RÉPUBLIQUE
FRANÇAISE
Liberté
Égalité
Fraternité

AFD
GROUPE

The Rights of Nature

A collaborative publication
Under the direction of Farid Lamara, in partnership with Marine Calmet and Sarah Hayes

#WorldInCommon

Acknowledgements

This collaborative publication was produced under the direction of Farid Lamara, human development expert and strategic advisor in AFD's Department of Strategy, Foresight and Official Relations (SPR) department, in partnership with Marine Calmet, President of the NGO Wild Legal, and Sarah Hayes, human rights expert and consultant to AFD. They were supported by a steering committee representing several AFD departments. This committee included Emilie Aberlen, project manager and human rights specialist in the Civil Society Organisations Partnership team; Guilhem Arnal, project team manager in the Governance division; Myriam Dhaman Saidi, TILT editorial manager in the Awareness, Advocacy and Education team; Caroline Piquet, mission leader in the Biodiversity section of the Climate and Nature division; Stéphanie Leyronas and Serge Rabier, research managers in the Research department.

This publication was only possible with their dedicated involvement and with the vital contributions of local experts who provided insights and testimonies from the field. This is particularly the case in the second part of the report which reviews local initiatives and projects from around the world. Also significant were the contributions of economist Timothée Parrique, who agreed to write the afterword, and Sarah Marniesse, Executive Director of AFD Group Campus. Finally, Marie Ehlinger (Kokliko) was responsible for the exceptional graphic design and editing, which has greatly enhanced the content.

This project has also benefited from the support and encouragement of Philippe Jahshan, Director of the AFD Strategy, Foresight and Official Relations (SPR) department, as well as the department's Deputy Director Françoise Chalier and her predecessor Philippe Walfard.

Foreword

Rémy Rioux
AFD Chief Executive Officer

"*Think like a mountain*" wrote ecologist and forester Aldo Leopold in the 1940s, illustrating the need to think of living entities in their entirety. And, furthermore, to leave behind an anthropocentric approach and consider our ecosystems, their fragility and vulnerability, as an issue of rights.

This is the premise of this fine publication. To show that original solutions and initiatives are emerging all over the world to give living entities – both human and non-human – their rightful place, and to ensure the habitability of the planet for the biosphere as a whole.

Like an underground river that follows its course far from the modern hustle and bustle, these innovations are gradually spreading and consolidating towards the recognition of the rights of nature. In Latin America, a pioneering region, *la Pachamama* – nature – has been granted constitutional rights in Ecuador since 2008. In the Indian sub-continent, the courts have recognised the Ganges and Yamuna rivers, the glaciers from which they originate and the forests and tributaries linked to them, as legal entities with rights. In Africa, collectives defend the rights of oases in Morocco and the Ethiope River in Nigeria and have managed to amend the Constitution in Uganda. And in Europe, the European Union is currently strengthening its legal arsenal to counter environmental crime and lay the foundations for the recognition of ecocide.

In the pages that follow, we draw a map of a world on the move, marked by an astonishing, jubilant plurality of the forms that this major movement of legal invention is taking. From the Kunming-Montreal agreement to national legislation and local customs, this forward-looking publication is sure to promote optimism among us and encourage a major reconciliation. Since, as Achille Mbembe quite rightly says, human beings are neither the sole inhabitants nor the sole rights holders of our world, they should not be allowed to exercise unlimited sovereignty.

He calls for a democracy of living entities, where the "in common" becomes a pact of care – "care for the planet, care for all the inhabitants of the world, human and non-human". This world in common is the AFD Group's rationale and everyday commitment.

The wealth of testimonies gathered in this publication has the effect of inviting all actors in development financing to further question our practices, encourage debates, and participate in the construction of a dynamic in which human rights and the rights of nature are two sides of the same coin. My sincere thanks go to the colleagues behind this inspiring, mobilising work, which offers a glimpse of, and leads us towards, a desirable future. We will share it with all those who work with the AFD Group, whether in France, with Team Europe or in the Finance in Common (FiCS) movement, which brings together all public development banks, our peers from around the world. There's no doubt that it will spark interest and encourage commitment everywhere!

Contents

Introduction

Philippe Jahshan
Director of the AFD Strategy, Foresight and Official Relations Department

Françoise Chalier
Deputy Director of the AFD Strategy, Foresight and Official Relations Department

The concept behind this publication comes from work conducted by AFD over the last five years on the subject of human rights and sustainable development. The issues raised by the application of the human rights-based approach, in particular in the context of two international conferences organised by AFD, in December 2021[1] and December 2023[2], illustrate the many interconnections between: conventional human rights, in other words those recognised by a binding international treaty or convention (economic, social, cultural, civil and political rights); the right to a healthy environment (recognised as a human right by the United Nations General Assembly in 2022, but not yet the subject of a binding international treaty); and the emerging rights of nature.

It is now widely recognised that the global ecological crisis (of the climate, environment and living entities as a whole) has major, multidimensional consequences for human rights, particularly for the poorest populations and in the most vulnerable countries.This infers that all actions undertaken to mitigate these crises should take into account strategies that are based on both human rights and ecological considerations. This publication presents several examples that illustrate the importance of this dual approach and emphasise the increasingly deep interdependence between the two. In other words, to contribute to the respect, protection and realisation of human rights, it is now necessary to emancipate ourselves from an overly anthropocentric approach to adopt an ecocentric logic, which considers living entities – human and non-human – as a whole.

[1] AFD, proceedings of the Human Rights and Development Conference, 2021 https://www.afd.fr/en/ressources/conference-human-rights-and-development

[2] AFD Human Rights and Sustainable Development Conference of 8 December 2023 – YouTube

From this point of view, the recognition of the rights of nature is one of the key levers of action of the international community and its member countries. The development community can also play a decisive role in nurturing this movement by taking part in the debate, both through its intellectual output and through support for projects, experiments and innovations in the field. This is what this publication aims to highlight.

The first part reviews the concepts and history of the rights of nature movement. This movement now has an unprecedented scope, as illustrated by the work of the Global Alliance for the Rights of Nature (GARN)[3], which identifies several hundred initiatives that are contributing to the recognition of the rights of nature around the world, and the United Nations Harmony with Nature Programme[4], which promotes a new relationship between the Earth and humankind.

The second part of the publication describes a selection of the initiatives being undertaken on every continent. It demonstrates how development actors can contribute to advancing the rights of nature in partner countries, both at national level by supporting the development and operational implementation of public policies, and at regional and local levels by working with a wide range of local partners (e.g. local authorities, civil society organisations).

The third part of the publication offers a number of courses of action and more general information to allow development actors to support the rights of nature movement. The concluding fourth part of the publication takes a step back to contribute to a more global, forward-looking reflection on questions of development strategies and economic models, on the interactions between the rights of nature and the commons, and on the convergence of the agendas of the rights of nature and women's rights.

[3] Global Alliance for the Rights of Nature (GARN).
[4] Harmony With Nature (harmonywithnatureun.org).

Marine Calmet
President of the NGO Wild Legal

The Movement for the Rights of Nature background and concepts

1 The Movement for the Rights of Nature: background and concepts

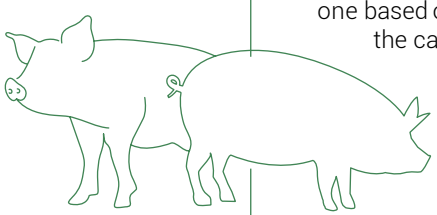
1 / CONTEXT

Scientific warnings of climate change are intensifying, the collapse of biodiversity is increasingly obvious, calls by civil society to abandon projects that destroy nature are becoming ever more strident and less peaceful with each passing year, and recourse to the courts is becoming an effective means of challenging the political inaction of governments in response to the ecological crisis.

How can we explain that science clearly shows that human activities are exceeding the biosphere's limits of ecological sustainability while most of these activities are apparently perfectly legal?

Indeed, the acceleration of climate change and the sixth mass extinction are now clearly mostly connected to human activities, which by their industrial (rather than traditional or artisanal) scale, necessitate state authorisation. There are many examples. Palm oil production has led to the deforestation of huge areas of tropical forest in Southeast Asia, leading to the extinction of large mammals such as tigers and orangutans from their habitat and stoking tensions with Indigenous peoples[1]. Chile has been plagued by social conflict for many years, in particular due to the serious ecological repercussions of mining activities and a drought that has been worsened by the privatisation of water resources for use in intensive agriculture[2]. European and Asian factory ships are emptying the seas off the coast of West Africa, destabilising local ecosystems and jeopardising traditional societal models and the food security of local people, in order to produce fish meal and fish oil for the intensive breeding of animals, particularly pigs in France[3].

Yet all these activities, as well as many others that plunder and destroy nature, are legal. They are the face of an industrialised, extractivist society, in other words one based on the exploitation of natural resources to total exhaustion, far exceeding the capacities of ecosystems for renewal.



[1] Greenpeace France, *L'huile de palme met le feu aux forêts d'Asie du Sud-Est* [*Palm oil is setting the forests of Southeast Asia alight*], 2016.
[2] Marion Esnault, *Au Chili, les mégabassines néfastes depuis 35 ans* [*Harmful megabasins in Chile for 35 years*], Reporterre, 2022
[3] Feeding a Monster, Changing Markets Foundation and Greenpeace Africa, 2021.

1
The Movement for the Rights of Nature: background and concepts

Source: © Freepik (kriserdmann).

This methodical, formalised plundering is motivated by economic arguments, encouraged by the dominant political discourse and tolerated by a legal system that is incapable of considering our planet's biological equilibrium.

The need for the legal recognition of the ecological limits of the Earth system stems from the observation that current environmental law is not an effective tool for confronting the ecological crisis, and that it is necessary to find a common framework that ensures the preservation of the planet's habitability.

We have to admit that the current law is structurally incapable of protecting living entities. Environmental policies are dispersed across various codes of law and often split between different ministries. They divide ecosystems into distinct entities – forest, sea, coastline, mountain – and by utilitarian approach – agriculture, shipping, etc. This restricted approach is incompatible with the fact that natural environments are closely linked and interdependent, and that the pressures exerted by certain human activities have a domino effect on the biological equilibrium of ecosystems.

The global ecological crisis, the impacts of which are now affecting the North as well as the South, is accompanied by a growing awareness of the urgency for a radical transformation of our relationship with natural environments. Their stability has conditioned the emergence of our societies, and their collapse threatens not only the most fundamental of human rights, but also healthy democracy and peace around the world.

In view of this observation, the development of sustainable solutions rests in particular on seeking a model of society that is desirable to both humans and non-humans[4], in order to define a "natural contract" as the French philosopher Michel Serres has called it. This is because the social contract, the tacit agreement cementing relations between members of society, between individuals and the state, has long rested on the exploitation of the earth's resources and the promise of emancipatory growth.

[4] An expression referring to all living and non-living entities, animals, plants and other entities that are distinct from humans.

1

The Movement for the Rights of Nature: background and concepts

The excessive and exponential growth of economic and social inequalities, linked to the monopolisation of an ever-increasing share of the wealth produced by a small number of individuals and enterprises, is a striking symptom of the need to rediscover a stable, secure social and natural contract.

Previous centuries were marked by major struggles for human rights; new legal constructs emerged during the industrial revolution, gradually adopting a growing significance in our society. Enterprises, which are profit-making human groupings, have benefited from a legal evolution that is now displaying dangerous dysfunctionality. It has become apparent that the allocation of rights to enterprises has in certain cases been to the detriment of the protection of social[5] and environmental[6] commons.

Source: https://fr.dreamstime.com (Liliia Marchuk).

These enterprises now also have individual rights and freedoms: property rights, nationality, entrepreneurial freedom, the right to protection of reputation and business confidentiality, etc. This evolution has profoundly altered the balance of power between the protection of the commons and general interest against private interests.

The consequences of this transformation of our society are now visible, as inequalities are growing both within enterprises, particularly the biggest CAC 40[7] companies, and in the relationship with the "super profits" generated by these legal entities through the exploitation of nature and social crises.

Based on the protection of individual and exclusive property (*usus, abusus, fructus* in the hands of the same person, whether a physical person or legal entity), industrial civilisation has been built on the vision of a world that consists of resources to be exploited, whether natural or human.The myth of infinite growth, with its emphasis on the strategies of competition and short-term exploitation, has for a long time benefited from the absence or weakness of regulation and the prevalence of economic considerations over the protection of human rights and the rights of nature, in this way establishing itself as the only desirable scenario.

Thus, new legal principles could establish cross-cutting social norms that respect the biological functioning of the living world.

Ensuring that every individual has access to the most fundamental rights, such as the right to decent housing, healthy food and safe drinking water, is a promise that the capitalist model has, and will continue to have, great difficulty keeping. Exclusive private property is far from being the best way to achieve these results for the majority of human beings on the planet, and environmental scandals show that the opposite is actually true.

In this way, challenging a system in which, since 2020, the richest 1% have consumed 63% of global wealth[8] raises the question of how to re-establish a social and ecological equilibrium in our society and the international community.

[5] According to H. Defalvard, social commons "represents the pooling and sharing of resources that are universal rights such as healthcare, culture and employment, whose collective management ensures local and democratic access for all". Cf. the article "From social commons to the commons society", RECMA 2017/3 (No. 345) pp 45 to 56.

[6] Including both the legal category of "common things" (res communes, enshrined in article 714 of the French Civil Code: "There are things that belong to no one and whose use is common to all") and other categories of shared space such as grazing or community woodland.

[7] A report published by Oxfam in 2018 (*CAC 40 : des profits sans partages* [*CAC 40: Profits without Sharing*]) shows that the salary gap between CEOs and employees is widening. The difference went from 40:1 in the 1970s to 119:1 on average in 2016.

[8] Cf. OXFAM report "*La loi du plus riche* [*Survival of the Richest*]" January 2023.

To achieve this, we need to radically change the expression of power, by ending the current rights of polluters and guaranteeing the rights of those who have until now been overlooked by the legal corpus, i.e. non-humans.

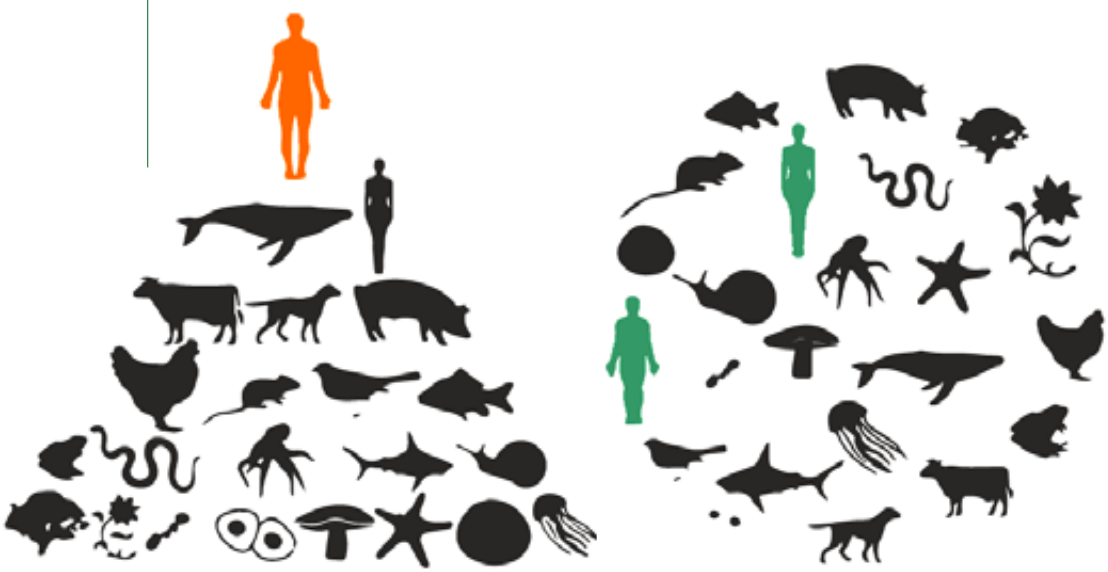
Our entire social edifice, constructed on our founding texts and consolidated by anthropocentric legislation, must now be challenged in order to build new societies in a vital symbiosis between humans and the ecosystems in which they live.

2 / DEFINITION OF THE RIGHTS OF NATURE

The rights of nature are both a set of legal rules and principles based on the paradigm by which nature and all its constituent elements have intrinsic fundamental rights, and a worldwide movement that has been growing rapidly since the start of the 21st century, particularly in South America.

The aim of this thinking is to propose a legal response to the "dominant" Western anthropocentric paradigm, the impacts of which are mentioned above and whose legal translation is a structural imbalance between nature and its components. The status of the latter is that of things, goods or resources at the disposal of human beings, the only species enjoying the status of a person that has fundamental rights.

It is thus a matter of legally justifying a model in which human beings are no longer at the top of the pyramid of species, but rather are integrated with other members of the community of natural entities, finding their place among living things.



Anthropocentric vs Non-Anthropocentric Design (Available via licence: CC BY 4.0).

1
The Movement for the Rights of Nature: background and concepts

The application of the rules and principles of the rights of nature is now multifaceted and depends on the territory and culture. Fundamental rights have thus been defined in a general way for the whole of nature, known as Mother Earth, or *Pachamama* in South America.The recognition of rights can also be more restricted by specifically referring to an environment (river, forest, mountain, etc.) or a site or ecosystem due, for example, to its sacred nature for the peoples concerned.

In some territories, the granting of rights specific to certain environments is directly related to the creation of a natural legal person – a legal entity (a structure recognised by law) that features an administrative model made up of legal representatives (also known as guardians, tutors, etc.) brought together in councils or assemblies (with rules specific to the body).

In certain cases, this legal personality is not specifically attributed, and the defence of the fundamental rights of nature may be guaranteed in court in a broad manner (for example, by *actio popularis*, a mechanism of legal action open to all), or be exercised by different entities, associations, communities or government structures dedicated to the defence of nature, etc.

The ambition is thus to guarantee, both through democratic means (non-anthropocentric local governance) and litigation (legal action), respect of the needs and interests of nature and its constituent entities.

In summary, the rights of nature are based on three elements:

- **the recognised fundamental rights of nature**, irrespective of the uses and benefits that human beings derive from nature;
- the possibility of **asserting these rights**, both before governance bodies and the courts (standing);
- the possibility, in the event of breach of these fundamental rights, of **obtaining redress on behalf of nature** and the entities for which the prejudice is recognised.

The aim of this legal innovation is to restore a balance of power between human interests, particularly economic interests, and the fundamental needs of natural entities.

Source: https://fr.freepik.com (danmir12).

The background and origins of the movement for the rights of nature

In 1972, the Sierra Club, a US environmental association, opposed the Walt Disney Company's plan to build a winter sports resort in the heart of the Sequoia National Park.

The American academic world and justice system embraced the affair. Although the case was lost in the first instance as well as on appeal, the reasons set out by the judges raised questions. They rejected the environmental association's claim on the grounds that it had no interest in the case, not being able to attest to any personal injury. The courts dismissed the case, ruling that the simple fact that the Disney company's construction project displeased Sierra Club members did not constitute a prejudice that could justify a legal action.

This decision appeared particularly restrictive considering that the political context at the time was strongly characterised by major debates around the world on environmental protection. Furthermore, the United Nations Conference on the Human Environment (UNCHE) was held in Stockholm in 1972, and was considered to be the first international event to consider the place of human beings within the global ecosystem.

The same year also saw the publication of the Meadows Report, known as The Limits to Growth, which marked a new awareness of human development and its incompatibility with the planet's biological capacities. The question of the responsibility of individuals, enterprises and states in light of the already apparent ecological crisis, took on a new significance.

It was in this context that Professor Christopher Stone, in response to the Disney v. Sierra Club case, published an academic article with the evocative title: Should Trees Have Standing? – Toward Legal Rights for Natural Objects. Stone's text was published before the Supreme Court's decision, and his ideas were cited favourably by Justice Douglas, a member of the panel who was particularly sensitive to environmental matters. But his was a dissenting opinion and the Sierra Club's appeal against Walt Disney was ultimately rejected.

The essay is considered the founding text of the movement for the recognition of the rights of nature and raises the question of granting nature and the ecosystems that it comprises a legal personality and intrinsic rights in order to guarantee their protection.

1
The Movement for the Rights of Nature: background and concepts

Christopher STONE

In his essay, Stone examines the evolution of law over the centuries in order to demonstrate the relevance of his proposal while deconstructing the prejudices inherent in the innovation of the reflection. He reminds us that the status of a subject that has enforceable fundamental rights is not a state of nature, referring to Hobbes[9], describing the slow evolutions that have progressively expanded the circle of those to whom society attributes consideration and thus protection as a result of the moral development of human beings. Stone points out, for example, that in Roman times, children did not have rights, and that the father had the right of life or death over his offspring. This transformation in our relationship with children has been the subject of a recent cultural evolution, particularly in the 20th century, when child labour was progressively denounced and prohibited by means of international texts promoted by the United Nations, such as the 1989 Convention on the Rights of the Child (UNCRC).

Christopher Stone also looks back at the condition of aliens, slaves and women, and the discrimination suffered as a result of the comfort afforded to the dominant who maintained a status quo to their advantage. He points out that in the United States, xenophobic and misogynist laws had long been legitimised by a so-called original state based on pseudo-scientific assertions: that the Chinese were inferior beings by nature; the Jews were *ferae naturae* animals (naturally wild); the Blacks were their masters' property and workforce; and that women were incapable and destined to reproductive functions by nature.

Stone thus warns that, in the same way that a society marked by a racist or patriarchal ideology implies a legal status that discriminates against the dominated, our culturally anthropocentric vision of the world modifies our relationship with non-humans, depriving them of rights and therefore of representation in our society.

Christopher Stone's essay introduces a Copernican revolution to the world of law, not only considering the feasibility of granting legal personality and rights to nature, but also advancing the social, political and ethical opportunity of this idea.

Source: Sequoia National Park / pexels (vasilis-karkalas)

[9] C. Stone refers to the philosopher Hobbes' state of nature to question the development of law. "Perhaps there never was a pure Hobbesian state of nature, in which no 'rights' existed except in the vacant sense of each man's 'right to self-defence'. But it is not unlikely that so far as the earliest 'families' (including extended kinship groups and clans) were concerned, everyone outside the family was suspect, alien, rightless." see Should Trees Have Standing? C Stone, ed.

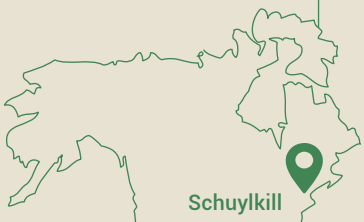
FROM THEORY TO PRACTICE

It would be many years before the rights of nature movement progressed from theory to practice.

In the face of ecological upheaval, many areas of resistance are nevertheless rising up against a world order that seems to install the dogmas of liberalism and the diktats of industrialists as the law, treating those responsible for ecological devastation with impunity and describing those who oppose the seizure and destruction of living things as delinquents.

It is consequently through citizen mobilisations that refuse the application of unjust law, written to satisfy the private interests of a few, that new models of governance [10] are being born. These models are based on respect and the recognition of our interdependence with the other entities of the community of living things.

Given the influence of US academic Christopher Stone, it is not surprising that the first decision to recognise the rights of nature was taken in the United States in 2006. Tamaqua is a town of around 7,000 people located between Philadelphia and Pittsburgh in Pennsylvania. Coal mining was the main economic activity in this region, but the industry declined towards the end of the 20th century, leaving behind gigantic open pits. The landowners then used the pits to store toxic waste from the medical and industrial sectors. This storage of hazardous materials contaminated tributaries of the Schuylkill River, which supplies Philadelphia with drinking water, leading to several deaths in the 1990s.



Source: © Freepik (aleksandarlittlewolf).

[10] Governance refers to a set of decisions, rules and practices that aim to ensure the optimal functioning of an organisation and also describes the structural bodies responsible for formulating, implementing and monitoring these decisions, rules and practices. The concept of governance applies to all levels of organisation: public and private, local, regional, national, international and global. (Definition translated from French from the Youmatter website https://youmatter.world/fr/definitions/gouvernance-definition-objectifs-principes-volet-social-et-societal/.)

A group of local citizens known as The Army For A Clean Environment and the Community Environmental Legal Defense Fund (CELDF), an association set up in 1995 to help communities oppose development projects that present risks to public health or the environment, took action to stop the pollution.

On 19 September 2006, at the initiative of CELDF, a historic municipal ordinance was adopted, setting out that "Borough residents, natural communities, and ecosystems shall be considered to be 'persons' for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems".[11] The decision authorised any resident of the community to seek compensation for damage to natural communities and ecosystems. The ordinance was the result of a long process of awareness raising among local communities about their democratic rights[12].

However, the first significant victory at state level came in Ecuador. Affected by the ecological and health repercussions of the activities of the Texaco Chevron oil giant, the country gained a fitting political revenge in 2008 when the members of the Constituent Assembly proposed a referendum on a law expressly guaranteeing the fundamental rights of nature. Article 71 of the Ecuadorian Constitution now sets out that «Nature, or *Pacha Mama*, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes".

UNIVERSAL DECLARATION OF THE RIGHTS OF MOTHER EARTH

Many citizens' movements are now hopeful that a new international legal order will be established on the basis of the fertile ground created by the recognition of the rights of *Pachamama* in Ecuador.

Disappointed by the lack of progress made during the international negotiations of the Copenhagen Summit on climate change in 2009, civil society organisations held a global summit in Cochabamba on 19-22 April 2010 at the invitation of Bolivian President Evo Morales.

The meeting brought together 35,500 participants of 147 different nationalities, including 47 official delegations of government representatives, the Bolivian and Venezuelan presidents, Evo Morales and Hugo Chavez, the vice-presidents of Cuba and Burundi, as well as numerous international organisations, including the United Nations Secretariat.

[11] Tamaqua Borough Ordinance no. 612 of 19 September 2006.
[12] In Wake of toxic dumping, Tamaqua Borough passes Rights of Nature ordinance, USA. In the Global Atlas of Environmental Justice, 2019.

The Universal Declaration of the Rights of Mother Earth was the result of intense work and has become the reference text for the rights of nature. The text incorporates several of the movement's key reflections. It recognises Mother Earth as an "indivisible, living community of interrelated and interdependent beings with a common destiny".

From this point of view, there is no conflict between human rights and the rights of nature. To the contrary, those drafting the text recall that, in order to guarantee human rights, it is essential to recognise and defend the rights of Mother Earth and all the living beings that it comprises.

The heart of the Declaration lies in two central articles: Article 2, that defines twelve intrinsic rights of Mother Earth, and Article 3, that sets out the thirteen duties of human beings towards this living community.

This text, enhanced by the cosmovision [13] of Indigenous peoples and a holistic vision of the relationship between humans and nature [14], goes beyond the intention expressed by Christopher Stone. Granting legal status to natural elements, which is the central concept upon which the legal thinking is based, is a much more incidental aspect, the practical consecration of a profound philosophy that encompasses the human in nature. Consequently, "the inherent rights of Mother Earth are inalienable in that they arise from the same source as existence. Mother Earth and all beings are entitled to all the inherent rights recognised in this Declaration without distinction of any kind, such as may be made between organic and inorganic beings, species, origin, use to human beings, or any other status." (Article 1 of the Universal Declaration of the Rights of Mother Earth).

This text was a genuine trigger for the rights of nature movement around the world and inspired many other states, communities and associations to follow suit.

Source: © Freepik

[13] "Cosmovision is a term increasingly used to designate visions of the world and the life of various cultures in which non-human terrestrial and other extraterrestrial elements, in the literal sense, are not only present in cosmogonies and founding myths, but also hold a real place in contemporary culture, affecting the social organisation and day-to-day life of the groups concerned." (Belaïdi, 2005).

[14] A broad interpretation of the relationship between humans and nature, which is not reduced to utilitarian or economic aspects, but which includes an analysis of interdependence on spiritual, biological and social levels.

The differences between the rights of the environment and the rights of nature

Although Christopher Stone did not discard the philosophical dimension of his proposal, and also touched on the psychological and psychosocial aspects of recognising the rights of nature in an anthropocentric Western society, the movement is resolutely committed to reconsidering the human-nature relationship, supported by a form of legal animism, as expressed by Doctor of Law Marie-Angèle Hermitte, Honorary Research Director at the CNRS and Director of Studies at the École des Hautes Études en Sciences Sociales. She states that the legal development designed to qualify natural entities as subjects of law can be called "legal animism". Of this, there are (at least) "two very different traditions: the historical animism of Indigenous peoples on the one hand, and a scientific animism on the other, which encourages legislators and judges to recognise, through the needs of this or that species or ecosystem, the necessity for human societies to act with these needs in mind"[15].

Marie-Angèle HERMITTE

Marie-Angèle Hermitte is a pioneer of the rights of nature in France and reasons that Western law and its construction tend to rely on "a scientifically-based animism"[16] by defining a set of standards that aim to protect nature, established on the basis of scientific knowledge[17] (good ecological status, list of protected species, etc.). The mission of these standards is to protect nature, whereas the animism of Indigenous peoples, through custom and spiritual links, ensures this protection without the need for justification on scientific grounds.

We will draw a distinction here between the development and practice of the rights of nature in Indigenous traditions and among the first peoples and the development of the rights of nature in the Western world.

1 / THE RIGHTS OF MOTHER EARTH, USES AND MOBILISATIONS

In several territories where the policies of assimilation or colonial exploitation have imposed a reorganisation of traditional society, the legal tool of the rights of nature has been used as an implement in the struggle to bring together decolonial and ecological visions.

Indeed in many Indigenous societies, the "nature-culture" divide that anthropologist Philippe Descola has made his subject of study does not exist. And neither does the term "nature" itself. Non-human entities, whether living or not, are considered as beings with which humans cultivate different relationships.

[15] *Agir en justice au nom de la nature* [Legal action on behalf of nature], Marie-Angèle HERMITTE, Colloque Agir en justice au nom des générations futures [Colloquium: Legal action on behalf of future generations], 17-18 November 2017.

[16] *Artificialisation de la nature et droit(s) du vivant* [The artificialisation of nature and the rights of living entities], Marie-Angèle Hermitte, 2017.

[17] With regard to current regulations, it is nevertheless important to specify that the role of science is often discarded to primarily take account of economic and industrial needs.

> “The Achuar treat plants and animals like people”
>
> *Philippe DESCOLA*

In this way the Andean cosmovision uses the term *Pachamama* to describe Mother Earth, the maternal guardian of everything that makes up the world, who can be both fertile and destructive.

Philippe Descola has studied the culture of the Achuar people and in *Les Lances du crépuscule* (Plon, 1993) recounts the spiritual filiation of Achuar humans – who call themselves the "People of the water palm" – with the plants and animals of the forest. This relationship goes beyond the barriers of species. It involves many prohibitions and proscribed behaviour within these societies and a social construction based on common usage rather than the exclusive appropriation of land.

The *Pachamama* rights movement emerged from this fertile ground, very close to the ideas of the personalisation of living things, but above all in reaction to neocolonial policies and the threats they represent to the rights of Indigenous peoples and the preservation of traditional living environments.

In Ecuador, this movement has, in particular, been carried forward by Sarayaku leaders, who have mobilised to pursue recognition of the rights of their ancestral forest. They made the *Kawsak Sacha* (Living Forest) Declaration in 2018, seeking the recognition of their territory as a living entity that is subject to rights in order to counter oil industry development. Women such as the activists Nina and Helena Gualinga are pursuing the struggle in a modern way, notably through social media and the international press.

Other activists throughout South America are adopting terminology that reflects their relationship with Mother Earth. In Brazil, the activist and now Minister for Indigenous Peoples, Sônia Guajajara fights for the rights of the first peoples who were victims of colonisation, while making the link to environmental causes, asserting that "The fight for Mother Earth is the mother of all fights!"[18].

Source: Sônia Guajajara in 2019 / https://commons.wikimedia.org.

[18] The Fight for Mother Earth is the Mother of all Fights, Rainforest Foundation, Norway, 2 March 2023.

In the United States, the movement has made progress in particular through the efforts of Indigenous peoples who have been victims of colonisation and had their territories threatened by numerous oil and mining projects. Activists such as filmmaker Tom Goldtooth of the Diné (Navajo) people, who is also director of the Indigenous Environmental Network, and Casey Camp-Horinek, an actor, environmental activist and elected representative of the Poncas Nation of Oklahoma, are well-known, respected faces in the global movement for the rights of nature. Their battles, notably against the Keystone XL pipeline and the Standing Rock oil pipeline, illustrate a struggle that combines: the defence of Indigenous peoples' rights in view of colonisation; the mobilisation against the destruction of Indigenous culture and sacred sites; and the fight to defend Mother Earth.

Many Indigenous reservations and municipalities have recognised the rights of nature. Examples include the Council of the White Earth Band of the Ojibwe Nation in Minnesota which adopted a law in 2018 to recognise the rights of the Manoomin, a wild rice species that is fundamental to their identity and traditions[19]. The Yurok First Nations Council passed a resolution in May 2019 to establish the rights of the Klamath River in the State of California[20].

The process is similar in India; Vandana Shiva, an Indian writer, militant ecofeminist and environmental activist, is part of the movement for the rights of nature. This emphasises the intrinsic link between the struggle against the capitalist colonial model (notably patents on living things, GMO seeds) and the patriarchy, calling for all models of domination to be considered and deconstructed. Instead of the term rights of nature, Shiva prefers to use the term rights of Mother Earth (see her interview in part 2, case no. 9). This is based on the Sanskrit concept of *Vasudhaiva Kutumbakam*, which means "the world is a single family" or "the earth and living beings on it form a single family". Once again, these concepts describe the filial relationship between these peoples and their environment, reflected in the sacred nature of numerous rivers such as the Ganges. This is why the first jurisprudence based on the rights of nature was founded on the spiritual link between Hindus and nature.

A similar reflection is being carried out in various African states and territories. In 2012, Benin became the first nation to adopt an interministerial decree to protect sacred forests[21] following initiatives by society to protect "sites where gods, spirits and ancestors reside". Local communities are given responsibility and act as guardians of the optimal ecological management of the locations in question.

This movement has also been evident in Kenya since the same year, with the publication of a report by the Gaia Foundation, produced in conjunction with the African Biodiversity Network and the Institute for Culture & Ecology. The report, written by Adam Hussein, puts forward legal recommendations to strengthen the community protection of sacred natural sites in accordance with customary systems of governance. It also sets out potential approaches for the Kenyan state to recognise the Jurisprudence of the Earth (another expression used by the movement for the rights of nature) and engage in drawing up laws to radically reshape environmental management. The report is fully in line with the legacy of Wangari Muta Maathai (Green Belt Movement, Nobel Peace Prize laureate), Ng'ang'a Thiong'o (Kenyan activist, co-author of the book Exploring Wild Law – The Philosophy of Earth Jurisprudence, 2011) and Kariuki Thuku (environmental activist with the Porini Trust).

[19] Rights of Manoomin (Wild Rice). White Earth Law and Enforcement case. Center for Democratic and Environment Rights, 2021.
[20] The Klamath River now has the legal rights of a person, High Country News, 24 September 2019.
[21] Interministerial Decree of 16 November 2012, Benin.

Uganda underwent its own transformation in 2019, adopting an environmental protection law that recognised the fundamental rights of nature (see part 2, case no. 15), while a customary law added the local protection of sacred sites to the legal repertoire (see part 2, case no.16). This differentiated approach at national and local levels illustrates the cultural gap between regional structures that try to keep pre-colonial customs alive and a national law that, despite certain progress, remains ineffective, as sadly illustrated by the case of TOTAL's Tilenga oil drilling project in the heart of the Murchison Falls National Park.

The recognition of the rights of Indigenous peoples, Mother Earth and sacred sites has encountered a major obstacle: the productivist political agenda and economic dogma of growth promoted by many countries, particularly in the West.

2 / THE USE OF THE RIGHTS OF NATURE IN THE WESTERN WORLD

Faced with the failure of current environmental law, a number of initiatives in favour of the rights of nature are being advocated by various players, including elected representatives, governments, associations, communities, etc. These initiatives are multifaceted and often originate in areas where ecological scandals add to anger at weak, inadequate and even unfair environmental justice that protects those responsible for environmental damage from any recourse or sanction..

A prime example of this kind of situation occurred in the United States. Residents of the city of Toledo, Ohio (population 600,000) mobilised following serious, repeated pollution of Lake Erie. The health of the lake had been affected for some ten years by the proliferation of blue-green algae (cyanobacteria) which mainly develops as a result of phosphorus from urban and agricultural pollution, also resulting in threats to the supply of drinking water. Following a campaign by Toledoans for Safe Water supported by the Community Environmental Legal Defense Fund (CELDF), a local referendum held on 26 February 2019 resulted in a 61.37% vote in favour of the adoption of the Lake Erie Bill of Rights. One of the aims of this text was to allow legal action to be taken against polluters on behalf of the lake, thus ending their impunity. However, in the summer of 2019, an amendment to the Ohio State budget law promoted by the Chamber of Commerce thwarted the initiative by decreeing that: "Nature or any ecosystem does not have standing to participate in or bring an action in any court of common pleas." This case is a banal illustration of the political balance of power that currently exists, preventing this legal transition in order to protect private economic interests (see part 2, case no. 24, Lake Erie, USA).

A similar case had a more promising outcome in Spain.The Mar Menor lagoon had been affected by the growing impact of human activities since the 1960s, due in particular to urbanisation and the intensification of farming. This led to run-offs of nitrates, pesticides and fertilizers, causing the increases in phytoplankton and the eutrophication of this fragile ecosystem. After several episodes of mass fish die-offs in the Mar Menor, the historical and cultural attachment of residents to this ecosystem, considered to be part of the local heritage, led them to take action. A collaboration of neighbourhood associations, environmental organisations, professional groups and cultural foundations demanded that measures be taken to restore and preserve the lagoon. A popular legislative initiative was launched using a mechanism of participatory democracy.This allowed citizens to present a proposed law to

Source: Green algae at Mar Menor lagoon / https://www.shutterstock.com (Sarnia).

Parliament if they could collect over half a million signatures. Mar Menor obtained over 615,000 signatures in favour of the recognition of its rights. The Spanish Senate finally approved the "Mar Menor Law" on 30 September 2022. This law defined the fundamental rights of this ecosystem and provided it with a new representative body to guarantee respect of its needs and interests (see part 2, case no. 23, Mar Menor).

It should be noted, however, that recognition of the rights of nature does not mean adopting texts that erase the pre-existing legal framework. Instead they are additional rights that aim to complement, or indeed correct, environmental law and its anthropocentric structural imbalance. Moreover, by adding a new category of natural entities that are subjects of law, the rights of nature do not deny or diminish the scope of protection of human rights, but rather contain human activities that are incompatible with the conservation of all living things, all species, within the biological limits of the biosphere.

Marine Calmet

President of the NGO Wild Legal

Examples of local initiatives

This section presents a wide range of cases, initiatives and achievements in the field of the rights of nature.

It covers many of the geographical regions in which AFD is active (including French overseas territories), as well as some striking examples from the Global North, to illustrate the progress of the rights of nature around the world.

The cases listed describe the legal and cultural features of the emergence of the rights of nature in each territory. These cases highlight the traditional knowledge and practices that allow respect for biodiversity and encourage development that does not exceed the planet's limits.

2 Examples of local initiatives

Central and South America


Panama
8
Colombia
5
6
7
Costa Rica
Ecuador
1
2
3
Ecuador and Peru
4

1

Ecuador

New Constitution 2008

LOCAL CONTEXT

Ecuador is a country that has experienced and continues to experience periods of major political instability. In 2008, Ecuadorians were called to vote on a new Constitution announced by the then President Rafael Correa as a new chapter in the history of this territory deeply scarred by a decade of conflicts and crises.

A Constituent Assembly was appointed following a referendum held in April 2007. Largely consisting of representatives of the ruling party and other allied parties on the left, this Assembly focused on ten key areas including the protection of health and the environment.

The new Constitution, approved by 64% of voters, would mark a turning point towards a strong State and challenge the neo-liberal view of the previous Constitution in favour of more fundamental rights. These notably aimed at integrating plurinationalism, a concept supporting the inclusion of Indigenous people and the Andean tradition.

HUMAN AND ENVIRONMENTAL ISSUES

This process was a response to the devastation to health and the environment caused by extractive industries such as oil and mining. Some of the most severe damage suffered by the country was caused by oil giant Texaco Chevron. For almost three decades between 1965 and 1992, the company drilled 350 oil wells in the Amazon region of Oriente, in the north of the country. UDAPT, a victims' association made up of the Siona, Siekopai, Cofan, Kichwa, Shuar, Al' Kofan and Waorani Indigenous groups as well as peasant communities, accuses the company of massive pollution of the land and water as well as poisoning 30,000 inhabitants.

Litigation began in 1993 but, despite extraordinary legal battles, no decision has been reached to impose the restoration of the ecosystems or ensure compensation of those wronged.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

Fundación Pachamama developed legal proposals at the request of members of the Ecuadorian Constituent Assembly with the aim of avoiding the recurrence of the damage caused by the criminal actions of multinationals. The elected officials proposed a draft constitutional text to citizens, expressly guaranteeing the fundamental rights of nature.

This was adopted by a large majority of the Ecuadorian people by means of a referendum. Far from the whim of a few lawyers passionate about the environment, this was a new Constitution adopted by the people with the intention of making a clean political break with the past.

"Today, Ecuador has decided on a new nation. The old structures are defeated. This is the confirmation of the citizens' revolution," declared incumbent President Rafael Correa.

> **"Ecuador has decided on a new nation... This confirms the citizens' revolution"**
>
> *Rafael CORREA*

Source: https://fr.freepik (vecstock).

RIGHTS GRANTED TO NATURE

Preamble

We, the sovereign people of Ecuador [...]

Celebrating nature, the Pacha Mama *[Mother Earth], of which we are a part, and which is vital to our existence,* [...]

And with a profound commitment to the present and to the future,

Hereby decide to build.

A new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the sumak kawsay.

Article 10

Nature shall be the subject of those rights that the Constitution recognises for it.

Chapter 7 Rights of nature

Article 71

Nature, or Pacha Mama*, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.*

All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.

The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.

Article 72

Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.

In those cases of severe or permanent environmental impact, including that caused by the exploitation of non-renewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences.

Article 73

The State shall apply preventive and restrictive measures to activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles.

The introduction of organisms and organic and inorganic material that might definitively alter the nation's genetic assets is forbidden.

Article 74

Persons, communities, peoples, and nations shall have the right to benefit from the environment and natural resources enabling them to enjoy a good way of living.

Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

Each citizen is given the opportunity to take legal action when the rights of nature are threatened.

It is often through *amicus curiae*[22] that Ecuadorian organisations such as the Pachamama Alliance or the Global Alliance for the Rights of Nature intervene in legal procedures or provide the court with insight in support of the rights of nature.

This legal transformation has been a slow and in-depth process. Far from overwhelming the courts, only around 50 cases in 13 years have relied on the constitutional basis of Article 71 et seq. It is a procedure used sparingly and carefully by local organisations.

> **"Each citizen is given the opportunity to take legal action when the rights of nature are threatened"**

Source: https://www.pachamama.org.ec/en/about-us/

[22] The expression *amicus curiae* comes from the Latin for "friend of the Court". It refers to a procedure by which an expert or an organisation that is not directly linked to the applicants or defendants in a trial, offers information or expertise to the judges with the aim of shedding light on the case, in the form of a brief. The judges have the option of dismissing or using this external intervention.

INTERVIEW WITH ACTOR IN THE FIELD

Natalia Greene

Political scientist, Vice President of CEDENMA and Director of GARN-Global Alliance for the Rights of Nature.

CEDENMA's mission is to gather and politically represent the collective interests of Ecuadorian environmental non-government organisations whose goals are to conserve nature, protect the environment and promote and implement the principles of sustainable development.

GARN is a global network of organisations and individuals committed to the universal adoption and implementation of legal systems which recognise, respect and enforce the "rights of nature"..

When the new constitution was being drafted, I was working on the Yasuni ITT initiative. This aimed to preserve Yasuni National Park by foregoing the exploitation of oil reserves in the ITT area (Ishpingo-Tambococha-Tiputini).

As environmental organisations, both CEDENMA and its member organisation the Fundación Pachamama, with whom I was working at the time, were expected to provide the members of the Constitutional Assembly with environmental information and proposals relating to mineral extraction, fishing and dozens of other subjects. It was here that the subject of the rights of nature emerged in discussions. The Constitutional Assembly was desperately searching for new concepts to respond to the needs of a State destabilised by years of liberal policies, environmental destruction and political instability.

The previous Texaco Chevron scandal and the ongoing campaign against fossil fuel exploitation in Yasuni National Park created the ideal backdrop for making proposals which would radically alter the course of events.

The members of the Constitutional Assembly were highly receptive to our message, in which we highlighted our responsibility to the Ecuadorian people, in particular to the Indigenous population and their view of the world.

We therefore brought together international allies who had made some progress on the matter, as well as Ecuadorian experts, such as lawyers and Indigenous people. Although they were not necessarily well versed on the rights of nature, they understood the concept and recognised the underlying problems caused by an unbalanced relationship with nature when it is treated as an object rather than an entity with rights. We had lawyers such as Mario Melo on board, who had worked on the Sarayaku case [violation of the rights of the Indigenous people of Sarayaku by an oil company operating on their land] and other researchers, but the subject of the rights of nature was entirely new to us, so we started by exploring this topic.

Source: Photo Natalia Green / http://www.harmonywithnatureun.org/profile/

The only precedent we had was the borough of Tamaqua in Pennsylvania, USA, which in 2006 banned the discharge of toxic sewage sludge in its jurisdiction and became the first place in the world to recognise the rights of nature in a local ordinance. This case allowed us to prove that the idea was feasible and that it had been implemented elsewhere in the world.

We had conducted research and called on international experts. This allowed us to create our own interpretation, to adapt this idea to pre-existing cultural elements, in particular the Pachamama, as well as to the political context.

This was well received, particularly because it coincided with the idea of creating a more democratic instrument which would include the Indigenous world view. It also offered a response to certain strong voices in the Constitutional Assembly which were supportive of the concept of plurinationalism as a means of finding harmony between Indigenous people and other cultures. As the Indigenous Kichwa culture is very strong, it has permeated the general culture of the country.

Our country comprises 14 nationalities in total. The acceptance of the concept of Pachamama has therefore been a slow and progressive process.

Each individual, association or collective will now be able to act to defend the rights of nature, without having to justify it as a personal violation. The Ombudsman[23] is also available to support citizens and organisations who choose to take action.

I have noticed that in the majority of cases we have followed, it is groups of people supported by NGOs or technical experts and local communities who take action, never solely an individual, and certainly not a company.

CEDENMA takes action in two ways: either by directly approaching the courts through strategic litigation, or through *amicus curiae* interventions providing the judge with expert advice.

When cases are brought to court by other NGOs, we support them financially or by providing them with expertise or communications resources.

We have won numerous cases since 2008. Highly progressive judges presided over the Constitutional Court between 2019 and 2022. Unfortunately, two new judges are drawn by lot every two years, and we have lost two very progressive judges. This has led to a decline in progress in cases related to the rights of nature, but we hope that the new Court will continue the work started by the previous Court.

We must remember that in Ecuador we have been given an extraordinary opportunity. The possibility of changing the Constitution depends hugely on the context; this is certainly not universally reproducible. The stars have aligned, **which does not mean that this cannot happen elsewhere; on the contrary, there are numerous cases relating to the rights of nature around the world today, but each is a response to local circumstances.**

[23] "Ombudsman" is a Swedish word meaning "citizen representative", translated as Defensoría del Pueblo in Spanish.

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

Nature is the subject of the rights recognised for it by the Constitution.

Opportunities

The people have accepted the rights of nature and civil society understands how to use them to actively defend the interests of nature.

Weaknesses

Ecuador is a country very rich in mineral resources, which creates numerous disputes due to the desire to extract profit from these resources, even when their exploitation is at odds with the rights of nature.

Threats

There is still pressure to criticise the Constitution and this could be a threat to the rights of nature in the case of political change. However, given that the principle of non-regression is written into the Constitution, the country is not likely to abolish the articles on the rights of nature.

GOOD PRACTICES AND REPLICABILITY

Cultural and political context is crucial when evaluating the feasibility of obtaining recognition for the rights of nature. A union between local culture and identity (*Pachamama* and other cultural markers of Indigenous identity) and political momentum (change of ruling party, political will for reform) are the elements which could greatly assist such an in-depth legal and environmental transition.

2

Ecuador

Los Cedros Ruling, 2021

LOCAL CONTEXT

In 2017, the Ecuadorian government announced new concessions for mineral exploration and a revision of fiscal policies to introduce financial incentives for investors in the mining industry. A great number of the concessions awarded were located in protected forests and Indigenous territories with extremely biodiverse ecosystems [24].

On 3 March 2017, the Ecuadorian government granted two mining concessions to the Ecuadorian state mining company (ENAMI) and Canadian mining firm Cornerstone Capital Resources. The exploration project, named Río Magdalena, is located in the Los Cedros Protected Forest in the Llurimagua region of Cotacachi in the north of Ecuador. The 36 km² of land awarded in the concession covers 68% of the Los Cedros Forest, even though this site is part of the "priority areas for biodiversity conservation in Ecuador".

HUMAN AND ENVIRONMENTAL ISSUES

The Los Cedros Reserve, in northwest Ecuador, comprises more than 4,800 hectares of forest, of which 85% is primary tropical forest. According to information provided by the journal Tropical Conservation Science [25], the Los Cedros Forest lies at an altitude of 980 to 2,200 m, making it a lower montane rainforest, also known as a "cloud forest". As the forest is highly inaccessible, its integrity had up until then been largely protected, which explains its strong biodiversity. It is home to 178 threatened or near-threatened species, some of which are in danger of extinction.

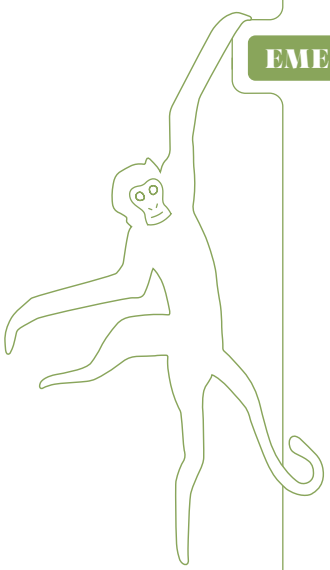
[24] Source: *https://loscedrosreserve.org/*

[25] Roy B.A., Zorrilla M., Endara L., *et al.* "New Mining Concessions Could Severely Decrease Biodiversity and Ecosystem Services in Ecuador", Tropical Conservation Science, 2018.

Notable examples include three species of monkey: the critically endangered brown-headed spider monkey, the endangered mantled howler monkey and the white-faced capuchin. Los Cedros is also home to jaguars and is classified as a hotspot for birds with 309 species, of which at least 26 are endangered. The cloud forest is also a vital habitat for the conservation of amphibians, including some species which have not been found anywhere else. The list of animal and plant species is long.

However, mining activities are notoriously incompatible with the preservation of natural habitats and their good ecological status. The exploration and exploitation of metal mines causes massive deforestation, ecological fracturing in order to open trails, disruption of the water cycle, considerable water and noise pollution and many other anthropogenic stressors resulting in major damage to biodiversity. The mining concessions covering 68% of the Los Cedros Forest would therefore have had a significant impact on this unique ecosystem.

The canton and local organisations also pointed out that the inhabitants had not been duly informed in advance of these concessions being awarded, which violated their right to free, prior and informed consultation.



EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

On 5 November 2018, Cotacachi canton filed an action for injunctive relief before the Cotacachi canton court, aimed at the revocation of mining permits, alleging the violation of the constitutional rights of nature and the status of the protected Los Cedros Forest, as well as the violation of the obligation to consult local communities.

The cantonal judge immediately rejected the action.

However, following an appeal, on 19 June 2019[26], Imbabura Provincial Court accepted the action in part, as there was found to be a violation of the obligation to consult the local population. The judges revoked the previous ruling as well as the environmental permit allowing ENAMI and Cornerstone to conduct explorations in the Los Cedros Forest. However, the judge ignored not only the arguments concerning constitutional protection of the rights of Pachamama and the prohibition of mining activities in protected forests, but also the arguments relating to human rights, notably the right guaranteeing access to clean water.

One final attempt before the Constitutional Court led to a landmark victory being announced on 10 November 2021 with the canton of Cotacachi winning the case[27].

The Constitutional Court of Ecuador recognised that the mining exploration permits granted by the government, covering around two thirds of the forest, were unconstitutional and violated the rights of nature which are protected by the country's Constitution.

[26] Rainforest Action Group, Los Cedros court win, 2019.
[27] The full decision is available in English on the GARN website (www.garn.org).

Source: Los Cedros Reserve / Flickr.

The Court stated that the government had not provided sufficient evidence to demonstrate the compatibility of the mining activities with the protection of this fragile ecosystem. In the absence of a satisfactory environmental study, the highest court in the country ruled that these projects were incompatible with the right to existence and regeneration of the Los Cedros Reserve.

The Court further reiterated that the absence of prior environmental studies and consultation of local communities by the government violated the rights of these communities to water, a healthy environment and prior consultation.

The objective of this jurisprudence is to recall the constitutional obligation to protect the rights of nature which consequently also requires the State to put a stop to human activities, notably mining, which should not be pursued in territories where biodiversity and ecological balance are threatened.

RIGHTS GRANTED TO NATURE

Concerned by the rejection of the case at the first instance before the cantonal court, which made no ruling on the question of respect for the rights of nature, the judges of the Constitutional Court reiterated in their decision that "the rights of nature, like all the rights established in the Ecuadorian Constitution, have **full normative force**. They **do not constitute mere ideals** or rhetorical statements, but rather **legal mandates**. Thus, in conformance with Article 11, paragraph 9 [of the Constitution], integrally respecting and ensuring respect for these rights, along with all the other constitutional rights, is **the highest duty of the State**."

The judge pointed out that public entities are called upon to respect the rights of nature in Article 84 of the Constitution: "respect for the rights of nature also includes the duty of every entity with regulatory power to formally and materially adapt said norms to these rights, as well as to all the other constitutional rights".

The duty to act respectfully towards the rights of nature equally applies to private individuals, who are also compelled by the Constitution to preserve a **healthy environment and the rational, sustainable use of natural resources** (Article 83 of the Constitution).

The judge also recalled that **the application of the rights of nature is direct**, which means that "the rights and guarantees that the Constitution recognises for nature are directly and immediately applicable by, and before, any public servant, whether administrative or judicial, ex officio or at the request of a party".

This protection of the rights of nature also extends to cases of legal uncertainty, as provided by the ***in dubio pro natura*** principle: "when in doubt about the specific scope and exclusive nature of environmental legislation, it should be interpreted in the manner most favourable to the protection of nature".

The judge pointed out that according to the basis of Article 71 of the Constitution recognising the rights of the *Pachamama*, Mother Earth, "the central idea of the rights of nature is that nature has **value in itself** and that this should be expressed in the recognition of its own rights, **regardless of the utility that nature may have for human beings.**"

The ruling highlights that this is "a systemic perspective that protects natural processes for their own value. Thus, a river, forest or other ecosystems are seen as systems of life whose existence and biological processes merit the greatest possible legal protection that a Constitution can grant: the recognition of inherent rights to a subject. "

To apply this to the Los Cedros Forest case, the judge distinguished between the **general recognition of the rights of nature assured by the Constitution** and the **specific rights** which can be **afforded to particular ecosystems**. In the case of the protection of a natural entity, no specific recognition is necessary (by way of a law or regulation, for example), but the regime of protection should be configured in a manner appropriate to the holder of rights, whether it is a forest, mangrove or river.

Accordingly, the judge specified that the right to the reproduction of cycles of life afforded to the *Pachamama* in the Constitution is defined based on the threshold of ecological tolerance of the ecosystem, i.e. the status of the environment whose basic characteristics have not been altered beyond what is optimal for that system. "For each particular characteristic of the environment (amount of rain, humidity, solar radiation, etc.), there are limits beyond which organisms can no longer grow, reproduce and, ultimately, survive".

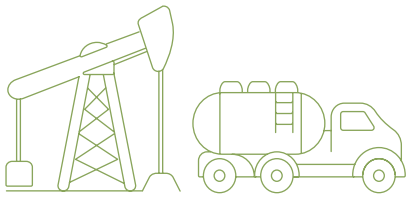
Aware of the paradigm shift that recognising the inherent rights of nature implies, the Constitutional Court highlighted that this was a major breakthrough since historically, "the law has functioned for the instrumentalisation, appropriation and exploitation of nature as a mere natural resource".

However "to **harmonise relationships with nature**, it is the human being who must adequately adapt to natural processes and systems, hence the importance of having scientific and community knowledge, especially Indigenous knowledge due to their relationship with nature regarding such processes and systems".

