



**RIGHTS OF NATURE  
AND THE ECONOMICS  
OF THE BIOSPHERE**

**Stillheart Institute, Woodside, CA  
October 20-24, 2013**

**GLOBAL  EXCHANGE**

*building people-to-people ties*



# Contents

Can Rights of Nature Help Us Rewrite Our Human Story?	1
The Global Water Crisis Demands a Paradigm Shift	3
A New Paradigm for Nature – Turning our Values into Law	6
What are Rights, and how can Nature “have” Rights?	15
At the Crossroads Between Green Economy and Rights of Nature	20
Indigenous Sovereignty, “Green” Economy and the Rights of Mother Earth	25
I am the River and the River is Me – The Implications of a River as an Indigenous Legal Person	29
How the Recognition of the Rights of Nature Became a Part of the Ecuadorian Constitution	34
The Nature of Farming and Farming with Nature	37

## **Can Rights of Nature Help Us Rewrite Our Human Story?**

Welcome to the Summit

The majority of the world's economies are based on the idea that nature is property. So are most legal systems, putting real power behind the idea that nature is a "thing" separate and apart from humans, and here only to serve our needs and whimsical desires. To accept the current structure of law and economy is to accept that the human relationship with the rest of the natural world is one of ownership, and promotes unfettered exploitation of the Earth's natural systems by humans. This is our current story.

We believe that as long as our activism to prevent the wholesale destruction of nature operates within these confines, we are limited to merely slowing down the rate of destruction at best, and letting the long arm of property and corporate law continue to make sacrifice zones of our communities and the ecosystems upon which we depend. Climate change, and the constant and growing reminders of the social and ecological destruction it brings, is that large flashing red light reminding us that we're operating by a set of rules that are out of balance with the laws of Mother Earth.

Global Exchange has been a leader in the quickly emerging global movement for Rights of Nature, which, as put forward in the Constitution of Ecuador, and laws in Bolivia and New Zealand, and a growing number of U.S. communities—defines legal rights for ecosystems to "exist, flourish, and regenerate their natural capacities." We advocate for the need for a wholly different framework grounded in the recognition that Earth's living systems are the foundation of all life and our very existence. It follows that the most sacred or important of rights are the rights of these systems, i.e., the Rights of Nature, and posits that other rights are derivative. This defines the essential paradigm shift from a jurisprudence and legal structure designed to secure and consolidate the power of a ruling oligarchy to a jurisprudence and legal structure designed to serve all living people and a living Earth Community.

While indigenous leaders, deep ecologists, environmental justice allies, economists, localization activists, globalization thinkers and others have discussed the moral ill of treating the Earth as a commodity, we often



do so in silos, or focus only on the meta-story or the on-the-ground practical; seldom on both. Aspirational documents like the Earth Charter, provide a common language for where we want to go, but don't necessarily include mechanisms to achieve that vision— thus we have limited our thinking, seeking solutions only within the current economic and legal frame, rather than challenging the systemic frame that has brought humanity to the edge of the cliff.

It is with this in mind that I welcome you to the Rights of Nature & Economics of the Biosphere Summit in gorgeous Woodside, CA. Over the next few days, we will examine how the Rights of Nature paradigm can be used as a movement tool, as an economic policy prescription, and a new cultural and legal mirror to reflect the values we believe place humanity in balance with Earth's laws. We are so grateful for your participation in this discussion that seeks to be big picture, spiritually grounded, focused on action and relentlessly practical.

On behalf of Global Exchange, and our Summit advisors, including co-chairs Randy Hayes and Gopal Dayeneni, and team, Shannon Biggs, Jeff Conant, Jonathan Frieman, Osprey Orielle Lake, Prajna Marcus and Linda Sheehan, thank you for taking this first step forward with us in rewriting our human story.



Carleen Pickard

---

*Carleen Pickard is the Executive Director at US-based Global Exchange. She works to oppose free trade agreements and privatization, promote fair trade and buen vivir. She surfs and learns from documentaries.*

# **The Global Water Crisis Demands a Paradigm Shift**

By Maude Barlow and Meera Karunanathan

Gandhi said it best when he said, “the Earth provides enough to satisfy every man’s need, but not enough to satisfy every man’s greed.”

This is truer of the world’s freshwater supply now than ever before. There is no shortage of water for the needs of people and the planet, yet we are rapidly running out of clean water because there aren’t sufficient amounts to serve the insatiable greed of a small number of powerful corporations whose interests dominate the global economic agenda.

If there was any illusion that Rio+20, the United Nations Conference on Sustainable Development, could restrain the runaway capitalism that has generated the environmental crisis plaguing our ever-shrinking planet, it has already been extinguished. Rio+20 is shaping up to be yet another platform for corporations seeking unfettered growth at a time when the planet is telling us we need to scale down and change course.

Dominated by corporate interests, the dialogues leading to Rio+20 have been about packaging the quest for economic growth and market expansion into a new brand of corporate environmentalism, and the still fairly vague proposals for a so-called “green economy” are being met with fierce opposition from social movements around the world.

When it comes to water, the corporate green economy is about using the environmental crisis to further entrench corporate rights and access to increasingly scarce water resources. As the United Nations Environment Programme (UNEP) puts it, “water is the engine for the green economy.”

On the one hand, systemic causes of the global water crisis are evaded by emphasis on resource efficiency and high-tech solutions that allow business as usual for water-intensive and water-polluting industries. On the other hand, there is a push to develop market-based models for the distribution of scarce water resources. These models will entrench corporate rights and access to water resources — among them, water markets and pricing mechanisms that will allow for those who pay

more to have more, and the financialization of both water resources and utilities in order to generate new forms of capital accumulation in areas where markets have had very limited access. All of these elements require greater analysis than what we are able to offer within the limited space of this article. Suffice to say that many forces are at play to ensure that the environmental and economic crises serve as ruses to facilitate greater corporate control of water.

And in the tug of war against corporate so-called “rights” — which are better described as privileges and protections — we need to think bigger and beyond existing regulatory systems and human rights mechanisms.

By 2030, demand for water will outstrip supply by 40% according to a 2009 report by the World Bank-sponsored Water Resources Group. This will cause tremendous human suffering, yet this statistic does not even take into consideration the water needs of non-human life. The handful of corporations engaged in water-intensive and water-polluting activities are not only competing with the rest of the world’s human population, they are competing with all other species as well.

Water shortages are having an ever-increasing impact on the planet’s biodiversity. According to Wetlands International, there has been a 50% loss of wetlands over the course of the 20th century. Freshwater species in particular are disappearing at a much faster rate than all other species. Nearly 25% of freshwater fish in Africa alone are threatened with extinction and 136 freshwater-dependent birds had become extinct by 2010.

## **This has led to a growing movement demanding a new model of governance centered on the rights of nature.**

Far from being radical, the Rights of Nature model is based on the inescapable reality that we are all connected.

Our economies have been built on unrealistic expectations of what the planet can yield — and people living closer to the land have been feeling the impacts for decades. Indigenous communities living downstream from polluting industries like the tar sands in Canada or large mining projects in Latin America have seen unnaturally high rates of cancer, skin

diseases, birth defects and illness in the fish and livestock vital to their survival. The food security of communities throughout the Global South has been severely threatened by drought, leading farmers in India to commit suicide over the loss of crops.

Even the staunchest proponents of the neoliberal agenda can no longer deny the scientific evidence of our deeply ailing planet, leading countries like Canada to foolishly engage in shoot-the-messenger strategies such as eliminating publicly funded science, shrinking government departments responsible for environmental monitoring and criminalizing environmental organizations in order to blindly pursue a path of economic growth based on massive expansion of the extractive sector.

