TOWARDS THE ADOPTION OF A RIGHTS-BASED APPROACH:

Incorporating the Rights of Nature into the Post-2020 Global Biodiversity Framework of the CBD

LEARN MORE AT WWW.EARTHLAWCENTER.ORG

Introduction to the Rights of Nature: An innovative legal concept departing from anthropocentric legal systems

A legal revolution for Nature is underway across the globe. The Rights of Nature recognizes that all living beings possess certain fundamental rights. This represents an evolution of the current Western legal systems, which give rights only to humans and human-created entities (such as corporations) but not to Nature, upon which all life on Earth depends. Under traditional Western legal systems, Nature is treated as a mere commodity and has no formal rights or voice in government. This void is at the core of the global destruction endured by Nature today.

Existence: The Foundation of Rights

“Rights originate where existence originates. That which determines existence determines rights.” - Thomas Berry

As with human rights, Nature's rights are inherent. When the United Nations drafted the Universal Declaration of Human Rights, the drafting committee observed that *“the supreme value of the human person [...] did not originate in the decision of worldly power, but rather in the fact of existing.”* Similarly, ecosystems around the world have rights simply because they exist. Western legal systems are only now beginning to recognize this truth through formal laws.

Historian and philosopher Thomas Berry stated that there are at least three rights for every member of the Earth community: the right to be, the right to habitat, and the right to fulfill its role in the ever-renewing processes of the Earth community.

Expression of Indigenous Belief Systems

Rights of Nature is a legal interpretation of a cultural worldview held by Indigenous peoples for millennia. Indigenous traditions teach that humans are part of, not separate from, the larger community of Nature, and that all community members depend upon the health and wellbeing of the Earth. A human duty to uphold the integrity of Nature arises from these understandings.

Indigenous wisdom has inspired a growing number of Earth-centered (or "ecocentric") laws that are being passed worldwide. Instead of focusing exclusively on relationships between humans, ecocentric law, including laws recognizing the Rights of Nature, regulate relations between all members of the Earth community. This is in stark contrast to existing anthropocentric legal systems in which Nature is treated as mere human property to be exploited for human benefit.

Why Rights of Nature needs to be incorporated into the Post-2020 Global Biodiversity Framework

- **Nature must have a voice within international treaty bodies**

Nature is currently represented only indirectly within the CBD, such as through civil society groups that speak for a variety of interests related both to Nature and humans. By promoting the Rights of Nature through the Post-2020 global biodiversity framework, Nature itself can begin to have a formal role within the CBD. Although Nature cannot speak in a traditional sense, Nature's rights can still be given effect, such as through legal guardianship bodies that act on behalf of Nature's rights and interests . Such a guardianship body for Nature should be explored in the context of the CBD, along with other ways of giving Nature an formal voice.

- **Including a Rights of Nature approach within the Post-2020 Global Biodiversity Framework will help to ensure that, by 2050, the shared vision of living in harmony with Nature is fulfilled**

Biodiversity, and the benefits it provides, is fundamental to human well-being and a healthy planet. The post-2020 global biodiversity framework sets out an ambitious plan to implement broad-based action to bring about a transformation in society's relationship with biodiversity and to ensure that, by 2050, the shared vision of living in harmony with Nature is fulfilled. Because recognizing the Rights of Nature entails responsibilities to humans and societies towards ecosystems and living entities based on their inherent rights, it creates a balance between the different interests within the global system, leading to a holistic and more effective approach to sustainability.

The theory of change of the post-2020 framework already acknowledges that it "will be implemented taking a rights-based approach". To actually meet its 2050 goals, this approach needs to acknowledge and actively promote the Rights of Nature. Such recognition should be at the heart of the zero draft.

Additionally, although Rights of Nature is increasingly recognized within individual countries and promoted within the United Nations and IUCN, no international treaty body has explicitly supported the Rights of Nature. Doing so within the CBD presents an opportunity to create a brighter future for Nature at the international level while inspiring other treaty bodies to do the same.

- **Rights of Nature can be a powerful tool to implement the Post-2020 targets**

Acknowledging the Rights of Nature, both through the CBD and within the legal systems of its Parties, would help achieve the Post-2020 targets by:

- Asserting the responsibilities of everyone towards Nature and holding accountable those who violate her rights;
- Formally acknowledging Nature's role as the source of all life;
- Raising awareness of the need to address root causes in order to protect and restore biodiversity; and
- Empowering Indigenous Peoples and elevating their philosophical and cultural views.

Parties to the CBD can promote the Rights of Nature by taking the following actions:

- Formally adopting the Universal Declaration of the Rights of Mother Earth;
- Helping to develop model language on Rights of Nature laws, constitutional amendments, etc.
- Promoting Rights of Nature pilot projects that protect and restore biodiversity; and
- Convening workshops and other programs to train and support lawyers and others interested in advancing Rights of Nature initiatives to protect biodiversity.

Why Rights of Nature is necessary for Systemic Change

The Inadequacy of Environmental Laws

Even though environmental laws do exist and have undeniably done much good, they have failed to reverse the longstanding trend of environmental declines. Environmental laws actually legalize environmental harm by regulating how much pollution or destruction of Nature can occur within the law, in order to protect property and promote extraction- and consumption-based economic systems. In most countries, the law requires quantitative damage to humans as a prerequisite to taking a bad actor to court. Unfortunately, this often means the damage must be done first before local communities or those harmed have legal recourse.