In its conclusion, the Constitutional Court stresses that "the rights of nature protect ecosystems and natural processes for their intrinsic value, thus complementing the human right to a healthy, ecologically balanced environment".

The Constitutional Court ordered the State and in particular the Ministry of the Environment to repair the damage caused. The following measures were announced:

- **A ban on all activities that threaten the rights of nature** in the protected Los Cedros Forest, including mining activities;
- **The annulment of environmental** and water **permits** granted to operators;
- An order for companies to cease their activities, **remove infrastructure and reforest** areas which have been deforested by such infrastructure or the opening of trails;
- An order for the Ministry of the Environment, in coordination with the canton of Cotacachi, to **take all necessary measures** to respect the rights of nature;
- An order for the Ministry to assist, within six months, in the preparation of a **participatory plan for the management and care** of the forest alongside local communities and under the supervision of the Ombudsman;
- This plan should cover numerous aspects, including the restoration of impacted sites, the prevention of illegal mining activities and the promotion of economic activities in harmony with the rights of nature.



In order to avoid repetition of this scenario, the Constitutional Court ordered the following measures:

- The **revision of the regulatory provisions** corresponding to the issuance of environmental permits for extractive activities in order to avoid new violations of the rights of nature;
- The Ministry shall disseminate this ruling and **train officials** in charge of issuing environmental permits on the parameters of the decision;
- The **Judiciary Council** shall disseminate this ruling among the members of the bar in order to inform the body of lawyers;
- The **Ombudsman** shall be responsible for verifying compliance with the decision on site.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The **canton of Cotacachi** is the local community impacted by the mining activities which pursued legal action against the granting of environmental permits and mining concessions on behalf of its inhabitants.

The Los Cedros Reserve Research Centre brings together biologists and other researchers involved in the study and preservation of the ecosystem.

These two entities led the fight locally with the affected communities and brought it to the highest judicial authority.

The **Ministry of the Environment** is responsible for the implementation of the management plan.

Source: Exploitation – Stock Photos (Bim).

INTERVIEW WITH ACTOR IN THE FIELD

Elisa Levy

Biologist working on conservation and research projects in Ecuador. She has been a research coordinator at the Los Cedros Scientific Station since 2017.

When I started working on the Los Cedros Reserve, I was mainly interested in its biodiversity. However, I slowly grew to realise that it was one thing to have areas of great biodiversity to explore and study, but that it was also necessary to be aware of the threats to these areas, such as mineral exploitation, which take a heavy toll on the environment.

In Ecuador, only 4% of primary montane forest is still intact. Although initially, it was agricultural activity that contributed significantly to deforestation, it is now mining companies that represent a major threat to these ecosystems.

We "got lucky" in the Los Cedros case when it was selected by the Constitutional Court of Ecuador in 2020. Verdicts issued in selected cases set standards of general application (*erga omnes* effect[28]). This allowed our case to be picked from the long list of cases waiting to be heard by the Constitutional Court. Unfortunately, other actions against permits for mineral exploitation have not received the same attention and are still awaiting judgment.

In the first instance (district court), the judge was contemptuous of us. He was very biased and refused to listen to the *amicus curiae*. He was completely closed off to the idea of the rights of nature. In the second instance (provincial court), the judges proved more understanding, agreeing to travel to the site and visit communities around Los Cedros to confirm with the residents that no consultation had taken place.

This was an important point, as the company asserted that there had been no violation of the right to consultation of these communities. The judge emphasised that all Ecuadorian citizens have the right to be consulted on any activity likely to have an impact on their environment, and that this right had not been respected.

The Constitutional Court stressed that the rights of nature are constitutional and that they had been violated in this case. This led to a strict cancellation of permits and to actions ordered by the judge to avoid these illegal moves being repeated in the future.

[28] Center for Environmental Rights, Press Release: Rights of Nature Victory in Ecuador – Los Cedros Case – Constitutional Court Upholds Rights of Nature, December 2021.

Alongside other local actors, we have assisted in the joint preparation of the management plan ordered by the judge. The Ministry of the Environment hired a consultant to carry out this work and many discussions have taken place since 2022. Local actors have made recommendations, but the plan has not yet been finalised. It is expected to be published some time in 2023.

It is a very good sign that the verdict was in favour of the management plan, as we had already worked to update it prior to the arrival of the mining companies. However, I am a little disappointed that the management plan does not recognise the role of the Scientific Station, particularly the part it played in the preservation of the forest. We will be careful to ensure that management is shared with the local communities through the creation of a joint management committee. What concerns me is that rules need to be in place to avoid conflicts of interest (with mining companies) and that anyone could infiltrate the joint management committee.

Finally, we note that the government has not adapted its policy on granting mining permits. On the contrary, the new president, Guillermo Lasso, has adopted presidential decrees which support the protection of mining interests. The armed forces have also been authorised to use force to protect the mines in light of the 2022 protests. To me this shows that the government is prioritising economic interests over what is best for the people.

The mining register has also not been updated since 2018, which casts major doubt on the real extent of concessions. This issue became a major issue of debate among the population during last year's protests (2022). Activists are demanding that no more licences should be granted for mineral exploitation until the current issues have been resolved.

I also think that this kind of decision is a genuine source of hope for the people. We have worked hard to achieve this ruling and have reported it widely, and this will allow others to persist and continue their fight. It is a very important victory in this regard.

Those involved in the campaign are very active in the National Anti-Mining Front and organise collectively to respond to mining projects and identify common strategies. We are therefore working together to protect the rights of nature and human rights thanks to new synergies.

"Our land is not for sale"
Protest by Waorani women against new oil exploration projects.

Source:
Juan Diego Montenegro/ dpa/Alamy Live News

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The Ecuadorian Constitutional Court's ruling provides additional protection for the country's forests regardless of whether they have protected status. In a ruling chosen for its landmark nature, the judge strongly reiterated that the rights of nature are not merely a symbol, but a constitutional principle imposed on all public and private entities in Ecuador. This will have an impact across the entire territory.

Opportunities

The verdict has allowed support for the creation of a management plan in conjunction with local communities in order to avoid this type of situation being repeated in the future and sustainably involving residents in the protection of their land.

Weaknesses

Replicability of the ruling. While the Constitutional Court ordered the dissemination of this decision to the magistrates and the bar association, other jurisprudence shows that the lesson has not yet been learned and that local jurisdictions are still reluctant to apply the rights of nature.

Threats

The lack of knowledge of judges creates some uncertainty over the correct application of constitutional norms. There are numerous disputes in Ecuador concerning mining and oil issues and the authorities seem to have difficulty assessing and effecting radical political change in response.

GOOD PRACTICES AND REPLICABILITY

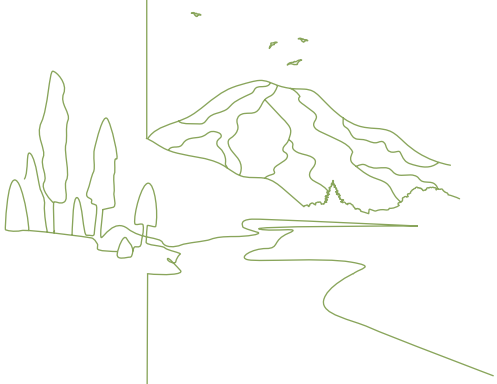
This jurisprudence sets a precedent which will allow the preservation of 186 forests benefiting from protected status in Ecuador, totalling some 2.4 million hectares. This ruling is also an additional legal tool for all forests as the judge pointed out that the application of the rights of nature is not limited solely to forests with protected status (parks, reserves, etc.).

The campaign allowed civil society organisations to rally and organise to establish synergies and common strategies. Although the political situation remains tense, this jurisprudence is certain to gain momentum in Ecuador and elsewhere around the world.

3

Ecuador

The Piatúa River Case, 2021



LOCAL CONTEXT

The Piatúa river flows through the province of Pastaza, in the ancestral territory of the Kichwa people in eastern Ecuador. The Piatúa is a sacred natural entity to the Kichwa communities who live on its banks. Its crystal clear waters rise in the Llanganates National Park.

In 2017, the Ministry of the Environment granted a concession to the company GENEFRAN S.A. and authorised the construction of hydroelectric infrastructure on the Piatúa River in a 40-year project with the capacity to generate 30MW.

The Secretariat of Water and the Sub-Secretariat of Hydrographic Demarcation authorised the diversion of 90% of the flow of the Piatúa River to the Jandayacu River.

HUMAN AND ENVIRONMENTAL ISSUES

The Piatúa River is an ecological corridor and biodiversity hotspot located between the Llanganates and Sangay National Parks.

Scientists have condemned the project, which would greatly affect the ecological balance of the two rivers, and described the environmental impact studies carried out as non-compliant[29].

While the site is home to numerous endemic species, notably orchids and amphibians, the studies appear to be incomplete. The true extent of biodiversity has not been correctly established, but rather underestimated, with numerous species not listed. The environmental permit was issued nonetheless; this decision was justified by alleging poor local biodiversity which led to the conclusion that the site lacked sensitivity to this kind of project.

[29] Antonio José Paz Cardona, *Pleito: indígenas kichwa se oponen a polémica hidroeléctrica en la Amazonía ecuatoriana,* [Legal case: Indigenous Kichwa oppose hydroelectric plans in the Ecuadorian Amazon] Mongabay, 2019.

Source: A march by Indigenous Kichwa. Photo: PUCE Centre for Human Rights.

On the contrary, according to Patricio Meza, biologist at the Central University of Ecuador, the project would change the ecosystem with major implications. "It involves clearing primary forest, it would break up ecological niches and biological corridors. This would alter food webs and species could be displaced which may also accelerate the extinction process for those species which are highly vulnerable to anthropogenic changes"[30].

With regard to the human aspect, the affected Indigenous Kichwa people claim the absence of prior, free and informed consultation.

According to Kichwa leader Christian Aguinda, no consultation took place. Exchanges were limited to promises to supply drinking water and actions to ensure better access to education, but the leader denies any approval of the project by local communities.

"The river is sacred to the Kichwa people"

Christian AGUINDA (Kichwa leader)

In terms of the environmental impact, this dam project represents a threat to the means of subsistence and the traditional and cultural practices of the Kichwa people. Opponents of the project assert in particular that the river is sacred to the Kichwa people, that its stones and waters have healing properties and that the project represents an attack on local **people's right to cultural identity**, people for whom the river ensures the connections between local communities.

The construction of the dam could therefore have negative implications for the economic and food resilience of the Kichwa people, whose way of life depends on the health of the river.

[30] *https://confeniae.net/quienes-somos*

The Ombudsman of Pastaza province also pointed out that the project had not been integrated into the country's energy plan and that it did not respond to any actual need in the territory given that Ecuador generates a surplus of electricity and exports it to Colombia. The construction of this dam and its negative impacts therefore could not be justified in view of an overriding interest.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

On 28 May 2019, a legal action for protection was filed for the violation of the collective rights of the Kichwa people of Santa Clara and the breach of the rights of nature of the Piatúa river.

The parties behind this jurisprudential appeal were:

- The Kichwa communities of Santa Clara
- Fundación Pachamama
- The Pastaza Province Ombudsman's Office
- The Human Rights Centre at the Pontifical Catholic University of Ecuador (PUCE)
- Fundación Río Napo
- CONFENIAE, a regional Indigenous organisation representing around 1,500 communities belonging to the Kichwa, Shuar, Achuar, Waorani, Sapara, Andwa, Shiwiar, Cofan, Siona, Siekopai and Kijus peoples of the Amazon.

The Pastaza Provincial Court dismissed the case at the first instance in a decision dated 25 June 2019, rejecting allegations of the violation of constitutional rights.

However, the Pastaza Province Ombudsman appealed the decision, reaffirming the importance of protecting the Piatúa river and respecting the Kichwa people whose way of life and culture depend on the health of this ecosystem.

Source: Sangay National Park. *https://commons.wikimedia.org* / (Alfredobi)

RIGHTS GRANTED TO NATURE

In a decision dated 5 September 2019, Pastaza Provincial Court accepted the appeal[31], recalling the obligation to respect the rights of nature on a constitutional basis, and also citing the Inter-American Court of Human rights, in particular Article 11.2 of the Protocol of San Salvador.

This Article points out the obligation for member States to ensure the protection, preservation and improvement of the environment, "understood as a right that has both individual and also collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations". It also has an "individual dimension, to the extent that the right to a healthy environment is a human right and that its violation may have a direct or indirect impact on the individual owing to its connectivity to other rights".

The judge noted that by reducing the natural flow of the river to just 10%, the State had "prioritised hydroelectric production over human consumption, violating the right of the riverside communities to food sovereignty and the use of water, affecting their health and also violating the obligation of the State to prohibit the monopolisation or privatisation of water".

The judge rejected the argument of the State and the company in question, in which they claimed to have respected environmental standards, and noted the violation of certain constitutional rights. These included the rights of nature, in particular the right to existence of the river and the maintenance and regeneration of its lifecycles as well as those of the animals that live on the project site and in its area of influence. In the ruling, the judge established the State to be at fault for granting an environmental authorisation without a management plan in place with specific measures for each species in order to mitigate the impact on animals on national wildlife red lists. This violated the precautionary principle and the right to live in a healthy and ecologically balanced environment outlined in Articles 14 and 73 of the Constitution of the Republic.

The judge therefore ruled that the State had not provided evidence that this project guaranteed a use of natural resources that was beneficial to society (in terms of public interest), thereby justifying urgent measures by the State to fully restore the affected ecosystem.

The Pastaza Provincial Court therefore decided:

– to revoke the first-instance judicial decision,

– to recognise the violation of the constitutional rights:

- to a **healthy and ecologically balanced environment** (Articles 14 and 66.27 of the Ecuadorian Constitution),
- regarding **nature** (Articles 71, 73 and 396 of the Ecuadorian Constitution),
- to **water** (Article 12 of the Ecuadorian Constitution),

[31] *https://www.derechosdelanaturaleza.org.ec/wp-content/uploads/2019/08/sentencia-piatua-2da-instancia.pdf*

- to **food sovereignty** (Articles 13, 282 third paragraph of the Ecuadorian Constitution),
- regarding the c**ollective rights of the Indigenous people** (Article 57 figures 1, 5, 6, 8 of the Ecuadorian Constitution),
- to **cultural identity** (Articles 1 and 21 of the Ecuadorian Constitution),
- to **prior consultation** on environmental matters (Article 398 of the Ecuadorian Constitution).

– to cancel the permit to use and exploit the water flow,

– to cancel the environmental licence,

– to order parties with standing to halt the execution of the project until they obtain relevant permits,

– dto order the competent administrative authorities to train their staff in the correct application of the Constitution,

– to order the defendant to accept responsibility and make a public apology to the Indigenous Kichwa people of Santa Clara.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The State, through the Ministry of Electricity and Renewable Energy, responsible for granting the concession.

The Secretariat of Water and the Hydrographic Demarcation of Napo and the Ministry of the Environment and Natural Resources, responsible for granting the permit for the use and exploitation of the water flow to the company GENEFRAN S.A.

Source: Kapawi and Ahucar territory. https://www.cncd.be/Equateur-il-faut-sauver-la-region-region

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The inhabitants rallied together to protect their sacred river, highlighting their culture and drawing on their history, as well as on scientific information.

Opportunities

If the Constitutional Court rules in favour of the rights of the Piatúa and also stresses the obligation for hydroelectric dam projects, this would be a first for the green energy sector in Ecuador.

Weaknesses

The Constitutional Court has not yet ruled on this matter. Although other cases (such as Los Cedros) demonstrate the determination of the Ecuadorian judge to enforce the rights of nature, a victory has not yet been achieved by the plaintiffs.

Threats

Over the past decade, the Ecuadorian government has pursued a major policy to construct hydroelectric dams. However, this initiative has been delayed due to several failures to meet environmental and engineering standards. Climate change could further increase pressure at certain sites, under the pretext of developing sustainable electricity generation as an alternative to fossil fuels.

GOOD PRACTICES AND REPLICABILITY

Local people came together to address the environmental risks of the project, with 19 communities deciding to act immediately to oppose the dam project[32]. Despite the company's strategy to divide residents by promising jobs and economic development in the area, the local people succeeded in demonstrating the failure to respect the protocols for consulting Indigenous people and the project was suspended. Based on the people's local culture and their strong connection to the river, this decision shows the relationship that exists between Indigenous rights, minority rights, human rights and the rights of nature. This type of victory could inspire many more, not just in Ecuador.

[32] *Time, The Fight to Save Ecuador's Sacred Piatúa River, 2022.*

4 Ecuador and Peru
Sacred Headwaters Alliance

LOCAL CONTEXT

The Sacred Headwaters region is located in the east of Ecuador and the north of the Peruvian Amazon. It spans 35 million hectares and is home to 600,000 Indigenous people from 30 nationalities of the Amazon, some of whom benefit from increased protection as Indigenous Peoples in Isolation and Initial Contact (PIACI).

These people inhabited this territory well before the formation of the states of Peru and Ecuador. They have survived numerous crises, notably by means of uniting through local movements of Indigenous organisations which defend the territory and cultural identity (in Ecuador in the 1960s and in Peru in the 1970su[33]).

HUMAN AND ENVIRONMENTAL ISSUES

The Sacred Headwaters region features huge cultural diversity and is highly biodiverse. However, its inhabitants and the environment are threatened not only by the development of industrial, mining and oil projects, but also by road and hydraulic infrastructures, deforestation and intensive agriculture[34]. Besides the threat of direct ecological impacts, the deterioration of Amazonian territories also endangers the food self-sufficiency of local residents.

[33] *https://cuencasagradas.org/nuestra-vision/*
[34] *https://cuencasagradas.org/amenazas-2/*

Source : Julio Cusurichi / https://www.cncd.be/Equateur-il-faut-sauver-la-region

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

In 2017, an alliance of Indigenous organisations in Ecuador and Peru from the Sacred Headwaters region, together with international NGOs, considered a territorial policy at regional level. The common theme was the great rivers of the Ecuadorian and Peruvian Andes.

> **"We have been persecuted for defending the PIACI, but we will not stop"**
>
> *Julio CUSURICHI*

The purpose of this alliance is to execute the Bioregional Plan 2030[35], a document that establishes a development model for the Sacred Headwaters region. It includes economic proposals, a theory of change (new indicators) as well as the development of fiscal, administrative and economic solutions (transport, urban settlements, finances).

Source: Kapawi and Ahucar territory. *https://www.cncd.be/Equateur-il-faut-sauver-la-region*

[35] *Amazon Sacred Headwaters Initiative, Bioregional Plan 2030*, September 2021.

RIGHTS GRANTED TO NATURE

The document's introductory proposals set out the desire to protect "the sacred waters of the Amazon, this cultural and ecological gem, these sacred territories and living forests" and defend them against the industrial extraction of resources in the long term..

Quote: "Indigenous peoples do not talk about conserving nature, we talk about respecting nature because we see her as our family, we see her as the mother, we see her as our home".

According to the plan, the development of the region should be based on the "recognition and respect for Indigenous peoples' collective rights, the rights of nature and the pursuit of collective wellbeing – also known as Buen Vivir or Vida Plena".

The plan states that during the drafting process, consideration was given to respect for human rights, the rights of nature, and laws provided for in international agreements and the constitutions of Ecuador and Peru.

The principles of the rights of nature are also present in the economic, educational and fiscal measures to define new criteria for development.

This is reflected in particular in the "non-commodification of nature" criterion. The plan "recognises that nature is a living being and a right bearing entity and hence, does not consider nature as an object to be traded in carbon markets".

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The project is led by the founding organisations and the leaders and representatives of the Indigenous nations and is organised according to the ancestral wisdom and cosmovision of the Indigenous people represented. It is managed by a **governing council** composed of 27 member organisations[36]. The members meet twice a year to make collective decisions on the allocation of resources and priority strategies. The Governing Council also appointed an eight-member **steering committee** to make operational decisions. This committee meets once a month and includes representatives of the founding organisations: COICA (Coordinating Body of Indigenous Organisations of the Amazon Basin), AIDESEP (Interethnic Association for the Development of the Peruvian Rainforest) and CONFENIAE (Confederation of Indigenous Nationalities of the Ecuadorian Amazon).

[36] https://cuencasagradas.org/wp-content/uploads/2023/02/Brochure_eng_web.pdf

INTERVIEW WITH ACTOR IN THE FIELD

Rodrigue Gehot

Project manager of the Fundación Pachamama Forest Economies Programme.

Many peoples and nationalities around the Sacred Headwaters have a view of the region which is unique to their culture or to their cosmovision, but often still very similar to neighbouring peoples. They are connected by the great rivers whose sources are located in the Ecuadorian and Peruvian Andes, and which are tributaries of the Amazon. This region of headwaters is highly important for its cultural and biological diversity. The threats posed by industrial and mining developments and the vision shared by partners in the field led to the emergence of the alliance, driven by powerful, organised Indigenous networks.

The issue of the rights of nature is key to the Bioregional Plan, both in the expression of a political project and in the choice of themes. This issue is not limited to the principle set out by the Ecuadorian Constitution but more generally corresponds to the vision of the rights of nature held by Indigenous people, supported by the idea that a living environment must be maintained, and that this is sacred and is not merely a resource. This is why the influence of Indigenous culture is so important in this project, as all the concepts of the rights of nature, not just legal, but philosophical and political, allow the vision of the territory to be nurtured and lead to tangible actions for the protection of human rights and the rights of nature. There are therefore no legal actions, but this does not prevent the Bioregional Plan being directly aimed at promoting the rights of nature.

Governance is directly centred on Indigenous leaders, which is fairly exceptional given the unique magnitude of the project. Project partners, such as Fundación Pachamama and the Rainforest Foundation US, as well as other figures, support these leaders in spheres of influence and lobbying when necessary. However, the Ecuadorian and Peruvian States are still a long way off from taking part in the initiative. We have had meetings with institutions in the current Ecuadorian government, in particular the Ministry of the Environment. We do a great deal of networking with institutions, so they are aware, but this is all still at an early stage.

This is why the impact is greater on the international stage, where the attention garnered by UN Climate Conferences and other events offers Indigenous leaders a space for discussion and the opportunity to present their activities. The movement has surfed the wave of interest in Indigenous people, and in particular the people of the Amazon.

The Sacred Headwaters initiative will face challenges linked to managing an autonomous structure. Whereas previously the administrative and accounting tasks were taken care of by Fundación Pachamama, the initiative will now have to manage the issues of human resources, funding and the growth of the project.

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

Representatives of the various nationalities have been united in a single project with a strong ambition to implement a long-term systemic paradigm shift.
It is an ideological struggle which responds to the need for a different approach to the protection of nature, distinct from the Western view of nature conservation.
The scientific studies carried out led to an action plan which was respectful of Indigenous thought.

Opportunities

The Amazonian territories are undergoing rapid development. The new generation is taking its role as a defender of nature seriously and is getting involved through new forms of activism.
The initiative is recognised at the international level (IUCN, COP) but still needs to be promoted at local and regional levels.

Weaknesses

The initiative faces financial and political challenges in obtaining funding and support at community and State levels.

Threats

The mining sector is developing very rapidly, and pressure is mounting. Consequently, the initiative's goal is to stop the advance of the extractive model.
It is a way of establishing a balance of power.

GOOD PRACTICES AND REPLICABILITY

This is an initiative which could absolutely be replicated at South American level, as well as in other regions with tropical forests such as Congo and Southeast Asia or more generally in the fight against the monopolisation of natural resources.

It should also be noted that the rights of nature are therefore a practical tool in regional development, and not merely a legal weapon for use in disputes.

5

Colombia

Atrato River Case 2016

LOCAL CONTEXT

The Atrato River flows 750 km across two departments in northwest Colombia. The first is the very poor department of Chocó, which has a primarily Black population as well as a minority (10%) of Indigenous Emberá people and Mestizo peasants, the *campesinos*. The river then flows through the department of Antioquia, which in contrast has a White and Mestizo population. Several ethnic groups thus have a status entitling them to specific rights, particularly with regard to collective ownership.

The department of Chocó has one of the richest biodiversities in the world, and illegal mining activities represent a major threat.

HUMAN AND ENVIRONMENTAL ISSUES

Armed conflicts and other political instability which have affected the territory for decades have opened the door to all kinds of trafficking, particularly illegal mining which is prominent along the Atrato River. Pollution due to sediment resuspension and mercury waste from mining are at the root of an unprecedented ecological and human catastrophe. The fish in the Atrato River, which are the basis of the traditional local diet, are dying and can no longer reproduce in the turbid water. With extreme pressure on food and economic resilience, some local people have joined groups of illegal gold miners. This is a vicious cycle making the Atrato River the most polluted in Colombia.

An Indigenous person of the Emberá-Wounaan tribe, in the muddy water of the Atrato River.
Source: Alamy Photo Bank (Jan Sochor).

The Atrato River is an essential natural element that permeates all aspects of the daily lives of local people: transport is primarily by water, hygiene is dependent on it (bathing, washing clothes and cleaning cooking utensils) and numerous cultural events and celebrations are also held on the river.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

The Tierra Digna organisation, which represents four local groups and ethnic communities of the Chocó department, initiated an action against the violation of the rights of nature and Indigenous people as well as human rights (tutela action).

In a ruling of 11 February 2015, the Administrative Court of Cundinamarca – Section four, Subsection B – decided not to handle the appeal through tutela action. The action was considered inadmissible as it intended to protect collective rights rather than fundamental rights. The Court therefore declared that the plaintiffs would have to resort to popular action rather than tutela action to defend their interests. This decision was confirmed on 21 April 2015 by the State Council, Second Section, Subsection A.

However on 10 November 2016, the Constitutional Court reviewed this ruling and declared the action not only admissible, but also well-founded.

RIGHTS GRANTED TO NATURE

In this judgment, the Constitutional Court set out several founding elements for the jurisprudence of the rights of nature in Colombia.

First of all, the Court reiterated that "the greatest challenge of contemporary constitutionalism in environmental matters is to achieve the safeguarding and effective protection of nature, the cultures and life forms associated with it, and biodiversity. This should not be for the simple material, genetic or productive utility that these may represent for human beings, but, as a living entity composed of multiple other forms of life and cultural representations, they are subjects of rights that may be individually adapted. This produces a new imperative of comprehensive protection and respect on the part of States and societies".

The Court highlighted the necessity of an "attitude of deep respect and humility towards nature" in order to establish relationships with these entities "on fair and equitable terms", not limited to utility, efficiency or economic performance.

It also drew on the "ecological" Constitution of Colombia and its "catalogue of provisions – around 30 in total – that consecrate a series of principles, mandates and obligations focused on the double objectives of: (i) protecting the environment in an integral manner and (ii) guaranteeing a model of sustainable development".

In its reasoning, the Court referred to two rulings. The first was Constitutional Court judgment C-595/10 of 2010[37], which notes that in view of the importance of the protected constitutional interests, the presumption of guilt or deceit in matters of environmental infringement (introduced by Law 1333 of 2009) does not constitute a violation of the presumption of innocence.

The Court also referred to judgment T-080 of 2015[38] establishing that "nature is not conceived only as the environment and surroundings of human beings, but also as a subject with its own rights, which, as such, must be protected and guaranteed".

The judges confirmed in the decision that "nature and the environment are a **transversal element of the Colombian constitutional order**. Their importance lies, of course, in attention to the human beings that inhabit them and the need to live in a **healthy environment**, to lead a life in **dignity** in conditions of **well-being**, but also in relation to the other living organisms, with which we share the planet, conceived as existences worthy of protection in themselves. It is important to be aware of the interdependence that connects us to all living beings on earth; that is, recognising ourselves as integral parts of the global ecosystem – the biosphere – rather than based on normative categories of domination, simple exploitation or utility. This is **a position that takes on special relevance in Colombian constitutionalism, given the principle of cultural and ethnic pluralism** that underpins it, as well as the knowledge, practices and ancestral customs bequeathed by Indigenous and tribal peoples (...)".

[37] *https://www.corteconstitucional.gov.co/RELATORIA/2010/C-595-10.htm*
[38] *https://www.corteconstitucional.gov.co/relatoria/2015/t-080-15.htm*

In this way the Court also made the link to the violation of human rights and in particular the breach of the biocultural rights of residents affected by water pollution in Chocó.

The Court recalled that "biocultural rights, in their simplest definition, refer to the rights of ethnic communities to autonomously administer and protect their territories". The Court also stressed that "the central elements of this approach establish an intrinsic **link between nature and culture, and the diversity of the human species as part of nature and manifestation of multiple life forms.** From this perspective, the conservation of biodiversity necessarily implies the preservation and protection of the ways of life and cultures that interact with it."

The Constitutional Court concluded by specifying that "today, as a legal concept, biocultural rights seek to integrate, into a single protection clause, the scattered provisions regarding rights to natural resources and the culture of ethnic communities, which in our Constitution appear in transitional Articles 7, 8, 79, 80, 330 and 55. In other words, **biocultural rights are not new rights for ethnic communities**; instead, they are a **special category** that unifies their rights to natural resources and culture, understanding them as integrated and interrelated".

Consequently, the Court declared that "the Atrato River, its headwaters and its tributaries will be recognised as an entity subject to rights of protection, conservation, maintenance and restoration by the State and ethnic communities".

The decision was that: "consequently, the Court will order the **national government to exercise legal guardianship and representation of the rights of the river** (through the institution designated by the President of the Republic, which could be the Ministry of the Environment) together with the ethnic communities that inhabit the headwaters of the Atrato River in Chocó. In this way, the Atrato River and its headwaters will henceforth be represented by a member of the plaintiff communities and a delegate of the Colombian Government, who will be the guardians of the river".

In order to ensure the protection, recovery and conservation of the river, these parties were tasked with forming, within three months, a council of guardians of the Atrato River, composed of the two appointed guardians and an advisory team made up of environmental organisations. This team will receive support from other experts brought in to assist the council's work.

The Court ordered the government, and in particular the Ministry of the Environment and Sustainable Development, the Ministry of the Interior and the relevant departments and communities, to draw up, within a year, a plan to decontaminate the river.

The Court also ordered the Ministry of Defence and communities to draft, within six months, a plan to eradicate illegal mining.

The Ministry of Agriculture was also ordered to establish, within six months, a food resilience plan in collaboration with the relevant communities, in order to "re-establish traditional forms of subsistence and diet within the framework of ethnodevelopment to ensure a minimum level of food security in the area".

The Court also ordered the Ministry of the Environment and the Ministry of Health to carry out toxicological and epidemiological studies of the Atrato River, its tributaries and communities, within nine months. The objective is to "determine the degree of contamination by mercury and other toxic substances, and their possible effects on human health, as a result of the mining activities which use these substances".

The Attorney General's Office, the Ombudsman's Office and the Comptroller General of the Republic were given the responsibility of establishing a process to support and monitor compliance and execution of all orders issued in this decision, in the short, medium and long term.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

"We are not born guardians of Nature, we become them"

Marine CALMET

The Guardians of the Atrato River: the decision of the Constitutional Court which had announced the creation of a joint guardianship council between the government and ethnic communities, has not been respected. Ultimately, seven local organisations were designated to be the legal representatives of the river. Each organisation nominated two guardians, bringing the number of guardians on the River Council to 14. Their mission is to ensure compliance with the decision and to develop proposals related to health, security, economics, food and ecology in order to mitigate the crisis afflicting the Atrato River.

The Ministry of the Environment and Sustainable Development, responsible for cleaning up the river.

The Ministry of Defence, responsible for the fight against mining.

The Ministry of Agriculture, responsible for the food security of communities.

The Ministry of Health, responsible for toxicological examinations.

The Office of the Attorney General, the Office of the Ombudsman and the Comptroller General of the Republic, responsible for monitoring compliance with the decision.

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

This was a powerful decision that required the State to put in place a plan of action in collaboration with local populations to address the acute crisis.

Weaknesses

The lack of sanctions for policymakers who, by failing to act, have caused ecological and human damage, as acknowledged by the judge.

Opportunities

The accession to power of a new government, headed by the country's first left-wing president, Gustavo Petro, along with Vice President Francia Márquez, a Black female ecologist and a figure synonymous with change. These new leaders announced that the environment and the transformation of the development model would be at the centre of their policies.

Threats

This is a region riddled with corruption and collusion between politicians and traffickers; it faces a systemic problem that is both environmental and social, to which there is no easy solution.

GOOD PRACTICES AND REPLICABILITY

A legal evolution towards the recognition of the rights of nature and rivers has in fact already taken place in the jurisprudence and laws of other countries. The historic ruling of the Constitutional Court occurred in the same year as the signing of the peace agreement between the Revolutionary Armed Forces of Colombia (FARC) and the State, supposed to put an end to more than half a century of war.

However, it was only a few years before conflicts once more impacted the region of Chocó.

The guardians appointed to enforce the Atrato River decision point out the lack of actions by the State to ensure respect of the jurisprudence and to guarantee the mission and safety of the environmental defenders.

It is worth noting that in a politically unstable state whose institutions are structurally flawed, recognition of the rights of nature is in danger of being ignored, as effective implementation requires a healthy participatory democracy and strong political convictions.

This shows that a legal response is not the sole solution if it acts in isolation of other systemic responses, in particular economic, social and political.

6 Colombia
The Amazon Affair 2018

LOCAL CONTEXT

Colombia has dealt with many years of political instability due to periods of civil war and conflicts linked to land ownership and drug trafficking.

The country is subject to political influences which are difficult to reconcile, notably Bolivarianism (socialism) and Santanderism (liberalism). Environmental protection is therefore very much secondary to national politics.

HUMAN AND ENVIRONMENTAL ISSUES

The Colombian Amazon covers 406,000 km², 6% of the 6.7 million km² of the Amazon rainforest, most of which is located in Brazil. The area's biodiversity is among the richest in the world.

However, this ecosystem is threatened by various human activities, particularly land grabbing, illicit coca crops, illegal extraction of mineral deposits, infrastructure projects, agro-industrial crops and logging.

According to the NGO Global Witness, Colombia tops the list of the most dangerous countries for environmental protectors, as they are often targeted by armed groups[39]. The NGO reports "the alarming situation concerning the Indigenous people and women defenders, and how their vulnerabilities are exacerbated by the lack of State protection".

[39] *Global Witness, Annual Report, 2019.*

Source: Felling trees in Colombia / https://commons.wikimedia.org (Matt Zimmerma).

At the 2015 Paris Climate Conference, Colombia committed to stopping deforestation of the Amazon Rainforest, a failed commitment as statistics show that deforestation increased by 44% between 2015 and 2016.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

The legal action was led by 25 young people aged between 7 and 25 years old, supported by Dejusticia, a legal and social studies centre located in Bogotá, Colombia. The action was directed against the President of the Republic of Colombia, the Ministry of the Environment and Sustainable Development, the Ministry of Agriculture and Rural Development as well as the Natural Parks Administrative Unit and local governments.

The plaintiffs' aimed to show that deforestation was increasing, leading to adverse effects on their rights to life, health and a healthy environment.

The Civil Chamber Specialised in Land Restitution of the Superior Court of the Judicial District of Bogotá rejected the decision at the first instance.

The young people then appealed to the Supreme Court, which issued its decision on 5 April 2018.

RIGHTS GRANTED TO NATURE

While previous jurisdictions had rejected their requests, in a major turn of events, the Supreme Court of Colombia went beyond the demands of the plaintiffs, adding to the grounds by alleging the violation of human rights and the violation of the rights of the Amazon as a "subject of law".

The Court highlighted that "the fundamental rights to life, health, satisfaction of basic needs, freedom and human dignity are closely linked to the environment and ecosystems".

The Court also declared that "in order to protect this ecosystem vital for the future of the planet", it "would recognise the Colombian Amazon as an entity, a subject of law and entitled to protection, conservation, maintenance and restoration",[40] obliging national and local governments to act pursuant to the Colombian Constitution.

The decision relied in particular on the judgment of the Colombian Cons titutional Court of 2016 (see previous file) which granted legal rights to the Atrato River.

The Court recalled that "awareness of the necessity to adapt our behaviour has grown progressively. We are witnessing the emergence of movements in favour of a new **"eco-centric anthropogenic" societal ideology**, which **surpasses excessive "homosensorial" "autistic" anthropocentrism**, considering the environment in the framework of the ideal of progress and of the effective notion of sustainable development, to reach "an equilibrium between economic growth, social wellbeing and environmental protection, understanding that present actions should guarantee the possibility of using resources in the future".

The Court decided to extend the protection of constitutional rights to nature, highlighting that "the protective shield of fundamental rights not only extends to the individual, but also to 'the other'. The other is the otherness; its essence, the other persons who inhabit the planet including other animal and plant species". The Court also included the question of future generations "unborn children, who deserve to enjoy the same environmental conditions that we have."

Highlighting the responsibility of current generations to the protection of the intrinsic value of the environment, the Court recalled: self-respect itself implies **"respect for the part of oneself which is constituted by nature, and of which future generations will in turn be a part"**.[41]

The Court stated that "there is no doubt that there is a risk of damage, as according to IDEAM4[42], the increase in GHG emissions resulting from deforestation of the Amazon rainforest will cause an increase in the temperature in Colombia of between 0.7 and 1.1 degrees Celsius between 2011 and 2040, while for the period 2041 to 2070, an increase of 1.4 to 1.7 degrees Celsius is calculated, reaching up to 2.7 degrees Celsius in the period from 2071 to 2100".

[40] Decision of the Colombian Supreme Court of 4 May 2018. *http://www.cortesuprema.gov.co/corte/wp-content/uploads/2018/04/STC4360-2018-2018-00319-011.pdf*

[41] Kormody, E., "Conceptos de ecología" [Concepts of Ecology], Alianza, Madrid, 2001, pp. 237 and 238.

[42] Institute of Hydrology, Meteorology and Environmental Studies (*Instituto de Hidrología, Meteorología y Estudios Ambientales*).

Likewise, the Court also noted the impacts of climate change on the water cycle.

The Court concluded that "the Colombian Government must put an end to causes of greenhouse gas emissions triggered by the severe reduction of the Amazon rainforest. It is crucial to adopt immediate mitigating measures, protecting the right to environmental welfare, both for the plaintiffs as well as the rest of the population, the people who inhabit and share the Amazon territory, not just nationally, but also abroad, as well as all the inhabitants of the planet, including ecosystems and living beings".

The Court notes the shortcomings of the Colombian State, as well as of the management of national parks which are, despite their status, also affected by deforestation, as well as the failings of local governments and municipalities.

It therefore ordered the government, various Ministries and administrative bodies to join the plaintiffs, the affected communities and concerned citizens to present, in the **four months following the decision,** an **action plan for the short, medium and long term** aimed at reducing deforestation.

The Court also acknowledged that it would be future generations who would suffer the worst impacts of climate change. Consequently, it also ordered the Government, the Ministry of the Environment and Sustainable Development as well as the Ministry of Agriculture and Rural Development, to draft an **Intergenerational Pact for the Life of the Colombian Amazon**. On this point, the Court ordered the text to be written with the participation of the public, affected communities and environmental and scientific organisations.

This pact aims to establish a list of provisions based on the principle of intergenerational equity. In particular, these provisions concern the principle of precaution and solidarity between the generations in order to respect the commitments of the Paris Agreement and the obligations imposed on the State with regard to the protection of forests and the climate.

This document should allow the development of strategies at national, regional and local levels of a preventive, binding, corrective and educational nature, aimed at adaptation to climate change.

The Court also ordered all the municipalities concerned to update their management plan within five months.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

Dejusticia offers legal support to numerous associations and communities in Colombia by making public policy proposals, leading advocacy campaigns and supporting legal actions such as the present case, in the attempt to obtain innovative jurisprudence for the respect of human rights.

The Ministry of the Environment and Sustainable Development is responsible for national strategies for climate change management and the fight against deforestation. It is the Ministry's task to develop plans, schedules and projects linked to these issues.

The mission of the **Administrative Unit of Natural Parks** is the conservation and protection of Colombian National Natural Parks, which represent a key tool in counteracting the impacts of climate change. This is done by means of environmental mitigation or protection measures and adaptation to change. The Unit has the authority to take action to control the drivers of deforestation, in particular through collaboration with vulnerable communities by way of agreements which permit the restoration of the affected zones.

Local governments in particular have the responsibility of taking certain measures to protect the environment at local level; they regulate land use in order to achieve this objective.

Source: Dejusticia / https://bit.ly/4a7IdPQ

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

According to IUCN: "The Supreme Court's decision is remarkable in several other ways: it provides thorough, cogent analysis and application of key principles of environmental law and environmental ethics, including intergenerational equity and the precautionary principle, placing the rights of the Amazon within the context of Colombia's constitution as well as international law. The Court's discussion can hopefully serve as a guide for the judiciary in Colombia and elsewhere in how to apply these concepts toward the complex and related problems of deforestation and climate change"[43].

Opportunities

Colombian President Gustavo Petro, who took office in 2022, committed to prioritising the defence of the environment and the fight against climate change. In light of this, he announced that he will limit agricultural expansion in the Amazon region[45] by creating environmental reserves so that Indigenous and peasant communities can develop environmentally sound projects.

Threats

Timber mafias have established themselves locally and are taking advantage of the peace to undertake lucrative trading on a large scale[46].

Weaknesses

Deforestation is still increasing: 6,584 km^2 between 2014 and 2018 compared to 7,018 km^2 of forest between 2018 and 2021[44]. The policies of President Yvan Duque, in particular operation "Artemisa" that mobilised 23,000 troops and three dozen prosecutors to oversee deforestation cases, have not proved effective.

[43] *https://www.iucn.org/news/world-commission-environmental-law/201804/colombian-supreme-court-recognizes-rights-amazon-river-ecosystem*

[44] *https://www.lepoint.fr/monde/colombie-l-echec-de-la-lutte-contre-la-deforestation-le-defi-du-nouveau-president-03-08-2022-2485311_24.php*

[45] *ibid*

[46] *https://www.geo.fr/environnement/en-colombie-lamazonie-victime-insoupconnee-des-accords-de-paix-207437*

GOOD PRACTICES AND REPLICABILITY

Litigation for climate justice is spreading across the world, notably in Western countries and particularly in Europe. This jurisprudence recalls, in particular, the victories achieved in the USA by Our Children's Trust[47] whose strategy includes advocating for "future generations" by supporting young people in their legal actions. The distinctive feature of the Amazon decision in Colombia is that it succeeds in making the link between climate justice, human rights and the rights of nature. It has been well-documented and reported at international level and is perfectly replicable in litigation relating to the protection of forests, as well as for other strategic ecosystems in the fight against climate change, such as wetlands or even oceans.

Source: https://imagining-climate.clas.ufl.edu/news/2019/our-childrens-trust/

[47] *https://www.ourchildrenstrust.org/*

7

Costa Rica

The town of Curridabat 2015

LOCAL CONTEXT

The small Central American state of Costa Rica has long benefited from a stable political situation. And now it has made a groundbreaking transition to become a pioneer of environmental protection. With a surface area of 51,100 km² and a population of 4.8 million, the country is home to 6% of the world's biodiversity.

However, the country has not always been virtuous when it comes to the environment. Agriculture has focused on coffee, bananas and pineapples which led to considerable deforestation in the 1980s. The country is still the world's leading producer of pineapples, a land-hungry crop. This position has been achieved by the heavy use of pesticides.

On the other hand, Costa Rica's well-preserved natural environment and exceptional biodiversity are a source of revenue. A significant proportion of the country's income comes from tourism (approximately 6% of GNP before 2020 and the Covid-19 pandemic)[48].

HUMAN AND ENVIRONMENTAL ISSUES

According to Costa Rica's National Institute of Biodiversity, the country has 850 species of birds, 180 species of amphibians, 220 species of reptiles, 34,000 species of insects and 230 mammal species as well as some 12,000 plant species[49].

Some 26% of land has protected status and half of the country is forest. However, Costa Rica also suffers from urban sprawl, with a high rate of land development as a result of a lack of town planning, particularly in the capital, San José[50].

[48] *https://www.donneesmondiales.com/amerique/costa-rica/tourisme.php*
[49] *https://www.geo.fr/environnement/costa-rica-le-pays-ou-la-vie-est-plus-verte-159177*
[50] How Costa Rica's capital is reimagining our urban future Urban SH/FT, 9 September 2021.

Some 77% of Costa Rica's population lives in urban areas, a fact that has led to a progressive disconnection between humans and the natural environment.

This situation had a significant effect on the canton of Curridabat, to the east of the capital San José. In the face of several phenomena such as immigration, urban growth and a lack of strategic town planning, Curridabat's natural spaces were at risk, as were the town's many pollinators, namely 15 species of bees, 69 species of butterflies, 4 species of hummingbirds and 8 species of bats.[51]

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

In 2015, with a view to reinforcing the place of nature in the town and safeguarding the health and well-being of residents, the mayor's office adopted a proposal to "broaden the definition of a citizen of Curridabat", in this way recognising pollinators "as native inhabitants of the town"[52]. The objective has been to facilitate cohabitation between humans and non-humans, and ensure that spaces and resources are shared fairly.

The town has drawn up strategic regulatory plans to restore its ecological heritage, in particular by encouraging research, such as through the Curridabat Territorial Biodiversity Intelligence Centre project.

Source: pexels (phil-mitchell).

[51] Robert Steuteville, Building a knowledge base for sustainable urban habitation. Public Square, June 2020.
[52] For further information: Atlas of the Future. Costa Rica's sweetest town (*atlasofthefuture.org*).

RIGHTS GRANTED TO NATURE

Although the Curridabat municipal authority has introduced an initiative to recognise pollinators (bees, butterflies, hummingbirds, etc.) and local plant species as having the status of citizens of Curridabat in the same way as human citizens, the fact remains that the local urban development plan (PLU) does not directly recognise the rights of nature. Nevertheless, local policies and urban development have been reconsidered to take into account the needs and lifestyles of non-human citizens.

As a result, the Curridabat strategic municipal plan[53] considers five dimensions: biodiversity, infrastructure, habitat, coexistence and productivity. The plan specifies that "the fundamental premises for action include: the reintroduction of native biodiversity; raising public awareness of the importance of this and of the interactions between human beings and nature; the transfer of skills in land micromanagement and self-management to the people, district by district; the integration of design and planning into the collective culture of communities".

One of the town's leading innovations, and the key to overhauling its districts, has been the creation of biocorridors. Streets and pavements are planted to reduce the amount of concrete used and offer an ecological means of moving around. This green network is designed so that pollinators can travel seamlessly from one space to another, respecting their need to move around in complete safety. These biocorridors allow a peaceful harmony between the pollinator citizens and the human citizens; the latter also benefit from the beneficial effects of continuous green spaces. All interests are taken into account.

Parks are now designed as universal living spaces for humans, animals and plants. The declared objective is to remove the traditional boundary between built-up and natural spaces, no longer separating nature from the urban area.

Another key feature of local policy is environmental education. The Aula Dulce (gentle school) programme encourages human residents to discover their non-human neighbours, in particular by providing educational resources, such as the "Guide to Gentle Plants" catalogue This encourages citizens to plant certain local species to boost the presence of pollinators in the town.

Visitors to Curridabat's parks can scan QR codes for information on plants, in this way learning more about biodiversity and opportunities to volunteer to protect pollinators.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

Municipality of Curridabat, in charge of urban planning and land use that incorporates the rights of nature.

[53] Municipality of Curridabat. *Ciudad Dulce* [The Gentle City]. Municipal Strategic Plan. 2018-2022.

INTERVIEW WITH ACTOR IN THE FIELD

Edgar Mora

A former journalist and Education Minister and Mayor of Curridabat from 2007-2018. Senior advisor on strategic public policy design and global ambassador of The World Bee Project.

First of all, the idea was to move from the supply side to the demand side. This idea came about following an experience I had in a school before I became mayor.

We formed two groups, one of students and another of teachers including the school's headteacher. We asked them to answer the same question. What improvements could be made to the school? There was an unused area in the school grounds. The teachers suggested it could be a car park, the students a vegetable garden. The quality of demand was different because the children saw school improvement from a citizen's point of view, while the teachers saw the opportunity to improve the school and gain resources. The conflict of interest was on the supply side.

When I was elected, I changed the local government's point of view from the supply side to the demand side. We wanted to know how we could get the best quality of demand. This allowed us to consider other parties with demands who were not able to express their needs in a perfectly grammatical sentence.

This opened things up to other species.

We learned that the town was in fact a multi-layered phenomenon, a multi-tiered structure, which was invisible to our eyes. We tried to set up a project – the Atlas of the Real Citizen Experience – which was meant to uncover what was invisible to us.

When you start to see previously invisible things, you start to be swamped by new urgent needs. One of these was: what is actually the base layer?

There are two possibilities. The first is that the base layer is the infrastructure, with all the strength of traditional urban planning. Mexico City is a good example of how infrastructure can be imposed, not only on another culture, but also on a magnificent lake. But what happens if the lake or biodiversity is actually the base layer? How can we critique the practice of building places for humans, constructing human habitats on this biodiversity?

It is not possible to approach the idea of reclaiming cities from this original design failure without defining biodiversity, not as a product in the town, but as the genuine basis of the city.

Bees allowed us to start to perceive the invisible from another point of view. We examined the town by simulating what bees saw as they flew around. We asked the bees to teach us their point of view, and we discovered a completely different town.

We decided to take this consideration into account when drawing up the town's official plans and documents.

We organised workshops for people and brought this point of view into meetings in order to improve demand. This gave rise to a different methodology that focused on meeting communities, and children in particular, who were given the role of representing the bees' point of view. In this way they had a very strong voice.

In fact, we used pollinators as intermediaries. This is very important, because the power of the engineer, architect, town planner or other municipal official is to use the infrastructure as an intermediary. In this way, not only have we acted so that the infrastructure is no longer the basis, we have also taken it out of meetings by letting in another intermediary.

That is how bees became one of the main partners in the urban renewal.

Finally, there is another ideological statement.

The most commonly used expression in urban planning is beneficiary. We decided to abolish this concept, making the citizen a passive body. This is because the most important role of municipalities is not just to give us somewhere to live, but to be the place where inhabitants can transform themselves into citizens.

Once again, the pollinators inspired us. They had not been invited into the town, and the place tells them it belongs to human beings. But they act, and do not need the condition or grammatical designation as citizens, to deploy their citizenship.

Citizenship is an activity, not just a condition. If these entities are constantly creating value, why not recognise that, by their actions, they are already citizens?

Source: Town of Curridabat / https://bit.ly/49m9Blu

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

Tangible, cross-disciplinary projects such that the philosophy of the rights of nature can have a direct impact on the transformation of urban environments. Curridabat is building a biodiversity intelligence centre to study gentler ways of reimagining our cities and disseminating methods of implementing these approaches. The concept is to test new models and generate information that will help other cities thrive in harmony with nature.

Opportunities

Building on its strengths, it is Costa Rica's ambition to become "the world's first green democracy". In this way it would benefit from a political climate that encourages ambitious programmes in the field; this would certainly allow the town of Curridabat to pursue its efforts.

Weaknesses

The rights of non-human species have not been written into local legislation. Consequently, the approach is very much the vision and will of the existing municipal authority. This represents a source of instability for the project and for the protection of nature.

Threats

An environmental court has been in existence since 1995. This is overwhelmed with appeals. The number of cases has risen considerably, a sign that the public is increasingly sensitive to environmental issues but also that there are more and more infringementss[54].

GOOD PRACTICES AND REPLICABILITY

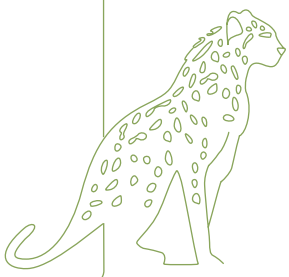
This experience could be reproducible and inspire very many urban projects in the future. It is a matter of eliminating the boundary or antagonism between urban environments and nature, and it is also about providing a new methodological framework for non-specist urban planning design.

[54] *https://www.geo.fr/environnement/costa-rica-le-pays-ou-la-vie-est-plus-verte-159177*

8

Panama

Law for the rights of nature



LOCAL CONTEXT

Panama has one of the richest biodiversities in the world. Its vast expanses of tropical forests and mangroves are home to no less than ten thousand plant species[55] and 1,569 animal species, including the jaguar and the spectacled bear. Panama is an isthmus that links Central America to South America, with unrivalled access to the flora and fauna of three different bodies of water: the Caribbean Sea, the Gulf of Chiriquí and the Gulf of Panama[56]. The Spanish colonised the territory in the 16th century, an area previously inhabited by three Indigenous nations. It was only in the early 20th century that Panama achieved full autonomy.

HUMAN AND ENVIRONMENTAL ISSUES

Panama is facing the challenges of deforestation and the ecological dangers of extractive activities. According to Global Forest Watch, the country lost around 78,000 hectares of tropical rainforest between 2002 and 2022[57]. This deforestation has an impact on the protection of human rights as Indigenous peoples, as well as rural populations, are highly dependent on the health of their natural environment for their own cultural, environmental and economic survival.

Source: Spectacled bear wikimedia.org/w/index.php?curid=40229560 (Glaucia Azevedo).

[55] *https://www.forestsoftheworld.org/programme/panama*
[56] *https://www.cbd.int/countries/profile/?country=pa*
[57] *https://www.globalforestwatch.org/dashboards/country/PAN/*

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

In September 2020, Juan Diego Vásquez Gutiérrez, a Panamanian lawyer and independent member of the National Assembly, proposed a bill to recognise the rights of nature. This bill was debated in Parliament leading to the adoption and publication of Law no. 287 of 24 February 2022 on the recognition of the rights of nature and the obligations of the State in relation to these rights.

Juan Diego VÁSQUEZ GUTIÉRREZ

RIGHTS GRANTED TO NATURE

The law defines nature as "a collective, indivisible and self-regulating entity, made up of interdependent elements, biodiversity and ecosystems" (article 3).

The law also protects that "the right of every person to a healthy environment in harmony with nature for their development, health and well-being shall be recognised and is closely linked to the rights of nature set out by this law." (article 4).

The law recognises the right of any natural or legal person, whether individually or in association, to represent nature and demand the respect and fulfilment of the rights and obligations established in this law before administrative and legal bodies at national level. (article 5).

The law recognises the application of the following principles:

- the best interests of nature, in view of its vulnerability to human activities likely to alter its ecological cycle and life cycle;
- *in dubio pro natura*, the principle that in the event of any doubt in the meaning of the law, an interpretation must be made to the advantage of nature;
- *in dubio pro aqua*, which follows the same logic as *in dubio pro natura*, but applied to water;
- also the principles of precaution, prevention and restoration.

Article 10 of the law sets out the rights afforded to nature, including "the right to exist, persist and regenerate its cycles", "the right to the diversity of life and of the beings, elements and ecosystems of which it is composed" and "the right to be restored after having directly or indirectly suffered damage caused by any human activity".

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The State has an obligation to apply and ensure that the rights of nature are respected, as well as to prevent or repair any damage that may be caused to the natural environment.

The State must also ensure the application of all legal, technical/administrative or other measures that are necessary to implement the law in order to prevent any harm to a species, destruction of ecosystem, permanent alteration of the climate, etc. (article 7).

The State is responsible for "authorising the sustainable use of the elements that make up nature within a framework of sustainability and in respect of the rights contemplated by the current legal system" (article 13).

Article 16 describes more specific obligations that are directly incumbent on the State, notably the obligation to "ensure that all its plans, policies and programmes are consistent with the rights and obligations recognised in this law". But also to "develop balanced forms of production and consumption to satisfy the needs of the population, while preserving the regenerative capacities and integrity of the vital cycles, processes and balances of nature".

Source: Aerial view of the Panama Canal at the Atlantic coast / https://fr.123rf.com (dani3315).

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

This law is a strong indicator of the political will to protect the rights of nature. It is a comprehensive legal text that also incorporates a significant social and economic vision.

Opportunities

More generally, this law is part of a move to protect the rights of nature on a national level, in this way indicating serious political ambitions. The law was supplemented in 2023 by legislation that guarantees Panama's sea turtles the right to live and move freely in a healthy environment[58].

Weaknesses

This protection of the rights of nature would have been stronger if it had also been incorporated into the Constitution. The question will also be asked about its interaction and compatibility with other legislation, in particular laws on extractive activities (mining and forestry).

Threats

The poverty of local populations accentuates deforestation that is linked to agriculture and stock raising. The country is consequently facing a genuine challenge to combine the protection of natural environments with strengthening human rights.

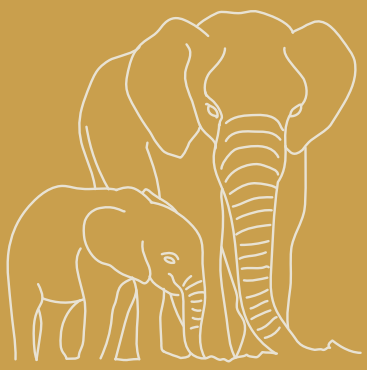
GOOD PRACTICES AND REPLICABILITY

Inspired by the progress made by the rights of nature movement in South America, and particularly Ecuador, Panama has, with this law, adopted a remarkably clear text on the rights afforded natural entities and the related obligations of the State. This dynamic could have a knock-on effect in other States, depending on the political opportunities that become apparent at parliamentary level.