The global campaign for the Rights of Nature provides a way forward. But to simply recognize the Rights of Nature on paper does not suffice. Such an approach will be laden with internal contradictions if governments are unwilling to challenge the dominant model of economic globalization. The recognition of the Rights of Nature must be part of a larger commitment to rebuild economies based on respect for watersheds and ecosystems. This means scaling down and reducing consumption; limiting export-oriented production and nurturing sustainable local economies to bring an end to over-extraction, large-scale displacement and contamination of water, fragmentation of rivers and the continued destruction of wetlands and glaciers.

It's no longer enough to simply regulate corporate greed.

---

*Maude Barlow is the National Chairperson of the Council of Canadians, Chair of the board of Food and Water Watch, as well as an international best-selling author. She has received ten honorary doctorates as well as many awards, including the 2005 Right Livelihood Award. She served as Senior Advisor on Water to the 63rd President of the United Nations General Assembly.*

*Meera Karunanathan is a Water Campaigner for the Council of Canadians, Canada's largest social justice group. Working with the organization's 70 chapters across the country, Meera promotes water as a human right and a commons in Canada. She also works with global water justice activists around the world through the Blue Planet Project to support struggles against the corporate takeover of water.*

## **A New Paradigm for Nature – Turning our Values into Law**

By Shannon Biggs and Mari Margil

It takes thousands of years for individual drops of rain to maneuver through silent passages and gently accumulate into underground aquifers. Purified and enriched over the millennia by mineral deposits deep in the earth, groundwater is the sacred lifeblood of local watersheds upon which all life – including human communities – depend. Yet it takes no time at all to destroy this delicate balance. In fact, all it takes is a simple piece of paper.

Steeped in colonial history, Nottingham, New Hampshire, could be a picture postcard of quaint village life in New England. Yet in 2001, this tiny rural village of 4,000 residents became the poster child for too familiar “site-fights” between small towns seeking to protect local water and large multinational corporations seeking to extract it. It was then that the USA Springs Corporation applied to the state for a permit to extract more than 400,000 gallons of water a day from Nottingham’s local aquifer to bottle and sell overseas.

Corporate water withdrawals – siphoning off hundreds of thousands of gallons a day from local aquifers – impact both surface and groundwater resources. They deplete drinking water and can contaminate aquifers and wells. In addition, withdrawals dry up streams, wetlands, and rivers, as well as reduce lake levels, damaging habitat and harming wildlife.

For seven years the community of Nottingham came together to stop their water from being mined. Upon discovering that our own laws forbid communities from saying “no” to the wide array of dirty, destructive and unwanted practices allowed by law, they attempted to protect their local groundwater using all the tools available under the law. They did everything “right” by traditional, conventional environmental activism. They lobbied their state legislature, petitioned their government, testified at hearings, protested, rallied, educated and organized their neighbors and filed lawsuits. But as is so often the case, it just wasn’t enough.

When the people of Nottingham beseeched their state environmental agency, the New Hampshire Department of Environmental Services, to

take effective action and protect the aquifer, their requests went unmet. Instead of helping them protect their water, the agency was in fact responsible for issuing permits to the corporation to take it.

## **Is the system broken or working perfectly?**

The experience of Nottingham is shared by thousands of communities across the United States and around the world that discover that their government officials and agencies – ostensibly in place to protect them – are, in practice, serving other interests.

The question that the people of Nottingham were forced to ask is, “why?” Why are corporations allowed to override community concerns and put destructive projects in our midst? Why do our environmental laws and regulations, rather than put in place protections for the environment, instead seem to be written to exploit it? And why is our government helping a corporation to extract water from a community and sell it for profit, when the impacts from such projects are so significant?

These are the questions that people and communities find themselves asking when they face the threat of water extraction, mining, drilling, or a range of other activities. Based on the assumption that environmental legislation was in earnest set up to protect Nature, much of our environmental activism has logically been spent trying to “fix” what appears broken; seeking to improve the types of laws and regulations that Nottingham ran into.

But what if the system was never designed to put Nature first?

Under New Hampshire’s Groundwater Protection Act – initially lauded as an important legislative tool, corporations are awarded permits by the state to siphon off water from local aquifers. Thus, despite the Act’s title, the law in fact authorizes the exploitation of water within the State of New Hampshire. It is much like the federal Clean Air Act and the Clean Water Act, which govern *how much* pollution of our air and water can occur.



This is not a mistake or somehow unique, and it is not about corruption within a generally functioning system. Rather, the major environmental laws in the United States, which have now been exported and adopted around the world, are laws not borne of protection, but of exploitation.

Although it's rarely said out loud, it is often the industry to be regulated that creates the laws we ask our legislators to enforce. And when it becomes too expensive to comply with the regulations, corporations are often exempted from them, or the regulations are simply rewritten. By design our environmental laws place commerce above nature, and in so doing they legalize certain amounts of harm to ecosystems. And *by design* regulatory agencies administering these laws are in place to operationalize that exploitation.

This isn't to say we haven't protected anything while toiling within this system of law. Whatever limits to damage have been achieved have come from dedicated vigilance by the hands of caring and concerned people. But taking a step back to look at the big picture, we must also recognize what has been lost.

By almost every measure, the environment today is in worse shape than when the major U.S. environmental laws were adopted nearly 40 years ago and replicated worldwide. Global species decline is increasing exponentially, global warming is far more accelerated than previously believed, deforestation continues unabated around the world, and overfishing in the world's oceans are pushing many fisheries to collapse. With so much at stake, the question is – why haven't we been successful at ending this destruction?

It certainly is not from lack of effort by communities or activists. Rather, the system of law within which their efforts are taking place is based on entirely the wrong premise — that Nature is property.

The Clean Air Act, the Clean Water Act, and similar state laws legalize environmental harms by regulating how much pollution or destruction of Nature can occur. Rather than preventing pollution and environmental destruction, these laws instead codify it. How else could we justify the damming of rivers, the blowing off of mountaintops for coal or fishing to extinction?

We codify our values in law, and thus for time immemorial we have treated nature in law, as well as in culture, as a “thing” – as amoral, without emotion or intelligence, without any connection to or having anything in common with us. In this way we justify and rationalize our exploitation, our destruction, our decimation. It is the long history of humankind’s relationship with Nature as a possession, rather than as a system governing our own well-being.

So when the people of Nottingham asked state agencies for help that was not forthcoming, the lack of assistance was not sheer unwillingness; rather the state agency was simply carrying out the law of the land in assisting the corporation to take their water.

## **The nature of property: Is Nature a slave?**

In the United States, title to property carries with it the legal authority to destroy the natural communities (which include human communities and ecosystems) that depend on that property for survival. In fact, our environmental laws were passed under the authority of the Commerce Clause of the U.S. Constitution, which grants exclusive authority over “interstate commerce” to Congress. The migration of birds, rivers flowing to the sea, or almost any natural process you can name is, or can be classified as interstate commerce. Treating Nature as commerce has meant that all existing U.S. environmental law frameworks are anchored in the concept of Nature as property.

But history shows that with enough will, unjust laws that deny rights can change. Slaves and women were once considered property, but through massive shifts in law and culture they moved from being “right-less” to being rights-bearing.

During slavery in the United States, the economies of both the North and South were based on slavery. Slaves provided the labor force upon which the new country depended. Slaves were the property of the slave master and a series of “slave codes” were put in place to *regulate* the treatment of slaves. Slave codes in South Carolina required the whipping of a slave who left his master’s plantation without permission. In Louisiana, any slave who hit his master was to be punished by death. In

Alabama, teaching a slave to read was illegal and violators were required to pay a fine.

