-its-so-hard-regulate-fracking>.

states, and all public and private institutions must ensure that the pursuit of human well-being contributes to the well-being of Mother Earth, now and in the future.⁸

Through local and international applications of the principles of Earth jurisprudence, this brief will illustrate how these principles are essential in any discussion surrounding human rights and should influence any resulting advisory opinion.

III. ARGUMENT

“You cannot have healthy people on a sick planet.”

Thomas Berry

a. Introduction

A society’s notion of right and wrong, good or bad, as well as what is minimally acceptable in its treatment of nature is not always reflected in its laws. Moreover, “[t]here is no recognition, even at the international law level, of any need for human laws to take account of the wider context of ‘laws’ of the universe or nature.”⁹ Thomas Berry posited that the natural world gets its rights from the universe, just as humans do. He noted that, “[e]very component of the Earth community has three rights: the right to be, the right to habitat, and the right to fulfil its role in the ever-renewing processes of the Earth community.”¹⁰

As our understanding of the natural world advances, so too must the systems that govern our relationship with it. As Lecturer Jamie Murray expounds:

The connection of ecology and law, and the development of Earth Jurisprudence, are not only marked by the critique of the dominant worldview paradigm but also marked by the appreciation of some of the

⁸ Universal Declaration of Rights of Mother Earth, (December 2010), <http://therightsofnature.org/universal-declaration/>.

⁹ Cormac Cullinan, *Wild law: A Manifesto for Earth Justice*, 68 (Chelsea Green Pub.) (2011).

¹⁰ Thomas Berry, Ten Principles of Jurisprudence, available at <https://therightsofnature.org/thomas-berrys-ten-principles-of-jurisprudence/>.

major scientific developments of the last hundred years that have fundamentally changed the way we understand how the cosmos, Earth, and nature operates.¹¹

Earth Jurisprudence goes that step further beyond the laws of a particular state and serves to fill the void, where one exists, between that nation's established body of laws and the moral principles, ethical beliefs, or philosophical mores of its population. As Cormac Cullinan notes:

Fundamentally changing our governance systems will require more than reforming existing laws or making new ones. We need to take a long hard look, not only at our legal systems, but, more importantly, at the legal philosophies that underlie them. Only by creating a vision of an 'Earth Jurisprudence' will we be able to begin a comprehensive transformation of our governance system.¹²

This Tribunal, in addressing the four questions presented, should not only apply international human rights considerations, but should fill the void that exists in such analysis by applying the principles of Earth jurisprudence.

b. The rights of human beings and the rights of the Earth community as a whole are indivisibly connected, broadly accepted, and must be considered together.

This Session on Human Rights, Fracking and Climate Change asks its judges to apply the standards of international human rights law and render an advisory opinion on four fundamental legal questions associated with the impacts of fracking and climate change. Although international human rights instruments do not contain explicit provisions on fracking, the international human rights system clearly acknowledges the relationship between environmental degradation and

¹¹ Murray, Jamie. *Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology and Law*, LIVERPOOL LAW REVIEW, Vol. 35, No. 3, 12.2014, p. 215-231.

¹² Cormac Cullinan, *Wild law: A Manifesto for Earth Justice*, 37 (Chelsea Green Pub.) (2011).

human rights.¹³ “Human rights law... recognizes that human rights and environmental protection depend on each other.”¹⁴

As this brief will explain, the rights of human beings and the right of the whole Earth community are indivisible from each other. Therefore, a comprehensive legal analysis of the impacts of fracking and climate change must include the application of Earth jurisprudence principles.