[58] *Euronews, Turtle power: Panama gives legal rights to sea turtles, protecting against pollution and poaching, 2023.*


Airtel 4G

South and Southeast Asia




Pakistan
13
India
9
10
11
12
Bangladesh
14
Philippines

9 India

Ganges and Yamuna Ruling 2017

LOCAL CONTEXT

India's most sacred river, the Ganges (or Ganga) rises in the Himalayas, at the Gangotri glacier to be precise. The Ganges flows through five states across the northern plains of India before emptying into the Bay of Bengal, crossing the Sundarbans delta, the world's largest mangrove forest. The Yamuna River is a tributary of the Ganges with its source in the Yamunotri glacier.

Despite the spiritual attachment of Hindus to the Ganges and the Yamuna, the rivers are directly impacted by many different types of pollution as well as by climate change. Furthermore, the glaciers that are their sources are now melting at an exponential rate.

HUMAN AND ENVIRONMENTAL ISSUES

The Gangotri glacier is retreating with repercussions for the flow of the Ganges river. The entire Indian catchment area is affected, along with the 500 million people who depend on it. They are already facing the challenges of climate change, which is impacting agriculture and, as a result, the territory's food resilience.

The Ganges is venerated as a living deity and, since time immemorial, Indians from all over the country have converged on the numerous historic temple towns that line its banks to pray and ritually bathe.

Melting glaciers and climate disruption have already led to numerous material and human disasters, notably in June 2013, when floods killed nearly 6,000 in the north of the country, including 924 in the state of Uttarakhand. According to a report published in the French newspaper Libération: "Environmentalists and development aid agencies have asserted that uncontrolled urban construction and deforestation are responsible for the floods.

In particular, the international charity ActionAid considered that the construction of hydroelectric dams and mining projects in Uttarakhand over the last ten years had threatened the fragile ecosystem of many valleys in the state"[59].

Many other environmental disasters linked to climate change and melting glaciers are affecting the northern Indian region on a regular basis. Following the deadly floods of February 2021, ActionAid said: "In the light of the increasing frequency and intensity of disasters occurring in the Himalayan region and keeping in mind the growing danger of climate change on glaciers and on weather patterns ActionAid Association urges the Government of India to consider declaring the entire Himalayan region an ecologically sensitive zone." The objective is to more strictly assess and limit development projects in the future, in this way protecting local populations.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

Mohammad Salim, a resident of Haridwar, concerned by construction and mining operations on the bed and banks of the Ganges as well as the high levels of pollution, initiated a public interest litigation.

In order to take action against these scourges, he asked the Court to acknowledge and sanction the failure of the governments of Uttar Pradesh and Uttarakhand to set up the Ganga Management Board, as set out in Article 80 of the Uttar Pradesh Reorganisation Act 2000.

The High Court of Uttarakhand issued its ruling on 20 March 2017.

A fisherman rows through toxic foam on the polluted Yumuna River.
Source: Alamy (ZUMA Press).

[59] *Libération, Près de 6 000 morts dans les inondations de juin en Inde* [Nearly 6,000 dead in India's June floods], 2013.

RIGHTS GRANTED TO NATURE

The Court found that the Ganges and Yamuna rivers are in great danger, a situation that required exemplary measures, as these rivers are sacred and venerated.

In reaching its decision, the Court referred to a previous ruling in the "Yogendra Nath Naskar v. Commission of Income-Tax, Calcutta" case from 1969, in which Supreme Court judges held that a Hindu idol is a legal entity capable of holding property and being taxed through its Shebaits, who are entrusted with the possession and management of its property.

Furthermore the decision cites another Supreme Court case, Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & others of 29 March 2000, in which the judges ruled that "the recognition of an entity as a juristic person is for subserving the needs and faith of society".

In paragraph 13 of the said decision, the Supreme Court states: "With the development of society, where an individual's interaction fell short, to upsurge social developments, cooperation of a larger circle of individuals was necessitated. Thus, institutions like corporations and companies were created, to help the society in achieving the desired result. The very constitution of a State, municipal corporation, company, etc. are all creations of the law and these 'juristic persons' arose out of necessities in the human development. In other words, they were dressed in a cloak to be recognised in law to be a legal unit."

The Court justifies the decision by emphasising that "All the Hindus have deep Astha (faith) in rivers Ganga and Yamuna and they collectively connect with these rivers. Rivers Ganga and Yamuna are central to the existence of half of Indian population and their health and well-being. The rivers have provided both physical and spiritual sustenance to all of us from time immemorial. Rivers Ganga and Yamuna have spiritual and physical sustenance. They support and assist both the life and natural resources and health and well-being of the entire community. Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountains to sea."

The Court concludes that "to protect the recognition and the faith of society, Rivers Ganga and Yamuna are required to be declared as the legal persons/living persons."

The Court also states: "the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna."

This status of legal person is also justified by virtue of Articles 48-A and 51A(g) of the Indian Constitution[60].

[60] *https://www.wipo.int/wipolex/fr/text/583997*

Article 48-A Protection and improvement of environment and safeguarding of forests and wild life. – The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 51A(g). Fundamental duties. – It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and **to have compassion for living creatures.**

Consequently, the judges reiterated that the constitution of a Ganga Management Board is indispensable.

The Director of NAMAMI Gange (a Ganges conservation programme), the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand are declared *persons in loco parentis* (Latin, meaning "in the place of a parent"), in other words the legal guardians of these ecosystems, "as the human face to protect, conserve and preserve Rivers Ganga and Yamuna and their tributaries".

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

Ganga Management Board: According to section 80(2)(b) of the Uttar Pradesh Reorganisation Act, 2000, two full time members, one from each of the successor States, shall be nominated by the respective State Government as members of the Ganga Management Board. Section 80(2)(c) of the Act sets out that four part-time members, two from each of the successor States, shall be nominated by the respective State Government. The Chair shall be appointed by the central government in consultation with the successor States and two representatives.

If the two States do not nominate their members, the central government can set up the Ganga Management Board without the members of the States concerned.

Source: Gangotri Glacier, source of the Ganges (anjaligi04) / https://fr.123rf.com

INTERVIEW WITH ACTOR IN THE FIELD

Vandana Shiva

An Indian feminist and environmental activist, Shiva is famed for her campaigns, notably for the free use of farmers' seeds.

India is an ecological civilisation. Its whole culture is infused with the concept of Mother Earth. And human rights derive from the rights of Mother Earth.

I was involved in drawing up the Declaration of the Rights of Mother Earth, an initiative promoted by Bolivia. I also participated in drafting the new constitution of Ecuador. However, I would draw a distinction with the Indian cases on the constitutional issues of the rights of nature.

The decision by the Court of Uttarakhand in the Ganges and Yamuna case was blocked by the Supreme Court. Consequently – as someone who is very involved in the movement for the rights of nature – I would like to offer an honest critique of this, because these legislative initiatives have become empty gestures.

Firstly, it is not possible to insert the rights of nature, the power of Gaia, into a colonial state structure. And you can't put Gaia, Mother Earth, into a restricted patriarchal structure.

So yes, the rights of nature have been recognised by this Court, but how? The Court mandated the State, which is responsible for destroying nature, to be the guardian of nature. But the destroyer cannot be the protector. And the Court has basically appointed the representative of the State of Uttarakhand to act as a parent by means of the *parens patria* mechanism. Now that's patriarchy! It is not possible for a patriarchal State to represent Mother Earth. It's an ontological muddle.

The reason the Supreme Court overturned this decision is that it considers that this type of issue should be resolved at Constitutional level, not as a minor court case. Because if the rest of the system is involved in destroying nature, it is not logical to deal with the subject of its protection in such a trivial way.

This is why I'm not going to celebrate these decisions as they are empty rulings that can be easily overturned.

Vandana Shiva and Cyril Dion during COP21/
Source: https://commons.wikimedia.org/wiki/File:Vandana_Shiva_and_Cyril_Dion.jpg?uselang=fr

The rights of nature should be seen as a force for the transformation of the way in which the State functions. The rights of nature are a form of society in their own right. However, society has behaved as if nature were either dead, insignificant or worthless. The rights of nature emphasise that humanity needs to change its way of thinking. So the only way to genuinely apply the rights of nature is to make sure that we fight ecological violations against nature. Yet we live in an era when laws on pollution have been weakened by the force of neoliberal globalisation. The protection of the soil, water and air has all been diluted.

If we want to make the rights of nature more robust, we must stop this dilution and recognise what has to change in terms of human obligations to nature. We have to decide what brakes must be applied to corporations. That can only be done by means of court rulings.

The rights of nature movement in India should not be analysed in relation to these recent court rulings, because, in fact, the movement dates back to 1999 when The Living Democracy Movement started saying "we are part of the earth". The basis for the court ruling comes from Hindu tradition and ultimately the concept of *Vasudhaiva Kutumbakam* (a Sanskrit phrase found in Hindu texts such as the *Maha Upanishad*). This means "the world is one family" or "the earth and the living beings on it form one family". And thousands of communities are working for the rights of nature to defend their ecological rights. We are part of those communities that depend on and protect nature – protect the forests, the rivers, the soil.

The recognition of the rights of nature at constitutional level will depend on many factors. These are strange times and India's future cannot be foreseen. But if the opportunity arises, of course the Living Democracy movement can bring this subject into the Constitution.

If we want to understand how the rights of nature can be rooted in society, we need to look at the organisation of Indigenous peoples. In the first place, these societies are not governed by state law, but by customary law – a cultural reflection of the way society functions, whereas state law is a creation of colonialism. Secondly, we need to change the Constitution. Thirdly, the rights of nature must be revived through customary law. Fourthly, the State must follow the will of its citizens.

We must not confuse the rights of nature with what has been played out in the courts. Corrupt politicians and States cannot impede the rights of nature. The rights of nature are beyond their reach. The rights of nature are the rights of the autonomous natural entity that is the earth.

To return to the ruling on the Ganges, neoliberal globalisation has led to a "corporate" State, and it is this State that is now saying, finish with the Ganges, dam every centimetre of the river, and as for its guardians, those who defend its rights, because this is their spiritual duty, let them die. I know three spiritual leaders who have died, killed because they protested against these scandals.

And then all of a sudden you have this little court that recognises the rights of this river and entrusts the protection of these rights to the very same people who are destroying nature. That is absurd, it is bad jurisprudence.

As long as you have this political and economic system that functions as if nature had no rights, you will have this kind of very weak decision that can be reversed.

India is a nation based on the rights of nature, and what is happening today is not only a violation of nature, it's also an attack on our cultural roots. The reason I have been able to work so effectively with communities on the issues of seeds, biodiversity and soil is because people remember these roots. In India, we applied the rights of the Earth long before we spoke of the "rights of nature". This term has been used because Westerners are not comfortable with the concept of "Mother Earth", but they must accept it one day. Our movements are much older than the language of the "rights of nature". The Declaration of the Rights of Mother Earth was drawn up in Bolivia in 2010, but we already had our movement to fight against the deprivation of living things in 1999. We have always considered water to be a living thing, a subject upon which we are entirely dependent.

Unfortunately, things are very polarised in India at the moment. I don't think it is possible to find an electoral voice that would be able to overcome globalisation in the short term. But what I do see are cultural voices to make the shift, and this is happening in every region where we work.

I am concerned about the violence against the defenders of nature. I wrote the foreword to the Global Witness report[61], which shows that the majority of victims are now activists who have defended the rights of nature. The murders that occur are not everyday events, they are not about "Mr A" fighting "Mr B" for his property, it is rather about people fighting to defend Mother Earth, which is a far more powerful idea. The representatives of greed are very fearful of the rights of nature. This is not just because it goes against their interests, as in the case of people defending their land from mining activities. Much more than this, it is because the rights of nature as an idea shakes them to the point of the collapse of the foundations upon which their world is built and undermines the ground beneath their feet.

[61] *https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/*

In a living democracy, governance is organised around communities that take care of the spaces and the environments of this earth; valleys, forests. All living things go from the soil to the sky, from the bottom to the top. Dictatorship, on the other hand, goes from the top to the bottom. So the living democracy that I also like to call Earth Democracy comes from living communities working together to both protect and regenerate the earth and defend their collective rights. In the colonial world there are the rights of nature on one side and the rights of humans on the other; the two are kept separate. In an ecological world, in contrast, we are part of nature and as soon as the rights of nature are recognised, the rights of communities are recognised.

When it comes to governance, we apply the concept of *swaraj*, self-governance, that guides how to organise resistance. Just as in New Zealand, where guardians are appointed to defend ecosystems, we could certainly imagine the same thing happening in India, where we are familiar with the concept of raksha, meaning "protector". It is through these concepts that we have stood up to Monsanto over the years, emphasising that seed rights are also farmers' rights.

Source: https://www.bioaddict.fr/vandana-shiva-nous-sommes-tous-des-semeurs-d-espoir/

Devprayag, source of the sacred River Ganges.
Source: https://commons.wikimedia.org/wiki/File:Devprayag,_Birth_of_holy_Ganga_river.jpg?uselang=fr (Aniket Singh).

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The judge's consideration rests on strong cultural aspects that are specific to Hindu tradition and appeals to the sacred nature of ecosystems to justify their protection.

Opportunities

Several legal actions have been launched simultaneously in the country. This demonstrates local awareness of the urgency of the situation.

Weaknesses

The decision does not specify the mechanism of the rights and duties of protected natural entities.

Threats

Political and economic powers at central level have an influence. The regional administration is finding it difficult to implement the Court's decisions.

GOOD PRACTICES AND REPLICABILITY

Following the order by the Uttarakhand Court, the State of Uttarakhand appealed the decision to the Supreme Court. The Supreme Court suspended the lower court's order on 7 July 2017.

The Supreme Court considered that if a river is to be considered a person in its own right, then this would imply the existence of rights, but also duties.

Taking the example of a flood that had caused damage to local residents, the Court ruled that it was impossible for the Ganges or Yamuna to assume their liability in any legal action against them.

"Let me be very clear that we are not against giving the two holy rivers of Ganga and Yamuna living entity status," said Uttarakhand Minister Madan Kaushik to The Times of India[62]. But the government, as the guardian of the rivers, does not wish to be held liable for damage caused by these watercourses, arguing that assigning duties to ecosystems could lead to legal risks if claims were brought against the rivers in the event of flooding or drowning. It also wished to express its consideration of the duty of guardianship, given the impossibility for it to ensure the health of these ecosystems. Pollution could come from neighbouring regions over which there was no jurisdiction.

The Supreme Court's decision to suspend the order by the Court of Uttarakhand can be contested. Indeed, the argument concerning the guardians' liability could have been easily dismissed by means of classic mechanisms to deflect responsibility, notably "force majeure". Furthermore, the Indian administration regularly compensates the public for ecological and climatic disasters, as was the case in 2013. As the Minister expressed agreement in principle with the legal personality of the rivers, but asked for clarification on the mechanisms of liability for the legal guardians, it would surely have been better for the Supreme Court to clarify instead of suspending the order.

However, other jurisprudence has shown that this decision will continue to be challenged by judges given the demands of the people.

Future jurisprudence may clarify the regime of Indian aquatic ecosystems.

[62] *The Times of India, Supreme Court stays Uttarakhand high court's order declaring Ganga and Yamuna 'living entities', 2017.*

10

India

Himalaya Ruling 2017

Uttarakhand is an Indian state in the Himalayas that borders Tibet and Nepal. The north of this mountainous territory is covered by glaciers, while the south has large expanses of forest. The alpine zone of the Himalayas is a place of great biodiversity.

The local economy is mainly based on agriculture and livestock. There are also several hydroelectric dams.

LOCAL CONTEXT

Scientists have observed the melting of Himalayan glaciers for many years, a process that has accelerated since the 1970s. This has an impact on the main rivers that rise in the region as well as on fresh water reserves, which are depleting.

The State of Uttarakhand also features several natural parks. However, these are threatened by human activities, most notably deforestation, as well as general environmental degradation. These parks and forests act as vital carbon sinks.

Trees are sacred and are often associated with a god in Hinduism. The region has experienced strong ecological resistance movements for trees in the past. The Chipko movement of the 1970s consisted of mobilisations of villagers in the region who opposed deforestation projects. They prevented trees from being felled by forming a circle around them.

A Chipko Andolan activist protests against Pune's Riverfront Development project.
Source: https://commons.wikimedia.org/wiki/File:Chipko_Andolan_4.jpg?uselang=fr (Samruddhi2897)

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

A public interest litigation was initiated in 2015 when the petitioner, Lalit Miglani, applied for the recognition of the Himalayas, glaciers, rivers and other bodies of water as legal entities.

The High Court issued its ruling on 30 March 2017.

RIGHTS GRANTED TO NATURE

In this case, the High Court of Uttarakhand considered that the application to the courts to declare the Himalayas, glaciers, streams and bodies of water as legal entities and subjects of law in the same way as the sacred Ganges and Yamuna rivers (see previous example) came under the principle of "**continuous mandamus**". This allowed the judge, when justified by public interest, to order the administration to take measures.

The Court stressed that "it is the fundamental duty of all citizens to preserve and conserve nature in all its original glory". The Court also affirmed that the courts are obliged to protect the environment by virtue of the "jurisprudence for a new environmental justice" and the principle of ***parens patriae***.

This principle is derived from common law. In particular it is defined by the American case law of the Supreme Court of the United States in Snapp & Son, inc. v. Puerto Rico ex rel. Barez: "Parens patriae literally means 'parent of the country'. The parens patriae action has its origins in the common law concept of the 'royal prerogative'. This latter measure included the right or responsibility to care for people who were legally incapable due to mental incapacity, whether caused by 1. age; 2. intellectual impairment; or 3. insanity; to care for themselves and their property."

This concept allows the State to intervene and act as a guardian for children and disabled people as well as the mentally ill, incapacitated and elderly who are unable to care for themselves.

Expanding on this point, the Court emphasised that the concept of a legal person allows any subject to be submitted to human laws for reasons of general interest or governance. In particular, it extends the field of action to legal entities, such as companies or other organisations.

Consequently, the Court reiterated that "rivers and lakes have an intrinsic right not to be subject to pollution. Polluting or damaging rivers, forests, lakes, aquatic elements, air or glaciers is **legally equivalent** to harming, injuring and causing **damage to a person**.

Rivers, forests, lakes, bodies of water, air, glaciers and springs have **the right to exist, persist, endure and regenerate their own vital ecosystems**. Rivers are not just bodies of water. They are scientifically and biologically alive. Rivers, forests, lakes, bodies of water, air, glaciers, springs and human life are united and form an indivisible whole. The integrity of rivers must be maintained from the glaciers to the ocean."

Just ten days after having done so for the Ganges and Yamuna rivers, in this way the Court recognised elements of nature as legal persons.

The Court emphasised that "Corpus Juris Secundum[63], Vol.6, page 778, explains the concept of legal/artificial persons as follows: "Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic." A legal person is any subject matter other than a human being to which the law attributes personality for valid and sufficient reasons. As legal persons are the arbitrary creations of the law, as many types of legal person have been created by the law as society needs for its development. (See Salmond on Jurisprudence, 12th edition, pages 305 and 306). Thus, Himalayan mountain ranges, glaciers, rivers, streams, lakes, jungles, air, forests, grasslands, valleys, wetlands, prairies and springs must be declared as a legal entity/person for their survival, safety, sustenance and redress."

The Court recognises rights similar to fundamental rights to these natural entities, including all the rights necessary for their preservation and conservation. It states that these ecosystems thus have "the status of a legal person, with all the corresponding rights, duties and responsibilities of a living person".

"The rights of these legal entities are equivalent to the rights of human beings, and damage caused to these entities is treated in the same way as damage caused to human beings", the Court emphasised in its ruling.

Finally, the court has appointed several individuals to be the human face of the protected ecosystems.

Shikra hawk in Uttarakhand.
Source: https://commons.wikimedia.org/wiki/File:Shikra_with_kill_-_Powalgarh,_Uttarakhand,_India.jpg?uselang=fr (Aniket Singh).

[63] An encyclopedia of American law.

GOVERNANCE:
ROLE AND NATURE OF ACTORS INVOLVED

Persons in loco parentis: the ***parens patria*** mechanism presupposes the appointment of legal guardians to represent persons incapable of representing themselves. The Court has appointed the **Chief Secretary of the State of Uttarakhand**; the Director of the NAMAMI Ganga Project (Ganga River Restoration Project); Mr Praveen Kumar, Director of NMCG (National Mission for Clean Ganga); Mr Ishwar Singh, Legal Advisor to the NAMAMI Ganga Project; the **Advocate General of the State of Uttarakhand**; Mr Balram K Gupta, Director of the Chandigarh Judicial Academy and Mr M C Mehta, **Senior Advocate of the Supreme Court**, who are therefore declared persons in loco parentis as the human face of the NAMAMI Ganga Project and the State of Uttarakhand.

The Court stresses that: "These officials are required to preserve the status of these (natural) entities and promote their health and well-being."

Residents: the ruling states that "the Chief Secretary of the State of Uttarakhand is also authorised to co-opt up to seven public representatives from towns and villages in the State of Uttarakhand to represent communities living on the banks of the rivers and near lakes and glaciers."

Women from the Kumaon region in Uttarakhand, India.
Source: Wikimedia Commons / https://bit.ly/3ThjulH.

Garhwali shepherd near Lansdowne, Uttarakhand. Source: Sumitra Devi, a Garhwali shepherd near Lansdowne, Uttarakhand 03.jpg (Satdeep Gill).

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The decision is based on the mechanisms of legal personality rather than spiritual criteria as in the Ganges and Yamuna decision. This tends to make it more technical and legally precise.

Weaknesses

The Court appoints government officials as substitute guardians for the natural elements. Government authorities, whose failings have caused the ecological crisis, can hardly be considered legitimate to take on this role.

Opportunities

The threats to populations in the Himalaya region are becoming increasingly obvious, and these issues are regularly brought before the courts. This was true of the case initiated in early 2023 by the residents of the sacred town of Joshimath against the dams that they consider responsible for the major subsidence in their municipality[64]. Awareness is clearly growing.

Threats

In a similar case concerning the Ganges and Yamuna rivers, the Supreme Court suspended the Court of Uttarakhand's order that had recognised the rights of these ecosystems (see previous ruling).

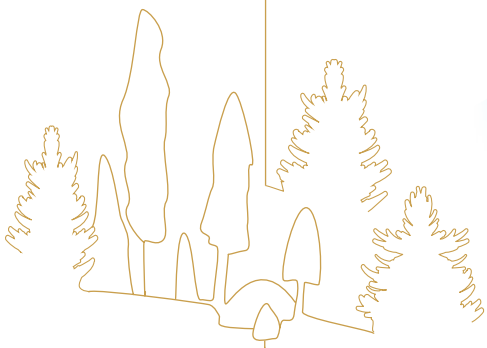
GOOD PRACTICES AND REPLICABILITY

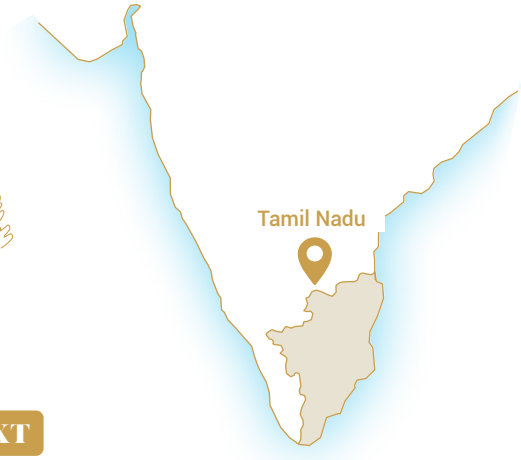
This decision by the Court of Uttarakhand has not been appealed before the Supreme Court, unlike the decision concerning the personality of the Ganges and Yamuna rivers. This decision could therefore be a legal precedent that paves the way for other decisions involving the rights of nature in India.

[64] *The Guardian, Scarred for life: the Himalayan towns sinking into oblivion, 2023.*

11

India
Madras High Court Ruling 2022





LOCAL CONTEXT

Tamil Nadu is a state in southern India that is richer and more urbanised than most Indian states. According to the Tamil Nadu Forestry Department, it has a "*spectrum of nine major forest types ranging from wet evergreen forest to moist deciduous, dry deciduous, sholas, grasslands and scrub forest. The Western Ghats, the longest hill range in the State, is one of the 25 global hotspots of biodiversity and one of three mega centres of endemism in India*" [65].

HUMAN AND ENVIRONMENTAL ISSUES

Source: https://bit.ly/3RsVkDS

The territory is prized for its mineral resources and in particular its red sand. Minerals such as rutile, granite, zircon and ilmenite are subject to intense, environmentally destructive exploitation led by private companies who sometimes resort to violence and corruption [66].

[65] *www.forests.tn.gov.in*

[66] Le Monde, *La guerre du sable rouge dans le Tamil Nadu* [The Tamil Nadu red sand war], 2019.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

The case brought before the court concerns a former official who requested the reversal of his punishment for illegally granting land concessions on protected government land ("*Forest Poramboke Land*"). He contested his dismissal, blaming the decision on one of his superiors.

In its decision of 19 April 2022, the Madras High Court [67] emphasised, in new jurisprudence, the role of the State in preserving nature.

RIGHTS GRANTED TO NATURE

Invoking the *parens patriae* procedure, usually used to protect people who cannot defend or take care of themselves (particularly children), S. Srimathy, the judge hearing the case, acknowledged the power and obligation to intervene in the best interests of nature due to the threat to its health and wellbeing.

In its ruling, the Court recognised Mother Earth as a holder of fundamental rights to survival, safety, sustenance and resurgence in order to maintain its status as a living entity and to promote its health and wellbeing.

The Court stressed that "past generations have handed over the 'Mother Earth' to us in its pristine glory and we are morally bound to hand over the same Mother Earth to the next generation".

It also highlighted that "under the guise of sustainable development the human should not destroy the nature. If sustainable development finishes off all our biodiversity and resources, then it is not sustainable development it is sustainable destruction."

The plaintiff's punishment was reduced as the deed was corrected, but a suspension was still imposed for the act against nature.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The Court recalled that "*The State government and the central government are required to protect 'Mother Nature' and to take appropriate steps to protect Mother Nature in all possible ways.*"

[67] Capital of Tamil Nadu.

INTERVIEW WITH ACTOR IN THE FIELD

Shrishtee Bajpai

Indian researcher and activist dedicated to the rights of nature and local communities, member of the executive committee of the Global Alliance for the Rights of Nature and founding member of the transnational "Rights of Rivers South Asia" alliance.

None of the existing jurisprudence in India on the rights of nature has managed to create a debate at a national level. The 2022 Madras Court ruling on the rights of nature that granted rights to Mother Earth as a living being, in particular, is too far removed from the original context of the submission. The ruling is not rooted in core community struggles and therefore does not constitute a solid precedent for the emergence of a new jurisprudence which could be inspired by it.

I do not believe that the courts or the law are currently equipped to deal with these issues. However, the rights of nature are a powerful tool for changing the language of the law.

Other important jurisprudence has nevertheless been established, notably by the Uttarakhand High Court, which declared the entire animal kingdom a legal entity, meaning that animals could be represented by a custodian (2018). Other examples include the recognition of Sukhna Lake in Punjab as a legal person in 2020 and the rights granted to the Ganges and Yamuna rivers.

There are many different cultures and belief systems in India and the representation of nature and its governance depend greatly on the relationship that Indigenous people and other local communities have with nature. The New Zealand system of guardians appointed by local communities and the State could work in India. At the same time, the example of the Ganges, a very long transboundary river along which numerous religious communities live – Hindus, Muslims and Christians – shows that highly diversified transnational and multicultural collaboration is needed for the rights of rivers to truly be representative.

Source: MF Media-Chennai -Tamil Nadu-DSC 0008 (Giri9703). https://bit.ly/3T8v4Qr / Wikimedia Commons.

Current development in India is based on extractivism; this is not a context in which the rights of nature will easily find a prominent place. However, the ecological crisis and the mobilisation of society are helping to bring this issue to the fore. We must use strategies to create legal precedents in territories where environmentally destructive projects are being opposed, and we must mobilise local communities on this basis.

We must recognise that the rights of nature are an integral part of the local customary law of numerous Indigenous communities and other populations dependent on nature. We must therefore decolonise the rights of nature from the Western viewpoint and make them acceptable and realistic at the local level.

The difficulty lies in the fact that civil society struggles to involve these issues in public discourse and the media is disinterested. However, we are trying to coordinate our efforts by strengthening existing networks such as the *Global Tapestry of Alternatives and Vikalp Sangam* (Alternatives Confluence).

Source: Pichavaram Park / Mangrove forest in India / AFD (Didier Gentilhomme).

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

This decision shows that the rights of nature could emerge in jurisprudence of different kinds, not solely led by citizens, but also in individual disputes, particularly when they relate to the State's responsibility to protect nature.

Opportunities

Visibly increasing awareness of the protection of nature among judges, who seek to add to jurisprudence beyond ordinary petitions covered by environmental protection.

Weaknesses

The ruling does not impose sanctions or specific measures aimed at improving the administration's protection of nature.

Threats

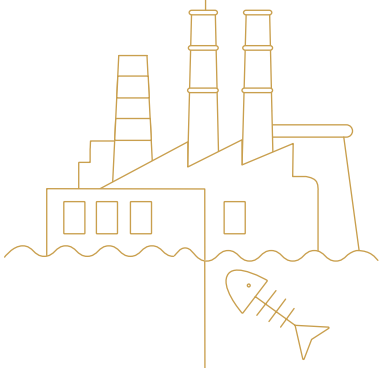
A political and economic context centred around the development of extractive industries that is often linked to corruption scandals.

GOOD PRACTICES AND REPLICABILITY

The context of this ruling differs from previous rulings which were based on petitions in defence of particular ecosystems and already orientated towards the rights of nature. It could illustrate, if replicated more widely, an awareness of judges and a willingness to assert a real shift in environmental jurisprudence. This decision could also be replicated in many other cases and in States facing similar problems.

12

Bangladesh
Turag River 2019



LOCAL CONTEXT

The Turag River originates from the Bangshi River and then flows into the Buriganga River, one of the main rivers in Bangladesh. The river runs approximately 65 km through Dhaka, Bangladesh's capital city.

HUMAN AND ENVIRONMENTAL ISSUES

The Turag River faces serious ecological threats, particularly due to pollution from the large-scale illegal dumping of industrial and household waste[68]. The river is lined with dyeing and textile design factories. The inhabitants of the industrial neighbourhoods of Dhaka, Tongi, Gazipur and Savar are the first to feel the effects of the pollution which makes the water unsafe and unsuitable for essential uses such as bathing, cleaning cooking utensils or doing laundry.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

On 7 November 2016, the Bangladeshi NGO *Human Rights and Peace for Bangladesh* (HRPB) filed a writ petition to the Supreme Court of Bangladesh. This public interest litigation (Article 102 of the Constitution) sought to contest the legality of earth-filling, encroachment and construction along the banks of the Turag River. The case was brought against the national government.

[68] *The Daily Star, A dumping zone called Turag, 2022.*

The organisation's petition was based in particular on several investigations and a detailed *Daily Star* newspaper report concerning the state of the river from 2013 to 2016[69].

During the examination of the case, a wider public debate concerning the health and state of rivers in Bangladesh was held as part of the International Water Conference, entitled "River: A living being" (organised by *ActionAid Bangladesh* at the end of January 2019).

RIGHTS GRANTED TO NATURE

In a judgment delivered on 30 January and 3 February 2019, the Court declared the Turag River to be a legal person, legal entity and living entity.

This ruling was based on the *public trust* doctrine, i.e. the legal principle according to which certain resources are placed in the trust of the State (not as private property) by the Nation. The Court stressed that this trust also applies to the sea, mountains, forests, lakes and other bodies of water on State territory.

Exercising its *parens patriae* jurisdiction, the Court recognised the Turag River's status as a "living entity" and asked the competent authorities to remove all illegal infrastructure from its banks within thirty days. The Court also declared that the status of living entity applied to all rivers and streams in the country.

The legal guardianship of the Turag River and the other rivers in the country was granted to the National River Conservation Commission which is responsible for taking necessary measures to protect their rights. The Court ordered the State to revise the Commission's status to make it an independent authority and provide it with the means to fulfil its mission.

The ruling also referenced key principles including the precautionary principle and the polluter pays principle. The Court noted the rise of the movement to recognise the rights of nature across the world and that the issuance of this jurisprudence was directly inspired by these developments.

The Court also issued measures to raise awareness and educate the public. This is the responsibility of the Ministry of Education for the country's youth and the Ministry of Industries for the professional sector.

[69] *The Daily Star, Dark Flows the River Turag, 2018.*

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The National River Conservation Commission is the appointed guardian of the rivers of Bangladesh.

The Court ordered all relevant authorities to consult with the National River Conservation Commission before launching any new project involving rivers, canals or bodies of water, and obtain a "no objection" certification before carrying out such projects.

The purpose of this is to prevent: illegal encroachment on rivers, pollution of the environment, pollution of rivers caused by industrial activities, illegal constructions and various other irregularities. It should also ensure the restoration of normal river flows, the maintenance of rivers and guarantees of navigable waterways. Ultimately, for the Commission, it is a question of ensuring a multidimensional use of rivers for socioeconomic development, as stated on their website[70].

The Commission is tasked with making recommendations to the government concerning policies for Bangladeshi rivers, including the adoption of plans in the short and long terms for their protection. It can also carry out regular inspections and make recommendations for monitoring activities linked to the protection of rivers. The Commission also examines the practical application of existing laws and policies relating to the protection of rivers and formulates recommendations to the government to amend these laws and policies if necessary.

Source: Pollution of the Turag river / ID 103728687 © Bayazid Akter – Dreamstime.com.

[70] *http://nrccb.portal.gov.bd*

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The ruling draws on the international movement to justify recognition of the rights of rivers.

Opportunities

The Bangladesh Garment Manufacturers and Exporters Association (BGMEA) supports stricter measures in relation to environmental protection. Consequently change could come about through the efforts of companies.

Weaknesses

The Court has entrusted responsibility to a supervisory body under the authority of the government; the latter is responsible for the failures which led to the water pollution scandal.

Threats

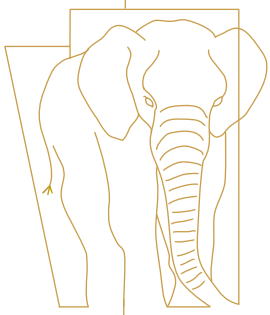
Bangladesh has already implemented recommendations on environmental protection (1995) which failed to reduce pollution. The problem is therefore with the application of, and compliance with, regulations.

GOOD PRACTICES AND REPLICABILITY

The Court's ruling seeks to tackle the situation head on by placing it in the new context of the rights of nature, and by setting out specific practical measures for criminal matters as well as for governance, education and raising public awareness. Although its impact is difficult to evaluate in the short term, this type of jurisprudence helps to show that the national court can draw on the evolution of the rights of nature around the world to recognise, beyond laws or related constitutional texts, the rights of nature while clarifying their application through cross-cutting provisions.

13

Pakistan
Kaavan the elephant



LOCAL CONTEXT

Present-day Pakistan belongs to the part of the Indian sub-continent colonised by the British in the 17th century. During the process of India gaining independence, Hindus and Muslims were in conflict, leading to the creation of Pakistan in 1947. Constitutionally, Pakistan is a Federal Islamic Republic, with Islam as the State religion.

Pakistan's legal system derives from Common Law (a system based on English law, established in numerous British colonies, the rules of which are primarily enacted by courts through jurisprudence). Its Constitution nevertheless stipulates provisions requiring the State to bring laws into conformity with the injunctions of Islam[71].

HUMAN AND ENVIRONMENTAL ISSUES

The case of Kaavan the elephant relates to the rules for the living conditions of zoo animals and obligations related to animal well-being. At the time, Pakistan only had an animal cruelty law from the British era in 1890 and Articles 428 and 29 of the Pakistan Penal Code concerning poisoning and killing animals (1860).

In 1978, Islamabad Zoo was managed by a private company which was prosecuted due to the poor conditions of captivity of the animals.

Source : Amir Khalil, vet at the animal protection organisation Four Paws, welcomes Kaavan the elephant 2020.
Alamy (dpa) https://bit.ly/3TeIsn3.

[71] See 12. *Définir la normativité de la charia au Pakistan* [Defining the normativity of sharia in Pakistan] | Cairn.info.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

Kaavan the elephant was gifted by the Sri Lankan government in 1985 when he was one year old. According to the expert mandated by the Court, Kaavan was kept chained up for more than three decades in a small enclosure inadequate for his biological needs. His guardians mistreated him, his state of health was a cause of concern, and he was kept in isolation after the death of his companion Saheli in 2012.

Kaavan displayed behaviour typical of deep psychological distress. He would bang his head against the walls of his enclosure and shake his head nervously in an anxious expression of his loneliness and suffering.

Nicknamed "*the loneliest elephant in the world*", his case succeeded in attracting the attention of the general public and the media. This led to judges delivering an exemplary ruling on 25 April 2020.

RIGHTS GRANTED TO NATURE

In the ruling, the Court deliberately used the term non-human beings to refer to zoo animals.

It used science to stress that Asian elephants are nomadic living beings; they need a social structure to thrive, and they are organised socially in matriarchal herds.

The ruling highlighted that "*there is now a consensus that elephants have emotions, some of which are similar to those of humans. They feel pain, distress, happiness and sadness. They celebrate the birth of a baby elephant and cry and lament the death of a member of the herd.*"

This appears to be irrefutable proof that a zoo is not an appropriate place for this species. The Pakistani judge therefore concluded that the zoo in question could not meet his needs and that the conditions of his detention caused him suffering.

The judge also highlighted that zoos have no utility in terms of the conservation of this species and serve only to expose their living prisoners to visitors. In light of this, the Court stated that the zoo did not contribute positively to society in any way, and that on the contrary, thanks to technological advances, there are much better and more informative ways of observing and acquiring knowledge about animal species.

In its reasoning, the Court stressed that Kaavan the elephant is not a thing, nor a property and that, like human beings, animals have natural rights which should be recognised.

The judge was strongly influenced by Islamic law in this case. He recalled that the Constitution and its preamble expressly provide that measures will be taken to enable Pakistani Muslims to order their lives in the individual and collective spheres in accordance with the fundamental principles and concepts of Islam. In light of this he referred to the principle of "preservation of life" which he defined as the greatest creation of Allah, the Creator. The Court stressed that "life" is not limited to human life, but includes all forms of life, whether it is an animal or plant. The Court cited several verses of the Qur'an highlighting "the rights of animal species and the duty of man to protect them from harm, suffering and unnecessary pain".

Consequently, the Court emphasised that "in a society where the majority of people follow the religion of Islam, it is inconceivable that an animal could be treated in such a way".

The judge also made the connection between human and animal rights on the basis of people's right to life under Article 9 of the Constitution. The Court thus emphasised that the existence of the human race on the planet depends on other living organisms such as plants and animals in order to stress that the treatment inflicted on captive animals in zoos is a breach of human rights.

In its conclusion, the Court based its decision to recognise the violation of the animals' rights in Islamabad Zoo and in particular the rights of Kaavan the elephant on the following consideration: human rights are inherent because they are rooted in being "alive". Life is therefore the premise of the existence of a right. Whether it is human rights or the rights guaranteed expressly by the Constitution, they are all linked to "life". An object or a thing without "life" has no rights. A living being, however, has rights due to the gift of "life".

The judge stated that "like humans, animals also have natural rights which should be recognised. It is about the right of each animal, each living being, to live in an environment which responds to their behavioural, social and physiological needs".

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The Court confirmed that the constitutional and legal obligation to ensure that the rights of living beings are not violated lies with the State, in particular the Ministry of Climate Change.

The Wildlife Council was ordered to place the animals in sanctuaries.

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The Court drew on Islamic law, but also on international precedents. This notably included the case of Happy the elephant from the Bronx Zoo in the USA, whose release the Nonhuman Rights Project[72] is trying to secure.

Opportunities

Pakistan will establish stricter legislation with regard to the fight against animal cruelty[73].

Weaknesses

There are no sanctions on the management company or the guardians responsible for the mistreatment.

Threats

The application of this ruling in the rather isolated case of zoo animals may not transfer to other cases to a similar extent, in particular with regard to the conditions for rearing livestock.

GOOD PRACTICES AND REPLICABILITY

This ruling highlights that the recognition of the rights of nature could be inferred from the protection granted by all religions to divine creation and therefore to the creatures of God, whether human or not. This jurisprudence could also be replicated in other countries whose national courts make use of religious law.

[72] More information about the organisation: *https://www.nonhumanrights.org/*
[73] See: *Pakistan announces animal welfare reforms, bans animal testing | Pakistan – Gulf News*

14

Philippines
Living Laudato Si

LOCAL CONTEXT

The Philippines are an archipelago of 7,107 islands, covering a total area of around 300,439 km^2. The country's unique geography makes it highly sensitive to climate hazards and subject to major climate, environmental and social vulnerability.

HUMAN AND ENVIRONMENTAL ISSUES

Faced with extreme meteorological events such as typhoon Haiyan in 2013, the country must improve the forecasting of these increasing natural phenomena, and also pursue a policy of adaptation to climate change. Despite a dynamic economy, the population of the Philippines is mostly poor and therefore particularly vulnerable.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

RIGHTS OF NaturePH

Rights of Nature PH is a coalition of NGOs and Catholic Philippine environmental organisations which was formed to respond to the climate emergency and enforce the rights of nature.

A proposal to recognise the rights of nature was submitted to the country's House of Representatives in 2019. While this was unsuccessful, a second initiative was led by Senator Risa Hontiveros in July 2022.

Edwin GARIGUEZ

In 2022, the municipality of Infante Quezon adopted the country's first ordinance on the rights of nature. Lodged and defended by Vice Mayor L.A. Ruanto, the ordinance established the River Agos as a protected area in the municipality, recognising its rights[74].

In February 2023, a third bill filed by several members of the House of Representatives, Arnan Panaligan, Joey Salceda and Edgar Chatto, sought a vote on measures to recognise the rights of nature[75].

From 21 to 23 March 2023 in Quezon City, near Manila, 63 members of Rights of Nature PH organised a general assembly dedicated to "recognising the rights of nature in the Philippines". This environmental coalition supports the recognition of the rights of nature in order to "find solutions to a dysfunctional economic system and confront harmful legal, social, political and cultural structures both for people and for the planet"[76].

Father Edwin Gariguez, former director of Caritas Philippines, explains that the concept of the "rights of nature" recognises and honours the environmental rights of human beings. He asserts that this means that human activities should not interfere with the ability of ecosystems to regenerate their natural capacities and to develop and evolve. According to the priest, all stakeholders including businesspeople must therefore be made fully responsible for any negative impacts on ecosystems[77].

Source: https://livinglaudatosi.org.ph/about/

Living Laudato Si'
PHILIPPINES

[74] See mapping: *https://storymaps.arcgis.com/stories/7a2b21853d324b4fa56183cfa603bc91*
[75] See article: *https://www.asianews.it/news-en/Catholic-environmentalists-call-on-the-Philippine-Congress-to-recognise-the-rights-of-nature-58046.html*
[76] See report: *https://missionsetrangeres.com/eglises-asie/une-coalition-catholique-philippine-appelle-manille-a-reconnaitre-les-droits-de-la-nature/*
[77] See previous article.

RIGHTS GRANTED TO NATURE

The House Bill introduced on 9 February 2023[78] by representative Joey Sarte Salceda seeks to recognise natural ecosystems, (non-human) populations and processes as legal entities to certain inherent and inalienable rights, such as those related to their existence, regeneration and restoration.

The text draws on Section 16 of Article II of the 1987 Philippines Constitution which states that "the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature".

It seeks to depart from the usual utilitarian perspective which considers nature as an object to exploit and an afterthought to "development", instead regarding it as a living system with an inherent right to thrive. The Bill demands the introduction of "a holistic development perspective that is integral in the creation of an economic, legal and cultural transformation anchored on environmental conservation and respect for biodiversity, community development, participation, democratic governance, social justice and sustainability".

The Bill begins by presenting the underlying principles of the text.

This includes in particular the principle of the "*interconnectedness of all creation bound by a common living source and all activities in the ecosystem – land, air, water and sea – live and function according to their respective roles to create and sustain the web of life shall at all times be respected*". The text also asserts the principles of harmony, collective good, multiculturalism and the coexistence of human rights and the rights of nature.

Section 5 of the Bill on legal personality stipulates that "t*he legal personality of natural ecosystems and processes, including all of their living and non-living elements, as well as any distinct and identifiable portions, aggregations or components thereof, shall be recognised under law. In any action for the protection or enforcement of the rights recognised herein, the natural ecosystem or process involved shall be considered the real party-in-interest*".

The fundamental rights of nature are defined as follows:

"Natural ecosystems shall have the right to exist; to the maintenance of the vital cycles, functions and processes that ensure their continued sustainability and their well-being; to the conditions necessary for their ecological renewal and restoration; and to adequate and effective representation vis-a-vis the protection and enforcement of these rights. These rights shall be in addition to, and shall not impair or limit, any other right or remedy available under existing law, administrative regulations or jurisprudence. A violation of any existing environmental law or regulation shall be deemed a prima facie violation of these rights."

[78] See: *https://docs.congress.hrep.online/legisdocs/basic_19/HB07128.pdf*

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The Bill stipulates a number of consequent obligations of the State related to respecting and guaranteeing the rights of nature, both in public policy development and in the promotion of balanced forms of production and patterns of consumption.

The text also sets out obligations that affect legal entities, ordering them to embed the rights of nature policy into their by-laws and organisational processes when submitting their application to the *Securities and Exchange Commission* (Philippines company register). It also includes an obligation to report activities related to the rights of nature.

The Bill stipulates that all residents of the Philippines can take action to enforce the rights of nature.

The Bill also supports the creation of a Trust Fund designed to hold money awarded to the defence of nature by any court. This money will be used by a Conservation Committee, appointed to implement the measures necessary for protection, preservation, ecological renewal and restoration of the ecosystem or natural process on whose behalf an action pursuant to this Act has been filed. This Committee will include the concerned parties, particularly Indigenous cultural communities, popular organisations, NGOs or any accredited public interest group.

Marabut Islands / Philippines (Vyacheslav Argenberg).
Source: https://commons.wikimedia.org/wiki/File:Marabut,_Philippines,_Limestone_islands_in_San_Pedro_Bay_2.jpg

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The text sets out innovative legal and financial mechanisms for taking legal action and ensuring the inclusive monitoring of measures intended to preserve or restore the rights of nature.

Opportunities

Other organisations support the rights of nature movement, particularly the Laudato Si Initiative. This organisation seeks to guide believers in "eco solidarity"[79] by drawing on the message of the Catholic Church and its writings, such as those of Saint Francis of Assisi.

Weaknesses

The religious aspect of the approach could weaken recognition of the rights of nature if interfaith dialogue is not possible and if it discourages other religious, political or community representatives from affiliating.

Threats

According to the NGO Global Witness, the Philippines is one of the most dangerous countries in the world for environmental activists, with 43 environmental defenders killed in 2019[80].

GOOD PRACTICES AND REPLICABILITY

The movement for the rights of nature is based on an alliance between NGOs and faith-based organisations. It benefits from consultation with elected officials who have already tried to make progress by introducing several bills to recognise the rights of nature. This type of coalition is possible in many States or territories where religious organisations play an important role. The rights of nature echo a universal message of peace and solidarity, compatible with, but different to, the message of monotheistic religions.

[79] Guide to eco-solidarity: *https://livinglaudatosi.org.ph/sdgls21/*

[80] See article: *Les Philippines, pays le plus dangereux d'Asie pour les défenseurs de l'environnement* [The Philippines, the most dangerous country in Asia for environmental defenders] – Geo.fr

Africa


Morocco
20
Tunisia
19
Nigeria
17
Uganda
15
16
18
South Africa

15

Uganda
National Environmental Act 2019

LOCAL CONTEXT

Uganda has a great diversity of ecosystems: glaciers, vast lakes, savannahs and tropical forests. The country also has a remarkable biodiversity. Despite the creation of national parks to preserve the environment, there are numerous challenges to protecting nature, such as deforestation, pollution and climate change.

HUMAN AND ENVIRONMENTAL ISSUES

The country's economic activity is largely based on agriculture, which puts great pressure on forest areas, prized both for their wood and their soil. The fast-growing population is increasingly subject to degradation of living environments and worsening climate conditions and suffer from the effects of floods, droughts and food insecurity.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

At a national level, Advocates for Natural Resources and Development (ANARDE) has acted as the main promoter of the recognition of the rights of nature in Ugandan national environmental law, acting in collaboration with the Gaia Foundation.

To achieve this, ANARDE has relied on traditional models of customary governance and concepts from Earth Jurisprudence, a philosophy inspired by Thomas Berry and other thinkers in the movement.

In 2019, Uganda became the first country in Africa to recognise the rights of nature in national legislation through Article 4 of the National Environmental Act (2019)[81].

[81] National Environment Act, 2019 (Act No. 5 of 2019).

RIGHTS GRANTED TO NATURE

Article 4 of the Act stipulates that:

(1) Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.

(2) A person has the right to bring an action before a competent court for any infringement of the rights of nature under this Act.

(3) The government shall apply precaution and restriction measures to all activities that may lead to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles.

(4) The Minister shall, by regulations, prescribe the conservation areas for which the rights in subsection (1) apply.

The inclusion of the rights of nature in the new National Environmental Act means that citizens and Indigenous communities can now take legal action to defend the rights of nature in Ugandan courts.

The Act (Art 3.3) stipulates in particular that any citizen can file a civil suit against a person who has harmed or is likely to harm the environment. This action can have the objective of stopping the cause of the damage, requiring an environmental evaluation, imposing monitoring on the activity, ordering the restoration of the degraded environment, compensating any victims or providing compensation for other losses connected with the contested act (Art 3.5).

Article 5 refers to complementary environmental management principles, in particular:

- Encouraging participation by the people of Uganda in the development of policies, plans and programmes for the management of the environment;
- Providing for equitable, gender responsive and sustainable use of the environment and natural resources, including cultural and natural heritage, for the benefit of both present and future generations;
- Maintaining stable functioning relations between the living and non-living parts of the environment through conserving biodiversity and by use of prudent environmental management measures;
- Ensuring optimum sustainable yield in the use of renewable natural resources;
- Ensuring that environmental awareness and literacy form an integral part of education and governance at all levels;
- Ensuring that in the implementation of public and private projects, approaches that increase both the environment and people's resilience to impacts of climate changed are prioritised.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

Policy Committee on the Environment: the 2019 Act states that the Policy Committee on the Environment responsible for strategic environmental policy guidance shall be chaired by the Prime Minister. It brings together various ministries including the Ministry of Water and Environment, the Ministry of Agriculture, Animal Industry and Fisheries, and the Ministry of Lands, Housing and Urban Development.

The functions of this Committee include, in particular, providing guidance in the formulation and implementation of environmental and climate change policies, legislative proposals, plans and programmes.

The Minister of the Environment is responsible for developing environmental policies and implementing the decisions of the Policy Committee on the Environment.

Article 51 of the Act stipulates that the Minister is also responsible for creating conservation areas where the rights of nature apply. The Minister may, following a recommendation from the National Authority of Environmental Management (see below) or the local lead agency (see below) and with the approval of Parliament, by statutory instrument, declare a special conservation area.

To do this they must, in advance, "(a) consult the local council and the local community in whose area the proposed special conservation area is to be located; (b) require an environmental and social impact assessment to be carried out, as appropriate; and (c) if the area in which the proposed conservation area is to be located is private land or land in which any person has an interest, where necessary, acquire the land in accordance with the Constitution, the Land Acquisition Act and the Land Act".

The National Environmental Management Authority is responsible for regulating, controlling, supervising and coordinating all activities related to the environment. In particular it has the jurisdiction to issue certificates of environmental compliance, permits and licences and regulates the activities of the "*private sector, intergovernmental organisations, non-governmental organisations, cultural institutions, Indigenous people and local communities and religious institutions on issues relating to the environment*". (Article 9.2.g)

Lead agencies are tasked with planning, regulating and managing the environment sector within their mandate and carrying out environmental assessments and inspections.

Urban councils and district councils are structures for local environmental management which have the power to issue orders and regulations on various aspects of the protection of natural resources. These councils prepare environmental action plans and ensure that environmental concerns are integrated into local policies in a cross-cutting manner. They also have supervisory power and are responsible for providing the public with information.

INTERVIEW WITH ACTOR IN THE FIELD

Carlotta Byrne

Coordinator of the Gaia Foundation Earth Jurisprudence Programme. A trained lawyer and former course facilitator at Schumacher College.

The Gaia Foundation is a small and spirited international civil society organisation. For nearly forty years, we have supported communities and movements across the world to revive biocultural diversity and Indigenous knowledge, restore ecosystems and strengthen governance centred around the Earth. Our Earth Jurisprudence Programme includes three years of training for civil society leaders across South, East and West Africa. It is an experimental process of decolonising the mind and the idea of "development", of learning and unlearning. Graduates become Earth Jurisprudence practitioners and cultivate their skills to support Indigenous communities in restoring biodiverse and resilient futures, rooted in their traditional knowledge and customary systems of governance. A community of practitioners is emerging, known as the African Earth Jurisprudence Collective.

Thomas Berry is known as the "father" of Earth Jurisprudence and also developed the idea of the rights of nature, inspiring the global movement. Much of his thinking came from the ways of life and customary laws of Indigenous people, passed down from generation to generation. Unlike in Western law, these customs are not based on rights, but on the relationship between human communities and the shared ecosystem, and therefore on responsibilities.This is an approach based on the governance of relationships, rather than the management of a living landscape.

Reverence for, and intimacy with, nature are deeply anchored in African cultures but were greatly undermined by the colonial process and its consequences. The objectives of the African Earth Jurisprudence Collective include the legal recognition of customary laws centred around the Earth and the creation of spaces for the rights of nature in national legal systems. The Collective works on a range of strategies at local, national and pan-African levels.

Uganda is an example of the various ways in which the rights of nature are gaining ground in Africa, in national politics and through the recognition of customary law. Like numerous other African countries, Uganda uses various types of laws – national laws (a legacy of colonialism) and customary laws, whose value is often recognised by constitutional texts, even if they are subject to alternative jurisprudence.

Uganda uses the common law legal system, which also offers the possibility of implementing the rights of nature through a type of "legal activism".

Frank Tumusiime, a Ugandan lawyer and ANARDE coordinator (Advocates for Natural Resources and Development) was inspired by Earth Jurisprudence after attending a short workshop organised by Gaia. He then engaged in advocacy at a national level, making Uganda the first African nation to inscribe the rights of nature into a legal framework. In March 2019, the new Ugandan National Environment Act 2019 entered into force with provisions enabling nature "to exist, persist, maintain and regenerate its vital cycles, structure, functions and processes in evolution".

However, it is essential that the rights of nature are actually applied in the field through community practices, and that they are not simply imposed by national legislation. In western Uganda, traditional leaders and the Buliisa District Council – supported by Dennis Tabaro (a local Earth Jurisprudence practitioner), ANARDE and Gaia – developed legislation aimed at protecting sacred national sites and recognising the customary laws of the local Bagungu people[82]. The customary laws of the Bagungu intrinsically protect the rights of nature to exist, prosper and evolve. The ordinance of the district of Buliisa is awaiting approval from the Attorney General's Office.

Fortunately, recognition of the intrinsic value of customary laws is gaining ground in Africa and internationally. This is evident through Gaia's work with the African Commission to ensure the adoption of the African Resolution ACHPR/Res.372 (LX) 2017 on the Protection of Sacred Natural Sites and Territories[83]. Resolution 372 embraces the vision of the African Charter which calls for the decolonisation of the African legal system and the revitalisation and valorisation of its cultural and natural heritage. It calls for the recognition of the rights of guardians, the right to religion and cultural beliefs, the right to healthy ecosystems and the rights of nature.

These processes, at local, national and regional levels, have highlighted a very clear fact: the Indigenous and traditional people of Africa have intrinsically recognised and respected the rights of nature for countless generations.

[82] Uganda Recognises Rights Of Nature, Customary Laws, Sacred Natural Sites. Cf. The Gaia Foundation website.
[83] Simon Mitambo, Radical Ecological Democracy Gaining Root in Africa, GTA's Newsletter #5: Power and Democracy, Sept. 2021.

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

A clear signal in support of environmental protection and public participation in the development of ecological policies.