Many advocates of slavery argued that the slave codes would somehow lead to a gradual end of the slave system; that slaves themselves did not “need” legal rights in order to be sufficiently protected. It is easy from today’s vantage point to see that this regulatory framework did not and could never protect the slaves or end slavery. To the contrary, it codified, enforced and upheld the system of property and the continued enslavement of human beings. Today in the United States and in much of the world, Nature is treated in the same way, and laws and regulations have been put in place to regulate ecosystems as property.

## **What does it mean to recognize the Rights of Nature?**

If we believe that rights are inherent, then Nature’s rights already exist, and any law that denies those fundamental rights is illegitimate.

Under existing environmental laws, a person needs to prove “standing” in order to go to court to protect Nature. This means demonstrating personal harm from logging, the pollution of a river, or the extraction of water. Damages are then awarded to that person, not to the ecosystem that’s been destroyed. Women were once considered the property of their husbands or fathers, and as such had no legal standing. Prior to the 19th Amendment, if a married woman was raped, it was considered a property crime and damages were awarded to her husband. In the wake of the BP oil spill, the only damage deemed compensable by the legal system is the financial damage caused to those who can’t use the Gulf ecosystem anymore.

Communities in the United States are turning their backs on a system that cannot provide true environmental protection. They are beginning to craft and adopt new laws that recognize that natural communities and ecosystems possess an inalienable and fundamental right to exist and flourish. Residents of those natural communities, as stewards of the place where they live, possess the legal authority to enforce those rights on behalf of those ecosystems. In addition, these laws require local governments to remedy violations of those ecosystem rights.

Under a rights-based system of law, a river has the right to flow, fish and other species in a river have the right to regenerate and evolve, and the flora and fauna that depend on a river have the right to thrive. It is the natural ecological balance of that habitat that is protected. Just as the lion hunts the antelope as part of the natural cycle of life, recognizing Rights of Nature does not put an end to fishing or other human activities. Rather, it places them in the context of a healthy relationship where our actions do not threaten the balance of the system upon which we depend.

In essence, these laws represent fundamental changes to the status of property in the United States. While not eliminating property ownership, they do eliminate the authority of a property owner to destroy entire ecosystems that exist and depend on that property. These laws do not stop development; rather they stop the kind of development that interferes with the existence and vitality of those ecosystems.

This represents a true paradigm shift, one that recognizes that we can no longer tinker at the margins of a legal system that places property at the apex of civilization. It makes no apologies for recognizing that a linear system of development cannot be sustained on a finite planet and that we enslave Nature to our own demise.

## **Building a movement for the Rights of Nature**

Environmental and community rights attorney Thomas Linzey has been known to say that, “There has never existed a true environmental movement in this country” because movements drive rights into fundamental structures of law, which environmentalists have never sought to do. It’s a provocative statement sure to raise the ire of many an advocate for Nature.

On September 19, 2006, the Tamaqua Borough Council in Schuylkill County, Pennsylvania, became the first municipal government in the United States to recognize legally enforceable Rights of Nature. Working with the Community Environmental Legal Defense Fund, they drafted and adopted a local ordinance recognizing that natural communities and ecosystems have a legal right to exist and flourish, that individuals within

the community have the authority to defend and enforce the rights of those natural communities and ecosystems, and that the Borough government has a legal duty to enforce the ordinance.

Over a dozen more communities in Pennsylvania, New Hampshire, Maine, and Virginia have now adopted ordinances recognizing legally enforceable Rights of Nature. Communities in California, New Mexico and elsewhere are in the process of adopting similar laws. The people of Nottingham adopted an ordinance in 2008 that recognizes the inalienable Rights of Nature and bans corporate water extraction.

That same year Ecuador became the first country in the world to recognize the Rights of Nature in its constitution; after generations of watching its fragile ecosystems destroyed by corporate mining, drilling and other practices. The new constitution was approved by an overwhelming margin through a national referendum on September 28, 2008. With that vote, Ecuador became the first country in the world to codify a new system of environmental protection based on rights, leading the way for countries around the world to make this necessary and fundamental change in how we protect Nature. The constitution reads, “Nature or *Pachamama*, where life is reproduced and exists, has the right to exist, persist, maintain itself and regenerate its own vital cycles, structure, functions and its evolutionary processes.”

In 2009, international leaders that gathered in Copenhagen for the UN Climate Change Conference predictably failed to reach an agreement to save humanity from its own destruction. In response, the World People’s Summit on Climate Change and the Rights of Mother Earth convened in Cochabamba, Bolivia. Some 32,000 people from around the world attended and, led by indigenous communities of Latin America, proposed the Universal Declaration of the Rights of Mother Earth.

This work is now expanding as people and communities and governments conclude that we have pushed the Earth’s ecosystems to the brink and that our existing frameworks of environmental laws are not only inadequate to reverse this destruction, but were never intended to do so.

In September 2010, an international gathering was held in Tamate, Ecuador, to develop a strategy for building an international movement on Rights of Nature. The gathering brought together individuals and organizations from South Africa, Australia, Bolivia, Peru, Ecuador, and the United States. The outcome of the meetings was the formation of the Global Alliance for the Rights of Nature. Key areas of work will be education and outreach, as well as assisting local, state, and national governments around the world to put Rights of Nature laws in place and to build and support a global movement for the Rights of Nature.

## **A new cultural context for Nature supported by law**

How different would our world look if the Amazon could sue oil companies for damages, or if those responsible for the oil spill could be forced to make the Gulf of Mexico “whole”? What if communities could be empowered to act as stewards for their local environments and say “no” to massive groundwater extraction?

As a species we have come to value “endless amounts of more” to our own detriment, and we have codified that value into law. Of course it is up to us to begin the process of deprogramming our society and dispelling our arrogant belief that the Earth “belongs” to humans. Like all successful movements for rights, the cultural change necessary needs only be enough to change the law – the law itself forces the larger cultural change that must take place. However, both are needed in order to truly recognize rights for the right-less.

In 1973, Professor Christopher Stone penned his famous law review article, “Should Trees Have Standing?”. He wrote, “The fact is, that each time there is a movement to confer rights onto some new ‘entity’ the proposal is bound to sound odd or frightening or laughable. This is partly because until the right-less thing receives its rights, we cannot see it as anything but a thing for the use of ‘us’ – us being, of course, those of us who hold rights.”

This is the challenge that every rights-based movement comes up against – not only an illegitimate structure of law that defines a living being as property, but also the culture which is built upon this concept.

The Abolitionists faced this – with slavery not only providing the labor force in the South, but being the driving engine of the economy of the North. Abolishing slavery meant abolishing a way of life. Most said it could not and must never be done. That is the argument we hear and face now. But it can, and we must.

---

*Mari Margil is the Associate Director of the U.S.-based Community Environmental Legal Defense Fund (CELDF) where she conducts campaign and organizational strategy, media and public outreach, and leads the organization's fundraising efforts. In 2008, she assisted Ecuador's Constitutional Assembly on the re-writing of their constitution to include Rights of Nature, and is now assisting Nepali organizations in the drafting of that country's first constitution*

*Shannon Biggs directs Global Exchange's Community Rights program, working to subordinate corporations to the rights of communities and nature. She is the co-author/editor of two books including *Local Green Economy: Success Stories from the Grassroots* (2007) and *Rights of Nature: The Case for the Universal Declaration on the Rights of Mother Earth* (2011). She is a former senior staffer at the International Forum on Globalization and a lecturer of International Relations at San Francisco State University.*

# What are Rights, and how can Nature “have” Rights?

By Ben Price

*Humans and Nature are born free, and they are everywhere in chains*  
– paraphrasing Jean-Jacques Rousseau

Various theories based on completely different premises answer the question “What are Rights?” The clear understanding of the nature of Rights and the way that Rights bear on the concept of the Rights of Nature is the essence of all our deliberations and discussions. As a result, it makes sense that we consider each theory, and particularly take note of the premises and contexts in which various theories of Rights are presented when we propose the adoption of legally enforceable Rights for Nature.