As Cormac Cullinan, environmental attorney and author, explains:

Earth jurisprudence is a philosophy of law and human governance that is based on the idea that humans are part of a wider community of beings and that the welfare of each member of that community is dependent on the welfare of the Earth as a whole. It states that human societies will only be viable and flourish if they regulate themselves as part of this wider Earth community and do so in a way that is consistent with the fundamental laws or principles that govern how the universe functions...¹⁵

Born out of impending necessity from the teachings of Thomas Berry, Earth jurisprudence is an emerging field of law that encourages us to rethink our approach to law and governance and our relationship with Earth. It requires a reintroduction to our interdependent relationship with the entire Earth community. It draws upon indigenous wisdoms and practices by offering an alternative to the property-based, exploitive system currently present in many nations around the world. As Thomas Berry expounds, our Western traditions "are also seriously deficient in not teaching more effectively that the natural world is our primary revelatory experience."¹⁶

¹³ *A Guide to Rights-Based Advocacy: International Human Rights Law and Fracking*, 13, Mercy International Association (2015).

¹⁴ *Id.*

¹⁵ Cormac Cullinan, *Sowing Wild Law*, 19 ENVTL. L. & MGMT. 71, 72 (2007), available at <http://www.lawtext.com/pdfs/sampleArticles/ELM-19-2-Wild-Law-final0207.pdf>

¹⁶ Thomas Berry, *The Great Work: Our Way Into The Future* 75 (1999).

As a result of humans' isolationist and exploitive relationship with the rest of the Earth community, Earth jurisprudence emerged in an attempt to fill the void, specifically our lack of communion with the natural world, left by our current legal systems. The impacts of fracking and climate change are just some examples of the effects of that void. Thomas Berry, the father of Earth jurisprudence, explained, 'The time has come when human laws and Earth laws must be brought together.'¹⁷

Earth jurisprudence requires us to reimagine our current legal systems and implement a system of governance that mirrors the natural system and relies on our acknowledgement of our place in that system. As advocate and author Linda Sheehan explains, "Our ethical and practical survival now calls us to the table to develop a system of Earth-based law that reflects our growing scientific and ethical awareness about our place in the Earth community."¹⁸

The problem is that because humans have positioned anything nonhuman as lesser, we have created a governance system that only benefits humans rather than the larger earth community. There is a fundamental lack of understanding that we are a subset of a larger integral Earth community. Our laws prioritize human and private property rights at the expense of the rest of the Earth community. As Thomas Berry warned, "If there are no rights and no protections for anything that is not human, then we establish a predator relationship."¹⁹ When we diminish and exploit everything that is not human, we lose our connection with the rest of the Earth community.

¹⁷ Berry, Thomas 2011. *Rights of Earth: We Need a New Legal Framework Which Recognizes the Rights of All Living Beings* p. 226 in Burdon, Peter (ed.) 2011. *Exploring Wild Law: The Philosophy of Earth Jurisprudence*. Wakefield Press.

¹⁸ Sheehan, Linda 2011. *Earth Day Revisited: Building a Body of Earth Law for the Next Forty Years*. p.244 in Burdon, Peter (ed.) 2011. *Exploring Wild Law: The Philosophy of Earth Jurisprudence*. Wakefield Press.

¹⁹ *The Mystique of the Earth, The Vision of Thomas Berry for an Earth Democracy*; Thomas Berry is interviewed by Caroline Webb, April 2003.

Earth jurisprudence encourages us to develop "an integral human order within the order of the planet earth."²⁰ Thomas Berry referred to this paradigm shift as The Great Work.

Through the lens of earth jurisprudence, the responsibility and liability of States and non-state actors for violations of nature related to environmental and climate harm caused by unconventional oil and gas extraction techniques is considerable. Indeed, in deliberating the effects of human activity on nature, we must consider not only the legal ramifications, but also the ethical and moral repercussions, of those actions and any effects they may have on the environment. We must consider our place within the universe and this Earth, our home, realize our interdependence on her vast -yet finite- natural resources and vow to protect her sensitive ecosystems. Toward that end, a number of municipalities, cities, states, and countries have adopted Earth-friendly constitutions or charters.

i. Local Applications of Earth Jurisprudence Principles

The principles of Earth jurisprudence have been applied in many municipalities, cities, states, and countries. In the United States, the City of Pasadena's charter includes the following language, "The city of Pasadena elects to be an environmental advocate and a leader in environmental compliance and protection. The City shall cultivate superior environmental standards that will provide for sustainable municipal development."²¹ While this approach represents an adherence to the regulatory, environmental system currently utilized, it demonstrates a shift in priorities from the exploitation of Nature to a sustainable relationship. It represents the

²⁰ *Id.* At 3.