Opportunities

The mobilisation of local communities, particularly Indigenous communities, to protect sacred sites, which strengthens environmental protection.

Weaknesses

The rights of nature are restricted to conservation areas whose creation depends on the authority of the Minister, which could ultimately be a severe hindrance to the efficacy of the legislation.

Threats

The development of harmful projects such as the oil drilling and pipeline project EACOP & TILENGA by TotalEnergies in Murchison Falls Park, the oldest natural park in the country. This kind of project demonstrates the weakness of measures to protect the environment when faced with the economic power of extractive multinationals.

GOOD PRACTICES AND REPLICABILITY

Local advocacy and legal proposals are developed by enhancing the skills of community leaders. This is a long-term project, conducted in cooperation with all relevant authorities and combining respect for customary law, traditional governance and the rights of nature. This methodology could be replicated in other countries to strengthen existing networks.

16

Uganda

Customary laws for the recognition of sacred sites 2020

LOCAL CONTEXT

The shores of Lake Mwitanzige (Lake Albert) in western Uganda are home to the Indigenous *Bagungu* communities. These communities are historically organised in chiefdoms, kingdoms and ethnic dynasties, a model which was severely undermined by colonialism. In the 19th century, the United Kingdom declared present-day Uganda a protectorate. This colonial period ended in 1962 when the country gained independence, but local structures are still unstable today due to this past influence.

HUMAN AND ENVIRONMENTAL ISSUES

Western Uganda is home to some of the most important aquatic environments on the planet. These ecosystems store carbon and play an essential role in combating climate change, in particular by impacting the movement of atmospheric moisture across the globe by connecting water systems around the world.

Extractive industries and mining operations play a major role in the water crisis which the country is likely to face by 2025[84].

[84] Fiona Wilton, *À mesure que les industries extractives s'étendent, la rareté de l'eau aussi : le lac Albert en Ouganda* [As extractive industries grow, so does water scarcity: Uganda's Lake Albert]. Dossier spécieux. Eaux, bien commun (Passerelle n°18. Rubrique Lignes de frant. February 2019).

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

In 2017, a resolution was adopted by the African Commission on Human and Peoples' Rights on the Protection of Sacred Natural Sites and Territories (ACHPR/Res. 372 (LX) (2017). It recognises "that sacred natural sites are **one of the oldest forms of culture-based conservation**, defined as 'areas of land or water having special spiritual significance to peoples and communities' (IUCN, 2008) and often harbouring rich biodiversity contributing to connectivity, resilience and adaptability of valuable landscapes and ecosystems".

The Resolution asserts that "custodian communities, who maintain customary governance systems to protect sacred natural sites and territories, play an essential role in preserving the traditional values of Africa, and require legal recognition and support to do so".

In this Resolution, the African Commission calls on States Parties "to recognise sacred natural sites and territories, and their customary governance systems, as contributing to the protection of human and peoples' rights" and urges countries, companies and civil society to respect and protect the intrinsic value of sacred natural sites and territories.

Inspired by the previous victories of the Indigenous people of the Colombian Amazon, the Bagungu people have held regular intergenerational community dialogues for five years. This was a first step in reviving their traditional knowledge and practices, re-appropriating their system of governance and their agricultural knowledge as well as consolidating community cohesion.

Source: Young Bagungu boys practise hunting ceremonies (Kinkonogo). Wikimedia Commons / https://bit.ly/47UfUTy

In November 2018, a process was started to draw up eco-cultural maps and calendars and catalogue customary laws and clan constitutions. This work was supported by the African Institute for Culture and Ecology (AFRICE) and the Gaia Foundation. These documents played an important role in the creation of the new ordinance.

Building on this, traditional chiefs and the Buliisa District Council worked to develop a local ordinance to protect sacred natural sites, drawing on customary laws.

This led to Buliisa Council adopting a district-level ordinance on 22 November 2019, recognising the customary laws of the Bagungu people[85].

[85] Buliisa District Local Government Council. Resolution on the customary Laws of Bagungu Custodian Clans by Buliisa District Council. The Republic of Uganda. 22 November 2019.

RIGHTS GRANTED TO NATURE

Prior to the colonial period, Bagungu customary law guaranteed inhabitants a relationship of harmonious interdependence with their ancestral land and waters. This customary law protected nature and its intrinsic right to exist, thrive and evolve.

The ordinance does not constitute a general recognition of the rights of nature at a territorial level. Instead, it defines an interconnected network of sacred natural sites, known as Mpuluma, to which Bagungu custom attributes great spiritual, cultural and ecological significance, as essential for ensuring the balance, health and integrity of ecosystems and their human and non-human inhabitants.

In order to ensure the protection and defence of the rights of these sacred sites, the text establishes the powers of custodians (*Balamansi*) appointed for this purpose. Their task is to ensure that traditional ceremonies are carried out, and to guarantee that no prohibited activities take place in sacred and preserved areas. This relates to wetlands and lake shores in particular, where there is a ban on all harmful human activities such as agriculture, fishing, hunting or other activities which could damage these ecosystems.

Working in a co-governance body with Buliisa District officials, the custodians are responsible for implementing the ordinance in order to ensure the integrity of sacred sites and the rights of the Bagungu people. The body will enforce both national and customary law.

Another tool from customary law is the use of restorative justice in cases of infringements and damage to sacred sites. Favouring restoration over punishment, this type of justice will introduce penalties aimed at restoring sites by planting trees or supplying seeds. This is an example of hybrid justice, inspired by Indigenous customary law and traditions.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

Buliisa Council: responsible for adopting the law on sacred sites.

Custodians of sacred sites: the ordinance establishes that the custodians (Balamansi) and, in particular, the chief custodians (Balamansi Bahandu) of sacred natural sites (Mpuluma) are directly responsible for protecting these sites and carrying out rituals to keep the necessary balance between man and nature.

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

This ordinance is an important step in the return to the Bagungu people of the means to support the resilience of their ancestral lands and their traditions centred on the Earth.

With the 2019 Act and this local regulation, Uganda emerges as a leader in the recognition of the rights of nature on the African continent and paves the way to an eco-perspectivist governance rooted in a decolonial vision. This progress shows a willingness to assert the position of Indigenous and traditional communities on this territory.

Opportunities

This development of the rights of nature and sacred sites in Uganda is part of a broader movement in Africa to reclaim Indigenous knowledge and customary systems of governance.

A collective born from the African Earth Jurisprudence movement is working in collaboration with Indigenous and traditional communities in eastern, western, central and southern Africa to enable the reaffirmation of cultural and ancestral African identities. They are working with a decolonial perspective to develop new proposals in response to the ecological crisis.

Weaknesses

The Bagungu tribe wants to secede from the Bunyoro-Kitara kingdom to form its own kingdom. Local divisions could therefore hinder the proper implementation of the ordinance[86].

Threats

EACOP, an oil pipeline project on the banks of Lake Albert, is a major threat to the protection of the sites and to the respect of the rights of Indigenous people and their right to self-determination.

GOOD PRACTICES AND REPLICABILITY

This ordinance combines the preservation of cultural identity, decolonisation and defence of the rights of nature. Rather than imposing the legal concepts of the rights of nature on the territory, the movement takes its inspiration from the local culture and customs, which allows it to adopt a tailored approach.

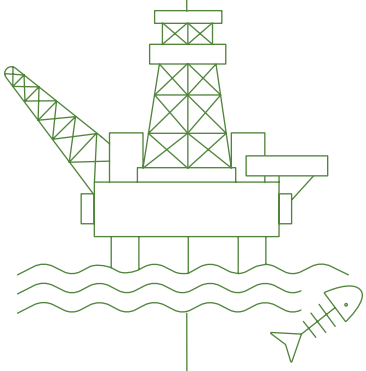
The reference to sacred sites, by definition locations of great cultural importance, is also present in the approach of the Māori in New Zealand and numerous other Indigenous people who have been victims of colonisation. The balance thus found between customary and national law could be replicated in many countries in Africa and on other continents.

[86] Peter Kugonza, Bunyoro-Kitara parliaments rejects Bagungu secession plans. The Cooperatore, January 2023.

17

Nigeria

The River Ethiope



LOCAL CONTEXT

The River Ethiope originates in the territory of the Umuaja community in the Ukwani Local Government Area (one of 774 LGAs, subdivisions of the 36 federal states of Nigeria). The river flows through several cities and communities in five LGAs before joining the Benin River which ultimately empties into the Atlantic Ocean. The river basin is home to almost 2 million people.

HUMAN AND ENVIRONMENTAL ISSUES

Oil activities have a huge impact on water pollution, especially in the Niger Delta, and also affect fish and wildlife in general as these directly depend on the quality of the watercourses.

Water protection laws are considered by actors in the field to be insufficient and inadequate with regard to the protection of human and environmental rights.

Although Nigeria has the most abundant oil reserves in Sub-Saharan Africa, the economic and social benefits for the country's citizens are limited due to local insecurity and corruption[87].

Despite these polluting industrial operations, other activities such as tourism, fishing, hunting, farming, logging and sand mining are practised in the River Ethiope basin. The basin is essential for the provision of food and facilitating transport as well as nurturing cultural and spiritual practices. It also plays vital ecological roles, particularly in the context of the climate crisis.

[87] Vincent Collen, Au *Nigeria, la manne du pétrole ne cesse de decliner* [In Nigeria, oil revenues continue to decline], Les Échos, 24 February 2023.

The river faces various environmental problems: poor water quality, alteration of the landscape, loss of wetlands (over 60%), loss of native vegetation and biodiversity, sand and silt build ups, diversion of the river for leisure activities and loss of natural flow due to invasive weeds and silting[88].

These issues are linked to oil and other industrial activities, agriculture, wetland degradation, sand mining, urban development and tourism, increasing population, poor rainwater management, climate change, flooding and soil erosion[89].

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

Irikefe V. Dafe founded the River Ethiope Trust Foundation (RETFON) in 1992 to address the ecological deterioration of the river. Its mission is to "restore, preserve and promote the exceptional natural qualities of the River Ethiope catchment area and encourage cooperation between state and federal agencies, private industry, universities, grassroots organisations, donor agencies and local landowners to address the serious problem of the ecological deterioration of the River Ethiope catchment area".

The organisation has taken concrete action to halt polluting activities, including helping to conduct legal and institutional studies and analyses on the protection of the river in order to understand the flaws in the current framework.

The organisation argues that local environmental law, combined with commercial and constitutional law, encourages a development model that is based on the exploitation of oil and the country's natural resources and undermines the protection of ecosystems.

This African organisation has forged a partnership with the Earth Law Center (ELC) to advocate for the rights of the River Ethiope.

Source: River Ethiope / https://commons.wikimedia.org (Aghogho Otega).

[88] Irikefe V. Dafe et al, Ecological Law Case Study Series: Environmental Degradation of River Ethiope Nigeria. Leadership for the Ecozoic (L4E), Ecological Law Blog. October 2021.

[89] *Ibid.*

DROITS RECONNUS À LA NATURE

On 31 January 2020, RETFON organised a stakeholders' workshop on the protection, management and recognition of the Ethiope river basin. A statement signed by numerous local authorities, community leaders and other village representatives was issued in support of the rights of nature.

A bill was drafted recognising, in particular, the status of the River Ethiope as a living entity with fundamental rights. It also established the obligation of the Nigerian government and private entities to evaluate and consider the best interests of the River Ethiope in all actions and decisions concerning the river. The bill also called for the appointment of one or more independent custodians.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The Niger Delta Basin Development Authority and the Benin-Owena River Basin Development Authority are responsible for the management of the River Ethiope.

If the bill is adopted, an authority bringing together the custodians of the Ethiope river will be established. This authority will be composed of various actors: local communities, existing authorities, including the basin development authorities, universities, religious bodies and Indigenous peoples.

Source: Niger delta oil spills / *https://www.forbes.com/sites/davidrvetter/2021/01/29/niger-delta-oil-spills-shell-ruled-responsible-in-landmark-verdict/?sh=38d54a11465e*

INTERVIEW WITH ACTOR IN THE FIELD

Irikefe V. Dafe

Scientist specialised in environmental conservation; founder/Executive Director of the Foundation for the Conservation of Nigerian Rivers; founder/President of the River Ethiope Trust Foundation; Africa Lead of Earth Law Center USA and expert member of the UN Harmony with Nature initiative.

While working in environmental conservation and research at university I realised that you never truly feel fulfilled until you pass on your knowledge for the benefit of the community. I wondered how I could complete my studies by giving something back to the community I came from. I realised that I could get involved in the protection of the River Ethiope, where I used to swim, fish and play every afternoon with my classmates.

In 1992, I asked prominent members of my community to join me in creating the River Ethiope Trust Foundation. To my knowledge, it is the only African foundation whose objective is directly linked to protecting a single river.

Sometimes the foundation would get into discussions or even conflicts with certain investors, operators or developers whose activities were damaging the river. I gradually realised that if things were so bad despite all our efforts, there was something wrong with the law. It was either ineffective or structurally incapable of responding to the challenges of environmental protection.

This is how the link was established with the Earth Law Center, a non-profit organisation based in the USA. Together we drafted a declaration on the rights of the River Ethiope, which was signed by numerous partners and stakeholders. We also prepared a bill, which we will soon finalise to incorporate feedback and contributions from the community before presenting it to Delta State government legislators and the National Assembly of the Federal Republic of Nigeria.

We have worked hard to involve people like local kings, royal fathers [traditional chiefs], local authorities and all other community actors. We have managed to create a link with customary law by involving the royal fathers, who will present the bill for the rights of the river to the Delta State government and the National Assembly. Together we will present the text to parliament so that hopefully, by the end of 2023, the rights of the River Ethiope will be recognised and pass into law.

After this first step, we will take it to national level and call for recognition of the rights of all the rivers of Nigeria.

Parliamentary elections took place in February 2023 and the parliamentarians start their mandate in June. We are therefore offering a series of capacity-building workshops on the rights of nature for the newly elected representatives and other essential stakeholders. We are confident that raising awareness will allow us to adopt a law that recognises the rights of rivers and other natural ecosystems in Nigeria.

We also have very strong support from national authorities. In January 2023, the Federal Government of Nigeria, via the Federal Ministry of Water Resources, became the first country in Africa to recognise and adopt the Universal Declaration of the Rights of Rivers with a view to its ratification and transposition in Nigeria.

At the 12th Interactive Dialogue to Commemorate International Mother Earth Day, organised on 24 April 2023 by the UN Harmony with Nature initiative, Nigeria, represented by M. Suleiman Adamu, Minister of Water Resources, expressed the desire to take the initiative to encourage other African countries to recognise the rights of nature.

We are gradually overcoming all objections, including those of companies which operate in the River Ethiope basin. They were initially against us, but they now understand that if the river is destroyed, their activities will inevitably be disrupted. Hotels, golf courses and many other establishments rely on the health of the River Ethiope, so they have now joined us in our work.

We want to use the law to create a harmonious society and change people's attitudes towards the river, while also being able to take legal action on behalf of the River Ethiope if it comes under threat.

Source: River Ethiope / *https://commons.wikimedia.org/wiki/File:Ethiope_river.jpg (Dotun55).*

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The initiative has built a considerable network of long-term support which has given it significant legitimacy.

Opportunities

The election of new representatives who will be educated on the rights of nature presents an opportunity to mobilise parliamentarians in favour of the rights of the Ethiope.

Weaknesses

The text has not been finalised and could still be amended.

Threats

Lobbying by foreign companies, particularly oil companies whose operations depend on the extraction of raw materials and not the conservation of the ecosystem, unlike tourism or agriculture.

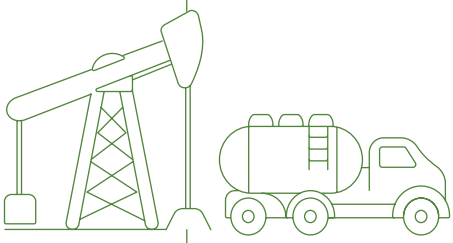
GOOD PRACTICES AND REPLICABILITY

The Foundation has made considerable efforts to raise awareness, educate and invest on the ground to communicate the concepts of the rights of nature. This has enabled local stakeholders to gain skills and consequently grow the network of advocates of the rights of nature.

The Foundation and the Earth Law Center want to develop a template and a guide to enable other organisations to replicate the work done in Nigeria.

18 South Africa

Shell offshore exploration



LOCAL CONTEXT

South Africa is a country that has been affected by Apartheid whose population still experiences very high levels of inequality. It is one of the richest African countries on the continent by GDP ranking and has significant mineral reserves.

HUMAN AND ENVIRONMENTAL ISSUES

South Africa has been dealing with the consequences of climate change for many years, in particular the droughts that severely affect the country. For example, Cape Town suffered severe water stress in 2018 and inhabitants' access to water was greatly reduced.

A third of the population did not have access to running water[90] in 2020 due to poor management and a significant decline in rainfall.

Against this backdrop, several oil fields were discovered off the coast of South Africa, despite operations linked to oil exploration constituting a real threat to coastal populations and the climate.

Source: https://fr.freepik.com

[90] Sylvie St-Jacques *et al.*, L'Afrique du Sud assoiffée [Thirsty South Africa]. In Le Devoir. Fonds de journalisme international Transat-Le Devoir. 15 February 2020.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

In 2014, the Department of Mineral Resources and Energy (DMRE) granted Shell and Impact Africa a permit to conduct seismic surveys off the coast of South Africa in search of oil and gas.

Ecologists and fishing communities mobilised to denounce the impacts of the exploratory seismic surveys on marine life.

Natural Justice, Greenpeace Africa and two other applicants, represented by the environmental law firm Cullinan & Associates, applied to Grahamstown High Court seeking an urgent suspension of the seismic surveys. This application was unsuccessful.

Another application for the surveys to be stopped, lodged before the same Court, ordered Shell to immediately halt seismic exploration activities along South Africa's Wild Coast. The judge also ordered Shell and the Minister of Mineral Resources and Energy to pay the court fees[91].

The applicants then lodged a case before Makhanda High Court demanding the revocation of Shell's exploration right to conduct seismic surveys on South Africa's Wild Coast.

Source: *https://sahel-intelligence.com/28919-afrique-du-sud-interdiction-pour-shell-de-mener-une-exploration-sismique.html*

[91] Ajsa Habibic, Shell ordered to halt seismic survey off South Africa. In Offshore Energy. 28 December 2021. *(Shell ordered to halt seismic survey off South Africa - Offshore Energy (offshore-energy.biz)*

RIGHTS GRANTED TO NATURE

The Court ruled in favour of the applicants.

It found that the exploration rights were granted illegally as the affected communities had not been consulted. It also stressed that consulting local kings and other traditional customary authorities was not enough to satisfy the right to free, prior and informed consultation.

The Court confirmed that decision-makers failed to consider the potential damage to the ocean and consequently to the livelihoods of fishing communities and the impact on their cultural and spiritual rights.

The Court also reasserted the contribution of oil and gas exploitation to climate change.

Finally, the Court added that by granting the exploration rights to Shell, the authorities had failed to consider the Integrated Coastal Management Act (ICMA). In particular, this document establishes the requirement to consider the interests of the entire community before issuing an authorisation for a coastal activity. The judge stressed that this meant considering the impacts on fishing communities, but also the interests of other living organisms which depend on the coastal ecosystem, i.e. all marine life.

This Act sets out in particular:

The **"interests of the whole community"**: the collective interests of the community determined by:

(a) prioritising the collective interests in coastal public property of all persons living in the Republic over the interests of a particular group or sector of society;

(b) adopting a long-term perspective that takes into account the interests of future generations in inheriting coastal public property and a coastal environment characterised by healthy and productive ecosystems and economic activities that are ecologically and socially sustainable; and

(c) **taking into account the interests of other living organisms** that are dependent on the coastal environment.

State public trustee of coastal public property

12. The State, in its capacity as the public trustee of all coastal public property, must:

(a) ensure that coastal public property is used, managed, protected, conserved and enhanced **in the interests of the whole community**; and

(b) take whatever reasonable legislative and other measures it considers necessary to conserve and protect coastal public property.

Control and management of coastal waters

21. An organ of state that is legally responsible for controlling or managing any activity on or in coastal waters must control or manage that activity in the interests of the whole community.

In this case, the Court noted that the competent Minister did not dispute the fact that the provisions of the ICMA had not been considered. It therefore highlighted that the area to which the exploration right applies has a special legal status that affords the environment and this area a particularly high level of protection. However, this was lacking due to the absence of an integrated approach to management, since, in this instance, the decision-maker dealt with the application as an energy-sector specific issue.

The exploration rights were consequently revoked by the court.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The Department of Mineral Resources and Energy was the branch of administration that examined the case and issued the exploration permit.

The Department of Forestry, Fisheries and the Environment is the branch of administration responsible for the enforcement of provisions related to the protection of the environment and the coastline in particular.

Shell Exploration and Production South Africa B.V. are the defendant companies.

Source: Cormac Cullinan / *https://www.garnafrica.org/our-work*

INTERVIEW WITH ACTOR IN THE FIELD

Cormac Cullinan

Lawyer, environmental law specialist and member of the GARN Africa Network (Global Alliance for the Rights of Nature Africa). Cullinan lives in Cape Town and is the author of the book "Wild Law: A Manifesto for Earth Justice[92]" – a manifesto for the rights of nature.

An interesting aspect to explore in Africa is customary law, as it is reflective of complex identities and cultures in which the sacred is present in forests, rivers and numerous other natural entities; it requires certain behaviour towards living beings. Customary law therefore relates to cultural and historic heritage.

In the case against Shell, it is interesting to note that the Court stressed that it was not its place to say whether an animist belief, shamanic practice or a local cult was "good" or not, but that the oil company had to take this into consideration when consulting the population. It condemned Shell for not respecting the obligation to consult.

Shell appealed the decision, so we are still waiting for the next ruling.

What makes me smile now in hindsight is that 14 years ago, in 2008, the South African government consulted me on the drafting of the Integrated Coastal Management Act. I managed to incorporate an amendment requiring respect for the interests of the entire community, including humans and non-humans, without anyone paying attention. Everyone ignored it.

More than a decade later, we were able to use this provision against Shell to fight against this project which did not respect the interests of the living beings who inhabit the coast of South Africa. During the trial, discussions were particularly focused on the interests of non-human living beings and how to define these interests. Scientists had difficulty thinking outside the box. At present we consider things in terms of a protected area or protected species. I said to them: ask yourself whether it is in the interest of dolphins and other marine mammals to see this project go ahead.

I think we need a new project development methodology which considers the interests of nature. Awareness has nevertheless been growing in South Africa, in particular since the severe drought in 2018.

[92] Cormac Cullinan, Wild Law. A Manifesto for Earth Justice. Second Edition. Ed. Chelsea Green Publishing Co. April 2011.

Many people have finally realised that human rights are dependent on nature. When there is no more water, you cannot sue or complain to the administration to make it rain. We need to find new ways of being proactive to prevent environmental problems.

It is too early to draw conclusions on the enforcement of the rights of nature in Africa, but there is a clear intention within GARN Africa to build on the existing foundations, cultural and customary, as they already fully implement concepts such as interdependence with living beings and respect for sacred entities. Despite only being officially formed in November 2022, our collective dates back further and already has 200 members.

The problem is that this vision has been severely impacted by colonialism. This is particularly true for people in cities, where the colonial process has led many to disrespect their own culture. This is much less the case in the countryside where communities have preserved their culture and their proximity to nature.

Major conflicts arise in communities due to new beliefs which arrived with Christianity and other religions. In particular, anything which is not in line with the religions brought by colonialism can cause discord. Ancient cultural practices are denounced as witchcraft and those observing these traditions are discriminated against or even threatened.

Another major challenge is that Africa is a target for mineral extraction. This is ever more the case as resources run out and are increasingly difficult to extract elsewhere in the world. This creates numerous conflicts between communities and multinationals.

It is therefore particularly important to view the recognition of the rights of nature as an essential tool for protecting human rights, democracy and the right to self-governance. Those who authorise destructive projects often live in cities and do not suffer the consequences themselves. They make decisions while regularly breaching the right to free, prior and informed consultation.

In Africa, I believe that a grassroots strategy will be most effective in constructing local projects which respect the rights of nature and finding a balance of power with the State.

There are some countries, like Nigeria, where the state has agreed to recognise the rights of rivers, and where we can therefore find the right counterparts. However, apart from a few exceptions, I believe that most initiatives will come from civil society movements.

To the question of whether the rights of nature could divide social movements by relying on the cultural link with nature which varies between different ethnicities and peoples, I would answer that the rights of nature do take these differences into consideration. I always talk about "Earth Jurisprudences" in the plural, as relationships with nature are varied and our strength is precisely to accept and recognise this diversity. The rights of nature are a tool for acknowledging similarities and working on diversity to grow stronger.

In conclusion, I believe that Africa is fertile ground for the movement of the rights of nature.

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The ruling calls on stakeholders to consider the interests of non-humans without expressly talking about the rights of nature. The Court is therefore drawing on the needs of these other entities to revoke mining companies' operating permits.

Opportunities

The strengthening of the GARN Africa network will certainly have a positive impact on structuring the movement against oil permits.

Weaknesses

The decision is still not definitive and could be overturned on appeal.

Threats

Numerous oil projects threaten the integrity of the coastline. Under the guise of an improved environmental impact study, future investors could attempt to convince the judge and administration of the compatibility of their activity with the interests of nature.

GOOD PRACTICES AND REPLICABILITY

This is an interesting strategy, halfway between recognising the rights of nature and a better integration of broader collective interests. It does not call into question the object status of natural entities and therefore does not require major legislative upheaval. The strategy could be circumvented by vague commitments to compensate for ecological damages rather than being a clear obstacle to certain activities in environments even when they are particularly fragile and sensitive.

19

Tunisie
Constitution

LOCAL CONTEXT

Tunisia has experienced major political instability for many years, dating back to the start of the 20th century and the struggle for independence (gained in 1956) and again in 2010 with the revolution which sparked the Arab Spring.

The country suffers from high levels of poverty. Since the COVID-19 crisis, almost 4 million Tunisians have been living in poverty, one third of the population[93].

After suspending parliament, Kaïs Saïed, President since 2019, organised a revision of the Constitution which was put to a referendum in July 2022. Only 2.5 million of the 9.3 million Tunisian voters (27.54 %) participated in the referendum, but the revised Constitution was approved by a large majority. It entered into force on 16 August 2022. This highly controversial text has strengthened presidential powers to the detriment of other legislative and legal powers[94].

HUMAN AND ENVIRONMENTAL ISSUES

The environment is not a new subject in Tunisia. Tunisia has had regulations for protecting soil and water (1994) since gaining independence. At the start of the 1990s, the Ministry of the Environment addressed the issue of pollution prevention, waste management (1996) and the protection of biodiversity following the Rio de Janeiro Conference.

However, despite existing legislation, the situation on the ground deteriorated year by year[95] due to a lack of enforcement and respect for environmental law.

[93] *Le Monde, En Tunisie, la misère et l'exclusion des jeunes, défis de l'après-référendum* [The poverty and exclusion of young people in Tunisia, challenges following the referendum], 20 July 2022.
[94] France 24, *Tunisie : la réforme constitutionnelle de Kaïs Saïed sous le feu des critiques* [Tunisia: Kaïs Saïed's constitutional reform under fire from critics], 30 June 2022.
[95] Le Courrier de l'Atlas, *La Tunisie perd 25 places dans l'indice de performance environnementale* [Tunisia drops 25 places in the Environmental Performance Index], 9 June 2022.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

The process of revising the Constitution began following a serious political crisis which led to the President dismissing the government and suspending parliament. A decree of 22 September 2021 endorsed the creation of the National Consultative Commission which was tasked to submit a draft Constitution to the President of the Republic.

The Commission brought civil society stakeholders together for discussions and to listen to their demands. The Green Tunisia network sought to use this opportunity to publicise its proposals to improve environmental protection and more specifically recognise the rights of nature.

A draft article was written to this effect but was not retained.

It is important to clarify that the text proposed by the National Consultative Commission differed from the text proposed in the referendum. The Commission spoke out against the new Constitution, rejecting it so as not to be blamed for its creation.

RIGHTS GRANTED TO NATURE

The Green Tunisia network proposed
the inclusion of the following article into the Tunisian Constitution:

"The right of Tunisians to a healthy and balanced environment can only be realised if the health of nature itself is protected.

The State endeavours to respect nature's inherent right to exist, persist, renew its vital lifecycles, its structure and its development processes, and strives to preserve and restore its functions."

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The 2014 Tunisian Constitution established several important measures for environmental protection.

This included Article 129 establishing the creation of a "Commission for Sustainable Development and the Rights of Future Generations", an authority which could be consulted on draft laws related to economic, social and environmental issues as well as development plans.

Despite an **organic law adopted on 13 June 2019**, the election of members was so delayed that the Commission was never formed and it was removed from the new Constitution adopted in 2022, along with all other constitutional bodies.

INTERVIEW WITH ACTOR IN THE FIELD

Amel Jrad

General Manager of the Tunis International Centre for Environmental Technologies – CITET (2012-2018), and former project leader to the Ministry of Local Affairs and the Environment.

Amel Jrad is an independent consultant and expert in environmental technologies and climate action.She works with civil society to build the capacity of stakeholders and advocate for eco-citizenship to achieve the SDGs. She is a member of the Green Tunisia network, a transdisciplinary think tank.

The Ministry does not ensure the enforcement of the law and sometimes does not respect its own legislation. The environmental situation is critical. The country is experiencing a water crisis and waste management has become a major national issue. The efficacy of laws is poor as there is a lack of coherence in public policies.

The State has a very anthropocentric vision of environmental policy, which takes a sectorial (compartmentalised) approach which is not adapted to the systemic nature of environmental problems and challenges. This is exacerbated by the absence of an inclusive public dialogue.

In Tunisia we effectively manage problems day by day. There is no real long-term policy, and the Ministers of Ecology change too often (there were a dozen Ministers over the 2011-2023 period). Each time there was a new circle of advisers, but they did not listen to officials or agents in the field.

The Green Tunisia network is a force of opposition when required, but it is primarily a proactive force. We participated in the revision and consultation process of the environmental code that is currently being prepared, and we also proposed the integration of the rights of nature in the new 2022 Constitution.

As we were not officially involved, we approached political parties, some of which had been asked to participate in the debates. Most were lacking strong, innovative proposals on the matter of environmental protection. They adopted and supported our proposed text on the laws of nature, drafted in legal terms. But this approach was unsuccessful.

Consequently, we have fallen back on the environmental code which is still being finalised.

The draft code will now pass before parliament following the legislative elections in January 2023. The network will therefore lobby lawmakers and the environmental commission in particular to get them to vote for structural amendments for the rights of nature.

It is a shame that the decision-makers do not have sufficient knowledge regarding the challenges of the rights of nature.

Our strength is combining transdisciplinary powers and mobilising experts who, depending on the case, tackle complex subjects related to environmental protection.

The rights of nature could also draw on local struggles, such as small-scale fishing which is on the UNESCO World Heritage List. This is an area where we could mobilise people and raise awareness. But it could also relate to other actions which could be influenced by the rights of nature.

Although we do not have Indigenous people on our territory, our culture and the scarcity of natural resources mean that the subject of the rights of nature could really be tailored to our country. Our ancestral knowledge has been strongly overlooked in favour of industrialisation. But now the question is how to reverse this trend and limit the loss of knowledge about nature.

Source: Fisherman on the island of Djerba in Tunisia / https://fr.123rf.com.

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

A robust network of experts capable of mobilising and being a proactive force.

Opportunities

A future law on environmental protection could allow debates to reopen on the subject of the rights of nature.

Weaknesses

The subject of the rights of nature is still largely unknown among the general public and political figures.

Threats

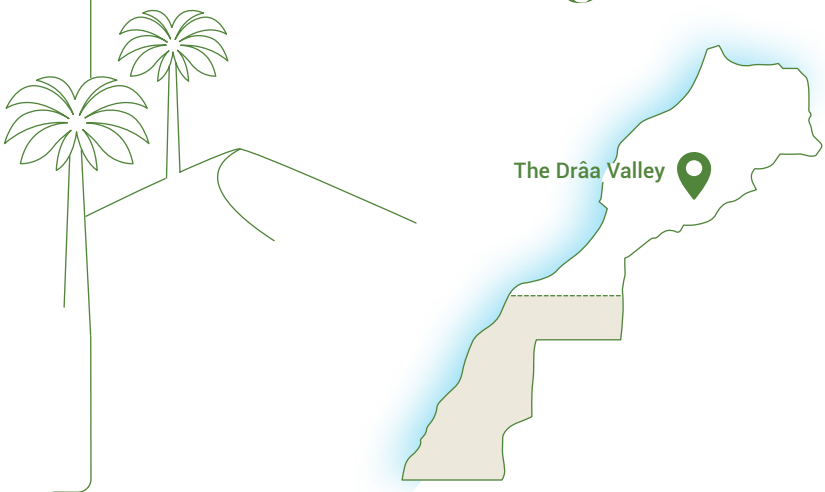
Growing political instability leading to uncertainty on the ability of institutions to persist and work without distraction on the subject of ecology.

GOOD PRACTICES AND REPLICABILITY

This is a network of experts who monitor political news and are on the lookout for new opportunities to change legislation. Members keep an eye on international developments and have been able to study other victories around the world in order to submit a draft text. Although their work has not yet been adopted, it is important as it gets a foot in the door and alerts political elites to these issues; this approach could certainly be successful in the long term. This behaviour could be replicated in other countries where the subject of the rights of nature is still very new compared to the country's general progress in terms of environmental protection.

20

Morocco
Oasis rights 2018



LOCAL CONTEXT

The Drâa Valley in Morocco is a historical caravan route linking the Sahara with the north of the country. It is a culturally rich territory with many different ethnicities including a Black population (Draouas), Arab populations from the Sahara, tribes from the north (Aït Sedrate) and other ancient nomad people (Aït Atta).

Due to drought and water scarcity, the balance of oasis life has relied in particular on a frugal distribution of water and collective use traditionally organised within communities.

HUMAN AND ENVIRONMENTAL ISSUES

The problem of water stress is now very real in the Drâa Valley and the oasis region in southeastern Morocco. Climate change influences precipitation and groundwater status[96] while the water cycle is disrupted by intensive water use, as well as hydroelectric construction[97] intended for supplying cities. Villages already need to be supplied with drinking water by tankers.

The impact on agriculture and also on access to drinking water, health and other vital needs will require significant changes to oasis models.

[96] *YaYabiladi, Les sols marocains pas épargnés par le réchauffement climatique, selon le GIEC* [Moroccan soils not spared by climate change, according to the IPCC], 8 August 2019.

[97] *Telquel, Le long de l'oued Drâa, deux barrages et une vallée à sec* [Along the Wadi Drâa, two dams and a dry valley], 6 January 2023.

[98] *https://festivalcheminfaisant.com/edition-2018-maroc/*

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

In 2018, the first Moroccan edition of the Chemin Faisant festival[98] was held in M'Hamid in the Drâa Valley in order "to explore a very symbolic topic, the water at the heart of current challenges: from climate change to new rights for living entities, from collective intelligence to the emergence of a planetary consciousness".

Among those invited was Valérie Cabanes, international lawyer, specialist in the crime of ecocide and campaigner for the recognition of the rights of nature through the Global Alliance for the Rights of Nature.

The subjects discussed during the festival were chosen taking into account the public, in particular farmers and people from other relevant sectors. The aim was to encourage a response from actors on the ground and expose these new legal concepts to the reality of oasis life and traditions.

The event inspired local cultural and social stakeholders, who continued their efforts to raise awareness and educate by organising a celebration for Earth Day in 2019.

The lawyer Marine Calmet, a specialist in the rights of nature, was invited to this event to continue consideration of the subject of water management. She told the organisers about preparations for a mock trial on the rights of oases with the objective of highlighting the damage caused to ecosystems and the water cycle, which is disturbed by anthropogenic stresses.

Source: freepick@wirestock

RIGHTS GRANTED TO NATURE

At the moment, local stakeholders are focused on cultural activities (music festival, planting day with young people, etc.) to raise awareness of the concepts of the rights of nature among the people of the Drâa Valley.

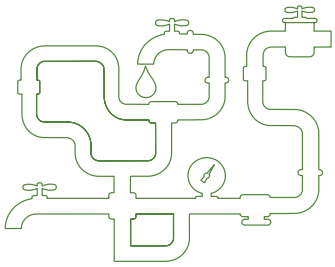
We need to find a way of reconciling local ancestral organisation with the rights of nature. There are real obstacles, including a marked inertia within institutions, but also in respect of the sensitivities of farmers who must be accommodated in order to avoid provoking conflicts. Despite an agricultural model based on three-phase permaculture, with restricted water usage, traditional practices have been substantially altered by the use of individual pumping[99] and the production of some crops, such as watermelon, for export to the European market[100], a practice which represents essential income for some inhabitants. This is already posing real problems, both for social harmony and the protection of the most fundamental human rights.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

In Morocco, the planning and production of drinking water supply are the responsibility of the National Office for Electricity and Drinking Water (ONEE), a public establishment operating on a commercial industrial basis. It controls 80% of drinking water production nationwide, while the rest (20%) is shared between distributors in the major cities and municipalities. Distribution and sanitation are the responsibility of municipalities, under the authority of the Ministry of the Interior.

Source: freepik./ https://bit.ly/46O8hMQ

Water governance is considered complex, and the allocation of responsibilities to different entities without consultation raises questions about the transformation of this administration.



[99] Aziz Bentaleb, ***Pompage de l'eau et désertification dans la Vallée du Drâa moyen : cas de la palmeraie de Mezguita (Maroc)*** [Water pumping and desertification in the Middle Drâa Valley: the case of the Mezguita palm grove (Morocco)], Insaniyat, 2011.

[100] Le360, *Zagora : surexploitée, la nappe phréatique proche de l'épuisement* [Zagora: over-exploited, the groundwater is close to exhaustion], 24 February 2022.

INTERVIEW WITH ACTOR IN THE FIELD

Mohamed Leghtas,

Human rights activist and campaigner for environmental protection.

The situation is catastrophic as the population is affected by both compromised agricultural activities and a problematic drinking water supply. However, paradoxically, these are not the main concern. It was not until the 2001 Marrakech Climate Change Conference that the subject of environmental protection truly emerged. But human rights activists saw us, the environmental activists, as petit bourgeois. Although things are evolving, the issue of the rights of nature, of the water, sea, air… is not yet topical.

The oases are near death. This is the fourth consecutive year of water stress since 2019 and it is disastrous. The population is badly affected, and awareness is increasing, but whether there is a willingness to fight against desertification and water stress is another question. When we look at the large-scale cultivation of watermelons, between Zagora and M'Hamid, where we use deep groundwater to grow watermelons which we export to the Netherlands, Belgium and throughout Europe, it's unbelievable! Civil society actors and organisations are trying to speak out and denounce the irresponsibility of this intensive monoculture and each year the authorities say that they will impose restrictions, but nothing changes. There is a conflict between the immediate income from agriculture and tourism and the outlook over the medium and long terms; the results over these longer periods will be catastrophic.

We had the chance to meet a range of people and work with some them during the events in M'Hamid, including lawyer Valérie Cabanes who spoke to us extensively about the rights of nature. Together we imagined the possibility of holding a mock trial against those responsible, as well as against the administration, to force them to react and stop these disasters.

The idea behind organising this symbolic trial was to raise awareness of the concept of the rights of nature and demonstrate how to use these rights and existing jurisdictions to try to make some progress and promote good practices.

This transition will be achieved with time. Before, we did not see the problem, but now we do. Personally, I am very interested in NEXUS[101], an approach which seeks to reconsider the compartmentalised approach to water management, in which administrative entities work separately. Instead, a regional approach is proposed in order to bring all the people concerned, local people and experts, around the same table.

[101] Mohamed SINAN *et al.*, *La question de l'eau au Maroc selon l'approche «NEXUS» dans le contexte du changement climatique* [The issue of water in Morocco according to the "NEXUS" approach in the context of climate change], IRES, 30 March 2020.

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

A local community of cultural and environmental organisations which make the link between preserving the living environment and maintaining local identity.

Opportunities

Upcoming events are planned to continue to raise public awareness and take local action.

Weaknesses

The difficulty of taking legal action against the administration or local economic actors.

Threats

The progress of this movement is very slow with regard to the climate emergency and the ever-growing ecological decay of oases, which could lead to a collapse of local ecosystems and an exodus of the population.

GOOD PRACTICES AND REPLICABILITY

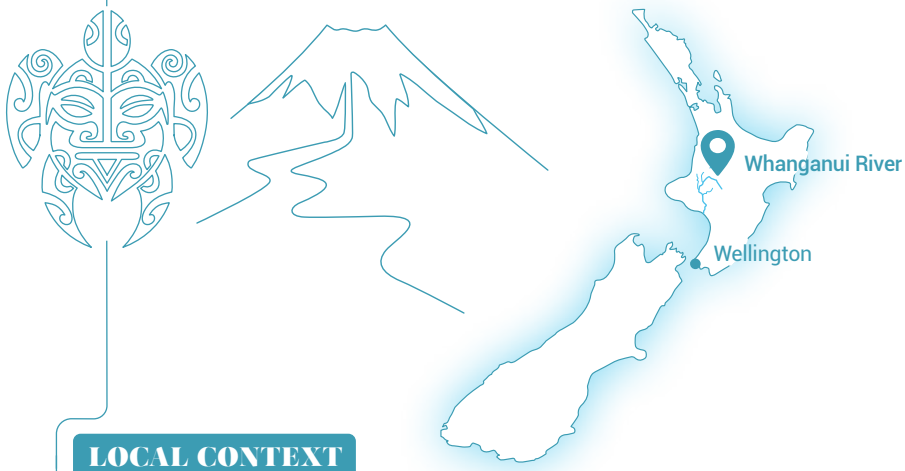
Local actors are joining forces with international experts and other international solidarity associations, with whom they are sharing new ideas and actions to try to find a peaceful and effective solution to environmental issues. Events are designed ensuring respect for cultures (musical events, promotion of nomadic identity, etc.) and local actors (farmers, tourism stakeholders, etc.) to jointly develop appropriate responses. It is certainly a drawn-out strategy, but one which seeks to maintain a fragile social balance.

Oceania


New Caledonia
22
New Zealand
21

21

New Zealand
Whanganui River Claims Settlement 2017



LOCAL CONTEXT

Some 17.4% of the population of New Zealand belongs to the Māori ethnic group, the first people who lived in the territory before it was colonised by the United Kingdom[102]. The country is a unicameral parliamentary monarchy, where a minimum of seven seats are reserved for Māori Members of Parliament. This has been the case since the adoption of the Māori Representation Act in 1867.

This followed numerous conflicts between the Crown and tribes (iwi) in the 19th century, particularly regarding the matter of the ownership and management of Māori ancestral lands. A Māori court was created in 1975, the Waitangi Tribunal, which is a "permanent commission of inquiry that makes recommendations on claims brought by Māori relating to Crown actions"[103].

HUMAN AND ENVIRONMENTAL ISSUES

New Zealand is an economically prosperous country which has embraced liberalism since the 1980s[104]. The economy is mainly based on tourism, but agriculture and mining have also shaped the territory. In the 20th century, the hydroelectric industry's development policy profoundly altered the landscape of New Zealand. The scale of some projects, such as Lake Manapōuri, generated opposition from environmentalists, tourism operators, fishing communities and local people[105].

[102] Statistics 30 June 2022: *https://www.stats.govt.nz/information-releases/maori-population-estimates-at-30 june 2022/*
[103] *https://www.waitangitribunal.govt.nz/*
[104] *https://www.senat.fr/ga/ga-027/ga-0273.html*
[105] *https://teara.govt.nz/en/hydroelectricity*

Some of these intensive economic activities were met with resistance from iwi Māori in particular, who were determined to establish a legal balance of power in order to protect and manage the sacred ancestral territories of which they consider themselves the guardians. The sacred ecosystem of the Whanganui, a river which originates in the snow-covered volcanoes of North Island, has been transformed to cater to local economic needs. Blasting rapids to allow boats to pass, gravel extraction, diversion of the watercourse and hydroelectric dams… These changes, perceived as serious attacks on both the river and Māori identity, have been the subject of claims from the tribes for whom the Whanganui constitutes a cultural lifeline.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

The Treaty of Waitangi, signed in 1840 by the British Crown and some Māori chiefs, is the founding document of the British colony of New Zealand.

Source: https://bit.ly/3Tzt6bX

Article 2 establishes that "Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession". However, at the end of the 19th century, State authorities confiscated part of Māori land following a series of conflicts. Since then, Māori have been demanding property rights, contesting the administration of the territory and seeking financial compensation.

Iwi have been jointly fighting for the comprehensive recovery of their ancestral rights to the entire Whanganui River since 1930. The first river administration council was created in 1988 by the Whanganui River Trust Board106 (WRTB) and presented claims to the Waitangi Tribunal in 1990.

[106] Whanganui River Trust Board Act, 1988.

On 30 August 2012, the Whanganui River Deed of Settlement was signed by the government and the iwi of the Whanganui River. This agreement was based on the Waitangi Court's report which established that "to Whanganui Iwi the Whanganui River was a single and indivisible entity, inclusive of the water and all those things that gave the river its essential life; Whanganui Iwi possessed, and held rangatiratanga (sovereignty) over, the Whanganui River and never sold those interests".

After this first agreement, a second agreement was signed on 5 August 2014, the Ruruku Whakatupua, which dissolved the WRTB. Finally, on 14 March 2017, the Te Awa Tupua Act was adopted by the New Zealand Parliament to ratify the new regulation of the river.

RIGHTS GRANTED TO NATURE

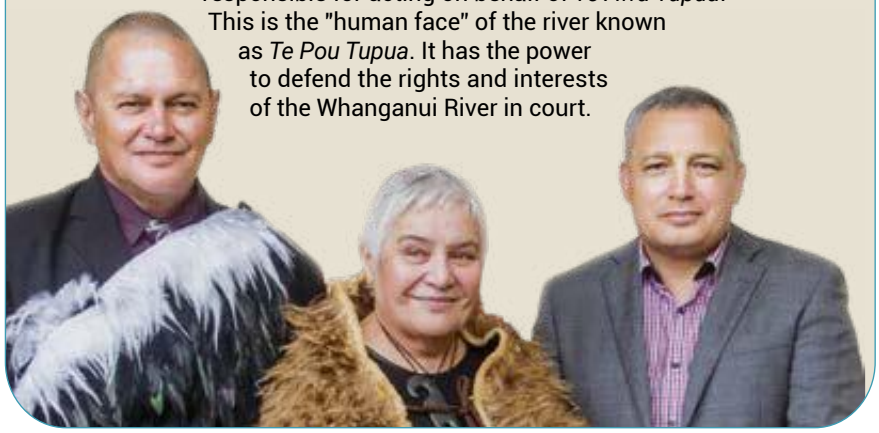
The Act establishes the existence of an entity comprising the Whanganui River from its headwaters to its mouth, known as Te Awa Tupua, which is recognised as a legal person.

The Act states that "Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements".

The text also stresses the material and immaterial elements inseparable from the river, its essence known as *Tupua te Kawa*. The Act highlights that the river is the source of spiritual and physical subsistence, which supports the life and natural resources of the Whanganui River and the health and wellbeing of the iwi, hapū (subtribes) and other communities of the river.

It states that "the iwi and hapū of the Whanganui River have an inalienable connection with, and a responsibility to, Te Awa Tupua and its health and well-being".

As well as this legal entity, there is an entity responsible for acting on behalf of *Te Awa Tupua*. This is the "human face" of the river known as *Te Pou Tupua*. It has the power to defend the rights and interests of the Whanganui River in court.



Source: Living representatives of the Whanganui River. *https://waateanews.com/2017/11/06/living-representatives-of-whanganui-river/*

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The river is represented by the "human face, Te Pou Tupua" which is comprised of two people: one Māori representative chosen by the iwi Whanganui and another person nominated on behalf of the Crown by the Minister for Treaty of Waitangi Negotiations, in consultation with the Minister for Māori Development, the Minister of Conservation and any other relevant minister (Article 20, Section 4).

The nomination is determined by the *mana*, skills, knowledge and experience of the nominee which are considered necessary to achieve the purpose and perform the functions of *Te Pou Tupua*.

The functions of this governance entity are:

- To act and speak for and on behalf of *Te Awa Tupua*;
- To support the river and its intrinsic values, its essence;
- To promote and protect the health and well-being of the *Te Awa Tupua*;
- To perform, for and on behalf of Te Awa Tupua, landowner functions for the land vested in the river.

An **advisory group** known as *Te Karewao* is established to provide advice and support to *Te Pou Tupua* in the performance of its functions. It may also consult any relevant external person.
The group consists of one person appointed by the trustees of the river, one person appointed by iwi with interests in the Whanganui River (other than Whanganui iwi); and finally one person appointed by the relevant local authorities (Article 28).

A **strategy group** known as *Te Kōpuka* is set up to ensure the proper functioning of the collaborative planning process for the river and enforce the plan relating to freshwater management in the catchment area. This group ensures the management of public policies affecting the river.

Te Kōpuka comprises representatives of persons and organisations with interests in the Whanganui River, including iwi, relevant local authorities, departments of State, commercial and recreational users, and environmental groups (Article 29).

A special fund has been created (*Te Korotete*) for the administration of *Te Awa Tupua*. The Whanganui iwi tribe also received 80 million New Zealand dollars (52.2 million euros), and a further 30 million to improve the health of the river (Article 9 of the Agreement of 5 August 2014).

Whanganui River (New Zealand)

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

This legal development is gradual and set against a very strong historic and cultural background which gives significant legitimacy to the text recognising the personality of the river and the role of its trustees.

Opportunities

This legal development also encompasses other ecosystems. The Te Urewera National Park (2014) and Mount Taranaki (2017) are also the subjects of similar legislation. The progress made in recognising the legal personality of natural entities could be extended more widely across the country.

Weaknesses

The council of two guardians is somewhat reminiscent of a governance inherited from colonial times, where the Māori are not the sole representatives of the river and are forced to share this representation with the Crown. This could be criticised in light of the past management of the river.

Threats

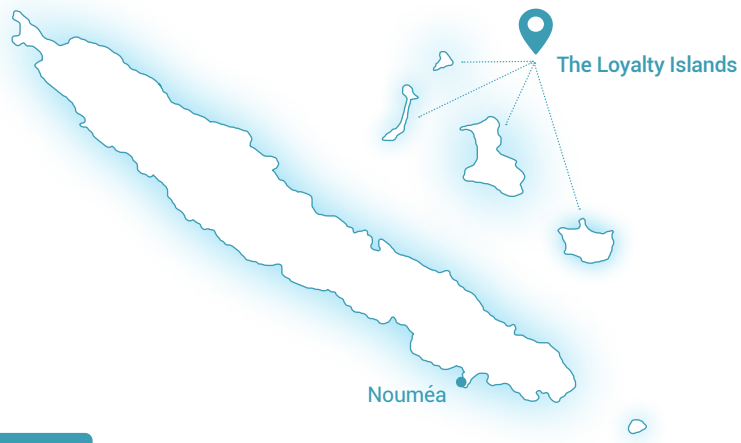
In the long term, it will be a matter of seeing whether liberal policy is capable of adapting to the rights of nature movement or if, on the contrary, these streams of thought are incompatible and prevent a satisfactory transition of the current development model to one that is virtuous and ecologically sustainable.

GOOD PRACTICES AND REPLICABILITY

This legislative development reflects a desire for long-term post-colonial reconciliation which respects Indigenous identity. It is an approach which could be replicated in numerous territories where public policies face the challenge of integrating a revision of the economic development model with climate urgency and respect for multiculturalism.

22

France
The Loyalty Islands, New Caledonia



LOCAL CONTEXT

The institutional structure of New Caledonia is linked to its special status as an overseas collectivity of the French Republic. The Matignon Agreements of the late 1980s created the provinces of New Caledonia and gave them responsibility for environmental matters. While the South Province adopted an environmental code in 2009, the Loyalty Islands Province did not begin this process until 2011.

HUMAN AND ENVIRONMENTAL ISSUES

The Loyalty Islands have very many endemic species and a relatively well preserved natural environment. However, human activities have clearly inflicted some direct damage to nature, in particular the destruction of natural habitats for urban development, hotel projects, etc.

Part of the Ouvéa Island lagoon was listed as a UNESCO World Heritage Site following the involvement of the customary authorities, who also highlighted the sacred nature of certain sites, in particular the Beautemps-Beaupré Atoll. This explains why certain behaviours are perceived as intrusions into sacred spaces, including pleasure boats, illegal Vietnamese fishing, the yachts of Australian billionaires, etc.

The unwritten "no access" rules in some places have been difficult to enforce in respect of foreign visitors. This has prompted the customary authorities to take the initiative to devise new legal provisions.

While there is a desire to change local legislation, the customary authorities have lost legitimacy. Despite the recognition of the specific rights of the Kanak people, the influence of the customary authorities has been weakened through decades of colonialism. Colonial and post-colonial legal rules have taken away the legal power of the customary authorities; customary justice no longer exists. It was therefore necessary to use formal legal means to enact and enforce new texts.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

Victor DAVID (Researcher IRD)

Influenced by the precedent in New Zealand, the Loyalty Islands Province decided to use tools from the movement for the rights of nature to draft a provincial environmental code. The aim was to reconcile customary law, the Indigenous perspective and French legislation.

The local authorities worked together with Victor David, a researcher at the French National Research Institute for Sustainable Development. The new code was gradually adopted from 2016 with the incorporation of various texts into a unified body of work.

RIGHTS GRANTED TO NATURE

The first part of the environmental code containing the main founding principles was published in 2019.

Article 110-3 of the code establishes that "the unitary principle of life, which means that man belongs to the natural environment which surrounds him and conceives his identity in the natural environment is the founding principle of Kanak society. In order to take account of this vision of life and of the Kanak social organisation, certain elements of Nature may be recognised as having a legal personality with rights of their own, in compliance with legislative and regulatory provisions in force".

On 29 June 2023, a second decision by the Province assembly completed the chapter related to protected species with several articles granting an elevated status of protection to sharks and sea turtles.

Article 242-16 now provides that "in the territory of the Loyalty Islands Province, in application of the unitary principle of life laid down in Section 110-3 and in order to take account of the customary value in Kanak culture, the elements of Nature, living species and natural sites listed in Article 242-17 are recognised as natural entities subject of rights.

They are recognised as having fundamental rights. They have no duties. Neither the natural entities that are subjects of law, nor their spokespersons, nor the Province of the Loyalty Islands may be held liable for any damage they may cause".

"Each natural entity which is a subject of law has an interest in bringing an action, exercised on its behalf by the President of the Loyalty Islands Province, by one or more spokespersons, in accordance with Articles 242-22 and 242-23, by the associations appointed for environmental protection and the environmental groups governed by special local law provisions (GDPLs) referred to in Articles 124-1 to 124-3 of the present Code."

Article 242-17 establishes that "sharks and sea turtles are natural entities that are subjects of law within the meaning of the present section. Other living elements as well as natural sites and monuments may be recognised as natural entities subject to law by the Assembly of the Province of the Loyalty Islands under the terms of the present section, on the proposal of the customary authorities by customary act, of environmental GDPLs or on the initiative of the President of the Assembly of the Province after consultation with the customary authorities".

Article 242-17 of the Code establishes that "living species and natural sites, recognised as natural legal entities in article 242-17, benefit from the following fundamental rights:

1) The right to not be the property of any State, province, human group or individual;

2) The right to exist naturally, to flourish, to regenerate in accordance with their lifecycles and to evolve naturally. Exemptions are only possible in a strictly regulated customary context and as defined in Article 242-19;

3) The right not to be kept in captivity or in servitude, not to be submitted to cruel treatment and not to be removed from their natural environment;

4) The right to freedom of movement and residence in their natural environment;

5) The right to a natural environment that is balanced, unpolluted and uncontaminated by human activities and to the protection of their successive habitats at different stages of their life;

6) The right to the restoration of their degraded habitat;

7) The right not to be patented and the right to freedom from infection, contamination or dispersion, by any means whatsoever, of genetically modified organisms which could impact them.

No State, company, human group or individual may engage in any activity which breaches these rights and freedoms.

II. Ecosystems and natural sites, recognised as natural legal entities in article 242-17, benefit from the following fundamental rights:

1) The right to a natural environment that is balanced, unpolluted and uncontaminated by human activities and to the protection of their physical, chemical, spiritual and aesthetic integrity;

2) The right not to be divided for the purpose of permanent or temporary human occupation or for the exploitation of the living or mineral resources which are present there;

3) The right, in the case of voluntary or involuntary degradation, to the restoration of the balance that has been degraded.

Specific rights may also be granted to each natural legal entity by the Assembly of the Province of the Loyalty Islands".

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The President of the Province of the Loyalty Islands, the spokespersons, the associations appointed to protect the environment and the environmental GDPLs have the power to legally represent the protected natural entities.