The fact that the average person has so little understanding of the many guises in which the idea of Rights appears is a big problem for those of us who would posit the notion of legally enforceable Rights for Nature. Utterly wrong understandings are the biggest obstacle we face, and so it is our responsibility to redirect the popularly misunderstood cultural, historical and legal concept of Rights, so that when we apply the term to Nature we are easily understood.

It is ours to decide which theory, and which use of the term “Rights” shall apply to our work and our efforts to change the system, the status quo. Our decisions matter, because the fate of our ecosystem is at risk if we fail to adapt human law and governance to the finite capacity of this planet to endure theories embracing human exceptionalism and property-based notions of Rights.

## **Theory # 1: Rights are intrinsic properties of living beings**

When promoting local “rights-based” laws, the Legal Defense Fund and our partners have relied upon the claim that, even if not constitutionally enumerated, certain Unalienable (not to be forfeited) Rights accrue to rights-bearing entities as a consequence of being born. American cultural legend suggests that Unalienable Rights derive from Nature and “Nature’s God,” as the American Declaration of Independence puts it.

But when we assert that Rights are intrinsic characteristics of beings that we choose to categorize as “rights-bearing entities,” in the context of Western legal traditions we may as well be arguing for the existence of an immortal soul. Seeking a metaphysical source for Unalienable Rights, particularly Rights for Nature, places on advocates for those Rights a burden of proof that ultimately cannot be satisfied.

## **Theory #2: Rights are legal possessions of certain entities**

Western legal tradition protects social privileges codified in constitutions, charters, titles and judicial precedent. It also conflates the concept of Unalienable Rights with the often legally transferrable commodities of privilege and property. Despite revolutionary claims suggesting that Unalienable Rights derive from Nature and accrue, at least to humans, as a consequence of birth, subsequent law has had difficulty acknowledging any obligation of the state to extend protective guardianship over Unalienable Rights that are not constitutionally enumerated, legislatively codified and judicially sanctioned.

Well-established traditions have in the past obliged the state to act as guarantor of hereditary privilege (favored birth) and continue to oblige the state to protect chattel privileges (property “rights”). It is the favor of the conqueror, and the conqueror’s descendent sovereignty, which defines such privileges. Titles (both hereditary and property) as well as Charters (statutory and corporate) form the taproot that nourishes empire and has allowed the centuries-long enslavement of Humans and Nature. Those Unalienable Rights that have been constitutionalized after long, difficult social struggle have yet to supplant the practical hegemony of charters and titles of legal privilege that are underwritten and protected by government, its institutions and its recourse to force.

## **Theory #3: Rights are strict limits upon human society’s authority**

In order to legitimize the full range of Unalienable Rights and advance the Rights of Nature, we must answer the questions “What are Rights?” and “Where do Rights come from?” Our answers will be of little use unless they overcome the arbitrariness of a metaphysical response, and

unless they convincingly obligate society to acknowledge and respond appropriately to those answers.

To succeed, a refinement of existing legal concepts cannot be avoided. I propose framing the answer to both questions in terms of a more egalitarian version of Rousseau's Social Contract. Instead of defining Rights as inherent aspects of living beings, or as licensed privileges that elevate the "rights" of charter and title holders above the community at-large, let's postulate Rights as a socially beneficial relationship between society and its instrument, government, and those beings entitled to obligatory respect.

Just as Western legal tradition has generally eschewed the metaphysical origins of Unalienable Rights, so revolutionary reasoning has opposed institutionalized privilege as an impairment of the social contract between society and its members -- because inheritable and chartered privileges maintain generation-spanning inequities favoring an opulent minority -- traditionally made up of white males -- over all other beings. And these inequities uncouple government and its beneficiaries from obligations that would ensure the viability and sustainability of society. Throughout the world we witness the proprietary rape of the environment and the "regulated" oppression of laboring humans -- epiphenomena of chartered corporations -- both past and present -- occupying unwilling communities and turning them into resource colonies.

In the context of the social contract theories of Locke and Rousseau, Rights invoke a legal counterpart: *obligations*. This ethical coupling offends the notion that rights are absolute, by suggesting they could be made legally contingent on the Rights-holder living up to social obligations. But we must refine our understanding of how Rights and Obligations are interdependent.

### **Theory #4: Rights are human society's obligations to constituents to achieve social sustainability within Nature**

The Rights = Obligations symmetry recommends a more fundamental relationship between society and the individual, and between the state

and its communities. Instead of Rights as conceptual “possessions,” we can more fruitfully define them as those benefits and freedoms accruing from obligations fulfilled by society and government within a finite and restricted field of action. Rights become legally tangible when duties owed by society to its living members, its constituent communities and its natural environment, are executed *in order to achieve social sustainability within Nature*. Law, then, becomes the codification of those constraints and obligations on society and government.

To arrive at this concept of Rights I posit that it is society’s obligations that define the Rights of living things and systems. *Human Society itself is obligated to make Human Society sustainable within Nature*.

Rights are the manifestation of those obligations and they vindicate Human Society to itself. Human Society is made up of its constituent parts, but has no rights of its own. Privileges that conflict with society’s obligations to individuals, and to the achievement of social sustainability within Nature, are not Rights. Human Society’s instruments of government, economy, education, and other institutions must be defined by the obligations they are required to fulfill in the service of Rights.

This obligation is rooted in the moral and ethical prerogatives of self-preservation of the species, and as such it is a paramount prerequisite to any justification of the legitimacy of law and government. Laws and governance which would abdicate this obligation and contingent responsibilities must be characterized as illegitimate and invalid. Because human survival is contingent upon a healthy natural environment, and because communities of people are the repository of authority to determine the future sustainability of those communities, as well as the natural community of non-human entities in which human communities are embedded and upon which they rely for survival, the assertion and enforcement of legal rights for Nature resides within the judgment of each community, and each community may impose on other communities an obligation to respect and uphold such rights.

## **Tentative definitions:**

**RIGHTS** are those obligations owed by Human Society, its members and institutions, to living things, and both human and natural communities.

**UNALIENABLE RIGHTS** are those moral, ethical, practical and legal freedoms that human society, its members and institutions are obliged to afford to all living things, upon their birth, and to all interdependent combinations of living things, and to all life-sustaining systems of the earth.

*Rights of Nature, Rights of Communities (human and natural) thus become organic relationships between society and living individuals and systems. Rights become the essential element for the sustainability and the survivability of human societies. And we have thus a rational, logical, theoretical and strategic basis on which to build a movement for Rights rooted in the Human and Natural Community, which are in fact one community.*

---

*Ben Price is the Projects Director for the Community Environmental Legal Defense Fund. Ben has coordinated Community Rights organizing across Pennsylvania for the past eight years, and in the past several years has expanded that work into Ohio, Maryland, New York, Colorado New Mexico and Illinois. Ben offers free organizing assistance and training to municipal officials and community members, with an eye toward adoption of local laws that protect communities from corporate assaults. As Projects Director he assists strategic organizing in all areas of the country, and travels as needed to help jump-start organizing and support movement-building.*

## **At the Crossroads Between Green Economy and Rights of Nature**

by Pablo Solón

Almost one thousand dolphins are lying dead on the beach. Another five thousand pelicans have also been found dead. What is the cause of this massacre? There are different explanations. Some argue that it was the offshore oil exploration while others say that these birds died because anchovy, their main food, has disappeared as a result of the sudden heating of coastal waters due to climate change. Whatever the explanation, the fact is that during the past months, the Peruvian coast has become the silent witness of what the capitalist system is doing to Nature.