²¹ City of Pasadena Environmental Charter, available at http://ww2.cityofpasadena.net/pdf/green_report.pdf

beginning of the important paradigm shift necessary for the adoption of Earth jurisprudence principles.

Another example found in Article 5.1 of the 2008 Constitution of the Kingdom of Bhutan is dedicated to the Environment. The document addresses individual citizen's responsibilities, noting:

Every Bhutanese is a trustee of the Kingdom's natural resources and environment for the benefit of the present and future generations and it is the fundamental duty of every citizen to contribute to the protection of the natural environment, conservation of the rich biodiversity of Bhutan and prevention of all forms of ecological degradation including noise, visual and physical pollution through the adoption and support of environment friendly practices and policies.²²

The Bhutanese Constitution does further still to outline the responsibilities that the government has not only to its people, but to the entire Earth community stating: "Equally responsible, the Royal Government must (a).Protect, conserve and improve the pristine environment and safeguard the biodiversity of the country; (b).Prevent pollution and ecological degradation; (c).Secure ecologically balanced sustainable development while promoting justifiable economic and social development; and (d).Ensure a safe and healthy environment."²³

In yet another application of Earth jurisprudence principles, the Ecuadoran Constitution is quite comprehensive in detailing the country's environment-centric policies and enumerating the rights of Nature (referred to also by the indigenous name Pachamama), dedicating sections three through seven to *Natural Assets and Ecosystems; Natural Resources; Soil; Water; and Biosphere, Urban Ecology, and Alternative Sources of Energy*. In answer to energy practices, Article 413, under Section 7 of the document, stipulates that Ecuador will utilize only environmentally-friendly

²² Constitution of Bhutan, Art. 5.1 (2008), available at https://www.constituteproject.org/constitution/Bhutan_2008

²³ *Id.*

methods and sources stating, “The State shall promote energy efficiency, the development and use of environmentally clean and healthy practices and technologies, as well as diversified and low-impact renewable sources of energy that do not jeopardize food sovereignty, the ecological balance of the ecosystems or the right to water.”²⁴

Another illustration of the interdependent relationship between human rights and the rights of the entire Earth community, in 1989, Algeria stated in Article 4, Chapter 68, of its national Constitution that: “Citizens shall have the right to a healthy environment. The State shall work to maintain the environment. The law shall define the environment protection duties of natural and legal persons.”²⁵ Here, the State is taking on the duty of oversight, while holding each citizen accountable for protecting the environment.

ii. International Applications of Earth Jurisprudence Principles

On a global level, the Universal Declaration of Rights of Mother Earth recognizes “Mother Earth” as a living being and notes that all species have rights just as human beings have rights.²⁶ Moreover, the preamble of the Declaration states,

We, the peoples and nations of Earth:

Considering that we are all part of Mother Earth, an indivisible, living community of interrelated and interdependent beings with a common destiny;

Gratefully acknowledging that Mother Earth is the source of life, nourishment and learning and provides everything we need to live well...recognizing that the capitalist system and all forms of depredation, exploitation, abuse and contamination have caused great destruction, degradation and disruption of Mother Earth, putting life as we know it today at risk.....²⁷

²⁴ Constitution of Ecuador, Art. 413, Sec. 7 (2008), available at https://www.constituteproject.org/constitution/Ecuador_2015#s2570

²⁵ Constitution of Algeria, Art. 4, Chap. 68 (1989), available at https://www.constituteproject.org/search?lang=en&key=env&status=in_force

²⁶ Universal Declaration of Rights of Mother Earth, available at http://ww2.cityofpasadena.net/pdf/green_report.pdf