The environmental GDPLs are groups of clans who have a totemic or land interest in a protected area.

New natural entities can be recognised as subjects of law by the Assembly of the Province of the Loyalty Islands on the proposal of the customary authorities, environmental GDPLs or at the initiative of the President of the Assembly of the Province after consultation with the customary authorities.

Each natural entity has six spokespersons. Three of these are appointed by the President of the Province, and each of the three customary areas also designates a person according to its customs and rules.

Source: Loyalty Islands Customary Council / *https://neocean.nc/province-des-iles-requins-tortues-avocats/*

INTERVIEW WITH ACTOR IN THE FIELD

Victor David

Researcher at the French National Research Institute for Sustainable Development (IRD) in the SENS Mixed Research Unit for Knowledge, Environment and Societies, based in Montpellier.
Researcher in environmental law and sustainable development.
Doctor of Law and Social Science EHESS, Paris.

In 2011, I read a press release on the ongoing negotiations between the Māori people and the New Zealand government concerning the future status of the Whanganui River and the government's recognition of its legal personality. I immediately latched on to this idea as I started my thesis. It seemed to me like a way of getting back on track in New Caledonia, in Indigenous lands that had French law that was ill-suited to the Kanak culture.

In a document published in 2012, the government formally recognised the river as a living and indivisible entity, with rights, a human face...

I gave a presentation at the Nouméa IRD Centre to a large audience which included officials from the Loyalty Islands Province.

At the end of the seminar they approached me saying that the Province had decided to develop an environmental code and that this approach was what they needed to reconcile customary law, the Indigenous worldview and formal French law. The other two provinces of New Caledonia already had their own environmental codes.

I said that I was interested, providing that this would not be an exact copy of the French environmental law. We agreed that what we wanted was to develop an environmental code for the Loyalty Islands Province which was in harmony with the environmental ethics of the Kanak people, their culture and their ancestral vision, while also integrating international law, in particular the Nagoya Protocol of the Convention on Biological Diversity (CBD), etc.

We decided to employ a participatory approach for these texts and each regulation, whether it relates to invasive species or the Nagoya Protocol, has been subject to consultation with the customary authorities of the three Loyalty Islands. As these are three different customary areas, we speak to different people.

My research on the global recognition of nature as a subject of law, as has happened in Ecuador, and the difficulty of obtaining this recognition, led me to believe that it was problematic to have the same vision of nature across three different islands; it was more appropriate to talk about specific spaces.

The elected representatives of the Islands Province wanted certain elements of nature to be recognised because the personification of nature is part of Kanak culture. It is an animist society which associates animals and plants with certain properties and these species are totems for different clans on different islands. This means that a species might be totemic on one island but not on another. Generalising the recognition of the rights of nature by saying "all nature" is a subject of law would have undoubtedly impeded the adoption of measures in favour of the rights of nature and would have made implementation more complex. We worked so that the structure of the code was adopted in 2016 and included a chapter dedicated to protected species. It was in this chapter that we planned to include a statute on the rights of nature.

The inclusion of Article 110-3, that defines the unitary principle of life, in the founding principles was important; it is the foundation of the recognition of the rights of nature. It implies that humans and nature are one. This principle also means that if human rights are recognised, it is possible to recognise the rights of other living elements.

New Zealand adopted the Whanganui River legislation in 2017 and the concept gained global momentum; for the Atrato River, for the Ganges. It started resonating with people. We then set to work on regulations on the practical application of the unitary principle of life.

The Loyalty Islands Province therefore recognises certain living or non-living elements as natural legal entities, with a regime of protection that is different to that of the standard protected species in the French environmental code.

This creates a third category of protected species, natural legal entities, which have the highest level of protection. They are granted fundamental rights and have human representatives as in the New Zealand model. However, we have modified this slightly to create a joint model with people appointed by both the Province and the customary authorities on each of the three islands. This means there are six physical people representing one natural entity.

The decision lists the elements of nature which are recognised as natural legal entities. The Province selected sharks and turtles to begin with, which have thus become natural legal entities, and benefit from a series of rights: the right to life, the right to exist, etc.

There are clans named after sharks on almost every island, so in theory the individuals first in line to be appointed spokespersons are those belonging to these clans.

Flag of the Loyalty Islands.

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The legal development of the protected status of natural entities has been gradual and the product of long-term collaborative work. It allows protection to subsequently be extended to other entities.

Opportunities

The progress made on the rights of nature around the world is effective in influencing local projects and could lead to an even greater expansion of the current protection of sacred sites and areas.

Weaknesses

The shared jurisdiction between the Loyalty Islands Province for environmental law and New Caledonia for civil law. The new natural entities created could be considered a category of person under the Civil Code, thus entailing a de facto escape from provincial jurisdiction.

Threats

Some politicians want to abolish the Provinces which would eliminate the specific benefits of the Loyalty Islands' environmental code compared to other codes adopted in New Caledonia.

GOOD PRACTICES AND REPLICABILITY

The recognition of the rights of natural entities is the product of numerous consultation meetings in order to transfer concepts from the rights of nature to the Indigenous Kanak cosmovision. The inhabitants of each island were consulted to ensure the support of the local people and customary authorities.

This work is inspiring other organisations in France, particularly in the overseas territories. Organisations in the Antilles have asked Victor David to support their project to make the Etang des Salines in Saint Anne, Martinique, a natural legal entity. However, what is happening in New Caledonia is not necessarily replicable elsewhere. Other territories have less room for manoeuvre to integrate the rights of nature due to their status.

Source: Peninsula in the Ouvéa lagoon – Sharks Pass (Unyee island). (Pacificbluefilm) https://commons.wikimedia.org/

Source: *https://fr.123rf.com (chonchon974).*

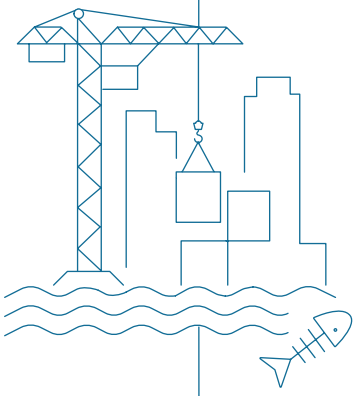
Europe, North America and International


25
Canada
24
United States
International
26
23
Spain

23

Spain

Mar Menor 2022



LOCAL CONTEXT

The Mar Menor is a lagoon marine ecosystem with a surface area of 135 km^2. It is the largest coastal lagoon in the Spanish Mediterranean and one of the largest in the western Mediterranean. With an average depth of 4 m, it is separated from the Mediterranean Sea by a sandy spit which lies on top of rocky volcanic outcrops 22 km long and between 100 and 1,500 m wide. Crossed by five channels which connect it to the Mediterranean, this ecosystem is of great ecological importance.

HUMAN AND ENVIRONMENTAL ISSUES

The increased impact of human activities on the conservation of the Mar Menor has been the subject of studies that have highlighted a major deterioration of its health since the 1960s. This has been due to the convergence of various phenomena, including urban development and the intensification of agricultural activities responsible for discharges of nitrates, pesticides and fertilisers. The result has been increasing amounts of phytoplankton and the eutrophication of this fragile ecosystem.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

Following several episodes of mass fish die-off in the Mar Menor, residents with historical and cultural connections to this heritage ecosystem took action, bringing together local and environmental organisations, professional bodies and cultural foundations to demand measures be taken to restore and preserve the lagoon.

A popular legislative initiative was launched. This mechanism of participatory democracy allows citizens to present a bill to Parliament if they can collect over half a million signatures. Mar Menor obtained over 615,000 signatures in favour of the recognition of its rights.

On 5 April 2022, almost all the members of the Spanish Congress (apart from the far-right) voted in favour of the law granting the lagoon legal personality, and the Senate confirmed the vote when it reconvened.

The Act granting Mar Menor legal personality was adopted on 30 September 2022.

RIGHTS GRANTED TO NATURE

The new Act seeks to take a qualitative step forward by adopting a new "legal and political model" based on the global trend to favour the rights of nature.

The objective of the Act is to grant legal personality to the ecosystem of the Mar Menor lagoon. This provides it, as a subject of law, with a charter of rights on the basis of its intrinsic ecological value and intergenerational solidarity, thus guaranteeing its preservation for future generations.

There are two intended benefits: to increase public and private accountability regarding the protection of the natural environment and to extend the rights of those who live in the lagoon area and who are threatened by ecological degradation, in this way guaranteeing their so-called "bio-cultural" rights.

This legal development is not unfounded in Spanish law. In the 1990s, the Supreme Court ruled that, in accordance with the Constitution, humans belong to nature, and their fundamental rights to life and health are intrinsically linked to environmental protection.

The "differentiation between harms affecting human health and risks damaging other animal or plant species and the environment is due, to a large extent, to the fact that humans do not consider themselves part of nature but rather an external force destined to dominate or conquer nature in order to put it at their service. It should be remembered that nature does not tolerate unlimited use and that it constitutes a natural asset that must be protected" (Judgment of the 2nd Chamber of the Supreme Court of 30 November 1990, number 3851/1990, Legal basis 17.2).

The law granting Mar Menor a legal personality gave rise to new rights and autonomous governance was introduced to improve existing local policies. Ultimately, the lagoon was transformed from a mere ecological object, recreational area and development opportunity into an "inseparably biological, environmental, cultural and spiritual subject" as established by the legal text.

Rights granted to the Mar Menor

The Act recognises that the entire lagoon and its basin form a biogeographical unit with the following rights:

- the right to exist as an ecosystem; this implies respect for the natural order which allows the preservation of the lagoon's equilibrium and capacity for regulation in the face of imbalances caused by anthropogenic pressures, arising mainly in the catchment area;
- the right to evolve naturally, which includes the protection of all the natural characteristics of the water, communities of organisms, the soil and the terrestrial and aquatic sub-systems that form part of the Mar Menor lagoon and its basin.

The lagoon also has rights enforceable against human beings, local authorities and inhabitants, including:

- the right to protection which involves limiting, suspending and not authorising activities which pose a risk or harm to the ecosystem;
- the right to conservation which requires actions to preserve terrestrial and marine species and habitats and the management of associated protected natural areas;
- the right to maintenance;
- the right to restoration which requires, once damage has occurred, remedial actions in the lagoon and its catchment area to restore natural dynamics and resilience as well as the functioning of the ecosystem.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The governance of the Mar Menor lagoon and its basin has been entrusted to a new supervisory body organised as follows:

- a Committee of Representatives, composed of representatives of the public administrations of the area and citizens of the coastal municipalities;
- a Monitoring Commission, the guardians of the lagoon;
- a Scientific Committee comprising experts from universities and research centres.

The Committee of Representatives will have thirteen members: three from the General State Administration, three from the Autonomous Community and seven citizens.

These seven citizens have been nominated from among the initiators and leaders of the Popular Legislative Initiative. They include activist Maria Teresa Vicente, a lawyer and professor of the philosophy of law, and Eduardo Salazar Ortun, a lawyer specialised in environmental law.

The **Monitoring Commission** is composed of seventeen members:

- Eight representatives from the eight coastal municipalities, appointed by their respective town councils. They are reappointed after each set of municipal elections.
- Nine representatives from the following sectors: business, trade unions, neighbourhood associations, fishing, agriculture, livestock associations, environmental defence groups, gender equality groups and youth associations.

These people will be appointed on the basis of their experience in the defence of the lagoon for renewable periods of four years.

The **Scientific Committee** will be composed of scientists and independent experts specialised in the study of the Mar Menor, proposed by the Universities of Murcia and Alicante, the Spanish Institute of Oceanography (Oceanographic Centre of Murcia), the Iberian Ecology Society and the Spanish National Research Council, for renewable periods of four years.

COMPETENCES OF THE SUPERVISORY ORGANISM

The functions of the **Committee of Representatives** include proposing actions for the protection, conservation, maintenance and restoration of the lagoon. It ensures that the rights of the lagoon and its basin are respected based on the contributions of the Monitoring Commission and the Scientific Committee.

The activities of the **Monitoring Commission** include the dissemination of information on the Act, the monitoring and enforcement of the rights of the lagoon and regular updates on compliance with the Act. This is done while taking into account the indicators defined by the Scientific Committee to analyse the ecological state of the Mar Menor.

The functions of the **Scientific Committee** are to advise the Committee of Representatives and the Monitoring Commission and to establish indicators on the ecological status of the ecosystem. This involves identifying existing environmental risks and appropriate restoration measures.

Sources: Protest against the environmental deterioration of Mar Menor.

INTERVIEW WITH ACTOR IN THE FIELD

Eduardo Salazar Ortuno

A lawyer specialised in public interest environmental law and Assistant Professor of Administrative Law at the University of Murcia (Spain).
Member of the Environmental Law Worldwide Alliance.

We were very happy with the publication of the Act. It was a real landmark moment here, both for law professors who did not believe in the rights of nature, but also for those who support the movement. We are working hard trying to push the government to adopt a regulation allowing us to set up the committees that make up the supervisory body for the Mar Menor. We are slightly worried, because if the left does not win the Spanish elections, this could prevent the adoption of the regulation allowing us to set up the Monitoring Commission, Scientific Committee, etc.

There are parts of the law which we can already enforce without supplementary regulation, including the procedural part, acting on the basis of Article 6 of the law to go to the administration or courts on behalf of the Mar Menor. But the regulation must be adopted for the governance of the committees of Article 3. The text has already been submitted for public consultation and sent to the Spanish Council of State for an opinion. We are waiting.

However, there have already been tangible results. The water authority has improved its water control procedures in order to avoid illegal irrigation of farmers' fields. This has worked better since the Act was adopted. Plans and budgets have been drawn up to avoid any further damage and restore the lagoon's habitats. We believe that the administration and State have been more diligent in acting to protect the Mar Menor since the Act was adopted.

Our strength lies in the more than 600,000 signatures we received in support of the adoption of the rights of the Mar Menor, as well as the political consensus surrounding the approval of the Act, as only the far-right opposed the text. Politicians and the public are unanimously in favour of the Act. This support keeps pressure on for the implementation of the rights of the Mar Menor. A forum has recently been created to collect politicians' signatures in support of the recognition of the rights of the lagoon.

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The legitimacy conferred by the citizen movement considerably strengthens the recognition of the rights of nature at a local level in relation to public institutions.

Opportunities

Due to the general nature of the Act, its application depends on transposition by the government. However, the adopted text also states that the Commission must be created by January 2023... in theory, citizens and associations could go to court to invoke this and force the government to act.

Weaknesses

Changeable political circumstances could have an impact on the adoption of the regulation.

Threats

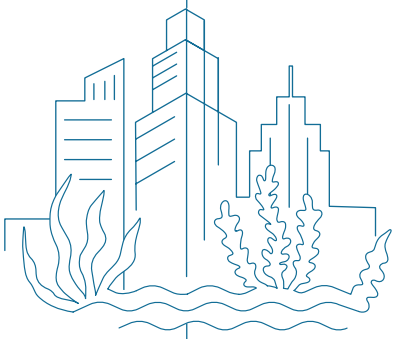
The text was appealed by a far-right party and there has not yet been a ruling by the Constitutional Court.

GOOD PRACTICES AND REPLICABILITY

This procedure is specific to Spain.The petition model does not exist in all countries, particularly those where direct democracy is discouraged. However, the mobilisation centred around the recognition of the rights of the Mar Menor involves good measures which could be replicated. This includes the collection of signatures by activists contacting local people on their doorsteps to explain the challenges of recognising the rights of the ecosystem. Local mobilisation is crucial for raising awareness. This was a bottom-up approach, driven solely by the University of Murcia and citizens, which avoided any political exploitation. Negotiations were led by Maria Teresa Vincente Giménez, a professor of law at the university, whose legal expertise was extremely helpful to the smooth running of the procedure.

24

United States
Lake Erie



LOCAL CONTEXT

Lake Erie is the fourth largest of the five Great Lakes of North America and is the warmest and shallowest. Some 12 million people live on its shores: the Lake Erie basin is the most populated of the watersheds that make up the Great Lakes basin, with a third of the total population. It also forms the natural border between the United States and Canada.

The area is prized for its natural spaces and is popular for outdoor sports, but it is also threatened by intensive human activities.

HUMAN AND ENVIRONMENTAL ISSUES

Pollution of the lake since the 1960s has led to blooms of green algae and cyanobacteria, also known as blue-green algae. These form primarily as a result of phosphorus inputs from urban and rural pollution (fertiliser and manure runoff).

The record growth of algae has created "dead zones" in the lake, areas which have been starved of oxygen due to the decomposition of algae. The anoxia of the water is a direct threat to aquatic life and causes the death of thousands of fish.

This phenomenon poses a real danger to drinking water, as the lake supplies around 12 million inhabitants. It also affects tourism and the fishing industry which are suffering substantial losses.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

As a consequence, the regulatory authorities of the United States and Canada have had to work together to agree limits on phosphorous levels and implement a coordinated approach for managing the lake. Although the authorities are pleased with the outcome of this collaboration, residents are not convinced.

In 2014, pollution made the water supply to the city of Toledo, on the western side of the lake, unsuitable for consumption for three days, affecting 500,000 residents[107]. Following this latest in a series of pollution episodes and in response to the lake's deteriorating condition, people from the city and lakeside communities launched an initiative to increase protection through public policies and action against those responsible for the pollution.

This local initiative, Toledoans for Safe Water, looked to the Constitution of Ohio (Art. XVIII, Articles 9 and 14); these provisions guarantee State residents the right to propose amendments to city charters, providing they acquire the signatures of at least ten percent of electors.

Toledoans for Safe Water drafted a petition proposing an amendment to the City of Toledo charter which included the recognition of the rights of Lake Erie.

On 26 February 2019, following a campaign backed by the Community Environmental Legal Defense Fund (CELDF), local residents voted in a referendum on the text, where 61.37% voted in favour.

Source: A protest outside a Toledo City Council meeting after the Board of Elections declined to put the Lake Erie Bill of Rights on the ballot.(2018) / https://nextcity.org/features/can-cities-grant-nature-the-right-to-exist-and-thrive

[107] Le Monde, *Aux États-Unis, le lac Erié a désormais le droit légal «d'exister et de prospérer naturellement »* [Lake Erie, in the United States, now has the legal right "to exist and naturally flourish"], 22 February 2019.

RIGHTS GRANTED TO NATURE

The preamble of the text affirms:

"We the people of the City of Toledo find that laws ostensibly enacted to protect us, and to foster our health, prosperity, and fundamental rights do neither; and that the very air, land, and water – on which our lives and happiness depend – are threatened. Thus it has become necessary that we reclaim, reaffirm, and assert our inherent and inalienable rights, and to extend legal rights to our natural environment in order to ensure that the natural world, along with our values, our interests, and our rights, are no longer subordinated to the accumulation of surplus wealth and unaccountable political power.

[...]

And since all power of governance is inherent in the people, we, the people of the City of Toledo, declare and enact this Lake Erie Bill of Rights, which establishes irrevocable rights for the Lake Erie Ecosystem to exist, flourish and naturally evolve, a right to a healthy environment for the residents of Toledo, and which elevates the rights of the community and its natural environment over powers claimed by certain corporations.

Section 1 – Statements of Law – A Community Bill of Rights

(a) Rights of the Lake Erie Ecosystem.

Lake Erie, and the Lake Erie watershed, possess **the right to exist, flourish, and naturally evolve**. The Lake Erie Ecosystem shall include all **natural water features, communities of organisms, soil as well as terrestrial and aquatic sub ecosystems** that are part of Lake Erie and its **watershed**.

b) Right to a Clean and Healthy Environment. The people of the City of Toledo possess the right to a clean and healthy environment, which shall include the right to a clean and healthy Lake Erie and Lake Erie ecosystem.

c) Right of Local Community Self-Government. The people of the City of Toledo possess both a collective and individual right to self-government in their local community, a right to a system of government that embodies that right, and the right to a system of government that protects and secures their human, civil, and collective rights.

(d) Rights as Self-Executing. All rights secured by this law are **inherent, fundamental, and unalienable**, and shall be **self-executing and enforceable against both private and public actors**. Further implementing legislation shall not be required for the City of Toledo, the residents of the City, or the ecosystems and natural communities protected by this law, to enforce all of the provisions of this law."

By granting legal rights to the lake, the citizens of Toledo intended to make it possible to take legal action against polluters on behalf of the lake in the event of a violation of the rights set out in the City Charter.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The adopted text includes more information on its enforcement in Article 3.

It states that: "Any corporation or government that violates any provision of this law shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation".

To enforce the text, it is established that "The City of Toledo, or any resident of the City, may enforce the rights and prohibitions of this law"; this therefore includes the possibility of exercising the rights of the Lake Erie ecosystem.

"Such court action shall be brought in the name of the Lake Erie Ecosystem as the real party in interest. Damages shall be measured by the cost of restoring the Lake Erie Ecosystem and its constituent parts at least to their status immediately before the commencement of the acts resulting in injury, and shall be paid to the City of Toledo to be used exclusively for the full and complete restoration of the Lake Erie Ecosystem and its constituent parts to that status."

CONCLUSION: ANALYSIS OF THE PROCESS

In summer 2019, an amendment to the Ohio State budget, pushed through by the Chamber of Commerce [108], thwarted the efforts of Toledoans for Safe Water and the Lake Erie Bill of Rights.

The amendment states that neither nature nor an ecosystem has standing to participate or bring an action in any court of common pleas. This text also establishes that no person can act on behalf of or represent nature or an ecosystem in order to bring an action in any court of common pleas [109].

Furthermore, the adopted text was never able to achieve legal effect due to a court order issued in a case filed the day after the law was passed. In the case Drewes Farms P'ship v. City of Toledo, a farm operating across four counties near Toledo contested the rights of Lake Erie, arguing that the initiative would expose the farm to liability simply for fertilising its fields, as it was unable to demonstrate the total absence of runoff water into the lake. The plaintiff argued that the text violated the United States Constitution, in particular breaching the right to equal protection before the law, the protection of the Fifth Amendment against vague laws as well as denying the plaintiff their rights without due process.

The court upheld the plaintiff's claim, confirming that the text had violated the Fourteenth Amendment of the United States Constitution which protects the right to due process including, in particular, respect for the clarity of the law.

[108] The Intercept, How Ohio's chamber of commerce killed an anti-pollution bill of rights, 29 August 2019.
[109] See the report by Toledoans for Safe Water "Ohio Legislature Attacks Rights of Nature, Protects Polluters in Budget Bill"

The judges considered that the recognition of "irrevocable rights for the Lake Erie ecosystem to exist, flourish and naturally evolve" was worded too vaguely, as it did not indicate what type of behaviour would infringe the rights of Lake Erie.

This decision is open to criticism, especially as the court also considered that the right of the citizens of Toledo to a "clean and healthy environment" was too vague and had no practical significance... even though this expression has been used by almost half the countries of the world[110] and applied, in particular, by judges in France and Europe in reference to pollution.

The decision of the court to invalidate the Lake Erie Bill of Rights prevented its entry into force.

SWOT analysis

Strengths

The mobilisation and support of the general public for the text demonstrates the awareness of civil society regarding the recognition of the rights of nature. This enthusiasm shows that the public has grasped the legal issues and is also capable of organising in order to use existing democratic levers to change legislation accordingly.

Opportunities

The citizens involved in *Toledoans for Safe Water* continue to mobilise, but there are no further opportunities to act in the immediate future.

Weaknesses

Agricultural lobbying and disregard of the ecological challenges by institutions, and particularly the court. These parties openly ignore the impact of pollution on the public interest and protect the status quo to the benefit of the polluters.

Threats

There is considerable pressure locally and companies are working hard to silence citizens. After contesting and obtaining the revocation of the Lake Erie Bill of Rights, the farm and its partners turned on the City of Toledo to claim the payment of legal fees amounting to 207,500 dollars[111]. This move could well smother new initiatives of this type.

[110] Lise-Hélène Gras, *Le droit à un environnement sain : un droit fondamental en pleine expansion* [The right to a healthy environment: a fast-growing fundamental right], Fondation Jean Jaurès, 4 April 2023.

[111] Press release, 1 September 2020, Toledo Residents Told to Foot the Bill for Democratically Enacted Lake Erie Bill of Rights.

GOOD PRACTICES AND REPLICABILITY

This initiative could be reproduced in numerous States which allow citizens, through direct democracy, to propose legal provisions via a referendum or petition, as shown by the example of Mar Menor (see above).

Although the initiative was blocked by the agricultural lobby, it is worth noting that, a significant number of more successful initiatives have already emerged in the United States. As of 2023 there have been around thirty initiatives of various types, particularly in Indigenous territories. These include the 2018 decision112 of the White Earth Band of Ojibwe in Minnesota recognising the rights of manoomin, a species of wild rice, and the recognition of the rights of the Klamath River by the Yurok Nation in May 2019 (California). The movement is also taking hold in many cities and communities that are not predominantly Indigenous. This is notably the case in Pittsburgh, the first major American city to pass an ordinance recognising the rights of nature, through a unanimous 9-0 vote by the city council. This followed a strong community campaign against the hydrocarbon fracking industry in 2010113. In December 2022, Port Townsend and Gig Harbor, municipalities in Washington State, USA, signed a proclamation declaring the inherent rights of the endangered killer whales of the Salish sea. This recognition set out "the right to life, autonomy, culture, free and safe passage, adequate food supply from naturally occurring sources, and freedom from conditions causing physical, emotional or mental harm"114. While the proclamation is not legally binding, it could gather state-wide momentum to enhance the protection of these marine mammals.

Source: Orcas / https://fr.freepik.com (@wirestock_creators).

[112] News analysis written by CEDLF, see: https://www.centerforenvironmentalrights.org/rights-of-manoomin

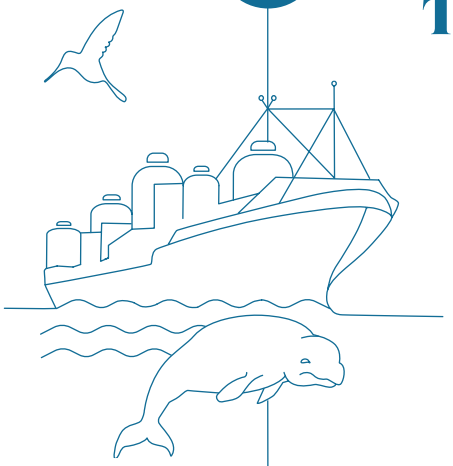
[113] Business Insider, How Pittsburgh embraced a radical environmental movement popping up in conservative towns across America in Business Insider, 9 July 2017.

[114] Text of the proclamation of the municipality of Townsend, 5 December 2022.

2
Examples of local initiatives

25

Canada
The St. Lawrence River Act



LOCAL CONTEXT

The St. Lawrence is one of the largest rivers in the world. With its watershed covering more than 1.6 million km², it drains over 25% of the earth's freshwater reserves. More than 30 million Americans and 15 million Canadians live in the river's basin.

The river meets the Atlantic Ocean after flowing 3,058 km from the upper end of the St. Louis River, crossing the Great Lakes.

The St. Lawrence River is a waterway used for navigation; it has been developed, canalised and dredged to allow the passage of boats. Vessels from across the world now sail from the estuary to the Great Lakes, via the St. Lawrence Seaway and the Welland Canal, transporting more than 100 million tonnes of cargo a year[115].

The river also generates energy via hydroelectric dams along its course and its tributaries, including at Saguenay, Ottawa and Beauharnois.

HUMAN AND ENVIRONMENTAL ISSUES

Intense river traffic as well as agriculture, urbanisation and industrialisation are responsible for significant pollution and anthropogenic pressures which affect the health of the St. Lawrence River.

Measures have been taken to limit the discharge of wastewater from urban centres and polluting industries.

[115] *La navigation sur le Saint-Laurent. Un écho du passé, une voie d'avenir Plan d'action Saint-Laurent 2011-2026* [Navigation on the St. Lawrence: echo of the past, path to the future. St. Lawrence Action Plan 2011-2026].

In 2014, GNL Quebec announced the development of the Énergie Saguenay project, a natural gas liquefaction facility in the industrial area of Port of Saguenay intended to export 11 million tonnes of liquefied natural gas (LNG) per year, supplied by sources in western Canada116. Although it had the stated aim of "supporting the efforts to fight climate change in Europe, Asia and elsewhere in the world by offering a transitional energy to replace other more polluting energies", the project was denounced by its opponents for its carbon footprint and impact on biodiversity. The project included a 782 km pipeline, a liquefied natural gas plant (Énergie Saguenay project) and a maritime terminal where "LNG supertankers would load liquefied natural gas to export to the foreign markets via the Saguenay Fjord and the St. Lawrence River"[117]. Critics of the project were particularly concerned about the impact of these vessels on the habitat of the St. Lawrence belugas, a species that was already endangered due to other anthropogenic pressures.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

In response to this project and to other threats faced by the river, the International Observatory on Nature's Rights (IONR) launched the St. Lawrence River Alliance/ Magtogoek initiative. This initiative brings together a dozen environmental organisations, Indigenous bodies and research centres, and also has the support of Canadian municipalities.

A petition was launched, collecting 2,500 signatures in 2023.

"We spoke to political party leaders in Quebec to ask for their involvement and support in protecting the environment through more effective actions, such as the submission and approval of a law declaring the St. Lawrence River as a subject of law to the National Assembly of Quebec. This will guarantee not only the protection of human rights, Indigenous rights and the rights of future generations, but also the rights of other species on Earth."[118]

The Alliance also drafted a declaration, the "St. Lawrence Solution"[119], which highlights the rights it wants to see granted to the River.

Source: *https://fr.123rf.com (photowrzesien*

[116] See project: *https://www.bape.gouv.qc.ca/fr/dossiers/projet-construction-complexe-liquefaction-gaz-naturel-saguenay/*
[117] Le Devoir, *Le projet GNL Québec doit être rejeté* [The GNL Québec project must be rejected], Tribune de Jesse Greener et Luce Sauvé, 3 June 2019.
[118] Petition: Declaration on the St. Lawrence as a subject of law.
[119] https://www.solutionsaintlaurent.ca/

This work led to a bill being drafted.

On 5 May 2022, former Québec solidaire (QS) MP Émilie Lessard-Therrien, in Québec, and federal MP and deputy leader of the New Democratic Party (NDP), Alexandre Boulerice, in Ottawa, simultaneously presented their respective legislative initiatives in the National Assembly and the House of Commons, at the request of the International Observatory on Nature's Rights and the St. Lawrence Alliance.

Unfortunately, the bill was listed 252nd by random draw in the order of examination in accordance with Canada's legislative system, and the mandate of MP Alexandre Boulerice will therefore end well before the bill can be considered.

Nevertheless, on 19 April 2023, the Assembly of First Nations Quebec-Labrador (AFNQL) announced that they had unanimously passed a resolution recognising the legal personhood of the St. Lawrence River[120]. This resolution was presented at the United Nations in New York during the Twelfth Interactive Dialogue of the General Assembly on Harmony with Nature.

First Nations could have used previously their jurisdiction to recognize legal personhood to the St. Lawrence River[121] (as they did on the Magpie River in 2021, at the initiative of the Innu people). But the move is being made now to support the movement already in place, to push the government and MPs to act.

Source: View of ECOSOC conference room at the United Nations Headquarters in New York.
Photo: Radio-Canada (Paloma Martínez Méndez).

[120] See the resolution: https://observatoirenature.org/observatorio/wp-content/uploads/2023/05/04-2023-Defense-du-Fleuve-St-Laurent.pdf

[121] Assembly of First Nations Quebec-Labrador. Resolution No. 04-2023.
ALLIANCE FOR THE DEFENCE OF THE ST. LAWRENCE RIVER, online: https://observatoirenature.org/observatorio/wp-content/uploads/2023/05/04-2023-Defence-on-St-Lawrence-RIver-Declaration-APNQL.pdf

RIGHTS GRANTED TO NATURE

The bill introduced to Canada's House of Commons by MP Alexandre Boulerice and that presented to the National Assembly of Quebec by É milie Lessard-Therrien are very similar.

They assert, in particular, the right of the St. Lawrence River to exist and flow, to maintain its vital cycles, natural biodiversity and integrity, to fulfil essential functions within its ecosystem, to be nourished by its aquifers and tributaries, to be protected against contamination and to regenerate.

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

Governance was proposed in the form of a Committee to represent the river.

The initiative states that:

"The St. Lawrence River Protection Committee is hereby established, responsible for acting on behalf of the River.

The Committee is to consist of eleven members appointed by the Governor in Council including two members recommended by the Government of Québec, two members recommended by the Government of Ontario, two members recommended by relevant Indigenous governing bodies from the Province of Québec, two members recommended by relevant Indigenous governing bodies from the Province of Ontario as well as three members recommended by relevant non-governmental organisations from the provinces of Québec or Ontario.

The Committee may bring an action for damages on behalf of the St. Lawrence River if it is of the opinion that an act or omission in contravention of any Act of Parliament or of a provincial legislature has caused substantial damages to the River."

Source: Whales in Tadoussac / Hans Bernhard (Schnobby). *https://commons.wikimedia.org/wiki/File:Whale_watching_Tadoussac_11.jpg*

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The initiative is supported by numerous organisations and has dedicated lawyers and experts supporting the fight.

Opportunities

The bills could be presented on a future occasion when the legislative calendar allows.

Weaknesses

The initiative is being ignored by the government and does not seem to have allies in the economic world.

Threats

The constraints of the legislative calendar could stall the campaign if there are no intermediate successes.

GOOD PRACTICES AND REPLICABILITY

The initiative relies both on networks of organisations that specialise in the protection of water resources as well as Indigenous associations. Significant work has been done to draft legislative proposals that define an objective that is proportionate to the size of the ecosystem. This process could be replicated to take into account existing niche political opportunities. The legislative calendar must be considered to retain effectiveness and ensure that the campaign leads to a vote on the bill, even if this means favouring intermediate stages to ensure the progress of the mobilisation from local level (local regulations, municipal rulings, etc.) to national legislative level.

26

International
2022 Kunming-Montreal Global Biodiversity Framework

LOCAL CONTEXT

International negotiations are taking place within the framework of the Convention on Biological Diversity (CBD) against the background of what scientists are already calling the sixth mass extinction. This extinction threatens the survival of a million species, including our own, due to the dangerous decline in global biodiversity. The CBD is a legally binding international treaty that has three main objectives: the conservation of biological diversity, the sustainable use of biological diversity and the fair and equitable sharing of the benefits of the utilisation of genetic resources.

The fifteenth United Nations Biodiversity Conference (COP15) was held in Montreal, Canada from 7-19 December 2022. Representatives of 188 governments attended and the conference adopted an agreement to define a global action plan for the protection of nature through to 2030. The Kunming-Montreal Global Biodiversity Framework aims to halt and reverse nature loss by defining targets for the protection and sustainable use of biodiversity.

HUMAN AND ENVIRONMENTAL ISSUES

According to the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) assembly held in Medellín, Colombia, from 17-24 March 2018, not acting to halt and reverse the process of biodiversity extinction means risking "not only the future we want, but even the lives we currently lead"[122]

[122] Le Monde, *Le déclin massif de la biodiversité menace l'humanité,* [Massive biodiversity decline threatens humanity], an article by Audrey Garric and Pierre Le Hir, 23 March 2018.

EMERGENCE AND IMPLEMENTATION OF THE INITIATIVE WHICH LED TO THE STRENGTHENING OF THE RIGHTS OF NATURE

Some 200 organisations and individuals from more than 40 countries have committed to the campaign over three years of negotiations.

As explained by a press release by the Earth Law Center, Bolivian delegates defended the inclusion of the rights of nature and the rights of Mother Earth in the framework agreement with the support of Ecuador and New Zealand (all three countries have recognised the rights of nature in their national legislation). At the same time, negotiations were undertaken with countries that initially opposed the text (Argentina, Japan, the European Union and Australia, among others). Much of the opposition came from countries that declared that their legal systems did not have similar laws. However, the negotiators eventually reached a consensus on the final text.

RIGHTS GRANTED TO NATURE

The text explicitly states that the new **Kunming-Montreal Global Biodiversity Framework** recognises and considers "the rights of nature and rights of Mother Earth, as being an integral part of its successful implementation".

The negotiators of the text stated that, in States that have recognised the rights of nature, this legal evolution is an essential step for the protection of biodiversity.

The measure has not been extended to all states worldwide, notably due to the desire of those who drafted it to preserve the sovereignty of States and integrate "different value systems", according to which "nature embodies different concepts for different people, including biodiversity, ecosystems, Mother Earth, and systems of life".

The final document adopts **23 conservation objectives** and guidelines for their implementation. It recognises the essential place of Indigenous peoples, emphasising their role as "**custodians of biodiversity** and as partners in its conservation, restoration and sustainable use".

The text stresses that "the Kunming-Montreal Global Biodiversity Framework [...] sets out an ambitious plan to implement broad-based action to **bring about a transformation in our societies' relationship with biodiversity** by 2030 [...] and ensure that, **by 2050, the shared vision of living in harmony with nature** is fulfilled".

For the framework agreement, a world of living in harmony with nature means a world where: "by 2050, **biodiversity is valued**, conserved, restored and **wisely used**, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people".

This objective seeks to bring about a **radical change in our relationship with the world.**

The framework agreement also emphasises in its Target 12 that the aim is to significantly increase "the area and quality and **connectivity of**, access to, and benefits from **green and blue spaces in urban and densely populated areas** sustainably, by mainstreaming the conservation and sustainable use of biodiversity, and ensure **biodiversity-inclusive urban planning**, enhancing native biodiversity, ecological connectivity and integrity, and improving **human** health and **well-being** and **connection to nature** and contributing to inclusive and sustainable urbanisation and the provision of ecosystem functions and services."

GOVERNANCE: ROLE AND NATURE OF ACTORS INVOLVED

The framework aims to enhance "the role of collective actions, including by **Indigenous peoples** and local communities, **Mother Earth centric actions and non-market-based approaches** including community based natural resource management and civil society cooperation and solidarity aimed at the conservation of biodiversity".

The agreement sets out that Mother Earth centric actions comprise an "**ecocentric and rights-based approach** enabling the implementation of actions towards **harmonic and complementary relationships between peoples and nature, promoting the continuity of all living beings** and their communities and ensuring the **non-commodification of environmental functions of Mother Earth.**"

Source: COP 15 / Montréal (eva blue) / *https://commons.wikimedia.org/*

INTERVIEW WITH ACTOR IN THE FIELD

Pella Thiel

Co-founder of Rights of Nature Sweden and End Ecocide Sweden

We started the CBD coalition when we learned that a new framework agreement for biodiversity was being negotiated. We seized this opportunity, because we knew that the previous framework agreement had achieved none of its objectives, and that there had to be an opportunity to say: we have to do things differently.

First of all I set up a small team with Doris Ragettli from Rights of Mother Earth and Hana Begovic from Earth Advocacy Youth, and we gathered the contact details of all the COP participants. We wrote to them to raise their awareness of the rights of nature and emphasise the importance of this issue.

Fortunately, the Earth Law Center then cooperated with us. They took on a major part of the work through their international platform. We organised webinars, expanded the network and contacted negotiators.

Some countries really got involved, Bolivia in particular, which supported the inclusion of the rights of nature in the text. The countries advocating for the rights of nature were mainly those with Indigenous populations, from which came the use of the term "Mother Earth".

This new text acts as a lever. The rights of nature will make a tangible contribution to evolving attitudes. Although I do not have much confidence in these international accords, I think that, above all, it is important to spark a change of attitude. But this text, on which these countries have agreed, is an important stage in asking States to take concrete measures to bring its objectives to fruition.

I see it like planting a seed, an act from which something can emerge, even if the text is not binding on States.

I hope we can also reactivate the network that has been created on future occasions. The movement for the rights of nature is very powerful. It's like an acupressure point for transforming society. It has huge potential even if not many people realise it at the moment.

In Sweden we have been alerted by the extinction of species, herring in particular, and we are planning to set up a Baltic Sea embassy, conceived as a space for the rights of nature. We want to use the success of the rights of nature in the framework agreement on biodiversity to gain legitimacy for our actions at Swedish national level.

CONCLUSION: ANALYSIS OF THE PROCESS

SWOT analysis

Strengths

The text marks a turning point in the terminology used in environmental conservation and protection, in particular when it comes to the financialisation of nature.

Opportunities

Various national organisations and international networks involved in the joint campaign may be requested to oversee implementation of the objectives at the level of member States.

Weaknesses

The text is not enforceable on member States. It is not binding and may have relatively little effect on national policies if there is a lack of political will.

Threats

The rights of nature could be withdrawn, diluted or greenwashed in future negotiations in the event of the adoption of a new text. Organisations will have to be vigilant.

GOOD PRACTICES AND REPLICABILITY

An international coalition of actors for the rights of nature network has demonstrated its capacity to propose amendments to an international agreement and to influence negotiations through pilot countries. This coalition could be reconvened for other negotiations, such as Climate COP, an agreement on the protection of the high seas, the Council of Europe's Convention on the Protection of the Environment through Criminal Law, etc.

Summary

Summary

Given the rapid progress made by the movement for the rights of nature around the world, the case studies in Part 2 of this publication are in no way exhaustive. Furthermore, the decision was made to focus on AFD's areas of intervention and to present a selection of cases that illustrate the movement's recent evolution in the West and internationally. Despite this necessarily limited selection, the cases presented are representative of several trends in the movement for the rights of nature.

First of all, there is **the undeniable influence of civil society organisations** (CSO). In very many cases, CSOs play the role of environmental monitor, raising the alarm about numerous ecological scandals. They also act as advocates for **legal changes involving the recognition of fundamental rights to endangered ecosystems, such as the Atrato river in Colombia, the Turag river in Bangladesh and the Ethiope River in Nigeria.**

It is also notable that organisations advocating the rights of nature often benefit from a **network of legal experts**, as is the case for the Global Alliance for the Rights of Nature, the Earth Law Center and other capacity-building networks such as the Gaia Foundation in Africa. These networks benefit citizens' movements, as shown by the campaign for the St Lawrence River in Canada and the mobilisation for sacred headwaters in Ecuador and Peru. They also provide **direct support to States**, when the local situation allows constructive collaboration with the national institutions, parliaments or ministries involved in protecting natural environments, as demonstrated by the adoption of Ecuador's Constitution in 2008 and the passing of the National Environment Act in Uganda.

Furthermore, the case studies demonstrate that the philosophy of the rights of nature has been taken on by several countries by means of **local or national referendums**. It is thus clear that **far from being a debate for experts and lawyers, these concepts are now being embraced by the general public as a practical lever for ecological transition**, as shown by the campaigns around the Ecuadorian Constitution, the rights of Lake Erie in the USA and the rights of the Mar Menor lagoon in Spain.

Even though the movement is now spreading rapidly in Western countries, it is important to emphasise, as the selected cases highlight, **the predominant role of Indigenous peoples and customary authorities** in the recognition of the rights of nature. Their influence comes in a context that is often marked by post-colonial struggles and campaigns for the **right to self-determination** and the preservation of **social and cultural rights**. This is often c**oupled with resistance to industrial projects** that entail the degradation of the natural environments with which Indigenous people maintain close links. This is clearly shown in the cases of the Piatúa River in Ecuador and the Whanganui River in New Zealand.

Indigenous peoples' cosmovision and customary rights form a powerful **alliance to offer a new legal model that is no longer based on the appropriation of living entities, but instead gives expression to an interdependent connection with the living environment.** This logic is common among many Indigenous peoples and has influenced several legal revisions, such as in the Loyalty Islands and in the case of Uganda's network of sacred sites. **This influence is also being expressed at an international level**, as shown by the inclusion of the rights of Mother Earth in the Kunming-Montreal agreement as the result of lobbying by Bolivia.

It is therefore important to remember that the movement for the rights of nature is multifaceted and has grown significantly since the 2000s under the influence of civil society and Indigenous peoples. The movement is based on a societal and legal paradigm shift that has the ambition of combating environmental scandals and offering a way of life and human activities that are compatible with safeguarding the interests of non-humans.

Source: *https://commons.wikimedia.org* / COP15 – Adoption-du-cadre-Kunming-Montréal – 2019.

2 Summary

RECOGNITION OF THE RIGHTS OF NATURE				
International	National	Local	Symbolic	Jurisprudence

CONTEXT		
Post-colonial movement	Indigenous peoples	Spirituality

International

26 Kunming-Montreal Global Biodiversity Framework

RECOGNITION OF THE RIGHTS OF NATURE

International Recognition of the rights of nature or the utility of the concepts of the movement for the rights of nature by several States or by a text adopted by a group of States.

National An initiative throughout the territory of a State.

Local An initiative by part of the territory of a State, in particular an ecosystem defined as an identified environment and/or the entities that comprise it.

Symbolic A non-binding initiative, a text that is not legally enforceable but is essentially a declaration of political intent.

Jurisprudence A court ruling.

CONTEXT

Post-colonial movement Recognition of the rights of nature that occurs in the context of a desire to break with a model inherited from colonial times, particularly in legal, political and cultural terms.

Indigenous peoples An initiative from an Indigenous organisation or people that includes claims specific to First Nations, in particular linked to the right to self-determination.

Spirituality An initiative strongly linked to a religious context or to local beliefs in which the question of what is sacred intervenes directly in the connection between humans and their living environment.

ENVIRONMENTAL ISSUES

Industrial pollution The natural environment has undergone an alteration of its biological functions as a result of an accident or human-induced discharge linked to a human activity.

Major structures The physical modification of the natural environment by a human-made structure that has an impact on ecological continuity (dams, canals, etc.).

Mines Primary or secondary mineral extraction activities whether artisanal or industrial.

Déforestation The irreversible or long-term destruction of forested areas.

Climate change A global climate phenomenon that leads to long-term variations in temperature and weather conditions

Artificialisation The lasting alteration of all or part of a soil's ecological functions, in particular its biological, hydrological and climate functions, as well as its agronomic potential, through occupation or use.

Animal cruelty Acts of animal mistreatment, cruelty or exploitation. Keeping animals in conditions that are incompatible with the biological requirements of their species.

Water cycle The initiative is linked to a project that affects the circulation of water in the natural environment.

EMERGENCE

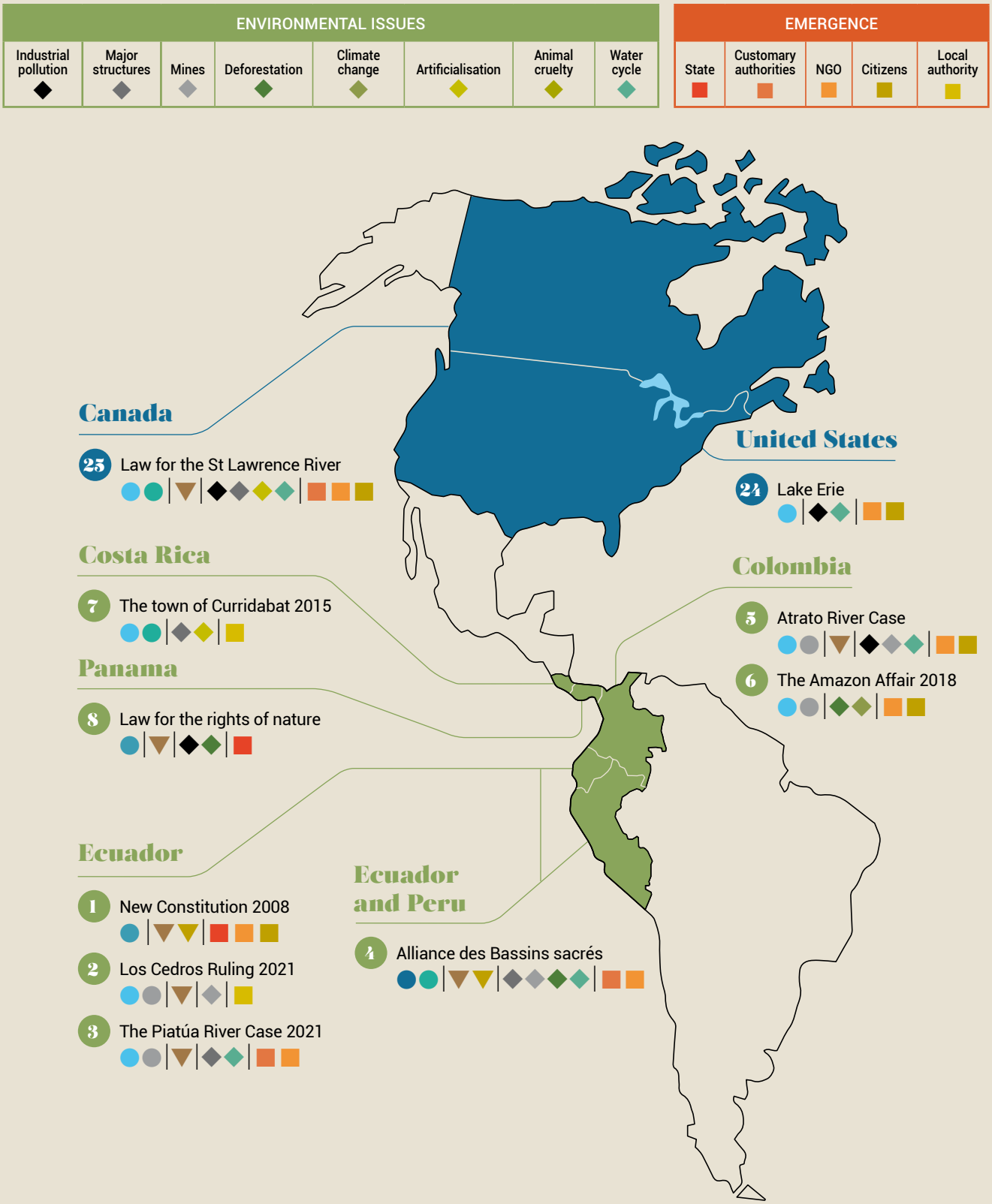
State The initiative is supported by the country's institutions on a national scale.

Customary authorities The initiative is promoted by one or more chiefs or traditional authorities in accordance with local custom.

NGO An initiative by one or more civil society organisation.

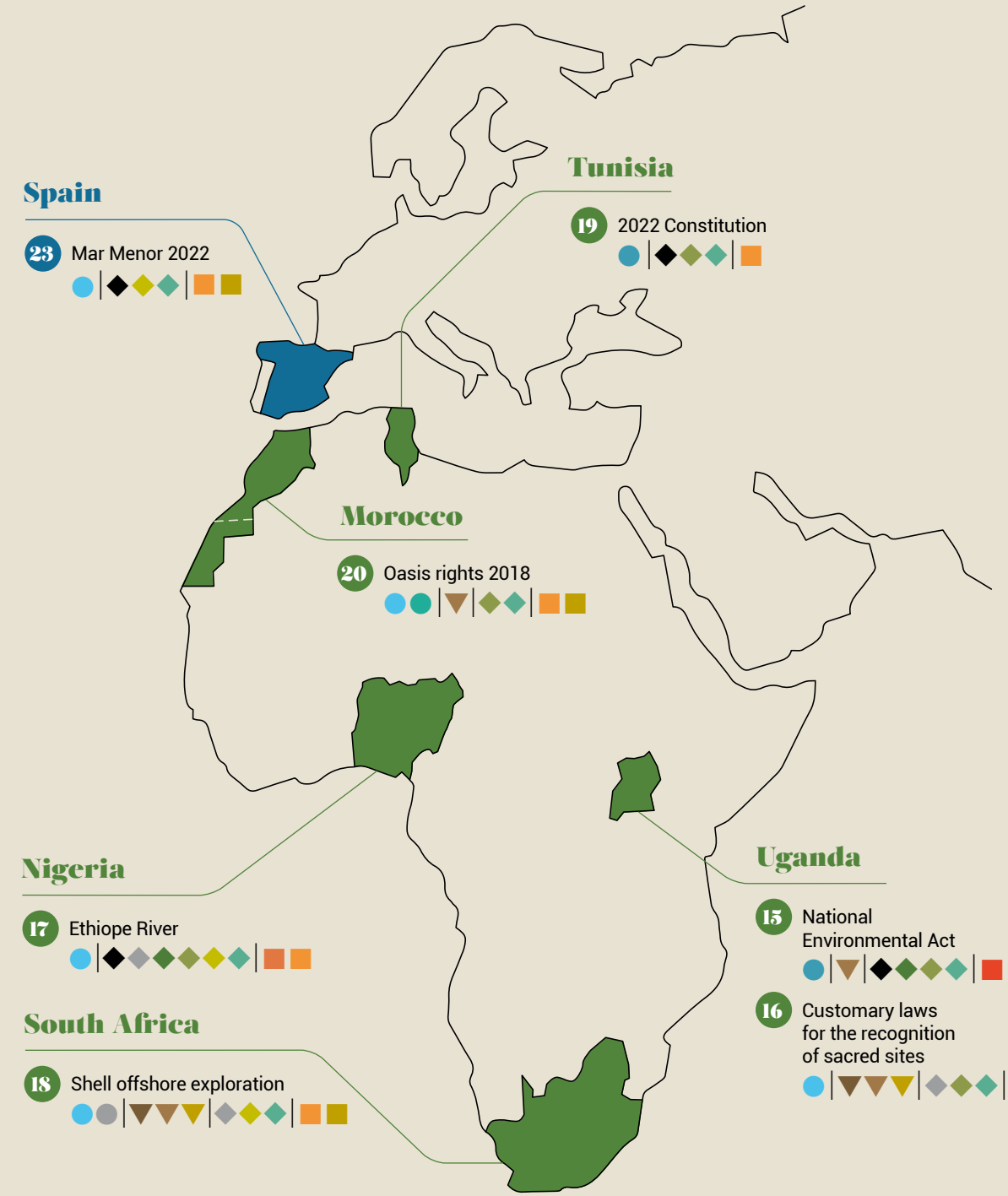
Citizens An initiative led or supported by individual citizens (referendum, petition, etc.).

Local authority The initiative is supported by a municipality, district or other type of local territorial organisation.


ENVIRONMENTAL ISSUES
Industrial pollution
Major structures
Mines
Deforestation
Climate change
Artificialisation
Animal cruelty
Water cycle
EMERGENCE
State
Customary authorities
NGO
Citizens
Local authority
Canada
25 Law for the St Lawrence River
United States
24 Lake Erie
Costa Rica
7 The town of Curridabat 2015
Colombia
5 Atrato River Case
6 The Amazon Affair 2018
Panama
8 Law for the rights of nature
Ecuador
1 New Constitution 2008
2 Los Cedros Ruling 2021
3 The Piatúa River Case 2021
Ecuador and Peru
4 Alliance des Bassins sacrés

RECOGNITION OF THE RIGHTS OF NATURE				
International	National	Local	Symbolic	Jurisprudence

CONTEXT		
Post-colonial movement	Indigenous peoples	Spirituality




ENVIRONMENTAL ISSUES
Industrial pollution
Major structures
Mines
Deforestation
Climate change
Artificialisation
Animal cruelty
Water cycle
EMERGENCE
State
Customary authorities
NGO
Citizens
Local authority
Pakistan
13 Kaavan the elephant
Bangladesh
12 Turag River 2019
Philippines
14 Living Laudato Si
France
22 The Loyalty Islands / New Caledonia
India
9 Ganges and Yamuna Ruling 2017
10 Himalaya Ruling 2017
11 Madras High Court Ruling 2022
New Zealand
21 Law for the rights of the Whanganui River 2017

Marine Calmet
President of the NGO Wild Legal

What role for the community of development Actors?

3 What role for the community of development Actors?

I. INTERNAL PERSPECTIVES / P. 210

II. AVENUES FOR EXTERNAL INTERVENTION / P. 215

The authors of this publication are aware that the legal considerations involved in contemplating the recognition of the rights of nature can generate reticence, or indeed even resistance, by development actors. These actors may consider that this recognition does not fall within their mandate, professional remit or skills.

For this reason it is important to remember that the issues involved in the rights of nature go far beyond the strictly legal sphere. They relate to the triple ecological crisis – global warming, the degradation and destruction of the natural environment and the loss of biodiversity. They also refer to the development model – post-colonial, patriarchal, extractivist – that orchestrates the destruction of nature and oversees the huge explosion of inequality.

The movement for the rights of nature combines philosophical, ethical, cultural, economic, historical and even spiritual considerations. These different dimensions make it possible to understand the issue of the rights of nature from a wide range of angles, depending on the local context.

The evolution of this movement over the past decades and its huge growth in recent years, illustrate both the enthusiasm and the global urgency to transform the way in which we inhabit the planet in order to achieve a more harmonious relationship between nature and human societies.

In this context, development actors can have considerable leverage in supporting local initiatives that contribute to the progression and recognition of the rights of nature. This publication, and in particular its second part, demonstrates that this is not only possible but also desirable, in a context of multiple expectations and needs.