In the period from 1970 to 2008, the Earth System has lost 30 percent of its biodiversity. In tropical areas, the loss has even been as high as 60 percent. This is not happening by accident. This is the result of an economic system that treats nature as a thing, as just a source of resources. For capitalists, nature is mainly an object to possess, exploit, transform and most specially profit out of it.

### **Green economy is about cheating nature while making profit out of it**

Humanity is at the edge of a cliff. Instead of recognizing that nature is our home and that we must respect the rights of all beings of the Earth community, transnational corporations are promoting more capitalism under the ambiguous name of “green economy.”

According to proponents, the mistake of capitalism, which led us to these current multiple crises, is that the free market had not gone far enough. Thus, “green economy” capitalism is going to fully incorporate nature as part of its capital. They are identifying the specific functions of ecosystems and biodiversity that can be priced and then brought into a global market as “Natural Capital.”

In a report by Ecosystem Marketplace, we can read a brutally frank description of what is motivating Green Economy advocates:

*“Given their enormous impact on our daily lives, it’s astounding that we don’t pay more attention, or dollars, to ecosystem services. Ecosystems provide trillions of dollars in clean water, flood protection, fertile lands, clean air, pollination, disease control - to mention just a few. These services are essential to maintaining livable conditions and are delivered by the world’s largest utilities. Far larger in value and scale than any electric, gas, or water utility could possibly dream of. And the infrastructure, or hard assets, that generate these services are simply: healthy ecosystems.*

*So how do we secure this enormously valuable infrastructure and its services? The same way we would electricity, potable water, or natural gas. We pay for it.”*

The goal is not just to privatize material goods that can be taken from nature, such as wood from a forest, but also to privatize the functions and processes of nature, label them environmental services, set a price and then bring them into the market. In the same report, the contributors already have estimated annual values for these environmental services.

To illustrate, take a look at the leading example of “green economy,” the program REDD (Reduction of Emissions from Deforestation and Forest Degradation). REDD’s purpose is to isolate one of the functions of forests — its ability to capture and store carbon — and then measure how much CO<sub>2</sub> it can capture. Once the value of the potential carbon storage of the forest has been estimated, carbon credits are issued and sold to rich countries and big corporations who then use these to offset, or buy and sell, polluting permits in the carbon markets.

For example, if Indonesia, which has a deforestation rate of 1,700,000 hectares per year — only deforests 1,500,000 hectares next year, it will be able to sell in the REDD market, the carbon credits for the amount of CO<sub>2</sub> that is stored by the remaining 200,000 hectares.

In theory, REDD provides a monetary incentive for not deforesting. In actuality, corporations purchasing credits can release into the atmosphere the amount of CO<sub>2</sub> they paid for. In other words, carbon

credits are polluting permits for the rich. Additionally, only countries that reduce their deforestation will be able to put carbon credits in the REDD market. So if a region has always preserved its forest, they will not be able to sell any carbon credits from reduction of deforestation. So what is happening now, for example, in some parts of Brazil, is that in order to be prepared for REDD, trees are being cut with the purpose of increasing the deforestation, so that, tomorrow, the reduction of the “deforestation” will be higher and the amount of carbon credits that can go into the market will be bigger.

REDD is just the face of “green economy” for forests. The whole system is about cheating nature while making profit from it.

Imagine if the same logic is applied to biodiversity, water, soil, agriculture, oceans, fishery and so on. Add to this the proposal to perform geo-engineering and other new technologies in order to further the exploitation, tampering and disruption of nature and creating a new speculative market.

In order to promote such an assault on nature, the capitalists have first labeled their greed economy as “green economy.” Cash strapped governments, are being told that that the only way to get the billions of dollars needed for the preservation of water, forests, biodiversity, agriculture and others is through private investment. But the private sector will not invest profits — accumulated through the exploitation of labor and material goods of nature — without an incentive. And so, governments need to offer them this new business of making profit from the processes and functions of nature.

Most promoters of “green economy” are very straightforward on this: if there is no pricing of some functions of nature, new market mechanisms and guarantees for their profit... the private sector will not invest in ecosystem services and biodiversity.

### **“We cannot command nature except by obeying her”**

The “green economy” will be absolutely destructive because it is premised on the principle that the transfusion of the rules of the market

will save nature. As the philosopher Francis Bacon said: we cannot command nature except by obeying her.

Instead of putting a price on Nature, we need to recognize that humans are part of Nature and that Nature is not a thing to possess or a mere supplier of resources. The Earth is a living system, it is our home and it is a community of interdependent beings and parts of one whole system. Nature has its own rules that govern its integrity, interrelationships, reproduction and transformation, and these rules have worked for millions of years. States and society must respect and assure that rules of nature prevail and are not disrupted. This means we need to recognize that our Mother Earth has also rights.

Scientists have been telling us that we are all part of an Earth System that includes the atmosphere, the biosphere, the lithosphere, and the hydrosphere. We humans are just one element of the biosphere. So why would it be that only we humans have rights and all the rest are just materials for human life? To speak of equilibrium in our Earth system is to speak of rights for all parts of the system. These rights are not identical for all beings or parts of the Earth System, since not all the elements are identical. But to think that only humans should enjoy privileges while other living things are simply objects is the worst mistake.

Why should we only respect the laws of human beings and not those of nature? Why do we call the person who kills his neighbor a criminal, but not he who extinguishes a species or contaminates a river? Why do we judge the life of human beings with parameters different from those that guide the life of the system as a whole if all of us, absolutely all of us, rely on the life of the Earth System?

There is a contradiction in recognizing only rights of humans while all the rest of the Earth system is reduced to a business opportunity in the “green economy.”

Decades ago, to talk about slaves having the same rights as everyone else seemed like the same heresy that it is now to talk about glaciers, or dolphins, or rivers, or trees, or orangutans having rights.

In an interdependent system in which human beings are only one component of the whole, it is not possible to only recognize the rights of the human part without instigating an imbalance in the system. To guarantee human rights and to restore harmony with nature, it is necessary to effectively recognize and apply the rights of Nature.

Nature cannot be submitted to the wills of markets or a laboratory. The answer for the future lies not in scientific inventions that try to cheat nature, but in our capacity to listen to nature. Science and technology are capable of many things, including destroying the existing world itself. It is time to stop geo-engineering and all artificial manipulation of the climate, biodiversity and seeds. Humans are not gods. The capitalist system has gone beyond control. Like a virus it's going to kill the body that feeds it... it's going to damage the Earth System, making life impossible for humans as we know it. We need to overthrow capitalism and develop a system that is based on the Community of the Earth.

---

*Pablo Solón is the Executive Director of Focus on the Global South, and the former Ambassador of the Plurinational State of Bolivia to the United Nations. He has been a social activist and worked for several years with different social organizations, indigenous movements, workers' unions, student associations, human rights and cultural organizations in Bolivia.*

# Indigenous Sovereignty, “Green” Economy and the Rights of Mother Earth

By Tom B.K. Goldtooth

The topic of the green economy and sustainability demonstrates the differences between the money-centered Western views and indigenous life-centered worldview of our relationship to the sacredness of the female creative principles of Mother Earth. Many of our Indigenous peoples around the world are deeply concerned that the economic globalization model treats Mother Earth, nature, as a resource for the marketplace to own, privatize and exploit for maximized financial return. This development model displaces Indigenous peoples from their lands, cultures and spiritual relationship to Mother Earth, as well as destroys the life-sustaining capacity of nature and the ecosystem.