Ultimately, most legal systems start from a “humans first” perspective. This assumes that humans are somehow apart and separate from the rest of Nature, when we are in fact connected to everything else on the planet just as it is connected to us. Rights of Nature is a transformational idea, challenging this system in a constructive and practical way.

Rights of Nature posits that an Earth-centered perspective represents the next evolution of rights-based law. Rights of Nature takes a holistic view which grasps humans and human needs as parts of one global, complex, interconnected and biologically diverse system. Rather than considering everything else as property or objects, Rights of Nature considers ecosystems and fellow species as subjects that deserve legal protection from harm.

Rights of Nature and the tradition of Rights-based Law

Considering how long humans have been on the planet, universality of human rights is a recent phenomenon. Children’s rights, abolition of slavery, and women’s suffrage all represent the evolution of rights law. Each milestone in the development of rights-based law meant rights recognition for a new group which had previously been considered unworthy of having rights. As more and more previously disenfranchised groups join the rights-bearing community, we have seen a more just and equal society emerge (although the struggle for rights still continues). Rights of Nature represents the next evolution in rights by acknowledging that all life is worth of basic protections.

Rights of Nature is not a new idea. The idea of Nature having legal standing was first proposed by Christopher Stone in his 1972 article “Should trees have standing?”, then famously endorsed by Justice William O’Douglas’s dissenting judgment in *Sierra Club v Morton* (U.S. Supreme Court, 1972), in which he argued that ecosystems should have standing to defend themselves in a court of law. Since then, and especially in the last decade, Rights of Nature is increasingly taken up by legislative bodies, courts, and local communities with the desire to effectively protect ecosystems.

Examples of Rights of Nature legal recognition

While international progress moves forward, individual countries and communities have taken matters into their own hands with powerful, precedent-setting laws at local or national level. For a complete and up to date list, please visit United Nations Harmony with Nature Programme’s website.

- **Ecuador**’s 2008 constitution recognizing the Rights of Nature, or "Pachamama".
- **Bolivia**’s 2010 and 2012 laws on the rights of Mother Earth.
- In the **United States**, dozens of communities (for example, Santa Monica, CA) and 5 tribes have recognized the Rights of Nature.
- In **New Zealand,** the Te Awa Tupua Bill declared the Whanganui River a legal entity in 2017, and Mount Taranaki and Te Urewera have been given legal status, as well.
- **Colombia**’s Constitutional Court recognized the legal rights of the Atrato River in 2017. Since then, rights recognition has been extended to about 10 other ecosystems, including the entire Colombian Amazon.
- In Mexico, **Mexico City** and the **States of Guerrero** and **Colima** have recognized the Rights of Nature.
- **Uganda** recognized the Rights of Nature in their Environmental Act 2019.
- In **India**, the Holy River Ganga, the Yamuna River as well as the Himalayan Gangotri and Yamunotri glaciers have been declared as living human entities by the High Court of Uttarakhand. Stayed by the Supreme Court.

International institutions and courts have also started to recognize the Rights of Nature:

- The **International Union for Conservation of Nature**'s Resolution 100 (2012) “[incorporates] the Rights of Nature as the organizational focal point in IUCN’s decision making."
- In 2009, the **United Nations General Assembly** began the Harmony with Nature program, which has emphasized Rights of Nature as a possible solution to environmental challenges.
- The **Inter-American Court of Human Rights** supported a Rights of Nature approach in Advisory Opinion OC-23/17 of November 15, 2017.

Conclusion & Summary of Recommendations

Despite ongoing efforts, biodiversity is deteriorating worldwide and this decline is projected to continue or worsen under business-as-usual scenarios. Legal systems are part of the governing systems used to implement National strategies, however, the environmental laws in place today don’t fulfill their requirements anymore. The legal systems are outdated and must be adapted in order to protect biodiversity and fulfill the vision of a future in harmony with Nature.

It is time to see and treat Nature as a living system and the source of all life and recognize her rights. Nature as a rights-bearing entity and subject of law will foster a redefined relationship between humans and the rest of Nature, and be the necessary base for transformative changes within societies.

Considering this background, we strongly urge that the following actions/targets be included in the Post-2020 framework:

- **Global recognition and implementation of the Rights of Nature, including Nature's rights to exist and flourish independent of its value to humans.**
- **Adoption of a Declaration of Rights of Mother Earth by the UN to complement the Human Rights Declaration.**
- **Urgent action taken against activities significantly and permanently impairing biodiversity, including by making ecocide an international crime and prosecuting violators.**

Learn more: www.earthlawcenter.org
Contact: info@earthlaw.org

Learn more: www.rightsofmotherearth.com
Contact: doris@rightsofmotherearth.com

Learn more: www.naturensrattigheter.se
Contact: pella.thiel@endecocide.se

Learn more: www.earthadvocacy-youth.org
Contact: hanabegovic1@gmail.com

Learn more

United Nations Harmony with Nature Programme
www.harmonywithnatureun.org

Earth Law Center
www.earthlawcenter.org/earthlaweducation