The objective of this third part of the publication is to share some lessons and avenues for reflection with the community of development actors. It is a case of allowing them to support their partners in the operational implementation of local initiatives in favour of the rights of nature.

We propose a selection of approaches and potential levers that can be used to address both the internal practices of development actors (in section I.) and actions carried out with external partners and beneficiaries (section II.).

I. INTERNAL PERSPECTIVES

New strategy for the rights of nature

The projects in which development actors are involved are infrequently oriented towards the rights of nature, in other words oriented through their formal recognition, their translation into public policies, their integration into national regulations for all public and private actors, their incorporation into local initiatives, etc. However, issues relating to the preservation of biodiversity and the protection of the environment are increasingly being taken into account in development projects, even though they still adopt an anthropocentric logic (protection of ecosystem services and uses for humans).

Furthermore, even if most of the projects currently supported by development actors do not claim to be part of the movement for the rights of nature, many of them promote practices and lifestyles that are consistent with the preservation of natural environments and in this way are compatible with the movement's principles and demands, although without formally endorsing them.

From a strictly terminological point of view, some leaders, such as Vandana Shiva in India, voluntarily use alternative terms to "the rights of nature", such as "Mother Earth". Some campaigns, in Uganda for instance, refer to the protection of "sacred sites" or other concepts, which have strong similarities to the movement for the rights of nature while adopting references rooted in the local cultural context.

It is consequently essential not to confine the concept of the rights of nature to a meaning that might appear "too Western". On the contrary, we need to establish analytical tools that can assist the reflections of development actors and support the various projects that are compatible with the spirit of the movement and the realities on the ground.

It is essential that the main principles and the philosophy of the rights of nature are assimilated by development actors before practical tools can be proposed. The suggested approach involves phases of acculturation, familiarisation and application.

Acculturation of development actors

Before we can imagine the future integration of new concepts and analytical frameworks into practices, or even changed frames of reference for development actors and their partners, an acculturation phase is imperative.

Beyond the acquisition of key notions around the philosophical and historical origins of the movement and its broad main principles, it will be useful to develop both **sector-based and geographical approaches**. This will allow a differentiated analysis according to the area of intervention and the development policy pursued.

Some territories that are more committed to the issue of the recognition of the rights of nature than others, could thus, through **collaboration between development actors and exchanges within the institutions themselves**, permit skills to be strengthened and best practices to be shared by disseminating information on the progress of initiatives that have been observed, encouraged or supported.

Internally, building the capacities of certain key actors would also be decisive. In the case of donors, this could involve the teams in charge of analysing projects with regard to environmental and social criteria and sustainable development issues. **This also applies to the management of environmental and social claims**, or to any system for resolving conflicts through a conciliation mechanism involving a neutral, independent and impartial third party.

Conflicts can arise when a project complies with local environmental standards but there are tensions linked to social or ecological acceptability. It may therefore be the role of an internal mediator or independent expert to facilitate, for example, an agreement between the defenders of the disputed project and the ecological and

social needs expressed by local communities. To this end, the rights of nature can be a practical tool that allows a new approach, moving away from anthropocentric conflicts of use while broadening appreciation of the problem in an attempt to find a balance within the living environment that satisfies all stakeholders.

Adopting new logic for the protection of nature

The recognition of the rights of nature raises the question of how to revise the environmental policies defended by development actors.

This requires a strong political message that refers back to other societal developments in the past. Indeed, just 20 years ago, the issue of gender was not really considered nor very well understood by development actors. With regard to public development operators in France, it was when the French State issued a strong signal, by developing specific strategies and setting targets to be reached in the service of "feminist diplomacy", that development actors accelerated the operational implementation of a gender approach in a completely cross-disciplinary way.

This cross-disciplinarity could be achieved by taking into account the principles of the rights of nature in project rating criteria – such as climate and biodiversity benefits – thus complementing the environmental frame of reference for project appraisal. In the specific situation of AFD's project appraisal process, the "rights of nature "[123] criteria could eventually be integrated into the "sustainable development" analysis of interventions, enriching the social and environmental criteria frames of reference, in countries where the rights of nature are already recognised. This type of approach could facilitate the emergence of new practices in the preparation of development projects.

Reference environmental and social standards have been harmonised among the main international donors, generally reflecting the World Bank's prevailing environmental and social policies and standards, in particular the Environmental and Social Standards (ESS).

If the current momentum of the movement for the rights of nature is consolidated, development actors could encourage the integration of these new legal tools into the corpus of international standards, alongside other analytical elements.

[123] AFD's Sustainable development analysis and opinion mechanism conducts an ex-ante review of projects to be financed to ensure that they align with the sustainable development objectives.

Frame of reference for the rights of nature

It is not easy to draw up an exhaustive list of the criteria that would allow us to definitively qualify a project as compatible or, on the contrary, inconsistent, with the rights of nature. It is nevertheless possible to deepen this reflection through a range of indices and questions leading to a new understanding of development projects.

Here are a few questions to offer structure to a new frame of reference:

Ethical

- Does the project maintain a relationship of domination (exploitation) with the environment or does it encourage a collaborative approach between humans and non-humans?
- Is the project constructed on a relationship with nature that is based on conservation/restoration motivated solely by economic benefits, or does it embrace a logic of the long-term preservation of natural capital and the protection of biodiversity motivated by a relationship of respect and empathy towards living entities?

Ecological

- Does the project guarantee the respect, protection and preservation of nature's ecological balances, processes and cycles?
- Does the project ensure that the pursuit of human well-being contributes more generally to the well-being of nature, both now and in the future?
- Does the project effectively integrate existing information and knowledge on living entities into the decision-making process?

Governance

- Has the project been designed in order to integrate the interests of non-humans into its governance? Are there any other mechanisms to prevent/manage the risks of violating the rights of nature?
- Are representatives of non-human interests (associations, spiritual leaders, etc.) recognised by the community as legitimate to defend the interests of nature?
- Have measures been introduced to ensure the resolution of conflicts in cases of the breach of the rights of nature and human rights?

Cultural

- Does the project enhance the local people's links with their living environment, cosmovision and traditional practices?
- Does the project provide a new narrative for the Anthropocene, putting forward an economic model that is in harmony with the Living World?

If the agents who are responsible for appraising projects are trained in these new forms of enquiry that touch upon environmental ethics and the accompanying legal tools, they can develop a comprehensive approach to projects:

- In the scenario in which the rights of nature are not recognised locally, even if it's not up to the project appraisers to go further than the existing law or international social and environmental standards, thanks to their acculturation to this emerging global movement, they will be able to identify situations in which they can embrace and support this legal evolution particularly when:

  • the project promoter claims to be part of the movement for the rights of nature and is seeking support to develop the law governing the protection of natural environments in this direction,

  • the project promoter does not claim to be part of the movement, but the appraiser identifies synergies or complementarities with other local actors who do claim affinity with this movement.

- In a case in which the rights of nature are recognised locally, the appraiser can utilise their knowledge of the movement in favour of these rights in the following circumstances:

  • when a project appears to be incompatible with the rights of nature, this incompatibility could be discussed by the appraiser and project promoter in order to draw up pertinent questions and, in the best-case scenario, enable a reorientation of the project,

  • when the project is compatible, but does not claim to respect the rights of nature. The appraiser could support the project promoter by evaluating whether this is linked to the context of the project or whether the promoter is unaware of the concepts of the rights of nature. In the latter case, an analysis can be conducted of whether it would be beneficial for the promoter to be supported in officially integrating the rights of nature into the project (project structure, capacity building, etc.).

Following this presentation of the internal perspectives, the second part below addresses the question of courses of action with regards to external partners, including civil society organisations, state institutions and local authorities.

II. AVENUES FOR EXTERNAL INTERVENTION

The rights of nature and civil society organisations

Resource persons

Myriam Dahman Saïdi

Awareness, Advocacy and Education Team – TILT Editorial Manager – Link with the community ecosystem through advocacy – AFD

Émilie Aberlen

Team for partnership with civil society organisations – Project Manager, Human Rights Adviser. Project financing and monitoring, dialogue with CSOs – AFD

As described by Part 2, very many of the advances made by the movement for the rights of nature have come from actions led by NGOs and other forms of civil society organisation (collectives, petition groups, etc.).

CSOs, as a result of their often modest size, local presence and links with various networks, can be the trailblazers of many legal evolutions. They question, and indeed criticise, the existing model, shining a light, for example, on the failure of the state or private sector to apply regulations. Through their advocacy, CSOs call for and facilitate the adoption of new laws to meet national challenges such as plastic waste and the protection of water and land from polluting industries. This has particularly been the case for mining activities and the use of toxic pesticides. These are activities that have regularly come up against social and environmental campaigns organised by local people who fear negative impacts on their living conditions.

An analysis of the movement for the rights of nature shows that, in many cases, advocacy for the recognition of the rights of a river or forest, as for example in Ecuador, India and Spain, arises from the observation that environmental law is ineffective, or even unfair, in that it conspicuously and almost systematically favours economic freedom to the detriment of human and environmental rights.

In order to reestablish the balance of power between private interests and the defence of the general interest, CSOs advocating social and environmental justice act as a catalyst, calling for structural changes, notably through rights and the law. This observation is valid irrespective of the type of right being defended.

The question of development actors' support for CSOs is therefore key to the emergence of the rights of nature around the world as a practical tool for the structural reinforcement of ecological and social transition, the fight against climate change and biodiversity extinction, and in light of the ecological emergency in general.

To complete this analysis, the support for CSOs must be considered over the long term. While, initially, projects funded via CSOs may play a role in the emergence of the rights of nature, the actual application of laws is highly dependent on the implementation of public policies. CSOs can therefore play a pioneering role in developing the law and acting as a monitor of the effective implementation of the legal and regulatory frameworks that recognise the rights of nature. This role also includes acting on the ground to implement public policies and contributing to these policies as experts and citizen representatives. In some cases, CSOs can conduct small-scale trials of processes that will then feed into public policy.

Support for civil society is therefore worth considering as one the tools available to development actors for scaling up and public policy dialogue.

How CSO projects are selected

Development actors can support the emergence and strengthening of the rights of nature through financial tools intended for civil society initiatives.

Whether project applications are selected on a thematic or geographical basis or by calls for expressions of interest, it is up to development actors to incorporate the issue of the rights of nature into their selection policy.

With regards to the cases presented in Part 2 of this publication, it would be particularly relevant to reconsider the project selection strategy by voluntarily choosing to associate the issue of human rights with the rights of nature (the logic of biocultural rights, as described for the Atrato river, Colombia, in case no. 5) instead of considering them separately, and thus establish cross-cutting, non-anthropocentric criteria.

It would then be up to development actors to promote an "approach based on human rights and the rights of nature" in order to respond to all the development objectives in a complementary, cross-cutting manner. As Part 2 shows, the issues of gender equality, democracy and many other subjects are in fact systemically linked (see also Part 4).

In this context, development actors can support CSO beneficiaries in consolidating their approach and asking themselves new questions, both ecocentric and non-anthropocentric, in order to develop their projects.

Financing CSO projects

In the same way as most environmental protection actions, campaigns for the recognition of the rights of nature are intrinsically contrary to certain industrial and political interests. As a result, they receive little support and may even be opposed by local or national donors. External financial support is thus often necessary.

As these campaigns are generally small structures – citizens' coalitions or local organisations – support for the movement for the rights of nature must be available as a range of instruments, from small-scale funding for issues such as legal action or the production of contradictory scientific assessments, to more substantial funding for national campaigns.

Support for CSO actions that address the rights of nature

Development projects that receive funding could involve a wide variety of actions, including:

- documenting problems and analysing ecological issues within an area of action in order to consolidate knowledge, provide technical and scientific expertise and draw up proposals in favour of the rights of nature;
- strengthening the local/regional/national advocacy of one or more CSOs, in this way enabling them to raise awareness of the rights of nature through information campaigns, training, events and, more broadly, the dissemination of educational messages to different audiences;
- building the capacities of partners on the subject of the rights of nature: forming federations of local actors, consolidating networks, setting up processes for collaboration and transferring skills, etc.;
- promoting collaboration between CSOs from different "families" within collective projects (development CSOs, environmental CSOs, human rights CSOs), in order to encourage the exchange of approaches and opinions, breaking out from "anthropocentric compartmentalisation" and enabling a mutual reinforcement to the benefit of a global approach to development, based on human rights and the rights of nature;
- supporting the implementation of development programmes that claim membership of the movement for the rights of nature (e.g. the Sacred Headwaters Alliance collaborative programme, see Part 2, case no. 4).

In addition, development actors can also shine the spotlight on these initiatives in favour of the rights of nature by disseminating them to the general public.

* TILT! Changing the world starts here
TILT! A click here and a click there!
What are the rights of nature?

An example is **AFD's launch of the Tilt digital ecosystem** with a website and social media presence aimed at a younger audience. Tilt publishes videos, articles and personal testimonies through a range of media. Some of this content has been developed in collaboration with civil society actors to allow a new generation to get involved, on environmental issues in particular. A video and article were published online in January 2023 to introduce young people to the issue of the rights of nature and the evolution of the law to meet the challenges of the future[124].

Example

The Mendihuaca Project for the return of Indigenous lands and transfer of knowledge in Colombia

AFD's CSO Initiatives Platform has provided financial support for this project by the *Tchendukua - Ici et Ailleurs* association since 2017[125]. This organisation is an IUCN member and the project supports the Indigenous peoples of the Sierra Nevada de Santa Marta, in particular the Kogis and Wiwas communities, to recover their ancestral lands and preserve their culture.

With funding of 1,275,000 euros over nine years, the project is being conducted in collaboration with the relevant traditional authorities as well as with the Indigenous organisations OGT (*Organización Gonawindua Tayrona*), OWYBT (*Organización Wiwa Yugumaiun Bunkuanarrua Tayrona,* representing the Wiwas) and ASOWAKAMU (Arhuacas women's association).

This programme allows populations who have been affected by colonisation and dispossessed of much of their land to regain their food autonomy through ancestral agricultural practices. This helps to restore biodiversity and preserve their traditional way of life.

The programme also has the objective of safeguarding and promoting the communities' cosmovision and their link to Mother Earth, Pachamama, of which they consider themselves to be the custodians. The programme includes "studies of the crossover between science and Indigenous knowledge", with the aim of "contributing to the emergence of new ways of understanding and protecting ecosystems", as well as disseminating the messages of Indigenous peoples in Europe.

In this case, AFD's support enables a CSO initiative to be reinforced, the message of which is linked to the movement for the rights of nature. Furthermore, this support also promotes the transmission of knowledge from the Indigenous world to the Western world, in this way proposing new solutions to the ecological crisis.

Source: Bioéconomie en équateur [Bioeconomy in Ecuador] © Esteban Barrera (AFD).

Collaboration with state bodies and local authorities

Resource persons

Guilhem Arnal
Project Team Manager in the Governance Technical Division, AFD

Caroline Piquet
Project Officer, Biodiversity Unit in the Climate and Nature Division, AFD

A very large proportion of the budgets allocated by international financial institutions goes to public institutions in the form of sovereign loans or grants. However, AFD, like other public development banks, has access to other financing tools to support the private, non-profit and other sectors.

Projects supported by international donors must meet environmental and social criteria in line with global commitments (in particular the Paris Climate Accords and the Global Biodiversity Framework). In this context, the principles of the rights of nature could complement these collaboration strategies by integrating a human rights-based approach with the rights of nature.

Governance

Programmes intended for States, including financial and technical assistance, can be supported by reinforced governance involving scientists, civil society and local people. Setting up this governance can be the result of dialogue between partners during the project design phase. In particular, the objective is to ensure the involvement of citizens, users and local actors in the construction, implementation and monitoring of the public policy or initiative being supported.

In view of the development of the movement for the rights of nature around the world, and the various examples set out in Part 2, this would be a powerful tool for integrating governance models into development actions that allow for the involvement of custodians of nature (terminology widely used to designate people who speak on behalf of and in the best interests of nature or a natural entity, e.g. the custodians of the Atrato River in Colombia and the Whanganui River in New Zealand, see Part 2, case nos. 5 and 21). These custodians may belong to the world of science who define ecological objectives that guarantee the protection of the fundamental rights of nature, or belong to civil society, e.g. local customary authorities, spiritual leaders, journalists, forest rangers, etc.

The involvement of people from outside the State, whose mission would be to defend the interests of the sites concerned, would allow the integration of the fundamental needs of nature and reinforcement of the social fabric while respecting local history and traditions.

Improving the legislative arsenal

It is essential to define new legal standards and norms in order to assert the rights of nature. These cannot be symbolic declarations or non-binding charters, because, as the examples cited in Part 2 of this publication show, these rights must be enforceable through the authorities and judicial bodies.

It is thus a matter of supporting an evolution of legislation to allow the recognition of the rights of nature, without acting instead of States, and while respecting each partner's legal tradition.

The examples of the work carried out by the Gaia Foundation in Uganda (recognition of the status of sacred sites, case no. 16) and the Pachamama Foundation in Ecuador (inclusion of the rights of Pachamama, Mother Earth, in the Constitution, case no. 1) show that, with the support of legal professionals, it is possible to encourage legislative reviews that recognise the rights of nature, through concepts that are deeply rooted in the social, historical and cultural context.

To this end, development actors can mobilise their tools in favour of "**improving the legislative and regulatory arsenal** of beneficiary project owners, as well as policies and standards relating to sustainable development and governance, reinforcing human and technical capacities, while simultaneously improving economic, social and environmental performance", as envisaged, for example, by AFD's Environmental and Social Framework document[126].

This option becomes possible in the context of **public policy loans**, and in particular applies to sectors likely to generate significant negative environmental and/or social impacts. It is then possible to employ various tools, such as strategic environmental and social evaluations, or to integrate an environmental and social section into Technical Assistance programmes.

Example 1

In Mexico, the State obtained AFD's support to finance a programme to promote low-carbon, inclusive growth through a loan and grant. In particular, this financing aims to "draw up and reinforce legislative, regulatory and institutional measures to encourage the alignment of public and private financial flows in Mexico with the mitigation and adaptation objectives of the Paris Agreement"[127].

Example 2

AFD's financing programme for Mexico, Costa Rica, Ecuador and Bolivia aims to ensure the implementation and monitoring of the Escazú Agreement, the first environmental treaty for Latin America and the Caribbean. The objective is to promote the strengthening of environmental law, access to justice, public participation and the transparency of environmental and climate information[128].

[126] See: Environmental and Social Framework | AFD

[127] See project sheet: *Accompagner les politiques publiques en faveur de la finance durable et inclusive* [Supporting public policies for sustainable, inclusive finance] | AFD

[128] See programme: *Appuyer la justice environnementale et climatique au Mexique, au Costa Rica, en Équateur et en Bolivie* [Supporting environmental and climate justice in Mexico, Costa Rica, Ecuador and Bolivia] | AFD

Development actors could therefore encourage an improvement in the legislative and regulatory arsenal, while including a non-anthropocentric evolution that is respectful of the cultural identity of the territory, in this way enhancing customary law.

The "co-construction" of this legal innovation is complex due to the red lines defined by the partners. Negotiations between the parties during the project preparation process may lead to an evolution of environmental standards. Without necessarily recognising a new status for nature, this may involve strengthening existing laws in order to protect fundamental needs and provide governance that represents non-human interests. Non-anthropocentric governance, which can be organised in many different ways, would at least allow the essential objectives of the rights of nature to be adopted (guaranteeing the health and integrity of natural environments and their capacity for regeneration, etc.), even in cases where the use of these concepts was not directly conceivable (for political or cultural reasons, etc.). The examples of Part 2 of this publication illustrate these situations.

Public training and awareness raising

Development actors can also be proactive in order to go beyond the role of financier, taking up a position in a more global logic of support, advice and training.

The AFD Campus, based in Marseille, is an example of this, offering training modules to AFD's counterparts, project owners and partners. The beneficiaries include administrative executives, representatives of public and private enterprises, local elected representatives and public officials as well as representatives of civil society[129].

These training courses support project partners in technical and methodological subjects such as procurement, gender mainstreaming in public policies and a wide range of environmental issues. This broad training offer is part of a rich landscape of partnerships and initiatives, such as the *Agir pour le Vivant* festival in Arles, and links with professional networks all around the world.

In general, very many development projects include a support component for stakeholders through capacity-building actions, institutional support, technical assistance, etc. The integration of concepts relating to the rights of nature into the support components of projects, where appropriate, could therefore offer an essential means to promote these legal innovations to those who will construct the public policies of the future.

[129] See: AFD Campus.

Example

The Chakra Project, forest economies in Ecuador

AFD has provided financial support for the planning of a new agricultural production model in Ecuador, called the bioeconomy, since 2022.

In October 2020, 34 public and private institutions signed up to the National Pact for a Sustainable Bioeconomy. This was an important step in the country's strategy in this area. AFD supported the development of the strategy with 1.5 million euros of funding.[130]

The process of drawing up Ecuador's National Pact for a Sustainable Bioeconomy has involved academia, public institutions, the private sector, Indigenous peoples and local communities (with the support of specialist advisers). It takes into account the realities and criteria of the country's different regions in a differentiated manner.

The Technical University of Loja will publish an official report on the main thrusts of the strategy. The ambition is for a new production system to emerge, which will have to be translated into public policy.

Jean-Philippe Berthelemy, the AFD deputy director in Ecuador, considers that a highly ambitious public policy matrix has already been developed, based on a multi-actor approach, involving the Ministries of Production and Agriculture, civil society, academia and the private sector.[131]

Jean-Philippe BERTHELEMY

AFD has also approved 1.5 million euros of financial support to the Pachamama Foundation for a complementary programme known as the Chakra Project.

The Pachamama Foundation supports Ecuador's Indigenous peoples in the consolidation and autonomous management of their territories[132]. The Foundation is deeply rooted in the Indigenous cosmovision and respect for the rights of Mother Earth, the Pachamama. Its team includes a legal officer dedicated to the strategy of political, legal and educational advocacy for the promotion and guarantee of human rights and the rights of nature, both nationally and internationally.

The Chakra Project focuses on forest economies and although it does not directly mention the rights of nature, it does offer a concrete example, specific to the local Indigenous context. Active in the three Amazonian provinces of Napo, Pastaza and Morona Santiago, the programme supports chakras, an ancestral model of cultivation from this part of the world[133]. The initiative has allowed over 100 Indigenous and peasant communities to generate income for their families by growing crops without destroying nature.

[130] For further information: *Ecuador: Fortaleciendo una política pública de bioeconomía* [Ecuador: Strengthening a public bioeconomy policy] | AFD – Agence Française de Développement.

[131] *Se inicia la elaboracion del primer Libro Blanco de Bioeconomia del Ecuador* [Work begins on Ecuador's first Official Bioeconomy Report], in La Revista El Universo, 30 August 2022.

[132] For further information: see the Fundación Pachamama website.

[133] For further information: The Chakra Project. Fundación Pachamama.

Source: Kapawi and Ahucar territory. https://www.pachamama.org.ec/nosotros/

The project is part of a drive for development across the country.

This example illustrates the major role of civil society and foundations, alongside States, in demonstrating the feasibility of a new, long-term public policy that is compatible with the rights of nature. More particularly, when it comes to emerging issues such as the rights of nature, there is a real interest in mobilising CSOs as project operators. CSOs can offer a "head start" and apply their expertise to support the implementation of innovative public policies.

These complementary programmes supported by AFD demonstrate the ambition of Ecuador, which enshrined the rights of nature into its 2008 Constitution. The objective is to propose alternative models to Western schemes and liberalism, in order to construct not just a legal system but also an economic model that accords with the rights of nature.

As a consequence, the role of development actors can be considered to support public policies that take climate, environmental and social issues into account, leading in particular to the integration of a "Rights of Nature" approach. It can also be to support public policy dialogue with civil society and its organisations, including foundations, acting to protect the rights of nature.

Rehabilitating social and environmental Sciences for a world in common

4

At the great tipping point: restoring meaning to the economy

Farid Lamara

Human Development Expert and Strategic Advisor in the Strategy, Foresight and Institutional Relations Department, AFD

Sarah Marniesse

Executive Director of the AFD Group Campus

> "If ever there was an illumination of the short sightedness of our prevailing economic and political systems, it is the ratcheting up of the war on nature"
>
> *Antonio GUTERRES*[134]

Subject and summary of the article

This article looks at the dominant economic paradigm and the anthropocentric, inegalitarian and life-destroying development model it has generated. It refers to a wide range of scientific literature and draws on many disciplinary fields to embrace, in all its complexity, an understanding of the myth of never-ending growth. It also presents the dramatic consequences of this approach and outlines exit routes.

On these bases, the article notes that this model has only been able to be deployed to the detriment of "elsewhere", initially by colonisation, and thereafter through a logic of unequal exchanges, including ecological ones, essentially to the benefit of the countries of the Global North. And it continues to produce the massive inequalities upon which it prospers, while depleting the planet's biocapacity.

The framework of planetary boundaries offers a clear insight into this last point. Scientific literature has demonstrated that decoupling, which claims that economic growth is possible without ecological damage, is a myth. A fully decarbonised economy that aims for infinite GDP growth will remain predatory on nature and will continue to have a negative impact on the ecological footprint. In this scenario, natural resources are depleted, ecosystems devastated, inequalities explode and humanity as a whole stands on the edge of the abyss, with poor countries and disadvantaged people in the front line.

[134] *Progress towards the Sustainable Development Goals: Towards a Rescue Plan for People and Planet. Report of the Secretary-General (Special Edition). Paragraph 6. Unedited Version. May 2023. "If ever there was an illumination of the short sightedness of our prevailing economic and political systems, it is the ratcheting up of the war on nature".*

The scientific community, together with a wide range of institutions and figures from the worlds of politics and civil society, are increasingly calling for a complete paradigm shift. This implies rethinking the societal goals of the economy and resolutely adopting a model that enables living entities to exist in healthy, safe environments, where the objective is well-being for all.

The key to giving substance to such a vision lies in seeking Justice in all its forms, encompassing the Earth system and living things. The recognition of ecocide and the rights of nature represents a lever to achieve this, but the necessary change of the system goes far beyond that. It implies resetting the economy within society, reconnecting it to ethics and philosophy, questioning value, exploiting the world's archives and drawing inspiration from those "inhabitants" who live and experience the planet in a different way. It means actively supporting the transition from an anthropocentric, inegalitarian model to an ecocentric, just model to ensure the planet's habitability. It requires a genuine ecological, political economy that guarantees robust sustainability.

This complete paradigm shift must encompass ecological issues in the broadest sense – environmental, climate and biodiversity – as well as human freedoms, multidimensional inequalities and global justice, with a view to preserving the commons and intergenerational and transgenerational equity.

1 / THE AGE OF INCONSEQUENCES

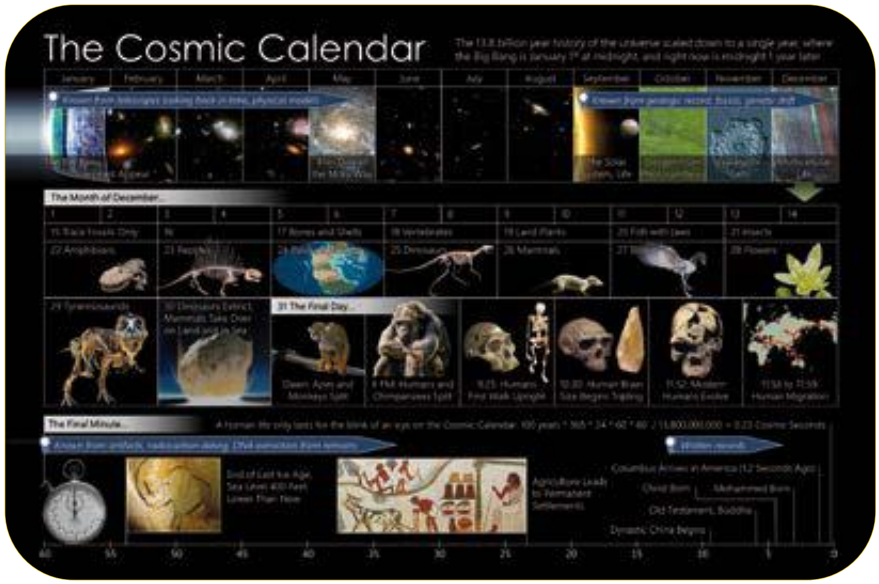
The blink of an eye

In his cosmic calendar, the astronomer Carl Sagan[135] proposed considering the history of the universe condensed into a single year (13.8 billion years reduced to twelve months). The birth of the universe, the Big Bang, occurs on the first second of 1 January. At present we are at midnight on 31 December. In this calendar, the Milky Way forms on 1 May and the Earth on 14 September. The very first life forms appear on 25 September. From 15 December, invertebrates, oceanic plankton, fish, the first vertebrates, insects, amphibians and reptiles develop. The first trees appear on 23 December. The supercontinent Pangaea forms on 24 December. On the 25th, dinosaurs emerge, only to disappear on the 30th. Meanwhile, mammals, birds and flowers appear. Homo sapiens take their first steps on the last day of the year, just four minutes before midnight. And during the very last second of the year, Christopher Columbus crosses the Atlantic, triangular trade is established, colonisation starts, nation states emerge, industrial revolutions, world wars and the Cold War come and go, medicine and technology develops, humans take their first steps on the moon, a multipolar world emerges and demographic growth leads to a human population of 8 billion ....

[135] Carl Sagan, Cosmos, Ed. Mazarine, 1981.

Carl SAGAN

And in well under half a second, the concentration of CO2 in the atmosphere jumps from 280 ppm to 420 ppm[136], ecocides multiply, large-scale pollution abounds and humanity enters the Anthropocene[137]. By competing with the forces of nature, human activities have brought about extremely rapid major changes, marking the end of the Holocene geological epoch, which was stable in environmental and climate terms (extending over the last 11,700 years). The evolution of the Earth system has been disconnected from the laws of nature.



Source: https://upload.wikimedia.org/wikipedia/commons/9/99/Cosmic_Calendar.png?uselang=en

The Anthropocene, a turning point

Officially, we are still in the Holocene, an epoch that began 11,700 years ago after the last ice age. However, in 2002, Paul J. Crutzen[138] suggested that we consider the start of a new epoch, the Anthropocene. He compiled many observations linked to the decisive influence of humans over nature, and also listed the warnings from years gone by: that of Marsh, who published "Man and Nature" in 1864, helping to launch the modern conservation movement; of Italian geologist Antonio Stoppani, who as early as 1873 referred to "the new telluric force which in terms of power and universality can be compared to the greatest forces on earth" and described the "Anthropozoic era"; and that of geologist Vernadsky, who in the 1930s, along with Teilhard de Chardin, used the term "noosphere" (the sphere of human thought) to denote humanity's growing control over shaping its own future and environment. All that remained was to establish the start date of this new era. Paul J. Crutzen proposed 1784, the year of James Watts' key discoveries on steam engines.

[136] ppm (parts per million) is a unit of measurement used by scientists to determine the concentration of CO_2 in the atmosphere. The maximum acceptable limit is 350 ppm.

[137] Will Steffen; Paul J Crutzen; John R McNeill, The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature?, Ambio; Dec 2007; 36, 8; Sciences Module. Royal Swedish Academy of Sciences.

[138] Paul J Crutzen, Geology of Mankind, Nature, Vol 415, Janvier 2002.

This was based in particular on analyses of air trapped in ice which showed worldwide increases in the concentration of CO_2 and methane. Crutzen also highlighted the effects of demographic growth, the expansion of land use, the scale of livestock farming and its consequences, the use of fresh water, the speed at which tropical forests are disappearing, the reduction of biodiversity, the decline in fish stocks, the increasingly massive use of energy, and the use of pesticides and their long-term, harmful consequences for living entities and ecosystems. And this list was not exhaustive.

This dateline was challenged a few years later with the publication of scientific analyses largely based on the work of the International Geosphere-Biosphere Programme (IGBP)[139]. This work is summarised in 24 graphs, namely 12 socio-economic indicators[140] that reflect human activity and 12 indicators of the Earth system[141], measured since 1750, that constitute a "planetary dashboard"[142]. The trajectories of the Earth system show the decisive changes of the twentieth century and the clear inflection from the middle of the century, even if some indicators are less marked than others. Furthermore, the coupling between the two sets of indicators is striking, and the analyses carried out make it possible to establish the link between human activity and the pressure it exerts on nature. The coupling on the one hand, and the inflection on the other, indicate a very clear trend of anthropic pressure on the Earth system after the Second World War. Scientific evidence is accumulating that demonstrates fundamental changes in the status and functioning of the Earth system since 1950 that exceed the variability of the Holocene and are clearly the result of human activities. This has led the scientific community to consider 1950 as the starting point of the Anthropocene[143]. This starting point also corresponds with the beginning of industrial growth, which became truly global in 1990 with the emergence of China and India[144]. The second half of the twentieth century is unique in the entire history of human existence on Earth, and has "without doubt seen the most rapid transformation of the human relationship with the natural world in the history of humankind".[145]

From the Great Transformation to the Great Acceleration

It was from these observations that the concept of the "Great Acceleration" was developed, echoing Karl Polanyi's work "The Great Transformation"[146].

The Great Transformation theorised by Polanyi took form against the background of the ideology of a market economy autonomous from the social sphere and fabric that had been employed through the 19th century, until it failed in the turmoil of the

[139] International Geosphere-Biosphere Programme (IGPB).

[140] The issues of population growth, urbanisation, economic growth, direct foreign investment, the use of primary energy, dam building, water use, paper production, pesticide consumption, transport, telecommunications and international tourism.

[141] Trajectories in terms of the atmospheric concentration of CO_2, methane, nitrous oxide, global surface temperature rise, stratospheric ozone, the depletion of fish stocks, ocean acidification, coastal nitrogen pollution, shrimp aquaculture, the loss of tropical forest, land domestication, and the degradation of terrestrial biodiversity.

[142] Eloi Laurent, *Économie pour le XXIe siècle. Manuel des transitions justes*. [Economics for the 21st Century. A manual for just transitions.] La Découverte, Coll. Grands repères Manuels, Paris, 2023.

[143] Will Steffen, Wendy Broadgate, Lisa Deutsch, Owen Gaffney, Cornelia Ludwig, The Trajectory of the Anthropocene: The Great Acceleration. Anthropocene Review, IGPB & Stockholm Resilience Centre, 2015.

[144] Eloi Laurent, *op. cit.*

[145] Steffen, W., *et al.* 2004. Global Change and the Earth System: a Planet under Pressure. Springer-Verlag, New York, USA.

[146] Polanyi Karl, The Great Transformation, 1944 (Ed. Gallimard 1983). Karl Polanyi reiterates that "previously to our time [the work was published in 1944], no economy has ever existed that, even in principle, was controlled by markets" (p.87), and demonstrates that the self-regulating market is not natural, but a construct built in the tradition of classical economists. Polanyi emphasises that, in the past, economic systems were organised around the principles of reciprocity, redistribution and domestic administration.

1930s. This asocial conception of the market was characterised by the "disembedding" of economic relations from social relations. It reduces everything to goods – people and labour, land and natural resources, money – and "instead of economy being embedded in social relations, social relations are embedded in the economic system".

Like Karl Polanyi's "Great Transformation", the "Great Acceleration", a concept developed by the historian John McNeill and empirically clarified by climatologists Will Steffen and Paul Cruzen[147], is a comprehensive vision that describes the phenomenon whereby the curves depicting the historical trends of human activity and the physical changes that have affected the Earth system illustrate a slow progression from 1750 and exponential growth after 1950. Combined with a global development model based on an increasingly deregulated market logic (in particular since the 1980s), and an extractivist, inegalitarian and imperialist system[148], the "Great Acceleration" could potentially lead to a new "Great Transformation", but in a context in which the balance of the Earth system is severely disrupted and threatens humanity with catastrophic consequences.

The worrying advance of Earth Overshoot Day

The concept of the ecological footprint is another way of illustrating recent anthropogenic pressure. This non-monetary environmental indicator was created by Mathis Wackernagel and William Rees (University of British Columbia) in the 1990s. It is used to evaluate the pressures on natural resources and the ecological services of nature. It measures the resources we consume and the waste we produce against nature's capacity to absorb this waste and generate new resources. This is known as global biocapacity. If a population's ecological footprint exceeds the biocapacity of a given area (country, region), then this territory has a biocapacity deficit. The opposite scenario is known as a biocapacity reserve. There are huge differences between countries. Some have biocapacity reserves (Canada, Brazil, Bolivia, Paraguay, Uruguay, Argentina, CAR, DRC, Russia, Mongolia, New Zealand, etc.), while many others have deficits (USA, China, India, most European countries, the whole of North Africa and the Middle East, the whole of Central Asia, etc.)[149]. A frequent metaphor is the number of planets that a population would require if its lifestyle were applied to the global population. In 2022, if the earth's inhabitants lived like Qataris, nine planets would be needed, as opposed to 0.4 if they lived like Haitians[150]. On a planetary scale, in 2022, Earth Overshoot Day – the day on which humanity has used up all the biological resources that the Earth can regenerate in the whole year – landed on July 28. In 1970, it was calculated as 29 December. Since that time, Earth Overshoot Day has fallen consistently earlier in the year, with the only exception in 50 years occurring in 2020, the year of the Covid-19 pandemic that brought the economy to a standstill and let the planet breathe: a reversal of three weeks that was quickly forgotten.

[147] Will Steffen, Wendy Broadgate, Lisa Deutsch, Owen Gaffney, Cornelia Ludwig, The Trajectory of the Anthropocene: The Great Acceleration. Anthropocene Review, IGPB & Stockholm Resilience Centre, 2015.

[148] Ulrich Brand and Markus Wissen, The Imperial Mode of Living: Everyday Life and the Ecological Crisis of Capitalism, London, UK: Verso, 2021.

[149] See the Open Data Platform of the Global Footprint Network.

[150] Consumption of planet Earths by country 2022 | Statista.

A model at tipping point

Following on from the initial work conducted by the IGPB, in 2009 J. Rockstrom and W. Steffen, working with a team of researchers from the Stockholm Resilience Centre, developed a new framework of analysis and action to describe the departure from the planetary environmental stability that characterised the Holocene. This is the Planetary Boundaries framework. They "define the safe operating space for humanity with respect to the Earth system and are associated with the planet's biophysical subsystems or processes"[151]. The authors emphasised that among the many terrestrial sub-systems, crossing certain thresholds could have deleterious or potentially even disastrous consequences for humans. On this basis, they identified the biophysical processes of the Earth system and their associated thresholds which, if exceeded, could generate uncontrollable environmental changes. They proposed nine processes for which it is necessary to define planetary boundaries: climate change, biodiversity loss (terrestrial and marine), disruption of the biogeochemical cycles of nitrogen and phosphorus (mainly linked to agriculture and intensive livestock farming), stratospheric ozone depletion, ocean acidification, global freshwater use, change in land use, chemical pollution and atmospheric aerosol loading. Furthermore, they announced that three boundaries had been exceeded: climate change, biodiversity loss, and disruption of the nitrogen and phosphorus cycles. The initial analyses were complemented and enhanced in 2015, and researchers announced that a further planetary boundary had been exceeded (change in land use). They also changed the boundary linked to chemical pollution to consider "new entities in the environment" (including plastics). Then in 2023, the Stockholm Resilience Centre[152] stated that six of the nine planetary boundaries had been exceeded. The three that had not been exceeded were stratospheric ozone depletion, ocean acidification and atmospheric aerosol loading – while pressure on all the boundaries had continued to increase[153].

The scientists stress the strong interactions between the different planetary boundaries. They point out that even if exceeding a boundary does not immediately lead to severe phenomena, the probability of runaway events increases. Exceeding a boundary amplifies the risk of causing large-scale, abrupt and/or irreversible environmental and social changes, known as "tipping points". In 2018, PNAS (Proceedings of the National Academy of Sciences of the USA)[154] published a paper by a team of researchers that highlighted ten tipping points as critical thresholds beyond which a system reorganises, often abruptly and/or irreversibly. The main tipping elements include the collapse of the West Antarctic and Greenland ice sheets, the melting of Arctic permafrost, the collapse of the Atlantic Meridional Overturning Circulation and the dieback of the Amazon rainforest. An OECD report published at the end of 2022 aimed to review the state of knowledge on tipping points[155]. It reiterated that crossing tipping points in the climate system can also cascade through socio-economic and ecological systems "over timeframes that are short enough to defy the ability and capacity of human societies to adapt", severely affecting human and natural systems. The report stated that, at regional level, each tipping point is associated with different types of potentially serious regional or local impact, such as extreme temperatures, more frequent droughts, forest fires and unprecedented weather conditions.

[151] J. Rockström *et al.*, Planetary boundaries: exploring the safe operating space for humanity. NATURE 461/24, September 2009.
[152] All planetary boundaries mapped out for the first time, six of nine crossed – Stockholm Resilience Centre.
[153] K. Richardson *et al.*, Earth beyond six of nine planetary boundaries, Science Advances, Research Article, Sep. 2023
[154] W. Steffen, J. Rockstrom et al., Trajectories of the Earth System in the Anthropocene, PNAS, 2018.
[155] Climate Tipping Points: Insights for Effective Policy Action. Summary and abstract. OECD, December 2022.

Moreover, on a global scale, tipping points would have planetary repercussions, for example by contributing to additional greenhouse gas emissions, temperature feedback loops or an acceleration of the rise in sea levels. But above all, it warns that "recent state-of-the-art research shows that important tipping points are already 'possible' at current levels of warming and may become 'likely' within the Paris Agreement range of 1.5 to 2°C warming, questioning the previously well-accepted notion that climate tipping points have a low probability of being crossed under low levels of warming."

The evolution of the Planetary Boundaries framework*

*Stockholm Resilience Centre. Stockholm University. Licensed under CC BY-NC-ND 3.0 (Credit: Azote for Stockholm Resilience Centre, Stockholm University. Based on Richardson *et al.* 2023, Steffen *et al.* 2015, and Rockström *et al.* 2009).

7 boundaries evaluated, 3 crossed | 7 boundaries evaluated, 4 crossed | 9 boundaries evaluated, 6 crossed

A profoundly unjust model

The depletion of natural resources on a planetary scale and the modification of biogeochemical cycles have been accompanied by a massive growth in inequalities within countries since 1980, and also by a global development model that is destructive for nature, the general interest and the commons. The deployment of this model is ultimately only possible at the expense of "elsewhere". In other words, colonised countries before decolonisation, poor countries (i.e. the same countries) after colonisation, the vast majority of the world's poorest people (including in rich countries), as well as women and specific population groups such as Indigenous peoples and ethnic minorities.

While the world's population has grown significantly in non-OECD countries, and despite the shift in global production towards BRICS countries, global consumption remains concentrated in OECD countries. Steffen emphasises that these countries accounted for 74% of global GDP for 18% of the world's population in 2010. Consequently, he indicated that "most of the human footprint on the Earth system comes from OECD countries"[156] considering that this footprint is connected to consumption.

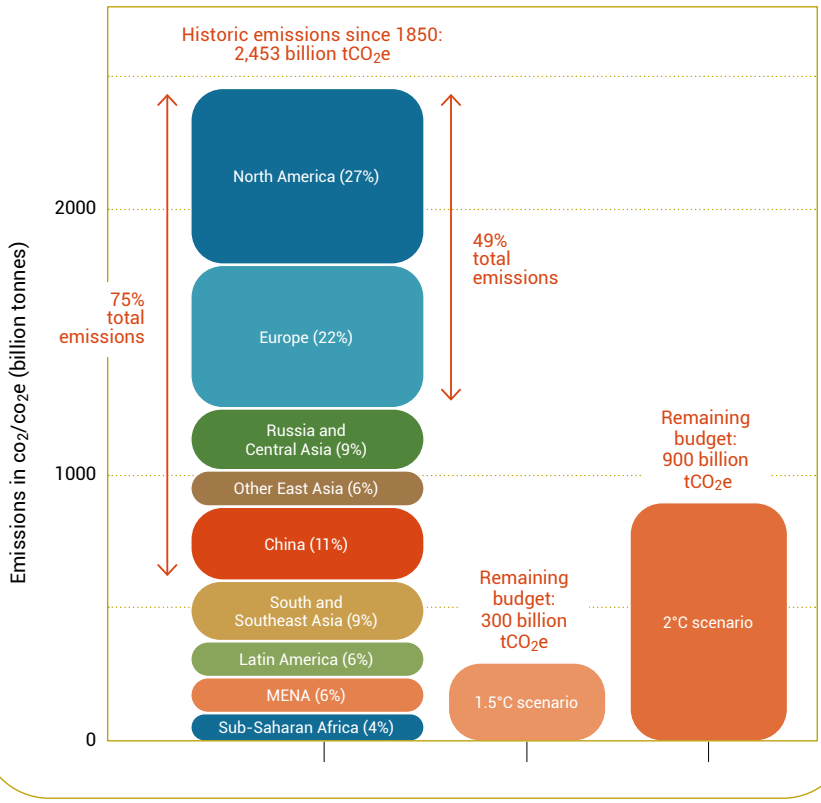
Although the emergence of the middle classes in BRICS countries can be seen in the trajectory of several indicators, e.g. paper production, increasing numbers of motor vehicles, telecommunication devices, urbanisation and water and pesticide use, according to the International Comparison Program (ICP)[157], high-income countries still accounted for 49% of global GDP in 2017, for 17% of the population. Upper- and lower-middle-income countries, representing 36% and 40% of the world's population respectively, accounted for 34% and 16% of global wealth. Low-income countries' share of global GDP was under 1%, for 8% of the world's population.

[156] W. Steffen *et al., op. cit.* 2015.
[157] International Comparison Program (IPC). Press release. World Bank Group. 19 May 2020.

Data from the Climate Inequality Report 2023[158] (the five Figures below are from this report) shows that 49% of total CO_2 emissions since 1850 have come from North America (27%) and Europe (22%), while China accounts for 11% of emissions, Russia and Central Asia for 9%, and Southeast Asia for 9%. Latin America (6%), the Middle East and North Africa (6%) and Sub-Saharan Africa (4%) are responsible for a total of 16% of emissions. Overall emissions were 2,453 billion tonnes of CO_2 equivalent (tCO_2e) by 2020, while the remaining budget to reach the Paris Climate Agreement target of 1.5°C global warming (since 1850) was just 300 billion tCO_2e – or 900 billion tCO_2e for the 2°C target.

Figure 1

Accumulated historical CO_2 emissions compared with remaining carbon budgets in 2020

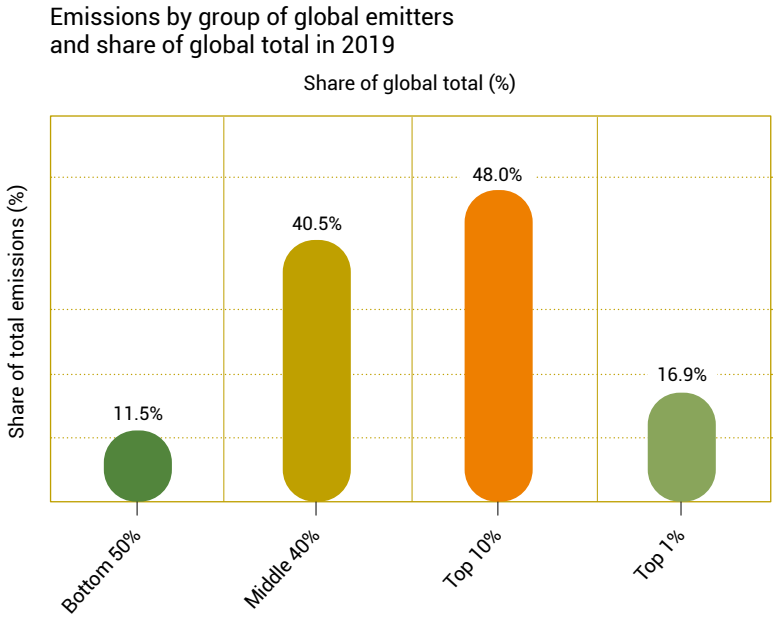


Source: Chancel, L., Bothe, P., Voiturier, T. (2023) Climate Inequality Report 2023, WIL Study 2023/1.

Furthermore, the carbon emissions of the bottom 50% (4 billion people) are far lower than the emissions of the top 1% (80 million people). The richest percentile of the world's population is responsible for 17% of global emissions, while the poorest half of humanity produces 12% of emissions. The top 10% account for 48% of emissions, while the middle 40% emit 40% of global emissions.

[158] Chancel, L., Bothe, P., Voituriez, T. (2023) Climate Inequality Report 2023, World Inequality Lab Study 2023/1L.

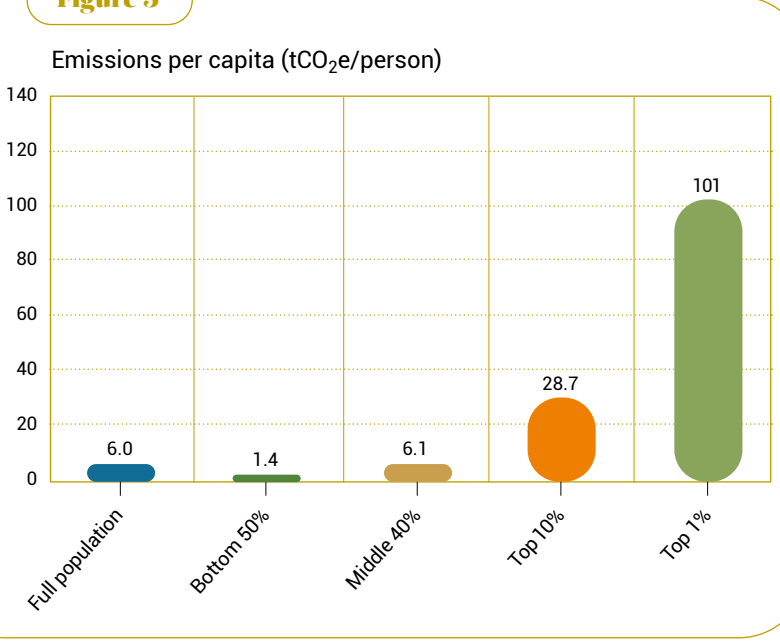
Figure 2



Source: Chancel, L., Bothe, P., Voiturier, T. (2023) Climate Inequality Report 2023, WIL Study 2023/1.

Finally, on a global scale, average emissions per capita are 6 tCO_2e. However, the average per capita emission for the bottom 50% is 1.4 tCO2e. The figure is 6.1 tCO_2e for the middle 40%, 28.7 tCO_2e for the top 10% and 101 tCO_2e for the top 1%.

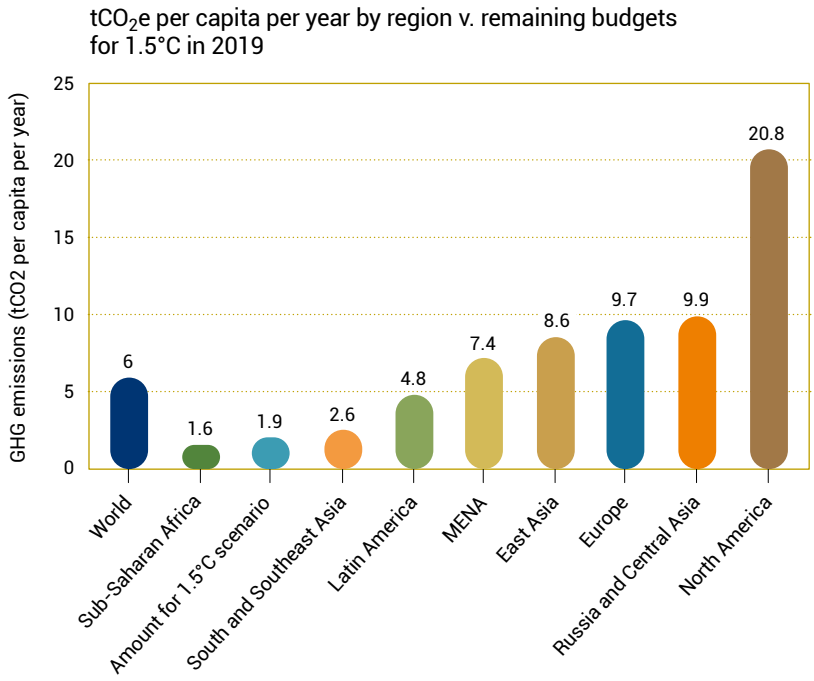
Figure 3



Source: Chancel, L., Bothe, P., Voiturier, T. (2023) Climate Inequality Report 2023, WIL Study 2023/1.

With regards to regional inequalities per capita in 2019, average emissions per capita were 1.6 tCO_2e in Sub-Saharan Africa, 2.6 tCO_2e in South and Southeast Asia, 4.8 tCO2e in Latin America, 7.4 tCO_2e in the Middle East and North Africa, 8.6 tCO_2e in East Asia, 9.7 tCO_2e in Europe, 9.9 tCO_2e in Russia and Central Asia, and 20.8 tCO_2e in North America. However, all regions would have to be at 1.9 tCO2e per capita in order to respect the 1.5°C target.

Figure 4



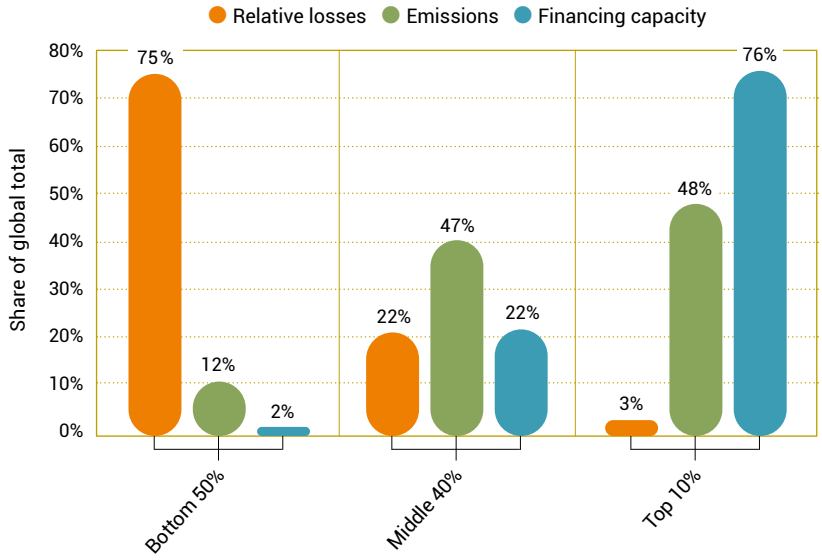
Source: Chancel, L., Bothe, P., Voiturier, T. (2023) Climate Inequality Report 2023, WIL Study 2023/1.

While the human footprint on the Earth system comes mainly from OECD countries, the impacts of climate change are primarily borne by poor countries. Thus, the latest reports by the IPCC (2022), which bring together a vast amount of scientific literature confirmed by governments, indicate that 3.3 to 3.6 billion human beings currently live in contexts that are highly vulnerable to climate change[159], and that it is first and foremost the most vulnerable people and systems that are disproportionately affected, due to their economic fragility, concentration in the tropics, lack of safety nets, etc. Although they are not responsible for the emissions, the poorest are far more exposed to a relative loss of income (75%) due to climate change, and have no financial capacity to cope (2%). In contrast, the top 10% are only marginally exposed to losses due to climate change (3%), while they have the greatest financial capacity to cope with these hazards (76%).

[159] IPCC Sixt Assessement Report, Climate Changer 2022: Impacts, Adaptation and Vulnerability, SPM, February 2022.

Figure 5

Global carbon inequalities:
losses, emissions and financing capacity



Source: Chancel, L., Bothe, P., Voiturier, T. (2023) Climate Inequality Report 2023, WIL Study 2023/1.

More broadly, the question of inequality lies at the heart of the unsustainability of the current model. Inequality is increasing and reinforcing environmental unsustainability. There are many ways of defining and measuring inequality beyond socio-ecological inequality. Vertical inequality, for example, describes the distribution of income and wealth, while horizontal inequality is more concerned with gaps in terms of opportunities and status.

Vertical inequalities refer not only to earned income (salary), but also to wealth and assets. These include financial assets (corporate shares or bonds, financial investments) and non-financial assets (land and property). According to data from the World Inequality Report 2022[160], the bottom 50% in the world (the poorest 50% of the population) received 8.5% of income in 2021, while the top 10% (the richest 10%) received 52%. Meanwhile, the top 1% (richest 1%), received 19%. The remaining 39.5% of income went to the middle classes (the middle 40%), who are located between the poorest 50% and the richest 10%. The gaps are even wider when it comes to assets, illustrating the hyper-concentration of wealth: the bottom 50% own 2%, while the top 10% own 76%. And the top 1% alone owns 38%. These extreme inequalities should be seen in the context of global income in 2021, which was 86 trillion euros, but also, and above all, global wealth, which stood at 510 trillion euros, i.e. six times more than income. These global figures mask significant geographical differences (by country and region). The fact remains that, in all regions – including Europe – the bottom 50% still gains less than 20% of income and holds less than 5% of assets.