The green economy is nothing more than capitalism of nature. The 2012 United Nations Conference on Sustainable Development, which is promoting a green economy, is the next step in the evolution of capitalism. The goal is to implement an alternative to global regimes cashing in on creation by privatizing, commodifying and selling off all forms of life — including air, water and genes, plants, traditional seeds, trees, biological and cultural diversity, ecosystems and even indigenous traditional knowledge.

The green economy is the mechanism for new ways to sell nature, including UN and World Bank initiatives such as REDD-plus (Reducing Emissions from Deforestation and Forest Degradation), the Clean Development Mechanism, carbon trading, PES (Payments for Environmental Services), the International Regime on Access to Genetic Resources and Benefit Sharing, patents on life, TEEB (The Economics of Ecosystems and Biodiversity), natural capital, green bonds and species banking. This economic system greenwashes environmentally and socially devastating, extractive industries like logging, mining and oil drilling, and promotes them as “sustainable development.”

REDD-plus is a false solution to climate change promoted by the UN, the World Bank and climate corporate criminals, such as Shell, that allow polluters to expand fossil fuel development and not reduce their

emissions at source. REDD-plus is a pillar of the global agenda for the privatization and financialization of nature, and constitutes a worldwide land grab and carbon offset scam.

Indigenous peoples from every region of the world inhabit and care for the last remaining sustainable ecosystems and biodiversity hotspots in the world. One example of unsustainable development is the destructive mineral extraction industries continuing to encroach onto Indigenous peoples' traditional territories. Unconventional oil and natural gas development into these areas is increasing despite the urgency for the world to move away from a fossil fuel economy. This extreme energy development based on the combustion of fossil fuels is causing climate chaos that directly affects the well being of Indigenous peoples from the North to the Global South.

As Indigenous peoples of the North, our reality is we live in the belly of the beast. The United States consumes one-third of the natural wealth of our sacred Mother Earth, including the oceans. This level of overconsumption feeds the addictive appetite of the United States, and its industrialized society causes continued intrusions and invasions into other peoples' territories, including indigenous homelands. The current national and global economic system with its global corporations, financial institutions and governmental bureaucracies, cannot survive without an ever-increasing supply of "natural resources": forests, industrial agriculture, minerals, coal, uranium, oil and natural gas, fish, wildlife, water and more land. A human society based upon endless conquest and expropriation of the sacredness of Mother Earth is not only unsustainable, but it is impossible.

The dominant societies' economic paradigm, at all levels, places rapid economic growth, the quest for individual and corporate accumulation of wealth, and a race to exploit natural resources, as its foundation. This economic system disregards the finite limits of Mother Earth, in terms of natural resource availability, consumption, waste generation and absorption.

With some indigenous communities it is difficult and sometimes impossible to reconcile traditional spiritual beliefs with the participation in climate mitigation that commodifies the sacredness of air (carbon),

trees, biodiversity, soils and life. Climate change mitigation and adaptation must be based on different mindsets with full respect for nature — on the rights of Mother Earth — and not solely on market-based mechanisms.

Indigenous peoples can contribute substantially to sustainable development within a holistic framework. With the knowledge that development that violates human rights is by definition unsustainable, Rio+20 must affirm a human rights-based approach to sustainable development. In particular, by affirming that the United Nations Declaration on the Rights of Indigenous Peoples must serve as a key framework underpinning all international, national and sub-national policies and programs on sustainable development with regard to Indigenous peoples.

Full recognition of land tenure of our place-based Indigenous communities is the most effective measure for protecting the rich biological and cultural diversity of the world. Strengthening international, national and sub-national frameworks for collectively demarcating and titling Indigenous peoples' territories and land has proven to be one of the most effective measures for reducing deforestation, protecting the environment from unsustainable mineral extraction, conserving and restoring biodiversity, and preserving a better world for future generations.

A body of law must be developed that recognizes the inherent rights of the ecosystems of Mother Earth and enables indigenous and non-indigenous communities to act as protectors of those ecosystems. Colonial Western law limits nature as mere property or "resources" to be exploited. For the sake of the future generation of humanity and for the world as we know her to survive, there must be a new paradigm enforced by law that redefines humanity's governance relationship to the sacredness of Mother Earth and the natural world. This includes the integration of the human-rights based approach, ecosystem approach and culturally-sensitive and knowledge-based approaches. The world must forge a new economic system that restores harmony with nature and among human beings. We can only achieve balance with nature if there is equity among us.

At Rio+20, governments of the world and civil society must reject any green economy agenda that promotes the commodification and financialization of nature. The people of the world must take concerted action to initiate a new framework that begins with recognition that nature is sacred and not for sale, and that the ecosystems of our Mother Earth have jurisprudence for conservation and protection.

There is a need for this new paradigm in this world. This paradigm requires a change in the human relationship with the natural world from one of exploitation to one that recognizes its relationship to the sacredness of our true mother – Mother Earth.

---

*Tom B.K. Goldtooth is the Executive Director of The Indigenous Environmental Network, a network of indigenous communities worldwide. He is a leader of environmental and climate justice issues and the rights of Indigenous peoples. He is co-producer of an award-winning documentary Drumbeat For Mother Earth, which addresses the effects of bio-accumulative chemicals on indigenous communities.*

# I am the River and the River is Me – The Implications of a River as an Indigenous Legal Person

By Brendan Kennedy

Indigenous peoples around the world often fight with governments that do not recognize their view of the natural environment. When natural resources are involved, indigenous worldviews are rarely the centre of dispute resolution processes because indigenous worldviews of the environment often conflict with non-Indigenous notions of property ownership. So many people were intrigued when the New Zealand government and a Māori tribe came together over a year ago to sign an agreement that proposed, among other things, the acknowledgement of a River as legal person. While this agreement has been viewed as a novel answer to resource management, the proposed solution is more compelling when viewed as an agreement to define a natural resource according to the worldview of Māori, the indigenous peoples of Aotearoa New Zealand. To illustrate, the following outlines (A) Māori and non-Māori views of the natural environment; (B) the existing relationship between the New Zealand government (usually referred to as “the Crown”) and the Māori people; (C) the Agreement proposing the definition of a River according to Māori views, entered into as a result of this relationship; and (D) the implications of the Agreement for Māori and other indigenous peoples.

## Māori and non-Māori views of the natural environment

Like many other places around the world, the natural resources in Aotearoa New Zealand are often viewed in two different ways: one Māori, and one non-Māori. The Honorable Dr. Peter Sharples, noted Māori academic and politician, describes these two competing views best:

*Holding a title to property, whether Crown or private, establishes a regime of rights – to capture, to exclude, to develop, to keep. Rangatiratanga [Māori sovereignty or absolute chieftainship] is asserted through the collective exercise of responsibilities – to protect, to conserve to augment and to enhance over time for the security of future generations. Both seek to increase value, but the question is, how do you*

*value the resource? The profit you can make? Or the taonga [treasure's] contribution to the survival of the group.*

Accordingly, the Whanganui Iwi is the indigenous tribe that has rangatiratanga, or chieftainship over the Whanganui River, and it is the Iwi's view of the River as an integrated whole, or Te Awa Tupua, that is going to govern the future management of the River. But the Whanganui Iwi's view of the River encompasses more than chieftainship because according to Niko Tangaroa, a Whanganui Iwi elder, the Iwi has an interdependent relationship with the River:

*The river and the land and its people are inseparable. And so if one is affected the other is affected also. . . . The river is the heartbeat, the pulse of our people. . . . [I]f the [river] dies we die as a people. Ka mate te Awa, ka mater tatou te Iwi.*

Unfortunately, this unique relationship is not a concept that can be easily valued by non-Māori because its value exists outside the profit generating notions of property.