²⁷ *Id.*

Per Article 3 of the Declaration, all human beings have an obligation to Mother Earth to live in harmony and respect with her and all human beings, public and private institutions, for all States must abide by the pronouncements in the document.²⁸

Likewise, the Earth Charter cites our “universal responsibility” as global citizens, linking our local communities with the whole Earth community, and calls upon “our spirit of human solidarity and kinship” noting that it “is strengthened when we live with reverence for the mystery of being, gratitude for the gift of life, and humility regarding” our place in nature.²⁹ The Charter’s language then implores “a shared vision of basic values to provide an ethical foundation for the emerging world community” and subsequently addresses the subject of Ecological Integrity under Section II, which notes that the best method of environmental protection is the prevention of harm.³⁰

Through these various local and international applications of the principles of earth jurisprudence, one can conclude an inextricable link with the notion of our interdependent relationship with the entire Earth community. Therefore, it is essential, when providing an advisory opinion on the impacts of fracking and climate change.

c. Because international human rights and the rights of the entire earth community are indivisible, the destructive impacts of fracking and climate change are violations to both.

This Session on Human Rights, Fracking and Climate Change asks its judges to apply the standards of international human rights law and render an advisory opinion on four fundamental legal questions associated with the impacts of fracking and climate change. Because the rights of human beings and the rights of the entire Earth community are inseparable, considerations must

²⁸ *Id.*

²⁹ The Earth Charter, available at www.earthcharter.org

³⁰ *Id.* at 3

be given to both as a single, inherent set of rights when rendering an advisory opinion on the questions presented. The impacts of fracking and climate affect the entire Earth community to which humans belong. To base an analysis on one or the other would be incomplete and the opinion produced inherently flawed.

Fracking and other unconventional oil and gas extraction techniques are inherently dangerous activities when it comes to the health and welfare of humans and our planet. All over the world, people and their governments have been initiating moratoriums, injunctions, and permanent or indefinite bans on fracking and natural gas extraction projects. These actions against fracking have been founded on years of research and data collection, which has demonstrated how hazardous each stage of these projects is, and the negative impacts they cause. Fracking and nonconventional oil and gas extraction negatively impacts the health and quality of our Mother Earth and its inhabitants through the degradation of water, air, land, and public health. It is often found that projects such as fracking violates existing laws regulating the health and welfare of the people, and indisputably will be found to violate the rights of nature.

Society is the catalyst for which hydraulic fracturing projects and other non-conventional oil extraction projects will be found responsible for the harm they have caused to Mother Nature and the resulting prohibition of these projects altogether. Fracking is argued to be a violation of not only human rights, but also the rights of the entire Earth community, because of the known concerns with these projects, from water pollution, air pollution, land degradation both human and animal related, protection of aboriginal people and their cultures, economic impacts such as fishing and tourism, and human health.³¹

³¹ Scientific Inquiry Into Hydraulic Fracturing in the Northern Territory, Beetaloo sub-basin Social Impact Assessment Summary Report (January 2018), available at <https://frackinginquiry.nt.gov.au/inquiry-reports?a=476742>.

Although most of these issues revolve around the rights of humans, we would be doing our species a disservice if we failed to approach these issues from a more interconnected viewpoint. We are products of our environment, we come from the Earth and we leave back into it. We are inhabitants of the global ecosystem and without a healthy planet with clean air, unpolluted water, and sustainable food sources we will not survive. To recognize Earth's rights is to truly recognize human rights, and applying these rights to modern law would bring us to the same conclusions about the hazards of fracking and other oil extraction projects, much more quickly and with minimal damages.

The Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking (the Compendium) imparts information regarding the threat to public health and safety posed by unconventional gas and oil drilling and fracking, as well as the fracking infrastructure, which includes compressor stations, pipelines, silica sand mining operations, natural gas storage facilities, and the manufacture and transportation of liquefied natural gas (LNG). In its Historical Context section, the *Compendium* reveals that the State of New York banned fracking in 2014 due to potential adverse effects on public health.³² However, in the same section, the *Compendium* notes that its third edition...