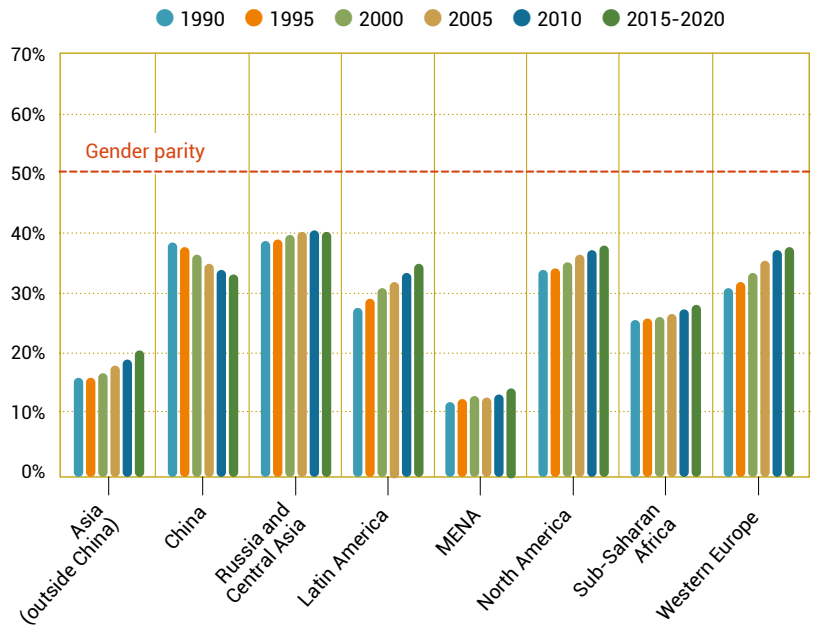
[160] Chancel, T. Piketty, E. Saez, G. Zucman, World Inequality Report 2022, WIL, 2021.

In addition to considering income and wealth inequalities, we should also look at what are known as horizontal inequalities, in other words those concerning status and opportunities. These cover a wide range of issues. For example, life expectancy, the right to essential services (food, water, housing, health), the right to education, the right to social protection[161], access to justice, participation in public life, territorial inequality, gender inequality, inequalities of access to resources and digital technologies, and also inequality in terms of quality of life, employment and a healthy environment. Many other issues also illustrate the massive horizontal inequalities between the North and South, but also increasingly within countries between local elites and the rest of the population (digital divide and access to technologies, access to quality services, opportunities to travel).

At the intersection between income and status, there are massive inequalities in earned income between men and women. Women's share of overall income from work was 31% in 1990, rising to nearly 35% for the 2018-2020 period. Once again, these global figures mask geographical inequalities, as illustrated by the figure below from the World Inequality Report 2022[162].

Figure 6

Women's share of earned income in different regions of the world (1990-2020)



Interpretations: Women's share of earned income rose from 34% to 38% in North America between 1990 and 2020.
Source and series: wir 2022wid.world/methodology and Neef and Robillard (2021).

[161] 55% (over 4 billion) of the world's people live without any form of social welfare, and only 35% of children have access to welfare. Cf. ILO, World Social Protection Report. Universal social protection to achieve the SDGs. 2017/2019. ILO.

[162] Lucas Chancel *et al.*, World Inequality Report 2022, *op. cit.*

Several other indicators illustrate the multidimensional inequalities that women face around the world and that have consequences at every level: economic, social, political, legal and security. For example, over 2.5 billion women and girls around the world are affected by discriminatory laws and a lack of legal protection[163]. The inequalities between men and women are blatant in very many areas (education, decent employment, food security, exposure to violence, access to technology).

2 / HOW DID WE GET HERE?

As the paragraphs above describe, much of the disorder in the world is known and identified. But knowing does not mean to "absorb" something, to take ownership, to think consciously. You have to go further: to realise, engage with your brain, and with your emotions too. You have to understand, leave your beliefs behind and embrace a new reality.

Understanding the catastrophe, its origins and ramifications, is an exercise in weaving together in the complex universe that precedes and surrounds us. It is an exercise in the deployment of a nuanced, systemic thinking, and also of decompartmentalising and reassociating ideas.

Reflection on the collapse of civilizations is not new. Jared Diamond[164] authored a book on the subject and identified five causes, from environmental damage to war and bad decisions by elites. In "Aux *origines* de la catastrophe" [The origins of catastrophe][165], Pablo Servigne and Raphaël Stevens compile and present educational contributions from experts and intellectuals, all of which shed light on a particular aspect of the picture. Their inventory lays bare the complexity of the phenomena at work, exposes the interdependencies and shows the need for systemic approaches to identify causes and responsibilities and draw up a horizon for action. They show how everything is embedded, how everything participates in the current great upheaval, and how the quest for meaning must act as a guiding light.

The sources – Neolithic and patriarchal?

Has humanity been destined from the very beginning to destroy its environment? This enquiry into the beginnings prompts us to consider the societies that preceded us – the hunter-gatherers of the Palaeolithic, the first Neolithic farmers – as heralds and precursors of our contemporary world. Homo sapiens lived in coexistence with nature for 300,000 years. Some 12,000 years ago, there were between one and two million Homo sapiens, scattered across the planet in small groups of a few dozen individuals, living by gathering, hunting and fishing. Sedentary agriculture was developed over a few centuries, leading to the Neolithic Revolution. Demographic growth followed, giving rise to large-scale societies, the first towns, dependency on increasingly productive agriculture, numerous innovations, the exploitation of nature to improve living conditions, the birth of social differentiation and the transformation of landscapes. So many elements that formed the breeding ground for patriarchy, pyramidal societies and the first wars.

[163] Equality in the law for women and girls by 2030: A multi-stakeholder strategy for accelerated action, UN Women, 2019.
[164] J. Diamond, Collapse. How Societies Choose to Fail or Survive, Penguin, 2011.
[165] P. Servigne, R. Stevens: *Aux origines de la catastrophe: pourquoi en sommes-nous arrivés là ?* [The origins of catastrophe: how did we get here?] Les liens qui libèrent, 2020.

Capitalism

Even more fundamentally than the Neolithic Revolution, capitalism is considered a key factor in explaining today's problems. To such an extent that authors such as Christophe Bonneuil and Jean-Baptiste Fressoz[166] have proposed calling the new epoch the Capitalocene, rather than the Anthropocene. Whereas the "Anthropos" targets humanity "as an indiscriminately responsible universal agent", disregarding historical and colonial responsibilities and even economic models, as well as power relationships and development choices, the Capitalocene allows the debate on differentiated responsibilities to be opened up.

Capitalism emerged at a specific time, in a well-defined region and in a specified context, namely that of the great discoveries of the late Middle Ages; it was the moment when the Western powers set out to conquer the world. Long-distance trade, with Venice and Genoa, drove the capitalist dynamic. It was the conquest of America that allowed the nature of this dynamic to be amplified and changed. The natural resources of this continent, a land bursting with resources, could be extracted while preserving Western ecosystems. Following the advent of disease, and what some describe as a genocide (although there is much controversy on the use of this term) which decimated the Indigenous populations, the transportation of millions of slaves to develop the lands as part of a triangular trade enriched the intermediaries and boosted the development of capitalism in Europe.

This was when Western modernity objectified reality and nature, which became an object upon which action could be taken. In the same way, the Other could be objectified, subjugated and exploited, provided that they did not belong to the same humanity. Achille Mbembe[167] has clearly illustrated the extent to which capitalism is founded on the exploitation of the Other, making the accumulation of wealth possible. This capitalism thrived on the plantation system, which prefigured the system of enclosures described by Marx, and which is considered by authors such as Malcolm Ferdinand[168] as sufficiently structuring of contemporary problems to suggest naming our epoch the "Plantationocene". This proposal invites us to move beyond unconscious colonial attitudes. "Colonial habitation" is the violent replacement of local ecosystems with orderly rows of export crops, designed to create wealth for the few. Colonisation imposes its norms and values; it is a brutal, extractive way of inhabiting the world. The terrestrial environment is thought of as "an abstract stock and inexhaustible reservoir of resources from which one can simply take"[169].

History shows that Europe's boom was achieved through the large-scale, forced appropriation of resources and labour from the "Global South"[170]. In summary, it was through European commercial and colonial expansion, conducted by traders supported by their States, that the transition from feudalism to capitalism took place in Europe[171].

[166] Christophe Bonneuil, Jean-Baptiste Fressoz, *L'évènement Anthropocène,* [The Anthropocene event] Seuil, 2016.

[167] Achille Mbembe, Critique of Black Reason, Duke University Press, 2017. Repeated in The Earthly Community, V2_Publishing, 2023: "Through violence, but also through legal appropriation in a law that was akin to the law of war and conquest, the Atlantic slave trade sought to rationalise and standardise the relationship with the Black human body, considered a commodity, or rather a natural resource whose yield could be increased. Like the earthly body, this resource body was subject to a monetary valuation and physical appropriation that was also legal and regulatory. Its aim was to transform Black humans into objects suitable for commercial exploitation."

[168] Malcom Ferdinand, Decolonial Ecology: Thinking from the Caribbean World, Polity Press, 2021.

[169] Ferdinand, *op. cit.*

[170] It should be noted that this term is widely contested, given the many fault lines in the contemporary world: B. Tertrais, *Le piège du Sud Global* [The trap of the Global South], Le grand continent, 2023.

[171] A. Bihr, *Le premier âge du capitalisme* (1415-1763) [The First Age of Capitalism (1415-1763)], Tome 2, *La Marche de l'Europe occidentale vers le capitalisme* [The March of Western Europe towards Capitalism], Syllepse Eds, 2019.

J. Hickel and several researchers revisited this colonial appropriation in an article published in 2022 that demonstrated how this unequal relationship continues to this day[172]. In the post-colonial era, industrial growth in the "Global North" continues to depend on appropriation from the South. Rich countries and monopolistic companies exploit their geopolitical and commercial dominance in the global economy to reduce the prices of resources and labour in the South, both across national economies and within global commodity chains. As a result, for every unit of resources and incorporated labour that the South imports from the North, it must export many more units in payment, allowing the North to achieve a net appropriation through trade. The authors focus their analysis on trade in energy, labour, raw materials and land use over the period 1990-2015. For every unit of energy, labour, raw materials and land use that the South imports from the North, it has to export on average three units (energy), 13 units (labour), five units (raw materials) and five units (land use) respectively in payment. On a global scale, net appropriation by the North is equivalent to a net drain on the South. This is known as an "ecologically unequal" exchange. The consequences are significant for the South in terms of losses of use value. In monetary value, the North's net drain on the South in 2015 alone represents, according to the authors, USD 10.8 trillion (or 23% of the Global North's GNP). This would have been enough to eradicate extreme poverty 70 times over (at a threshold of USD 1.90 per day in 2011, at purchasing power parity). The net drain of the North on the South for the 1990-2015 period amounts to USD 242 trillion, in other words 24% of the North's global GNP over the 25 years of the period.

With the shift of the centre of gravity of global capitalism, especially since 1990, and the transformation from a bipolar to a multipolar world, and with the emergence of new economic, political and military powers, unequal exchange is no longer the preserve of former colonising countries[173]. Growing research and data on international trade has estimated the amount of economically unequal exchange between China and Africa. For example, results show significant unrecorded transfers of value from Africa to China, amounting to 2.5% of the total gross domestic product of African countries during the sample period (1995-2015)[174]. Emerging countries are now also participating in an arable land grab in Africa. The example of China is well known and documented[175]. The case of Brazil is less well known. Relations between Brazil and Africa are characterised by the close interweaving of the interests of Brazil's major corporations with the country's foreign policy. Investment in corrupt and polluting sectors is increasing. Africa is increasingly reduced to a reservoir of arable land and natural resources[176]. The economic and political emergence of certain countries is in this way contributing to prolonging this post-colonial or imperialist economic model, in passing reducing the "elsewhere"[177], but at the same time provoking growing tensions in global competition between the powers carrying the continuity of a model that is ever more productive, extractivist, emissive, consumerist, and ultimately ecocidal and inegalitarian.

[172] J. Hickel, C. Dorninger, H. Wieland, I. Suwandi, Imperialist appropriation in the world economy: Drain from the global South through unequal exchange, 1990-2025. Global Environment change, February 2022.

[173] Philippe Hugon, *La chine en Afrique, néocolonialisme ou opportunités pour le développement ?* [China in Africa, neocolonialism or opportunities for development?] Revue internationale et stratégique, no. 72, 2008/4.

[174] Komla D. Dzigbede (2022): On the Unequal Exchange in China's Economic Partnership with Africa, International Journal of Public Administration. December 2022.

[175] Charles Sielenou, agricultural expert and founder of Action Sociale Africaine, notes that China has 1 million hectares of agricultural land in Africa, far behind the continent's major land buyers, namely the United Arab Emirates (1.9 million hectares), India (1.8), the UK (1.5), the USA (1.4) and South Africa (1.3).
Cf. Henri Fosto, *La course aux terres agricoles, une bombe en Afrique* [The race for agricultural land, a bomb in Africa] – DW – 12/09/2019.

[176] Duarte, Afrique XXI, September 2023.

[177] Ulrich Brand and Markus Wissen, *op. cit.* 2021

The justice issues highlighted by the ecological question mean that it is no longer possible to not make the link between this ecological question and inequalities[178] and, consequently, human rights.

The exploitation of people and nature, land grabs by multinationals to the detriment of local people and their living environments, especially forests, the depletion of subsoils, the pollution of rivers and oceans, the patenting of living organisms, the limitless accumulation, the focus on short-term profit, the economy's stranglehold on society: all these ingredients of capitalist logic continue to thrive... And of course, there is the generalised exploitation of women, the prerogative of a patriarchal ideology that ultimately applies the same *utilitarian* treatment to women as it does to nature. In a certain manner, the development model that is leading humanity towards the finiteness of natural resources, continues to proliferate on multidimensional inequalities, and in particular those linked to gender. The academic discipline of ecofeminism, launched by Françoise d'Eaubonne in the 1970s and continued by numerous research projects, establishes the intrinsic links and parallels between the exploitation of women and the exploitation of nature. These issues are highlighted by Serge Rabier's contribution to this publication.

Individualism, modernity and the time of "Eurocentric certainties"

Capitalism became established at the time when the West decided to nominate Reason as the organising principle of societal life rather than gods, ancestors and tradition. There is, of course, a link between these two events.

Previously, the major orientation of the human condition was submission, an adherence to a founding, original and transcendent order: the order of God, the order of the cosmos or the order of communities, dogmas and traditions. With the great scientific discoveries, the discovery of the New World, the accelerated circulation of knowledge, as well as religious wars, there came the questioning of many certainties, a new conception of humans in their environment[179]. The notion of the individual emerged. Metaphysical idealism disappeared to be replaced by the means to individualise and profitably organise temporal activities: science, economics, finance, technology and politics. It is the time of engineers and a technological science that is speculative rather than contemplative. It is the time for thinking that is oriented towards transformative appropriation, rather than submissive adherence. This metaphysical reversal also permeated nascent economic thought: Bernard Mandeville[180], for example, or Adam Smith[181] focused on the motor of private interest to transform the world. Thus modernity is the idea of humans who individualise themselves ("cogito ergo sum") and devote themselves to production and the transformation of their environment. Progress in the sciences leads us to believe that the world is controllable, predictable and calculable.

[178] D. Bourg, *Inégalités sociales et écologiques. Une perspective historique, philosophique et politique.* [Social and ecological inequalities. A historical, philosophical and political perspective.] Université de Lausanne (UNIL), Revue OFCE, 165 (2020/1). *Inégalités sociales et écologiques : une perspective historique, philosophique et politique (sciences-po.fr).*

[179] It is this transformation that originates in the writings of Galileo, Newton and Descartes, who asserted a fundamental distinction between matter and spirit. The matter around us is soulless, it is a machine that we can control by exercising our reason, our rational intellect.

[180] Mandeville, The Fable of the Bees, 1714.

[181] A. Smith, An Inquiry into the Nature and Causes of the Wealth of Nations, 1776.

It is the time of the Eurocentric certainties[182] that formed in the 17th century: Europe, in defiance of "elsewhere", has seen itself as the cradle of the invention of Progress that would guide the development of humanity. The advances made in science and technology over five centuries have indeed been prodigious. But this has also set out the matrix of the Anthropocene:

- Individualism became "pleonexia"[183] (always wanting more) and egoism. The narrative of Homo economicus takes hold, calculating, utilitarian, rational, guided by the pursuit of self-interest, freed from links to others and to the surrounding environment;
- "Empowerment", linked to individualism, is a driving force of humanity's ontological separation from nature and all that surrounds it, the "great divide" between humans and nature[184]. Humans, who see themselves as external to nature, master, transform and bully the natural world around them. And the same is done with part of humanity;
- Environmental issues are articulated around the ideals of autonomy and abundance, as Pierre Charbonnier shows in his work "Affluence and Freedom"[185]: the ideal of autonomy, applicable to both the individual and the collective, condenses within it the demands for equality, freedom and ownership that the Enlightenment released. The political society of free, prosperous individuals sought by the Moderns is considered to be liberated from the burdens of the world, hence the link between democracy and growth, between the conquest of autonomy and the exploitation of resources.

Calculating reason and the loss of meaning

Reason is a faculty that allows the human mind to organise its relations with reality. Since Aristotle, this faculty has placed humans above other species, with its capacity for reflexivity, understanding, judgment, mastery of the surrounding world, wisdom, virtue and freedom.

With the modern scientific revolution, followed by the technical and computational revolution, cerebral activity is changing. It calculates, classifies, correlates, deduces, it is formatted according to "algorithmics", it becomes instrumental.

Calculating or instrumental reason[186], is defined as a reason at the sole service of economic performance, production efficiency, profitability, which no longer questions the purpose of the acts it commits; a reason reduced to the rank of a tool, a means, an instrument, a calculation, an evaluation of means to effectively enable ends, and no longer a purpose, or a critical requirement. It forgets meaning and signals the end of progress, which has become innovation without "conscience" and without meaning[187].

Far from the Kantian rationality of ends, oriented by a final cause, instrumental rationality is characterised by a mastery of the instruments that takes the place of a project. It empties the subject of its substance, its humanity.

[182] A. Mbembe, The Earthly Community, V2, 2022, developing in particular Samir Amin's concept of eurocentrism, 1988.
[183] Dany-Robert Dufour, 2015.
[184] See the work of Philippe Descola, and in particular "Beyond nature and culture", The University of Chicago Press, 2013.
[185] Charbonnier: Affluence and Freedom, Polity Press, 2021.
[186] Adorno and Horheimer, Dialectic of Enlightenment, 1947.
[187] See in particular the writing of E. Morin on the subject, or the talks by Etienne Klein – *Faire progresser l'idée de progrès* [Advancing the idea of progress] – Des Nouvelles de Demain | Acast.

This instrumental reason is often described by Edgar Morin as incapable of embracing complexity: we are increasingly living under the influence of unilateral thinking, not able to link knowledge to understand the realities of a complex world[188].

As a symptom or reflection of this thinking that is blind to complexity, economic literature incorporates little contemporary knowledge or consideration of issues. Andrew Oswald and Nicholas Stern said: "We are sorry to say that we think economists are letting down the world". They note that of the 77,000 articles published by the nine leading scientific journals in economics since their creation, only 57 have dealt with climate change. The Quarterly Journal of Economics, the most cited journal in the field of economic analysis, holds the sad record of never having published a single article on the subject. The situation is the same for biodiversity: a study published in 2019 and cited by Eloi Laurent shows that of 44,000 articles published since 2000 in the 50 leading journals, just 11 were devoted to the decline of biodiversity[189]. The "self-fulfilling" system of recognition by publication in rank A journals distances research and science from societal needs[190]. Genuinely innovative articles do not survive mainstream selection tests which prefer "normal science" to "new science". Other observers are alarmed by the underestimations and disinterest of economists in assessing the quantified effect of global warming. Finance Watch[191], for example, emphasises the existence of a "serious gap between climate research and the models that shape economic policy", which ultimately encourages inaction.

Finally, in addition to the shortcomings of the system that produces knowledge and reasoning, the education system is also unsuitable for contemporary challenges. Far from contributing to systemic understanding and change, it reproduces the system and does not offer the skills that are essential to 21st-century humans who need to understand complexity, make sense of it and conceive exit routes from contemporary dead ends. Achille Mbembe and Sarah Marniesse develop these ideas in "L'apprentissage comme curation" [Learning as curation][192].

As Felwine Sarr[193] has said, knowledge supports a real order, promotes and reproduces it, and regulates understanding of the world as well as of subjectivities and relationships with time; epistemology is the key to everything. But the dominant epistemology is blinding us and driving us to disaster. We need to rebuild it.

Growth as mythology and GDP as the standard

Economics is an ancient discipline, invented in the West by Xenophon and Aristotle some 2,500 years ago. The root of the word is the association of "oikos" (the household) with "nomos" (the law or rule of conduct) that makes economics the discipline of sobriety in the service of meeting essential human needs. It responds to human requirements while taking into account the constraints of their environment. As Eloi Laurent[194] shows, economists of the modern era, particularly the English school of classical economics including John Stuart Mill, thought about an economy that reconciles social and environmental preoccupations, social justice and sustainability.

[188] Edgar Morin, Des nouvelles de demain. Interview, Campus Groupe AFD. Season 2, 30 November 2020.
[189] Eloi Laurent, *Économie pour le XXIe siècle. Manuel des transitions justes* [Economics for the 21st Century. Manual for just transitions]. op. cit. p.55.
[190] Andrew Oswald, Nicholas Stern, Why are economists letting down the world on climate change? VOX, CEPR Policy Portal, Sept. 2019.
[191] Thierry Philipponnat, Finance in a hot house world. A call for economic models that do not mislead, scenario analyses that prepare the market, and a new prudential tool. Finance Watch. October 2023.
[192] Mbembe and S. Marniesse, *l'apprentissage comme curation* [Learning as curation], Le grand continent, May 2023.
[193] Giraud and F. Sarr, *l'Économie à venir* [The economy to come], Les liens qui libèrent, 2021.
[194] Eloi Laurent, *op.ci.*

But for over a century, neoclassical economics has been working to discredit these concepts. The break was both formal – the ascendancy of modelling, accounting and statistics, as summarised by A. Supiot[195] by the expression "governance by numbers" – and substantial – the break with philosophy, ethics and justice, the reign of instrumental reason. The issue of justice was relegated in relation to efficiency at various key moments[196]:

- Economics was described as a "cold, objective science" by Charles Franklin Dunbar, President of the American Economic Association, in 1887.
- Gross Domestic Product[197] (GDP), officially developed by Kuznets (who did not consider it to be an indicator of progress) in the United States in the 1930s, was selected as the benchmark economic development indicator by the Bretton Woods Conference in 1944. It measures the wealth of a country as the value of all the goods and services produced, and focuses attention on a single objective, growth, as synonymous with human well-being and the rational horizon for public policy. GDP growth is not just an indicator, in the service of which a sprawling accounting system will develop, it is also a "fantasy embedded into institutions, a mental structure inlaid into a political structure"[198].
- The welfare theorems of Arrow and Debreu (1950) demonstrated that the free market economy is superior to any other form of exchange.
- Okun's great dilemma described the need to choose between equality and efficiency (the tradeoff).

These moments significantly distanced economics from concerns about distribution and the environment. An imbalance was created between the power to act on one side, and ethics on the other. The economy has separated itself from society, disembedded itself, as Polanyi describes it, self-supported by a mathematised, formalised, categorised and senseless order. We live in an episteme of the quantifiable, of materiality, of possession. What counts, and what has value, is what can be calculated.

A model that endeavours to silence dispute: Thucydides' trap or the protection of the commons

Recently coined by academic Graham T. Allison[199], the concept of Thucydides' trap refers to a dominant, established power taking fright at the growing influence of an emerging power, with the situation ultimately degenerating into war. Allison developed the concept by observing the evolution of relations between the United States and China and drawing inspiration from the writings of Thucydides on the Peloponnesian War, which he claimed was triggered by Sparta's fear of the rising power of Athens.

[195] Alain Supiot, Governance by Numbers, lecture at Collège de France, Fayard, 2015.

[196] Inspired by Eloi Laurent, *op. cit.*, with the addition of GDP as a benchmark, which is also a structuring moment.

[197] To understand the origins, history, meanings and issues surrounding GDP, see Eloi Laurent, *Sortir de la croissance* [Leaving growth behind], Les liens qui libèrent, 2021. Or the writings of Dominique Meda. The question of GDP is consubstantial with economics. Malthus was first to propose a definition of wealth as "all the production that can be measured". He confirmed the nascent science of economics as a discipline of measurement. E. Laurent: "The essential problem with GDP and its growth since its invention a century ago is not what it measures, but what it neglects. Growth faithfully accounts for an increasingly insignificant share of human activities: goods and services but not their distribution; commercial transactions but not social links; monetary values but not natural volumes. Justice, cooperation and the environment escape it entirely."

[198] Eloi Laurent *op.ci.*

[199] Graham Allison, Destined for War. Can America and China Escape Thucydides's Trap?, Houghton Mifflin Harcourt, 2017.

Without repeating the academic controversies around this research, the concept can be adopted to describe the evolving relationship between movements contesting the dominant development model, whose motivations are fundamentally ecological, and the proponents of its persistence, who advocate business as usual.

The question of the protection of human rights and environmental defenders, who are increasingly under threat around the world, is emblematic of the treatment reserved for those who oppose the paradigm of the full market and environmental devastation. According to Global Witness[200], in 2020, an average of four people were killed every week for defending their habitats, territories and livelihoods, as well as for protecting ecosystems vital to biodiversity and the climate. While this figure is progressively rising, it does not reflect the true scale of the phenomenon as a result of the numerous restrictions, barriers and intimidations that prevent investigations into such cases. Furthermore, environmental defenders suffer numerous, varied breaches of their rights, in particular arbitrary arrests, smear campaigns and multiple forms of violence, including sexual violence against women. Three quarters of attacks took place in Latin America, but a marked increase has been observed in Africa. A third of victims are either Indigenous peoples (particularly in Latin America, but also in Indonesia and the Philippines) or Afro-descendants. Half are small-scale farmers. It should also be noted that there are a growing number of murderous attacks on state officials in charge of environmental protection, such as forest rangers and nature reserve wardens. The killings generally occur against the background of the exploitation of resources – forests, minerals, intensive agriculture – or major infrastructure works, e.g. hydroelectric dams. The Global Witness 2023 report confirms that these dramatic trends in murder continue unabated[201]. This critical situation has also been strongly denounced by the International Union for Conservation of Nature[202] (IUCN), which had already expressed serious concerns about several instances of repression against environmental and human rights defenders. For example, this international organisation expressed strong condemnation when Victoria Tauli-Corpuz, the United Nations Special Rapporteur on the Rights of Indigenous Peoples, was called a "terrorist" by her government (Philippines) in retaliation for her support of the rights of Indigenous peoples.

The countries of the North are also the scene of a growing number of acts of violence against environmental defenders who challenge public policies and government choices on environmental protection, the commons and the general interest. Michel Forst, the United Nations Special Rapporteur on Environmental Defenders, considers that these defenders continue to be exposed to significant risks of criminalisation, persecution, harassment and murder. "And these risks also apply to the geographical areas covered by the Aarhus Convention"[203], which are mainly located in Europe.

All over the world, in the face of growing protests by environmental and human rights defenders, the authorities are falling into Thucydides' trap by waging war against a movement that is increasingly perceived as a threat rather than a solution. The aim

[200] Global Witness, Last Line of Defence. The industries causing the climate crisis and attacks against land and environmental defenders Global Witness. September 2021.

[201] Global Witness, Standing Firm. The Land and Environmental Defenders on the Frontlines of the Climate Crisis. Global Witness. September 2023.

[202] IUCN, Policy Matters Volume I: Defenders and the Many Faces of Repression; Policy Matters Volume II: Grassroots in action; Policy Matters Volume III: Conservation and the Need for Greater Defenders Protection. Special Issue on Environmental Defenders, IUCN, Sept. 2021.

[203] UN Special Rapporteur on Environmental Defenders presents his vision for mandate to ensure protection under the Aarhus Convention | 24 November 2022, UNECE.

is to suffocate the environmental and human rights movements, while at the same time playing down the scientific research, to such an extent that a growing number of representatives of the scientific community are joining the protest movements[204].

In the context of the retreat of democracy around the world, a salutary approach to ecological issues and the governance of the Earth system could be based on a recognition of the rights of living entities. But beyond this, the application of these rights implies reactivating modes of governance based on the respect of human rights in which the participation of local actors will be central to offering sustainable responses. However, massive inequalities prevent the dissemination of solutions to preserve the environment and make collective action difficult. This is all the more true as the means of communication and information are in the hands of those who hold the most capital and have the ability to lobby against change. In this respect, Elinor Ostrom has clearly shown that a high degree of cohesion and a low level of inequality facilitate the improved collective management of the commons[205]. In this way, managing the commons necessarily implies placing justice at the heart of social relations and the methods of environmental governance. Stéphanie Leyronas's contribution to this publication allows a repositioning of the challenges of preserving the commons with regard to the rights of nature.

3 / CHANGING STORIES AND PARADIGMS TO CHANGE THE WORLD

The Western-centric model is driven by an instrumental reason immersed in a fantasy of infinite growth. It has been deployed, as Achille Mbembe[206] encapsulates in "Brutalism", by societies that are "brutal" towards everything considered exploitable ("inferior" men, women, stigmatised and vulnerable people, the rest of the living world, the planet). But this model has now reached its limits. Now, certainties are crumbling in the face of the abyss. The neoliberal capitalist system is not just an economic system, it is an anthropology, as Felwine Sarr[207] puts it, a "vision of man that gives it a foundation that is apparently incontestable, but in reality is unique, historical... and therefore open to criticism". The foundation is collapsing... from which comes the urgent need to reinvent the epistemological structures of our societies: the categories, concepts, metrics, vision, narrative; the compass.

The fable of decoupling, or the impossibility of infinite growth in a finite world

Firstly, it must be recognised once and for all that infinite growth in a finite world is, in all probability, impossible.

The framework of planetary limits makes it clear that even if the global economy were to be completely decarbonised – and as successive IPCC reports attest, we are nowhere near this – it would not mean that the threats to nature and the environment would disappear, far from it.

[204] The "Scientist Rebellion" movement in particular.
[205] Elinor Ostrom, Governing the Commons. The evolution of institutions for collective action, Cambridge University Press, 1990.
[206] A. Mbembe, Brutalism, Duke University Press Books, 2024.
[207] F. Sarr, *op.ci.*

If the energy transition subscribes to the economic logic of infinite growth, and ultimately seeks to reproduce an extractivist economic model, the ecological footprint will continue to grow and deplete natural resources, devastating ecosystems and exposing humanity as a whole. In reality, in this extractivist model, decoupling, which claims that economic growth is possible without ecological damage, is quite simply a myth. Timothée Parrique and a team of researchers presented a remarkable demonstration of this in a 2019 report entitled Decoupling Debunked. They concluded that "not only is there no empirical evidence supporting the existence of a decoupling of economic growth from environmental pressures on anywhere near the scale needed to deal with environmental breakdown, but also, and perhaps more importantly, such decoupling appears unlikely to happen in the future"[208]. The authors call on policymakers to acknowledge the fact that addressing environmental breakdown "may require a direct downscaling of economic production and consumption in the wealthiest countries", and that their findings justify abandoning decoupling and green growth as the only sustainability strategy. This finding is confirmed by a study published in The Lancet Planetary Health in 2023 by researchers from the Sustainability Research Institute (UK) and the Institute of Environmental Science and Technology (Spain)[209].

The issue of increasing energy expenditure is one of the seven main reasons[210] that the Decoupling Debunked report sets out in order to contest decoupling and thus rule out the possibility of "green growth". On this point, the extraction of natural resources will be increasingly expensive and use increasing energy resources (as the cheaper options are used first). However, a carbon-neutral (or low-carbon) energy transition implies using ever greater (and phenomenal) quantities of natural resources. In the case of metals, for example, it would increase more in one generation "than in the entire history of humanity", according to geologist Aurore Stéphant[211]. And this is while the metal concentrations in ores have been falling for several decades and extraction depths are increasing. Moreover, the criticality of many of these metals is high, and they are essential to the energy transition. While there is a debate on when rare and precious metal reserves may be exhausted, there is no doubt in any part of the scientific community that natural resources are indeed exhaustible and that the exploitation of the remaining stocks will very seriously aggravate the human ecological footprint on the environment through pollution, biodiversity loss, ecosystem degradation and waste disposal. Furthermore, in addition to the impact on the environment, the social and human rights impacts are significant[212].

Furthermore, the issue of dependence will inevitably arise, as the stocks of resources are geographically concentrated. For example, 50% of known cobalt resources are located in the Democratic Republic of Congo[213] (DRC). Finally, the dynamics of transition, particularly embraced by wealthy countries, will continue to fuel a profoundly

[208] Parrique T., Barth J., Briens F., C. Kerschner, Kraus-Polk A., Kuokkanen A., Spangenberg J.H., 2019. Decoupling Debunked: Evidence and arguments against green growth as a sole strategy for sustainability. European Environmental Bureau.

[209] Vincent Lucchese, *Climat et croissance sont incompatibles, constatent des scientifiques.* [Climate and growth are incompatible, observe scientists]. Reporterre, 7 September 2023.

[210] 1. Rising energy expenditures 2. Rebound effects 3. Problem shifting 4. The underestimated impact of services 5. Limited potential of recycling 6. Insufficient and inappropriate technological change 7. Cost shifting.

[211] *Rapport d'étude. Controverses minières volet 1 – Caractère prédateur et dangereux. Techniques minières. Déversements volontaires en milieux aquatiques. Anciens sites miniers. 16 novembre 2021. SystExt. Volet 2 – Meilleures pratiques et mine «responsable». 16 février 2023. SystExt.* [Study report. Mining controversies Part 1 – Predatory and dangerous nature. Mining techniques. Voluntary discharges into aquatic environments. Former mining sites. 16 November 2021. SystExt. Part 2 – Best practices and "responsible" mining. 16 February 2023. SystExt.]

[212] Aurore Stéphant, Thinkerview talks of 25 January 2022 and 26 February 2023.

[213] Clément Fournier, *Transition écologique : vers l'épuisement des ressources naturelles ?* [Ecological transition: towards the exhaustion of natural resources?] youmatter, March 2022.

unequal relationship with the populations of poorer countries who have access to the coveted resources. Continuing the example of cobalt, multiple sources indicate that several tens of thousands of children[214] currently work in the mines of the DRC. This is partly to benefit European countries aiming to switch to individual electric vehicles by 2035[215].

Imagining the conditions for a just transition... after growth

The term "transition" was introduced by Rob Hopkins, who initiated the "Cities in Transition" movement. Criticised by some for being too slow in view of the scale of the emergency, it is nevertheless a powerful way of considering more desirable futures, inviting us to project ourselves onto alternative routes and find the means to get there collectively.

The term "just transition" comes from the United States, and was used by a union leader in 1990 to describe the need to resolve the conflict between employment and the environment. The term has been taken up at various COP meetings since then. The concept involves answering three questions, as proposed by Eloi Laurent[216]: 1. What is the unjust world that we want to leave behind? (We have just discussed this at length); 2. How can just policies and institutions be constructed?; 3. What just ends should we aim for?

The founders of the "political economy" placed the issues of distribution and the principles of justice at the heart of their work. As previously described, neoclassical economics has been working to discredit these concepts for over a century. It was only at the end of the twentieth century and the beginning of the twenty-first that some economists took a renewed interest in human development and inequality. Nevertheless, as has been shown, these dimensions are still very much under-represented in academic works, as well as in public and fiscal policy.

That said, a growing number of economists are questioning our development model – as are many other voices from a very wide variety of backgrounds[217]. Thus, starting from the observation that growth has failed to reduce inequalities and that it has led to pressures on ecosystems and the planet that could become irremediable in a few years, the economist Kate Raworth proposes, with her "doughnut theory", a vision of a "regenerative and distributive" economy that takes into account human well-being, which she calls the "social foundation", and limited planetary resources, which she refers to as the "ecological ceiling". The "just and safe space for humanity" lies between these two boundaries. This would allow everyone's needs to be satisfied while preserving the world[218].

[214] Théophile Simon, *République Démocratique du Congo: les petits forçats du cobalt.* [Democratic Republic of Congo: the little convicts of cobalt]. February 2023. Amnesty International.

[215] In this respect, an insightful documentary by ARTE shows the many facets of what are commonly referred to as the social and environmental "externalities" of cobalt mining in the DRC: *Cobalt, l'envers du rêve électrique* [Cobalt, the other side of the electric dream], directed by Quentin Noirfalisse and Arnaud Zajtman, 2022. https://campus.arte.tv/program/cobalt-l-envers-du-reve-electrique.

[216] Eloi Laurent: *la transition juste, un nouvel âge de l'économie et de l'environnement* [The just transition, a new age for the economy and the environment] OFCE, 2020.

[217] Representatives of multilateral organisations (UN), the IPCC, IPBES, the academic world, civil society, the political and religious worlds (Pope Francis, in his encyclical LAUDATO SI', calls for the acceptance of "decreased growth", considering that "technologically advanced societies must be prepared to encourage more sober lifestyles").

[218] Kate Raworth, *La théorie du donut. L'économie de demain en sept principes* [Doughnut theory. The economy of tomorrow in seven principles], Plon, 2018.

Kate Raworth's approach calls for reflection on the meaning of growth in a world of finite resources. This reflection underlies a series of fundamental questions. Is the transition from a degenerative and inegalitarian model to a regenerative and socially just model compatible with continued growth, even if green? Is economic growth an end in itself, or must a steady state be achieved?

In resonance with these questions, economists no longer hesitate to propose heterodox solutions and approaches that revert on the dogma of infinite growth. Some advocate the invention of a post-growth economy[219] that guarantees sustainable development and social progress[220] based on three transversal principles: respect for ecological limits, the equitable distribution of wealth, and autonomy. Others defend an economy based on degrowth, a trend that emerged after the Meadows report[221]. While it is not a question of abandoning growth everywhere, as T. Jackson[222] explains, as developed countries must give emerging countries the space they need to develop, it has become essential to reduce material flows, i.e. the volume of materials passing through the economic system either as raw materials or waste. It has become essential to "lighten the weight of the world", as Corinne Morel-Darleux[223] said so aptly.

Reflecting on the best way to confront contemporary challenges to ensure a high quality of life for the global population as a whole without destabilising the Earth system, Daniel W. O'Neill and his colleagues proposed an analysis framework encompassing Kate Raworth's doughnut and planetary limits, which they applied to 150 countries[224]. They estimated that essential needs such as nutrition, sanitation, access to energy and the eradication of poverty below the poverty threshold (USD 1.90 a day) could probably be met for 7 billion people (the study was conducted in 2017) at a level of resource use that would not significantly exceed planetary boundaries. In contrast, the universal achievement of more qualitative goals (satisfactory living standards, healthy life expectancy, secondary education, democratic values, social support, equality) would require resource use at two to six times the sustainable level. On this basis, the results of their analyses indicate that "resource use could be reduced significantly in many wealthy countries without affecting social outcomes, while also achieving a more equitable distribution among countries". Thus, O'Neill and his team considered that "sufficiency" strategies in terms of resource consumption would involve acknowledging that overconsumption weighs heavily on societies confronted by a variety of social and environmental problems, and would mean "moving beyond the pursuit of GDP growth to embrace new measures of progress". It could also involve "the pursuit of 'degrowth' in wealthy nations" and a shift to other economic models.

At this stage, it is worth clarifying that the purpose of this article is not to review the methods of applying degrowth. In his book Ralentir ou Périr [Slow Down or Perish], Timothée Parrique[225] lists valuable practical publications and sources, including "The Future is Degrowth: A Guide to a World beyond Capitalism" by M. Schmelzer, A. Vetter and A. Vansintjan, described as a veritable encyclopaedia of degrowth. Also

[219] Cassiers, K.Maréchal and D.Meda: *Vers une société post-croissance. Intégrer les défis écologiques, économiques et sociaux,* [Towards a post-growth society. Integrating ecological, economic and social challenges] ed. de l'Aube, 2017.
[220] H. Daly, The steady state, 1976.
[221] D. and D. Meadows: The limits to growth, 1972.
[222] Tim Jackson, Prosperity Without Growth. Foundations for the economy of tomorrow, Routledge, 2016.
[223] C. Morel-Darleux: *Plutôt couler en beauté que flotter sans grâce* [Rather sinking in beauty than floating without grace], Libertalia, 2019.
[224] Daniel W. O'Neill, Andrew L. Fanning, William F. Lamb and Julia K. Steinberger, A good life for all within planetary boundaries, Nature sustainability, Vol 1, February 2018.
[225] Timothée Parrique, *Ralentir ou Périr* [Slow Down or Perish]

relevant are the works of anthropologist J. Hickel[226]. And according to the definition proposed by Parrique[227]: "degrowth is a reduction in production and consumption to reduce the ecological footprint, democratically planned in a spirit of social justice and with a concern for well-being", which would allow a post-growth economy, in other words "a steady state economy in a harmonious relationship with nature, where decisions are taken together and wealth is fairly shared to allow prospering without growth".

For a transition that integrates climate justice

The information presented in the first part highlights the massive inequalities in the face of global warming. Added to this is the North's historical responsibility for climate change and its consequences. This raises the question of climate justice, which leads to the principle of "common but differentiated responsibilities" defended in particular by emerging and developing countries.

In its report of February 2022, the IPCC, highlighting the effects of colonisation and its legacy in terms of climate and environmental inequalities and injustices[228], proposed effective, feasible and resilient adaptive solutions, above all compliant with various principles of justice. These solutions include the principle of redistributive justice, which means the equitable sharing of burdens and benefits among individuals, nations and generations; the principle of procedural justice, which refers to who decides and participates in decision-making – this is the principle of participation; and finally the principles of recognition, fundamental respect and a strong and just commitment to different cultures, knowledge and perspectives, particularly those of Indigenous peoples. We can also add the principle of corrective justice, which implies reconsidering the historical responsibilities of all parties and determining the compensation that should be provided as reparation.

By distinguishing between developed countries (Annex I) and developing countries (outside Annex I), the United Nations Framework Convention on Climate Change (UNFCCC – 1992)[229] recognises that the rich countries historically responsible for global warming have a specific liability. Applied within the framework of the Kyoto Protocol (1997)[230], this distinction introduces the notion of corrective justice (for historical emissions) and distributive justice (for current emissions and the capacity to pay)[231]. The financial section of the Paris Agreement returns to the notion of climate justice inherited from the UNFCCC and Kyoto: only rich countries have to contribute to the annual EUR 100 billion fund for adaptation to climate change. Some 15 years after this commitment (2009), it is still not being fully honoured[232].

[226] Jason Hickel, Less is More. How Degrowth will Save the World. Penguin Random House, 2020.
[227] Timothée Parrique, *Ralentir ou Périr* [Slow Down or Perish], *op. cit.* pp 177.
[228] *op. cit.* IPCC February 2022, Summary for Policymakers. § B.2, p.12.
[229] United Nations Framework Convention on Climate Change, 1992.
[230] Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997.
[231] Lucas Chancel, *Insoutenables inégalités. Pour une justice sociale et environnementale.* [Unsustainable inequalities. For social and environmental justice.] op. cit.
[232] W. P. Pauw *et al.* (2022) Post-2025 climate finance target: how much more and how much better? Climate Policy, 22:9-10, 1241-1251.

Reinventing the law

As has been thoroughly stressed, the issues of climate change, together with the degradation of natural environments, ecocide and the collapse of biodiversity, cannot be addressed and resolved without including a genuine approach to social[233], climate and environmental justice, which not only implies making the link between development and human rights[234], but also between development and the rights of nature, which currently constitute a missing link in the protection of living entities. The level of destruction of nature ultimately threatens humanity as a whole, and affects the poorest firstly and most severely. The recognition of the rights of nature, in the way that countries which are attentive to their Indigenous cosmologies already do (e.g. Ecuador[235] and Uganda) would constitute a powerful tool to slow this destruction and biodiversity loss. Ensuring the continuum between conventional human rights (economic, social, cultural, civic and political), the right to a healthy environment (which remains anthropocentric), and the rights of nature is thus a necessity if we are to achieve a steady state and redress global imbalances in ecological and human terms. These different dimensions are clearly interwoven and cannot be considered in isolation. An approach based on the rights of living entities is not optional when seeking to resolve these issues. This is increasingly the message of science and those governments that have recognised the conclusions of the IPCC or the COP (Conference of the Parties) on climate and biodiversity. For example, the Sharm el-Sheikh Implementation Plan (COP27) states that "parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment, the right to health, the rights of Indigenous peoples, local communities..."[236]. The provisional Kunming-Montreal agreement (COP15) recognised "the rights of nature and Mother Earth [...] as an integral part of its implementation"[237]. The final text announces a clear ambition to enhance "the role of collective actions, including by Indigenous peoples and local communities, Mother Earth centric actions and non-market-based approaches ..."[238]. It sets out that "Mother Earth centric actions" comprise an "ecocentric and rights-based approach" enabling the implementation of actions towards harmonic and complementary relationships between peoples and nature, promoting the continuity of all living beings and their communities and ensuring "the non-commodification of environmental functions of Mother Earth."[239]

[233] Lucas Chancel, *Insoutenable inégalités. Pour une justice sociale et environnementale.* [Unsustainable inequalities. For social and environmental justice.] Les petites matins/Institut Veblen, 2017.

[234] Olivier de Schutter, *L'approche fondée sur les droits humains et la réduction des inégalités multidimensionnelles. Une combinaison indissociable à la réalisation de l'agenda 2030.* [The human rights-based approach and the reduction of multidimensional inequalities. An inseparable combination for achieving the 2030 Agenda.] Research paper, October 2022, Ed. AFD.

[235] Alberto Acosta: *Ouvrons le monde à tous les mondes* [Opening the world to all worlds], Des nouvelles de demain, 2023.

[236] Sharm el-Sheikh Implementation Plan, COP 27. November 2022.

[237] Kunming-Montreal Global Biodiversity Framework. Draft decision submitted by the President. December 2022.

[238] Final Text of Kunming-Montreal Global Biodiversity Framework, December 22. 221222-CBD-PressRelease-COP15-Final.pdf

[239] Mother Earth centric actions: ecocentric and rights-based approach enabling the implementation of actions towards harmonic and complementary relationships between peoples and nature, promoting the continuity of all living beings and their communities and ensuring the non-commodification of environmental functions of Mother Earth. Cf. COP15 final text, *op. cit.*

For an economy of living entities

To conclude, we need to return to the importance of the new narrative to be constructed in common. As Bruno Latour[240] says, "we don't know an ecological model that brings abundance and freedom and supports emancipation, and yet is able to stay within the envelope of containment known as 'habitability'". It is to this narrative that thousands of people and groups are devoting themselves today; they are writing it into localised experiences, feeling their way, exploring. The priority is to give new meaning to an "off the ground" model and bring it "down to earth"[241].

It is a difficult task. It involves, no more and no less, reconstructing a new cosmology, that of the habitability of the Earth. With the "Intrusion of Gaia"[242], the question of habitability becomes the central concept.

The Intrusion of Gaia is the realisation that we have changed the world. We are no longer in a world where the priority is to use resources for development. Today, we are aware that we are transforming the Earth system and our living conditions in the universe, that we are responsible for the habitability of this thin layer of life that hosts us. Preserving the Earth's habitability is thus our urgent priority.

Faced with an economic model that is "off the ground" and disembedded, it is time for philosophical and ethical thinking on economics to resume its place. And, first of all, we urgently need to restore meaning to value, to what really counts; to what, according to C. Fleury and A. Fenoglio, "cannot be stolen"[243]. Value, according to D. Graeber[244], "is the method by which actions take on meaning in the eyes of actors by situating them in a larger social whole, real or imagined". We urgently need to ask ourselves what really matters in this world, in order to make the transformation of our societies desirable by overturning ways of thinking and feeling.

This is why political action and the invention of new horizons cannot be done without major internal work; a profound, spiritual and philosophical questioning of our relationship with the world. It is essential to heal the "pathologies of the ego" in order to rediscover the path of this relationship; to fully acknowledge our "incalculable and inappropriable"[245] dependence on the rest of the living world; to become an "inhabitant"[246] of this planet that welcomes and shelters us, in symbiosis with all the animate and inanimate species that populate it. To do this, it is essential to call on the archives of the planet, the philosophies of Indigenous worlds that have developed "thoughts about beings, subjects and relationships that are far richer than those based on calculation, profit and contract"[247]. It is only under these conditions that it will be possible to come "down to earth".

[240] B. Latour, *Habiter la terre* [Living on earth], Les liens qui libèrent, 2021.
[241] B. Latour, Down to Earth: Politics in the New Climatic Regime. Polity Press, 2018.
[242] I. Stengers, In Catastrophic Times, Resisting the Coming Barbarism, Open Humanities Press, 2015.
[243] Fleury and A. Fenoglio, *La charte du Verstohlen* [The Verstohlen Charter], tract Gallimard, 2022.
[244] D. Graeber, Toward an Anthropological Theory of Value: The False Coin of Our Own Dreams, Palgrave MacMillan, 2002.
[245] A. Mbembe, *La communauté terrestre* [The terrestrial community], La Découverte, 2023.
[246] A. Mbembe, *op.ci.*
[247] A. Mbembe, *op.ci.*

In conclusion: for a just, ecocentric approach

Human activities are causing very rapid changes to the Earth system, with major negative impacts for both nature and humanity. The interconnections between climate, environmental and biodiversity issues and human societies have never been so numerous and potentially destructive. The Earth's biocapacity is being dangerously depleted, six planetary boundaries out of nine have now been exceeded and the tipping points have almost been reached.

At the same time, multidimensional inequalities continue to grow and over half the world's population is deprived of the benefits of human development or any kind of prosperity. Many countries do not reach the majority of social thresholds or stay within the limits of the majority of planetary boundaries. There is currently no evidence that any country is moving towards "a safe and just space". And the present trends are likely to worsen the climate and ecological crisis without eliminating social deficits.

Our blindness and our fears, which are not entirely surprising in these times of radical changes to the prevailing cosmology, but also the intellectual laziness that we exhibit by not questioning our understanding, imagination, epistemology and practices, let alone the waves of cynicism that wash away everything when short-term gains are at stake... all of these are obstacles that stand in the way of reinvention. However, the time for patches and sticking plasters is over; soon it will be too late.

The processes that have led humanity to these extremes are well known and widely documented. The answer is a complete change of the economic paradigm and development model. We no longer have a choice.

So let's change our perspective and approach these challenges from the angle of creative opportunities. Let's ask ourselves what really counts, let's open up the world's archives, listen to those who have a different relationship with living things, let's recognise the huge diversity of beings and make room for all. Let's seriously consider the alternative of post-growth or degrowth; let's make justice a "non-negotiable" constant; let's reset our thinking, our techniques and our practices on the ground; let's experiment with and develop symbiotic systems, circular practices, regenerative approaches; let's value the connections, the benefits and the care of living things in all their forms. Let's imagine an economy that restores the planet's habitability to its rightful place, and makes this its purpose. Because that is what is urgently needed: to give voice to an epistemic pluralism and make care for living beings and the habitability of the world our guiding light.

In conclusion, it is also important to return to the Earth Commission.[248] This body defines the justice of the Earth system as "the equitable sharing of the benefits, risks and related responsibilities of nature among all the people of the world, within the safe and just limits of the Earth system to provide universal life support". The Commission believes that priority action should be taken on the justice of recognition, giving priority to the most marginalised and poorest people (more than half the world's population lives on less than USD 5.50 a day), as well as on "ideal" justice, considering that conservative justice does not meet the basic needs of the poorest within the limits of the Earth system, and on epistemic justice (integrating different knowledge systems)[249].

[248] Earth Commission – Global Commons Alliance.

[249] Joyeeta Gupta *et al.*, Earth system justice needed to identify and live within Earth system boundaries. Nature sustainability. March 2023.

To achieve this, the Earth Commission proposes a framework of action entitled the "3I" justice criteria: Interspecies Justice and Earth system stability; Intergenerational Justice; and Intragenerational Justice. With regard to interspecies justice, the Commission added the stability of the Earth system to "prevent the collapse of living conditions for all species". The stability and resilience of the Earth system on the one hand, and human well-being on the other, are in this way inextricably linked and should not be treated separately.[250]

Applying such a framework also implies breaking free from the persistent post-colonial model and unequal exchanges that continue to characterise international trade[251]. This persistence is illustrated, for example, by the expansion of the global market in pesticides and European exports of massive quantities of substances banned for use in the European Union to the countries of the South. These substances are extremely dangerous and present chronic or acute risks for health and the environment[252]. Another illustration is the move to privatise seeds, tirelessly denounced by Vandana Shiva over many decades[253]. There are many examples.

Beyond the direct actors in international trade (States, private sector, global finance), the community of development players as a whole, and in particular those of the Global North, may also have a role to play and a responsibility to assume as entities of countries that are thriving and have prospered on these inequalities for centuries. But to achieve this would require a Copernican revolution through a difficult but necessary self-criticism and by resolutely looking to others.[254]

[250] J. Rockström et al., Safe and Just Earth system boundaries, Nature, May 2023.

[251] Jason Hickel, The anti-colonial politics of degrowth, Political Geography, Elsevier Ltd. April 2021.

[252] *Atlas des pesticides 2023. Faits et chiffres sur les substances chimiques toxiques dans l'agriculture.* [Pesticide Atlas 2023. Facts and figures about toxic chemicals in agriculture.] Heinrich Böll Foundation.

[253] The Seeds of Vandana Shiva – A documentary film (vandanashivamovie.com).

[254] White Saviorism, Theories, Practices and Lived Experiences. Ed. by Themrise Khan, Kanakulya Dickson, Maika Sondarjee. Darajo Press, 2023.

The commons, common interest and the rights of nature: between implicit recognition and the struggle for formalisation

> **“In Africa, there was no such thing as a vacuum. Even the deserts were inhabited. There was always someone, something living.”**
>
> *Léonora MIANO*
> *Novelist,*
> *Dark Heart of the Night, 2010.*

Stéphanie Leyronas
Research Officer, Research Department, AFD

INTRODUCTION

The aims pursued by approaches based on the rights of nature have a certain similarity to those that are the foundations of the commons. The worlds of academia and activism have seized upon the commons to make numerous ecological demands.These include the struggles of activists against the privatisation of common resources (water, grazing land, forests, seeds). All around the world, communities are defending their rights of use, in this way fighting for the preservation of the resources upon which they depend. The connection between the two approaches is sometimes clearly stated. This is the case in France, for example, at Notre-Dame-des-Landes, called the "Laboratory of the Commons" by locals, where the famous motto is: "We are not defending nature; we are nature defending itself".

Yet, as Lionel Maurel[255] emphasises, literature that intersects these two fields remains surprisingly sparse. This is all the more surprising given that bringing them together raises important questions about the ways in which we inhabit and codify the world. We offer here a brief contribution to this issue; this is not intended to be exhaustive, but rather offers an opening up of the topic within the scope of this publication.

[255] Maurel, Lionel. 2019. *Accueillir les non humains dans les communs – Introduction.* [Welcoming non-humans into the commons – Introduction].

The first part considers the ecological potential of the commons. We will thus broaden our focus from the problem of the rights of nature in the strictest sense, in order to comprehend the relationship between the commons, as practices and theoretical approaches, and ecology and the preservation of ecosystems. We will see how the rights of nature gain *de facto* recognition in commons practices, and how the theoretical field of the commons proposes new extensions to account for the common interest that animates human and non-human entities. The second part focuses on the mobilisation of the notion of rights, and how the commons propose an original reading of ownership. We will see that this approach to ownership opens up interesting perspectives for the recognition of the rights of nature, which can be formal or informal, explicit or implicit. We will consider the legal innovations that exist in the gaps in modern law, which enable the implicit recognition of the rights of nature by the recognition of the commons and the common interest they represent. Finally, we will look at how the recognition of the rights of nature can be explicitly demanded by collectives involved in what are sometimes centuries-old commons, in order to protect their practices and rights of use.

THE ECOLOGICAL POTENTIAL OF THE COMMONS: FROM THE EFFECTIVE MANAGEMENT OF NATURAL RESOURCES TO "TAKING CARE" OF ECOLOGICAL SOLIDARITY

Nowadays, many activists and authors[256] consider the commons as a promising course of action to ensure the responsible and sustainable use of natural resources. But what does this mean? What do the practices and different theoretical approaches to the commons tell us? What recognition of the rights of nature do they imply?