Fundamentally, the Whanganui River has been a protected tribal resource since colonization. Therefore, the argument that everyone and no one own the River is not a concept that is accepted by the Iwi. Prior to the signing of the Agreement with the Crown, the Iwi argued that non-Māori ownership rights were the only way that their unique relationship, identity and rangatiratanga could be protected. So if the Iwi's view of the River are different from non-Māori, how did the Iwi get the government to agree to define the River as they always have, as Te Awa Tapua, "an integrated, living whole"? Also, why did the Iwi agree to have their rangatiratanga protected through a non-Māori guardianship model where the River is considered a legal entity?

## **The existing relationship between Māori and the Crown**

To explain why the Crown and Iwi came together to reach an agreement recognizing the Whanganui River as an integrated living whole, a legal person, to protected by appointed guardians, four general points need to be made about the existing relationship between Māori and the Crown. First, Māori chiefs and agents of the British monarchy formed

a partnership when they signed the Treaty of Waitangi in 1840, and this partnership continues to exist between the Māori people and the Crown. Second, the principles of the Treaty, rather than its explicit text, continue to govern the duties and obligations of the Treaty partners. Third, if Māori show that the Crown violated these Treaty principles, then Māori are entitled to a settlement as compensation for the violation. Finally, the settlement process usually starts when Māori file a claim with a specialized tribunal, the Waitangi Tribunal, and then Māori negotiate with the Crown directly so that Māori can get their compensation. The Whanganui Iwi has been engaged in this process for decades, and at the time of writing, the Iwi has shown a Crown violation of the Iwi's rights to the River and the negotiation of a settlement of this violation is ongoing.

While the Agreement has been lauded and criticized for granting the Whanganui River legal personhood, most commentators fail to see the broader implications of the Agreement for indigenous peoples. Based on the position of the current New Zealand government, the Government probably came to the table arguing that despite the validity of the Iwi's claim entitling them to redress of wrongs perpetrated by the Government, the Iwi would never be able to own the River in the western-property sense of ownership. In the alternative, the Iwi have argued that they have a symbiotic relationship with the river that reflects Māori cosmology and spirituality. Moreover, while this relationship does not translate into a property right that fits nicely into western-property notions of ownership, the Iwi assert that their customary rights could only be protected if they were granted ownership of the River. So, in an effort to reconcile these two competing arguments, it is not surprising that the European legal guardianship model was used to reconcile these two worldviews because the Iwi already sees themselves as kaitiaki, or custodians and stewards. While the concepts of the legal guardian and the kaitiaki are not synonymous, it could be argued that they share similar attributes.

## **The Agreement defines the River according to the worldview of Māori**

Professor Christopher D. Stone advocates for the application of the legal guardianship model as a mechanism to protect natural phenomena and the environment. For the purposes of this discussion, I would echo Professor Stone's sentiments here as a reminder to those who might freak out at the concept of giving a river legal rights:

*Now, to say that the natural environment should have rights is not to say anything as silly as that no one should be allowed to cut down a tree . . . Thus, to say that the environments should have rights is not to say that it should have every right we can imagine, or even the same body of rights as human beings have. Nor is it to say that everything in the environment should have the same rights as every other thing in the environment.*

Therefore, can a model that was originally proposed to protect the environment be used to protect the property rights of Indigenous peoples? If so, what is being protected? Or to put it another way, does the appointment of a guardian to act for the benefit a natural phenomenon that indigenous peoples have a cosmological connection result in the restriction of indigenous peoples rights that they are entitled to?

The Agreement, titled Tūtohu Whakaturua, proposes that Māori values of the Whanganui River be central to a final settlement that will define the River as an integrated whole, and a legal entity to be protected by appointed guardians. The Crown will appoint one guardian, the Iwi will appoint one guardian, and both guardians will act together for the benefit of the River. If the Guardians have to protect the indigenous property value associated with the River, then the Guardians must promote and secure more than the River as a natural resource. In other words, the Guardians must also promote and secure the spiritual and cultural rights of the River and not just the physical and ecological rights of the River.

## **The implications of the agreement for Māori and other Indigenous Peoples.**

Although the Agreement is not a settlement or a decision that has any independent binding authority, if the terms of the Agreement are followed, then the final settlement will be governed by the Iwi's values that consider the River as a treasure contributing to the survival of the group rather a profit generating resource. But the Iwi's rights to the River may be restricted by the recognition of the River as a legal entity and the appointment of independent legal guardians because the Iwi, like the Crown, will have no power to influence the two guardians once they have been appointed.

The cynic could interpret the Agreement as a foil to critics of Treaty settlements because the guardianship model ensures that no one, not even the Iwi, will own the Whanganui River. By comparison the Iwi have maintained that the welfare of the Whanganui River is the most important part of any settlement, and as Che Wilson from the Iwi notes, "[t]he recognition of the [river] as its own legal entity goes a long way to us as descendants of the river ensuring that the protection of the river is upheld and its sanctity is maintained." In the end, despite the motives of the Crown and the Iwi, it is difficult to make presumptions as to the implications of the Agreement because its details have not been fleshed out yet. So Indigenous peoples around the world should apply the proposals in the Agreement with caution as they continue to fight for the recognition of indigenous views of the natural environment. It is true that appointed guardians may protect a natural resource, but this does not mean that indigenous rights will be protected.

---

*Brendan Kennedy was born and raised in Aotearoa, and is currently completing his LL.M. in Indigenous Peoples Law and Policy at the University of Arizona James E. Rogers College of Law, in Tucson Arizona.*

## How the Recognition of the Rights of Nature Became a Part of the Ecuadorian Constitution

By Dr. Mario Melo

The debate of giving rights to Nature came about within the planetary concern regarding global warming and its implications on continuing with the present unsustainable economic model based on extraction and contamination. In 2006, the Ecuadorian political scene was marked by a historical rupture resulting from the deterioration of the state's institutionalism, a general distrust of political parties, and an economic crisis that left the country without clear perspectives.

Within a global awakening towards the need of going back to a harmonic relationship with Nature, *Fundación Pachamama* saw an opportunity and an opening to begin discussions in 2007 on the legal recognition of the Rights of Nature as the Constitution was going to be rewritten in one of the most biologically and culturally diverse countries in the world under the premise: "What is the country we all dream about?" To motivate the creation of this initiative in this specific political situation, *Fundación Pachamama* carried out an intense theoretical and empirical investigation. The work of *Ciro Angarita*, *Christopher Stone* and the *Community Environmental Legal Defense Fund (CELDF)* with *Thomas Linzey* was referenced as the first work on this innovative idea into the legal community of the United States. Similarly, the struggle since the end of the 1980s led by the Amazonian indigenous organizations for the defense and integral recognition of their territories and rights inspired those pushing the initiative to dedicate themselves to work towards the recognition of the Rights of Nature. *Fundación Pachamama*, together with other organizations of the Ecuadorian environmental movement, developed the proposal for a campaign that would bring together the reaction of some important social sectors, including the indigenous movement, which was represented by the *Confederation of Indigenous Nationalities of Ecuador (CONAIE)*.