Included more than 100 new peer-reviewed studies as well as the results of four substantive, multi-volume government reports on the impacts of fracking. One, from the U.S. Environmental Protection Agency (EPA), focused on water...And, from New York, the Department of Environmental Conservation's final environmental impact statement and attendant Findings Statement—which, together, implemented New York's statewide ban—incorporated the earlier health review into a larger analysis of the impacts of fracking. The Findings Statement made clear that no known regulatory framework can adequately mitigate the multiple risks of fracking...³³

³² Concerned Health Professionals of New York & Physicians for Social Responsibility, (2018 March). *Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking*, 7 (5th ed.) http://concernedhealthny.org/wp-content/uploads/2018/03/Fracking_Science_Compendium_5FINAL.pdf.

³³ *Id.* at 8.

The Compendium very clearly underlies the growing trend of individual and State responsibility toward preventing harm to the Earth and environment by listing the countries that have banned or placed moratoria on fracking due to the mounting evidence of potential harms to the environment. Included among these countries: France (banned 2011), Bulgaria (banned 2012) Scotland (moratorium January 2015, later studies showed evidence of ambient contamination and threat to worker health resulting from exposure to silica dust, banned 2017), The Netherlands (2015 – banned shale gas fracking until 2020), Northern Ireland (2015), Germany and Australia (2016). In the United States, the state of Vermont (banned May 2012) and 85 municipalities in Florida also followed suit, among other nations, states, cities, & municipalities.³⁴ These bans and moratoria were enacted due to concerns of mounting evidence of potential environmental harms, in addition to harm to humans. The *Compendium* further informs that:

In the United States, more than two billion gallons of water and fracking fluids are injected daily under high pressure into the earth for the purpose of enabling oil and gas extraction via fracking or, after the fracking is finished, to flush the extracted wastewater down any of the 187,570 disposal wells across the country that accept oil and gas waste...All of that two billion daily gallons of fluid is toxic, and it passes through our nation's groundwater aquifers on its way to the deep geological strata below where it demonstrably raises the risk for earthquakes. In the air around drilling and fracking operations and their attendant infrastructure, researchers have measured strikingly high levels of toxic pollutants, including the potent carcinogen benzene and the chemical precursors of ground-level ozone (smog)...Research shows that air emissions from fracking can drift and pollute the air hundreds of miles downwind.³⁵

When examined through an Earth jurisprudence context, this information and evidence cited is a clear call to action for global citizens to raise a unified effort to protect nature – for the good of the Earth, as well as humankind, in order to protect Nature's right to “be.” For, as Thomas Berry said, “Human rights do not cancel out the rights of other modes of being to exist in their

³⁴ *Id.* at 10, 11.

³⁵ *Id.* at 16

natural state.” Such a system leads to ecological degradation which in turn leads to the degradation of humanity itself. As Thomas Berry explained, “The planet Earth is a single community bound together with interdependent relationships.”³⁶ It is only appreciating this relationship with the natural world and modeling our governing systems after it that we can adequately determine whether there has been a violation of rights, human or otherwise.

IV. Conclusion

“History is suggestive, but it need not bear augmentative weight.”³⁷

The rights of Mother Earth are inalienable; they are the inherent rights of all living things, including humans. Recognizing that human rights are simply an extension of the Earth’s rights is vital to the sustainability of our ecosystems, economics, communities, and future. Any meaningful analysis of the violation of human rights must also include considerations for the rights of the entire Earth community. Without such considerations, the resulting advisory opinion would be inherently flawed.

³⁶ Thomas Berry, Ten Principles of Jurisprudence, <http://therightsofnature.org/thomas-berrys-ten-principles-of-jurisprudence/>.

³⁷ Richard H. Fallon, Jr., *How to Make Sense of Supreme Court Standing Cases—A Plea for the Right Kind of Realism*, 23 WM. & MARY BILL RTS. J. 105, 114 (2014).