Beyond the market and the State

The commons stands apart from the idea that there are only two ways to act: either through the State, or through the market. The political scientist Elinor Ostrom, who won the Nobel Prize in Economic Sciences for her work on the commons in 2009[257], and the research teams that have followed up her work[258], have highlighted numerous situations in which residents, users and citizens produce, manage and protect common resources, both tangible and intangible. In practical terms, these involve farmers' groups, housing cooperatives, residents' associations, collaborative platforms, cultural and innovative centres, ephemeral universities, etc. For Elinor Ostrom, these are "action situations"[259] in which "social dilemmas"[260] combining environmental, economic, social and democratic issues can be resolved through forms of cooperation and self-organisation.

[256] Kostakis, Vasilis, and Michel Bauwens. 2014. Network society and future scenarios for a collaborative economy. Springer, 2014.

[257] Ostrom, Elinor. 1990. Governing the Commons: The Evolution of Institutions for Collective Action. Political Economy of Institutions and Decisions. Cambridge: Cambridge University Press.

[258] For example, see for African commons: Leyronas, Stéphanie, Benjamin Coriat and Kako Nubukpo (eds.). 2023. The Commons. Drivers of Change and Opportunities for Africa. Africa Development Forum Collection. Washington, DC: World Bank

[259] An "action situation" is a situation of interdependence between individuals whose potential actions jointly produce results.

[260] A "social dilemma" is defined as a situation in which the immediate self-interest of an individual and the interests of a wider social group are in direct conflict. In this situation, if each individual attempts to maximise their own advantage at the expense of the group, at the end of the interactions each member of the group obtains a much less favorable result than if the members of the group had adopted a cooperative strategy. For Elinor Ostrom, it is precisely these situations that create the conditions for the emergence of the commons.

Research on the commons has established the invalidity of Garrett Hardin's proposition on the "tragedy of the commons"[261] by demonstrating that these methods of management can be effective in a number of situations, in this way facilitating the preservation of resources. Hardin's proposition is based on the idea that society is shaped by interactions between people who are motivated solely by individual strategies that seek to maximise their personal interests. Using the example of open-access grazing land, Hardin concludes that the "commons" are necessarily doomed to deteriorate unless controlled by the State through regulation, or regulated by the market through the distribution of property rights. Work on the commons shows that a "third way" is also possible, beyond the State and the market.

A close relationship between commons and ecology

Elinor Ostrom's concept of the commons has, from the very outset, been closely linked to ecology and the preservation of ecosystems. The constitution of a commons is intended to guarantee the management of a resource in such a way that its reproduction is protected over the long term and the use of the resource is safeguarded.

To understand this, it is useful to recall that theories of the commons emerged in the 1970s[262] when the Sahel was suffering exceptional droughts. Two currents conflicted at that time: Malthusian theories on the one hand, which explained the Sahelian crisis by demographic growth combined with the traditional values of nomadic groups expanding their herds on arid lands; and on the other hand the work of development anthropologists which highlighted extreme climate events in conjunction with government settlement campaigns and forced displacement. The latter work was described at the Annapolis conference held by the National Research Council in 1983, launching the first reflections on the commons. Based on field surveys in tropical and subtropical zones, the conference showed that policies of privatisation, encouraged by structural adjustment policies, were factors in the destruction of the commons, leading to rural exodus, the overpopulation of urban areas and upheavals of ways of life.

Elinor Ostrom, responsible for drawing up conclusions from the conference, proposed a first analytical framework of the commons in the following manner: a shared resource, a form of sharing based on rights and obligations distributed to the users of the resource, and a form of governance that enables the respect of these rights and obligations and the preservation of the resource over the long term. She stated that the commons can be considered in a privileged manner in all situations where resources are presented in a form that is both "extractable" (elements of the overall resource can be taken unit by unit, e.g. fish from a lake) and "not (or not easily) excludable" (it is difficult to object to these resources being taken by individuals or groups)[263]. In this way, she drew on numerous examples of commons structured around natural resources, and in particular renewable natural resources (water, grazing land, forest), which she called Common Pool Resources (CPR).

[261] Hardin, Garrett. 1968. The Tragedy of the Commons. Science 162 (3859): 1243-48.

[262] Locher, Fabien. 2016. Third World Pastures. The Historical Roots of the Commons Paradigm (1965-1990). Quaderni Storici 2016/1 (April): 303-33.

[263] Ostrom, Elinor, Roy Gardner and James Walker. 1994. Rules, Games, and Common-Pool Resources. University of Michigan Press.

A largely anthropocentric theoretical vision

The work of Elinor Ostrom and the Bloomington School[264] has made decisive contributions in respect of methods of organisation to preserve natural resources with a view to maintaining their usage over the long term. When combined with concerns such as the recognition of the rights of nature, limits and possible extensions can be identified.

There has been much research on the commons[265], but it is overwhelmingly based on an anthropocentric vision and a dualistic or naturalist posture. The great majority of the research maintains the assumption of a separation between the resource and the community of human users. The emphasis is placed on "sustainable" modes of "resource" "management" by "communities". As Lionel Maurel[266] has emphasised, this opposition repeats the thesis of a "presumed underlying ontological continuity between humans" and an "ontological discontinuity between humans and non-humans", leading to a "relationship objectifying non-humans as natural resources"[267]. A "relationship of instrumental exteriority" is inherent in a notion such as that of "resources", widely used in literature on the commons.

Indigenous practices based, in contrast, on relational ontologies

Observation of the commons in Indigenous societies of the South leads us to question the validity of the ontic rupture that runs through Elinor Ostrom's work and that has characterised Western thought for centuries, as described in the first part of this publication. In fact, the "nature-culture" divide does not exist in many Indigenous societies and non-human entities, whether living or not, are considered beings with which humans cultivate different relationships.

Following on from the work of Philippe Descola[268], Arturo Escobar[269] describes an ontology that is no longer dualistic but "relational". According to Escobar, the major contribution of relational ontology is to envisage "all things in the world [as] made up of entities that do not pre-exist the relationships that constitute them". In this way "the biophysical, human and supernatural worlds are not considered as separate entities [...]. The division between nature and culture does not exist, and even less so that between the individual and the community. In fact, the individual does not exist, but rather people exist in permanent connection with the whole of the human and non-human world".

[264] The Bloomington School, or the "School of the Commons", is an interdisciplinary field of scientific investigation built around Bloomington's Workshop in Political Theory and Policy Analysis, the IASC (International Association for the Study of the Commons) and Ostrom. The International Journal of the Commons is its publication.

[265] Cornu, Marie, Fabienne Orsi and Judith Rochfeld. 2021. Dictionnaire des biens communs. [Dictionary of the Commons] PUF.

[266] Maurel, Lionel. 2019. "*Communs & Non-Humains (1ère partie) : Oublier les « ressources » pour ancrer les Communs dans une « communauté biotique*" [Commons & Non-Humans (Part 1): Forget 'resources' to anchor the Commons in a 'biotic community]. https://scinfolex.com/2019/01/10/communs-non-humains-1ere-partie-oublier-les-ressources-pour-ancrer-les-communs-dans-une-communaute-biotique

[267] By non-humans, we mean everything with which humans are in continuous interaction: animals, plants, as well as elements such as water, air, earth, sometimes also including objects and artifacts produced by human activity. See Maurel, Lionel. 2019. "*Accueillir les non humains dans les communs – Introduction.*" [Welcoming non-humans into the commons – Introduction]. https://scinfolex.com/2019/01/04/accueillir-les-non-humains-dans-les-communs-introduction

[268] Descola, Philippe. 2019. "Anthropology of nature." The yearbook of Collège de France. Course and work 117 (2019): 439-460.

[269] Escobar, Arturo. 2019. "Thinking-feeling with the Earth: Territorial Struggles and the Ontological Dimension of the Epistemologies of the South." Knowledge born in the struggle. Routledge, 2019. 41-57.

These co-constitutive relationships between human societies and non-humans are the central mechanisms in many commons that we can denote as Indigenous[270]. These are based on ontologies, imagined scenarios and representations of nature that are founded on the sacred character of Mother Earth and her affiliation to super-natural powers. For example, Michel Izard[271] studied the functioning of Mossi societies in Burkina Faso: he noted that certain common resources (groves, backwaters, etc.) are considered to be endowed with religious power and offer a link to the unseen world with which it is necessary to interact in order to gain access to the services provided by nature.

In this perspective, the environment and the various elements of nature do not refer solely to shared resources, but to social constructs that form socio-ecosystems upon which the construction of the commons is based. Thus, "the group transforms the territory, which in turn transforms the group, and so on. The future of the collective is an interactive, reciprocal process"[272] which implies "knowing how to live as part of a complex ecology [...] precisely because we collectively and individually depend on it"[273].

New theoretical work on the commons that goes beyond the initial dualistic approach

The ontic rupture between humans and non-humans has been surpassed in recent work on the commons. In reference to the work of Bruno Latour[274], these reflections propose rethinking the relationship between human beings and their environment not in the form of a "system of production", but as an "engendering system", in order to take into account the links of interdependence that exist between all living things. These include, for example, approaches such as Anna Tsing's "Latent Commons"[275], Dimitris Papadopoulos's "Eco-commons"[276] and Patrick Bresnihan's "More-Than-Human Commons"[277].

Several authors on the commons[278] propose the principle of "ecological solidarity" to qualify the founding principle of the commons and proceed beyond the dualistic posture that runs through initial works on the commons. Marie-Pierre Camproux Duffrène[279] defines it as a representation of "the mutual dependence of the members of a society, but also of a sense of belonging to a community of interests".

[270] Boche, Mathieu, d'Aquino, Patrick, Hubert, Nicolas, Leyronas, Stéphanie and Sidy Mohamed Seck. 2023. "Land-Based Commons: The basis for a peaceful form of economic development?" In Leyronas, Stéphanie, Benjamin Coriat and Kako Nubukpo (eds.). 2023. The Commons. Drivers of Change and Opportunities for Africa. Africa Development Forum Collection. Washington, DC: World Bank

[271] Izard, Michel. 1986a. "*L'Étendue, la durée*" [The extent, the duration]. L'Homme 26 (97/98): 225-37.

[272] Tanas, Alessia and Serge Gutwirth. 2021. "*Une approche 'écologique' des communs dans le droit. Regards sur le patrimoine transpropriatif, les usi civici et la rivière-personne*." [An 'ecological' approach to the commons in law. Insights on transpropriative heritage, usi civici and the river-person.] *In Situ.* Au regard des sciences sociales (2021).

[273] Gutwirth, Serge and Isabelle Stengers. 2016. "*Théorie du droit: Le droit à l'épreuve de la résurgence des commons.*" [Theory of Law: the law on test by the resurgence of the commons]. Revue juridique de l'environnement 2 (2016): 306-343.

[274] Latour, Bruno. 2009. "*Will non-humans be saved? An argument in ecotheology.*" Journal of the Royal Anthropological Institute 15.3 (2009): 459-475.

[275] Tsing, Anna Lowenhaupt. 2017. The Mushroom at the End of the World: On the Possibility of Life in Capitalist Ruins. Princeton University Press.

[276] Papadopoulos, Dimitris. 2012. "Worlding Justice/Commoning Matter". Occasion: Interdisciplinary Studies in the Humanities 3.

[277] Bresnihan, Patrick. 2015. "The More-Than-Human Commons: From Commons to Commoning". In Space, Power and the Commons, edited by Samuel Kirwan, Leila Dawney and Julian Brigstocke, 93-112. Abingdon: Routledge.

[278] For example: Aubert, Sigrid and Aurélie Botta (eds.). 2022. *Les communs : Un autre récit pour la coopération territoriale.* [The commons: Another narrative for territorial cooperation]. Nature et société. Versailles: Editions Quae. https://www.lgdj.fr/les-communs-9782759234639.html

[279] Camproux Duffrène, Marie-Pierre. 2020. *Les communs naturels comme expression de la solidarité écologique.* [The natural commons as an expression of ecological solidarity]. Revue juridique de l'environnement, 45, 689-713. https://shs.cairn.info/revue-juridique-de-l-environnement-2020-4-page-689?lang=fr

Ecological solidarity links "social and ecological systems that overlap and blend" to form a single whole, integrating all living entities, including human beings. It associates humans and non-humans into a single community of destiny[280]. The emphasis is thus placed on relationships of interdependence: according to Nicolas Gaidet and Sigrid Aubert[281], "the commons approach allows the restoration of human-animal interactions in a relationship of reciprocity expressed in terms of i) interdependence between humans and the natural environment, ii) the sharing of space and resources with other living beings, and iii) the transmission of functional (healthy) ecosystems to future generations".

We understand here that the relational posture opens up perspectives in terms of the recognition of the rights of nature, the latter being considered beyond the barriers of the species. The notion of "community", much used in the literature on the commons in reference to resource users, is then broadened to take account of "diffuse, living, not exclusively human collectives that claim a legal existence on the basis of their action"[282]. This legal existence is facilitated by the law of the commons, which is a plural law, far removed from a conception based on exclusive ownership, which is currently dominant, as we will see in the next section.

THE USE OF THE LAW: TOWARDS THE RECOGNITION OF A COMMON INTEREST BETWEEN HUMAN AND NON-HUMAN ENTITIES

When the commons is considered from a relational perspective, it transcends the ontic rupture between humans and non-humans. Nature is integrated in the community of life and destiny, which in turn affords it rights recognised at the community level. One of the major contributions of the commons is the manner in which they apprehend the relationship to the law and property through what Elinor Ostrom has codified under the term "bundle of rights"[283]. How does this approach by bundles of rights make it possible to implicitly recognise the rights of nature within the communities involved in the commons? What spaces for formalising this recognition exist in positive law, allowing the recognition of the rights of natural elements from the outset? How, conversely, can the formal recognition of the rights of nature be a means to fight against the phenomena of land grabbing and privatisation, and thus of securing the commons and bundles of rights?

Property as a bundle of rights: implicit recognition of the rights of nature within a common interest

The commons give an offset impetus to doctrinal debates on property rights[284]. Elinor Ostrom favours a conception of institutions centered on the notion of rules, understood as "comprehensions shared by actors, relating to effective prescriptions,

[280] Mathevet, Raphaël, Aronson, James and Aïté Bresson. 2012. *La solidarité écologique: ce lien qui nous oblige.* [Ecological solidarity: the link that binds us]. Arles, FR: Actes sud, 2012.

[281] Gaidet, Nicolas and Sigrid Aubert. 2019. "*Écologie et régulation des relations homme-faune: repenser la conservation de la biodiversité par les Communs.*" [Ecology and the regulation of human-wildlife relations: rethinking biodiversity conservation through the Commons]. VertigO 19.1 (2019).

[282] Tanas, Alessia and Serge Gutwirth. 2021. *Ibid.*

[283] Ostrom, Elinor and Edella Schlager. 1992. "Property-Rights Regimes and Natural Resources: A Conceptual Analysis". Land Economics 68 (3): 249-62.

[284] Parance, Béatrice and Jacques de Saint Victor (eds.). 2014. *Repenser les biens communs* [Rethinking the commons], CNRS Editions, Paris (2014); Graber, Frédéric and Fabien Locher. 2018. *"Posséder la nature." Environnement et propriété dans l'histoire.* ["Owning nature." Environment and property in history] Paris, Éditions Amsterdam (2018).

defining what actions or results are required, prohibited or permitted"[285]. Rules define positions as well as the rights and obligations attached to these positions, which Ostrom describes as a "bundle of rights"[286]. The different components of a bundle of rights are recorded in particular cultural and historical contexts, and are often characterised by their oral and informal nature. They are likely to be controlled by different individuals, regulated by different bodies and transferred separately.

In the case of the commons of land and natural resources, it is thus not the status of the land (communal land, private property or State adminstered property) that determines land relationships, but the rights that govern access to land and resources. The commons recognise one or more functions of land and natural elements, for the benefit of one or more persons[287]. On a single piece of land there may be a co-existence of rights of way and rights to graze, farm, hunt and gather timber or food, each right being held for different spaces and natural elements and at different times by several individuals or groups[288].

The bundle of rights retranscribes into the commons of land and natural resources the relationships between humans on the one hand, and between humans and non-humans on the other, from the perspective of community of destiny with the living world[289]. It is understood that the bundle of rights mobilised by the commons integrates the recognition of the rights of nature by the communities involved. These communities do not set the interests of humans against those of natural entities, but rather put in place forms instituted through rules that bring together a human and non-human community around a common interest. This is what Fehrat Taylan refers to as the "commons milieu"[290] and Marie-Pierre Camproux Duffrène as the "natural commons"[291]. The French lawyer Sarah Vanuxem has developed a theory of "choses-milieux" [milieu things], in which she proposes the understanding of a thing as an "inhabited place": it thus becomes possible to define things as "milieux", and people, as well as other species, as their "inhabitants". A collective of human and non-human inhabitants would then "reside" within the thing[292].

Through the common interest of human and non-human entities, human communities involved in the commons recognise the rights of nature from the outset, without the need to formalise them. However, some works highlight the possibility of formalising this common interest by mobilising the existing levers of positive law.

[285] Ostrom, Elinor and Xavier Basurto. 2011. "Crafting Analytical Tools to Study Institutional Change". Journal of Institutional Economics 7 (3): 317-43.

[286] Weinstein, Olivier. 2013. "*Comment comprendre les 'communs' : Elinor Ostrom, la propriété et la nouvelle économie institutionnelle*". [How to understand the 'commons': Elinor Ostrom, property and the new institutional economy]. *Revue de la régulation. Capitalisme, institutions, pouvoirs,* no.14 (December).

[287] Le Roy, Étienne, Alain Karsenty and Alain Bertrand. 2016. *La sécurisation foncière en Afrique : Pour une gestion viable des ressources renouvelables.* [Securing land tenure in Africa: for a viable management of renewable resources]. Hommes et sociétés. Paris: Karthala.

[288] Mansion, Aurore and Cécile Broutin. 2013. "*Quelles politiques foncières en Afrique subsaharienne ? Défis, acteurs et initiatives contemporaines*". [What land policies in sub-Saharan Africa? Challenges, actors and contemporary initiatives.] Demeter 2014: economie et strategies agricoles. Paris: GRET. http://publications.cirad.fr/une_notice.php?dk=570489

[289] Mathevet, Raphaël, Aronson, James and Aïté Bresson. 2012. *Ibid.*

[290] Taylan, Ferhat. 2022. "*Les milieux communs: Vers une démocratie écologique.*" [The commons milieux: towards an ecological democracy]. Esprit 6 (2022): 83-92.

[291] Camproux Duffrène, Marie-Pierre. 2020. *Ibid.*

[292] Vanuxem, Sarah. 2020. Des choses de la nature et de leurs droits. [The things of nature and their rights]. éditions Quae, 2020.

Legal innovations for the recognition of the common interest of human and non-human entities

We can identify different legal inventions and evolutions, both local and disparate, that make it possible to comprehend living collectives and their forms of promoting the commons and recognising rights for animals, plants and minerals from the outset. It is interesting to see that the recognition of the rights of nature is achieved through the recognition of a collective and a common interest: it is therefore not necessary to use the artifice of personalising nature. Jurists and jurisprudence play an essential role here in recognising collective practices, and hence the common interest of human and non-human entities, inventing within modern law "other ways of considering the legal relationship with resources, environments and local ecologies", and relaying them through "creative work within the constraints of the regime of legal enunciation"[293]. This means playing on existing legal spaces within modern law and mobilising clauses that are already available to recognise the commons, and by this the common interest of human and non-human entities.

Alessia Tanas and Serge Gutwirth[294] have identified three types of legal innovation in modern Western law that allow the recognition of the common interest: the first focuses on resources, the second on communities and their methods of organisation, and the third, the most accomplished, on interactions.

The first approach focuses on recognition of the special status of certain "goods" (land, forests, watercourses, as well as urban goods, knowledge, etc.) in order to protect the common interest in these goods. Examples include *res communis* or communal property[295] (art. 714 of the French Civil Code and art. 542 of the Belgian Civil Code), the common heritage of humanity whether cultural or natural in international law, the regulations of *beni comuni* in Italy, etc.

The second approach focuses on the rules for organising communities involved in the commons and the bundle of rights mentioned above. Recognition of this bundle of rights, particularly in respect of the right to dispose (i.e. the right to transfer property to a third party, generally in return for payment), protects the "easements" that are shared rights of use, as well as the common interest underlying the rules of use. An example is the Italian usi civici[296], which protect the rights of certain rural communities (e.g. access to grazing or watercourses), regardless of who formally holds the title of the land concerned[297].

These are recognised by the Commercial Code, precisely because they integrate humans and their environment, and prove to be "essential elements" for "the life of local communities" (§ 3).

[293] Tanas, Alessia and Serge Gutwirth. 2021. *Ibid.*

[294] Tanas, Alessia and Serge Gutwirth. 2021. *Ibid.*

[295] Vanuxem, Sarah. 2018. *La Propriété de la terre.* [Land ownership]. Éditions wildproject.

[296] The legal regime of *usi civici* was recently (re)integrated by the Italian law of 20 November 2017, no.168. "The Republic recognises collective lands, in all their denominations, as the primary legal regime of the communities of origin." The law endows collective lands with the capacity to set their own standards. The regime put in place also gives them the capacity to manage "the natural, economic and cultural heritage that corresponds to the territory of the collective ownership", considered as "intergenerational co-ownership".

[297] Marinelli, Fabrizio. 2019. "*La Corte costituzionale e la tutela degli usi civici e dei domini collettivi*" [The Constitutional Court and the protection of usi civici and collective domains] Giurisprudenza italiana, no.6, p.1303-1309.

The third approach focuses on interactions and promoting the commons which establish and secure the common interest, over the long term, by and for the collective of human and non-human entities. Based on this principle, and shaking up presuppositions, French jurist Sarah Vanuxem[298] proposes, for example, an "a-modern" conception of law. She asserts that it is possible to recognise the rights of things in nature and, at the same time, have them escape the condition of objects, without personifying or representing them, and without the intermediation of human beings who would be empowered to speak on their behalf. She illustrates her view with the law of easements, in which the actual environmental obligation can be presented as resting on a multitude of relationships between things, between people, and between things and people.

These innovations slip into the gaps in the law and are powerful levers for protecting the common interest and the rights of nature. However, they are insufficient in certain situations where the phenomena of privatisation (public or private) and individualisation of natural resources apply. In such cases, human communities may have to defend the common interest they share with non-human entities on a wider scale than their own community.

The struggle of the commons against enclosure: towards a specific recognition of the rights of nature

Part 1 of this publication mentions numerous current and past struggles to have the rights of nature formally recognised in positive law. Some of these struggles come from collectives seeking to protect commons from enclosure.

An enclosure is the appropriation of resources or spaces intended for collective use by private owners or States. They can be commercial (e.g. confiscation of land for commercial purposes) or legal (e.g. patenting of seeds). The term was first used to refer to a phenomenon that took place in Britain between the 16th and 19th centuries which saw the emergence of ownership (private and public) in its exclusive form, and the disappearance of villagers' customary rights to harvest resources (fish, game, fruit, pasture, etc.) from land that was originally unenclosed[299].

Enclosures do not only refer to a historical period. They are a contemporary phenomenon, whether concerning material and biophysical commons, via privatisation (land, forests, watercourses, fishing areas) or "immaterial commons" (knowledge, languages, images, codes) through the extension of intellectual property rights.

The World Bank estimates that over 45 million hectares of agricultural land in developing countries was the subject of transactions or trade between 2000 and 2010, of which over 70% was in Africa[300]. These land grabs result from different dynamics, but most often involve the granting of land concessions by States to investors. The consequence has been the destruction of land and natural resource commons, changed relationships with the land and nature, the weakening of associated social structures and the transformation of ecosystems.

[298] Vanuxem, Sarah. 2020. *Ibid.*

[299] Neeson, Jeanette M. 1996. Commoners: Common Right, Enclosure and Social Change in England, 1700-1820. Cambridge University Press; Thompson, Edward Palmer. 1993. Customs in Common. New Press.

[300] Thematic sheets. *ALIMENTERRE. Accaparement des terres. Comité français pour la solidarité internationale.* [ALIMENTERRE. Land grabbing. French Committee for International Solidarity.] Updated in September 2019.

Formal recognition of the rights of nature could therefore be a means of securing land commons. Committed communities hope to limit the intensive exploitation of natural resources through this recognition in positive law, in this way safeguarding both their rights of use and their ways of inhabiting and codifying the world. To the many examples provided in Part 1, we can add another from Cusco, Peru, described by Philippe Descola. Here Indiginous people fought against an open-cast copper mine, defending the mountain not in the manner of defending a territory from despoliation or pollution, but as "an element of a collective much larger than a society"[301].

CONCLUSION

This article has reiterated the ecological potential of the commons, both in a practical sense and as a theoretical field. The most recent theoretical extensions make it possible to highlight the common interests of human and non-human entities that lie at the heart of many commons. Within the commons, promoting the commons and the rights and obligations that arise make it possible to protect, whether formally or not, the rights of nature in the perspective of a community of destiny.

Without claiming to be exhaustive, the article offers some examples of how modern law has been opened up to generative, collective and multiform practices. These experiences, which mainly emerge in the gaps of modern law, remain exceptional and localised. They do, however, show that a perspective of ecology through the commons encourages multiple legal models that are adapted to the specific features of the relationships between collectives and the land, drawn from practices that are sometimes centuries old. By promoting the diversity of law and its uses, this approach complements more unified approaches, such as that of a law introducing a sovereignty of nature.

The fact remains that an approach aimed at personifying nature and granting it rights as such is a remarkable political and legislative dynamic, which can in turn help secure the commons. This is the case, for example, of the River Claims Settlement Act of 2017, which in its Article 12 recognises the Te Awa Tupua entity in New Zealand as an "indivisible and living whole, comprising the Whanganui River, from the mountains to the sea, incorporating all its physical and metaphysical elements". This definition includes the Māori people who live along the river. The intrinsic values that characterise the whole are associated with it, including the need for "collaboration" between the elements and communities that comprise it. It is not a question of protecting the environment in itself, but rather of taking care of all the components of an ecological whole, both human and non-human.

[301] Descola, Philippe. 2019. *Ibid.*

The rights of women and the rights of nature
Converging development agendas

> “It is urgent to emphasise the death sentence of convulsive agony that has been dealt to the entire planet and its human species by this system if feminism, by liberating women, does not liberate humanity in its entirety – that is to say, wrest the world away from the man of today to transmit it to the humanity o f tomorrow.”
>
> *Françoise d’Eaubonne*
> *Feminism or Death (1974)*

Serge Rabier
Research Officer, Research Department, AFD

The Declaration of Rights: a legal and political revolution by men for men

The Enlightenment marked the end of the centrality of God as the foundation of human activities. There was a refocusing, that had started in the Renaissance, on Man as the holder of natural rights, and therefore as the subject and object of rights.

Along with others (Hobbes, Rousseau), Locke in particular contributed to this refocusing. In his Treatise on Civil Government (1689), Locke sets out that the individual is born with rights intrinsic to their nature as a person. These natural rights boil down to the right to ownership in all its versions, variations of which go beyond material goods to encompass ownership of one's life, health, security, freedom... These natural rights, evident and innate, define an individual as a "unique and irreplaceable being" in terms of the land they own, that which they bring to fruition through their work, ideas and skills, the opportunities they seize and their relationships (or networks as we now say).

These natural rights, which pre-exist any constituted society, were the subject, in France, of the Declaration of the Rights of Man and of the Citizen of 26 August 1789. But what does it mean to declare the Rights of Man? What is the meaning of this genuinely revolutionary sudden change? The new register of the Declaration indicates that rights are not granted by higher authorities, such as God, the King or the local lord, or that they are approved/conceded after negotiation. Neither is it a question of explaining the philosophical bases or justifying the ontological, metaphysical or religious foundations, but rather, the Declaration, without preconditions, establishes a new political and legal regime in which the law is "the expression of the general will" intended to support "the conservation of the natural and imprescriptible rights of man ...[which are]... liberty, property, safety and resistance against oppression", see Art. 2.

Women's rights as the unthought in the construction of Western modernity

However, the Declaration also sets out the exclusion of women from the new political, legal and social space that has just been established. In her Declaration of the Rights of Women and the Female Citizen (1791), Olympe de Gouges forcefully emphasised that:

"Considering that ignorance, neglect, or contempt of the rights of woman, are the sole causes of public misfortunes and the corruption of governments, have resolved to set forth in a solemn declaration, the natural, inalienable, and sacred rights of woman, that this declaration, being constantly present to all members of the body social, may ever remind them of their rights and their duties, that the acts of the power of women, and those of the power of men, being capable of being every moment compared with the end of all political institutions, may be more respected, that the claims of the female citizens, founded hereafter on simple and incontestable principles, may always tend to the maintenance of the constitution and of good morals, and to the general happiness".

Even though this text was disregarded[302] and its author was guillotined, for a short period at the start of the French Revolution (1790-1794), women saw the scope of their rights broaden considerably: the ban on "lettres de cachet" giving fathers and husbands the ability to lock women up without just cause, the removal of the death penalty for widowed or unmarried women who did not declare a pregnancy, the recognition of women's legal capacity to sign contracts from the age of 21, marriage without parental authorisation, the ability to seek divorce on an equal basis, set up schools, etc.

The order of Nature against the rights of women

This brief period of legal opening up for women soon came to an end, and it was in the name of the "laws of nature" that the spheres of public and social life were systematically closed down to women, and a system of domination based on the natural difference between the sexes was restored. While women were considered liable in respect of their infringements, Article 216 of the French Civil Code (1804)[303] established the legal incapacity of married women, again making them minors in the eyes of the law. They could not sign contracts in their own name, no longer manage their own property, were unequally constrained in the case of divorce by mutual consent, and were prohibited from working or travelling abroad without their husband's authorisation.

The entrenchment of these legal provisions to make women inferior, presented as a "natural" order, both highlights and limits the private space of the domestic and reproductive sphere as women's only legitimate space. In 19th-century France, as well as in other Western societies, this natural order was described as "feminine nature" (has the concept of masculine nature ever been discussed?). Various scientific disciplines, in particular medicine and psychology, but also the nascent social sciences, set out to describe and even repress this nature.

[302] It wasn't until the work of Paule-Marie Duhet and Olivier Blanc (among others) in the early 1980s, followed by that of Benoite Groult and Michelle Perrot, that Olympe de Gouges was rescued from oblivion.

[303] "The authorisation of the husband is not required when the wife is prosecuted in criminal or police matters".

In this way, the role of women as wives and mothers, that noble social mission of procreation, was to serve as a substitute for citizenship and was described, in a gently euphemistic manner, as the complementarity of the sexes. This "domestication" of women, both literally and figuratively, and their celebrated proximity to childhood (as mothers and educators), justified a regime of infantilisation that for hundreds of years made women incapable and deprived them of legal capacity, requiring them to be represented in almost all acts of civil life.

The question of women at the heart of Western modernity

Pascal Picq[304] emphasises how, from the 16th to the 19th centuries, all forms of Western modernity, which claimed to be rational, constructed a "nature", a specificity for women that justified their domination and disqualified them from making any contribution to the development of modernity: "From an anthropological point of view, modernity has equipped itself with a completely innovative economic, philosophical, scientific and political arsenal – so many fields of knowledge are in the hands of men and new institutions are forbidden to women – reinforcing the patriarchal ideology of male domination".

Thus, references to nature through the natural rights of the Declaration of the Rights of Man and of the Citizen, on the one hand, and to the natural order as the basis of the Civil Code, on the other, are ambivalent. At the same time that a universalism of rights was established (a political construction that took centuries to achieve), half of humanity was excluded from these same rights for a long time, while anthropological, political and legal systems were exacerbated, leading to a gendered and highly unequal organisation of society.

The two views of the anthropological regime of the appropriation of nature in the classical age

The establishment of the legal system of (exclusive) human rights as described above cannot be mentioned without an analysis of the system of the appropriation of nature as an unlimited and dominated resource, given that this is its philosophical and anthropological foundation. This was well expressed by Descartes in his Discourse on the Method[305]:

"For by them [general notions] I perceived it to be possible to arrive at knowledge highly useful in life; and in room of the speculative philosophy usually taught in the schools, to discover a practical, by means of which knowing the force and action of fire, water, air, the stars, the heavens, and all the other bodies that surround us, as distinctly as we know the various crafts of our artisans, we might also apply them in the same way to all the uses to which they are adapted, and thus **render ourselves the lords and possessors of nature.**"

[304] Picq Pascal, "*Comment la modernité ostracisa les femmes. Histoire d'un combat anthropologique sans fin*" [How modernity ostracised women. The story of a never-ending anthropological battle], Paris, Odile Jacob, 2022.

[305] Descartes, Discours on the Method, Part VI.

His contemporary, **Spinoza**, who was not heeded in the same way, made a critical analysis of this illusory relationship between man and Nature[306]:

"Most writers on the emotions and on human conduct seem to be treating rather of matters outside nature than of natural phenomena following nature's general laws. They appear to **conceive man to be situated in nature as a kingdom within a kingdom. They believe that he disturbs rather than follows nature's order, that he has absolute control over his actions, and that he is determined solely by himself.**"

The necessary inaugural convergence of feminist and ecological thought: the ecofeminist approach

The contemporary approach to ecofeminism theorised in the early 1970s by Françoise d'Eaubonne[307], and then pursued, in particular, by Mary Mellor[308], is part of a conjunction of efforts to combat ecological crises and fight against gender inequalities. It highlights the factor in play in the dominant economic system, namely the (false) gratuity and invisibility of women's work on the one hand (activities in the so-called reproductive sphere and, more broadly, care work), and the failure to take into account the ecological costs of the "natural" raw materials that serve as the substrate of the economic activities of our modernity.

The hypothesis underlying the work of this school of thought is to disconnect the concept of Nature (in the sense of Earth, Gaia, Ecosystems, etc.) from a naturalisation of gender identities (including the famous feminine nature) and, on the contrary, to consider that it is precisely the naturalisation of the social relations of sex that participates in and contributes to the unlimited appropriation of nature (including women's bodies) at the risk of its destruction, pure and simple. Contemporary developments in ecofeminism have allowed the emergence of new transdisciplinary questioning about the organisation of society, modes of production, the control of resources and freedom of choice, as well as practical forms of commitment; in India around Vandana Shiva (resistance ecofeminism), in Africa with Wangari Muta Waathaï and in the United States with Starhawk (spiritualist ecofeminism).

Consequently, women's control over their own bodies, and in particular their freedom of reproductive choices (by the right to contraception as a response to the "male appropriation of procreation"[309] and to abortion), constitutes an important stage towards a new relationship with nature, no longer within the anthropological framework of appropriation/destruction, but of cohabitation with all forms of living entities (human, non-human, animal and vegetable).

By posing women and nature as the stakes in the domination and predation of patriarchal systems in all their diversity and dimensions, this approach has enabled the construction of a "collective" discourse claiming equal rights as concomitant with the affirmation of a community of living entities.

[306] Spinoza, Ethics, Part III. Preface

[307] D'Eaubonne, Françoise. *Écologie/féminisme. Révolution ou mutation ?* [Ecology/feminism. Revolution or mutation?] Paris, Éditions Amsterdam (2018). 1978. In D'Eaubonne's view, the ideological matrix that enables men's domination over women is the same as that which enables men to dominate nature.

[308] Mellor, Mary, Feminism and Ecology, New York, New York University Press. 1997.

[309] Héritier Françoise, *Vers un nouveau rapport des catégories du masculin et du féminin pp 37-52. dans "Contraception: contrainte ou liberté".* [Towards a new relationship between masculine and feminine categories pp 37-52 in "Contraception: constraint or freedom"]. Paris, Odile Jacob, 1999.

A practical question then arises: if women manage to liberate themselves from the discrimination, violence and inequality of which they are victims, but the "Terrestrial" regime remains embedded in an Anthropocene that is still as destructive, what is the point?

A possible response is to consider rights-based approaches not solely as a way of breaking free from bonds of dependence or domination (feudalism, slavery, patriarchy, etc.), but also as a way of accepting contexts and betting on emancipatory combinations that benefit the greatest number of humans and non-humans possible. The solution is an expansion in the network of all forms of emancipation, which means questioning the use of the universalist concept of emancipatory modernity (by and large anchored geographically, historically and economically in the colonial Europe of the 16th-19th centuries). It is therefore an anthropological evolution that must be tackled, based on current legal instruments.

In other words, this is what Françoise Héritier was already stressing by suggesting that an alternative path to appropriation/domination is possible: "We are not experiencing a war of the sexes, but the fact that both sexes are victims of a system of representation that dates back millennia. It is thus important that both sexes work together to change this system. The oppression and devaluation of the feminine is not necessarily a gain for the masculine. So, when the positions of the sexes are no longer conceived in terms of superiority and inferiority, men will gain interlocutors: they will speak with women as equals. Then men will no longer be ashamed of their 'feminine' side, where, according to the socially accepted norms, emotions are expressed. And it is not clear that the equality of people eliminates desire and love between them."[310]

As for the phenomena of domination, appropriation, subjugation, exchange, imposition of heirarchies and even commodification of women's bodies (and the "products" of their bodies) by men, Françoise Héritier has widely documented their geographical and temporal extent. However, from the point of view of anthropology, equality between women and men and the recognition of the universality of human rights (including reproductive and sexual rights) have reached a stage where they are no longer unthinkable, but rather possible and achievable, and from the point of view of ecology, the widely acknowledged ravages of competition, productivism, consumerism and mechanisms for the senseless appropriation of the planet's resources are gradually giving way to the need to learn how to collectively and equitably manage Nature.

How, then, are we to consider the emancipation of women and the attainment of their human rights[311] within the framework of the Declaration of Rights, while at the same time refuting the so-called "feminine nature" that has historically justified the assignment of inferior status to, and oppression of, women?

Criticism of the patriarchal order was able to emerge in the name of a feminine nature of which the qualities have been ignored (Olympe de Gouges). While such criticism has been useful in revealing and denouncing the discriminatory nature of human rights (the Rights of Man), it is not without the risk of remaining locked in a natural antagonism between the sexes.

[310] Héritier Françoise, *Une pensée en mouvement. Textes réunis par Salvatore d'Onofrio* [A thought in motion. Texts collected by Salvatore d'Onofrio], Paris, Odile Jacob, 2009.

[311] The proposal is that natural rights should be called human rights, rather than the rights of Man, a term reserved solely for the historic moment of their Declaration.

The question of matriarchy is often raised (both in its origins and in the residual matriarchy of some Indigenous peoples) as historical evidence of the possibility of reversing the instituted order of the rights of man for the rights of women. However, this remains problematic from three points of view: by the confusion of the terms matrilinearity[312], matrilocality[313] and matriarchy; by the implicit recognition of a natural order generating inverted forms of domination that are not challenged as such; and by the acceptance of a legal framework that only attributes rights to humans.

A genealogy of the concept of emancipation shows that our Western modernity has materialised around two elements: an individual/individualising philosophical and legal dimension with the classical rational subject (Descartes) and the legal subject of the Enlightenment on the one hand, and a collective dimension of the reversal of the socio-economic conditions of exploitation (Marx), on the other. However, these two approaches fail to consider the fact that women could be subjects of law[314] and that the overthrow of the socio-economic conditions of exploitation could not be achieved without taking into account the unreasoned and unlimited exploitation of nature and the damage it causes. Moreover, the crises of climate change and bio-diversity loss, and the intrinsic value of ecosystems, mean that we need to rethink the ecological question precisely from the point of view of emancipation as the power of living entities[315], the representation of the fragile, the legitimacy of self-defence and existing in the articulation of the human and the non-human in the broadest sense.

Will the continuous extension of rights in concentric circles from men to women, from Westerners to the rest of the world, to animals ("sentient beings" in the Civil Code[316]), to natural entities (legal personality of rivers, forests, etc.) suffice to provoke a necessary change in anthropological norms, or is it the expression of an anthropological change already at work?

If the upheaval to be undertaken or accompanied is no longer simply legal, but anthropological, it may well be the system of political delegation at the heart of the functioning of representative democracies, which, if not to be rejected, needs to open up to forms of solidarity, articulation and horizontal integration between the forms of living entities (political, economic, social, ecological). In such a radically different dynamic, the rights-based approach no longer seems to be an end in itself but rather a lever, a means of profoundly changing the democratic space.

[312] A matrilineal system is one in which the mother passes on the name, inheritance, property and titles. However, Françoise Héritier adds: "This does not mean that matrilineal societies are ones in which the power belongs to women. Women have brothers who exercise authority over their sisters and nephews." Héritier Françoise, *Masculin/ Féminin I. La pensée de la différence,* [Masculine/Feminine I. Thoughts on the difference] Odile Jacob poche, Essais, rééd. 2012, p. 45.

[313] A system of residence in which a young couple are required to live with the wife's family.

[314] It should be recalled that it was an order of 21 April 1944 that set out that French women were "electors and eligible under the same conditions as men", some 96 years after the introduction of universal (male) suffrage by the Second Republic (1848)!

[315] See Victor David (2017) on the status of living entities. La nouvelle vague des droits de la nature. *La personnalité juridique reconnue aux fleuves Whanganui, Gange et Yamuna.* [The new wave of the rights of nature. Legal personality recognised for the Whanganui, Ganges and Yamuna rivers]. Revue juridique de l'environnement (Vol.42).

[316] "Animals are sentient living beings. Subject to the laws that protect them, animals are subject to the property regime." Art.515-14, Part II of the French Civil Code. This article acknowledges the need for ethical conduct towards animals as an introduction to future legal texts that more precisely qualify the nature, contours and extensions of this sentience...

CONCLUSION

How can we overcome the obsolescence of the current anthropological and ecological status quo and bring together/unite the emancipation of women and nature? How can we think today about the emancipations of tomorrow? Can the question of emancipation be extended to non-humans? What could be the vehicle for this emancipation? Will this new collective enterprise solely rely on the legal system of rights, or must we already be thinking in terms of going beyond this, or in any case of rebuilding it on a basis different to the system of property upon which it was constructed?

Indeed, the rights-based approach to nature (in the broadest sense) remains anchored in a system of protection which consequently falls short of emancipation insofar as natural entities cannot institute legal proceedings by and for themselves, and must be represented in court. Can we not already envisage a way beyond this legal constraint in the recognition of the liberation of an environment, and the recognition by humans that without their environment they cannot be what they want to be?

Beyond the effectiveness of the current legal regime in limiting damage to Nature, are we not at a time when we need to invent a new institutional architecture on a global scale, just as the revolution of Rights was able to do in the era of Modernity? The expression of a collective political will to design and produce new international standards, a new "general will", should materialise[317] in a new anthropological perspective, linking gender equality and environmental sustainability.

[317] See the routes suggested by Bruno Latour. Down to Earth. Politics in the New Climatic Regime. Polity Press, 2018

Conclusion

Farid Lamara

Human Development Expert and Strategic Advisor at the AFD Strategy, Foresight and Institutional Relations Department

Sarah Hayes

Human rights expert and consultant to AFDD

This publication shows us that the movement for the rights of nature is now spreading to all regions of the world, covering all types of natural and living entities (animals, rivers, forests and other ecosystems). The cases set out for the recognition of the rights of nature reveal a genuine potential for action that we hope can be transformative. These multiple initiatives are emerging in response to severe and sometimes irreversible attacks on nature and the environment – including actual ecocide – with major repercussions for human rights. The initiatives intend to remedy this, considering, in the words of Valérie Cabanes, that "the rights of nature to maintain life on Earth is a prerequisite to the rights of humanity if it wants to survive".[318]

The current dynamic indicates a strong, motivated local demand for the recognition of the rights of nature. This has repercussions at all levels – from local to international, and thus involves a huge diversity of actors.

Often initially driven by civil society and rooted in the cosmovision of Indigenous peoples, initiatives in favour of the rights of nature are now supported by local authorities, States, international organisations and, in some cases, by actors in the private sector. Together, they are playing a decisive role in the rapid expansion of this movement and the gradual recognition of these rights.

[318] Valérie Cabanes, *Homo natura. En harmonie avec le vivant.* [Homo natura. In harmony with the living.] Ed Buchet/Chastel, coll. "Dans le vif", Paris 2017.

This also illustrates that there is a growing awareness of the triple ecological crisis that is disrupting and threatening the planet's equilibrium. And yet, while there is an ever-increasing consensus on the need to act, there is a lack of effective recipes for conceiving public policies to ensure the conditions for a fair, universal human development that respects the planet's ecological limits. But now, the rights of nature appear to be one of the keys to achieve this. In order to design sustainable trajectories, this movement also implies a more global reflection on the dead ends of the dominant economic paradigm, which is increasingly destructive of living entities, while six of the nine planetary boundaries have now been exceeded. As Hélène Tordjman so brilliantly documents, market ecology does not offer solutions adapted to preserving the planet's habitability.[319]

This publication is also a source of inspiration for development actors drawing up action plans that are consistent with the rights of nature. The initiatives listed are varied and at different stages of realisation: from the introduction of a bill, as in the Philippines, to the recognition of some animal species as subjects of law, as in the environmental code of the Loyalty Islands in New Caledonia, or even the integration of the rights of nature into territorial public policy, such as in the urban planning of the municipality of Curridabat in Costa Rica. This publication shows what is possible. However, the results achieved so far are still fragile. Proactive support from development donors for local initiatives that are working to advance the rights of nature could make a real difference in consolidating current advances and amplifying the momentum achieved. To this end, technical and financial assistance can make a decisive contribution to supporting partners. It means incorporating the approach based on the rights of living entities into the activities supported.

Finally, this forward-looking publication is intended to spark a process of reflection which we hope will be taken up and extended, with a view to encouraging an increase in activities and programmes that are in favour of the rights of nature, and in this way also in favour of human rights.

[319] Hélène Tordjman, *La croissance verte contre la nature. Critique de l'écologie marchande.* [Green growth versus nature: A critique of market ecology]. Ed. La Découverte. 2024.

Afterword

Timothée Parrique

Researcher in Ecological Economics at Lund University

Decommodifying the living world

Our economic vision suffers from an anthropocentric utilitarianism that treats nature as an all-you-can-eat buffet. We have resourcified the living world,[320] transforming a complex biophysical reality into "natural resources" and "ecosystem services"; a "natural capital" that patiently awaits its destiny as a "factor of production". Where a child might see Babe's little pig, Ratatouille's adorable rat and the friendly creatures of Finding Nemo, homo economicus sees pork at three euros a kilo, pest control services and fish stocks.

But bees, hedgerows and streams are more than resources, factors, capital or services. They are living entities that existed long before the invention of economics and will continue to exist long after. Do you consider your dog as simple "fauna" that generates the "services" of comfort and entertainment? Is the tree that has stood in your garden for generations just firewood at 70 euros a cubic metre? Imagine how different our behaviour would be if we treated nature as a federation of natural societies, a republic of terrestrials, a community of the living. Burning down a forest or wrecking a coral reef would then be more like a genocide than a failure or accident.

Speaking of the genocide of non-humans, or more generally of ecocide, is no exaggeration. Our species is actively orchestrating the extinction of all others. According to the latest report from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), one in four living species (flora and fauna) is currently in danger of extinction, and the speed of decline is ten to one hundred times faster than normal.[321]

[320] Corvellec and Paulsson. Resource shifting: Resourcification and de-resourcification for degrowth, Ecological Economics, March 2023.

[321] IPBES, 2019. The global assessment report on biodiversity and ecosystem services.

If nature were a bank, we would have had our account closed a long time ago. And if nature could defend itself, fungi like the Cordyceps from the TV series The Last of Us (2023) would surely have extinguished our species by now.

But nature isn't a bank, so nobody cares. It is quite paradoxical to have considered certain banks as too big too fail during the 2008 financial crisis, but not apply the same rules of unconditional protection to ecosystems without which we wouldn't be able to eat, drink or breathe. The extinction of life on earth is neither here nor there for most economists. Indeed, neoclassical theory (as taught at university) considers that the different factors of production can be substituted one for another. Workers can therefore be replaced by machines and vice versa. And so, theoretically, you can do without nature provided you have workers and machines.

In practice, this is absurd. Nothing can replace nature because it is the building block of all other factors of production. Our tools are made of different materials and metals, and we are nourished, kept warm and move from one place to another using energy. Give a baker three ovens instead of one and they still cannot make baguettes without flour. And even if we could make bread without flour, how could we build and operate these ovens without the component materials and energy? We couldn't because nature is indispensable. The French economy is mainly made up of services (80% of national added value) but it couldn't function for more than a few days without food and energy. I challenge all those economists who discredit the importance of ecology by asserting that the agricultural sector represents only 2% of GDP, to see if they can continue writing their theories without eating.

And yet, talk of so-called "green" growth is gaining momentum. Armed with a few figures attesting to a (miniscule) drop in greenhouse gases, the governments of some rich countries are congratulating themselves on being at the vanguard of the ecological transition. This is extremely naive. The notion of ecological sustainability as defined by the framework of planetary boundaries[322] and the biophysical basis of the Sustainable Development Goals (climate action, life below water and life on land) requires much more than a slim reduction in the carbon footprint. The challenge of sustainability is a Rubik's cube of many colours: global warming, ocean acidification, biodiversity loss, land use, water use, various forms of pollution, etc. By reducing their national emissions by a few percent, these countries, which boast of "sustainable growth", have only managed to line up three squares of the same colour on a single side of the Rubik's cube. It's a start, but there is so much more to be done.

The very concept of "green growth" tells us a lot about our relationship with living entities. The elephant in the room is our obsession with economic growth (or rather, the SUV in the room, because soon there won't be any elephants left). As the climate heats up, water becomes scarcer, soils lose their fertility and pandemics become increasingly likely, our main concern is Gross Domestic

[322] Katherine Richardson *et al.* Earth beyond six of nine planetary boundaries. Science Advances, September 2023.

Product. This indicator, which is used to estimate that famous thing, growth, only considers monetary value and thus disregards anything that is not commodified[323], in other words almost all of nature. Worse still, it tends to consider any transformation of the natural environment as a source of "added value". A hundred-year-old tree that stores carbon, is home to many species, cools the city at the height of summer, filters water, etc. does not have any value. When it comes to economic output, cutting the tree down to make a coffee table would constitute wealth creation.

The race for growth has become the icon of modern society, justifying all means, starting with the unsustainable mobilisation of a natural heritage that should be more equitably shared between countries, generations and species (we must not forget that we humans are not the only ones who need energy, component materials and living space to thrive). It is in this context that some people are beginning to talk about degrowth: a reduction in production and consumption to lighten the ecological footprint, democratically planned in a spirit of social justice and concern for well-being.[324] This strategy of the controlled slowdown of an ecologically overheated economy consists of selecting the goods and services that will have to be given up to allow us to return to below the thresholds of the planetary boundaries. This is an ecocentric approach that aims to resize human economies (starting with those of the richest regions) according to the biocapacity of ecosystems.

Decreasing the size of biophysically obese economies is a principle of good stewardship: don't consume more than ecosystems can produce, and don't discard more than they can eliminate. An economy in harmony with nature can only produce more if it manages to improve the way in which it uses its ecological budget, or if this budget increases. If we discover a way to improve the efficiency of solar panels or a new source of energy, we can then allow ourselves to consume more electricity, if this is necessary. Conversely, if an ecosystem is deteriorating faster than expected, there will have to be less production and consumption to preserve it. We need to see economic prosperity as intrinsically linked to ecological prosperity. In the same way that a healthy organ will not survive long in a dying body, there can be no thriving economy in a collapsing biosphere (or at least not for long).

But this concept of re-embedding the economy in nature raises questions that are much more fundamental. What we really need is a new relationship with living things, a new natural contract[325]. This would start with a question that economists never ask themselves: "What kind of humans does nature need?"[326]

[323] The System of National Accounts (latest edition, 2008) describes how to calculate GDP: "For example, the natural growth of stocks of fish in the high seas not subject to international quotas is not counted as production: the process is not managed by any institutional unit and the fish do not belong to any institutional unit. On the other hand, the growth of fish in fish farms is treated as a process of production in much the same way that rearing livestock is a process of production. Similarly, the natural growth of wild, uncultivated forests or wild fruits or berries is not counted as production, whereas the cultivation of crop-bearing trees, or trees grown for timber or other uses, is counted in the same way as the growing of annual crops." (p. 7)

[324] Timothée Parrique, *Ralentir ou périr. L'économie de la décroissance,* [Slow Down or Perish. The economics of degrowth], Seuil, September 2022.

[325] Michel Serres, The Natural Contract, University of Michigan Press, 1995.

[326] Isabelle Delannoy, *L'économie symbiotique. Régénérer la planète, l'économie, la société,* [The symbiotic economy. Regenerating the planet, the economy and society] Actes Sud, October 2017.

We need to give ourselves an "ecological conscience", as the American philosopher Aldo Leopold described in Land Ethic. This is the idea of an "extended community" that is also found in buen vivir philosophy[327]. The society in which we live is not only human, it is also animal, vegetable and mineral, and we are all citizens of this terrestrial community. Sustainability is not just a principle of biophysical administration, it's also the possibility of the conviviality of many species.

What proportion of the goods and services that we currently consume would disappear if we granted non-humans an intrinsic right to exist? If a river is granted the status of a legal person, and a company pollutes that river, then it is not a tax that must be paid, but an unlimited fine or even heavier penalty. If there is a dispute, the penalty must be established by a court, taking into account the damage caused to the river and all those whose subsistence depends on it, both now and in the future. Placing the management of nature under the protection of the legal system (rather than that of the markets) is a way of re-embedding the economy in society, itself re-embedded in nature. This is the most powerful lever for bringing our oversized economies back within the limits of what is ecologically reasonable.

What would be the consequences of such a Universal Declaration of the Rights of Living Entities? Giving more rights to nature inevitably means taking rights away from others. Declaring a forest's right to exist imposes a duty of non-harm on all human stakeholders who interact with the entity. In the current context of capitalism that constantly seeks expansion, this means constraining all those ecocidal freedoms granted to companies for whom “the protection of nature” is just another cost to be minimised. No more havens for pollution, no more all-you-can-eat buffets; giving rights to nature is a veritable revolution that will forever change the way that we view – and do – economics.

[327] Alberto Acosta, *Buen vivir. Pour imaginer d'autres mondes,* [Buen vivir. Imagining other worlds], Utopia, January 2014.

Agence française de développement (AFD) 5, rue Roland Barthes, 75012 Paris.

Printed by the AFD reprographics department.

Graphic design and production
Kokliko / **Agence ferrari** / 7, Rue Sainte-Anne 75001 Paris / +33 (0)1 42 96 05 50 / www.ferraricorporate.fr

Translation from French to English David Alun Jones and Frankie Hearsum
Revision and Translation Coordination Delphine Olive

Photo credits / Cover Kokliko / freepik.com / **P. 2.** Aerial view of the encroachment of agricultural plots on the forest /
© Cultural Video production/AFD / **P. 4.** freepik.com (@pikisuperstar) / **P. 6.** freepik.com (@user19579769) /
P. 9. freepik.com (danmir12) / **P. 12.** Chapter 1 / freepik.com (micloggi76) / **P. 30.** Chapter 2 / freepik.com (@artcookstudio) /
P. 32. Opening image for South America (Amazon Rainforest – Ecuador) https://www.kapawi.com. /
P. 86. Opening image for South and Southeast Asia (Boats on the Ganges, Varanasi – India) https://fr.123rf.com /
P. 122. Opening image for Africa (Gorilla in the Bwindi rainforest – Uganda) ID 26145071 © Hel080808 – Dreamstime.com /
P. 158. Three Oceans (View of Faiava Island from Ouvéa, Loyalty Islands, New Caledonia) https://fr.123rf.com (donyanedomam) /
P. 174. Opening image for Europe (St Lawrence River – Montreal, Canada) https://www.alamy.com /
P. 208. Chapter 3 (Forest rangers) freepik.com /
P. 225. freepik.com (Latin American coffee grower working on the crop / Joaosocola) /
P. 228. Chapter 4 / freepik.com (@The Yuri Arcurs Collection) /

For a world in common

Agence Française de Développement (AFD) Group finances, supports and accelerates the transitions necessary for a more just and resilient world. It thus contributes to implementing France's policy on sustainable development and international solidarity. It is with and for communities that we build, with our partners, solutions in more than 160 countries, as well as in 11 French over-seas departments and territories.

Our objective: To reconcile economic development with the preservation of common goods: the climate, biodiversity, peace, gender equality, education and health. Our teams are involved in more than 3,600 projects in the field, which are part of the commitment of France and the French people to fulfilling the Sustainable Development Goals. For a world in common.

ISBN: 978-2-37902-024-7

www.afd.fr/en
Twitter: @AFD_France – Facebook: AFDOfficiel – Instagram: afd_france
5, rue Roland-Barthes – 75598 Paris cedex 12 – France
Tel.: +33 1 53 44 31 31

October 2024 | **Ferrari** | www.ferraricorporate.fr | +33 1 42 96 05 50 | Ggraphic design: Kokiliko