In 2007, members of the National Constituent Assembly were elected and charged with the task of creating a new Constitution for the country. *Alberto Acosta*, the elected president of the Assembly, led the Rights

of Nature initiative within the body, and was able to achieve a greater diffusion and open a space for its dialogue and debate.

Additionally, during the process of the Assembly, a political-technical team for the Rights of Nature was formed by environmental organizations and academics. The team participated in discussion and debates with Assembly members and advisors, documenting the meetings and socializing the theme in the press, as well as elaborating audiovisual materials for the defense of the initiative. A larger campaign of socialization took place in the traditional communication media – on television, the radio, and in the press, as well as with theatre, puppet shows, and cinema, so as to increase awareness among the general population.

Many contrary positions were confronted throughout the process. In the legal sphere, the discussions were focused on the theoretical practical foundations about the viability and functionality of a constitutional recognition of Nature as a subject of rights and its implications. From an economic perspective there were critics who focused on the possible complications in the application of a new development paradigm.

But little by little support was gained from the government and other parties and social movements with representatives from the Assembly. Assemblymen Norman Wray and Rafael Esteves were able to get the discussion about Rights of Nature into the Plenary through lobbying with working groups and international and national advisors. They explained the initiative's legal-theoretic foundations, such as the practical effects on an economic and social level of the implications of incorporating them into the Constitution. In April 2008, this recognition was approved by the Assembly, and the Constitution was submitted to a referendum, which entered into vigor on October 28, 2008. Furthermore, the continuous support from indigenous representatives contributed to a more participative process and legitimization of the work being undertaken, and allowed for the inclusion of different understandings with respect to the way in which humans and Nature relate to each other.

Currently, *Fundación Pachamama* is still promoting Rights for Nature and working for its real and effective implementation, as well as for a

secondary law that will allow for their visualization and consolidation. The organization recently participated in the Global Alliance for Rights of Nature to spread the word, not only to the Andean countries where it has been working, but to the whole world to understand and adopt Rights of Nature as an idea whose time has come

---

*Mario Melo is an environmental and human rights attorney in Ecuador. As an advisor to Fundación Pachamama, he participated in developing the text and the process of the historic inclusion of Rights of Nature in the Ecuadorian Constitution.*

## The Nature of Farming and Farming with Nature

Interview with Anuradha Mittal

**Q: How do industrial agriculture practices such as Genetically Modified Organisms (GMOs), pesticides, mono-cropping, trade regimes, etc. impact Nature?**

A: The idea of industrial agriculture is based on working against Nature, rather than working with Nature. Using poisons and uprooting ecosystems for mono cropping is a total violation of the natural order. Industrial agriculture also replaces the small farmer, a steward of land and biodiversity. The result is alienation from land, food sources, and disrespect for those who grow food while nurturing the Earth. We forget how to treat Nature, to be grateful for its abundance and to give back what we take. It is a systemic violation of the Rights of Nature for the short-term profit of large corporations. Food is “cheaper” but we are externalizing the cost of polluting land, air, water our own bodies, and the bodies of those who work the fields.

In a way, the worst assault is genetic engineering, which is the human manipulation of an organism’s genetic material in ways that do not occur naturally, something that is not possible in nature. The patenting of life forms is also a spiritual question – is life invented or created? We are not bigger than nature itself. But to what court can you take these violations?

**Q: What is at stake for us if we don’t change our relationship to the Earth and all species?**

A: If we do not change our relationship with Nature, including how we do agriculture, we are all over a cliff. Climate change is real, and the poorest people in the poorest countries are facing the fallout already. It is also a recipe for famine. It is a lose-lose scenario when food becomes a commodity to be traded in international markets or converted to ethanol for our cars, or when large corporations that can speculate on food prices replace farmers. Today, more than 1 billion people – that is one-sixth of humanity – are food insecure. We must learn the harsh lessons of a food system based on property and profits, or the outcome will be felt by Earth.

**Q: If everyone agreed that Nature has inherent rights, would that be enough to stop factory farming?**

A: We have to understand that on one hand our personal actions are important. When we shop we should be supporting local farmers' markets and community supported agriculture. Our conscious behavior is the foundation, but that is not enough. No matter how much we change our thinking, the understanding that Nature is not property to be exploited must come with mechanisms of real accountability for corporations.

The larger political change is where we can rip "personhood" from corporations and make corporations accountable to communities and ecosystems where they extract wealth. If this doesn't happen, for every personal step forward we take it is still 10 steps back because we haven't changed the law that caters to big business. Agribusiness will continue to use air, land, water, etc. in the same destructive ways.

**Q: How would recognizing Nature's rights in law support sustainable, small-scale farming?**

A: A rights-based approach places nature's well-being at the center of agricultural systems, not short-term profits. Growing food sustainably cannot be done large-scale. You cannot grow thousands of acres of a single crop without killing biodiversity, using herbicides, or transforming proud farmers to sharecroppers. Inevitably, recognizing Nature's rights means supporting small-scale farming. It opens the door for massive land reform, the ability for farmers to practice ancient methods of farming, such as seed saving, instead of being forced to use Monsanto's genetically engineered patented seeds. It means recognizing that agricultural innovation takes place by farmers in their fields, not scientists in lab coats. We're talking about justice: food justice, environmental and climate justice.

---

*Anuradha Mittal is an internationally renowned expert on trade, development, agriculture and human rights. Born in India, her work has always focused on elevating the voices of small farmers particularly in the global South. She lives in California, where she founded and directs the Oakland Institute and with her partner, raises their daughter, Soleil.*

**Global Exchange Thanks everyone who has made this Summit possible including:**

Summit Advisory Committee: Randy Hayes and Gopal Dayeneni (co-chairs), Shannon Biggs, Jeff Conant, Jonathan Frieman, Orielle Lake, Prajna Marcus, Carleen Pickard, Linda Sheehan.

Support staff: Hannah Zucherman and Jordana Gutman.

Filmmakers: Mark and Celia Kitchell.

Catering: Lisa Rost Catering.

Special thanks to Joan Porter, founder and director, Stillheart Institute; David Korten; Jerry Mander; C.S. Fund, the Solidago Foundation and our summit partners: Earth Law Center, Foundation Earth and the Women's Earth and Climate Caucus.



**For more information about the Rights of Nature:**

Contact Shannon Biggs: [Shannon@globalexchange.org](mailto:Shannon@globalexchange.org), +1 415.575.5540 or visit <http://www.globalexchange.org/communityrights/campaigns/rightsofnature>

Design and layout by Matthew Ramsden.

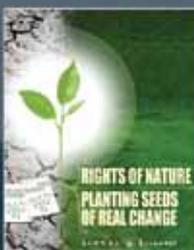
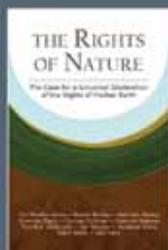
Printing by Autumn Express.

© Global Exchange 2013

2017 Mission Street, 2nd Floor - San Francisco, CA 94110, USA

[www.globalexchange.org](http://www.globalexchange.org) | t: +1 415.255.7296 | f: +1 415.255.7498

 [facebook.com/GlobalExchange](https://facebook.com/GlobalExchange)  [@globalexchange](https://twitter.com/globalexchange)



For more information on Community and Nature's Rights contact Global Exchange  
[www.globalexchange.org](http://www.globalexchange.org)

Shannon Biggs, Community Rights Director  
+1 415.575.5540 [shannon@globalexchange.org](mailto:shannon@globalexchange.org)

Follow us on twitter: [@communityrights](https://twitter.com/communityrights)  
Download this report for free at  
[globalexchange.org/communityrights/resources](http://globalexchange.org/communityrights/resources)